



Guide to SBA's Definitions of Small Business

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The U.S. Small Business Administration (SBA) has prepared this Guide to SBA's Definitions of Small Business (Guide) to help the public understand how SBA defines a small business and how it establishes its small business size standards. A small business size standard is numerical and represents the largest a concern can be and still be considered a small business. This Guide provides general information on size standard requirements and addresses most typical concerns about using size standards.

This Guide is advisory only, and carries no legal weight. SBA has written it in non-technical language. For further information, the user of this Guide should contact the sources listed at the end or consult the applicable regulations in the Code of Federal Regulations.

The regulations specifying size standards and governing their use are set forth in Title 13, Code of Federal Regulations, part 121 (13 CFR part 121), Small Business Size Regulations. SBA's size regulations pertaining to Federal procurement are also found in the Federal Acquisition Regulation, 48 CFR part 19.

BACKGROUND TO SIZE STANDARDS

The Small Business Act (Act) established SBA to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise, to insure that small businesses receive a fair portion of the Federal Government's purchases, and to maintain and strengthen the Nation's overall economy. The Act defines a small business concern as one that "is independently owned and operated and which is not dominant in its field of operation." The Act states that the definition of a small business shall vary from industry to industry to the extent necessary to reflect industry differences.

Since SBA's inception, the fundamental question has been what should be the numerical definition of small business, industry-by-industry, to establish eligibility for SBA's programs. This numerical definition is called the "Size Standard" and is usually stated in either number of employees or average annual receipts.

Small business size standards define the maximum size that a concern, together with all of its affiliates, may be if it is to be eligible for Federal small business programs.

Besides establishing eligibility for SBA's programs, all Federal agencies use them to determine eligibility for Federal contracts specifically designated for small business,

and for their own programs and regulations. Other laws or programs may require the use of the SBA's definition of small business as well.

DEFINITIONS

These definitions help clarify terms in this Guide. SBA's Small Business Size Regulations also contain the definitions, usually in more detail.

8(a) Business Development Program – An SBA program for small concerns owned by socially and economically disadvantaged persons. Firms admitted to the program can receive Federal contracts designated for 8(a) Business Development Program participants, as well as management and technical assistance. (See SDB Program, below.)

Affiliates – Affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business. The calculation of a concern's size includes the employees or receipts of all affiliates.

Annual Receipts – Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Business Concern – A business concern eligible for assistance as a small business is a business entity organized for profit, has a place of business located in the United States, and operates primarily within the United States or makes a significant contribution to the US economy through payment of taxes or use of American products, materials, or labor. A business concern can also be a small agricultural cooperative.

Central Contractor Registration – Central Contractor Registration (CCR) is the primary vendor database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions.

Both current and potential federal government vendors are required to register in CCR in order to be awarded contracts by the federal government. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration at least once per year to maintain an active status.

Dynamic Small Business Search (DSBS) – A Federal Government database for small businesses to register and increase their opportunities to provide goods and services to the Federal Government. It is part of the Central Contractor Registration (CCR) database. A small business only needs to enter its business information in CCR, which will then automatically populate the Dynamic Small Business Search. Firms may supplement their DSBS profiles with additional information to enhance their marketing efforts to the Federal government and larger prime contractors. Concerns interested in receiving Small Disadvantaged Business, HUBZone, 8(a), or any other certification(s), must apply separately to SBA to complete that process. It is important to note that both current and potential federal government vendors must register in CCR to be awarded contracts by the Federal Government.

Employees – The number of employees of a concern is its average number of persons employed for each pay period over the concern's latest 12 months. Any person on the payroll must be included as one employee regardless of hours worked or temporary status. That is, it is a “head count.” The number of employees of a concern in business under 12 months is based on the average for each pay period it has been in business.

HUBZone – The HUBZone Empowerment Contracting Program, which is included in the Small Business Reauthorization Act of 1997, stimulates economic development and creates jobs in urban and rural communities by providing contracting preferences to small businesses that are located in a HUBZone and that hire employees who live in a HUBZone. SBA is responsible for regulating and implementing the HUBZone Program. It certifies concerns for eligibility to receive HUBZone contracts and maintains a listing of qualified HUBZone small businesses federal agencies can use to locate prospective vendors.

Industry – Concerns primarily engaged in the same kind of economic activity are classified in the same industry regardless of their types of ownership (such as sole proprietorship, partnership or corporation). OMB classifies approximately 1,200 activities as industries under NAICS. For each industry, except those in the Public Administration Sector, SBA has established a size standard. Industries are described in detail in North American Industry Classification System – United States, 2007. It can be found in many libraries or purchased from the National Technical Information Service, by calling (800) 553-6847 or (703) 605-6000.

Nonmanufacturer – For Federal government contracts, a concern that supplies a product it did not manufacture is termed a nonmanufacturer. To qualify for Federal government contracting, a nonmanufacturer must have 500 or fewer employees, be primarily in the wholesale or retail trade, and supply the product of a US small manufacturer, if the contract is set aside for a small business. This requirement is called the "nonmanufacturer rule." This rule does not apply to supply contracts of \$25,000 or less that are processed under Simplified Acquisition Procedures. The requirement may also be waived through formal procedure by the Associate Administrator for Government Contracting if there is no small manufacturer in the Federal market for a class of products. The nonmanufacturer rule is more detailed in paragraph (b) of 13 CFR §121.406

Not Dominant – A concern is not dominant in its field of operation when it does not exercise a controlling or major influence on an industry. As part of its review of a size standard, SBA investigates whether a concern at or below a particular standard would dominate the industry on a national basis. Thus, a concern at or below the size standard is presumed not to be dominant in its field of operation.

Online Representations and Certifications Application (ORCA) – An internet application of representations and certifications that apply to Federal government procurements. Firms must maintain complete and accurate ORCA records. ORCS records are considered public information.

Service Disabled Veteran Owned Small Business – A small business concern that is at least 51 percent unconditionally and directly owned by one or more service-disabled veterans may represent itself as a Service-Disabled Veteran-Owned Small Business Concern in the Central Contractor Registry at www.ccr.gov. To participate in the Federal marketplace, the Veteran must have a service-connected disability that has been determined by the Department of Veterans Affairs or his or her respective military branch of service. For more information, please go to www.sba.gov/GC and www.sba.gov/vets.

Set-aside Contract – A "set-aside" is a restricted Federal contract for which only small business may submit offers.

Small Agricultural Cooperative – A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative's member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under part 121 of SBA's Small Business Size Regulations may not be a member of a small agricultural cooperative.

Small Disadvantaged Program (SDB) Program – While the 8(a) Business Development Program (above) offers a broad scope of assistance to socially and economically disadvantaged concerns, SDB certification strictly pertains to benefits in

Federal procurement. 8(a) concerns automatically qualify for SDB certification. SBA certifies SDBs to make them eligible for special bidding benefits. Evaluation credits available to prime contractors boost subcontracting opportunities for SDBs.

Woman owned small business – A business concern in which one or more women have 51 percent or more stock ownership. Women business owners are critically important to the American economy. America's 9.1 million women-owned businesses employ 27.5 million people and contribute \$3.6 trillion to the economy. However, women continue to face unique obstacles in the world of business. SBA is a very strong advocate for women entrepreneurs and offers many programs and services to help them succeed.

SUMMARY OF SIZE STANDARDS BY INDUSTRY DIVISION

To qualify as a small business concern for most SBA programs, small business size standards define the maximum size that a firm, including all of its affiliates, may be. The SBA has established two widely used size standards – 500 employees for most manufacturing and mining industries and \$7.0 million in average annual receipts for most nonmanufacturing industries. However, many exceptions exist. For the applicable size standard, see the SBA's Small Business Size Regulations, 13 CFR §121 or the Table of Small Business Size Standards matched to NAICS industries for which SBA has established standards. (SBA periodically changes a size standard for an industry. The process for changing a size standard is discussed later in this Guide.) The general range of size standards by industry division follows:

Construction – General building and heavy construction contractors have a size standard of \$33.5 million in average annual receipts. Special trade construction contractors have a size standard of \$14.0 million. The size standard for Land Subdivision is \$7.0 million in average annual receipts. The size standard for Dredging is \$20.0 million in average annual receipts.

Manufacturing – For approximately 75 percent of the manufacturing industries, the size standard is 500 employees. A small number have a 1,500 employee size standard and the balance have a size standard of either 750 or 1,000 employees.

Mining – All mining industries, except mining services, have a size standard of 500 employees.

Retail Trade – The size standard for most retail trade industries is \$7.0 million in average annual receipts. A few, such as grocery stores, department stores, motor vehicle dealers and electrical appliance dealers, have higher size standards. None are above \$29.0 million.

Services – For the service industries, the most common size standard is \$7.0 million in average annual receipts. Computer programming, data processing and systems design have a size standard of \$25.0 million. Engineering and architectural services have different size standards, as do a few other service industries. The highest annual receipts

size standard in any service industry is \$35.5 million. Research and development and environmental remediation services are the only service industries with size standards stated in number of employees.

Wholesale Trade – For all wholesale trade industries, a size standard of 100 employees is applicable for loans and other financial programs. When acting as a dealer on Federal contracts set aside for small business or issued under the 8(a) program, the size standard is 500 employees and the firm must deliver the product of a small domestic manufacturer, as set forth in SBA’s nonmanufacturer rule, unless waived by the SBA for a particular class of product. However, for those procurements made under the Simplified Acquisition Procedures of the FAR and where the purchase does not exceed \$25,000, the nonmanufacturer may deliver the goods of any domestic manufacturer.

Other Industries – Other industry divisions include: Agriculture; transportation, communications, electric, gas, and sanitary services; and finance, insurance and real estate. Because of wide variation in the industry structure of the industries in these divisions, there is no common pattern of size standards. For specific size standards as of January 1 of each year refer to the size regulations in 13 CFR §121.201. SBA's table of small business size standards includes all changes and modifications made since January 1 of the most recent year.

USE OF SIZE STANDARDS FOR LOANS AND OTHER FINANCIAL ASSISTANCE PROGRAMS

For SBA business loans the concern must meet the size standard for the industry in which it, including its affiliates, is primarily engaged as well as the size standard for the primary industry of the applicant concern, not including its affiliates. The SBA determines whether the loan applicant is an eligible small business. Applicants for financial assistance under the Small Business Investment Company (SBIC) and Development Company (504) Programs, must meet the size standard for business loans (see above), or as an alternative, not exceed the following criteria:

| | SBIC Program | 504 Program |
|---|---------------------|--------------------|
| Tangible Net Worth | \$18 million | \$8.5 million |
| and | | |
| Average (2 year) Net Income after Federal Income Taxes (excluding any carry-over loses) | \$6.0 million | \$3.0 million |

For Surety Bond Guaranty Assistance, the concern, including its affiliates, may not have receipts in excess of \$7.0 million for construction and service contracts. For

other concerns, including manufacturing, the size standard of the applicant's primary industry applies (including affiliates).

SBA amended the Surety Bond Guarantee Program size standard for construction (general or special trades) or service concerns performing contracts in the Presidentially declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. Under those circumstances the concerns must meet either the size standard for the primary industry in which it, together with its affiliates, is engaged, or the current \$7.0 million standard for the SBG Program, whichever is higher. Please see SBA's amendment for details.

USE OF SIZE STANDARDS FOR SBA'S SMALL BUSINESS INNOVATION RESEARCH PROGRAM

The Small Business Innovation Research (SBIR) Program provides small concerns a competitive opportunity to propose innovative concepts to meet the research and development needs of the Federal government. To be eligible, a business concern must be either

- at least 51 percent owned and controlled by US citizens or lawfully admitted permanent resident aliens, and, including affiliates, not exceed 500 employees; or,
- at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States.

To determine the SBIR firm's size, you must include the employees of any and all of its affiliates, wherever they are, and whether they are for-profit or not-for-profit entities. Many SBIR participants and applicants for participation have one or more Venture Capital Operating Company (VCOC) investors. This has raised questions about the relationship of the SBIR Company to the VCOCs and about the relationships among the VCOCs themselves. Because determining the SBIR company's eligibility as a small business involves counting the employees of all of its affiliates, SBA is presenting below a further explanation, with examples, of these relationships, and how a company could be affected.

SBIR Participants and Affiliation with Venture Capital Company Investors

Why is Affiliation an Important Issue?

SBA determines whether an entity qualifies as a small business concern by counting its receipts, employees, or other measure including those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

13 C.F.R. § 121.103(a)(6).

What are the General Principles of Affiliation?

Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. SBA's regulations on affiliation are contained in 13 C.F.R. § 121.103 (available at www.sba.gov/size).

The following are some of the affiliation rules that may apply when a business concern receives equity investment from one or more venture capital companies:

1. Stock ownership (13 C.F.R. § 121.103(c))

- Control of 50% or more of voting stock. A person¹ is an affiliate of a concern if the person owns or controls, or has the power to control, 50% or more of the concern's voting stock.

Example 1: Company A is the majority owner of Companies B, C and D (54.5%, 81%, and 60% respectively). Company A has the power to control Companies B, C and D. The companies are all affiliated. The receipts and/or number of employees of all four companies will be aggregated in determining the size of any one of them.

- Control of less than 50% voting stock, but large compared to others. Affiliation may also occur when a person owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock.

Example 1: Company A owns 40 percent of the voting stock of Company B and the next largest share is 2 percent. Company A controls Company B due to the fact it owns the largest block of voting stock compared to all other outstanding blocks of voting stock. Company A and Company B are affiliates. In addition, all other companies controlled by Company A will be considered affiliates of Company B.

Example 2: Two individuals each own blocks of shares of Company A. One individual owns 46.67% of the business and the other owns 33.333%. The individual that owns 46.67% of the stock owns the largest single block, which is large compared to any other block, and therefore probably has the power to control the concern. This individual also controls Company B. There is affiliation between Company A and Company, but it is rebuttable.

¹ The term "person" used throughout this document and the regulations includes an individual, entity, or business concern. § 121.103(c)(1).

- Control of less than 50% voting stock by multiple minority owners. In addition, if two or more persons each owns or controls (or has the power to control) less than 50% of a concern's voting stock and (i) the minority holdings are all approximately equal in size and (ii) all of the minority holdings taken together are large compared to any other stock holdings, affiliation is presumed to exist with each of those persons. It is important to note that this is a rebuttable presumption .

Example: Investor X, Investor Y, and Company A each own 23% of Company B. No other stockholder owns more than 5% of Company B. All three persons will be presumed to control Company B, unless they successfully rebut this presumption. If the presumption is not overcome, then Company A and Investors X and Y will all be considered affiliates of Company B. In addition, all companies controlled by Company A and Investors X and Y are affiliates of Company B.

- Voting stock is widely held. When a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the business concern's Board of Directors and Chief Executive Officer (CEO) or President are deemed to have the power to control the concern unless evidence is provided to show otherwise.

Example: In a corporation where no one stockholder has a block of voting stock sufficient to give it control or the power to control the concern, control instead rests in each member of the Board of Directors and the CEO or President. This means that any business controlled by a member of the Board and by the CEO or President is an affiliate of the business concern in question, unless the individual Board members and CEO or President can rebut this presumption.

2. Stock options, convertible securities, and agreements to merge (13 C.F.R. § 121.103(d))

SBA treats each of these cases as though the rights granted have been actually exercised. Regulations give present effect to an agreement to merge (including an agreement in principle) or to sell stock. If these rights have been granted and they confer the power to control, affiliation exists.

Example 1: If Company A holds an option to purchase a controlling interest in Company B, the situation is treated as though Company A had exercised its rights and had become owner of the controlling interests in Company B. Company A and B are affiliates. In addition, all companies controlled by Company A will be considered affiliates of Company B.

Example 2: Company A and Company B are in discussion about a merger between the two of them. Both companies' representatives have met several

times over the past two months. There is neither a formal nor informal agreement to merge, although merging -the two companies is their stated objective. Unless the two companies have an agreement to merge, SBA will not find affiliation between the two companies based on these open and continuing discussions of merger alone.

3. Common management (13 C.F.R. § 121.103(e)).

If one or more officers, directors, managing members, or general partners of a business controls the Board of Directors and/or the management of another business the businesses are affiliates. SBA usually finds affiliation in these examples:

Example 1: Members of Company A's Board of Directors occupy three out of five positions in Company B's Board of Directors. Company A has control of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B.

Example 2: A member of Company A's Board of Directors has veto rights over the majority decisions of Company B's Board of Directors. By possessing such negative control, Company A has control of the Board of Directors of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B.

4. Identity of interest between individuals or businesses , including family members (13 C.F.R. § 121.103(f))

Individuals or firms that have identical (or substantially identical) business or economic interests may be treated as though they are affiliated unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual (or other) relationships, are among those treated this way. However, individuals or firms may seek to demonstrate that no affiliation exists by providing convincing proof that apparently identical interests are, in fact, separate. Patterns of subcontracting, commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship may evidence an identity of interest.

Example 1: Several officers of Company A are also officers of Company B. The two companies are in the same line of work and extensively subcontract with each other. The interrelationship between the two companies results in them acting as one, and therefore, the two are considered affiliates.

Example 2: Company A and B share office space and equipment in the same location and also share key employees. In addition, Company A has

sent a substantial amount of business to Company B for each of the last three years. All this, taken together, is an indication that the two companies have combined their resources to each other's benefit, and therefore, are likely to be affiliated

Example 3: When three of four members of a concern's Board of Directors have investments in common with each other outside the concern and have also provided the concern with substantial financial assistance, they may be viewed as sharing an identity of interest. The three directors would be deemed to control the Board and to therefore also control the business. Each outside business that these three directors control would be an affiliate of the business concern in question.

Example 4: A husband and wife founded an accounting firm in 1974. Their daughter was a division head for two years in 2005-2007. In 2008, the daughter opened an office supply store using her own funds and a bank loan. Her parents purchase supplies from the daughter's store, and sales to her parents represent 10% of the daughter's revenues. Although the parents and daughter have business dealings, they are minimal in nature. There are no other business interactions between the daughter and her parents. If there are no other indicia of affiliation, SBA would find that affiliation due to family relationships is rebuttable.

5. *Contractual relationships or economic dependency (13 C.F.R § 121.103(a),(f) and (g))*

A concern that is unlikely to be able to survive on its own or is economically dependent upon another person will probably be found to be affiliated with the concern(s) on which it is dependent.

Example 1: Company A performs subcontracts for Company B, and Company B accounts for 90% of Company A's revenues. Company A's existence depends on work from Company B and the two are deemed affiliates.

Example 2: Company A provides significant loans to Company B and guarantees other loans to Company B. Company B's over reliance of dependence on Company A's financial support (both direct and indirect) results in their affiliation.

Example 3: A loan between two businesses is not an arm's-length transaction and the terms and conditions of the loan demonstrate financial dependence by one business on the other. The two are deemed affiliates.

Example 4: Company A obtained a patent for a product it developed. It licenses the use of the product to Company B, and makes it available for other companies to obtain a license. No affiliation exists between Company A and Company B based solely on the licensing agreement.

CONCLUSION

The above is an overview of some basic principles of affiliation as set forth in SBA's regulations and the Office of Hearings and Appeals rulings (see http://www.sba.gov/aboutsba/sbaprograms/oha/OHADecisions/OHA_DECISIONS.html) The reader must review all applicable regulations carefully before certifying a business's size status. For further information or questions, please contact the SBA Size Specialist who is responsible for the area in which the company is located. Below is a listing of Size Specialists and the geographical areas they serve.

| WHOM TO CONTACT FOR SIZE DETERMINATION INFORMATION? |
|---|
| <p style="text-align: center;">Government Contracting Area Office I, Boston, MA Janette Fasano, Director, (617) 565-5622</p> <p style="text-align: center;">Contact: Paul Taravella, (631) 454-0750 ext. 224 Sandy Liu, (631) 454-0750 ext. 215 Malinda Chen, (631) 454-0750 ext. 212</p> <p><u>AREA I</u> = CT. MA. ME. NH. NJ. NY. RI. VT. & Puerto Rico & the Virgin Islands</p> |
| <p style="text-align: center;">Government Contracting Area Office II, Philadelphia, PA David Loines, Director, (202) 205-7311 ----- Contact: Vince Mazzotta, (610) 382-5996</p> <p style="text-align: center;"><u>AREA II</u> = DC. DE. MD. PA. VA. WV.</p> |
| <p style="text-align: center;">Government Contracting Area Office III, Atlanta, GA Mitchell Morand, Director, (404) 331-7587 ext.202 ----- Contact: Ivette Bascumbe (404) 331-7587 ext 209 Mary Ann Korre (404) 331-7587 ext 206</p> <p style="text-align: center;">AREA III = AL. FL. GA. KY. MS. NC. SC. TN.</p> |

Government Contracting Area Office IV, Chicago, IL
Jack Boccarossa, Acting Area Director, (309) 782-6350

Contact: Dave Gordon, (312) 353-7674

AREA IV = IN. IA. IL. KS. MI. MN. MO. ND. NE. OH. SD. WI.

Government Contracting Area Office V, Dallas/Fort Worth, TX

Robert Taylor, Director, (817) 684-5302

Contact: Stephanie Lewis (817) 684-5305
Karen Klam (303) 844-2607 ext. 271

AREA V = AR. CO. LA. NM. OK. TX.

Office of Government Contracting VI, San Francisco, CA

James Gambardella, Director, (415) 744-8429

Contact: Carol Bunts (415) 744-6844
Tracey Brown (602) 745-7217
Esmeralda Sanchez (415) 744-4242
John Bagaason (206) 553-8546
James Hutchins (206) 553-6850

Area VI = AK, AZ, CA, HI, ID, MT, NV, OR, UT, WA, WY, GU

USE OF SIZE STANDARDS FOR GOVERNMENT PROCUREMENT

The contracting officer will designate, as part of the solicitation, the applicable size standard for the government procurement. The size standard is based on the industry classification of the goods or services being procured. The proper NAICS industry is that which best describes the principal purpose of the procurement, considering the industry description in NAICS. When more than one NAICS is involved in a contract, consideration is to be given to the function of the goods and services being purchased and the relative value and importance of each. To bid on Federal contracts, the concern must self-certify in ORCA (and above) that it is a small business under the appropriate size standard set forth in the solicitation. The size of the concern at the time of self-certification prevails for that contract. A concern may grow above the size standard before or after award without loss of eligibility to perform on that contract. In the 8(a), HUBZone and SDB Programs, the concern must meet the size standard for its primary industry to be admitted to the program. Then it must meet the size standard for the NAICS industry assigned to each individual contract. If a procurement calls for two or more items with different size standards and the offeror must bid on all end items, it may qualify as a small business if it meets the common size standard for those items accounting for the greatest percentage of total contract value. If the offeror is not required to bid on all items, it may bid only on items for which it meets the size standard.

To be awarded a Government small business set-aside or 8(a) contract, the concern must perform at least a given percentage of the contract. This provision limits the amount of subcontracting a concern may enter into with other firms when performing these types of contracts. The provisions are as follow:

Construction – For general and heavy construction contractors, the prime contractor with its own employees must perform at least 15 percent of the cost of the contract, not including the cost of materials. For special trade construction, such as plumbing, electrical or tile work, this requirement is 25 percent.

Manufacturing – The prime contractor must do at least 50 percent of the cost of manufacturing, not including the cost of materials.

Services – The prime contractor’s own employees must perform at least 50 percent of the contract cost for personnel.

See 13 CFR §125.6, Prime contractor performance requirements (limitations on subcontracting), for more information.

PENALTIES FOR MISREPRESENTATION OF SIZE STATUS

In addition to other laws that may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d) provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for influencing in any way the actions of the Agency. (13 CFR §121.108)

SIZE PROTESTS AND NAICS APPEALS

Any party to a procurement may protest the self-certification of a bidder as a small business. The protest must follow certain procedures and shall include the specific reason(s) why the protester believes the challenged firm is not a small business. A protest must be sent to the contracting officer, who transmits it to an SBA Office of Government Contracting Area Office for a size determination of the challenged firm. Procedures for protest and appeal of size determinations are detailed in 13 CFR §121.1001 through §121.1010. Size determination and appeal procedures for SBA’s financial assistance programs are found at the same citation. An interested party may appeal an NAICS designation made by the contracting officer on a specific procurement that has been set aside for small business. The most likely reason for such an appeal would be to correct an NAICS classification to one with a different size standard. These appeals are sent directly to SBA’s Office of Hearings and Appeals (OHA) and must follow the required procedures. (Different rules apply to NAICS designations of 8(a) contracts.)

Parties interested in making a protest of appeal should avail themselves of the procedures governing the time limitations for appeals in effect at that time. These procedures are contained in 13 CFR § 121.1001 through §121.1103, and 13 CFR §134 (Office of Hearings and Appeals).

REVIEW AND REVISION OF SIZE STANDARDS

The SBA's Administrator has responsibility for establishing small business size standards. Requests to change existing or to establish a new size standard should be addressed to the Assistant Administrator for Size Standards in Washington, DC. The Office of Size Standards has the responsibility of reviewing industry and other relevant information and making recommendations to the Administrator. Important factors are the structure of the industry and the affect of the size standard on Federal procurement. Changes to size standards must follow the rulemaking procedures of the Administrative Procedure Act. A proposed rule changing a size standard is first published in the Federal Register allowing for public comment. Documentation establishing that a significant problem exists requiring a revision of a size standard, plus an economic analysis of the change, must be included in a proposed rule. Comments from the public, plus any other new information, are reviewed and evaluated before a final rule is promulgated which establishes a new size standard.

WHERE TO GET ADDITIONAL INFORMATION

Small business regulations are contained in 13 CFR § 121 and the Federal Acquisition Regulation 48 CFR §19. For the applicable size standard and for size standard questions, you may contact SBA in one of the Area Offices of the Office of Government Contracting, or in Washington, DC. The full table of small business size standards matched to NAICS codes is available on the SBA's Internet Web Site. Please visit <http://www.sba.gov/size/>. There are six area offices in SBA's Office of Government Contracting, listed below. Each has someone designated as a Size Specialist.

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| <p style="text-align: center;">Area I</p> <p>Office of Government Contracting Boston Area Office Small Business Administration 10 Causeway Street Room 265 Boston, MA 02222-1093 Tel: (617) 565-5622 or (631) 454-0750</p> | <p style="text-align: center;">Area IV</p> <p>Office of Government Contracting Chicago Area Office Small Business Administration 500 West Madison Street Suite 1250 Chicago, IL 60661-2511 Tel: (312) 353-7674</p> |
| <p style="text-align: center;">Area II</p> <p>Office of Government Contracting Philadelphia Area Office Small Business Administration Parkview Tower 1150 First Avenue Suite 1001 King of Prussia, PA 19406 Tel: (610) 382-5996</p> | <p style="text-align: center;">Area V</p> <p>Office Government Contracting Dallas Area Office Small Business Administration 4300 Amon Carter Boulevard Suite 116 Fort Worth, TX 76155 Tel: (817) 684-5302</p> |
| <p style="text-align: center;">Area III</p> <p>Office of Government Contracting Atlanta Area Office Small Business Administration 233 Peachtree Street, NE Suite 1805 Atlanta, GA 3030 Tel: (404) 331-7587, x 208</p> | <p style="text-align: center;">Area VI</p> <p>Office of Government Contracting San Francisco Area Office Small Business Administration 455 Market Street 6th Floor San Francisco, CA 94105 Tel: (415) 744-6844</p> |

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ADVISORY NOTICE

As stated above in the Introduction, this guidance paper is advisory only and summarizes in simplified form the most basic provisions of the complete regulations found in 13 CFR §121. Part 121 regulations are legally controlling.