Kilpatrick

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Small Businesses Can Now be a Little Larger Under the SBA's Increased Size Standards

Being small is not always easy, but in the case of government contracting, it comes with significant advantages. These advantages include: access to limited competition procurements through small business set-aside contracts; availability of SBA-guaranteed loans and surety bonds; and other like advantages. Being small can also allow you to participate in various government programs, such as the 8(a), Woman-Owned Small Business, HUBZone, and Service Disabled Small Business programs, which provide further set-aside opportunities if you qualify.

To qualify as "small", a business must first be smaller than the size standard for its industry based on the North American Industry Classification System or NAICS Code. Found at 13 CFR §121.201, each NAICS code is based on either the number of employees a business has (mostly in the manufacturing arena) or a dollar amount derived from taking the average annual revenue (or in certain instances, receipts) for the business over the past three years (soon to be five years; *see* SBA Proposes (Finally) to change method of Calculating Size Status/Annual Revenues). Regulated and determined by the U.S. Small Business Administration ("SBA"), these revenue-based NAICS size standards are required to be reviewed and updated through a periodic SBA rolling review process to account and adjust the size standards for the economy, firm size averages, federal contracting trends, and other like adjustment factors. The SBA is also supposed to review size standards at least once every five years to adjust for inflation. These reviews and adjustments are critical to businesses, as they can "make or break" a company by impacting their status as "small" or "other than small" (nee, large).

On July 18, 2019, the SBA issued a Proposed Interim Final Rulemaking, 84 Fed. Reg. 34621 *et seq.*, in which the SBA has made what this author sees as significant increases to account for inflation in all monetarily-based size standards for seemingly all industries, as depicted in the following table:

TABLE 1—INFLATION ADJUSTMENT TO MONETARY-BASED SIZE STANDARDS

Current monetary-based size standards ($ million) (1)	Size standards adjusted for inflation, before rounding ($ million) (2)	Size standards adjusted for inflation, after rounding ($ million) (3)	Number of industries (incl. exceptions) (4)
$ 0.75	$1.05	$1.0	46
5.5	6.0	6.0	4
7.5	8.1	8.0	126
11.0	11.9	12.0	39
15.0	16.3	16.5	95
18.0	19.5	19.5	1
19.0	20.6	20.5	2
20.5	22.2	22.0	39
25.0	27.1	27.0	1
27.5	29.8	30.0	55
29.5	32.0	32.0	3
32.0	34.7	34.5	2
32.5	35.2	35.0	39
36.5	39.6	39.5	11
37.5	40.6	40.5	1
38.5	41.7	41.5	63
550	596	600	5
Total Industries (including subindustries or "exceptions")			532

84 Fed. Reg. 138 at 34263.

So how does this impact businesses? The following chart utilizes the construction industry to depict the significant increases between present size standards and the proposed new size standards:

Sector 23 – Construction			
NAICS No.	Description	Current Size Standard (Millions)	Proposed New Size Standard (Millions)
Subsector 236 – Construction of Buildings			
236115	New Single-family Housing Construction (Except For-Sale Builders)	$ 36.5	$ 39.5
236116	New Multifamily Housing Construction (except For-Sale Builders)	$ 36.5	$ 39.5
236117	New Housing For-Sale Builders	$ 36.5	$ 39.5
236118	Residential Remodelers	$ 36.5	$ 39.5
236210	Industrial Building Construction	$ 36.5	$ 39.5
236220	Commercial and Institutional Building Construction	$ 36.5	$ 39.5
Subsector 237 – Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	$ 36.5	$ 39.5
237120	Oil and Gas Pipeline and Related Structures Construction	$ 36.5	$ 39.5
237130	Power and Communication Line and Related Structures Construction	$ 36.5	$ 39.5
237210	Land Subdivision	$ 27.5	$ 30.0
237310	Highway, Street, and Bridge Construction	$ 36.5	$ 39.5
237990	Other Heavy and Civil Engineering Construction	$ 36.5	$ 39.5
237990	Dredging and Surface Cleanup Activities	$ 27.5	$ 30.0
Subsector 238 – Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	$ 15.0	$ 16.5
238120	Structural Steel and Precast Concrete Contractors	$ 15.0	$ 16.5
238130	Framing Contractors	$ 15.0	$ 16.5
238140	Masonry Contractors	$ 15.0	$ 16.5
238150	Glass and Glazing Contractors	$ 15.0	$ 16.5
238160	Roofing Contractors	$ 15.0	$ 16.5
238170	Siding Contractors	$ 15.0	$ 16.5
238190	Other Foundation, Structure, and Building Exterior Contractors	$ 15.0	$ 16.5
238210	Electrical Contractors and Other Wiring Installation Contractors	$ 15.0	$ 16.5
238220	Plumbing, Heating, and Air-Conditioning Contractors	$ 15.0	$ 16.5
238290	Other Building Equipment Contractors	$ 15.0	$ 16.5
238310	Drywall and Insulation Contractors	$ 15.0	$ 16.5
238320	Painting and Wall Covering Contractors	$ 15.0	$ 16.5
238330	Flooring Contractors	$ 15.0	$ 16.5
238340	Tile and Terrazzo Contractors	$ 15.0	$ 16.5
238350	Finish Carpentry Contractors	$ 15.0	$ 16.5
238390	Other Building Finishing Contractors	$ 15.0	$ 16.5
238910	Site Preparation Contractors	$ 15.0	$ 16.5
238990	All Other Specialty Trade Contractors	$ 15.0	$ 16.5

As can be readily discerned, these proposed inflationary increases are substantial at both the first (prime or general contractor) and lower-tier levels (subcontractors and suppliers). Perhaps most critically, these new size standards become effective on August 19, 2019 (with comments requested on or before September 16, 2019). While not final, these proposed numbers do become effective on an interim basis on August 19, subject to further adjustment and revisions based on comments received, if any. This, combined with the recently announced expansion from three to five years to calculate average annual revenue, both should go a long way to increasing the number of small businesses, and increasing competition in government contracting projects. This should also make it easier for prime contractors to

meet their small business subcontracting obligations. This is a significant change for government contractors of all sizes, industries and types, and should result in benefits to all interested parties, including the government and private industry.