

entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, SBA has prepared an Initial Regulatory Flexibility Act (IRFA) analysis addressing the proposed regulation.

B. IRFA

The RFA provides that when preparing a Regulatory Flexibility Analysis, an agency shall address all of the following: the reasons, objectives, and legal basis for the proposed rule; the kind and number of small entities which may be affected; the projected recordkeeping, reporting, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; federal rules which may duplicate, overlap, or conflict with the proposed rule; and any significant alternatives to the proposed rule. This IRFA considers these points and the impact the proposed regulation concerning multiple award or schedule contracts may have on small entities.

(a) Reasons, Objectives and Legal Basis

Under the Small Business Act, SBA is authorized to specify detailed definitions and standards by which an entity may be determined to be a small business concern. 15 U.S.C. 632(a)(2). SBA's definitions and standards relating to SBCs are set forth in 13 CFR part 121.

Pursuant to SBA's current regulations, a concern's size status is determined as of the date that it submits its initial offer, including price, for the MAS or other multiple award contract. If a concern is small as of that date, it is deemed to be small for the life of the contract and for all orders issued pursuant to that contract. It is our understanding that contracts issued pursuant to some multiple award schedules are being extended for ten or twenty years. This means that a concern that certified as small to receive a schedule contract ten years ago, could still be considered small for orders issued pursuant to the same contract even if the business concern is clearly no longer small. Agencies are then able to count these orders as awards to small business even though the firm may have grown to be other than small or has merged with or been acquired by a large business many years ago. Unfortunately, this means that Federal agencies that meet their SBC goals by counting awards to former SBCs do so at the expense of legitimately defined SBCs. Agencies may not seek other procurement opportunities with

legitimate SBCs because they have met their SBC goal through schedule orders to firms that are no longer small. As a result of the increasing use of these schedules and other multiple award contracts, SBA believes it is necessary to amend its regulations and address these size eligibility issues for orders issued pursuant to MAS and other multiple award contracts.

(b) Description and Estimate of the Number of Small Entities to Which the Rule May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines "small entity" to include "small businesses," "small organizations," and "small governmental jurisdictions." SBA's programs do not apply to "small organizations" or "small governmental jurisdictions" because they are non-profit or governmental entities and do not qualify as "business concerns" within the meaning of SBA's regulations. SBA's programs apply only to for-profit business concerns. Therefore, the proposed regulation (like the regulation currently in effect) will not impact small organizations or small governmental jurisdictions.

Small businesses that participate in federal government contracting are the specific group of small entities affected most by this proposed rule. While there is no precise estimate for the number of SBCs that will be affected by this proposed rule, SBA has reasoned the following. First, there are over 200,000 SBCs registered on PRO-Net. PRO-Net is a database containing profiles of SBCs that includes information from SBA's files and other available databases, as well as information inputted by SBCs. Second, in 2001, SBA approved over 48,000 loans. Thus, based on a simplistic review of PRO-Net, it may appear that the proposed rule could affect, at a minimum, at least 250,000 SBCs. SBA notes, however, that this rule would likely affect only those small businesses having a MAS or other multiple award contract that were small at the time of the initial schedule or multiple award contract, and are no longer small. The number of SBCs awarded a MAS or other multiple award contract are much less than the PRO-Net figure, and those that have grown to be other than small since the award of their MAS or other multiple award contract is even smaller than that. Therefore, this rule will not impact all of the "SBCs" with MAS or other multiple award contracts, but, as identified below,

would impact at least 6–12 businesses each year.

According to the Federal Procurement Data System (FPDS), in fiscal year 2001, there were 241,581 orders issued pursuant to the FSS and 648,522 orders issued pursuant to other Federal schedules for prime contract actions of \$25,000 or less. (Federal Procurement Report, Section III, Agency Views, <http://www.fpdc.gov/fpdc/fpr.htm>). Over \$600 million of these FSS orders and over \$180 million of the other Federal schedule orders were reported as orders to SBCs. For contract actions over \$25,000, there were over 61,000 orders, or \$13.8 billion in orders issued pursuant to the FSS, and over 47,000 or \$15 billion in orders issued pursuant to MAS contracts. *Id.* For FSS contracts above \$25,000, approximately \$4 billion was reported as awarded to 2,610 small businesses. This means that the average of orders awarded to SBCs is about \$1.5 million ($3,950,853,000/2610=1,513,737$).

In addition to examining FPDS data, SBA has examined the growth trends of businesses between the 1992 and 1997 Economic Censuses using the 1992 and 1997 Special Tabulation of the Economic Census for SBA. The data shows that the share of total businesses with 100 employees or more (an approximate average employment size of all size standards) increased by 0.2 percent. According to the Census data (www.census.gov), the share of total businesses with 100 employees or more increased by only 0.1 percent and according to SBA's Office of Advocacy data (see www.sba.gov/advo/stats/us88_99.pdf), the increase was 0.1 between 1992–1997 and about 0.15 percent between 1992–1999. Applying these general trends to the 6,000 small businesses SBA believes are participating in the GSA's MAS program, approximately 3 to 4 small businesses per year would outgrow their small business classification. SBA, however, expects the actual number of businesses that outgrow their small business classification would be two to three times higher (6 to 12 business concerns) than this estimate, since studies have shown businesses receiving Federal contracts tend to be stronger businesses. Therefore, SBA expects 6 to 12 business concerns each year that have a multiple award contract to become other than small during the year. SBA expects the number of concerns affected the first year to be greater because firms have not had to certify their size status annually since being awarded a multiple award contract, and firms may have received such contracts several years ago and