EA Engineering, Science, and Technology, Inc., PBC

225 Schilling Circle, Suite 400
Hunt Valley, MD 21031
Telephone: 410-584-7000
Fax: 410-771-1625
www.eaest.com

9 February 2024

ELECTRONIC SUBMISSION VIA REGULATIONS.GOV

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

RE: Docket Number SBA-2023-0015

Dear Dr. Sharma:

EA Engineering, Science, and Technology, Inc., PBC ("EA") is pleased to submit comments to the U.S. Small Business Administration's Revised Size Standards Methodology as described in the Federal Register announcement published 11 December 2023[1] (the "Size Standards Methodology").

Since our founding in 1973, EA has specialized in the application of multiple scientific, engineering, and technological disciplines to complex environmental problems, and performs work in numerous NAICS industries (we list 18 NAICS in our SAM profile) to accomplish our mission of environmental improvement. Today, we are a firm of more than 650 employees serving a wide range of federal, state, municipal, and private sector clients. We are 100%-owned by our Employee Stock Ownership Plan (ESOP) and are a Public Benefit Corporation under Delaware Law.

EA welcomes the opportunity to provide our input, and we have long been actively engaged in support of the size standard process. We also appreciate SBA's challenge of using economic analysis to express largely qualitative Congressional policy goals. To this end in 2018, EA retained an expert economist to review SBA's proposed size standard methodology and submitted his report with our comments.[2] While we supported SBA's methodology at that time and generally support the revised Size Standard Methodology, several of our comments and concerns are still valid today. In addition, we now recognize that some past methodology changes aggravate and distort attempts to derive a 'true' economically based size standard. These issues are discussed below, after first reviewing several areas where we agree with SBA's revisions.

1 88 FR 85852
2 https://www.regulations.gov/comment/SBA-2018-0004-0008

EA generally supports SBA's proposed Size Standard Methodology.

1. Disparity Ratio Approach

While we do not fully understand how it will apply to our own industries, we support SBA's new disparity ratio approach to measure small businesses' share of Federal contracting in relation to the broader industry. We look forward to reviewing the application of this approach in SBA's next round of size standard revisions. We also support the second major change highlighted by SBA, which is the use of FPDS-NG and SAM data for all aspects of industry analysis. Since FPDS and SAM are used in all other aspects of the analysis, it makes sense that SBA should use the same consistent source of data throughout the analysis where possible throughout the analysis.

2. Productivity Adjustments to Employee-Based Size Standards.

We also support SBA's current methodology with respect to avoiding additional productivity adjustments to employee-based size standards. As our e's report pointed out in 2018, by updating size standards every five years, those factors are already captured in SBA's analysis of the industry. Any separate adjustments would simply double count the impact of the changes that are already reflected in the industry data.

While we generally support SBA's approach, we remain concerned about several important areas, some of which have an especially pronounced effect on one of our primary industries.

1. SBA's Continued "Trimming" of Large Companies From Its Analysis for Exception Industries.

A significant proportion of EA's federal work is performed under procurements with awards "set aside" for small businesses who perform Environmental Remediation Services ("ERS"). The ERS exception industry is fundamentally different from most of the other 18 exceptions, which largely fall directly under one of 13 different NAICS. ERS derives from several different NAICS and therefore its size standard determination is highly sensitive to the methodology, as will be discussed below. So it is here, commenting on the Size Standard Methodology, that it is appropriate to voice our concerns.

All exception economic analyses performed by the SBA (such as formulating a sub-industry)—excluding only 562910 ERS and the three exceptions to 541715 R&D—are derived from subsets of the primary NAICS (self-identified by each firm) from which the sub-industry originates. The 541715 R&D exceptions size standards derive from their aligned primary manufacturing industry. Therefore, Census tabulations by NAICS and all exception sub-industries—except ERS—originate from "primary" industry firm data. For ERS, a subset of the base 562910 NAICS tabulation is not the basis for SBA's formulation of the exception industry group. Such data are derived from FPDS and SAM for any firm awarded Federal ERS contracts, regardless of

their primary industry. Hence firms which perform ERS may have myriad "primary" industry self-designations.

Indeed, this uniqueness is by design from the original SBA formulation of ERS in 1994,[3] as reflected in Footnote 14 of the Table of Small Business Size Standards. The original ERS formulation requires that no single NAICS industry dominate (>50%) the contract work scope and recognizes that ERS requires multiple primary industries. This unique derivation differentiates ERS from all other sub-industry exception processes, and it is why we describe ERS as instead a *super industry.* It requires, by its very nature, a critical mass of expertise in multiple fields and activities as the SBA recognized in 1994. Some firms competing in ERS today may designate the base 562910 NAICS (which did not exist in 1994) as their primary industry, but others may not. In sum, the "primary industry" test (to exclude firms whose primary industry is one other than the focal size standard) applies to every size determination except ERS.

This concept of uniqueness is important to our arguments below, and why we believe the treatment of 562910 ERS raises a distinct methodological issue deserving of comment and response.

Given the codified uniqueness of ERS, we agree that outliers could arise from sourcing data outside the conventional Census tabulations. Therefore, we agree that the Size Standard Methodology should address those concerns. For example, the trimming of ERS firms sourced from FPDS that have manufacturing primary industries makes complete sense as manufacturing is not related to executing ERS work and was not part of the original 1994 formulation of ERS. Such an exclusion was an appropriate first step in the SBA's most recent size standard revisions, with which we agree.

Our concerns about the Size Standards Methodology center on SBA's next step: the trimming of 25 of the largest ERS-awarded firms "whose primary activity is unrelated to ERS." The exclusions seem arbitrary (i.e., not economically based) and nonsensical within the meaning of NAICS footnote 14. Indeed, later in the same Proposed Rule,[4] SBA explains that "...the vast majority of these excluded firms operated in numerous, diverse NAICS codes and none of them reported the ERS exception as being their primary activity relating to their overall operations." We believe such policy judgments were flawed and conflict with the definition of ERS. We would expect many ERS firms, particularly large ones, to have diversified into many industries and activities, some of which originally formed the basis of the 1994 SBA rule on ERS.

A potential solution to the trimming issue (i.e., identifying which firms to trim) is to identify a primary industry for each ERS awardee as found in FPDS, and exclude those which do not align with the originally prescribed SIC industries (and new appropriate NAICS such as base 562910) from the 1994 formulation, using the SIC-NAICS crosswalk. Using the 1994 SIC industries as a

3 59 FR 47236
4 87 FR 24807

basis, the solution also has the benefit obviating the concern about "too little" ERS of FPDS-identified firms: if an identified firm has any ERS obligations and has a primary industry directly tied to the SICs that based the 1994 ERS formulation (such SICs being useful to ERS execution as defined by the 1994 SBA), then the firm is invested in ERS. This "originalist" solution is not arbitrary, would exclude non-industry participants such as manufacturers, and would provide a logic for exclusion with greater fidelity to the SBA's 1994 ERS formulation. An ERS-specific SIC-to-NAICS crosswalk is provided for your convenience in the Appendix.

If the "originalist" solution described above is not acceptable, and if SBA determines that it will remove large companies from its data set in future rulemakings, we recommend that it list the specific firms removed in the proposed rule. (There would be no need to publicly list excluded firms if the originalist solution is used.) This approach would provide greater transparency and would allow industry participants to comment on whether the removed companies were or were not significant players in the ERS industry. Giving industry the opportunity to respond to specific exclusions—particularly where the exclusions would result in a material deviation in the resulting size standard—is critical to ensuring that the process is fair, unbiased, and supportable.

EA argues that removing large companies, unknown to the public, from SBA's data set, without providing opportunity for industry comment on the propriety of specific exclusions, introduces opacity and arbitrariness that ultimately undermines the credibility of SBA's methodology. We cannot provide meaningful comment as to whether an excluded firm is an ERS competitor if the SBA is not transparent and does not identify the excluded firms. Data are the starting point of the methodology and can materially impact the resulting size standards, as SBA's own analysis of the ERS industry has shown.

Large competitors in the ERS super industry have a serious advantage over smaller businesses in terms of winning and executing work, even where only a small portion of their total revenue comes from ERS work. Some of the largest ERS competitors are multinational publicly traded companies with more than 50,000 employees. With only 2% of its employees devoted to ERS business, its ERS-related workforce would equal the current ERS size standard of 1000 employees. However, this comparison masks economies of scale that would give a large firm a tremendous competitive advantage over a small company making roughly equivalent revenue.

Many ERS awards are qualifications based, meaning that the company must demonstrate it has a superior performance history and workforce when considering the qualifications sought in the request for proposal. With a larger workforce comes a stronger resume stable from which to choose, and a more diverse performance history the company can leverage to show the relevant qualifications to win work. In the context of a "super industry" like ERS, large companies—even those who are small players in ERS—can leverage their qualifications to win in a way that small companies cannot.

To the extent competitions are instead based on price criteria, a large business performing a comparatively small amount of ERS work also has a disproportionate advantage over smaller companies. In the example mentioned above, it is unlikely that the same 1,000 employees would

perform the ERS work. Rather, the ERS work would more likely be accomplished by the full-time equivalent of 1000 employees. Thus, a large company with a comparatively small ERS portfolio can spread the same ERS workload across a much larger workforce, using a more favorable labor mix, achieving greater labor utilization, and driving down indirect costs. These advantages have a direct impact on pricing. Moreover, the large business can take advantage of greater corporate resources to hire, train, and deploy labor, further disadvantaging small businesses who must consider the total headcount impact of hiring to perform management and overhead tasks.[5]

While these competitive pressures are found in every industry SBA analyzes, they are especially acute in the conjoined ERS super industry. As noted below, SBA has exacerbated this competitive impact by truncating the data in a way that artificially—and materially—lowers the employee threshold for the ERS industry.

Excluding the largest businesses from the sample will have a deleterious effect on the viability of small businesses in the ERS super industry. Recent data shows that the leading causes of small business failure are lack of market demand and access to capital.[6] Moreover, professional, scientific, and technical industries—which are core industries in ERS—have the highest failure rate among all small businesses.[7] SBA size standards provide small businesses a protected marketplace in which to grow and equalize for future open competition. However, setting size standards at an artificially low threshold prematurely thrusts successful ERS small businesses into the same marketplace occupied by their largest competitors. This will cause graduating ERS small businesses to suffer unequal and inferior protection when compared to other graduating small businesses. This outcome would appear to be inconsistent with the statutory goal of the SBA to grow small businesses into the American marketplace.

2. SBA's Continued Use of Caps or Maximum Size Standards.

Our second concern relates to a question raised by SBA: "Should there be a ceiling beyond which a business concern cannot be considered as small?" We continue to strongly disagree with the need for the proposed cap on size standards of $47 million for revenues and 1,500 employees for employment-based size standards. As EA's expert economist, Dr. Henry Kahwaty, stated in his report, "Size standards would better reflect the economic characteristics of industries if there were no cap on size standards and instead SBA determined its analytical methodology for considering an industry's economic data and permitted its industry-specific analysis of that economic data to determine the appropriate size standard for that industry."[8]

5 SBA recognizes and accounts for these advantages through affiliation rules. See 13 CFR § 121.103.
6 https://www.forbes.com/advisor/business/small-business-statistics/
7 https://www.forbes.com/advisor/business/small-business-statistics/
8 https://www.regulations.gov/comment/SBA-2018-0004-0008, "The Small Business Administration's Size Standards Methodology and the Environmental Remediation Services Sub-industry" p.6.

We disagree with the need for such a cap. If SBA feels caps are necessary, we urge SBA to provide a sound economic analysis to justify not only the cap, but also the compounding application of the caps:

1. Capping the final factor size average (the most obvious);

2. Capping each factor size calculation at the factor level; and,

3. Embedding the numeric size caps within the 20%-80% process itself.

These, especially when combined, compound negatively in the final analysis, producing lower standards than would otherwise be calculated and thereby distorting the fundamental economics of deriving a Minimal Efficient Size (MES). With the caps now embedded into the 20%-80% process of calculating each industry factor size for each industry and exception, the Methodology no longer aspires to find a true economically-based size standard where a firm of such size could have grown the efficiency to actually compete with large firms (the MES), but the Methodology is now an exercise to equitably spread size standards between two arbitrarily set points, an SBA-determined maximum and a minimum.

Notwithstanding the fundamental embeddedness of arbitrary caps within the factor size calculus through scaling off two points (20% and 80%), the additive capping of individual factor sizes subsequently, subject to further capping after the factor sizes are averaged (the calculated size standard after rounding), also drives a size standard downward for industries with larger factor values relative to the all-industry median. As an example, consider an industry with a size standard cap of 1,500 employees, and calculated factor sizes of 2,000 employees for four factors and 500 employees for one factor. The uncapped simple average of these is 1,700 employees, but drops to 1,500 if capped only on the final average, and even further to 1,300 if double-capped per the SBA methodology. We deem the 1,700 size as a truer economically-based MES, which is 31% greater than what SBA would set. The example factor size numbers used are reasonable for industries with relatively higher economic MES's, but the 31% difference is unquestionably not reasonable if survival of small businesses, and therefore the resilience of a strong industrial base, is an objective.

The so-called "valley of death" between the maximum size of an SBA-set size standard and the size to be a competitive large business is a real phenomenon, and arbitrary capping, especially compounded capping, is undoubtedly a material cause. Given the current Methodology (with caps on each factor size and their average), the 20%-80% process locking in caps inside the factor calculus, and the continued growth and consolidation of industry, the size standard-MES gap will continue to grow over time, exacerbating and stretching the barbell effect of a large group of firms stalled at being small and a smaller group of extremely large firms with little in between, thereby further threatening the industrial base over time.

In the Federal Register preamble to posting the 2023 revised Methodology for comment, SBA articulates three primary considerations, as directed by 15 U.S.C. 632(a), for establishing size standards:

1. Size standards should vary from industry to industry according to differences among industries,

2. A firm that qualifies as small under the SBA's size standard shall not be dominant in its field of operation (note that this portion of the statute also mandated that the firm should be "independently owned and operated" which implies that SBA's affiliation rules apply to judging the capabilities of large competitors with relation to the ERS trimming issue), and,

3. The policies of the Agency should assist small businesses as a means of encouraging and strengthening their competitiveness in the economy.

The concept of an arbitrary cap is antithetical to the goal announced in #1, and embedding the same cap in compounding calculations can impact the success or failure of achieving #3. More specifically, caps favor size standard increases for industries with MES characteristics below the aggregated database median and stunt size standard growth for those industries with MES characteristics above the aggregated database median. Through its actions, therefore, SBA runs the risk of being perceived to favor the smallest small businesses at the expense of the larger small businesses, even where industry data analysis would justify according deference to differences between industries.

We are not aware of Congress directing this tradeoff via statute, nor of SBA explicitly proposing such a method, with its tradeoff effects, in a public rule making. In addition, when making such a policy determination, we are aware that the Federal government's largest procuring agency, the Department of Defense, is concerned about the continuity and resilience of the industrial base from small to large, with preference for larger small businesses due to their agility, innovation, and ability to deliver especially for mission-critical requirements. If such tradeoffs are necessary within the size-standard setting process, should not Congress, key procuring agencies, and the affected industries have a voice?

In preparing these comments, we noted that there was an early small business historical practice of using 2,500 employees as maximum size. "The Small Defense Plants Administration (SDPA), established during the Korean War...had flexible standards, ranging up to 2,500 employees for firms that were independent but did not dominate their industry"; and relatedly in 1952, the U.S. House of Representatives Select Committee on Small Business stated: "Public policy may demand similar treatment for a firm of 2,500 employees in one industry as it does for a firm of only 50 employees in another."[9] Why pick 1,500 employees, as opposed to 1952's 2,500 employees?

9 Quoted in Moore, N. Y., Grammich, C. A., & Mele, J. D. (2014). *Small business and strategic sourcing: Lessons from past research and current data.* Rand Corporation, pages 8 and 9.

The result of these caps, especially when applied on a factor-by-factor basis and compounded with the 20%-80% method, results in a significant understatement of size standards. By setting arbitrary caps, SBA is abdicating its responsibility to develop objective criteria derived through economic analysis. If SBA's calculations yield a result that it feels is artificially high or anti-competitive, it should propose an alternative methodology that does not yield such a result. Alternatively, SBA should seek guidance from Congress as to what policy-makers view as a maximum value for a business to be considered small.

By continuing to evaluate size standards based on a sound, transparent economic approach, SBA will support the creation of a healthy industrial base of ERS providers for Federal clients, and a better ability for small businesses to build the strength and capabilities needed to grow and graduate from small business status.

We look forward to participating in a productive dialog with the SBA as this process moves forward. Thank you again for the opportunity to support this important initiative.

Sincerely,

EA ENGINEERING, SCIENCE,
AND TECHNOLOGY, INC., PBC

Ian D. MacFarlane
Chair, President, and CEO

IDM/pn

APPENDIX: CROSSWALK OF SIC TO NAICS FOR SIC'S IDENTIFIED IN SBA's ORIGINAL ERS FORMULATION

SIC	NAICS
1629	236210
	237110
	237120
	237130
	237990
	238910
1795	238910
1799	236220
	237990
	238150
	238190
	238290
	238310
	238320
	238350
	238390
	238910
	238990
	561790
	562910
4212	484110
	484210
	484220
	562111
	562112
	562119
4953	562211
	562212
	562213
	562219
	562920
4959	488119
	488490
	561710
	562910
	562998
8711	541330
8731	541713
	541714
	541715
8734	541380
	541940