

Government Contracts Blog

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Objects In SBA's Mirror Are Smaller Than They Appear: A Summary Of SBA's Proposed Rule To Increase Small Business Size Standards

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The U.S. Small Business Administration (“SBA”) issued a proposed rule on March 16, 2011 that increases the small business size standards for 35 industries and one sub-industry in North American Industry Classification System (“NAICS”) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. The proposed rule is one of several rules to be proposed by the SBA that will examine and potentially change the small business size standards for industries grouped by NAICS Sector. The SBA undertook this effort following passage of the Small Business Jobs Act of 2010, implemented on September 27, 2010, and Executive Order 13563, signed by President Obama on January 18, 2011, which calls for agencies to undertake a review of possible ineffective or outdated rules and, if necessary, update and streamline their rules to better meet regulatory objectives.

The SBA’s proposed rule focuses on receipts-based size standards, as it covers all industries with receipts-based standards in NAICS Sector 54. In an effort to “simplify managing and using size standards” the SBA proposes to reduce the total number of receipts-based standards that are used from 31 to eight “fixed” size standards. These eight “fixed” receipts-based standards are \$5 million, \$7 million, \$10 million, \$14 million, \$19 million, \$25.5 million, \$30.0 million, and \$35.5 million. The SBA considered five primary factors in order to determine the appropriate receipts-based standard for the targeted industries:

1. average firm size;
2. startup costs and entry barriers;
3. industry competition;
4. distribution of firms by size; and
5. impact on Federal contracting and SBA loan programs.

Following review of the targeted industries based on the identified factors, SBA proposed revisions to the current small business size standards. For a comprehensive summary of the

proposed revisions to the size standards, see Table 7 – Summary of Proposed Revisions to Size Standards, at 76 Fed. Reg. 14335.

While the SBA's review could have supported lowering the size standards for some industries and sub-industries, in a nod to the realities of the current economic climate, the SBA proposes to maintain the current size standards for those industries that otherwise would warrant a lower standard based on the SBA's review.

The SBA seeks public comments on the proposed rule, and specifies several areas in which it is particularly interested. These areas include, for example:

1. whether its proposal to simplify the size standards by using eight fixed size levels for receipts-based size standards is appropriate;
2. whether the proposed size standards are appropriate based on the economic characteristics of each industry or sub-industry and suggestions for alternative standards;
3. the appropriateness of using a common size standard for certain industries;
4. whether the SBA should consider factors in addition to the five primary factors (noted above) when determining size standards;
5. whether equal weight should be given to the five primary factors;
6. whether the SBA should limit the increase to a size standard (the SBA's evaluation resulted in proposed increased size standards for some industries that are more than three times the current size standards); and
7. whether SBA should lower some size standards (as noted above, SBA's current position is that lowering any size standards runs afoul of the current regulatory vision for increasing opportunities for small businesses).

Comments on the proposed rule are due by May 16, 2011. The proposed rule in its entirety can be found at 76 Fed. Reg. 14323.

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