We have noted several recent Department of Justice press releases about companies that have been found to have falsely certified that they met certain criteria and were thus eligible for award of certain contracts set aside for companies that met the criteria. Companies that claimed to be a small socioeconomically disadvantaged business, but were not. Companies that claimed to be a small woman-owned business, but were not. Companies that claimed to be a small, service disabled veteran owned business, but were not. Companies that claimed to be HUBZone small businesses, but were not. You get the idea.

If you are a small business, you probably know it. FAR Part 19 has lots to say about the subject, as does Chapter 13 of the Code of Federal Regulations. There are rules that address permissible size standards by NAICS code. The Small Business Administration has lots of information to help companies with the complexities of eligibility determination. (For example: **here**.) While the topic is deep and complex, and there are gray areas, the basics are readily determinable, such that you probably know whether or not your company qualifies.

When you qualify, you "self-certify"—that is, you execute a Representation or a Certification in Section K of your proposal. Those Reps and Certs are, of course, subject to the False Statements Act. If you falsely certify, that's *really* not a good thing—as those Department of Justice press releases we noted above testify.

Of course, small businesses grow. As they grow, their compliance risks evolve. We've discussed that situation several times on this site, including **this article** . We wrote—

Many small business government contractors don't evolve their infrastructure, their back offices, to keep pace with the compliance risks of their newer contract awards. They end up with a mismatch between the needs of their newer contract requirements and the capabilities of their administrative staff. That's when consultants can add some value. But the real issue is not the knowledge or expertise of the team; the real issue is that the actual practices may need to change to match the compliance requirements of the newer contracts. The company may need to make fundamental changes to the way in which it does business.

Some small businesses get acquired. They get acquired by large businesses, or perhaps they get acquired by another small business. Either the small business becomes a large business or,

perhaps, *both* buyer and target become large businesses by virtue of the acquisition. In either situation, the acquired company may no longer qualify for the socioeconomic niche it had relied on for contract awards. Those Section K Reps and Certs need to be reviewed before execution, lest somebody falsely certify to being something they are not.

In related news, the Department of Justice recently **announced** that it had reached a settlement with TrellisWare Technologies, Inc., a communications company located in San Diego, with regard to allegations under the False Claims Act that TrellisWare had falsely certified that it was eligible for Small Business Innovative Research (SBIR) program awards, when it fact the company did not qualify as being a small business. According to the DoJ press release, TrellisWare "is a majority-owned subsidiary of ViaSat, Inc., a global broadband services and technology company also headquartered in San Diego." The press release explained—

Between 2008 and 2015, TrellisWare was awarded multiple SBIR contracts to provide the Navy, Army and Air Force with a variety of technology services and products involving communications and signal processing systems, including wireless networks used in military tactical environments. TrellisWare self-certified that it met the small business size requirements for eligibility to receive SBIR funding. But based on certain disclosures that TrellisWare later made about its ownership relationship with ViaSat, the government conducted an investigation into TrellisWare's eligibility for SBIR awards. The government contends that TrellisWare was not eligible for SBIR awards because it was actually a majority-owned subsidiary of ViaSat at the time it was awarded and performed on SBIR contracts.

Apparently, the government asserted TrellisWare falsely certified that it qualified as a small business in order to receive SBIR contract awards, and that every single invoice the company had submitted under those SBIR contracts was an individual false claim. We're confident that situation led to a very large quantum, and that TrellisWare/ViaSat was content to settle the allegations for $12.2 million.

Word to the wise: you need to review your Section K Reps and Certs from time to time, in order to make sure they are accurate. You probably want to restrict the authority of those who execute Reps and Certs on behalf of the company to those who can do so knowledgeably. You do not want to face a situation similar to the one faced by TrellisWare/ViaSat, where the government alleges you intentionally executed false Reps and Certs.