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PROFESSIONAL SERVICES: PROPOSED CHANGES TO THE SMALL BUSINESS SIZE STANDARDS

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH, CAPITAL ACCESS AND TAX

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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CONTENTS

Page

OPENING STATEMENTS

Hon. Joe Walsh 1
Hon. Kurt Schrader 3

WITNESSES

Mr. Walter J. Hainsfurther, FAIA, President, Kurtz Associates Architects, Des Plaines, IL 5
Mr. John Woods, Woods Peacock Engineering Consultants, Alexandria, Virginia 13
Mr. Roger Jordan, Vice President, Professional Services Council, Arlington, Virginia 25
Mr. Odysseus Lanier, Partner, McConnell Jones Lanier & Murphy LLP, Houston, TX 35

APPENDIX

Question for the Record:
Hon. Yvette Clarke 55

Responses for the Record:
Mr. Walter J. Hainsfurther, FAIA, President, Kurtz Associates Architects, Des Plaines, IL 61
Mr. John Woods, Woods Peacock Engineering Consultants, Alexandria, Virginia 56
Mr. Roger Jordan, Vice President, Professional Services Council, Arlington, Virginia 59
Mr. Odysseus Lanier, Partner, McConnell Jones Lanier & Murphy LLP, Houston, TX 60

Statements for the Record:
American Institute of CPAs Firm Segment Revenues Letter 44
American Society of Landscape Architects 63

Additional Materials for the Record:
Chairman Walsh letter to Dr. Khem R. Sharma, Chief of the Size Standards Division of the U.S. Small Business Administration 67

HEARING ON PROFESSIONAL SERVICES: PROPOSED CHANGES TO THE SMALL BUSINESS SIZE STANDARDS

THURSDAY, MAY 5, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON ECONOMIC GROWTH,
CAPITAL ACCESS AND TAX,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Joe Walsh [chairman of the Subcommittee].

Present: Representatives Walsh, Schrader, Clarke, Chu, Cicilline, Mulvaney.

Chairman WALSH. Okay. Good morning, everyone. Thank you for joining us. The hearing will now come to order. Welcome.

The issue before the Subcommittee this morning lies at the core of small business issues. Who exactly is a small business? The answer determines whether a company is eligible for capital or entrepreneurial assistance from the SBA and whether the company can compete as a small business in the $500 billion government contracts market. SBA is trying to take an objective and analytical approach to this question and is revising all of its size standards over the next five years.

Today we are looking at the size standards SBA is proposing for the scientific, technical, and professional services industries. These include the legal services, accounting, and tax preparation services; architectural and engineering services; computer systems; related services; management services; and advertising today. There is a joke that if you ask any business, they will tell you that they are definitely small but that their next largest competitor is clearly large. The difference between being small and large in the government contracting market has very real consequences.

In 2010, over $150 billion in federal prime contracts were awarded in the professional services industries, over a quarter of all federal contracts. Over 32 billion of these dollars went to small businesses. That is nearly one-third of the $109 billion in prime contracts awarded to small businesses that year.

Clearly, determining who a small business is in these industries is very important. SBA's proposed rule would increase the number of small businesses in this category by 9,450 firms, which represents 1.2 percent of total firms in the affected industries. While this may seem like a small number in some industries, such as ar-

chitecture, over 98 percent of businesses would qualify as small. Indeed, some small businesses would see their size standard increase by 400 percent. That is massive growth.

It is my understanding that some of our witnesses today are going to talk about what that will mean to their industry. In contrast, firms in the computer systems design industries are only seeing an increase of two percent, even though those industries have seen major changes in the past few years. I am looking forward to our witnesses' comments on these issues as well.

Another topic I hope our witnesses will address is whether the SBA should proceed with its proposal to reduce the number of size standards. Currently, SBA has 41 size standards based on receipts, number of employees or other industry-specific factors. Thirty of the current standards, including the standards we are discussing today, are receipt-based. When the SBA proposes a size standard, it looks at industry factors, such as average firm size, start-up costs, entry barriers, industry competition, distribution of firms by size, and success in the government contracting marketplace. The resulting number then would become one of its size standards.

SBA is now proposing that there only be eight receipt-based standards and that each industry be put in the closest appropriate standard. These new standards would range from $5 million up to $35.5 million. Since the old standards started at $755,000 and went to 35.5 million, I am curious as to whether the new standards really fit all of the industries as well as the old size standards did. We seem to have cut out the truly small size standards. Will limiting the number of size standards simplify the size standard process or will it unduly constrain SBA and keep them from developing industry-specific size standards? If moving to a set number of size standards is a good idea, are these the appropriate standards? Likewise, SBA is proposing grouping related industries into common size standards.

I know that two of our witnesses today, being architects, would now be sharing a size standard along with seven other industries. Does this make your life simpler? Presumably, smaller businesses are less likely to participate in more than one industry so such a proposal might favor larger businesses. However, given that the industries are so closely related, removing the confusion as to which code is appropriate may assist small businesses attempting to identify federal contracting opportunities. Additionally, a single industry standard would not allow contracting officers to choose a code in order to include or exclude certain companies. So this would reduce the number of protests filed over the incorrect NAICS code being used.

Finally, I want to hear how changes are being managed in the size standard program. I know that SBA is required by law to review all of its size standards in the next five years, but I do not want to see changes rushed at the expense of small businesses. I understand that some of the witnesses here today believe they need more time to study the effects of this proposed rule and I would like to learn more about that.

I look forward to hearing from our witnesses today. I am especially pleased to welcome another Illinoisan, Walter Hainsfurther

of Kurtz Associates Architects, who is testifying on behalf of the American Institute of Architects.

I also want to welcome John Woods of Woods Peacock Engineering Consultants, testifying on behalf of the American Council of Engineering Companies. And Roger Jordan, vice president, the Professional Services Council. I am certain you will help us all have a better understanding of these issues.

I now would like to recognize Ranking Member Schrader for his opening statement.

Mr. SCHRADER. Thank you, Mr. Chairman. I appreciate it.

Comprising the vast majority of employer firms and creating two-thirds of new jobs, small businesses are critical to our United States economy. Recognizing the importance of small firms' growth and job creation, Congress has created a lot of programs—federal programs, set-asides, tax preferences, and SBA loan programs—to help these small businesses succeed. However, as a result of that it has led to a very heated debate over what actually constitutes a small business. What is the appropriate size as the chair indicated?

The federal benefits at stake are substantial. Last year, small business firms accessed over $15 billion in capital through the SBA's loan programs. Many entrepreneurs used these loan proceeds to keep their doors open in these tough times, retain employees, and hopefully, start to create some new jobs. The SBIR and STTR programs provide billions to small firms involved in cutting edge research to develop the next new innovative technology for our great country.

The SBA's entrepreneurial programs and other technical assistance can help firms develop a business plan and hopefully find some new customers. How we define a small business even affects the regulatory process and what they are subject to. The Regulatory Flexibility Act requires agencies to assess whether the rule they are contemplating would have significant economic impact on a substantial number of small entities. If a business is not considered small, agencies are under no requirement to review the impact that regulatory changes would have on small firms.

Since SBA's inception, it has struggled to find a numerical definition for small businesses on an industry-by-industry basis. On five separate occasions, as the chair alluded to, between 1980 and 2008, the Agency has proposed a comprehensive revision of its size standards. However, these proposals were never fully implemented due to concerns that the changes would unfairly strip many small businesses of their eligibility. In these budget-limited times, perhaps we have a different problem.

So the result has been a confusing, sometimes unfair, patchwork of regulations. The current system consisting of the 42 different levels covering over 1,000 different industries is complex. Thirty-one of these size levels are based on average annual receipts, eight count a firm's number of employees, while three rely on other metrics altogether. In addition, the SBA has established 11 other size standards for its financial and procurement programs. Multiple industry groups have raised concerns that the complexity of the current size standards result in legitimate small businesses losing federal opportunities. I think again in these budget-limited

times with less dollars available probably in the SBA budget it is time to revisit the issue.

Under the authority of the Small Business Jobs Act of 2010 passed in the last Congress, the SBA has issued proposed standards changes for a number of industries in the professional services, architect, and engineering section. In the proposal, the SBA has taken a number of steps to streamline and simplify the standards, theoretically to help firms and federal agencies determine who qualifies for a small business loan accurately and quickly. These changes include reducing number and size limits from 31 to 8. The proposal also groups industries, as the chair said, under a common size standard. And while there is a lot of consensus on improving the system, the question is are these the right ways to improve it?

Today we will examine how current size standards are applied in the real world, hopefully as a result of this panel. We will also hear from industries that will be directly affected by SBA's proposed changes and help guide our decisions. It is my hope the SBA has learned from past failures and taken industry as well as congressional concerns into account when drafting the proposal. And I imagine I will hear that here.

In advance of the testimony I want to thank all the witnesses who have traveled here for their participation and insights on this important topic.

STATEMENTS OF WALTER HAINSFURTHER, PRESIDENT, KURTZ ASSOCIATES ARCHITECTS ON BEHALF OF THE AMERICAN INSTITUTE OF ARCHITECTS; JOHN WOODS, OWNER, WOODS PEACOCK ENGINEERING CONSULTANTS, ON BEHALF OF THE AMERICAN COUNCIL OF ENGINEERING COMPANIES; ROGER JORDAN, VICE PRESIDENT, PROFESSIONAL SERVICES COUNCIL; ODYSSEUS LANIER, PARTNER, MCCONNELL JONES LANIER AND MURPHY, LLC, ON BEHALF OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Mr. SCHRADER. And do you want me to introduce the other witness at this time, Mr. Chair?

Chairman WALSH. Yes, do. But let me also say how pleased I am to have Mr. Lanier here, as well.

Mr. SCHRADER. It was my job to introduce you, Mr. Lanier. The chair did not forget you.

Chairman WALSH. We both want to introduce you. And you can when we get to him.

If Committee members have an opening statement prepared, I ask that they be submitted for the record. You will each have five minutes to testify. Do your best to keep it to five minutes, though I will be as lenient as I can be. So welcome to all four of you.

We will begin with our first witness, again, Mr. Hainsfurther, who is testifying on behalf of the American Institute of Architects. He is the president of Associates Architects, a seven-person firm based in Des Plains, Illinois, and former national vice president of the American Institute of Architects.

Mr. Hainsfurther, I look forward to your testimony.

STATEMENT OF WALTER HAINSFURTHER

Mr. HAINSFURTHER. Thank you, Mr. Chairman.

Chairman Walsh, Ranking Member Schrader, and members of the Committee. My name is Walter J. Hainsfurther, FAIA. I am president of Kurtz Associates Architects, a seven-person architectural firm based in Des Plains, Illinois, and a former national vice president of the American Institute of Architects.

As I mentioned to the chair on the way in, I have also over my 30 years of practice done a number of projects not only in the chairman's district but throughout the Chicago area. I want to thank you for the opportunity today to testify on behalf of my firm and the 76,000 members of the American Institute of Architects.

The current economic crisis has affected every American but as this Committee knows all too well, it has hit small businesses, like mine, particularly hard. Billings at my company are down 80 percent from two years ago. I have gone from a firm of 25 architects five years ago down to five architects today. I personally have not taken a salary in two years so that I can keep the lights on and pay my employees.

Architects are, by and large, small business people. Ninety-five percent of U.S. architecture firms employ 50 people or less. In fact, the vast majority practice in one or two person firms. They are truly the engine that drives the design and construction industry.

The AIA wants to work together with the SBA to help American small businesses come out of this recession. When the SBA makes changes to its small business standards, AIA members pay attention. The SBA's goal is to ease the administrative oversight by limiting the number of exemptions from standards and reduce the number of levels that they have for small business. The SBA also wants to increase the number of businesses that qualify as a small business and has proposed to increase the size standards accordingly. Their analysis states that it will increase the number of businesses that qualify for SBA programs from 35 percent to 41 percent, but for our members it has a far different effect.

The AIA estimates that over 91 percent of architecture firms fall under the current $4.5 million standard. If the standard is raised to $19 million, over 97 percent of the firms will qualify as a small business. The proposed standard is being increased 322 percent, which would encompass not just a majority but almost every architectural firm in this country. In short, the SBA is asking firms that have five employees, like mine, to compete against those that have over 50. As you can see, the SBA's goal of increasing participation in the architectural market is too broad and their proposal has overreached.

The consensus is clear among AIA members that the proposed increase in the threshold is high. The AIA is continuing to gather comments from our members on the proper recommendation to make to the SBA. However, the AIA represents over 76,000 architects, intern architects, and allied professionals, and many will be impacted by these changes. To find the best recommendation for SBA, we ask the Committee to join with us in encouraging the SBA to extend the response period. We would appreciate at least another 60 days to continue to gather and compile information from

our members so that the SBA can make the best decision using the most accurate data possible.

We have two requests outside of the size standards for the Committee. The first is the review of the revenue calculation for architecture firms. In the past, AIA members have stated that over 50 percent of their gross revenue can be attributed to payments that flow through to subcontractors. Those payments affect the firm's gross revenue number but are not actually part of the firm's revenue. The second issue is whether SBA's use of receipts is appropriate for architecture firms.

As you can tell, architecture firms can be extremely small, and in fact, in the recession, more small firms are created instead of consolidating. As people lose their jobs, they hang out their shingles. Net receipts may not accurately represent this situation as well as the number of employees. We believe that net receipts for these two reasons may not be the best metric to determine small businesses sizes. We ask the Committee for further review.

In conclusion, I would like to thank Chairman Walsh, Ranking Member Schrader, and the members of the Committee for giving me the opportunity to testify before you today. I want to commend you for your dedication to the problems that small businesses face in this economy and for your leadership in advancing legislation that helps small businesses drive the economy. The challenges that we as small business people face are serious, but so is our commitment to play a leading role in rebuilding and renewing our country. Thank you very much.

[The statement of Mr. Hainsfurther follows:]

THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF
WALTER J. HAINSFURTHER, FAIA

"The Effect of Proposed Small Business Standards on the Architectural Community"

United States House of Representatives
Committee on Small Business

-

May 5, 2011
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Introduction

Chairman Walsh, Ranking Member Schrader, and members of the Committee, I am Walter J. Hainsfurther, FAIA, President of Kurtz Associates Architects, a seven-person architectural firm based in Des Plaines, Illinois, and former National Vice President of the American Institute of Architects (AIA). I want to thank you for the opportunity to testify today on behalf of my firm and the AIA.

The current economic crisis has affected every American, but, as this Committee knows all too well, it has hit small businesses like mine particularly hard. For example, our firm had a significant practice in the design and construction of retail buildings. In the past two years we have constructed one new building and are about to start a second. Prior to that, we designed as many as 50 buildings annually. We are grateful for the assistance that the Small Business Administration (SBA) has given to our members. However, we have concerns about the SBA's proposed size standard changes.

Architectural profession and the recession:

Architects are, by and large, small businesspeople; 95 percent of U.S. architecture firms employ 50 or fewer people.[1] In fact, the vast majority practice in one or two person firms. They are truly the engine that drives the design and construction industry. Architects are job catalysts – they are the first workers to be involved in the construction process when they develop designs. Hiring an architect leads to employment in other construction-related fields, from engineers and manufacturers, to steel and electrical contractors. In fact, there is one architectural service worker for every 34 construction industry workers in this country,[2] creating over $1 trillion in economic activity in 2008.[3] In fact, a study by the George Mason University Center for Regional Analysis found that every $1 million invested in design and construction creates 28.5 new full-time jobs.[4]

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[1] http://info.aia.org/aiarchitect/thisweek09/1009/1009b_firmsurvey.cfm
[2] U.S. Department of Labor
[3] www.census.gov/const/C30/total.pdf
[4] www.naiop.org/foundation/contdev.pdf

Architectural activity is a harbinger of construction work: the AIA Architecture Billings Index (ABI), which surveys work on the drawing boards, is a leading indicator of construction activity nine to 12 months down the line.[5] Between January 2008 and January 2011, the index showed the profession to be contracting at an alarming rate. Finally, the ABI turned slightly higher. In March, The ABI landed at 50.5, which is a small decrease from February's 50.6 number. [6] Any score above 50 shows an increase in architectural billings, so this indicator shows a modest increase in billings. Economic indicators have shown signs of slow, but steady growth. Clearly, we are starting to get out of the woods, but we are not out yet.

Billings at my company are down 80 percent from two years ago. Construction starts are very few, primarily because clients are:

- Unable to get the necessary credit to help finance new construction or remodels. This is due to a series of conflicting banking policies that require higher levels of loan to value ratios, significantly higher levels of capital investment in a project, and revised pro forma statements that are affected by current levels of foreclosures, short sales, pre-leasing levels of projects that are often unrealistic and other factors;
- Facing falling property values, along with new construction values that are being significantly affected by appraisals when compared to short-sale real estate transactions.
- States and Municipalities that have cut back so heavily on budgets, personnel, and services that capital projects are not being considered unless absolutely necessary. In Illinois, it took almost ten years to pass a capital improvement bill through the legislature due to lack of funding. In 2008, a bill was finally passed, but the funding is currently held up in court. In the interim, our infrastructure is crumbling around us. For example, asbestos located in the legislative office building on Springfield remains.

Last year, when I told a client who owns shopping centers throughout the country that we were starting a new, 20,000 square foot center, he said: "That's great because you are the only one I know of. We don't see building anything new for at least three more years."

I have gone from a firm of 25 architects five years ago down to 5 architects today. I have not taken a salary in two years so that I can keep the lights on and pay my employees. As you can

[5] www.aia.org/aiaucmp/ groups/aia/documents/pdf/aias076074.pdf
[6] http://www.aia.org/practicing/AIAB088918

see, I fit the definition of a small business and I don't need any further competition. We are losing some of the contracts available because larger firms are "bottom feeding." They are going after projects where several years ago they wouldn't submit proposals just to pay their bills. Clients are also negotiating fees downward, using the threat that they can always find someone to do the project for a greatly reduced fee. The proposed SBA rule would further increase competition and keep me and other small businesses out of government contracts, which is not the purpose of the change. We want to work together with the SBA to help American small businesses.

Proposed size standard and the effect on the architects

When the SBA makes changes to its small business standards, AIA members pay attention. Currently, the SBA is reviewing a third of their size standards; the architecture, engineering, mapping, interior design and landscape architecture professions have been included in this review. The SBA's goal is to ease the administrative oversight by limiting the number of exemptions from standards and reduce the number of levels that they have for small business standards. To move this standard, the SBA has introduced new levels for businesses: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million and $35.5 million for this set of reviewed employers.

The SBA also wants to increase the number of businesses that qualify as a small business, and it has proposed to increase the size standards accordingly. Their analysis states that it will increase the number of businesses that qualify for SBA programs from 35 percent to 41percent in the reviewed categories.[7] For our members it has a far different effect. The AIA estimates that over 91 percent of architecture firms fall under the current $4.5 million standard. If the standard is raised to $19 million, over 97 percent of firms will qualify as a small business.[8] The proposed standard is being increased 322 percent, which would encompass not just a majority, but a super-majority of architectural firms. In short, the SBA is asking firms that have five employees compete against those that have 50 employees. As you can see, the SBA's goal of increasing participation in the architectural market is too broad and their proposal has over-reached.

The SBA's proposed grouping of several related fields would greatly harm the architecture industry. The SBA's rationale for combining architecture, engineering, interior design, landscape

7 http://www.regulations.gov/#!documentDetail;D=SBA-2011-0008-0001 at 14337.
8 http://www.aia.org/advocacy/federal/AIAB088628?dvid=&recspec=AIAB088628

architecture and mapping into the same $19 million limit is due to the consolidation of these employers into multi-disciplinary firms. The SBA's view is that many architects practice with engineers or individuals who provide other related services. The AIA strongly challenges this assumption. Architects are the prototypical small business owners and many do their jobs with few, if any, employees. Architects create designs with a minimum of equipment, and their largest expense is their employees. We do not require the heavy equipment of other professions to do our jobs. Lumping our firms together with those from other professions like engineering will place us at a competitive disadvantage in the marketplace.

Use of receipts as a metric

A related issue to the SBA's proposal is how subcontractor payments are calculated in the net revenue of an architectural firm. In the past, AIA members have stated that over 50 percent of their gross revenue can be attributed to payments that flow through to subcontractors. Those payments affect the firm's gross revenue number, but are not part of the firm's revenue. To suggest that a firm is not a small business by counting in its revenue money that it merely passes on to a sub is not fair. The AIA has presented these arguments to SBA in the past, but the SBA has not been responsive to them. The SBA is not proposing any changes to this part of their standard in the current rulemaking. We would like your support in recommending that if the SBA continues to require the use of revenue, it counts only the revenue that accrues to the firm and not the revenue that is passed through to contractors.

Another issue is the SBA's use of receipts as a metric for small business designation. Typically, service industries have a net revenue standard, while a small percentage of manufacturing and sales industries have a standard set at number of employees. Although there is the potential to change the architectural standard from net receipts to employees, the SBA is not contemplating this and it would likely take a legislative effort. We would like your support on changing the architectural standard from net receipts to employees, so that it will more accurately reflect the nature of the architecture business.

Timing

The consensus is clear among AIA members that the proposed increase in the threshold to $19 million is too high. The AIA is continuing to gather comments from our members on the proper recommendation to make to the SBA. However, the AIA represents over 76,000 architects, intern architects and allied professionals, many if not most of whom will be impacted by these changes.

In order to find the best recommendation for SBA, we ask the Committee to join with us in encouraging the SBA to extend the response period. We would appreciate another 60 days to continue to gather and compile information from our members so that the SBA can make the best decisions, using the best and most accurate date, possible.

In conclusion, I would like to thank Chairman Walsh, Ranking Member Schrader, and members of the Committee for giving me the opportunity to testify before you today. I want to commend you for your dedication to the problems that small businesses face in this economy and your leadership in advancing legislation that helps small business drive the recovery. The challenges that we as small businesspeople face are serious, but so is our commitment to play a leading role in rebuilding and renewing our country.

Chairman WALSH. Thank you, Mr. Hainsfurther.

Our second witness is John Woods, testifying on behalf of the American Council of Engineering Companies. Mr. Woods is the founder and principal of Woods Peacock Engineering Consultants, Inc., a service-disabled veteran-owned small business that provides structural engineering services in Alexandria, Virginia.

Welcome, Mr. Woods. I look forward to your testimony.

STATEMENT OF JOHN WOODS

Mr. WOODS. Thank you, Chairman Walsh, Ranking Member Schrader, and members of the Subcommittee. I appreciate the opportunity to testify before you today about the changes to small business size standards, particularly the unique considerations of A&E services. I will also address factors that must be considered when SBA proposes changing the small business size standard by 400 percent.

I represent the American Council of Engineering Companies, the voice of America's engineering industry, with almost 6,000 member firms employing more than 500,000 engineers and other professionals responsible for $500 billion of private and public works annually. Over 70 percent of these 6,000 firms are small businesses with less than 30 employees.

As ACEC members are working as we speak to better understand the rationale behind the SBA proposal, it has become very apparent that we need an extension of more than the present two months and the comment period identified by SBA. We must review their 16-month analysis to develop alternative approaches and consider the effects on future competition, QBS use, and current small firm finances and contracting opportunities.

ACEC asks for your consideration and support of a September 30, 2011, extension. We would like to draw your attention to a number of key issues. First, the actual use of engineering firms of varying sizes is unknown. If the proposed rule is put into place using the demographics of ACEC membership, more than 90 percent of the nation's engineering industry, up from 70 percent from now, would be classified as small business. Data needs to be collected to better aggregate firms of various sizes doing responsible work based on many requirements, including licensure, regardless of contracting tier.

A second key point, the size standard, ACEC policies of encouraging small firm participation in the federal sector should reflect the fact that small firms are an integral part of teams submitting on federal work and selected under QBS for their capabilities. The qualifications and responsibilities of each firm member are clearly delineated in the proposal they submit to the Agency when competing for contracts.

A&E firms provide services in the very technical disciplines of architecture, mechanical, electrical, civil, structural, and other engineering. All states require professional licenses for the individuals performing this work, as well as for their firm. Like my Commonwealth of Virginia, the majority ownership of the firm must be licensed in the Commonwealth.

Firm size and capabilities are also controlled by the interests of professionals and their firm business model as by the opportunities

available to them. Many firms remained specialized and small for decades by intent. Selection boards consider all capabilities of all team member firms like ours when ranking firms under the qualifications selection. The team selected is required to perform the work with the proposed team individuals under contract.

A third key point, these responsible roles are not reflected in small business goal achievement by federal agencies and revenue data is not available to SBA for assessing government small business utilization when analyzing size standards, for engineering services, team formation, and responsible roles go far beyond tracking prime contract awards with only census data. The size standard discussion is influenced by the impact of increased costs and pass-through revenues for small firms serving federal clients. The SBA proposal also does not take into account small business size standards under other regulations, such as labor, family leave, health insurance, defense contracting auditing, to name a few.

A fourth key point, more effective small business utilization would be achieved through the development and retention of a contracting work force that understands A&E's services and procurement rules. The insufficient number of contracting personnel often without experiencing in procuring A&E services or the industry has created a basis for large contracts that require full service, large national firms to win and perform the work.

Finally, the current small business program establishes subcontract goals for small businesses based on a percent of work subcontracted. A better approach would be to establish the business subcontracting goals based on a percentage of funded prime contract dollar value, which would keep the proposed roles and easily resolve usage if all roles were not used. The change would eliminate the absorption of functions by the prime contractor resulting in no work for the tier small contractor.

I thank the Subcommittee for the privilege and opportunity to address the A&E industries with the proposed size standards and I welcome any questions.

[The statement of Mr. Woods follows:]

Testimony of John O. Woods, Jr., P.E
Principal,
Woods Peacock Engineering Consultants, Inc.

Before the House Committee on Small Business,
Subcommittee on Economic Growth,
Capital Access and Tax
May 5, 2011

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Summary

Professional engineering firms and our architect colleagues bear the responsibility (legally and ethically) for safety, performance, sustainability and cost effectiveness (construction and long term) of our nation's infrastructure (e.g. building, roads, levees, dams, bridges, pipelines, etc.). Together they comprise the A/E services industry. Due to requirements for individual and firm licensing by state, the multiple technical disciplines involved, state regulations mandating firm ownership by licensed professionals and ethical codes that require performance of only work they are competent to do, most A/E firms tend to be small and specialized in nature.

The SBA has published a proposed new size standard that is over 400% larger than the existing standard for A/E services (from $4.5 to $19 million). In an industry mostly composed of small, high quality, specialized firms that compete for government contracts on the basis of qualifications unique to the project in question, the impact of such a drastic change must be carefully analyzed.

The industry has previously testified to the need for focused federal contracting statutes and measurement requirements. Among these are including all work performed by A/E services firms responsible for project performance (part of the "team" selected and signing the design products), regardless of contract tier, when measuring small business participation by federal agencies, as well as establishing subcontract goals as a percentage of funded prime contract value. Any consideration of a significantly increased small business size standard must include consideration of the uniqueness of our industry and the small business program it operates within. Further considerations include:

1. The industry is not homogeneous; it's composed of full service and specialty firms across many technical disciplines with firms sized from sole practitioners to those in excess of 55,000 employees.
2. Current data excludes the bulk of support work performed by small firms.
3. The impact of the proposed change on the established qualifications based selection (QBS) procedures.
4. The impact on competition and the use of disadvantaged business enterprises.

Introduction

Chairman Walsh, Ranking Member Schrader, and Members of the Subcommittee,

I appreciate the opportunity to testify before you today about *Changes to Small Business Size Standards* and specifically about the unique considerations of A/E services. In addition, I will address factors that must be considered when significantly changing the small business size standard, the composition of the engineering industry, why small specialized firms like my own compose the majority of our industry, how we view federal government policies, and provide individual issues that need to be addressed to enhance small business understanding and participation in work, while protecting jobs and the tax payer.

My name is John Woods, and I am the founder and principal of Woods Peacock Engineering Consultants, Inc., a consulting structural engineering firm located in Alexandria, Virginia. Woods Peacock is a Small Service-Disabled Veteran Owned Firm with 17employees. All of my staff are committed to providing our clients structurally sound designs for various sized projects, at home and around the world. I have also served on several councils, foundations, and boards dealing with veterans, children, business, community, and disadvantaged persons' issues, as well as being a Presidential appointee to the U.S. Access Board, a leading Federal agency on accessibility for persons with disabilities and accessible design.

My firm is an active member of the American Council of Engineering Companies (ACEC), the voice of America's engineering industry. ACEC's almost 6,000 member firms employ more than 500,000 engineers, architects, land surveyors, and other professionals, responsible for more than $500 billion of private and public works annually. Over 70% of these firms are small businesses, with less than 30 employees. Our industry has significant impact on the long term performance and costs of our nation's infrastructure and facilities. I currently serve on ACEC's Federal Agencies Committee and the Small Firm Coalition, which develop Council positions on legislation and promote infrastructure issues before Congress, executive agencies, and states.

In over 40 years of experience I have designed -- or been in responsible charge of the design -- several hundred significant building structures and provided structural consultation on several thousand other projects, both domestic and international. I have served on the national committee of the Coalition of American Structural Engineers which wrote the National Guidelines of Practice and was on the industry committees that wrote the Critical Structures Manuals and the Complex Structures Manuals for many local governments. I have acted both as expert and advisor for legal counsel, particularly in the areas of standard of care and state of the trade, and more recently for design-build contracts. Notable present federal projects include the renovations of the West Wing of the National Museum of Natural History, U.S. Embassies in Rome, Monrovia, Liberia, Kigali, Rwanda, Johannesburg, S. Africa, and Karachi, Pakistan, and the new Department of Homeland Security Headquarters and New Operations Center.

We are at a critical juncture in our nation's history – the risk to people and infrastructure is growing at an alarming rate as a result of more than 100 years of neglect to the nation's infrastructure. At the same time we are in the throes of an economic crisis that is impacting long term infrastructure spending and our small professional architecture and engineering (A/E) services firms directly. To this we are adding a new size standard increased by more than 400%, whose impacts need to be fully understood prior to finalization. The combination of my small firm ownership, long history of involvement with my industry and small firms' issues,

performance under federal contracts, and personal interest in serving my community and nation provides me the background to address the following issues.

Considerations in Changing the Architect/Engineering Size Standard

Currently small firms represent over 70% of ACEC membership, with another 20% being firms that would become small under the proposed standard. The remainder are large firms under the current or proposed standard. The organization has done extensive outreach to its membership to gauge the reaction to the proposed size standard, and a number of opinion trends have been identified:

1. Most respondents recognize the need for an increase in the size standard. Opinions vary as to the size of that standard.
2. Many presently mid-size firms view the proposed $19 million standard positively, while others in the mid-sized category are open to smaller increases (to $10 or $14 million). A few have even advocated a much large increase, to $25.5, $30, or even $35.5 million.
3. In general the large firms (under the new standard) express concern that the increase is so large that all federal work could be set-aside for the new larger "small" firms, damaging their market and ability to compete. General concerns exist over the issue of federal agencies using market research and the Rule of Two at the $19 million size level to effectively bypass QBS and thereby damage the industry and jeopardize the public.
4. Many small firms (as measured under the current size standard) feel that they do not have the resources (financial, manpower, or time) to adequately compete with firms over 4 times their size, at the larger end of the proposed standard, and would be forced out of federal work. Many recognize the need for an increase in the size standard, but hope it would be in the more reasonable area of $7 or even $10 million. Also questioned is leaving DBE status tied to a larger size standard, since firms of that size are clearly not disadvantaged.

Based on this initial survey and my own knowledge of the engineering industry and federal contracting, certain considerations arise that need to be dealt with. Within ACEC, efforts are underway to resolve the issues raised and arrive at positions that will lead to meaningful comments on the proposed size standards. The following are some of the considerations being addressed:

1. The actual federal use of engineering firms of varying sizes is unknown, due to current data gathering. Only data on small firm prime contracts is gathered and reported beyond the individual contract level and that data is not adjusted to show what work is done by large firms supporting the small business prime. While individual small firm support to large prime contractors is reported at the contract level, the information is not aggregated further. No data is collected on the various size of firms performing federal work within the small and large categories. If the proposed rule is put into place, over 90% of engineering firms would be small businesses. Data needs to be collected to better aggregate firms of various sizes doing responsible (legally and ethically) work regardless of contracting tier (something ACEC has asked for previously as part of small business program reform). This would provide a better understanding of where the work is going and eliminate all work under a prime contract from being credited

only to either large or small firms. Agency goals and credits need to reflect the actual work performed by small firms. The information is already provided for all large firm contracts and should be for all contracts and then aggregated for the agency. The new digital reporting system needs to accumulate this data. Adding the relative size of each firm performing work (relative to the SBA standard size levels) should be doable.

2. The above gathered data should be used for a yearly evaluation of the size standard, to verify the intended growth in the use of small firms.
3. Small businesses are an integral part of teams submitting on federal work, which are selected(under QBS) for their capabilities. The selected team indicates the responsibilities of each team member in their proposal. The current small business program establishes subcontract goals for small businesses based on the percent of work subcontracted. A change (pursued by ACEC as part of program reform) to establishing small business subcontracting goals based on a percentage of funded prime contract value would keep to the proposed roles and easily resolve usage if all roles are not used, due to client assignments or project need. The change would eliminate the absorption of functions by the prime contractor, i.e., eliminating any work subcontracted, as is often the case. This should be applied to all contracts regardless if the prime is a large or small firm.
4. A category of micro-firm or emerging firm may be needed to provide opportunities, with purposely developed scopes of work, for firms at or below the current small business size. This would allow firms time to adjust to the new size standard and government an opportunity to assess the impacts on the industry.
5. A limit on the use of set-aside contracts by number, size of contract, or relative size of firms (micro or small), or a alternative that awards "bonus" qualifications points for small firms on otherwise open competitions, should be considered.
6. At the proposed size level, finding qualified small business competitors of all categories would be assured. With almost the entire industry becoming small under any significant change in the size standard, related rules and definitions need to be identified and adjusted accordingly.

Uniqueness of the Architect/Engineering Industry

A/E firms provide services in varied technical disciplines (e.g. architecture; mechanical, electrical, civil, structural, chemical, and other engineering; surveying; etc.). States require professional licenses for the individuals performing this work. In most states, the majority ownership of firms providing such services must be held by individuals licensed in their states in their respective disciplines, for the firm to be licensed to work in that state. The ethical codes for licensed professionals to retain their licenses require them to perform work only that they are capable of performing, based on education and experience.

Because of the state individual and firm licensing requirements, firms need to vary their structure for the state in which they are working. This, along with the ethical requirements for retaining their licenses, is why a majority of A/E firms are small and specialized. Since the work is performed by individuals, the quality of the services offered is independent of size. That is why a firm like Woods Peacock is sought out for its structural engineering and anti-terrorism/force protection services. The principals of such firms are directly involved with work performance. While advances in computer software and communications technologies allows engineering

firms to do much more with less personnel, it does not replace the individual knowledge, experience, and capabilities of the professionals performing the work. I will not, and procedurally and ethically cannot, take professional responsibility for work outside the technical discipline for which I am licensed and competent to perform.

As indicated above, there are many technical disciplines that are required to complete infrastructure and facilities projects. These disciplines must work together under common leadership to achieve optimum and integrated results. Project design management is often a discipline itself. The better the disciplines work together, the better the results. This teaming, whether internal to a large multi-disciplined firm or from separate highly qualified specialty discipline firms is a key to success. Quality teaming may be produced through formalized processes, experience of working together, or both.

Due to varying functions and performance requirements, physical conditions (soils, weather, etc.), locations and jurisdictions (access, utilities, building codes, permitting requirements, etc.) and similar considerations, each project is unique, requiring special capabilities and experience. Teaming arrangements need to accommodate the unique factors of each project. A team formed to optimize services performance for one project may not be the right team for a similar project in a different location or a different project at the same location. Sometimes teams can be optimized with minor changes of the individuals involved and sometimes whole new teams are better. Each project needs to have the project specific qualifications requirements identified and the A/E services teams established by evaluating and choosing the team members with the most capabilities to satisfy those qualifications.

The long term business success of individuals and firms providing A/E services is achieved only when clients and potential teaming partners recognize and accept their qualifications to perform quality services in specific disciplines and areas. Reputations for quality work, working well as a team member, and innovative solutions to technical problems that arise on projects are key to receiving repeat or future work.

Throughout the industry and codified by the Brooks Act (Public Law 92-582) for federal work, A/E services offerors are selected for work based on being the most qualified for the particular project or series of tasks. The cost of those services is small in comparison to construction, other project, and life-cycle costs, and yet the quality of the service has a profound impact on total project cost and performance. As a consequence, working with the most qualified services provider at a fair and reasonable cost is paramount.

As needs for services are identified and qualifications requirements are made known, potential offerors look at their own capabilities and decide what they need to do to not just perform the work, but to assure the owner/client that they are the most qualified to successfully complete the effort. Team formation internally and externally becomes critical to achieving this goal. This is why highly specialized small firms are routinely included on teams to improve the team's chances of winning and performing individual projects.

As this brief explanation of the industry shows, firm size and capabilities are as much controlled by the interest of professionals in their firm business model as by the opportunities available to them. Many firms remain specialized and small for decades, by intent. My firm, Woods

Peacock Engineering Consultants, is a prime example of a firm highly regarded and sought out for our structural engineering expertise and not wanting to dilute our direct involvement in such work buy becoming a full service firm whose owners by necessity must focus on project management and integration across disciplines.

Specialty firms like Woods Peacock take responsibility legally and ethically when they sign drawings and specification documents for a project. Also, selection boards consider all team members when ranking firms under a qualifications (Brooks Act) selection. The team selected must perform the work under contract. Unfortunately, these responsible roles are not included in small business goals achievement by federal agencies and revenue data is not available to SBA for assessing government small business utilization when analyzing size standards. The small business size standard setting methodology needs to reflect the natural way work is accomplished in an industry. For engineering services, team formation and responsible rolls goes far beyond tracking prime contract awards. The difference between full service firms and specialty firms needs attention.

The Issues in Setting a Single Size Standard for Engineering Services

To understand the impact of a new size standard on our industry and the small businesses therein, many issues require analysis. Inflation and emphasis of the federal government on having small firms perform larger, full service prime contracts have raised costs and pass through revenues for firms. This necessitated a need for increasing the current size standard that was originally established in 1984 at $2.5 million and has only grown to $4.5 million over the past 27 years.

There have been two attempts to increase the size standard (beyond inflation adjustments). They were a proposed increase to $7.5 million in 1998, and a change to 50 employees (FTEs) and a ceiling of $7 million in 2004.

The 1998 proposed rate was meant to catch up on inflation (no adjustments were allowed through 1996, due to the Competitiveness Demonstration Program), larger federal contracts, growing entry costs for technology, and the growth in pass through costs from subcontracts. The size standard was finalized in 1999 to $4 million, primarily recognizing that the smaller firms do not have the resources to compete with the firms at the higher portion of the proposed standard and would be harmed. Also, in some regional markets, the entire industry would be small; therefore the definition would be meaningless.

The 2004 proposal was dropped because of the undue burden a dual size standard (people and revenue) would place on small businesses in the industry. Also, the employee limit was considered arbitrary, particularly in enforcement, and would have had a negative impact on hiring.

The latest proposed size standard for A/E services is $19 million, which represents a very substantial increase (over 400%) from the current size standard. The initial reaction is to question the reality of such an increase and to question its validity, particularly when compared to the more reasonable increases for other professional services. Upon closer consideration, the firms in our industry become divided in opinions. The uniqueness of the structure and impact of

the A/E industry requires more consideration than the processing of Census data to arrive at average numbers for a size standard.

Problems Winning and Doing Federal Work

The current size standard for A/E services is $4.5 million based on gross revenues averaged over three (3) years. Pass through costs, including subcontract work and project equipment rentals inflate revenues without indicating real firm growth. This becomes a problem when poorly planned small business set-aside contracts are won by firms that must add technical disciplines and management capabilities, or subcontract to large firms to perform the project. The growth therefore is false or forced.

Individual state licensing requirements and large variances in state costs of living also impact gross revenues. The same size firm operating in a state with a high cost of living may show inflated revenues that graduate it from a small business only because of the higher costs of labor and services. Since size standards are consistent across the country and state restrictions do not exist for federal contracts, firms in high cost areas are being penalized.

Federal contract planning and sizes do not match the specialized nature of the work, small size standard, need for teaming to perform, and state licensing factors. Care is needed to assure that the contracts developed can be performed by small businesses in the location required, by the experienced personnel offered, and managed properly. The basic lack of contracting personnel, compounded by their general experience gap in procuring A/E services and the industry itself, has created contracts that require large, full service, national firms to win and perform the work. Even when small firms team or joint venture for such work, the larger firms are considered more qualified because of their simpler organizational structure, experience, and perceived financial capability.

Subcontracting percentage goals for federal large prime contractors is based on amount subcontracted. This allows the prime contractor to adjust the amount subcontracted to achieve the goals. A small firm cannot plan on a certain level of work, if any, over an extended period of time. While all A/E services are subject to client requirements and physical conditions encountered, percentage goals based on the funded amount of the prime contract would provide a clearer picture of the future for small business subcontractors. In addition, the latter goal setting eliminates an unintended penalty on mid-size firms and small businesses that graduate. With the goal based on contract dollar amount, other subcontracting is not a factor and teams can be established based on capabilities needed and existing relationships rather than on controlling ratios of subcontracted work. This even allows mid-size and large firms to team with each other in subcontractor roles without penalty on goals attainment.

Of course, the continuously changing federal rules and extensive oversight requirements present a burden of their own. A professional firm involves its principals in the performance of technical discipline work. To keep up with ever increasing statutory requirements and corresponding implementing regulations requires small A/E services firm owners to forgo their technical work or hire additional staff to learn, understand, and comply with the federal specific requirements.

Best Use of Industry Achieved Through Understanding of Roles

The federal workforce needs the managerial and administrative capabilities and numbers of personnel to establish program and policy, procure, coordinate, run, and accept the A/E services work. This work is ongoing and consistent and must be performed in a consistent and stable manner.

The private sector provides the project unique capabilities, varied experience, surge ability, and innovation to efficiently and effectively perform on limited duration project work. Using federal in-house technical staffs to perform project A/E services is similar to awarding all such work sole source to a single firm. They could not have all of the capabilities in-house to innovatively and efficiently perform quality work for each unique project. Private sector firms can team or add and delete staff as needed to meet fluctuating technical and schedule demands and are selected for being the most qualified for the specific project. In addition, project work performed by federal technical staffs is done at actual cost (staff payments), while private sector performance is done at negotiated contractual cost. Risks to the government are contained through use of the private sector for A/E services.

Conclusions and Recommendations

The A/E services industry is unique in how firms are established, perform work, selected to benefit their clients, and work with each other. Most firms in the industry are small, specialized, and have a business plan to remain that way to assure performance and reputation. They also perform technical work on unique projects, of limited duration, and requiring specific capabilities and innovation. These factors result in the need for special considerations when trying to assure appropriate small business participation in federal procurements.

Our industry recommends the following measures to be considered in evaluating small business size standards and programmatic changes that will make the use of small businesses more effective:

- **The industry should be provided an extension for submitting comments on the current proposed size standards.** In order to better understand the impacts of the proposed change, ACEC will need time to survey its member firms, review SBA's analysis completed over a 16 month period, develop alternative approaches, and consider the effects on future competition, QBS use, DBE involvement, design-build procurements, current small firm finances and opportunities, and teaming for work.

- **Small and large business participation should be based on work actually performed by small and large firms**, not on who holds the prime contract. Contracts awarded require performance plans that identify the team members performing the tasks involved. This is already done when preparing proposals under QBS criteria. Small Business Subcontracting should be counted as Small Business Participation to Meet Agency Goals. To not account responsible support work as part of the agency goals, either adding to or deducting from small business utilization, would appear to be inconsistent.

- **Establish that large prime contractors account for small business subcontracting goals by the prime contract funded value, rather than a percentage of work subcontracted.** This:
  - Discourages the prime contractor from reducing subcontract work and doing more in-house, thereby increasing the reported percent of work subcontracted to small businesses of various categories.
  - Provides small business subcontractors with a reasonable expectation of being utilized.
  - Provides a level of effort for the small businesses to perform subcontract work awarded, and a target level, plus verification, of the actual amount to be completed. Hence, the small business can plan accordingly.
  - Encourages the use of both small and mid-size firms based on capability and contribution to contract performance, which is in alignment with the Brooks Act.

- **Small business set-aside contracts should be consistent with the skills and maximum size of small business competitors**
  - Large contracts are currently being awarded to small businesses that within a year will cause them to exceed the small business standards (when averaged over the last three (3) years), hence, disqualifying them from re-competing the work.
  - Contract size should be limited to a reasonable factor of the size standard.
  - Requirements for the majority of work to be performed by the small business prime when compared to actual staff size must be a consideration.

- **Change contract bundling practices to ensure reasonable small business prime contract opportunities exist**
  - Adjust current contract bundling practices to ensure that prime contract opportunities are aligned better with small business capabilities; hence, encouraging more small businesses to compete for federal projects.
  - Presently complex contracts are being awarded to small firms in amounts large enough to negatively impact the sustainability and life of the firm.

- **Develop a career path for Contracting Officers specializing in AE contracting and hire or develop personnel in sufficient numbers**
  - Assure an appropriate size staff and continued competence and retention.
  - Create a cadre that understands and appreciates the benefits of QBS.
  - Fashion contracts of a size and scope that attract qualified small businesses.

I thank the Subcommittee for the privilege and opportunity to address A/E industry issues with the proposed size standards and the small business program and am pleased to answer any questions.

Chairman WALSH. Thank you, Mr. Woods.

Our third witness is Roger Jordan of the Professional Services Council. The Professional Services Council is the national trade association of the government professional and technical services industry.

Mr. Jordan, we look forward to your testimony.

STATEMENT OF ROGER JORDAN

Mr. JORDAN. Chairman Walsh, Ranking Member Schrader, and members of the Subcommittee, thank you for the invitation to testify and the opportunity to discuss small business size standards today.

When debates about industry size standards occur, often there is very little agreement. Very small businesses tend to advocate for lower size standards, companies operating in the middle of their industry size standards tend to advocate for status quo, and companies that are approaching are slightly above their size standard seek a higher level.

The reason for the varied opinions is simple. Companies have a keen interest in maximizing their ability to compete for and win federal contracts that are exclusively set aside for small business competition. Given the significant increase in federal spending on services over the past decade there is much to be gained competitively from qualifying as a small business. Adding fuel to the debate around size standards is the fact that the federal government lacks policies regarding contractors operating in the mid-tier. That is, firms that were once eligible to receive small business set-asides but whose revenues now exceed the size standard if even by only one dollar. If SBA policy is not only to create federal contracting opportunities for small businesses but also to ensure long-term success and a sustainable growth pattern, then the plight of small businesses that graduate from their industry size standard should not be ignored and Congress should explore operations that will alleviate this binary approach and incentivize contracting opportunities for mid-tier businesses.

During its evaluation, SBA relied on five equally weighted major factors to determine the proposed size standards, one of which is the impact on federal contracting and SBA loan programs. However, PSC recommends that greater weight should be given to the impact on federal contracting. In addition, SBA should broaden its evaluation of the federal contracting market to examine barriers to entry into the federal marketplace, not just the commercial space. This, in fact, might encourage SBA to reconsider the merits of adopting separate size standards for the purposes of federal contracting. The adverse impact on small businesses of a single size standard that covers federal procurement and all other SBA programs is documented in SBA's own methodology in which it acknowledges that the disparity between small business federal market share and industry-wide share may be attributed to a variety of reasons, such as extensive administrative and compliance requirements associated with federal procurement, the different skill sets required by federal contracts, and the size specific contractor requirements of federal customers.

That said, our members have not widely reported significant heartburn with many of the proposed increases to the size standards as many size standards were increased from 7 to either 10 or 14 million, which will provide much needed flexibility for small firms to mature. There are, however, proposals for two areas, architectural engineering services and computer-related services, that require greater scrutiny.

As my fellow panelists have already highlighted, the proposed size standard for A&E ballooned, which begs the question of what has changed so dramatically in that specific industry over the years to warrant a quadrupling of the size standard. In contrast, computer-related services have undergone significant changes over the last 20 years, yet SBA proposed raising size standards for those categories only by $500,000. In addition, SBA established common size standards for industries that share similar characteristics. According to the SBA, these common size standards reflect cases where many of the same businesses operate in multiple industries. This led SBA to establish a common size standard for a number of computer-related industries, even though the industry data supported a distinct size standard for each industry. For example, SBA analysis shows the computer facilities management services had a calculated industry-specific size standard of 35.5 million. Yet, by establishing a common size standard containing this category and other computer-related categories at a level of 25.5 million, SBA has eliminated legitimate small businesses from being able to qualify.

In summary, PSC recommends the following. With specific regard to the size standard proposal, PSC recommends that SBA give more weight to the impact on federal contracting factor and broaden its analysis with specific federal market dynamics that distinguish the federal market from the commercial space. Taking this recommendation further, SBA should consider creating a completely separate set of size standards to be used for federal procurement purposes only. In addition, SBA should review its policies regarding the creation of common size standards. Under the proposed rule, the use of common size standards will eliminate small businesses from competition; whereas if the individual industry size standard had been adopted, then all small businesses would be able to compete.

Beyond the common rulemaking process, SBA and Congress should support new and ongoing initiatives to incentivize contracting opportunities from mid-tier businesses to ensure that growing small businesses are provided at minimum some protection before having to always compete with large businesses.

Lastly, Congress should provide a necessary oversight of SBA to ensure that it is abiding by the provisions enacted in last year's Small Business Jobs Creation Act that require SBA to review and update the size standards every five years at minimum.

Mr. Chairman, this concludes my testimony. Thank you for inviting PSC to testify today and for your attention to this important matter. I would be happy to answer any questions that you may have.

[The statement of Mr. Jordan follows:]

TESTIMONY OF

ROGER JORDAN

VICE PRESIDENT OF GOVERNMENT RELATIONS

PROFESSIONAL SERVICES COUNCIL

BEFORE THE SUBCOMMITTEE ON ECONOMIC GROWTH, ACCESS TO CAPITAL, AND TAX

SMALL BUSINESS COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

"PROFESSIONAL SERVICES: PROPOSED CHANGES TO THE SMALL BUSINESS SIZE STANDARDS"

MAY 5, 2011

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INTRODUCTION

Chairman Walsh, Ranking Member Schrader, and members of the Subcommittee, thank you for the invitation to testify and the opportunity to discuss small business size standards.

My name is Roger Jordan and I am the vice president of government relations at the Professional Services Council. PSC is the national trade association of the government professional and technical services industry. PSC's nearly 350 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Roughly 20 percent of our members are small businesses and another approximately 30 percent would be considered small mid-tier firms. Together, the association's members employ hundreds of thousands of Americans in all 50 states.

When debates about industry size standards applicable to federal procurements occur there is often very little agreement. Company executives' opinions typically fall into one of three buckets depending on the current size of their company. For example, very small companies tend to advocate for lower size standards; companies operating in the middle of their industry size standard's range tend to advocate for the status quo; and companies that are approaching or slightly above their size standard seek a higher level. The reason for the varied opinions is simple: companies have a keen interest in maximizing their ability to compete for and win federal contracts that are exclusively set aside for small business competition. As such, there is much to be gained competitively from qualifying as a small business. This is especially true since the current approach to determining companies' size status results in companies being placed into one of two categories—either you are a small business or an "other-than-small" business left to compete with companies that are clearly dominant in an industry. This binary approach means that once companies exceed their industry size standard, even if only by one dollar, they are left on their own to compete in the full and open marketplace. Some succeed, others do not.

Reaching a consensus among these varying opinions is virtually impossible. However, one area in which most agree is that, after nearly 30 years without a comprehensive revision to industry size standards, it is time for the Small Business Administration to reevaluate them. This is an unenviable task that SBA has appropriately undertaken and their challenge is significant for a number of reasons. To properly adjust size standards, SBA must collect and digest significant amounts of data about the commercial and federal marketplaces, and often relevant data simply doesn't exist. In addition, SBA must have an in depth understanding of the federal contracting market and how the dynamics of that market are changing, either through natural evolution or because of the implementation of government policies.

BACKGROUND

On March 16, 2011, SBA published its much-anticipated proposed rule updating the small business size standards for 36 industries operating in the Professional, Scientific and Technical categories—often referred to as the "54" category because of the corresponding number assigned to them under the North American Industry Classification System (NAICS). The March 16 proposed rule is the third rule to be published within the last year proposing changes to broad industry categories. SBA will continue to revise other categories on a rolling basis. Examples of industries that fall under category "54" include legal services, tax preparation services, architectural and engineering services, many computer related and information technology services, and a number of consulting services, including management consulting, logistics consulting, scientific and technical consulting. In total, the federal government spends approximately $132 billion on contracts in these categories, while small business participation exceeds $30 billion (approximately 23 percent) at the prime contract level and is estimated to be considerably higher at the subcontract level.

SBA began its process of revising the size standards by developing a methodology based on five significant factors: average firm size; startup costs and entry barriers; industry competition; distribution of firms by size; and impact on federal contracting and SBA loan programs. SBA will also consider other factors such as technological changes and industry growth changes.

The thresholds established for determining small business size status are important for a number of reasons. First, SBA uses the size standards to determine whether a business is eligible to apply for, and receive, loans through the various SBA-backed loan programs. Similarly, small firm status must also be verified for businesses seeking assistance from SBA in order to recover from catastrophic natural disasters or terrorist attacks. Second, size standards are important to determine businesses' eligibility to compete for, and be awarded, federal contracting opportunities set-aside exclusively for small business competition. Third, the size standards are used by prime contractors to determine small business eligibility for their subcontracting plans required by the federal government to ensure that small businesses have ample opportunity to participate at the subcontracting, as well as prime contracting, levels.

SBA's analysis and update of these size standards is necessary because, other than periodic inflationary adjustments, it has been several decades since the size standards have been substantially reviewed and updated. During this timeframe, industries—especially the professional services industry—have changed significantly and the dynamics of the federal professional services marketplace are also much different than they were 15 years ago. Most significant is the general growth in the amount the federal government spends on professional services annually. Fifteen years ago the estimated amount that the federal government spent on ALL services was $114 billion. Today that figure is upwards of $335 billion. This increase means that there are considerably more opportunities for professional services providers to partner with the federal government. It also means that significant opportunities are being set-

aside for exclusive small business competition in the fields of professional, scientific, and technical services. The growth in the marketplace and increases in small business opportunities have been factors in increased calls for revisions to the size standards to ensure that accurate figures are dictating which companies are eligible for set-aside competitions. However, these are not the only factors that are fueling debate. A number of changes in the federal contracting market are also significant contributors.

CONSENSUS DIFFICULT, IF NOT IMPOSSIBLE

First, I would like to commend SBA's Office of Size Standards for its efforts on its size standards initiative, as updating them is a significant challenge that requires critical economic data analysis as well as a thorough understanding of the federal marketplace and key policies that impact it. Furthermore, SBA is unlikely to satisfy all interested parties because, as stated above, individual companies are likely to adopt a position on the issue based on their current situation.

Nonetheless, there are other critical questions that need to be addressed early in the process. At present, it is not at all clear that these questions were fully considered. Key among these questions is a definition of the PURPOSE of the government's small business program. Is the intent of small business contracting initiatives to help CREATE small businesses and then protect those that wish to maintain their small business status, or are these initiatives intended to serve as an incubator to foster the development, growth, and sustainability of companies? This is a critical question, particularly in the federal procurement marketplace; and the answers may well differ depending on one's perspective.

At PSC, we and our members have adopted the philosophy that the intent of the small business program is to foster growth to help facilitate long-term success of companies with the entrepreneurial spirit, and we believe this philosophy is shared by the current leadership within SBA. This position supports the need for size standards in the higher range. This does not mean that the standards should be set so high that they act as significant barriers to smaller companies seeking to break into the federal market. Rather, SBA must seek to balance size standards so that small businesses have legitimate opportunities to compete, yet higher revenue generating small firms that are not dominant in their field are not shut-out from competing for small business set-asides.

REALITIES OF THE FEDERAL MARKETPLACE

As I mentioned earlier, the characteristics of the federal marketplace have undergone significant changes in the last 15 years, and these changes have created "realities" that simply cannot be ignored when discussing industry size standards.

First, the government market for professional services has become increasingly dominated by indefinite delivery/indefinite quantity multiple award contracts which, in turn, have resulted in a marketplace where a significant amount of professional services are now procured at the task

order level. In the past, the majority of such work was procured through individual contracts. This shift to task order purchases has had enormous impacts on the marketplace. The costs to compete have risen significantly, as companies of all sizes, have to bid to win a position on a multiple award contract and then bid again for the actual task orders. The average value of a contract action has dropped by nearly 50 percent by virtue of the incremental buying that task orders represent. And competition at all levels has intensified. This has presented challenges for companies of all sizes, but most especially for small and mid-tier firms. At the same time, structured properly, these contracts can offer excellent opportunities for small businesses.

While there is little doubt that improvement is always needed, we are also witnessing an increasing number of very large contracts that are being inappropriately set-aside for small businesses. Take for example, a disaster recovery IDIQ architectural and engineering contract that was valued at $150 million over a five year period and that required the bidding firms to be able to conduct work in just about every state. The work was set-aside for small business. Yet, how many small businesses have that kind of capacity? Would it not have been smarter to either award such a contract to a more suitably sized company and build into the contract significant small business subcontracting goals, or to compete regionally-based awards?

Next, consider that the current size standard for architectural and engineering services is $4.5 million in annual gross receipts. While this set-aside may initially seem like a great opportunity, should a disaster occur and significant task orders need to be issued against that contract, it is likely that firms will struggle with the workload. Furthermore, the contractor's revenues are sure to skyrocket causing it to lose its small business size status, which is not necessarily a bad thing, but because the vast majority of its revenues are coming from performance on one contract the company will either be forced to compete in the "full and open" market to maintain its workforce in the future or will revert back to being a small business. Furthermore, the requirement that small businesses perform at least 51 percent of work awarded under a set-aside with its own workforce will place a significant burden and risk on the contractor to meet the terms of the contract.

Adding fuel to the debate around size standards is the fact that the federal government lacks policies regarding mid-tier contracting—firms that were once eligible to receive small business set-asides, but whose revenues now exceed the size standards. If SBA policy is not only to create federal contracting opportunities for small businesses but also to ensure their long-term success and a sustainable growth pattern, then the plight of small businesses that "graduate" from their industry size standard should not be ignored. Hence, the federal government should explore options that will incentive contracting opportunities for mid-tier businesses. Such incentives do not need to create separate goals for contracting with mid-tier companies, but should provide contracting officers with the flexibility to reserve certain contracting opportunities for mid-tier businesses once they have determined that the opportunities are not suitable for competition exclusively among small businesses.

Lastly, many of the changing dynamics surrounding federal contracting are a result of a federal acquisition workforce that is overburdened and understaffed. Because the federal acquisition workforce has not been provided with the necessary resources to keep pace with the growth of government contracting, they are often forced to find efficiencies that may be to the detriment of small and mid-tier firms. Addressing these workforce gaps can help to alleviate such instances.

SPECIFIC ISSUES WITH PROPOSED RULE

The proposed rule published by SBA on March 16 raises size standards for 36 industries and maintains the status quo for 10 industries. For most industries, the increases to the size standards were fairly substantial. For example, most size standards that have been established at $7 million were increased to either $10 million or $14 million. That increase will provide much-needed flexibility for small firms to mature while still having access to restricted competitions. However, these proposed thresholds have not been elevated to the extent that very small businesses will not also have legitimate opportunities. There are, however, proposals for two areas, architectural and engineering (A/E) and computer related services, that require greater scrutiny.

The proposed size standard for A/E ballooned from its current level of $4.5 million to $19 million, which begs the question of what has changed so dramatically in that industry over the years to warrant a quadrupling of the size standard. In contrast, computer-related services have undergone significant changes over the last 20 years and the federal government is purchasing more of these services than at any time in its history, yet the SBA proposed raising size standards for those categories by only $500,000, from $25 million to $25.5 million.

In addition, SBA established "common size standards" for industries that share similar characteristics. According to SBA, these common size standards reflect cases where many of the same businesses operate in the multiple industries, and might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the Computer Systems Design and Related Services industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 and NAICS 811212), even though the industry data supported a distinct size standard for each industry. The common size standard proposed by SBA for these categories was $25.5 million. However, SBA analysis shows that for NAICS 541513—Computer Facilities Management Services—the calculated industry specific size standard is $35.5 million. Therefore, by establishing a common size standard containing this NAICS category and other computer related categories at a level of $25.5 million, SBA has eliminated legitimate small businesses from being able to qualify. This same dynamic can also be applied to the common size standard for architectural and engineering services, where SBA calculated significant differences between each industry specific size standard.

As mentioned above, SBA evaluated five major factors to determine the proposed size standards: average firm size; startup costs and entry barriers; industry competition; distribution of firms by size; and impact on federal contracting and SBA loan programs. SBA determined that each factor would be given equal weight in its calculations. However, PSC recommends that greater weight should be given to the "impact on federal contracting" factor. In addition, SBA should broaden its evaluation of the federal contracting market to examine if typical contract requirements under a specific category tend to gravitate towards larger contracts. If so, SBA might determine that a higher size standard is warranted. If typical requirements under a specific category seem better suited to small contract awards, then perhaps a small size standard would be more appropriate.

PSC further encourages SBA to reconsider the merits of adopting separate size standards for the purposes of federal contracting. The adverse impact on small businesses of a single size standard that covers federal procurement and all other SBA programs is documented in SBA's own methodology. SBA acknowledges that the disparity between small business federal market share and industry-wide share may be attributed to a variety of reasons, such as extensive administrative and compliance requirements associated with federal procurement, the different skill sets required by federal contracts compared to typical commercial contracting work, and the size of specific contracting requirements of federal customers. Such a structure would allow SBA to focus more on the federal market dynamics regarding contracting.

SUMMARY OF RECOMMENDATIONS

PSC recommends a number of steps that can be taken to improve the size standard proposal and more broadly improve small business contracting opportunities across the federal marketplace.

With regard to the size standard proposal, PSC recommends that SBA give more weight to the "impacts on federal contracting" factor and broaden its analysis of specific federal market dynamics that distinguish the federal market from the commercial space. Taking this recommendation further, SBA should consider creating a completely separate set of size standards to be used for federal procurement purposes only.

In addition, SBA should review its policies regarding the creation of common size standards. Under the proposed rule, the use of common size standards will eliminate small businesses from competition whereas, if the individual industry size standard had been adopted, then all small businesses would be able to compete. In certain cases such as architectural services the use of common size standards would result in a number of firms being considered "small" that have annual revenues well-above the calculated value of the individual industry size standard. If SBA is unwilling to uncouple the common size standards, then it should adopt the highest individual industry size standard. We recognize such an approach would mean that some larger firms would become eligible to compete for small business set-asides; however, it would also ensure that no legitimate small businesses would be shut out from competition.

Beyond the current rule making process, SBA and Congress should support new and ongoing initiatives to incentivize contracting opportunities for mid-tier businesses to ensure that growing small business are provided, at minimum, some protections before having to always compete with large businesses. Additionally, Congress should support initiatives to rebuild the federal acquisition workforce and ensure that it has appropriate training opportunities. Such investments will likely decrease instances of contract bundling and result in the creation of contracts that are suitably sized for small business competition. Lastly, Congress should provide the necessary oversight of SBA to make sure that SBA is abiding by the provision enacted in last year's Small Business Jobs Creation Act that requires SBA to review and update the size standards every five years, at minimum.

Mr. Chairman, this concludes my testimony. Again, thank you for inviting PSC to testify today and for your attention to this important issue. I would be happy to answer any questions you may have.

Chairman WALSH. Thank you, Mr. Jordan.

I now yield to Ranking Member Schrader, who will introduce our next witness.

Mr. SCHRADER. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. Odysseus Lanier, one of the four founding partners in McConnell Jones Lanier and Murphy, LLP. Over 180 full-time employees. That is great. Three office locations. Mr. Lanier's firm is the third largest African-American-owned accounting and consulting firm in the United States. Mr. Lanier also—I hope I am getting the name correct. Am I close enough?

Mr. LANIER. You are correct.

Mr. SCHRADER. Thank you. I hate to keep repeating the wrong name.

Mr. LANIER. You are okay. You are okay.

Mr. SCHRADER. Mr. Lanier leads the firm's Federal Services Group, which specializes in working with federal, state, and local government agencies, much needed service by providing strategic planning, financial management, and operations review and support services. With more than 33 years of professional experience, he has extensive knowledge of federal, state, and local procurement policy, procurement strategies, contracting processes, and process improvement projects. So we look forward to your comments in particular. Welcome, Mr. Lanier.

STATEMENT OF ODYSSEUS LANIER

Mr. LANIER. Thank you very much. Good morning, Chairman Walsh, Ranking Member Schrader, and members of the Subcommittee.

Thank you for the opportunity to appear at today's hearing. My name is Odysseus Lanier and I am a CPA. I am a partner with the firm of McConnell Jones Lanier and Murphy, located in Houston, Texas. As Ranking Member Schrader has stated, there are 180 professionals in my firm and we have annual revenues of $17 million. I lead my firm's Federal Services Group and specialize, as you said, in working with federal, state, and local government.

I am here—I am pleased today to be testifying on behalf of the American Institute of Certified Public Accountants, of which I am a member. I am specifically here though to discuss a suitable small business size standard for NAICS's 541211, Offices of Certified Public Accountants, and 541219, Other Accounting Services, as they most directly affect the work performed for the federal government by CPA firms.

We comment the SBA for undertaking a comprehensive review of the existing small business size standards and thoughtfully—I want to emphasize thoughtfully—applying a statistically valid methodology which would raise the current standard from $8.5 million to $14 million in receipts.

During a recent meeting I attended with representatives of the AICPA, other CPAs, and the SBA Size Standard team, it became evident that the data used by the SBA did not adequately reflect the accounting profession. As a result of that meeting, the American Institute of CPAs provided the SBA alternative data compiled from surveys of CPA firms conducted by the AICPA and an indus-

try publication. Taking the AICPA's data and using the SBA's size standard methodology, I calculated that a more appropriate standard would be at a minimum $19 million in receipts.

Beyond these objective data-driven calculations warranting an increase from $14 million to $19 million, the AICPA proposes increasing the small business size standard to $25.5 million to compensate for other secondary factors in the middle market that affect the ability of small accounting firms to effectively compete for contracts in the federal marketplace. Importantly, two of those factors are primarily driven by discussions and suggested changes over the years in federal government procurement policy, an acquisition policy to reduce the number of vendors and increase the size of federal procurements. As you know, we are talking about reducing government.

And also, the current use of the sources sought and request for information notices to literally determine if contractors are qualified prior to issuing an RFP as part of an acquisition planning strategy. Importantly, to fully capture the small accounting firms that have the adequate resources in infrastructure, personnel, and cash flow to properly perform services in the federal arena reserved for just small business contractors, we believe the size limit would need to be raised to $25.5 million. This higher limit is necessary to promote growth of these small accounting firms and to avoid this arbitrary cutoff in the middle of the market segment where a firm would quickly outgrow a lower size standard and be forced to compete most likely and most unsuccessfully with the largest firms. And the nuance in our business is the largest firms are the big four, which average about $6.8 billion in revenue. Seventeen million dollars does not compete with 6 billion dollars when you classify it as large.

Let me talk a moment about my own firm as an illustration. When my partners and I formed our firm in 1999, having begun our businesses on the proverbial kitchen tables several years earlier, we had 28 full-time employees, no federal contracts, and a single-minded focus to build one of the largest African-American-owned accounting and consulting firms in the United States. In 2003, we were awarded our first federal contract, had 42 employees, and only $4.5 million in revenue. Over that time, we have not taken money out. We have made substantial investments in business development and back office infrastructure and technology, and proudly serve the federal, state, and local government markets.

But, by 2008, we exceeded the SBA's $8.5 million size standard limit. Since then we have had to complete for federal contracts as a large business and have not been nearly as successful because the infrastructure required to support our $14 to $16 million in revenues pales in comparison to the infrastructure of our competitors; firms, who have from $358 million to $10 billion in revenue and are 20 to 500 times larger than we are. Not surprisingly, our firm and other small firms like ours are finding it virtually impossible to compete in a federal market unless the SBA implements a significantly larger small business size standard.

I encourage the Subcommittee to urge the SBA to revisit the small business size standard for NAICS 541211, Offices of Certified Public Accountants, and 541219, Other Accounting Services, and

consider the factors I have discussed. It is widely recognized, as we all know, that small business is an important component in the economic health of our country. It is the engine that drives this economy. Why would you want to cut out a segment of the industry that would be able to provide value to the federal government as a small business? An increase in the small business size standard to $25.5 million will result in more opportunities for small accounting firms to provide federal agencies with high quality, value-added services, while at the same time fueling our economy.

Thank you again for the opportunity to come and testify at today's hearing. And I look forward to your questions.

[The statement of Mr. Lanier follows:]

American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

WRITTEN TESTIMONY OF ODYSSEUS LANIER

ON BEHALF OF THE

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH, TAX AND CAPITAL ACCESS
COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

HEARING ON

PROPOSED CHANGES TO SBA SIZE STANDARDS

MAY 5, 2011

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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

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HEARING ON PROPOSED CHANGES TO SBA SIZE STANDARDS

MAY 5, 2011

Good morning Chairman Walsh, Ranking Member Schrader and Members of the Subcommittee. My name is Odysseus Lanier. I am a partner in the firm of McConnell Jones Lanier & Murphy LLP, located in Houston, Texas. There are 180 professionals in my firm and we have annual revenues of $17 million. I lead my firm's Federal Services Group and specialize in working with federal, state and local government agencies by providing strategic planning, financial management, and operations review and support services. I am a member of the American Institute of Certified Public Accountants ("AICPA"). The AICPA (www.aicpa.org), founded in 1887, is the world's largest association representing the accounting profession, with nearly 370,000 members in 128 countries. AICPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting; membership is also available to accounting students and CPA candidates. The AICPA sets ethical standards for the profession and U.S. auditing standards for audits of private companies, non-profit organizations, federal, state and local governments. It also develops and grades the Uniform CPA Examination.

I would like to thank this Subcommittee for the opportunity to appear at today's hearing which focuses on the appropriate small business size standard for Professional, Scientific and Technical Services. I am here specifically to discuss a suitable small business size standard for North American Industry Classification (NAICS) codes 541211 (Offices of Certified Public Accountants) and 541219 (Other Accounting Services) as they most directly affect the work performed for the Federal Government by CPA firms. Prior to any changes as contemplated by the Small Business Administration (SBA) in their current proposed rulemaking (RIN 3245-AG07), the current size standard for those industry codes is $8.5 million.

To allow small business to compete for the billions of dollars spent by the federal government to procure goods and services, Congress mandates a 23 percent small business contracting goal for federal agencies. This ensures that a fair proportion of the government's purchases go to small businesses which have historically generated the most new jobs and are the engine of growth for our economy.

SBA's size standards define whether a business is small and thus eligible for government programs and preferences reserved for small business concerns. To determine eligibility for Federal government small business programs, SBA establishes small business size definitions (referred to as size standards) for most private sector industries in the United States. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Size standards are critical in the government-contracting process because they ensure a level playing field for small businesses.

Accounting firms contract with the Federal government to provide accounting and attest services as well as a wide array of consulting services such as strategic planning and financial management. The services small accounting firms provide to the Federal government have a strong public interest component. These services

include, among others, implementation and maintenance of financial and accounting systems ensuring that taxpayer resources are effectively and efficiently utilized, and independent audits of government organizations and programs to provide reasonable assurance of compliance with appropriate laws and regulations. As such, AICPA believes that SBA should focus on the experience and qualifications of the accounting firms performing the services and ensure the small business size standard for accounting firms is closely aligned and appropriate.

We commend the SBA for undertaking a comprehensive review of the existing small business size standards for NAICS codes assigned to the accounting profession. We further commend the SBA for thoughtfully applying a statistically valid size standards methodology that considers both primary and secondary industry factors to calculate the proposed $14 million small business size standard for NAICS codes 541211 (Offices of Certified Public Accountants) and 541219 (Other Accounting Services).

The SBA's methodology for considering primary industry factors is data-driven and the source of industry data used in calculating the recommended small business size standards in its proposed rule is a special tabulation of the *2007 County Business Census Patterns* and data from the *2007 Economic Census* prepared by the U. S. Bureau of the Census (Census Bureau) specifically for the SBA. This source data for key variables in the size standard calculation includes the following:

1. Average firm size within the industry,
2. The four-firm concentration ratio (the share of industry receipts generated by the four largest accounting firms in the industry and is used to measure industry competition), and
3. Distribution of firms by size within the industry (the shares of industry receipts accounted for by firms of different receipts and employment size classes in the industry to determine equality of distribution within the industry).

Based on the formula, the calculated small business size standard in the SBA's proposed rule is most sensitive to the four-firm concentration ratio and the distribution of firms by size.

During a recent meeting between the SBA's size standards team, representatives from the AICPA, and a team of CPAs (including myself), it became evident that the source data referenced above used in this calculation did not adequately reflect the accounting profession. To further aid the SBA's Office of Size Standards in their efforts to determine an appropriate small business size standard for the accounting profession, after that meeting the AICPA provided a breakdown of estimated firm revenues by size segment. This analysis uses data compiled from surveys of CPA firms conducted by *Accounting Today* and the leading benchmarking survey for CPA firms conducted by the AICPA (*PCPS/TSCPA National Management of an Accounting Practice Survey*). The letter from the AICPA to the SBA's Office of Size Standards outlining this information is attached herewith for reference and identifies estimated firm revenues and the number of professionals by firm size segment.

Also after the meeting with SBA, I went through the exercise of replacing the source data for key variables the SBA used in their size standards calculation, with the applicable data from AICPA's analysis for the key variables and re-performed the calculation under SBA's Size Standard Methodology. This recalculation that uses the AICPA's industry data as the source data for key variables confirmed that, at a minimum, the proposed size standards would increase to the intermediate level of $19 million, not $14 million as calculated by SBA.

Given that the objective, data-driven calculation warrants an increase to a $19 million small business size standard for the accounting industry, we propose further increasing the small business size standard to $25.5 million to compensate for several other secondary factors that inhibit the ability of accounting firms classified as small to compete for larger contracts in the Federal marketplace. These secondary factors include:

1. Changes in Federal acquisition policy to reduce the number of vendors and increase the size of federal procurements, and
2. Federal agencies' use of Sources Sought/Request For Information (RFI) notices to conduct market research as part of an acquisition planning strategy designed to determine the availability, capabilities, and capacity of qualified small business sources before issuing an RFP.

Reducing the number of vendors and simultaneously increasing the size of procurements, commonly referred to as contract bundling, requires small businesses to effectively make substantial investments in their business development infrastructure to compete with the larger firms in the industry. This is despite the fact that small businesses have substantially lower receipts from which to generate the necessary net income and available cash flow to enable them to reinvest in this infrastructure to be a competitively viable alternative to large businesses for Federal contracting officials making procurement decisions.

The use of Sources Sought/RFI notices provide prima facie evidence supporting an increase in the small business size standard to the $25.5 million limit because Federal procurement specialists often conduct market research to determine if a potential acquisition should be restricted to small businesses or available to large businesses in "full and open competition." For example, a particular Federal agency will issue a Sources Sought/RFI notice requesting information from the small business community to assist procurement officials with developing an acquisition strategy and approach for a large-scale financial systems implementation and related services requiring knowledge and expertise specific to the system being implemented. The notice will ask for "evidence of the interested firm's proven capability and experience in performing work identical or similar to the contemplated services," including *current* relevant qualifications and experience as a *prime contractor* as it relates to the anticipated work. While small accounting firms between the current $8.5 million small business size standard and the proposed $14 million small business size standard would likely be able to demonstrate the knowledge and capability to satisfy the contemplated requirement, they would likely not be able to reference, to the procurement official's satisfaction, contracts of similar size/scale or the capacity to perform the contract as a prime contractor because of a lack of infrastructure to compete with large accounting firms that dominate the Federal procurement landscape for accounting services. Consequently, the Federal procurement officials' research would result in an acquisition strategy to solicit the contemplated services in a full and open competition, further limiting the small accounting firms' ability to compete with peer firms for this type of contract and limiting the agencies' efforts to meet its small business procurement goals. Examples such as this are particularly relevant because there have been significant technological advances in the past several years associated with financial and accounting systems. Federal agencies are no exception in implementing and maintaining a variety of these sophisticated systems. Accounting firms must provide services that adhere to both AICPA and specialized Federal reporting standards and requirements concerning the audit and utilization of financial information and technology systems. Thus, accounting firms are required to be adept and knowledgeable of these advanced systems and related processes when performing audit, accounting and consulting services.

To fully capture the small business accounting firms that have the resources to invest in the necessary infrastructure and properly perform services as required by Federal government contracts reserved for just small business contractors, the AICPA believes that the size limit standard would need to be raised to $25.5 million. This limit is necessary to promote growth of these small business accounting firms and avoid an arbitrary cutoff in the middle of the market segment where a small business accounting firm would quickly grow beyond a lower defined small business size standard and as a result, be forced to compete (most likely unsuccessfully) with the largest of firms. These small business firms are essentially caught in the middle and likely unable to obtain any Federal procurements. According to data obtained from the Federal Procurement Data System-Next Generation, three of the four largest firms in our industry were awarded 33.5 percent of all federal procurements in 2010. While it is highly improbable for a small firm with $25.5 million in revenue to match the infrastructure of these top firms, small firms are well equipped to leverage and invest in advanced technology resulting in an infrastructure that supports adherence to the extensive compliance and skill set requirements associated with sophisticated Federal contracts. These firms also have sufficient resources to train their professionals so that

they possess proficient specialized knowledge to effectively perform the services required by such contracts. Importantly, our proposed limit of $25.5 allows for growth in these qualified firms that have built their expertise and infrastructure to meet the needs of sophisticated Federal contracts and to continue to provide high quality work in a capable, efficient and appropriate manner.

Based on industry data, there are less than thirty firms between $19 million and $25.5 million. Also, a $19 million firm and a $25.5 million firm closely mirror each other as far as the number of professionals (which can range from anywhere between 100 to 200 professionals, approximately, for both size segments). As a result, there would be minimal impact in raising the small business size standard for accounting services to $25.5 million and such an SBA size standard would greatly contribute to Federal agencies' reaching their congressionally-mandated goal to offer at least 23 percent of contracts to small businesses by, in essence, opening the playing field to those firms qualified to do the work.

By way of illustration, my partners and I formed McConnell Jones Lanier & Murphy LLP on March 1, 1999, through a merger of a traditional accounting firm and a boutique consulting firm after the partners in both firms started their businesses on their respective kitchen tables twelve and seven years earlier. On the first day of March 1999, we had 28 full-time employees, no Federal contracts and a single-minded focus to build one of the largest African American-owned accounting and consulting firms in the United States. We entered the SBA's 8(a) program in September 2002 with 42 employees and $4.5 million in revenue and were awarded our first Federal contract in October 2003. Since that time, we have made substantial investments in business development and back office infrastructure and technology to grow our firm. As a result, our firm now has $17 million in revenue and 180 employees, with a combination of contracts in the federal, state and local, and commercial markets. We exceeded the SBA's $8.5 million small business size standard for accounting firms in 2008 and have had to compete for Federal accounting and consulting contracts with the four largest accounting firms who have revenues ranging from $5 - $10 billion, as well as second-tier firms that have revenues ranging from $358 million to $1.4 billion. Our firm, as well as other small accounting firms, find it virtually impossible to continue to compete in the Federal market and continue to grow without an increase in the small business size standard for accounting and consulting firms to $25.5 million. Our growth was attributed to a combination of Federal and non-Federal contracts; however, when the country experienced the economic down-turn in 2009 and 2010, the Federal Government continued to contract for accounting and consulting services as the commercial market for these services greatly declined. Since we have exceeded the small business size standard for accounting and consulting firms, we have had to compete for Federal contracts as a large business and have not been as successful because the infrastructure supporting $14-$17 million in revenue pales in comparison to the infrastructure of firms with $358 million to $10 billion in revenue – firms 20 to 500 times larger than our firm. Consequently, we have been forced to lay-off a number of employees to adjust to the loss of potential contract opportunities in the Federal marketplace.

I am also aware of another small accounting and consulting firm, with over approximately 80 percent of its revenue generated from Federal contracts, that grew too large with $30 million in revenue in the late 1990s, exceeded the small business size standard, but was not large enough to compete with the large accounting firms. Because over 80 percent of this firm's revenue was generated from Federal contracts, the effect of exceeding the size standard was catastrophic. Once the firm was classified as a large business, it could no longer obtain additional work on its existing small business contracts on which it had stellar performance because its customers were still required to achieve their small business goals. Moreover, when this firm competed as a large business with the multi-billion dollar accounting firms for Federal contracts, it had absolutely no chance to prevail and was unsuccessful in every full and open competition for accounting and accounting-related services in the early 2000s. Consequently, after suffering significant cash losses attempting to retain personnel as it pursued opportunities as a large business, the firm made the painful decision to down-size by laying off personnel and right-sizing its business to enable the firm to compete as a small business in the Federal market again. It is unconscionable to think that firms like ours and others, that have made the appropriate investments to grow their businesses, are required to compete with the titans of our profession for Federal contracts rather than our peer accounting and consulting firms because we exceeded an anachronistic small business size

standard for our profession. $17 million in revenue will never compete with the largest of firms with $5-$10 billion in revenue. I strongly believe that it is time to consider leveling the playing field and allowing small accounting firms to provide our value-added services in an expanded Federal market place by increasing the small business size standard to $25.5 million.

I encourage this Subcommittee to urge the SBA to revisit the small business size standard for NAICS codes 541211 (Offices of Certified Public Accountants) and 541219 (Other Accounting Services) and consider the primary and secondary factors we have identified that support this increase. It is widely recognized that small business is an important component in the economic health of our country. By establishing a higher small business size standard, small business accounting firms will have an opportunity to take on a much greater role in growing our economy and effectively respond to the Sources Sought/Request For Information (RFI) notices issued by the Federal agencies. With the higher size limit, these firms will have the qualifications that indicate they have proven capability and experience in performing the work required. This will result in more opportunities for small business accounting firms and Federal agencies procuring high quality services that meets their needs while at the same time fueling growth of small business.

I want to thank the Subcommittee again for the opportunity to testify at today's hearing. The AICPA would welcome the opportunity to discuss this information with you in greater detail, either informally or in any future public hearing.

AICPA® PCPS
Private Companies Practice Section

American Institute of CPAs
220 Leigh Farm Road
Durham, NC 27707-8110

May 2, 2011

Dr. Khem Sharma
Assistant Director – Office of Size Standards
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

Dear Dr. Sharma:

As the world's largest association representing the accounting profession, with nearly 370,000 members in many areas of practice, we are deeply committed to working with your office to determine the appropriate size standard that would ensure the sound Federal government procurement of accounting services.

As promised to you during our meeting on March 23, 2011, we are providing herewith additional information on the accounting profession to further aid you in your efforts in determining an appropriate small business size standard for the accounting industry.

Below you will find our analysis of firm revenues by size segment. These figures are estimates and were derived from two reputable resources that are available in the public domain as follows:

- *Accounting Today* Top 100 Firm list – A publication that conducts an annual survey of regional accounting firms to gather the numbers that identifies and ranks the top 100 firms in 10 major geographical regions.
    - *Accounting Today* 2007 Top 100 Firms
    - *Accounting Today* 2009 Top 100 Firms
- PCPS/TSCPA National MAP Survey – The leading benchmarking survey for CPA firms conducted by AICPA on a bi-annual basis.
    - 2008 PCPS/TSCPA National Map Survey (results based on 2007 figures)
    - 2010 PCPS/TSCPA National Map Survey (results based on 2009 figures)

As you will see on the following page, the *Accounting Today* information was used to derive the figures in our analysis for the Big 4 and Top 100 firms, while the PCPS/TSCPA National MAP Survey data was used to derive the figures in our analysis for the Large, Medium and Small Firms.

2007 Estimated Firm Revenues and # of Professionals by Size Segment

Firm Size Segment	Number of Firms (AICPA)	Overall Revenues by Size Segment	% of Total Revenues by Size Segment	Average Revenues per Firm	Number of Professionals by Size Segment	Average Number of Professionals per Firm
Big 4	4	$ 27,382,380,000 [1]	44%	$ 6,845,595,000 [4]	79,607 [1]	19,901.75 [4]
Top 100 firms	100	$ 9,515,530,000 [1]	15%	$ 95,155,300 [4]	39,848 [1]	398.48 [4]
Large Firms (21-74 CPAs)	531	$ 5,230,350,000 [3]	8%	$ 9,850,000 [2]	23,922 [3]	45.05 [2]
Med. Firms (11-20 CPAs)	775	$ 2,043,675,000 [3]	3%	$ 2,637,000 [2]	9,781 [3]	12.62 [2]
Small Firms (2-10 CPAs)	12,190	$ 10,861,290,000 [3]	17%	$ 891,000 [2]	57,537 [3]	4.72 [2]
Sole Practitioners	30,745	$ 7,317,310,000 [3]	12%	$ 238,000 [2]	47,962 [3]	1.56 [2]
Total	44,345	$ 62,350,535,000	100%			

[1] *Accounting Today* 2007 Top 100 Firm list (summation)
[2] Average per 2008 PCPS/TSCPA National MAP Survey results (based on 2007 figures)
[3] Calculated value based on average multiplied by number of firms
[4] Calculated value based on total divided by number of firms

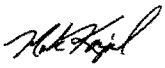
2009 Estimated Firm Revenues and # of Professionals by Size Segment

Firm Size Segment	Number of Firms (AICPA)	Overall Revenues by Size Segment	% of Total Revenues by Size Segment	Average Revenues per Firm	Number of Professionals by Size Segment	Average Number of Professionals per Firm
Big 4	4	$ 32,469,400,000 [1]	47%	$ 8,117,350,000 [4]	91,771 [1]	22,942.75 [4]
Top 100 firms	100	$ 11,638,400,000 [1]	17%	$ 116,384,000 [4]	45,113 [1]	451.13 [4]
Large Firms (21-74 CPAs)	531	$ 5,010,516,000 [3]	7%	$ 9,436,000 [2]	22,844 [3]	43.02 [2]
Med. Firms (11-20 CPAs)	775	$ 2,052,975,000 [3]	3%	$ 2,649,000 [2]	9,680 [3]	12.49 [2]
Small Firms (2-10 CPAs)	12,190	$ 10,690,630,000 [3]	16%	$ 877,000 [2]	52,661 [3]	4.32 [2]
Sole Practitioners	30,745	$ 6,948,370,000 [3]	10%	$ 226,000 [2]	45,195 [3]	1.47 [2]
	44,345	$ 68,810,291,000	100%			

[1] *Accounting Today* 2009 Top 100 Firm list (summation)
[2] Average per 2010 PCPS/TSCPA National MAP Survey results (based on 2009 figures)
[3] Calculated value based on average multiplied by number of firms
[4] Calculated value based on total divided by number of firms

Please note this information has not been approved, disapproved or otherwise acted upon by any senior technical committees of, and does not represent an official position of, the American Institute of Certified Public Accountants. We appreciate the opportunity to provide you this information. Please do not hesitate to contact me should you have any questions.

Sincerely,



Mark J. Koziel, CPA
AICPA | Director, Specialized Communities and Firm Practice Management

Enclosures

Cc: Odysseus Lanier, Partner - McConnell Jones Lanier & Murphy LLP
Tom W. Williams, Jr., CEO - Williams, Adley & Company, LLP

Chairman WALSH. Thank you, Mr. Lanier. We are actually going to have to go run and vote on the floor. It looks like about—it looks like a couple votes. So why do not we adjourn for about 30 minutes and we will reconvene after the votes.

[Recess.]

Chairman WALSH. Okay. We are back. We just voted to save the world. Now we are back. The Committee will reconvene. I will begin my five minutes of questioning and then I will yield to the ranking member.

My first question is really directed to the entire panel. This is a complicated issue and each of your industries has unique issues and problems. Give me your sense, as you have been approaching these issues, as to how the SBA has been to work with. Have they been receptive to your concerns, your comments?

Mr. Lanier, let us start with you and we will work our way down.

Mr. LANIER. Okay. I will be glad to answer that question.

You know, in my testimony I indicated that we had had a meeting with the SBA Size Standard office, and I will tell you they have been receptive to our comments. And in fact, encouraged us to follow the entire rule-making process and make sure that we got them back the data concerns that we had. Because the primary issue that we had was that the census data did not reflect the industry standards and publications that we use to determine exactly what the size of firms are in our industry, as well as the dispersion within our industry. So they have been very receptive to that, and quite frankly, I have—it has been a pleasure working with them to this point. I can personally vouch for that myself.

Chairman WALSH. Mr. Jordan.

Mr. JORDAN. Yeah. I would sort of echo those comments. I mean, this is an extremely big challenge and the SBA is in the unenviable position of no matter where they set the size standards there are going to be certain groups that are going to be unhappy.

SBA has had an open door policy as far as we are concerned. They have come out and spoken with us. They have asked us for more information. I thought that that was a very transparent process by publishing the methodology well in advance. In addition, they outline a number of questions directly related to their proposals in which they are seeking specific industry feedback, and I think that in a lot of cases they hit on the right questions.

Chairman WALSH. Great. Mr. Woods.

Mr. WOODS. I cannot add a whole lot to that. The problem is from my industry, we are engineers; not economists and statisticians. SBA gave us, in fact, advance warning. Gave us a schedule of everything. Every time they changed it. But it took them 16 months to figure this out and they are asking us to figure it out as engineers in two. So that is the only issue.

Chairman WALSH. Mr. Hainsfurther.

Mr. HAINSFURTHER. I would agree with that.

AIA has a longstanding, positive relationship with the SBA. You know, for instance, a few years ago we had a major issue with retainage on contracts and the SBA actually championed that issue in getting the rules changed. So we appreciate that. And we are happy to note that Major Clarke is here today, and I believe also

one of the gentlemen in charge of the standards is here today from the SBA. So we know they are open to comment and working with us. We just need a little more time to increase that collaboration and make the standards work for everybody concerned.

Chairman WALSH. Great. Mr. Woods, let me ask you a quick question. In your statement, you referred to the various disciplines encompassed by engineering firms, such as mechanical, electrical, civil, structural, etcetera. The current size standards do not distinguish between these. And in the proposed new size standards these would be wrapped up into the combined architectural and engineering services size standard. Given the different characteristics, do you think the SBA should propose individual size standards for each engineering subspecialty?

Mr. WOODS. No. Very simply. It works well to group those together.

Chairman WALSH. Okay.

Mr. WOODS. Our problem with the engineering thing is the statistics that are being used, because they are very, very large firms. And I will say somebody like Boeing or Lockheed-Martin provide engineering services. And if they provide them in the same NAICS code that I provide structural engineering services in, that is a real misnomer as to who is doing the work.

Chairman WALSH. Great. Let me ask one more quick question at this point and then I will yield to my ranking member.

Mr. Jordan, for the computer facilities management services you pointed out that the calculated industry-specific size standard is 35.5 million. Before SBA adopts the common size standard and reduces it to 25.5 million, can you explain to the Committee what this will mean for a business with average receipts of 30 million?

Mr. JORDAN. Absolutely. Simply put, they will be shut out from small business competition. It stems from the problem of creating these common size standards in which they want to keep like industries grouped together. In certain cases it makes sense, but where the size standards differ significantly, they ought to consider breaking those up, or at the very least they have got to go with the higher size standard to avoid eliminating small businesses from being able to compete.

Chairman WALSH. Okay. Great. Let me stop right there and I will yield to Mr. Schrader for his questions.

Mr. SCHRADER. Thank you, Mr. Chairman.

I guess I am concerned a little. There is this balance going on out there about how we do this but let us start with hopefully a fairly easy question. I guess each panelist just respond. And the goal has been to decrease the number of categories—one of the goals has been to decrease the number of categories, i.e., make it simpler. I assume that means not just simpler for SBA but simpler for different businesses to figure out do they qualify or not. Is the general consensus here that it is good to reduce the number of different categories? Mr. Lanier.

Mr. LANIER. Yeah. Let me take a stab and answer that question.

I think it is because—I will use my firm as an example. When we got sized out of the small business arena with the federal government, we had to make a strategic business decision to move into what we call related categories. Related NAICS codes. Okay? And

we moved into some related NAICS codes that were potentially horizontally integrated into our business. So we created a weapon systems engineering and logistics business underneath our consulting group in the accounting firm. Had we not done that, we would be on the street right now because we could not compete in our core competency. And our core competency stretches across industry codes. It is 541611 as well. That size standard down there is $14 million. That is consulting services. Okay? 541219, that is Other Accounting. 541211, that is CPA. We cut across all those and it makes sense to group the like industries together based on the way your industry does business and how you provide these services to the various sectors of the economy.

Chairman WALSH. Mr. Jordan.

Mr. JORDAN. Yeah, I think again, it comes down to what the actual numbers attributed to each of those categories are. Take engineering and architecture, for example. Those numbers are vastly different, and so grouping them together just does not make a whole lot of sense.

Chairman WALSH. Okay. Mr. Woods.

Mr. WOODS. I agree with it. Yeah, I think that, you know, size standards can be confusing. Obviously, oftentimes simpler is better but you have to look at whether the correct standards, not just the size and, you know, as Mr. Jordan pointed out, I think that perhaps we are going a little too far. What we need is more time, really, to give it an honest answer about that.

Chairman WALSH. It sounds like everyone agrees on that.

I am a little concerned in that we, in this budget-limited environment that we are in, it is likely the SBA is going to have probably less money rather than more money to work with in terms of backing loans and what have you. And with that in mind, one of the ways to look at this is with less money you should be decreasing the size of small businesses available to compete. And while that is not necessarily a great thing for those mid-size companies, how should we respond to that? Are a Congress and we are facing a situation of very little money. Who really should be getting the money? Should we create a mid-size type of category? Not all small businesses are small and there has been a lot of discussion about it is not the very small businesses that create the jobs that pull us out of this recession. So I am sensitive to both sides of the discussion. And we are going to have very little money going forward, and who should we be targeting? The small businesses or the mid-size businesses given that? Let us go this way. Mr. Hainsfurther.

Mr. HAINSFURTHER. Ranking Member Schrader, obviously, we are all small businessmen, and in our practices almost all of the firms within architecture, more than 80 percent of them are under five employees. And so we have a very different perspective I would say because architects, you know, they generate, I think, about eight additional jobs for every architect job in the world. So we need that capital focused on truly small practices because that is our world and that is the vehicle that we live in.

Obviously, let us say if I was a contractor, my size would be tremendously different because the needs to perform that work are different. The capital needs are more intensive. So we get by with very little capital, you know, pen and paper basically and a com-

puter. So I think that it is going to depend on what industry you are in and it is going to vary all over the place.

Mr. SCHRADER. I am assuming that we still have different categories, obviously, with different size or employee receipt size standards involved. So given that, you know, with less money what should we do?

Mr. HAINSFURTHER. Well, as I said, most of our members, you know, what is happening is they are becoming more small firms. So that need is even greater. Access to capital, obviously, if you do not have a track record, is very hard to come by.

Mr. SCHRADER. Sure.

Mr. HAINSFURTHER. So as the smaller firms start to blossom, because they will, we know that, they need the access to capital as opposed to a mid-size firm which has got a track record, they have built a record of success, and they will have better access to capital. And so if the purpose of a SBA loan or a small business set-aside is to start moving these smaller firms to make them more successful, it really needs to be targeted for that purpose if that is the purpose that you are trying to achieve.

Mr. SCHRADER. Thank you.

Mr. WOODS. I made the statement that part of the issue is I am very sympathetic to the mid-size firms because in the architectural engineering business we are a specialized group and we are selected on the QBS, which is very important. Therefore, we end up needing the most qualified team members. But if the contract says that we have got to subcontract out 35 percent of it and leave 65 percent to the prime, that is very difficult in many cases for a mid-size firm to participate.

If you did it on the basis of—and it would not take 35 percent, but if we had a $10 million contract and it was based on awarded dollars that the small business had to receive 10 percent of it, a million dollars, and that is the criteria, then it would not make any difference to the mid-size firms. You could have two or three mid-size firms that could team and perhaps be qualified.

It works very well. The Metropolitan Washington Airport Authority actually uses the percentage of dollars rather than the percentage of subcontracted out. So nobody in our business wants to outgrow small. And I have got colleagues who have done that but they have returned to small business because they could not get any work as a mid-size.

Mr. SCHRADER. Interesting.

Mr. JORDAN. With regards to the loan programs, SBA did an analysis and its current revision. When they looked at the impact on the loan programs, they determined that in the 54 category it was only the micro firms that were applying for those types of loans. Therefore, an increase in the size was not really having an impact on those loan programs.

With regard to the mid-tier, you know, I do not know that we need to create a separate category, but certainly we need to explore ways and potential opportunities to provide them with some opportunities.

Mr. SCHRADER. As they grow.

Mr. JORDAN. Absolutely.

Mr. SCHRADER. Yeah.

Mr. LANIER. From my perspective, the nuances of the accounting industry are totally different. The barriers to entry are very, very low. You do not have to have a lot of capital. I venture to say right now if you look at the SBA loan programs, you have very few, if many at all, CPA firms that go and apply for loans, except at the micro-level that Mr. Jordan is talking about here.

So I think that we need to have the ability for capital for that sector, but when you get to the mid-size, yes, you need to take a look at that as well because if you cannot get access to the capital by normal means in the capital markets, such as going to your banks and having your past performance to do that, there may need to be some look at that to see if there are loan programs that could potentially help those firms. But at the same time, a broad program, it would really affect only the smallest businesses in our sector for sure.

Mr. SCHRADER. Very good. Thank you. I yield back, Mr. Chair.

Chairman WALSH. Thank you. Let me recognize my colleague from California, Ms. Chu, for some questioning.

Ms. CHU. Thank you, Mr. Chair.

Mr. Woods, in your testimony you pointed out that the same size firms operating in states or localities within high cost of living may show inflated revenues which could cause them to be penalized in a size standard definition. Since I represent the Los Angeles area, my ears perked up when I heard that. This issue is of importance to contractors in my district, obviously, and so how could we develop fair standards for businesses in areas where there is a high cost of living without creating more bureaucracy and confusion in the system?

Mr. WOODS. Well, that is one of the reasons that ACC is, quite frankly, not opposed to raising the size standard for our industry $8 to $10 million. I am very appreciative of your constituents. I know some of them well. We actually have the same problem in the Metropolitan Washington area as they do in New York City and perhaps even in Chicago.

If you looked at it though from my firm, if you use 30 people in a firm and you used revenue—because all we sell is time and expertise—if the revenue per employee was $200,000 per employee, for a 30-person firm you would be talking about a $6 million size standard. If you increase that to $10 million, then you provide not only for some subcontracting pass-through but you also provide some additional leverage for higher cost areas.

Ms. CHU. Very good. Thank you.

Mr. Lanier, your firm exceeded the small business size standard for accounting and consulting firms. As you stated in your testimony, your $14 to $17 million in revenue pales in comparison to the firm's $358 million to $10 billion in revenue and so you find yourself competing with firms that are 20 to 500 times larger than yours.

Other than continuously adjusting the size standards to accommodate firms that are growing and therefore, ineligible for small business contract opportunities, what are things that the SBA and Congress can do to support the mid-tier firms who have outgrown the small business definition so that they can continue to grow?

Mr. LANIER. Yeah. I think the first step is to make sure that we continue to level the playing field by making sure that the size standards continue to be reviewed on an ongoing basis. I think the Senate put some legislation out through Senator Landrieu's committee that requires those standards to be reviewed on a continuing basis.

Now, the other thing that we can do is look at federal procurement policy at the same time. If you are going to look at mid-tier firms, allow us to go up to a level so that we will not be squeezed out of the middle market and then restrict some of the contract bundling exercises that some of the agencies do to try to constrict the number of contracts out there. I am sorry, constrict the number of vendors and then increase the size of the contracts. So you have to take a look at all those variables at that mid-market level to make sure the opportunities are still there for the mid-tier small businesses.

Ms. CHU. Mr. Jordan, do you have any thoughts on this?

Mr. JORDAN. No. I would largely agree. And on his last comment, we have seen instances where you are seeing rather large contracts being set aside for small businesses. And that has some real implications. It presents real risk to the small businesses to be able to perform that work. And really what we ought to be advocating for is that the federal acquisition workforce is rightsizing contracts for companies of all sizes so they each have their individual opportunities.

Ms. CHU. Yes, Mr.——

Mr. LANIER. Could I come back and follow up with that for one second? One of the things that I think we need to look at is, is this entire infrastructure issue associated with being able to support those size contracts? If you are going to have the large contracts and you have an acquisition policy that qualifies the House—and I mean qualifies the House, doing procurement planning—the acquisition professionals tend to send out sources sought notices and RFIs that ask for the capability and the capacity to be able to do those—perform those large contracts.

If you do not move the standard up such that mid-tier firms can demonstrate the ability to handle that work, you have a procurement official that manages three kinds of risk. They manage cost risk, schedule risk, and technical risk. All of us come from a profit-oriented environment, but the government manages risk.

And when you are managing technical risk, the first thing you are looking at is capacity and past performance. And if you do not have the ability to demonstrate that you have handled some of those larger procurements, and you cannot do that at $8.5 million where we are right now, you are completely shut out and the first thing an acquisition official will do is take—is mitigate that risk by putting that procurement in full and open competition. And that is a double-edged sword because it hurts the industry, I mean, the Agency for Mitsubishi to be able to get that 23 percent small business goal. And it hurts those of us who have to end up competing now with the Big Four firms and the firms who are, like I said, you know, 20 to 500 times larger than we are. So that is the area that we really need to focus on here because that discussion has

been going on for the last 10 years. And what you need to do is it is time address that at this point.

Ms. CHU. Thank you. I yield back.

Chairman WALSH. Mr. Hainsfurther.

Mr. HAINSFURTHER. Could I just add something to that? Obviously, in architecture and engineering it is a slightly different process because it is a qualification-based selection process. But they still look for that track record in that, you know, I would disagree slightly with the term managing risk. They are almost trying to avoid risk in many cases. And so they are looking for the firms that have a big track record, which many times a small firm does not necessarily have to do—have behind him.

But, for instance, I would not want to go compete and let us say, submit qualifications for a federal office building, you know, in downtown Chicago but I very well would like to do the OSHA office that is right next door to my office in my suburban office building. So we have to maintain that kind of perspective I would say, that qualification-based selection does not necessarily mean what I would call quantity-based selection, which means I have done 100 of them just like this, but that I have that ability to do it and to do it correctly is very important. And so, you know, as long as you try and maintain those opportunities, I think it levels that playing field as Mr. Lanier mentioned.

Thank you.

Chairman WALSH. Thank you Mr. Hainsfurther. Thank you to my colleague from California.

I only have two other real quick questions, actually coming right back at you, Mr. Hainsfurther. You stated that for the average AIA member, over 50 percent of their representative can be attributed to payments that flow through to subcontractors. What does this mean in terms of a receipts-based size standard? And how would you like SBA to address this issue when creating that size standard.

Mr. HAINSFURTHER. Currently, the SBA does account for pass-throughs. And that is going to subconsultants, like Mr. Woods's firm and his members. It goes to vendors that supply us with printing and other resources. So the issue with that as far as we are concerned is that if they continue to maintain that pass-through and recognize, that would be just fine with us because it is not a clear picture of what the revenue really is. The other opportunity, of course, is to look at net revenue and see what is actually flowing directly into the aspect of the firm.

Chairman WALSH. Great. Thank you. Mr. Lanier.

Mr. LANIER. Yes, sir.

Chairman WALSH. Given that the definition of a small business according to the Small Business Act is one that is independently owned and operated and which is not dominant in its field of operation, do you feel that this proposed rule adequately considers dominance in the field of operations?

Mr. LANIER. I am going to make that industry-specific to the accounting industry.

Chairman WALSH. Please do.

Mr. LANIER. It does not consider dominance—it does consider dominance in the field but it considers dominance in the field using

data from a source that is not industry recognized in terms of who is our oligopoly. Who constitutes our oligopoly? Our oligopoly is constituted by four firms. If you look at the census data that the SBA used in the calculation for 2007, that says those firms have $5.2 billion average revenues. Okay? Well, when you look at the data from Accounting Today, which is our publication that lists the top 100 firms every year in our industry, that number is $6.8 billion average among those four.

Now, let us talk about that for a second. Okay? The two most sensitive variables in the primary factors for calculating size standards represent, number one, the four firm concentration ratio that is in the industry dominance category, and number two, the distribution of firms by size. X-number of firms by classification have X-number of receipts in the industry. Those are the two most sensitive variables in the calculation. So if you use data that is not reflective of the industry, your numbers are skewed. So, yes, I do believe that industry dominance is taken into effect, but you just have to have the correct data.

Chairman WALSH. Thank you.

Mr. LANIER. Okay.

Chairman WALSH. I am through with my questioning. Mr. Schrader.

Mr. SCHRADER. I have no more.

Chairman WALSH. Great. Thank you all for participating today. As this Committee continues to focus on creating opportunities for small businesses, we will keep working on the issues of who is a small business.

Following today's hearing I will be sending a letter to the Small Business Administration to share what we have heard today, and I will request that the SBA keep the rule-making open longer so that small businesses can provide substantive comments. We will ensure that your voice is heard and will support policies to help you create jobs and spur investment.

I ask unanimous consent that members have five legislative days to submit statements and supporting materials for the record. Without objection, so ordered.

Thank you again all very much. The hearing is now adjourned.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]

Congresswoman Yvette Clarke (NY-11)
Question for the Record
Professional Services: Proposed Changes to the Small Business Size Standards
May 5, 2011

Question: From your points of view, many of you have addressed some of this in your testimony, what happens when a small business that has been successful finds itself up against a size standard that, should they continue to expand, this would put them in competition with larger and more established corporations? Seeing a perceived competitive disadvantage "Catch 22" what is their incentive to continue to expand their operations and add jobs? How would you structure an incentive that would alter the nature of the "Catch 22" to make it more favorable to the small business and its growth potential?

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Mr. John Woods, Wood Peacock Engineering Consultants, Alexandria, Virginia

Answer: For architect/engineering (A/E) firms competing for A/E services work, the question becomes complicated and has at least three answers, at least one of which is not based on size, but method of procurement.

But first, let me address your concern for growth and expansion, using my firm, somewhat typical of both engineering and architectural firms. In 1999 when my firm was created we had nine (9) employees. We now have seventeen (17) with three (3) of those added in the last two years, a sizeable expansion. This is in part based on our capabilities, but significantly based on our small service disabled veteran owned status, a requirement to be met in required subcontracting plans of large businesses to which we provide our services when they are selected under the QBS method as required by the Brooks Act. Unfortunately, fees for our services are often not counted toward small business goals, and therefore have not been considered in the present SBA review. Relative to other growth and expansion of firms, I have had four employees leave over the past twenty years to start their own firms, and all have a successful firm today, one of which employed 35 until the recession but now only has 12, another basis for not increasing the size standard so significantly.

Another reason for remaining small is dictated by the selected business form. In the Commonwealth of Virginia, a professional corporation, the basis for which my firm is formed, primarily for liability limitation issues, must have 2/3's of the owners as licensed professional engineers. Because we owners as professional engineers, both ethically and legally, must assume responsibility for all engineering work produced, we grow our firms and ownership carefully to allow proper supervision and quality control. Thus, there is a limit to the number of staff that we can responsibly supervise.

An additional reason for remaining small is based on the many other federal regulations pertaining to size that require significant paperwork and management unrelated to the engineering services, our passion. Examples, some of which we provide for competitiveness reasons, include written affirmative action policies; veteran hiring documentation; regulations for size at which family leave and the new health law take effect; federal cost accounting standards and federally approved accounting systems; OSHA and pension or profit-sharing regulations,

and most recently ARRA reporting for transparency in government. My firm just spent at least two man-days completing the new regulatory requirement to submit certification to remain a service disabled owned small business to the Veterans Administration, as I understand because of fraud by others in representing their business type.

While many of these regulations are based on FTE's, ACEC members do not want to use numbers of employees as a size standard as an FTE number is easily manipulated while the revenue basis is easily enforceable by the IRS.

ACEC recognizes the "Catch 22" situation for firms that either outgrow the size standard and/or the DBE limits. There are two methods not totally related to size to address this.

First, the Brooks Act requires qualifications based selection for A/E services work, so well planned and stated "Requests for Proposals (RFP's)" can be won by smaller firms. This requires government project and procurement/acquisition personnel to structure realistic dollar based smaller, sometimes single discipline, and usually a geographically limited RFP that allows smaller firms to compete. Unfortunately, due to increased workloads and reduced agency procurement staffs, government work scopes have become larger, more complex, multiple discipline, and national. As an example, an expert small firm with the likely one office location and licensed to perform single discipline (in my case structural engineering) is unable to pursue such work, unless backed by a large firm. The previous set-aside contracts for Katrina or Iraq related engineering services in the $100m+ category are good examples of perhaps well-intended but poorly designed small business RFP's. Also many contract RFP's have high dollar amounts, i.e., $60m over a five year period, but without available funding to the dollar amount, to again minimize the number of contract actions.

Also, in the general case, a small firm cannot match the marketing and sales resources of either a mid-size or a large firm. This and the tendency of government acquisition/management personnel to want to deal with a large single entity with many offices, puts both mid-size and particularly small firms at a disadvantage for A/E work that requires integration of varied disciplines and project management capabilities.

Another and the preferred method of contracting that will help all architectural and engineering firms, regardless of size, is to change the small business subcontracting goals as a percent of work to a percent of the contract award dollar amount. At present for a small firm, there is no ability to plan for any amount or schedule of work on a contract over the long term. As long as the prime contractor satisfies a percentage requirement a decision to do the work themselves can be made at any time. Despite my firm's success, we have been the victim of this on large prime contracts. Having goals established based on roles proposed (and for which QBS selection was based on), as a percent of the total funded contract, would assure the small businesses participation throughout the life of the contract. Second, and of real benefit to the firms out growing the small size or DBE limits, a prime could now award work to any number of qualified mid-size firms, thus encouraging more mid-size firms to team and pursue work. Such teams are built on mutual roles and strengths and tend to bring in small firms as true partners in accomplishing work. Currently, large firms often create joint ventures with typically other large firms, but occasionally with other service-type firms to legally avoid creating often unrealistic

small business subcontracting plans. Locally, the Metropolitan Washington Airport Authority very successfully uses the percentage of contract dollar amount awarded for small firm participation.

In conclusion, the government can provide better structured contract requirements and change the percent of contract to percent of contract award to provide opportunities for both small and mid-size firms. Also, changing the way small firm support work goals are both established and counted would facilitate natural teaming within the A-E industry. Currently, the way small business involvement is measured does not count support work at all. If a large firm is the prime contractor and the entire contract is large, none of the work value by the small firm is counted as small business participation. And per current SBA methodology, if a small firm is prime with a large firm as a sub contractor all of the work value is assigned to the small firm. In each case the information is distorted. As stated in my testimony, using industry available revenue amounts of $100, 000 to $200,000 per employee up to 50 (which some small firms will say is too large in our industry), the maximum SBA size standard should not exceed the $10-$12m amount. Finally, other government non SBA size related regulations will continue to be a factor for decisions to expand or grow from small firm.

Thank you for the opportunity to clarify and expand upon my testimony on the ACEC position. Therefore, please feel free to share this information with other members of the committee.

Congresswoman Yvette Clarke (NY-11)
Question for the Record
Professional Services: Proposed Changes to the Small Business Size Standards
May 5, 2011

Question: From your points of view, many of you have addressed some of this in your testimony, what happens when a small business that has been successful finds itself up against a size standard that, should they continue to expand, this would put them in competition with larger and more established corporations? Seeing a perceived competitive disadvantage "Catch 22" what is their incentive to continue to expand their operations and add jobs? How would you structure an incentive that would alter the nature of the "Catch 22" to make it more favorable to the small business and its growth potential?

Roger Jordan, Vice President of Government Relations, Professional Services Council

Firms that are approaching their industry category size standard cap are forced to make a difficult decision to either purposely restrict growth to remain small or to continue to expand and cross over into the mid-tier, in which there is little incentive for the government to continue to rely on the business and prime contractors are unable to take credit towards their small business subcontracting goals required by the federal government. The Professional Services Council would like to see a two-pronged approach to addressing the Catch-22 Congresswoman Clarke explains.

The first prong is to finalize the rules that raise the size standard for what is considered small based upon the category-by-category analysis. While the SBA has largely accomplished this task for professional services categories, in some cases, it relied on a common size standard that inappropriately shuts out businesses that SBA's own data says are small. Furthermore, if SBA focused its analysis more greatly on the federal marketplace dynamics and the barriers to entry into the federal market, higher size standards would likely be the result, thus providing more flexibility for firms on the cusp of "graduation."

The second prong would help firms in the "mid-tier". To assist small businesses, the FAR currently requires contracting officers to consider small firms first for all work below the simplified acquisition threshold (currently $150,000). Congress has historically avoided the debate around the plight of mid-tier firms. Yet it is time to engage in serious discussions about the potential solutions that would incentivize mid-tier opportunities. One such incentive would be to test a program that would provide contracting officers the flexibility to set-aside opportunities—greater than $150,000 and up to $1 million in value—for mid-tier firms, once it has be determined that small firms are unable to perform the work. This is but one potential solution, and may not be the "silver bullet" to solve the mid-tier problems, but this proposal and others should be the basis for further discussion.

Congresswoman Yvette Clarke (NY-11)
Question for the Record
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Question: From your points of view, many of you have addressed some of this in your testimony, what happens when a small business that has been successful finds itself up against a size standard that, should they continue to expand, this would put them in competition with larger and more established corporations? Seeing a perceived competitive disadvantage "Catch 22" what is their incentive to continue to expand their operations and add jobs? How would you structure an incentive that would alter the nature of the "Catch 22" to make it more favorable to the small business and its growth potential?

Mr. Odysseus Lanier, Partner, McConnell Jones Lanier & Murphy LLP, Houston, TX

Answer: To avoid the "Catch 22" and promote small business growth, it is imperative that the SBA focus on the experience and qualifications of the accounting firms performing the services. By doing so, the SBA can determine an appropriate size standard that fully captures those firms that have the adequate resources in infrastructure, personnel, and cash flows to properly perform services in the Federal arena reserved for just small business contractors. Further, it is necessary to establish a size limit is high enough to promote growth of these small accounting firms ***and*** avoid the arbitrary cutoff in the middle of the market segment where a firm would quickly outgrow a lower size standard and be forced to compete (most likely unsuccessfully) with the largest of firms. Successful firms that find themselves beyond a size standard too low are pushed to compete in the open and competitive market with more established firms that are 20 to 500 times their size. Federal procurement opportunities are lost and these firms find it virtually impossible to continue to grow when competing in this larger market, essentially constricting their growth. Instead, it is common for these firms to rethink their business strategy which often results in the firm retracting and downsizing so their firms can continue to be eligible for the small business contracts. It is no secret that the decision to expand stems from the perception that there are opportunities to gain that will benefit business. Thus, a higher size limit standard would provide firms the opportunities and incentive to continue to grow, add jobs and provide high quality work on sophisticated Federal contracts.

May 20, 2011

The Honorable Yvette D. Clarke
The United State House of Representatives
1029 Longworth House Office Building
Washingtion, DC 20515-3211

Dear Representative Clarke:

Thank you for your question regarding how small businesses could handle the transition out of small business status.

For many AIA members, their firms will never grow beyond the small business designation. At this time, 91.7 percent of our members qualify as small businesses under the current size standard. With the current economic downturn, we have fewer businesses who expand to the point where they do not qualify under the current SBA standards. Instead, we have larger firms, which grow shrink during recessions, and lay off their employees. This also create additional small businesses, as often these employees open their own practices when they cannot get alternate employment. We are hopeful that in the future, our members would grow out of the small business designation. However, even in the best of times, because of the nature of architectural work, history tells us few firms do.

There may be an opportunity for this subcomittee to help our members, not only who grow out of the SBA size standards, but represent firms that are fewer than 5 employees and make earn substantially less than even the current standards. Many AIA members are sole practitioners and could be considered ultra-small or micobusinesses. Giving micro-businesses priority would allow those members to build a base and gain the experience needed for government practice. We would ask that the SBA look for opportunities for set-asides for these ultra-small businesses. Then, when these firms grow towards the upper limit of the size standard, they will have the business experience to handle the change in size standards.

An alternate concept would be if the SBA could grandfather firms that have expanded beyond the SBA threshold. This could allow for small-to-medium sized firms to gain the stability needed to manage growth, while still also allowing the firm to establish their bona fides as a government contractor. For many of our smaller members, their largest

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challenge for gaining government contracts is establishing their qualifications to be considered for government work. This short period would allow for the firm to gain the government contracting experience while benefiting from their small business status during their growth.

Again, we appreciate the opportunity to present our ideas to you and the subcommittee at its hearing on May 5th. We also appreciate your interest and questions. If there are any other questions, please feel free to contact me at whainsfurther@kurtzarch.com or (847) 824-0132 or the AIA staff at jessicasalmojraghi@aia.org or (202) 626-7398.

Sincerely,

Walter J. Hainsfurther, FAIA

JHS/js

AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS

Testimony before the
United States House of Representatives
Committee on Small Business
Subcommittee on Economic Growth, Tax and Capital Access
The Honorable Joe Walsh, Chairman

on

Professional Services: Proposed Changes to the Small Business Size Standards

May 5, 2011

By

Nancy C. Somerville, Hon. ASLA
Executive Vice President/CEO
The American Society of Landscape Architects
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On behalf of the 16,000 members of the American Society of Landscape Architects (ASLA), I would like to thank Chairman Joe Walsh and Ranking Member Kurt Schrader for holding this critical hearing on the Small Business Administration's (SBA) proposed changes for the small business size standards in the professional, scientific and technical services industries. Included in the professional, scientific and technical services designation is the profession of landscape architecture, which I represent.

ASLA is extremely concerned about the significant size increase in defining what constitutes a small landscape architecture firm for the purposes of participating in the federal Small Business Administration's programs. I have heard from a number of our members and firms and I am pleased to share their thoughts and concerns about this proposal with the Subcommittee.

My name is Nancy Somerville and I am the Executive Vice President and Chief Executive Officer of the American Society of Landscape Architects. I also hold the distinguished honor of being recognized as an honorary member of the Society. ASLA represents approximately 16,000 landscape architects and students studying to become landscape architects in the United States and in countries across the globe.

Landscape architecture encompasses the analysis, planning, design, management and stewardship of the natural and built environment through science and design. The fundamental goals of landscape architecture include keeping the public safe from hazards, protecting the natural environment and sustainably managing the natural and built environment surrounding our homes and communities. The practice of landscape architecture is regulated in all 50 states by requiring landscape architects to be licensed. Becoming a licensed landscape architect requires a college degree in landscape architecture, completion of a period of supervised practice and passing an extensive national licensing examination.

The profession of landscape architecture is broad and diverse and includes planning and designing transportation corridors, transit-oriented development, streetscapes, parks and recreational trails, stormwater management projects, urban design, site planning, environmental restoration projects and private estate and residential master planning. While the scope of projects that landscape architects work on is varied, the manner in which the profession operates is much more homogenized. Nearly 80 percent of landscape architects work in private practice. Approximately 80 percent of all landscape architecture firms are small businesses under the traditional definition of a small business, which is an independently owned, operated and controlled business that employs fewer than 100 people and has annual revenues less than one million dollars.

While the profession certainly includes some mid-size firms and large multi-national firms that operate offices and plan and design projects all over the world, the landscape architecture profession is truly a profession of small business owners.

Under the current SBA federal definition of a small landscape architecture business, a landscape architecture firm may have up to seven million dollars in annual revenue to be considered a small business and participate in SBA programs. Under this current size standard, many of our members' firms have in fact been eligible to participate in SBA programs and contracting opportunities.

However, ASLA has heard from a number of our members and firms and learned that the vast majority of our traditional small business firms, with revenues less than one million dollars, have experienced difficulty in competing against the larger landscape architecture and multi-disciplinary firms for SBA federal landscape architecture contracting opportunities under the current size standards. These and other firms have further stated that SBA's new proposed size standards that would increase the threshold for small landscape architecture firms from seven million dollars to 19 million dollars would have a devastating impact on their ability to compete for any small business opportunities and could decimate their businesses.

On the other hand, we have also heard from some mid-size and larger landscape architecture firms that would welcome the opportunity to participate in the SBA programs that the new size standards increase would bring.

The one consistent comment that we, at ASLA, have heard from all our members is that they do not fully understand the reasoning for SBA's methodology in making these drastic size determinations and that they need more time to correctly determine what the impact of these size changes will mean for their firms and the entire landscape architecture profession.

We, at ASLA, share these concerns put forward by our members. We believe that more time is needed to truly study the impact of what a large size standards increase would mean for all our members – small, mid-size and large. The 60-day comment period for such an important regulation does not provide ample time for ASLA to gather revenue and contracting data from our membership and review and analyze its results to provide sufficient comments to the SBA. More importantly, our individual members and firms want to personally weigh in with SBA on this issue and need more time to better understand the SBA's methodology and reasoning for increasing the size standards from seven million dollars to 19 million dollars and how this increase will impact them and future contracting opportunities.

Accordingly, ASLA and its 16,000 members strongly urge SBA to extend the comment period for the size change standards for an additional 60 to 90 days. This will give ASLA and its individual members more time to better study the impact of such a far-reaching rule on our entire industry. More importantly, ASLA also recommends that SBA hold a series of educational webinars on the proposed size standards changes. Many of our members and other industries would greatly benefit from such an education session that would explain SBA's methodology and grouping simplification process for this proposed rule.

In conclusion, I certainly understand the need to review and change many of the size standards for professional, scientific and technical services industries. It is my understanding that a review of this sector has not been performed since the 1980s. However, such a dramatic and far-reaching review should be comprehensive, thorough, and allow for the greatest input from all professions involved. It is my hope that SBA will provide more time to comment on this proposed rule and provide additional

educational resources to help firms better understand its impact. I also hope that this Subcommittee will pass on these concerns to SBA as well.

Thank you Mr. Chairman. I welcome the opportunity to provide any additional information that the Subcommittee needs to move this issue forward.

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

May 6, 2011

Khem R. Sharma, PhD
Chief
Size Standards Division
U.S. Small Business Administration
409 Third Street, SW., Mail Code 6530,
Washington, DC 20416

Re: May 5, 2011 House Subcommittee on Economic Growth, Tax and Capital Access: "Professional Services: Proposed Changes to the Small Business Size Standards

Dear Dr. Sharma:

The House Committee on Small Business, Subcommittee on Economic Growth, Tax and Tax held a hearing yesterday regarding the Small Business Administration's (SBA) proposed size standards for NAICS Sector 54 industries. The Subcommittee hereby submits a link to the hearing to the SBA for inclusion in the administrative record, which may be found at http://www.youtube.com/watch?v=h-01pl_VTqo. Copies of written statements submitted for the record are also provided for the record.

We appreciate the SBA's attendance at the hearing to learn from the witnesses' testimony. As you know, the testimony included requests that the SBA extend the public comment period on the rule to allow industries to further examine the impact of the proposed size standards on affected companies and to provide suggestions for alternatives if deemed appropriate. The Subcommittee, with the concurrence of Chairman Graves, agrees that an extension of the comment period is warranted and requests that it be extended for an additional 90 days.

Specifically, the Subcommittee is concerned by cases where the proposed Common Industry Group Size Standard deviates significantly from what SBA would propose as the size

standard for the individual industries, a change that would adversely affect small firms' ability to compete. For example, in industries such as Computer Facilities Management Services and Engineering, businesses which SBA would otherwise consider legitimate small businesses with $35.5 million in revenue, would be denied the ability to compete as small businesses because of the Common Industry Group Size Standards that sets the size limit at $25.5 million. Further, in industries such as Architecture, Custom Computer Programming, Other Computer Related Services, and computer and Office Machine Repair and Maintenance, legitimate small businesses will be forced to compete against businesses that SBA considers other than small, yet both will have the designation of small business, due to the Common Industry Group Size Standards.

The potentially significant consequences that the proposed size standard rule may have on the ability of firms in the affected industries to compete, grow their companies, and create jobs compels the Subcommittee to request a longer time period for industry to analyze this proposal and provide input. We hope the SBA will concur and accommodate the Subcommittee's request, and that of the witnesses who testified yesterday, by extending the comment period by 90 days. Numerous small business groups have told me that if the extension is not granted, they will feel compelled to submit whatever analysis they can muster, I therefore ask that you inform the Committee of your decision no later than May 10, 2011.

Thank you for your consideration and hard work on this complex issue. If you need additional information regarding my request, please contact Emily Murphy, Senior Counsel to the Committee, at (202) 225-5821.

Sincerely,

JOE WALSH
Chairman
Subcommittee on Economic Growth, Tax, and Capital Access

cc: Chairman Sam Graves
The Honorable Nydia Velázquez
The Honorable Kurt Schrader