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(Submitted electronically at http://regulations.gov)

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Re: Small Business Size Standards: Calculation of Annual Average Receipts: RIN 3245-AH16

The Montgomery County MD Chamber of Commerce (MCCC), an 800-member Chamber active in federal procurement policy submits the following comments in response to the Small Business Administration's (SBA) solicitation for comments on Small Business Size Standards: Calculation of Annual Receipts. We applaud the changes proposed in this rule implementing the *Small Business Runway Extension Act* (Public Law 115-324) signed into law on December 17, 2018. The law changes the 3-year averaging period for calculating annual average receipts for all of SBA's receipts-based size standards to a 5-year averaging period. The Chamber's GovConNet Council, comprised of practitioners and business owners involved in government contracting, worked for months to come up with proposals that would give larger small businesses more "runway" to adjust to rapid growth, while still protecting smaller businesses under the various SBA programs. We believe the 5-year lookback strikes that balance. MCCC spearheaded this statutory change because data[1] from Bloomberg Government shows a low number of companies considered small under SBA size standards go on to become midsize businesses – midsize companies were still only 1.4 percent of all vendors in FY18. These efforts resulted in our recommendation to Congress that ultimately became the *Small Business Runway Extension Act*.

As small businesses and government contracts become larger, it is inevitable that they will face choices – grow beyond the small business programs to compete with large companies, stay small to avoid the difficulties of competing in a "full and open" environment, sell, or go out of business. Unfortunately, it appears that more and more firms are being forced to make those latter choices – stay small, sell, or go out of business.

Size standards play an important part in government contracting, defining eligibility for small business programs. Currently, the highest revenue standard is $38.5 million, applicable to industries such as financial services and aerospace engineering. This means that a business in those industries cannot have more than $38.5 million in annual receipts, averaged over previous three years to qualify as "small." A business with an average revenue of $39 million is expected to compete with large businesses with revenues sometimes in excess of $500 million. The numbers illuminate how difficult such competition can be.

Small business programs impact the local and national economy, though the purpose of these programs is sometimes misunderstood. Small business programs are not designed to subsidize business development; the purpose is to ensure supplier diversity in the federal marketplace to spur innovation and guard against supplier consolidation and noncompetitive pricing. Small businesses produce the majority of American jobs and without these firms

[1] Paul Murphy, Bloomberg Government, *2018 Mid-Tier Market Report* (2018).

growing to become midsize firms, who in turn grow to compete and challenge large businesses, the federal contractor ecosystem stagnates, and jobs will likely be lost.

Government contractors experience a unique pattern in their growth which is causing this midsize crisis – or no man's land. Contractor growth can be mercurial, sometimes hovering in the single digits and then exploding over two or three years. This pattern of sudden growth is increasingly common because of the government's more frequent use of large indefinite delivery, indefinite quantity (IDIQ) contract vehicles, under which contractors can be awarded huge task orders. It is not unusual for a contractor to win a single award or task order that, on its own, bumps the contractor out of the small business program. For example, using the SBA 3-year average revenue to determine program eligibility, a company with historic revenues of $15-$20 million might win an $80 million task order and be very quickly pushed out of the set-aside environment and into the full-and-open world.

1. SBA seeks feedback, along with supporting facts and analyses, on whether the Agency should calculate annual average receipts over 5 years for all industries subject to receipts-based size standards or on whether it should use a 5 year annual receipts average for businesses in services industries only and continue using a 3 year annual average for other businesses. SBA is concerned that the latter option may create confusion for both businesses in reporting their size based on annual average receipts and contracting personnel in verifying the size of bidders to Federal contracts.

The Chamber agrees with SBA and believes the 5-year change should be made for all industries subject to receipts-based size standards. If the size determination averages were different and only made the change for services industries, it would cause great complications for both contractors and the SBA. This type of change would also leave companies that have multiple capabilities to potentially be small under their services NAICS code, but not under other NAICS of work they perform. The small business community needs certainty on this issue – not the greater confusion that this option would cause. MCCC supports the change to a 5-year annual receipts average for all industries subject to receipts-based size standards.

2. SBA invites input on how the use of annual average receipts over 5 years instead of 3 years would impact both smaller small businesses and more advanced, larger small businesses in terms of getting access to Federal opportunities for small businesses.

The rationale behind the 5-year proposed change can be stated simply: competitiveness takes time to build. Revenue is not an indicator of present competitiveness; it is an indicator of future competitiveness. Larger small businesses that are about to graduate from the set-aside world need time to recruit talented employees, develop their intellectual property and build infrastructure to compete at the next level. Having a good year, or even a couple of good years, does not mean that the company will continue to grow. Moving to the 5-year lookback would give firms more time to adjust to the full-and-open marketplace and keep firms that show consistent high revenues graduated. Small businesses face enormous infrastructure hurdles, especially if they grow very quickly or win larger federal contracts with big task orders. Some refer to this as the "Powerball effect," leaving businesses scrambling to stay ahead of the demands of their growth and simultaneously trying to compete in the open market.

The transition to a 5-year lookback helps the federal procurement system as a whole, not only small businesses in the following ways. First, the 5-year change will help government customers keep with trusted suppliers for longer, while continuing to receive small business credit. Second, it will help small businesses build to where they can more ably compete with the larger firms in the marketplace. Third, this change leads to greater price competition and innovation at the top of the market. Finally, for the small firms themselves, as stated in the Congressional record, it will give small businesses better pipelines (i.e., as a result of sustained set-aside eligibility), and thus the resources and time to prepare for successful participation in the full and open marketplace.

It is important to recognize that not just large small and midsize companies benefit from the change to the 5-year average. Any small business that intends to grow will eventually benefit from these changes. Having more well-qualified firms under the revenue standards will increase the chance that solicitations will be set-aside, and therefore give all small firms more opportunities to compete. Separately, a major complaint we hear from large primes is that by the time they find a great partner that is small, the work garnered from that relationship makes the partner large and bump out of their small business status. Therefore, large businesses also benefit because it increases the pool of well-qualified subcontractors.

Furthermore, with regard to whether the smallest of the smalls will be disadvantaged, it is unfair to compare these companies to businesses about to bump out of their size standard. These emerging small companies tend to have their own swim lanes, and do not typically compete against "large small" businesses directly. Any objections by the smallest firms may be short sighted since those small firms may appreciate the 5-year lookback when they mature.

With regard to how the rule will impact the entire small business community, the SBA's own data shows that the change will benefit more than 7% of small firms, while harming less than 1% of companies. The Chamber recognizes that every new law or policy has unintended collateral damage, however one that leaves a 7 to 1 rate of return should be a viewed as a success and a benefit to the community as a whole.

In conclusion, size standards must change with the transformation in government buying that is trending towards utilizing larger and longer contracts. Therefore, this change is more important than ever. The 5-year lookback was signed into law and effective on December 17, 2018, and the small business community needs certainty as to SBA's position. SBA's delay has caused uncertainty for businesses attempting to bid on work and plan for future opportunities to know whether or not they are considered small. Some firms have been submitting proposals using a 3-year average given the SBA's guidance, while others have used the 5-year law. Due to this uncertainty, the Chamber recommends allowing a two-year transition period for small companies to either use the existing 3-year average or the new 5-year average effective December 17, 2018 through December 17, 2020. MCCC is dedicated to ensuring small businesses can grow and succeed in contracting with the federal government and urge the SBA to issue a final rule as soon as possible.