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# *POSITIONING YOUR BUSINESS IN TODAY'S SMALL BUSINESS WORLD*

BREAKFAST SEMINAR SERIES
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# THE ENVIRONMENT

1. Increased Scrutiny of Awards to Small Businesses by Congress
2. SBA Aggressively Monitoring Compliance with Small Business Program Eligibility Rules
3. SBA's Office of Hearings and Appeals and the Government Accountability Office are Sustaining Protests in Favor of Small Businesses
4. Positioning Small Businesses in this Environment through Teaming, Joint Ventures and the Appropriate Teaming Partners

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# POSITIONING YOUR SMALL BUSINESS

1. Impact of New Size Recertification Rules
2. Teaming or Joint Venturing for New Contracts
3. Teaming with the Right Partner
   - Affiliation and Eligibility Issues
4. Planning Ahead and Mitigating Risks

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# I.

# REPORT FROM CAPITOL HILL

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# LEGISLATION

A. Small Business Fairness in Contracting Act – (H.R. 1873)

- Passed the House of Representatives on May 10, 2007
  - Small business goals increased from 23% to 30%
  - Goals for SDB/WOSB from 5% to 8%
  - Contract Bundling – Requires bundling analysis for new contracts and expands the definition of bundling.
  - Reporting Requirement – Prime contractors must report the small business usage at all tiers based on the percentage of the total dollar amount of the contract award.

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# LEGISLATION (cont'd.)

A. Small Business Fairness in Contracting Act – (H.R. 1873) (cont'd.)

- Annual Recertification – Annual recertification, if at the time of an award, the firm has revenues greater than 80% of an applicable revenue-based size standard, or a workforce larger than 95% of an applicable headcount-based size standard.
- Appeal – If an SBC feels that they would be adversely affected by a proposed procurement, the SBC, or a trade association on SBC's behalf, may request the Administrator "to take action to further the interests of that small business concern."
- Applies small business goals to overseas contracts.

- See Draft Letter to Senators

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# LEGISLATION (cont'd.)

B. Clean Contracting Bill – (H.R. 1362)

- Passed the House of Representatives on March 15, 2007

  Restricts Sole-source contracts entered into in emergency situations (Iraq, Katrina).

  - Emergency-type contracts – Limited to 1 year (unless exceptional circumstances apply)
  - Sole-source minimization plan required for most agencies – Plan with measurable goals must be submitted to Congressional Oversight Committees
  - Exempts HUBZone, SDVOSB, and those 8(a)s below competitive threshold limits
  - Fixed priced contract maximization plan
  - Increased public disclosure of awards

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# II.

# SBA REPORT

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# REGULATIONS

A. Size Recertification (effect. 6/30/07)

1. Current rule
2. Size determination as of date of initial offer
3. Small for life of contract except when novation of contracts or change of name
4. New Rule
   - Recertification required on long term contracts, novated contracts, stock sales or mergers
   - Contracting office can seek recertification at any time

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# REGULATIONS (cont'd.)

A. Size Recertification (effect. 6/30/07) (cont'd.)

5. Impact on SBC
   - Agencies cannot take SB credit
   - Value of companies may be diminished, reducing acquisition prospects
6. On Long Term Contracts
   - 120 days prior to end of 5th year contracting office must request recertification
   - 120 days prior to exercising any option, the contracting officer must request size

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# REGULATIONS (cont'd.)

A. Size Recertification (effect. 6/30/07) (cont'd.)

7. Novated Contract
   - Within 30 days after approved novation
8. Stock Sales or Merger
   - Within 30 days of the transaction becoming final

- See Articles on Recertification Rule and the SBA's News Release "Myth vs. Fact: SBA and Government Contracting"

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# REGULATIONS (cont'd.)

B. Acquisition Related Threshold Adjustments (effect. 9/28/06)

1. Implements Fiscal Year 2005 DOD Authorization Act
2. Inflationary Adjustments every five years to acquisition related thresholds
3. Adjustments to:
   - 8(a) competition thresholds ($3.5 million/$5.5 million)
   - Subcontracting plan requirements ($550,000)
   - Micro purchase threshold ($3,000)

- See Federal Register Notices with Final Rule in FAR and DFAR

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# REGULATIONS (cont'd.)

C. HUBZone (Proposed)

1. Definition of Employees
2. Current Rule
   a) Full time equivalent (30 hours per week or more)
   b) Aggregate of employees that add up to 40 hours
   c) Totality of circumstances test
   d) Temporary employees, independent contractors, or leased employees are not employees
3. Proposed Rule
   a) Count full-time, part-time, temporary and leased employees
   b) Work 40 hours per month
   c) Totality of Circumstances

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# REGULATIONS (cont'd.)

D. Size Standards (Pending)

1. Inflationary Adjustment
2. IT Services adjustment
   a) $23 million to t/b/d
3. No Overhaul to Employee Based Size Standard

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# III.

# RECENT CASES

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# OFFICE OF HEARINGS AND APPEALS

1. Lance Bailey
   - Affiliation between SBA mentor protégé under SBA approved JV Agreement
2. ST Net Apptis
   - Affiliation on Joint Venture despite use of the SBA's JV form
3. Ross Aviation
   - Appeals will not be dismissed as moot because CO intends to leave award in place
4. See CSA Article on Lance Bailey; Tribal Advocate Article on ST Net Apptis

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# GOVERNMENT ACCOUNTABILITY OFFICE

1. ALATEC, Inc.
   - Contracts should be terminated if timely challenge to awardee's size even if SBA size determination is late
2. Alliance Detective & Security Services, Inc.
   - Options should not be exercised when firm is not small
3. MCS Portable Restroom Services
   - SDVOSB set aside and market research

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# IV.

# RECENT PROGRAM DEVELOPMENTS

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# SMALL BUSINESS PROGRAMS -RECENT DEVELOPMENTS-

A. 8(a) Program
   1. 8(a) Application Process – Backlog at SBA
   2. Competitive Threshold Increased Under FAR
   3. Early Graduation Proceedings
   4. Enforcement of Excessive Withdrawal Rule
   5. Enforcement of Audited Financial Statement Requirements
   6. Heightened Scrutiny of Mentor Protégé Arrangements

B. SDB Program
   1. SDB Application Process – Backlog at SBA
   2. No Price Evaluation Adjustment
   3. Subcontracting Plan Requirements
   4. Recertification at 3 years – delay in certification

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# PROGRAM DEVELOPMENTS

C. HUBZone Program

Proposed Rule on Employees

D. WOSB Program

1. Final Rule Expected this Summer
2. See SBA's News Release on Q&A on WOSB Program

E. SDVOSB Program

1. Goals Not Being Met
2. Expansion of Program
3. VA Goals and Set Aside Program (Veterans Benefits, Healthcare and IT Act 2006)

F. State MBE Programs

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