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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AF02

Small Business Size Standards; Job Corps Centers

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is establishing a \$30 million size standard in average annual receipts for Job Corps Center activities classified within the "Other Technical and Trade Schools" industry (North American Industry Classification System (NAICS) code 611519). The current size standard for all other activities within this industry remains at \$6 million in average annual receipts.

DATES: This final rule is effective April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, at (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: On November 22, 2002, the SBA issued a rule in the *Federal Register* (67 FR 70330) proposing to establish a \$30 million size standard for Job Corps Center activities classified within the "Other Technical and Trade Schools" industry (NAICS code 611519). The SBA received requests to review the size standard applicable to Job Corps Centers from the U.S. Department of Labor (DOL) and three other organizations. Job Corps Center contracts account for more than \$900 million annually and represent about 60 percent of the DOL's procurement expenditures.

The requestors sought the SBA's review of the size standard after the SBA's Office of Hearings and Appeals (OHA) rendered a decision that a Job Corps Center contract was improperly

classified under the Base Maintenance sub-category of Facilities Support Services. (See NAICS Appeal of Global Solutions Network, Inc., SBA No. NAICS-4478, dated March 5, 2002.) In that decision, OHA determined that the proper classification for an activity that trains individuals in life skills and readies them for the job market through academic studies and/or technical training is "Other Technical and Trade Schools," NAICS code 611519. The effect of this decision was to change the size standard for Job Corps Center contracts from \$20 million to \$5 million. (On February 22, 2002, an inflation adjustment increased the \$5 million size standard for NAICS 611519 to \$6 million and the \$20 million size standard for Base Maintenance to \$23 million. See 67 FR 3041, dated January 23, 2002.)

The SBA reviewed the reasons presented by the requestors to increase the \$6 million size standard and data on Job Corps Center contracts and bidders. Based on an analysis of that information, as described in the November 22, 2002, rule, it proposed a \$30 million size standard specifically for Job Corps Center contracts. The SBA received eight comments on the proposed size standard. After giving careful consideration to the comments, the SBA has decided to adopt its proposed \$30 million size standard.

Discussion of Comments on the Proposed Rule

The SBA received eight comments on the proposed size standard from seven business concerns and one Federal agency. In summary, seven commenters supported changing the \$6 million size standard. Six of these commenters supported the proposed size standard of \$30 million and one commenter recommended a size standard between \$12 million and \$15 million. One commenter opposed the SBA's proposal to establish a size standard above \$6 million. Below is a summary of the major issues raised by the comments on the proposed rule and the SBA's position.

Comments Supporting the Proposed Job Corps Center Size Standard

Six commenters supported the proposed \$30 million size standard for Job Corps Centers. Two of these commenters pointed out that many successful small business Job Corps

Center contractors would exceed the size standard because of the average dollar value of these contracts, "and therefore either would not be eligible to compete for the center they have been running or the contract would no longer be able to be let as a small business set-aside." In turn, the government would be faced with "remarkable turnover * * * that will actually cost the government more in dollars and performance in the long run." In addition, these commenters pointed out that this turnover has the potential for the DOL to eliminate small business set-asides, and thus, decrease its contracting dollars to small businesses.

Four commenters stated that the proposed increased size standard will improve the competitiveness of Job Corps Center small businesses. They claimed that this change will allow small businesses in this activity to grow and achieve stability, to develop economies of scale in their operations, to operate more than one center, and to remain in the Job Corps Center program. They also contend that a larger base of small businesses will encourage more solicitation competition and lower prices. Two other commenters supported the SBA's proposal by stating that the SBA's analysis captured the industry's characteristics and reflected the current status of businesses competing to operate Job Corps Centers.

The SBA agrees with these commenters. As discussed in the proposed rule, the average yearly funding for Job Corps Centers is \$8.8 million, with the funding ranging from \$5 million to \$44 million. This fact substantiates the commenters' claim that after being awarded one contract, almost all Job Corps Center small business contractors would no longer qualify for the follow-on contract or any Job Corps Center requirement that would be set-aside for small businesses. In addition, if the size standard remained at \$6 million, the DOL would be reluctant to set aside any Job Corps Center contract because of the continual turnover of small business contractors. The SBA is concerned that a viable size standard for Job Corps Centers must address a situation in which a small business obtaining a single contract quickly outgrows the size standard without being sufficiently ready to compete with larger businesses. The size standard needs to be at a level that

enables a small business to grow to a size to be competitive with other businesses in the industry. Most of the comments supported the position that a \$30 million size standard achieves this result.

Comment Recommending an Alternative Size Standard Between \$12 Million and \$15 Million

One commenter agreed that the \$6 million size standard warranted a change, but believed that increasing the size standard to \$30 million was unrealistic. The commenter proposed that the size standard be increased to a level between \$12 million and \$15 million. The commenter believed the DOL will not seriously consider the commenter's business in competition with companies whose financial earnings are far closer to \$30 million. The commenter argued that once a small business has obtained and operated a Job Corps Center for 3 or more years, it should be well situated to compete with other operators in procuring additional Job Corps Center contracts. The commenter also stated that a \$30 million size standard would allow larger businesses to "grab" business intended for new and developing companies. The commenter believed a size standard between \$12 million and \$15 million is sufficient to allow small businesses to develop economies of scale in their operations that improve efficiencies in internal operations as well as decrease the costs associated with managing a contract. This size standard range would also help small businesses contend with the financing requirements set by the DOL because "as the small business increases in size its ability to secure financing—for larger amounts and at lower rates—increases."

The SBA does not agree with this comment. The SBA agrees with the position of many of the other commenters that the proposed \$30 million size standard will make businesses more competitive by enabling them to achieve economies of scale associated with operating two to three Job Corps Centers. The DOL's experience with the \$20 million size standard that it used before the OHA decision mentioned earlier, resulted in only a limited number of small business Job Corps Center contractors, none of which operate more than one center. The SBA believes that a size standard that is less than the previously used \$20 million sized standard is inadequate for developing small businesses in the Job Corps Center sub-industry.

The SBA does not agree that the proposed size standard will substantially impact other small

businesses ability to compete for Job Corps Center contracts. As discussed in the proposed rule, 87 percent of Job Corp Center contract dollars go to businesses over \$30 million, with only two to four businesses falling within the range between \$15 million and \$30 million. The increased competition from a relatively few number of businesses between \$15 million and \$30 million is unlikely to diminish opportunities from other small businesses. Moreover, as other commenters have noted, businesses with less than \$30 million in size have competitive disadvantages in terms of economics of scale and financial requirements set by the DOL.

Comments Opposing a Change in the Job Corps Center Size Standard

One commenter opposed any change to the current size standard on the ground that having one center run by one contractor constituted contract bundling. This commenter claimed that "the DOL for 30 years has preferred to operate each of its contract-operated Job Corps Centers under one umbrella bundled contract." According to the commenter, by adopting the proposed size standard the SBA and the DOL are denying small businesses in the areas of facilities support, office administration, security guard services, janitorial services, landscaping services, medical and dental care, and food services from participating as Job Corps Center prime contractors.

The SBA does not agree with this commenter. Bundling is the consolidation of two or more contracts into a single procurement that will likely preclude small business participation. Here, the nature of the Job Corps Center contracts do not constitute contract bundling because they were not previously performed under separate smaller contracts and small businesses are not precluded from competing on these contracts. Bundling would occur for example, if the DOL issued one nationwide contract to manage the Job Corps Centers. A contract of that nature and scope would render small business participation unlikely. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003.)

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This rule also is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry (67 FR 70330, dated November 22, 2002). Based on that analysis, the SBA believes that a \$30 million size standard for Job Corps Centers is needed to better define small businesses engaged in these activities.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 10 additional businesses will obtain small business status and become eligible for these programs. These include Federal procurement

preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone). The 10 additional businesses may also become eligible for the SBA's financial assistance programs. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs for a variety of regulatory and program purposes. The SBA does not have information on each of these uses sufficient to evaluate the impact of the size standard change. If an agency believes that a different size standard is appropriate for its programs, it must contact the SBA. If an agency is seeking to change size standards in a general rulemaking context, then the agency should contact the SBA's Office of Size Standards (13 CFR 121.901-904). If the agency is seeking to change size standards for the purposes of a regulatory flexibility analysis, then the SBA's Office of Advocacy should be contacted pursuant to section 601(3) of the Regulatory Flexibility Act (RFA). Section 601(3) of the RFA requires the agency to consult with the Office of Advocacy and provide an opportunity for public comment when using a different size standard for the RFA analysis.

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the adopted size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the adopted size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses may benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program, the SBA estimates that \$700,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 10 additional businesses may result in only one or two small business guaranteed loans to businesses in this industry. As a guaranteed loan for larger businesses averages \$350,000 for businesses in the

Other Technical and Trade Schools industry and the Facilities Support Services industry, if two of the 10 business applied for a loan, the SBA could expect to guarantee an additional \$700,000 in loans. However, most businesses involved in Job Corps Centers are in other industries; thus, their eligibility for SBA loan assistance may be under their primary NAICS industry. The newly defined small businesses would also benefit from the SBA's Economic Injury Disaster Loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

The SBA estimates that businesses gaining small business status could potentially obtain Federal contracts worth \$53 million per year under the small business set-aside program, the 8(a) and HUBZone programs, or unrestricted contracts. Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A larger base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Federal contractors with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 10 additional businesses could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional businesses seeking assistance of the SBA's guaranteed lending programs, and additional businesses eligible for enrollment in the SBA's PRO-Net small business database. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal

contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone programs only if awards are expected to be made at fair and reasonable prices. In addition, the use of small business set-asides may encourage more competitors since small businesses would not have to compete against the major businesses in the industry.

The new size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to SDB or HUBZone businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. As currently there is only one small business that has a contract for a Job Corps Center, this transfer will be offset by initiating a number of Federal procurements than can now be set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers could result in up to \$53 million, or 5.8 percent of total contract dollars of \$909 million, being transferred from large businesses to small businesses. The SBA

based this estimate on the per year funding of the businesses that currently have Job Corps Center contracts, which would gain small business status as a result of this rule.

The revision to the current size standard for Job Corps Centers is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the RFA, this rule may have a significant impact on a substantial number of small entities engaged in Job Corps Center activities. Immediately below, the SBA sets forth a Final Regulatory Flexibility Analysis (FRFA) of this rule addressing the following: (1) The reasons and objective of the rule; (2) a description and estimate of small entities to which the rule will apply; (3) the projected reporting, record keeping, and other compliance requirements of the rule; (4) the relevant Federal rules which may duplicate, overlap or conflict with the rule; and (5) alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, this rule is limited to a specific type of contract only issued by the DOL. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies

must consult with the SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

(1) What Is the Need for and Objective of the Rule?

The objective of this rule is to establish an appropriate small business definition of businesses operating Job Corps Centers, and therefore, eligible for Federal small business assistance programs. An increase to the current \$6 million size standard is needed to provide contracting opportunities to the small business segment of businesses engaged in or competing for Job Corps Center contracts. Currently, there are five businesses in the Job Corps Centers activity that have revenues below the current \$6 million size standard; however, only one of these businesses has a contract to operate a Job Corps Center. This business is likely to outgrow the current size standard within the next year as its current contract is for \$5.8 million per year. This will leave only four businesses below the size standard, all having revenues below \$1 million. None of these businesses have been successful in winning a Job Corps Center contract. This, along with the fact that the average yearly contract funding is \$8.8 million and the minimal funding for a Job Corps Center is \$5 million, indicates that the size standard for Job Corps Centers needs to be greater than the current \$6 million.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)?

The SBA received no comments in response to the IRFA of the proposed rule.

(3) What Is the SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

The SBA estimates that 35 organizations are engaged in the Job Corps Center activity, of which approximately 14 percent are small businesses currently at or just below the \$6 million in size. With this rule, 10 additional businesses will gain small business status. These businesses will be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these businesses and the amount of Job Corps Center contracting, the SBA estimates that small business coverage will increase by \$53 million, or 5.8 percent of total contracting in this activity. The SBA based this estimate on the per year

funding of the businesses that currently have Job Corps Center contracts and that will gain small business status with this rule.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

A new size standard does not impose any additional reporting, record keeping or other compliance requirements on small entities for the SBA's programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determine "voluntary" access to the SBA and other Federal programs that assist small businesses, but do not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in a HUBZone; and (2) eligibility for the SBA's financial assistance programs such as 7(a), 504 business loans, and Economic Injury Disaster Loan assistance. The SBA estimates that businesses gaining small business status could potentially obtain Federal contracts worth \$53 million per year under the small business set-aside program, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents approximately 5.8 percent of the \$909 million in total Federal expenditures for Job Corps Centers.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act, 15 U.S.C. 632 and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-

manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The facts that the average yearly funding for a Job Corps Center is \$8.8 million, with funding ranging from \$5 million to \$44 million, and that there are only five businesses in this activity with revenues under the current size standard support establishing a separate size standard of \$30 million.

(b) What Alternatives Did the SBA Reject?

One commenter recommended a size standard between \$12 million and \$15 million size standard. He believed that once a business obtained and operated a Job Corps Center for 3 or more years, it should be well situated to compete with other Job Corps Centers operators. A \$12 million to \$15 million size standard will allow small businesses to develop economies of scale in their operations that improve efficiencies in internal operations as well as decrease the costs associated with managing a contract.

The SBA does not consider this a viable alternative. This recommendation is less than the \$20 million used by the DOL prior to the OHA decision mentioned above. The receipts distribution shows that 87 percent of the Job Corps Center contract dollars go to businesses with over \$30 million in revenues. If a \$15 million size standard were adopted, a business that won a second Job Corps Center contract would probably exceed the size standard within a year of work on that contract.

By establishing the size standard at \$30 million, the SBA will create opportunities for the small businesses in an industry where only five businesses are below the size standard. Of these five businesses, four have revenues below \$1 million, with only one of these businesses having a Job Corps Center contract. If the SBA retains the current \$6 million size standard, it will not accurately reflect the smaller segment of businesses that participate in operating and maintaining Job Corps Centers.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For the reasons stated in the preamble, amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

§ 121.201 [Amended]

2. Amend § 121.201 as follows:

a. In the table “Small Business Size Standards by NAICS Industry” under the heading “Subsector 611—Educational Services,” revise entry 611519 to read as follows; and

b. Add footnote 16 to the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
Subsector 611—Educational Services			
* * * * *			
611519	Other Technical and Trade Schools	\$6.0
EXCEPT	Job Corps Centers ¹⁶	¹⁶ \$30.0
* * * * *			

¹⁶ NAICS codes 611519—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Dated: March 14, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–6769 Filed 3–20–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14595; Airspace Docket No. 03–ACE–18]

Modification of Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Emmetsburg, IA. An examination of controlled airspace for Emmetsburg, IA revealed discrepancies in the Emmetsburg Municipal Airport, IA airport reference points used in the legal description for the Emmetsburg, IA Class E airspace area. This action corrects the discrepancies by modifying the Emmetsburg, IA Class E airspace area. It also incorporates the revised