



Congress' Holiday Gift To Small Businesses - Two Years

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For many businesses, the transition from being a “small business concern” to an “other than small” concern can be traumatic, not unlike the neophyte daredevil being shot out of a circus cannon and hoping that there will be a soft landing at the other end. Without the small business benefits like set-asides, joint venture and mentor protégé arrangements, and the lighter regulatory compliance burdens, the challenges for a company increase substantially. When one adds on the need to confront the harsher open competition environment with larger competitors that may no longer view the emerging entity with a welcoming attitude, the challenge may become overwhelming for some.

The SBA's small business regulations have endeavored to soften the transition by measuring one's size based upon average annual revenues or average employee base over the prior three years, depending on the North American Industry Size Code Standards for the areas in which an entity is engaged. In theory, this enables a growing business time to prepare itself to emerge from the protected environment of the small business world. That gradual approach, however, often fails to soften the blow for companies that receive a large set-aside agency contract that catapults them out of protected status before they have matured sufficiently.

The complaints of small business persuaded Congress to pass the Small Business Runway Extension Act of 2018 (H.R.6330), which the President signed into law on December 17, 2018. The law revises the SBA's small business annual receipts measurement lookback from a three-year average to a five-year average. The law's effect is to afford a longer time during which a growing small business may remain small and, in theory, prepare to become a large business. No change has been made for businesses measured under an employee-based size standard.

Although enacted into law, the SBA regulations do not yet reflect the change from three to five years. The SBA has not indicated how it intends to address the new law pending revision to its regulations. No doubt the SBA will be under substantial pressure to allow businesses to apply the new standard promptly.

The change in the size rule may not be viewed favorably by all businesses. A large business that is suffering declining revenues and looking forward to reclaiming small business status will find its path delayed because the downward slide will be moderated by the longer look back period.

For further information about this evolution or other small business issues, please contact Tony Anikeeff or another member of the Government Contracts team.

Related People

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