



U.S. Small Business
Administration

Legislative & Regulatory Update

For Small Business Government Contracting
Programs &

MPCSC Fall Off-site Meeting

November 20, 2019

Recent Legislative Action

Small Business Runway Extension Act of 2018

Public Law No. 115-324 ; 15 U.S.C. 632(a)(2)(C)(ii)(II)

- Modifies the method for prescribing size standards for small businesses
- Under prior law, firms in industries with receipts-based size standards calculated size based on annual average gross receipts over three years
- Provides that, unless an agency has specific authorization for size standards, an agency's receipts-based size standards for service-industry firms be based on annual average gross receipts over five years
- Leaves other industries unchanged at three years.
- GAO upheld SBA's interpretation and rejected the protestor's argument that the Act immediately changed receipts-based size standards to a five-year average. *TechAnax LLC: Rigil Corporation*

Recent SBA and FAR Regulatory Action

Final Rule: Adjustment of Monetary-Based Size Standards for Inflation

[84 FR 34261](#)

- Changes went into effect on August 19, 2019.
- Increases monetary-based size standards to account for inflation.
- Increases range from \$0.25 million for the lowest size standard to \$3 million for the highest.
- Interim rule—comments are due Sept. 16, 2019.

TABLE 1—INFLATION ADJUSTMENT TO MONETARY-BASED SIZE STANDARDS

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

Final Action: Size Standard Methodology (2019)

[84 FR 14587](#)

- To be used for next SBA five-year review of size standards
- Moves from an “anchor” approach to a “percentile” approach for evaluating industry characteristics
- Assigns a separate size standard for each NAICS industry instead of selecting a size standard from a limited number of fixed size standards
- Lowers the threshold for selecting industries for the evaluation of the Federal contracting factor to \$20 million in annual Federal contracting dollars from the \$100 million threshold previously
- Applies the 4-firm concentration ratio to all industries, as opposed to using it only when the ratio is 40% or more previously

Proposed Rule: NDAA FY16/17 & RISE Act

83 FR 54812

- Proposed to allow COs to request information in connection with a contractor's compliance with applicable limitations on subcontracting (LOS) clauses
- Proposed exceptions to the LOS for
 1. airline travel,
 2. work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910),
 3. cloud computing services,
 4. mass media purchases, and
 5. work performed by an independent contractor under a contract that was awarded pursuant to the Foreign Assistance Act of 1961.
- Proposed to require a prime contractor with a commercial subcontracting plan to include indirect costs in its subcontracting goals
- Proposed to clarify status recertification in 8(a) and socioeconomic programs
- Limit the scope of Procurement Center Representative reviews of Department of Defense acquisitions performed outside of the United States and its territories
- Double scorecard credit for local area small business set asides in connection with a disaster.

Proposed Rule: NDAA FY16/17 & RISE Act (cont.)

83 FR 54812

Proposed examples of failure to make a good faith effort to comply with a subcontracting plan

- A. Failure to submit in eSRS by the report due dates;
- B. Failure to pay small business concern subcontractors in accordance with terms;
- C. Failure to designate and maintain an official to administer the subcontracting program;
- D. Failure to demonstrate procedures adopted to comply with plan (e.g., flow-down clauses);
- E. Adoption of policies that have as their objectives the frustration of the objectives of the plan;
- F. Failure to correct substantiated findings from compliance reviews or participate in training;
- G. Failure to conduct market research identifying potential small subcontractors;
- H. Failure to obtain approval by the CO to change small subcontractors used in offers; or
- I. Falsifying records of subcontracting awards to SBCs.

Proposed Rule: Calculation of Average Annual Receipts

84 FR 29399

- Proposed to calculate average annual receipts using prior five years, instead of prior three years.
- Proposed to apply change to all industries with receipts-based size standards.
- Only would affect the application of SBA's size standard rules after the effective date of a final rule.
- Until the effective date of a final rule, SBA will continue to apply the 3-year averaging period for calculating annual average receipts.
- Final rule expected December 2019

Proposed Rule: FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting

84 FR 30071

- Proposed two sets of goals for individual plans: first-tier goals and lower-tier goals
- Propose to use these existing subcontracting reports in eSRS as a way for the prime contractor to monitor subcontractors' achievements
- Asks for input on the whether to have primes approve or acknowledge achievement for lower-tier goals

Proposed Rule: FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States

84 FR 39793

- Proposed rule to allow small business contracting provisions to be applied on overseas contracts.
- Includes set-asides

Upcoming SBA proposed rules

1. Small Business Size Standards: Services, Agricultural, Construction, Transportation, Manufacturing
2. Regulatory Reform Initiative

Upcoming FAR proposed rules

1. Proposed 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment
2. Proposed 2019-008, Small Business Program Amendments
3. Proposed 2019-004, Good Faith in Small Business Subcontracting
4. Proposed 2018-004 Increased Micro-Purchase and Simplified Acquisition Thresholds

Upcoming FAR final rules

1. Final 2014-002, Set-Asides Under Multiple-Award Contracts
2. Final 2016-011, Revision of Limitations on Subcontracting
3. Final 2018-007, Applicability of Inflation Adjustments of Acquisition-Related Thresholds

Other Notable Actions

FedBizOpps Moving to SAM.gov on Nov. 8

<https://beta.sam.gov/>

- The FBO transition to beta.sam.gov is scheduled for November 7 – 12, 2019.
- [Beta.SAM.gov](https://beta.sam.gov/) will be live on November 12, 2019.
- Users should use beta.sam.gov to migrate accounts, saved searches, followed opportunities, interested vendor lists.

Resources

Commercial Marketing Representative (CMR)

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