

# Buyer of Government Contractors: New SBA Size Recertification Rules Will Affect Merger & Acquisition ("M&A") Transactions

## ATTORNEYS

Phil Jaeger

## RELATED PRACTICE AREAS

Government Contracting

Mergers & Acquisitions

## RELATED INDUSTRIES

Government Contracting

Phil Jaeger

*BKK Business Law Newsletter*

March 2007

The U.S. Small Business Administration ("SBA") has issued new regulations requiring small businesses to recertify their size status for all of their small business contract awards if they are the target of a merger or acquisition or if they acquire another business. The acquired company must recertify its size to its customer within 30 days after the close of the transaction. These regulations become effective June 30, 2007.

The impact on M&A transactions could be significant. Under prior SBA regulations, a buyer could avoid recertification by structuring an M&A transaction as a stock purchase or a reverse merger. In such a case, no size recertification was required, even if the combined revenues of the buyer and the target surpassed the small business size standard for the original contract award. Under the prior SBA regulations, larger buyers could be aggressive in acquiring companies with small business contracts.

Under the new regulations, which are applicable to all contracts with durations of more than five years, all M&A transactions with small business contractors will require a size recertification and notification to the customer if the size standard is exceeded by the combined size of the buyer and seller after the M&A transaction.

The impact of this regulation on M&A transactions requiring size recertification is not yet clear. At a minimum, upon recertification, if the contractor cannot meet the SBA size standard, the agency cannot take the SBA business credit. However, the contract terms will be unchanged and the contract will remain in place.

How this will play out for M&A players is also uncertain and many questions remain unanswered. However, M&A players should try to get ahead of the curve by closely reviewing these regulations and evaluating, on a contract by contract basis, the possible discretionary outcomes within the control of the government contracting officers. M&A transactions will continue and players should move quickly to fully understand and adjust to the consequences of these new regulations.