

## Small Business Administration

## § 121.404

### **§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?**

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

#### SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT

### **§ 121.401 What procurement programs are subject to size determinations?**

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, the Very Small Business program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[69 FR 29204, May 21, 2004]

### **§ 121.402 What size standards are applicable to Federal Government Contracting programs?**

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the NAICS United States Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up

the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

(c) The NAICS code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns an NAICS code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing NAICS code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by an NAICS code designation or size standard designation may appeal the designations to OHA under part 134 of this chapter.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

### **§ 121.403 Are SBA size determinations and NAICS code designations binding on parties?**

Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

### **§ 121.404 When does SBA determine the size status of a business concern?**

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial