

SBA Changes: Contractor Beware!

Have you heard about Section 1341 of the Small Business Jobs Act? The “Presumed Loss Rule” has big implications for contractors. If an organization ineligible for Small Business status bids, wins, and performs on a set-aside contract, it may be exposed to up to three times the amount to the contract proceeds, plus additional damages, *whether or not the Government received value from the performance of work.*

It has always been illegal to misrepresent small business status in order to win bids. Until recently, however, it has been difficult for the Small Business Administration to pursue charges against the contractors that did.

Past laws limited recovery to \$5,500 to \$11,000 per contract invoice, which discouraged litigation, because pursuing such small claims consumed more time, money and effort than could be recovered in many cases. Misrepresentation of status on a \$10M contract split into four equal payments would have brought, at most, \$44,000 in recovered damages under the prior regulations.

The presumed loss rule has increased contractor exposure and made it more fiscally practical for the government to pursue claims. Under the new presumed loss rule, the same \$10M contract would be worth irrefutable damages of \$10M (tripled), PLUS penalties of \$44,000 would be added to this figure. The contractor’s liability is now \$30,044,000, making prosecution much more likely, and exposure much more dangerous.

A large business can also be subject to exposure through *no fault of its own* if it:

- Acquires, or enters into a joint venture with, a small business that was not actually eligible for Small Business Status at the time of bid on an existing contract.
- Bids as a subcontractor under a prime contractor who has misrepresented its status as a Small Business.
- Enters into a teaming agreement with a small business wherein the Terms of the Agreement compromise the smaller organization’s eligibility for Small Business status.
- Contractors who misrepresent their status through an innocent mistake may be protected from prosecution if they can prove due diligence. Contractors should review SBA size regulations and decisions from the SBA Office of Hearings and Appeals and keep records documenting this effort before certifying its own Small Business Status. It should also verify a potential business partner’s Small Business status before proceeding with any business agreement.

According to [Pamela Mazza](#), of [PiliroMazza in Washington DC](#) , (October 2011) no contractors have been affected by the new rules yet. But, the Government may be searching for a company to make an example of. Don’t let it be yours!

For more information, read “[Game Changer : The Presumed Loss Rule and Mis-Certification of Small Business Status](#)” by Albert Krachman, Esq.

In the end, you will be glad you made the call; by the way, it’s a FREE CALL.

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