

Defense extends suspension of price adjustments for small disadvantaged firms

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The Defense Department has extended its suspension of a policy that allowed it to adjust bid prices to give small disadvantaged businesses a leg up in winning contracts, citing a November 2008 [court ruling](#) that deemed the practice unconstitutional.

The policy permitted Defense to enter into contracts with small disadvantaged firms for a price higher than the market cost, if necessary to meet procurement goals. The department stopped giving small disadvantaged businesses a price evaluation adjustment on contract proposals in March 2007, long before the court decision, because it was able to meet the congressionally mandated goal of awarding 5 percent of contracts to these businesses. But Director of Defense Procurement Shay Assad said the decision could affect future use of the adjustments, should they once again become necessary to reach acquisition targets.

Defense and the Small Business Administration have said they're reviewing the ruling along with the Justice Department. On Tuesday a Justice spokeswoman said the case was still in litigation.

The United States filed a motion on Feb. 9, according to Justice, asking the court to limit the decision to the race conscious small business contracting programs authorized by Title 10 of the United States Code, Section 2323. That section deals primarily with race-based programs, but also includes the HUBZone program, which provides contracting assistance to companies in traditionally low-income areas.

The plaintiff, Rothe Development Corp., responded by asking the court to enjoin all programs authorized under Section 2323. Rothe, a Texas-based information technology company, lost a Defense contract to an Asian-American-owned business despite being the lowest bidder on the contract.

The government is planning a response to Rothe filing.