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Small businesses fear rule changes will crater federal contract chances

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By Lydia Wheeler - 08/17/16 12:36 PM EDT

Small businesses that contract with the federal government fear proposed changes to regulations will push them out of the bidding process.

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The joint proposal from the Department of Defense, the General Services Administration (GSA) and NASA requires agencies to write a report when they choose not to buy supplies or services through existing government contracts.

In the report, the contracting officer must compare the price of the goods or services selected with the prices offered through the Federal Strategic Sourcing Initiative (FSSI), a program the government created to streamline government purchases.

But small businesses say that what appears to be a simple administrative change could dismantle the Small Business Act.

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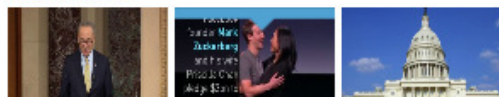
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...ve worked in government contracting for years, and to say to do something you will have to write a separate justification that someone has to sign off on — no one is going to take that avenue,” said Belinda Guadarrama, president and CEO of GC Micro, a California-based software management company with 40 employees. “Everyone is going to buy off FSSI contracts. These are not small businesses.”

Guadarrama and small-business advocates point to the section of the law that says federal agencies should “to the maximum extent practicable, avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation in procurements as prime contractors.”

Charles Tiefer — a professor at the University of Baltimore School of Law and former member of the federal Commission on Wartime Contracting in Iraq and Afghanistan — wrote a legal opinion calling the proposed changes “blatant and undeniably illegal.”

“The proposed regulations would reduce the breadth of small business contracting by up to 80 percent or even 90 percent in lines of business where small business contracting is currently common,” he wrote.

In its proposed rule, the government says the changes are needed to implement a statute that requires documenting when an agency determines not to use an FSSI contract.

But in an interview with The Hill, Tiefer argued the government could have fulfilled that statutory requirement in other ways.

“There was a bare-bones, two-sentence provision in one of the recent defense authorization bills,” he said. “It’s totally bare bones. So how you implement it is left entirely, entirely — completely, totally and entirely — up to the agencies.”

Instead, Tiefer said, the government chose to push small businesses out of the running. Though it’s possible for small businesses to become FSSI contract holders, Tiefer said it isn’t easy.

“It’s as difficult for me to fly down to Rio and join the Olympics,” he said. “Sometimes the requirements are practically nationwide.”

Take a contract for custodial care services for federal offices from coast to coast for example. While a small business could provide the services for the area in which they’re located, Tiefer said they’d have to create a team of contractors across the country to be able to do the work required.

Lloyd Chapman, president of the American Small Business League, said he’s already preparing to challenge the rule change in court.

“I would describe them as anti-small-business, job killing and illegal, and we don’t need that in America right now,” he said. “We don’t need policies that are going to kill jobs and pull money from the middle class.”

The GSA said it does not speak on behalf of the Federal Acquisition Regulatory Council, the multi-agency rulemaking body behind these policy changes, and directed The Hill to the White House Office of Management and Budget’s (OMB) Office of Federal Procurement Policy.

On Tuesday, the OMB said it would have to look into the matter. It did not respond by The Hill’s Wednesday afternoon deadline. The Defense Department also did not respond to a request for comment.

In its proposal, the government said the rule will not directly affect “small entities” and could benefit small businesses that have an existing FSSI contract with the government by forcing contracting officers to look at FSSI contracts they might not have looked at in the past.

Of the 137 entities with FSSI contracts, the government said 78 are classified as small entities.

The public has until Friday to submit comments on the proposed rule.



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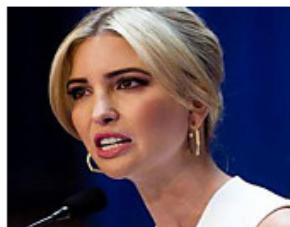
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**Gulredo** → grpetty · a month ago

Bigger government control over business is easier when you don't have the small business to contend with. Me thinks the huge increase in gov regs in the last 8 years is aware of their shrinking effects on creative new private sector capitol.

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**Lloyd Chapman** · a day ago

Here is a 7 minute film on the rampant fraud in federal small business programs.

<http://www.asbl.com/showmedia...>

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**Lloyd Chapman** · a day ago

Beginning in 2008 I predicted by the time Obama left office he would dismantle all federal programs for small businesses including the programs for minorities, women and service disabled veterans. The Obama Administration removed the parent company D&B number to help large businesses misrepresent their subsidiaries as small businesses. They have adopted policies that have made thousands of large businesses eligible for small business contracts. They adopted the "safe harbor from fraud penalties policy" to protect fraudulent firms from criminal prosecution. Obama has renewed the Pentagon Comprehensive Subcontracting Plan Test Program several times. The Pentagon has acknowledged the test program has reduced subcontracting opportunities for small businesses. Legal opinions described it as a "sham". Now with the GSA FSSI and the obvious anti-small business language in the 2017 NDAA federal small business programs will be dealt the final death blow by the Obama Administration. As a result of the Obama Administrations anti-small business policies the World Bank found the U.S. in 49th world wide in the ease of starting a new business. Home ownership is at a 48 year low, poverty is at a 17 year high and birth rates in the U.S. have dropped for six consecutive years as a result of economic concerns.

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**Rich** · a month ago

The Federal Acquisition Regulatory Council? I thought FARC was the guerilla group that finally gave up trying to overthrow the government in Colombia. Have they just changed targets and tactics? I smell a conspiracy!

^ | v · Reply · Share >

**ProfSamuelDBornstein** · a month ago

Great Article! Thanks for bringing this issue to light. While many contractors have not yet felt the impact of FSSI on their businesses, they should take note. FSSI will be applied to Category Management which will affect \$277 Billion in annual government

applied to Category Management which will affect \$277 Billion in annual government spending. That's two-thirds of all annual spending! So if you have not yet felt the pain of FSSI, it can be expected that you will. The Federal Contracting Community should take note of this Proposed Rule to amend the FAR and effectively make FSSI "mandatory" for two-thirds of all government spending. I urge all federal contractors to educate themselves on this issue and WRITE TO YOUR CONGRESSIONAL REPRESENTATIVES to express concern about the FSSI and Category Management.

On April 5, 2016, House Small Business Committee Chair Chabot and Ranking Member Velazquez wrote a letter to GSA Administrator Roth expressing concern for the damage that FSSI has and will cause for the small business community.

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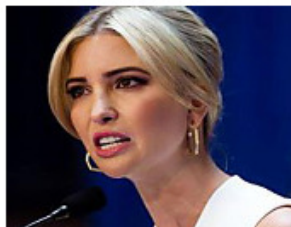
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