



U.S. HISPANIC CONTRACTORS
ASSOCIATION

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December 13, 2005

Mr. Gary M. Jackson

Assistant Administrator for Size Standards
Small Business Administration
409 Third Street, SW
Washington, DC 20416

Re: 13 CFR Part 121
RIN 3245-AE81

Dear Mr. Jackson:

The United States Hispanic Contractors Association (USHCA) appreciates the opportunity to comment on the Small Business Administration's (SBA) Interim Final Rule on Small Business Size Standards; Surety Bond Guarantee Program published in the Federal Register, Vol. 70, No. 218 on November 14, 2005. Although the USHCA remains enthusiastic and dedicated in its efforts to assist the Gulf Coast and Florida in recovering from the horrific effects of the 2005 Hurricanes Katrina, Rita and Wilma, the USHCA respectfully disagrees with the amendments to the size requirements for the Surety Bond Guarantee (SBG) Program, and desires an immediate return to the prior size standards.

The Interim Final Rule seeks particular comments on how long the amended size standards under this Interim Final Rule should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas, factors the SBA should consider before determining that the size standards are no longer necessary, and the appropriate Agency action after SBA makes that determination. The Interim Final Rule requires a construction or service concern seeking an SBA-guaranteed surety bond to meet either the greater of the size standard for the industry in which it is engaged or the previous \$6 million standard. Under the North American Industry Classification System (NAICS), the recently increased (as of December 6, 2005) small business size standards are \$31 million in average annual receipts for building, heavy and civil engineering construction, \$18.5 million in average annual receipts for dredging and \$13 million in average annual receipts for special trade contractors. Service industries range from \$3.5 million to \$32.5 million.

Total annual receipts means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms. Items such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, are included. Gross receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

The effect of this amendment is to make any business that qualifies as a small business eligible to obtain bond guarantees. The result of this amendment is that smaller contractors, whose annual receipts are less than \$6 million per year, and who need the assistance of the SBG Program due to their small revenue capacity and surety underwriting limitations, will now be competing for SBA guarantee dollars with companies that are up to six times larger and whose increased revenue capacity makes them not as dependent upon the SBG Program. These changes completely eliminate the intent and effect of the \$6 million upper threshold to let the smaller contractors who most desperately need the bond guarantees to obtain them. The contractors who will benefit most from this Interim Final Rule are those contractors who need the Interim Final Rule least. As an organization whose membership is largely composed of small minority contractors, the USHCA opposes this change.

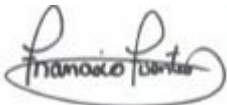
USHCA believes this change will have the most disparate impact on smaller, minority contractors. Moreover, the Interim Final Rule provides the increased size standards for all persons performing work in the hurricane effected areas, without regard to domicile. Again, such a requirement benefits larger contractors from states other than those affected by the hurricanes who will be able to capitalize on the benefits available to them at the expense and to the exclusion of the contractors in the affected areas, which are strongly minority.

For the above reasons, USHCA supports and recommends an immediate return to the prior standards for the SBG Program. Otherwise, the USHCA recommends that the SBA should return to the prior standards no later than 90 days after the effective date of the Interim Final Rule. By then, a substantial number of larger contractors will be allowed to bid and obtain contracts to perform work in the hurricane affected areas. Also, the SBA's physical loan application deadline dates for both these disasters will have passed (January 11, 2006 for Hurricane Katrina and December 23, 2005 for Hurricane Wilma), effectively showing that in the view of the SBA, some degree of normality has returned to the affected areas.

Moreover, a fixed date for the return of the prior standards is necessary to provide adequate notice for those impacted, both positively and negatively, as to the expiration of the Interim Final Rule. If the 90 days is insufficient, the SBA may certainly expand the time frame at that time. As the other SBA Programs, such as temporary suspension of certain regulations for the 60 Pilot Program, all have fixed dates, the SBA realizes the importance for all involved to establish a firm calendar date for the return of the regular guidelines. This time period will allow restoration of the effected areas to proceed with all deliberate speed during a fixed time period while remaining faithful to the original intent of the original \$6 million limitation.

Again, the USHCA appreciates the opportunity to file comments on this Interim Final Rule.

Respectfully submitted,

A handwritten signature in black ink that reads "Frank Fuentes". The signature is written in a cursive style and is enclosed within a simple, hand-drawn oval border.

Frank Fuentes
Chairman, USHCA

CC: Hispanic Congressional Caucus
USHCA Board of Directors
Hispanic Contractors Associations and Partners