



Written Testimony of

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House Committee on Small Business
Subcommittee on Contracting and Infrastructure

“Cleared for Take-off? Implementation of the
Small Business Runway Extension Act”

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Good morning, Chairman Golden, Ranking Member Stauber, and Distinguished Members of the Subcommittee. Thank you for the opportunity to appear before you today. My name is Megan Connor, and I am a partner at PilieroMazza PLLC, a law firm serving government contractors for over 30 years. I am joined today by our managing partner, Pam Mazza. We represent government contractors of all sizes and in a variety of industries. Many of our clients, though, are small businesses directly impacted by the Small Business Runway Extension Act of 2018 (“Runway Extension Act”).

Our firm supports the Runway Extension Act and, specifically, changing how small businesses calculate their receipts from a three-year basis to a five-year basis. However, we believe that, in implementing this change, there are three issues that need to be addressed in order to avoid negative impacts on small businesses. First, small businesses deserve clarity as to the effective date of the change from three years to five years. Second, we strongly recommend a transition period during which firms that are small under a three-year calculation, but not small under a five-year calculation, are able to adjust to the marketplace. Third, the System for Award Management database must be updated to account for this change. I will address each of these issues in turn.

Effective Date

First, there is widespread confusion in industry as to whether the Runway Extension Act—which was signed into law on December 17, 2018—is actually in effect. Our firm receives questions from clients on a nearly daily basis about the Act and the impact it has on the client’s size calculation. This confusion arises from the fact that, while the Act amended the Small Business Act to provide that a firm’s receipts calculation shall be based on five years, the Small Business Administration’s (“SBA”) regulations still state that receipts are to be calculated based

on the average of the three recently completed fiscal years.¹ While we would normally advise clients that federal law supersedes federal regulations, SBA issued an internal Information Notice to SBA employees on December 21, 2018, stating that “[t]he change made by the Runway Extension Act is not presently effective and is therefore not applicable to present contracts, offers, or bids until implemented through the standard rulemaking process.”²

Therefore, notwithstanding the Runway Extension Act’s change to the Small Business Act, SBA expects contractors to calculate their size for a receipts-based size standard based on a three-year average.

To illustrate the confusion this is creating, a client of ours submitted a proposal in October 2018, when the company was small under a three-year calculation. As of January 1, 2019, that company is no longer small under a three-year calculation, but remains small under a five-year calculation. This company was elated with the change made by the Runway Extension Act and its ability to continue pursuing small business contracts. But two weeks ago, the procuring agency sent them correspondence regarding the October 2018 proposal and asked the company to submit a proposal revision and include, among other things, updated representations and certifications of size. In response, the company reiterated that it was small at the time of its initial proposal with price, which is the relevant date for size purposes,³ and also provided updated representations and certifications that it remains a small business pursuant to the Runway Extension Act. This company, and others like it, should be able to take advantage of the Runway Extension Act now.

¹ See 13 C.F.R. § 121.104(c)(1).

² SMALL BUSINESS ADMINISTRATION, SBA Information Notice Control No. 6000-180022 (Dec. 21, 2018), available at <http://thecgp.org/images/Information-Notice-6000-180022-re-Small-Business-Runway-Extension-Act.pdf>.

³ See 13 C.F.R. § 121.404(a).

Accordingly, we recommend that Congress make clear its intent as to the effective date of the Runway Extension Act. It is my understanding that the Committee is currently drafting legislation to address this, which is welcome news. We appreciate the Committee's efforts and urge the Committee to consider, when establishing an effective date, how firms that are benefitted by the Act may take advantage of it as of the date it became law.

Transition Period

The second issue the Committee should address in implementing the Runway Extension Act is a transition period that would allow firms that are small under a three-year calculation, but not small under a five-year calculation, to adjust to this change. It was clearly the Committee's intent that the Runway Extension Act would "allow small businesses at every level more time to grow and develop their competitiveness and infrastructure, before entering the open marketplace."⁴ However, by extending the time period for the receipts calculation, the Committee may have assumed that revenues either remain stagnant or grow year-to-year at a steady rate. While this may be true for some companies, it is not true for all.

Indeed, the reality is that the Runway Extension Act unintentionally may harm small businesses that are experiencing financial downturns—for example, if a contractor unexpectedly loses a valuable follow-on contract or graduates from SBA's 8(a) Program and is no longer eligible for 8(a) contracts. In both scenarios, the contractor often experiences a decrease in revenues after years of increases.

To illustrate, Company A, an information technology ("IT") contractor, has had revenues grow by exactly 9% every year for the last five years:

⁴ H.R. Rep. No. 115-939, at 2 (2018).

Company A		
Fiscal Year	Total Receipts	Growth
2014	\$22,000,000.00	
2015	\$23,760,000.00	+9%
2016	\$25,660,800.00	+9%
2017	\$27,713,664.00	+9%
2018	\$29,930,757.12	+9%

Company A’s current size calculation is \$27,768,407, based on its three recently completed fiscal years (2016-2018), and it is therefore considered “other than small” for IT contracts under the \$27.5 million size standard. But if Company A’s size is calculated based on the last five fiscal years (2014-2018), pursuant to the Runway Extension Act, Company A’s current size is \$25,813,044, which would make Company A a small business again under the \$27.5 million size standard. Company A is a winner under the Runway Extension Act.

Now, let us consider Company B, another IT firm, which has had extreme growth and downturns over the last five years:

Company B		
Fiscal Year	Total Receipts	Growth
2014	\$35,000,000.00	
2015	\$40,000,000.00	+14%
2016	\$30,800,000.00	-23%
2017	\$27,400,000.00	-11%
2018	\$23,100,000.00	-16%

These fluctuations could be driven by the types of contracts Company B has. For instance, if Company B is a contract holder on a large contract vehicle and won large-dollar but short-term task orders in some of the recent fiscal years, but not every year, then it could experience these swings. Company B’s current size calculation, based on its three recently completed fiscal years (2016-2018), is \$27,100,000. Therefore, under SBA’s current regulations, Company B is small for purposes of a \$27.5 million size standard. If Company B’s receipts for the last five fiscal years (2014-2018) are averaged, though, Company B will be over the \$27.5 million size standard

and no longer considered small. Company B, therefore, is a loser under the Runway Extension Act.⁵

To address this inequity, small businesses should be given the option to choose which calculation is most favorable for them—three years versus five years—for a transition period. In this way, firms that are no longer considered small under a five-year calculation will have time to prepare to compete as a so-called mid-sized firm in the unrestricted marketplace.⁶ Such preparations could include identifying opportunities in industries with larger size standards, small businesses with which to form a mentor-protégé relationship, and teaming partners with which to pursue both set-aside and unrestricted opportunities.

System for Award Management

Lastly, in implementing the Runway Extension Act, the System for Award Management (“SAM”) should be updated to account for the change from three years to five years. SAM is a federal database of contractors doing business with the government. Except in narrow circumstances, all contractors pursuing work with the federal government must register in SAM.⁷ In order to be registered in SAM, firms must complete representations and certifications, including of the firm’s size for purposes of federal procurement.⁸ When completing SAM

⁵ These “Company A” and “Company B” examples were originally published in a post for the PilieroMazza blog. See Megan C. Connor, *New Receipts Calculation for Federal Contractors?*, PILIEROMAZZA BLOG (Sept. 26, 2018), <https://www.pilieromazza.com/new-receipts-calculation-for-federal-contractors>.

⁶ The Committee recognized the pressures on “other than small” firms that barely exceed the size standards applicable to their contracts, and are therefore considered mid-sized, but must compete against multi-billion dollar companies. See H.R. Rep. No. 115-939, at 3 (2018).

⁷ See 48 C.F.R. § 4.1102(a).

⁸ See 48 C.F.R. § 52.204-7(a).

registration, contractors must insert one amount representing their three-year average receipts.⁹ To conform to the Runway Extension Act, SAM should be updated to request a five-year average receipts calculation.

Conclusion

In conclusion, the Runway Extension Act is a positive change for government contractors, but in implementing it, any potential negative impacts should be mitigated through clarity for industry, a transition period for firms that are not benefitted by the change, and an update to SAM.

On behalf of PilieroMazza and the government contractors we represent, I would like to commend the Committee for continuing to consider how best to implement the Runway Extension Act. And I would like to thank the Committee again for the opportunity to appear before you today. I look forward to your questions.

⁹ This amount is then used to auto-populate a size certifications chart in SAM with “Y” and “N” to indicate whether the company is a small business for its designated North American Industry Classification System codes.