

December 29, 2015

The Honorable Gerald E. Connolly
U.S. House of Representatives
Washington, DC 20515

Dear Representative Connolly:

Administrator Contreras-Sweet has asked me to respond to your recent letter regarding the U.S. Small Business Administration's (SBA) September 10, 2014, proposed increase to the small business size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910, Remediation Services, from 500 employees to 1,250 employees.

The proposal was part of a larger proposed rule to modify a number of employee based size standards for industries that are not part of North American Industry Classification System (NAICS) Sector 31-33 (Manufacturing), Sector 42 (Wholesale Trade), or Sector 44-45 (Retail Trade). Thirty two of the more than 200 comments we received on the proposed rule addressed the ERS sized standard, with some supporting the proposed increase and others opposing it in favor of the current 500-employee size standard or a smaller increase. All comments are available for public review at <http://www.regulations.gov> under "RIN 3245-AG51."

The SBA has thoroughly evaluated and addressed all comments in the final rule. Specifically, in response to the comments, the Agency reconsidered its analysis and data sources SBA used in the proposed rule and has made appropriate adjustments to some of the proposed size standards changes in the final rule, to be published in the *Federal Register* in the near future.

Below are our responses to each of the four questions you asked in the letter.

1. What considerations were made regarding the impact this new classification would have on small businesses currently defined as smaller than 500 employees?

SBA response: The SBA proposed the 1,250-employee size standard for the Environmental Remediation Services (ERS) based on the relevant industry and Federal contracting data available when the proposed rule was developed. Specifically, as explained in SBA's Size Standards Methodology available at <http://www.sba.gov/size> and also in the September 10, 2014, proposed rule, SBA considered industry factors (e.g., average firm size, industry concentration, startup costs, etc.) and Federal market conditions (i.e., small business share of total Federal ERS contract dollars relative to small business share of industry receipts). Another important consideration was to ensure that a business concern qualifying as small under the proposed 1,250-employee size standard was not dominant in the industry. SBA sought comments from interested parties if the proposed size standard was appropriate. As stated earlier, SBA received 32 comments, some of which were concerned that by enabling larger firms to qualify as small, the 1,250-employee size standard would have adverse impacts on firms below 500 employees in terms of their ability to compete for Federal opportunities. The SBA has thoroughly considered and addressed these concerns in the final rule.

2. Did SBA factor in the decline of federal spending, in particular in environmental remediation, when proposing this new size standard?

SBA response: In addition to the four industry factors, SBA considered the small business share of total Federal ERS contract dollars relative to small business share of industry receipts, the combined results of which supported a 1,250-employee size standard. In response to comments that the Federal ERS market has been in decline, SBA examined total Federal dollars awarded during fiscal years 2001-2014 under the two Product Services Codes (i.e., F108 and F999) that SBA used to identify the ERS contracts. Total dollars under ERS contracts showed continuous growth, increasing from \$0.64 billion in 2001 to nearly \$2.0 billion in 2009. While ERS contract dollars declined during 2010-2011 with the winding down of funds under the American Recovery and Reinvestment Act of 2009, they bounced back averaging a little over \$2.0 billion during 2012-2014. Although the growth in Federal ERS market has slowed from the 2001-2009 period and seen some ups and downs in recent years, these trends do not necessarily support the argument that spending in the ERS industry has declined.

3. Has SBA found that there has been an increase in the consolidation of firms that provide these remediation services

SBA response: There is the lack of data to assess the consolidation of firms in the ERS market. The special Economic Census tabulations that SBA receives for the size standards analysis are limited to all firms that provide Remediation Services (NAICS 569210). They do not provide data specific to firms that specialize on the ERS activity. With respect to firms that primarily provide Remediation Services (including ERS), the Economic Census data does not suggest an increase in consolidation. However, several commenters, especially those supporting the proposed increase to the ERS size standard, argued that there has been increased consolidation in the ERS market, which is supported by reports from some industry sources (e.g., *Environmental Business Journal* and *Engineering News Record*).

4. Are there other considerations or proposals, such as creating a “mid-tier” status, that would both protect and foster growing firms while still protecting small, minority, women, and veteran-owned businesses?

SBA response: The Small Business Act authorizes the SBA’s Administrator to establish only one definition of “small” for each industry, except the size standards for certain Agricultural Enterprises, which are set by the statute. Accordingly, the answer is no.

We appreciate your support of SBA and the Virginia small business community. If you or your staff needs further information on this matter or other matters relating to SBA’s size standards, please contact the SBA Office of Congressional and Legislative Affairs at (202) 205-6700.

Sincerely,

Ali John Shoraka
Associate Administrator
Office of Government Contracting and Business Development