



July 26, 2006

MEMORANDUM FOR: FELIPE MENDOZA
ASSOCIATE ADMINISTRATOR (E)

FROM: PETER PROVENZANO
CHAIR, GSA SMALL BUSINESS ADVISORY COMMITTEE

SUBJECT: Size Determination for Small Business on GSA Multiple Awards
Schedule

The General Services Administration's (GSA) Small Business Advisory Committee (SBAC) was created by a charter filed with Congress on August 29, 2005. The SBAC's mission is to provide recommendations to the Associate Administrator for Small Business Utilization that will allow GSA to advance and improve its small business procurement program.

The SBA issued a proposed rule to change the requirements for size determinations for awards during GSA Multiple Award Schedule (MAS) contracts. Currently SBA determines size at the time of initial offer. The SBA intends to take final action shortly so firms who subsequently become large will no longer benefit from MAS awards. Following a period for written comments and nationwide hearings, the agency is now planning to issue a formal proposed rule, based on public comments.

In keeping with our mission, the SBAC has set up a subcommittee and reviewed the SBA 13 CFR Parts 121 and 124 RIN 3245-AF06 – specific to size for purposes of the Multiple Award Schedule Small Business Recertification Proposed Rule.

The SBAC subcommittee reviewed SBA's small business size regulations (13 CFR part 121) used to determine eligibility for all SBA and Federal programs that require a concern to be a small business. Currently, SBA's regulations provide that SBA determines the size of a concern from the date the concern presents a written self-certification that it is small to the procuring agency as part of its initial offer, including price. Therefore, for a multiple award schedule (MAS), Federal Supply Schedule (FSS), multiple award, or Government wide Acquisition (GWAC) contract, size is determined from the date of a concern's initial offer, including price. If a concern is small on that date, agencies may place orders under the original contract and consider these orders as awards to a "small business" for the length of the MAS, FSS, multiple award contract or GWAC.



In SBA's view, this has led to misleading results. Such contracts may have terms of five, ten, or twenty years, and amended to incorporate goods and services with varying size standards and unlimited quantities. According to SBA, "orders to concerns receiving such contracts would be considered to be awards to small business even though a firm had grown to be large (either through natural growth or by merger or acquisition) during the term of the contract even though the firm is not (and may never have been) small with respect to the size standard corresponding to the work to be performed under a particular order."

SBA also may review or seek a formal size determination for any recertification. However, once a firm is recertified, the concern will be considered to be a small business on any order it receives with a North American Industry Classification Code (NAICS) code having the same or higher size standard during that one-year period. Each order issued pursuant to the contract could then be counted as an award to small business.

However, under the GAO decision in CMS cited above, a contracting officer would have the discretion to ask for size certifications for individual orders. This proposed rule does not seek to, and does not in fact, change such discretion.

The SBAC subcommittee presented its findings to the SBAC at the Monday, May 15, 2006 meeting which was held in San Antonio, Texas. Based on the subcommittee's review of the SBA proposed rule, the SBAC subcommittee recommended to the SBAC the SBAC support the SBA recertification rule with the exception that it be **three years** rather than the "annual" proposed rule. The subcommittee found three years to be a more reasonable timeline to the small business performing contracts. **The motion carried unanimously.**

Prepared by: Daisy Gallagher, Ann Sullivan, John Leyendecker