

Small Business Government Contractors May Now Be Eligible Longer

By Ryan Spiegel

New law changes method of calculating size for small businesses.

On December 17, 2018, the president signed H.R. 6330, the Small Business Runway Extension Act of 2018, which makes a key change to the way that a company's size is measured for purposes of qualifying as a small business for coveted set-aside contracts with the federal government. Essentially, instead of averaging a business's revenues from its previous three fiscal years, which had been the standard, the formula will now use the average of revenues from the previous **five** fiscal years. The intent is to give small businesses more time in which to remain eligible for set-aside awards by extending out the number of years included in the average, to assist in their transition to larger, more stable companies.

In the past, if companies grew quickly within three years, or if they had a single outlier year of high revenue, they could lose their eligibility. But by including those earlier years of presumably smaller revenue in the average, even after four or five years of growth, businesses have the chance to remain small under the applicable size standards for a longer period of time. In other words, the revenue curve is smoothed out. This provides continued eligibility to bid on small business set-aside contracts. Qualified small businesses also are eligible to receive various types of assistance from the U.S. Small Business Administration.

The update to the law helps to address the prior disincentive to growth. Previously, some companies may have intentionally grown slower than they otherwise could have, to try to remain eligible for small business awards longer. For those companies that may be shrinking, though, the new law makes it tougher for them to enter the small business program if their higher revenues from prior years are now included in their average.

Note, however, that the new law does not change the revenue limits applicable to particular industries or NAICS codes. It merely changes the way that a particular business's size is calculated. For example, a company providing Engineering Services to government agencies under NAICS Code 541330 would still need to have average revenues under \$15 million to be eligible as a small business, but that average will now be determined by the previous five years of revenue rather than the previous three years.

The one-page bill does not specify a future date upon which it takes effect, and thus it appears to take effect immediately.

If you have questions about whether your company qualifies to become, or remain, a small business for purposes of contracting with the federal government, consult an experienced government contracts attorney.