



**FEATURE**  
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government sales

# Would the Real Small Business Please Step Forward

by Paul A. Miller

What is a small business these days? If you're a normal thinking person, you should have no problems recognizing a typical independent is a small company and Office Depot, for example, is a large company.

However, if you're doing business with the federal government, distinguishing between large and small businesses is not always that easy. Putting it simply, the rules governing the federal contracting process have gotten out of control. Today if you want to sell to the federal government you can't just set up shop and do so. You first have to navigate an increasingly complex maze of paperwork and regulations that on a good day would try the patient of a saint.

## NAICS Codes

Your first step involves deciding what North American Industrial Classification (NAICS) code you fall under. For some industries this may be easy, but office products is not one of them. For instance, most independent dealers classify themselves either under 424120 (Stationery and Office Supplies Merchant Wholesalers) or 453210 (Office Supplies and Stationery Stores). Both are legitimate classifications, but each has a different rule for defining what is considered a small business for federal government contracting purposes.

Under NAICS Code 424120, a small business is one with 100 or fewer employees. Under NAICS Code 453210, you are considered a small business if your revenue is \$6.5

million or less. In my opinion, neither of these definitions meets the needs of the office products industry.

According to the federal government and the NAICS Codes, an independent dealer with revenues in the \$10 million range could be classified as a large business. That definition ignores the reality of our industry. If you're a commercial or government buyer of office products, you're typically going to buy either from small business—and that could even be one with revenues in the \$50-100 million range—or from a mega-corporation with revenues in the billions. It just doesn't make sense to put any independent dealer in the same classification as the mega-players in our industry.

There is another NAICS Code for you to think about using as you compete for federal government business. Most independents should consider using NAICS Code 454111 – Electronic Shopping. This classification has a revenue threshold of \$23 million and if you don't have a store front, you might want to look into using this NAICS Code as well.

There is some relief, however. Most Requests for Proposals offer a different definition of what is considered a small business. Some use the 100-employee criteria or

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they use the \$6.5 million threshold. If you run across any of these and get concerned you cannot bid on these contracts because the rules say you won't be considered a small business, don't panic.

I'm here to tell you that you are a small business by the government's standards because of an exemption I was able to obtain for independent dealers last year to what's called the Non-Manufacturing Rule.

This exemption allows independents to use the 500 employee threshold when it bids on federal government contracts and it's a major benefit for dealers. However, you should expect it to come under fire in 2008 when the Small Business Administration (SBA) begins another round of size standard reviews.

When this happens, the industry has to be prepared to defend this provision and weigh in on the issue of the appropriate size standard criteria for office products resellers.

## Pass-Throughs

As you should be aware by now, the industry is taking the issue of pass-throughs head on. For those of you who don't know, a pass-through is a sham relationship set-up by one of the corporate giants with an independent dealer for the sole purpose of using their small business status to gain access to those federal government contracts that are meant for legitimate small businesses.

Our industry has made a real commitment to challenge these relationships and has done so successfully. The industry owes a big thank you to California dealer Office Solutions for filing the first challenge to the small business size standards. It took almost four months to fight, but at the end of the day Office Solutions won its challenge.

In this case a Colorado dealer, Faison Office Products, had partnered with

Corporate Express to bid on a small business set aside contract. The case went through a number of rulings and appeals, but in its final ruling, the Small Business Administration determined Corporate Express was much more than a partner to Faison and Faison could no longer be considered a small business for contracting purposes.

Pass-through relationships like the one between Faison and Corporate Express are costing legitimate independent dealers millions of dollars in lost opportunities and dealers ignore the practice at their peril. The cost is simply too great for all of you.

Independents have to come together and fight on issues like this. You're doing it on the size standards, and doing it effectively.

Together, we need to keep the pressure on. Faison was just the first victory. There are more size standard protests coming.

## Big Buys Small

Acquisitions represent another loophole in the federal contracting process that has been abused for years. There's nothing inherently wrong with one company buying another. It's a free country and part of our free enterprise system.

But when a mega player buys small businesses with lucrative federal government contracts and the federal government uses the acquired company's small business status to buy from the mega, that's not fair or even logical.

In 2006, Rep. Nydia Velazquez (D-NY), chair of the House Small Business Committee, identified several hundred large companies who were currently being listed by the federal government as small businesses.

They included Corporate Express, Office Depot, OfficeMax, and Staples. And they are all still listed as small again this year!

## Size Standard Review

Starting in 2008 the SBA will begin another review of the small business size standards issue. This time it will focus on categories of industries. This means that office products will be lumped into a larger classification for review, with the review process due to start in January.

There's no question the current size standards for small business need to be reviewed. But unless the SBA recognizes each industry is different with its own specific needs and priorities, the review process will fail.

That's why it's vitally important that when SBA starts its size standards review early next year, the independent dealer community has to be ready to respond.

You need to defend the Non-Manufacturing Rule. If you don't weigh in on its importance, you may well see the megas coming up with a way to undue the rule. We've already seen one of them challenge the Non-Manufacturing Rule in a recent protest.

Secondly, the industry has to be ready to sit down with SBA and explain how the industry works. The industry needs to weigh in when the time comes to let the SBA know that any changes to the small business size standard have to take into account how this industry operates. It makes no sense to consider even a \$50 million business in the same category as one of the megas, but that's what will happen if we don't work aggressively and proactively together as an industry.

Paul Miller is a founding partner in Miller/Wenhold Capitol Strategies, LLC, providers of direct and grassroots lobbying, legislative and regulatory tracking, advocacy planning and implementation and related services. Before setting up Miller/Wenhold, Miller served as government affairs director for the National Office Products Alliance and the Office Furniture Dealers Alliance (NOPA/OFDA). In addition to his lobbying and regulatory monitoring activities, Paul also provides consulting services to businesses on selling to the federal, state and local government markets. For more information, visit [www.mwcapitol.com](http://www.mwcapitol.com).