

June 14, 2011

BY ELECTRONIC MAIL

Mr. Khem R. Sharma
Chief, Size Standards Division
Small Business Administration
409 3rd Street SW
Washington, DC 20416

RE: Revision of SBA Size Standards: Professional, Scientific and Technical Services; 76 Federal Register 14323, March 16, 2011

Dear Mr. Sharma:

The Office of Advocacy submits this comment letter to the United States Small Business Administration (SBA) in response to the above-referenced notice of proposed rulemaking.

I. The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.³ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁴

¹ 5 U.S.C. § 601 et seq.

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

³ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁴ Id.

II. Advocacy Commends SBA for Extending Comment Period

The Small Business Jobs Act of 2010 requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period and to do a complete review of all size standards not less frequently than once every three years thereafter. This legislative requirement is in keeping with public comments to SBA that its size standards have not kept up with the changes in the Federal contracting marketplace. Advocacy has received a large amount of communication from small business stakeholders in regards to SBA's proposed changes to the size standards for professional, scientific and technical services. Advocacy asked SBA in a formal comment letter of May 12, 2011 to give consideration to an extension of time for the public to respond to the proposed changes. Advocacy commends SBA for extending the public comment period to June 15, 2011.

III. Area of Concern

a. Architecture and Engineering Services

Under the current size standard rule, more than 90 percent of all Architecture and Engineering (A&E) companies are designated as small businesses. If the proposed rule were to be adopted, this number would increase to 98 percent. As such, the current stakeholders are being asked to support a proposed rule that would in essence expand the competitive marketplace. This expansion would include A&E companies that have annual net revenues in a range of \$5 million to \$19 million. This range is well above the current net maximum revenue of \$4.5 million. This is an increase of 400 percent from the current level. Thus this expansion would incorporate much larger A&E companies in a field that is already competitively saturated at 90 percent.

b. Mapping Services

John Palatiello, Executive Director of the Management Association for Private Photogrammetric Surveyors (MAPPS), in a letter of September 13, 2010 to you set forth the reasons why the current size standard of \$4.5 million does not reflect the current Federal marketplace for these types of services. In part, Mr. Palatiello states that "SBA relies heavily on the Census of Services Industries for size standard determinations. The 2007 Census data for NAICS Code 541370 shows 9,690 firms with gross receipts of \$6,446,806,000 with 69,941 employees. These data fail to accurately reflect the contemporary surveying and mapping market, which today is more commonly known as geospatial."

c. Accounting Services

On May 5, 2011 the Small Business Committee of the United States House of Representatives held an extensive hearing on SBA's proposed changes to its size regulations. The testimony of Mr. Odysseus Lanier on behalf of the American Institute of Certified Public Accountants pointed out that there were problems with SBA's methodology for considering primary and secondary factors for size determinations in the accounting industry.

III. Recommendations

a. A&E Services

Many stakeholders have expressed grave concern that a size standard increase of 400 percent in this industry is not warranted and will stifle the competitiveness of small businesses at the lower end of the proposed range. Others contend that an increase is necessary because the Federal marketplace is making larger and larger A&E contract awards. Advocacy would recommend that SBA consider a size standard for A&E small businesses that is less than the proposed \$19 million but one that allows for some growth for these firms in the Federal marketplace.

b. Mapping Services

Based on the earlier letter from the trade group, MAPPS, Advocacy would encourage SBA to give consideration to the differences in the surveying and mapping and geospatial markets in determining the correct size standard for each of these unique industries.

c. Accounting

Advocacy would recommend that SBA give careful consideration to the testimony from the American Institute of Certified Public Accountants regarding the methodology used to calculate the proposed size standard.

Conclusion

We commend SBA for reviewing the industries in this size standard. We also commend the small business stakeholders for providing SBA with their various views on the proposed changes. We urge SBA to give full consideration to all of these public comments.

If you have any questions regarding this letter, please do not hesitate to contact me or Assistant Chief Counsel Major L. Clark, III in my office at (202) 205-7150.

Sincerely,

Winslow Sargeant, Ph.D
Chief Counsel for Advocacy

Major L. Clark, III
Assistant Chief Counsel for Procurement

Cc: The Hon. Cass Sunstein
Administrator, OMB Office of Information and Regulatory Affairs