

Congress of the United States

House of Representatives

108th Congress

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-6315

June 24, 2003

Ms. Linda G. Williams
Associate Administrator, Office of Government Contracting
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Re: Proposed Rule regarding "Size for Purposes of the Multiple Award Schedule and Other Multiple Award Contracts; Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

Dear Ms. Williams:

As Members of the Committee on Small Business, we are providing our comments on the proposed rule change regarding small business size re-certifications for the purpose of federal contract awards that was published in the *Federal Register* on April 25, 2003. We are concerned that if the option the SBA has selected in the proposed rule is the one chosen for the final regulation, small businesses will not only be unnecessarily burdened with paperwork, but the purpose of small business procurement programs will be undermined.

Currently, SBA regulations require firms to certify as to their business size as of the date of the initial offer on a contract. The General Services Administration implemented a Federal Acquisition Regulation (FAR) deviation in November of 2002, requiring companies with GSA Schedule contracts to re-certify as to their business size when their contracts are up for renewal of option years. Prior to this deviation, the GSA and the SBA interpreted the FAR to allow companies to re-certify every five years. Subsequent to GSA's FAR deviation, OMB required that firms holding Government Wide Acquisition Contracts (GWACs) should require an annual re-certification as to size.

In its proposed regulation, the SBA is apparently attempting to quantify even further when a small business must certify as to business size. The SBA proposes that companies annually certify as to business size on all multi-year federal contracts for all small businesses.

In the formulation of this rule, the SBA considered three other options in formulating this proposed rule, and has sought comments on the alternatives. The alternatives considered and rejected by the SBA were: 1) re-certification as of the date of an order on a task order contract; 2) re-certification at the time the agency exercises option years on contracts; and 3) requiring businesses to re-certify if their small business status has changed.

Alternative 1 was eliminated because the SBA expressed concern that it would require size certifications too often. Alternative 2 was rejected because the SBA believed it would require size certifications too infrequently. The third alternative was also rejected because the SBA decided that, although this option would be less burdensome to small businesses and would have a minimal effect on the procurement process, small businesses may not comply in a timely manner. The SBA determined that if a firm grew beyond its size standard, it might not notify the relevant federal agency until it had received the contract.

An analysis performed by the SBA in accordance with the Reg Flex Act resulted in an estimate of at least 250,000 small businesses that could be impacted by this rulemaking. However, the SBA identified that 6 to 12 businesses per year grow beyond the size standard each year. Although the SBA evaluated the impact of its proposed regulation, there remains a question as to whether the law was in fact followed. What is clear, is that the SBA violated the spirit of the Reg Flex Act which attempts to minimize costly and burdensome regulations on small businesses. With this proposed rule, the SBA has chosen the most burdensome option for small businesses, while rejecting other, less burdensome, choices.

The SBA has historically viewed the issue of business size in very black and white terms: either a business is small, or it is not. This narrow view compounded with the proposed regulation will have the effect of hampering the growth of small companies. A multiple year contract with option years has historically had, and continues to have, a stabilizing effect on a small business. The small business would have increased access to capital, and would be more likely to hire additional employees. The SBA would be destroying this stability by requiring firms to certify as to business size and then not allowing the exercise of option years if the company was only one dollar over the size standard. In reality, the SBA would be penalizing small companies for growth, in order to weed out a few bad actors, rather than encouraging small business to grow. Additionally, the SBA would be promoting a scenario in which a business would be small one year, other than small the next, small the following year, ad infinitum.

The Committee is concerned that the SBA is adopting a very rigid approach rather than a flexible one. Rather than the regulation as proposed, the Committee recommends that SBA adopt a rule in which a firm re-certifies after the base period of the contract, or after five years at a minimum. If the business at that point is within 20 percent of a monetary-based size standard or within 5 percent of an employee-based size standard, the firm should be allowed to have its option year exercised. Subsequent option years should require certification based upon a similar percentage index. This approach will allow small business to grow, and benefit from the multi-year contracts they have been successful in winning.

As the agency designated by Congress to assist small businesses, the SBA's regulation as proposed, will have the effect of harming small businesses rather than helping them. The Committee strongly recommends that the SBA re-evaluate its approach and consider the alternative proposed by the Committee that would better assist small businesses.

If you have any questions about this letter, please contact Ms. LeAnn Delaney of the Committee staff at (202) 225-4038.

Sincerely,



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Ranking Democratic Member
Committee on Small Business



CHARLES A. GONZALEZ
Ranking Democratic Member
Subcommittee on Regulatory
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