

CLIENT ALERT

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SMALL BUSINESS RECEIVES A NEW YEAR'S HOLIDAY GIFT!

by Scott MacGriff

A few weeks ago, the Federal Government gave small business a New Year's holiday gift. After an entire year of debate, the Small Business Administration ("SBA") published a new rule that modifies how annual revenue is calculated for the purpose of determining qualification for Federal contracting set-asides and assistance. In particular, the SBA changed its regulation on the calculation of annual revenues from a three-year averaging period to a five-year averaging period. This change may result in firms regaining or retaining small business status for Federal government procurement preference purposes. The change does not apply to SBA Business Loan and Disaster Loan programs, although, the SBA will be issuing future regulations on revised size determinations for those programs.

This final rule implements a law Congress enacted more than one year ago, the Small Business Runway Extension Act of 2018, PL No. 115-324 (the "SBA REAct"). The SBA REAct was intended to allow small business government contractors more time to prepare for the transition to the full and open market competition after those businesses exceeded the size standard applicable to SBA program participants.

As an initial matter, in 1953 Congress declared a social-economic policy of promoting small business, and passed the Small Business Act, 15 U.S.C. 631 (the "Act"). Congress created the SBA with a mission to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." The SBA charter also stipulated that SBA would ensure that small businesses received a "fair proportion" of government contracts and sales of surplus property. The Act created a program under which the SBA established small business size standards, based upon either the number of employees or annual receipts, and awarded preferential treatment in competing for Federal government contracts. Currently, the federal contract award goals for small businesses mandate that not less than 23% of the total value of all government contracts be awarded to small business. 15 U.S.C. §644(g). Further, the Act establishes that: (1) the goal for service-disabled veteran-owned small businesses is not less than 3% of the value of all government contracts; (2) the goal for women-owned small businesses is not less than 5% of the value of

all government contracts; (3) the goal for HUBZone small businesses is not less than 3% of the total value of all government contracts; and (4) the goal for small disadvantaged small businesses is not less than 5% of the value of all government contracts. Id. Part 19 of the Federal Acquisition Regulation implements the application of the SBA size determinations in context federal acquisitions.

The impact of the new SBA final rule will be to possibly extend the time a small business entity may have to receive preferential treatment in competing for government contracts, and continue its participation in the SBA program. Dickinson Wright's government contracts team is well positioned to advise clients on taking full advantage of all of the SBA's small business government contracting set-aside programs, and resolving disputes with the SBA related to size determinations, along with any other government contract related issue.

FOR MORE INFORMATION CONTACT:



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