

US Government Contracts Quick Hit Briefing

Update: Good News for Some Small Business Government Contractors — Your Runway to Becoming Large Has Been Extended!

January 2019

Based on newly acquired information, we are issuing the following update to our previous publication.

Update: Following the passage of the Small Business Runway Extension Act of 2018 (the Act) on December 17, 2018, the Small Business Administration (SBA) issued an internal Information Notice on December 21, 2018 to address inquiries about whether the Act would be effective immediately. According to the SBA, since the Act still requires approval through a rulemaking process, the change is not effective immediately and is not applicable to present contracts, offers or bids. Therefore, until the regulations are amended, the SBA explains, "...businesses still must report their receipts based on a three-year average." While the SBA's position may be open to challenge, it is important for businesses to be aware that at this point, the use of the five-year period would be contrary to the SBA's guidance.

Please note: Prior to issuance of this update, we attempted outreach to SBA about the Information Notice but to no avail due to the ongoing partial government shutdown. We will continue to monitor this situation and issue additional updates if any developments occur. Please contact one of our US government contracts experts herein if you have any questions or need advice on the Act.

On December 17, 2018, President Trump signed into law the [Small Business Runway Extension Act of 2018 \(HR 6330\)](#) (the Act), which modifies the period to measure small business size status from three fiscal years of average annual receipts to five fiscal years.

What This Means

Based on this amendment, government contractors that would have outgrown small business status under revenue-based North American Industry Classification System codes may gain additional years to transition from small business status to having to compete in full and open competitions with large businesses.

The Act does not make any additional amendments to the [Small Business Act](#). It simply states: "Section 3(a)(2)(C)(ii)(II) of the Small Business Act (15 U.S.C. 632(a)(2)(C)(ii)(II)) is amended by striking '3 years' and inserting '5 years.'"

The Act became law (Public Law No: 115-324) and was effective immediately on December 17, 2018. At this point, the Small Business Administration (SBA) has not addressed the Act. Therefore, it remains unclear whether the SBA will issue an interim or final implementing rule for the Act.

We will be monitoring for any guidance from or statements issued by the SBA on the Act. Please contact one of our government contracts experts if you have questions or need any advice on the Act.

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About Our US Government Contracts Team

Our International Trade Practice and Aerospace, Defense & Government Services Industry Group work in concert to provide multidisciplinary legal guidance and compliance solutions to companies across the globe on all aspects of the US government procurement processes, as well as M&A transactions involving US government contracts, including the related foreign ownership issues. Our experienced and knowledgeable professionals have a keen understanding of the intricacies involved when contracting with US government entities, and can position US government contractors toward success. We can shepherd your company through a landscape that is continually evolving by providing leading-edge, customized counsel at every step of the government contracting process.

Team

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