

Proposed Rule Would Allow Contractors to Challenge Changes to SBA Size Standards

October 10, 2016

WHAT: The U.S. Small Business Administration (SBA) issued a proposed rule that would allow contractors to file “Petitions for Reconsideration of Size Standards” at the SBA’s Office of Hearings and Appeals (OHA). Mandated by Section 869 of the National Defense Authorization Act of Fiscal Year 2016, the proposed rule would allow any “adversely affected” party to petition OHA to hear a challenge to SBA final rules that revise, modify, or establish a size standard. “Adversely affected” parties would include business entities conducting business under the NAICS code at issue, and that either qualified as small before the change or would qualify as small after the change. Notably, under the proposed rule, decisions by the SBA to retain an existing size standard could not be challenged under the proposed rule's new process.

WHEN: The proposed rule was published on October 7, 2016. Comments on the proposed rule are due by December 6, 2016.

WHAT DOES IT MEAN FOR INDUSTRY: The SBA stated in the proposed rule that it expects few challenges to its size standards decisions under this regime, and noted that such petitions under currently existing procedures are rare. Nevertheless, assuming the proposed rule is adopted, contractors should monitor any SBA final rules that change the size standard(s) for their industry, and, if desired, would have the opportunity to challenge the change or intervene at OHA should another petitioner bring a challenge that would negatively impact their own small business qualification.

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