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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