Government Contracts Update

February 2025

M&A Surge Expected in 2025: SBA Final Rule Delays Impact of Size Recertifications

Key Notes:

- SBA final rule ends continued eligibility for future set-aside orders under multiple award contracts after M&A changes a contractor's size status.
- M&A-related recertification rule change takes effect in January 2026.
- M&A activity expected to rise throughout 2025.

On December 17, 2024, the U.S. Small Business Administration (SBA) issued its final rule to adopt several changes from its proposed rule, "HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs." The final rule introduces significant changes impacting mergers and acquisitions (M&A) activity in the government contracting sector. Firms involved in acquiring and selling should take note of these recent changes.

Under the new rule, if a contractor holding small business status under a restricted multiple award contract (MAC) undergoes disqualifying recertification—meaning it is no longer considered "small" following a merger, acquisition, or sale—it becomes ineligible to bid on future task orders set aside or reserved for small or disadvantaged businesses. This change has major implications for investors and prospective buyers, as the loss of eligibility will significantly reduce the value of these MACs. However, this portion of the final rule has a delayed effective date of January 17, 2026. As a result, valuations of contractors holding small business status on their restricted MACs may decline following that date, and we anticipate a surge in M&A activity among government contractors in 2025.

Background on MACs

Federal contracting officers utilize various procurement vehicles to meet the government's needs, including MACs—indefinite delivery and indefinite quantity contracts awarded to multiple contractors deemed eligible for future contract opportunities. Agencies can then issue task or delivery orders under a MAC through fair opportunity competitions or, in some cases, directed awards. As relevant here, MACs can also be "restricted" or "set aside" for small businesses or those with specific SBA certifications, such as 8(a), Women-Owned Small Business, Veteran-Owned Small Business, or HUBZone. Additionally, agencies may set aside individual task orders under restricted and unrestricted MACs for small or disadvantaged businesses.

Prior Rule

Before the final rule, the government determined a contractor's size and eligibility status at the time of its initial offer for a restricted MAC. This meant that the contractor retained the benefit of its original small-business status and SBA program eligibility for the life of the MAC—even if the contractor later grew beyond the size threshold, such as through acquisition by a large business. As a result, these contractors could still compete for set-aside tasks or delivery orders.

While the government could require recertification of set-aside eligibility in certain circumstances, the only consequence of failing to recertify as small or program-eligible was that the agency could no longer count awards to that contractor toward its small business goals. This allowed large businesses to acquire small businesses holding valuable set-aside MACs and continue competing for small business-designated orders.

Final Rule

The final rule eliminates the continued small business eligibility benefits provided under the prior regime. Now, when a contractor undergoes required recertification—such as after a merger or acquisition—and submits a “disqualifying recertification” (confirming it no longer qualifies as a small business or for an SBA program), it becomes ineligible to bid on future set-aside orders under the MAC. This marks a significant shift from prior regulations, which permitted businesses to continue bidding under existing set-aside MACs.

However, if the disqualifying recertification follows M&A activity with another small business, the contractor remains eligible for set-aside orders issued under the MAC. Recognizing the need for businesses to adjust to the new recertification procedures, the SBA has implemented a delayed effective date for this aspect of the regulations. If an M&A transaction closes and the contractor holding the MAC submits its required recertification to the agency before January 17, 2026, the prior rule still applies, preserving eligibility for set-aside orders. This creates a strong incentive for contractors to complete M&A transactions before the deadline.

Takeaway

The final rule will significantly reshape the M&A landscape for small businesses, particularly those targeted by larger firms, once it takes effect on January 17, 2026. Until then, the valuation of set-aside MACs will be at its peak for prospective sellers and acquiring companies alike. Accordingly, contractors and investors should act quickly on any planned transactions to take advantage of the delayed implementation of the final rule before time runs out.

FOR MORE INFORMATION

For more information, please contact:

Edward T. DeLisle
202.973.2725
Edward.DeLisle@ThompsonHine.com

Frank D. Chaiken
312.998.4249
513.352.6550
Frank.Chaiken@ThompsonHine.com

Will M. Henry
216.566.7077
William.Henry@ThompsonHine.com

Andrés M. Vera
202.973.2795
Andres.Vera@ThompsonHine.com

Amaiya Johnson
202.973.2762
Amaiya.Johnson@ThompsonHine.com

or another member of our Government Contracts group.