



U.S. Small Business
Administration



U.S. Small Business
Administration

SBA's Small Business Learning Series

SB Size and Affiliation

Not intended for public distribution

Hosts

**Darryl V. Williams, Procurement Center Representative
SBA Office of Government Contracting
Area IV, Warren, MI**

**David S. Dierks, Procurement Center Representative
SBA Office of Government Contracting
Area IV, Minnesota**

Welcome to “SBA Virtual Learning 2024”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
<https://www.sba.gov/business-guide>
5. For more SBA training visit the SBA Learning Center website
<https://www.sba.gov/tools/sba-learning-center/search/training>

The APEX Accelerator Program

The APEX Accelerators are a vital resource partner.

- The APEX Accelerators posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting Officer Resources: “How APEX Accelerators partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest APEX Accelerators/Procurement Technical Assistance Center at <http://www.aptac-us.org>
- APEX Accelerator Information at <https://www.apexaccelerators.us/#/>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

FY2023

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QlZJiMLcc5o>
- December 7, 2022 – Subcontracting Program: <https://youtu.be/gMaaeGl8CBs>
- January 4, 2023 – Surveillance Review Program: <https://youtu.be/euUX4Jv6kRI>
- February 1, 2023 – HUBZone Program: <https://youtu.be/YGnS8e6idCc>
- March 1, 2023 – The Mentor Protégé Program: <https://youtu.be/A9KbCm4FP1c>
- April 5, 2023 – Non-Manufacture Rule (NMR): <https://youtu.be/AqwYMWoe9f0>
- May 3, 2023 – Size Program: https://youtu.be/45WZ_oPb1GY
- Jun 7, 2023 – Legislature and Regulatory Updates: <https://youtu.be/ljx9lajQJNY>
- July 5, 2023 – Market Research: [SBA First Wednesday Market Research - July 13, 2023](https://youtu.be/SBA_First_Wednesday_Market_Research_-_July_13,_2023)
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB): <https://youtu.be/QxcxJISRhnw>

FY2024

- October 4, 2023 - Certificate Of Competency: <https://youtu.be/VDZ-uuCLlWw>
- November 1, 2023 - 8(a) Program Updates: <https://youtu.be/6fN3dK0EShs>
- December 6, 2023: <https://youtu.be/sa29iONBtfk>
- January 3, 2024 - Compliance Reviews: https://youtu.be/WmZn_oa13-o
- February 7, 2024 – Limitations on Subcontracting: <https://youtu.be/fytGi6zhjXM>
- March 6, 2024 – Mentor Protégé Program: <https://youtu.be/ULmCzTe4c04>
- April 3, 2024 – Women-Owned Small Business Program: <https://youtu.be/E-R17-5lBn4>
- *May 9, 2024 - Participation Plans & Subcontracting Plans: <https://youtu.be/6OBLwxqdoZM>
- June 5, 2024 – Legislative and Regulatory Update: <https://youtu.be/iajaPOhtgHI>
- July 11, 2024 – HUBZone: <https://youtu.be/MJ9iL8dTOMk>
- August 7, 2024 – Market Research: <https://youtu.be/zg4ceGaqveE>

FY2025

- October 2, 2024 – SBA Size and Affiliation:

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2025 SCHEDULE

1:00 to 2:00 PM Central Time

2:00 to 3:00 PM Eastern Time

FY 2025	Date	Topic
1	October 2, 2024	SBA Size and Affiliation
2	November 6, 2024	TBA
3	December 4, 2024	TBA
4	January 1, 2025	TBA
5	February 5, 2025	TBA
6	March 5, 2025	TBA
7	April 2, 2025	TBA
8	May 7, 2025	TBA
9	June 4, 2025	TBA
10	July 2, 2025	TBA
11	August 6, 2025	TBA

The program schedule is for information only and is subject to change

Schedule Revisions may occur Due to Holiday or Programming Conflict

One Continuous Learning Point

- Self-service process for one CLP of credit: Many of you want to receive credit for today's training. You will be glad to know that today's training is worth one CLP. The slide presentation will include the training certificate on Slide 9. Fill, download the training certificate, copy and submit it through regular channels.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2025”

This Certificate is awarded to

Insert Your Name Here

For completion of

SBA Size and Affiliation

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

10/02/2024

DATE

Today's Speaker(s)

Stephanie Lewis

**National Subcontracting Program Manager
U.S. Small Business Administration
Office of Government Contracting**



U.S. Small Business
Administration



Size and Affiliation

Stephanie Lewis
Interim Size Program Manager
Office of Government Contracting

Topics Covered

➤ Size

- Size Standards
- NAICS Codes

➤ Affiliation

- Types of Affiliation
- Joint Ventures

➤ Size Protests



SIZE



Why is size important?

- Set-aside of contracts
- Assigning NAICS codes to contracts, subcontracts, and task orders
- Other situations
 - Programs of other agencies
 - SBA Certifications – VetCert, 8(a), WOSB/EDWOSB, SDVOSB, HUBZone
 - Obtaining federal property

WHAT'S NEW?

- SDVOSBs must now be certified by SBA as of Dec. 22, 2024
- SBA considering limiting when JVs can receive orders on a multiple award IDIQ contract (open hearing sessions) [Federal Register :: Tribal Consultation for HUBZone Program Updates and Clarifications and Potential Reforms Under Executive Order 14112](#)
- HUBZone proposed rule [Federal Register :: HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs](#)
 - Open for Comments until October 7, 2024

HUBZone Proposed Rule

- Ostensible Subcontracting - cannot be considered small when ostensible subcontracting is found
 - Considering allowing size protest based on ostensible subcontracting at the order level
- Defines five “extraordinary circumstances” under which a minority shareholder may have some decision-making authority without a finding of negative control
- Aligns and moves recertification size regulations to a new section - 13 CFR 125.12
- Size for Orders under a MAC
 - For an order under a MAC that itself was set aside/reserved for SB, size/status is determined as of the date of initial offer, including price, for the MAC (unless order-level size recertification is requested by the CO)
 - Where a CO requests size recertification with respect to a specific order, size is determined as of the date of initial offer (or other formal response to a solicitation), including price, for that specific order only.
 - Three narrow exceptions to the general rule that the date on which size is determined for an order against a MAC is dependent on whether the underlying MAC was set aside for small business or unrestricted
 - (1) Set-aside orders or agreements to be placed against GSA’s FSS Multiple Award Schedule (MAS) contracts – as of date of initial offer, which includes price, for the GSA FSS MAS contract
 - (2) 8(a) sole source awards issued against MACs - as of the date the order is offered to the 8(a) program
 - (3) When size recertification is triggered – on date of recertification (or on date of initial offer which includes price for an order if requested by a contracting officer)
 - Authorizes requests for a size determinations relating to size recertifications required by § 125.12
- Clarifies whether a contractor with a triggering recertification and recertifies as OTS (or no longer has the socioeconomic status) can receive future orders and options, and if it can receive them, whether those orders are counted as small or OTS

What is a Small Business?

- Organized for profit
- Place of business in the U.S.
 - And operates primarily in the U.S., or makes a significant contribution to the U.S. economy (i.e. jobs, taxes, US products)
- Each NAICS code has a receipts-based OR employee-based size standard
 - Each North American Industrial Classification System (NAICS) code has a small business size standard
 - Wholesale and Retail NAICS codes are not used in federal procurements

13 CFR 121.105

SBA Size Standards

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
541611	Administrative Management and General Management Consulting Services	\$25.5	
541612	Human Resources Consulting Services	\$29.0	
541613	Marketing Consulting Services	\$19.0	
541614	Process, Physical Distribution and Logistics Consulting Services	\$20.0	
541618	Other Management Consulting Services	\$19.0	
541620	Environmental Consulting Services	\$19.0	
541690	Other Scientific and Technical Consulting Services	\$19.0	
541713	Research and Technology in Nanotechnology ¹¹		1,000 ¹¹
541714	Research and Technology in Biotechnology (except Nanobiotechnology) ¹¹		1,000 ¹¹

← ALWAYS CHECK SIZE STANDARD CHART (i.e., this size standard increased to \$29 million from \$25.5)

It's important to recognize that a firm can be small for some NAICS while at the same time be 'other than small' (large) for others.

www.sba.gov/tools/size-standards-tool

How SBA sets size standards

- SBA has exclusive authority to set size standards
- Rolling reviews every five years
- Adjusts with Dept of Census NAICS codes every four years
 - Currently using 2022 NAICS/Size Standards
- Adjusted for inflation
- Changes apply to new solicitations (or mods before offer at discretion of agency)

Average Annual Receipts (AAR)

- Use Federal Tax Returns
- Cost of Goods Sold plus Total Income
- Average of last five completed fiscal years for procurements
 - For SBA Business Loan, Disaster Loan, Surety Bond, and Small Business Investment Company (SBIC) Programs, the three- or five-year average may be used (effective July 6, 2022)

Number of Employees

- Count all individuals employed on a full-time, part-time, or other basis.
- Average of number of employees for each of the pay periods for the preceding completed 24 calendar months (effective July 6, 2022)

Exclusions

- Inter-affiliate transfers
 - SBA Size Policy Statement No. 3 – exclude “all proceeds from transactions between a concern and its affiliates, **without limitation**”
 - Some amounts collected for another as an agent (listed in 13 CFR 121.104(a))

Inclusions

- Receipts or employees of all affiliates

Recognizing a small business

- General rule: Contracting Officer (CO) “shall” accept self-certification unless there is “a reason to question” the firm’s self-certification
- SAM self-certification
 - Must be updated every 12 months
 - Effective at time of offer
 - Can use date adjustment field to look up size for previous dates
 - **SAM contains a size representation for every company, for every NAICS code. Click on “see all” at bottom of the company’s size table.**

Assigning NAICS codes

- Best describes the principal purpose of the **product or service** being acquired
- The procuring agency assigns the NAICS, not the offeror(s)
 - See 13 CFR 121.402
- What is the primary purpose of the procurement?
 - For instance, if a procurement is for a generator (\$9000) and a building structure to house the generator (\$11,000), the primary purpose of the procurement is the generator so the generator's NAICS code should be assigned
- What constitutes most of the procurement's dollars?
 - For instance, if a pump (\$4000), a generator (\$9000) and a transformer (\$29,000) are being procured, the transformer's NAICS should be assigned since this comprises the majority of the procurement's dollars



AFFILIATION



Two types of Affiliation

- General Affiliation
 - On-going basis
- For a specific procurement
 - Joint venture
 - Affiliated only for the contract at hand

Affiliation

THE KEY TO SIZE IS AFFILIATION

A concern's size always includes the size of all of its domestic and foreign affiliates.
13 CFR §121.103(a)(6)

Separate divisions, subsidiaries, locations, CAGE codes, NAICS codes, product lines, state of incorporation, payment of taxes have **no bearing** on whether affiliation exists.

THE KEY TO AFFILIATION IS CONTROL

“Concerns are affiliated...if one concern **controls or has the power to control** the other, or a third party has the power to control both.”

13 CFR §121.103(a)(1); FAR §19.101

Affiliation Factors

- Common ownership
 - Common management
 - Identity of Interest (family members, common investments, dependent through contractual relationships)
 - Newly Organized Rule
 - Joint Ventures/Teaming
 - Franchises
-
- SBA Affiliation Guide at <https://www.sba.gov/document/support-affiliation-guide-size-standards>

For instance...

- I am trying to find out the size of a restaurant equipment supply business in the United States that I own 100% of but I also own all of the following :
 - ✓ 100% an ice cream parlor in Chicago
 - ✓ 50% of a furniture manufacturing plant in the Philippines
 - ✓ 75% of a non-profit business in Arizona
- None of them do any business with each other or have any connection with the others
- But they are all affiliated because the same person **controls** all of them through controlling stock ownership

Is a Teaming Agreement a Joint Venture or a Prime/Sub Relationship?

Can be either

Prime / Sub Relationship

- A potential **prime contractor** agrees with one or more other companies to have them act as its **subcontractors** under a specified Government contract



Joint Ventures (JV)

- JV must be in writing
- Must do business under its own name
 - Registered and identified in SAM.gov as a joint venture
 - Do business under its own name
- Organized for a specific and limited purpose – 2 year rule
- Can be a formal or informal partnership, a separate LLC, or other separate legal entity
- If a separate legal entity, JV cannot be populated with contract-performing for any set aside contract unless all parties to the JV are similarly situated entities (SSEs) - must be an unpopulated JV
 - The JV may have its own separate employees to perform administrative functions, including one or more Facility Security Officer(s)



Joint Ventures (JV)

- Each JV member must qualify as small for the NAICS code assigned to the procurement

JVP1 (AAR \$6 million) + JVP2 (AAR \$ 7 million)
Size Standard \$10 million = small business



- For a competitive 8(a) procurement, a joint venture the JV must also meet the requirements of [§ 124.513\(c\)](#) and [\(d\)](#) as of the date of the FPR for negotiated acquisitions and final bid for sealed bids
- A populated JV that is not comprised entirely of SSEs will be ineligible for any contract or agreement which is set aside.
- For a populated JV (whether involving similarly situated entities or not), SBA will aggregate the revenues or employees of all partners to the joint venture.
JVP1 (AAR \$6 million) + JVP2 (AAR \$ 7 million)
Size Standard \$10 million = not small business

13 CFR 121.103(h)(2)(i)

Mentor-Protégé JVs

- An SBA-approved mentor and protégé may bid on a federal procurement as a SB if the protégé is small
- The JV must meet the joint venture content and performance of work requirements for the type of set aside as of the date of FPR (negotiated acquisitions) or as of final bid (sealed bids), or for 8(a) sole source, prior to award:
 - 8(a) 13 CFR 124.513(c) and (d)
 - SBSA 13 CFR 125.8(b) and (c)
 - VOSB/SDVOSB 13 CFR 128.402(c) and (d)
 - HUBZone 13 CFR 126.616(c) and (d)
 - ED/WOSB 13 CFR 127.506(c) and (d)

13 CFR §121.103(h)(2)(ii)

- SBA must:
 - approve Mentor-Protégé Agreement (MPA) before offer
 - For 8(a) sole source procurements, SBA will determine as a part of the 8(a) firm's eligibility that it has complied with the provisions of 13 CFR 124.513(c) and (d) and SBA must approve a joint venture agreement (including addendums) before contract award.

13 CFR 124.501(g)(6) & 13 CFR 124.513(e)³

Ostensible Subcontracting

- A subcontractor is an ostensible subcontractor (and treated as a joint venture) if:
 - ✓ The subcontractor performs the **primary and vital requirements**, or
 - ✓ The prime contractor is **unduly reliant** upon the subcontractor
- Will not find ostensible subcontracting if contractor plus small subcontractors can meet the LOS
- In a general construction contract, the primary and vital requirements of the contract are the management, supervision and oversight of the project, including coordinating the work of various subcontractors, not the actual construction work performed

Size Recertification Requirements

GENERAL RULE: if the concern is small at the beginning, it is small for the life of the contract (including options).

EXCEPTION: recertification of size is required if there is a:

- ✓ **novation or**
- ✓ **merger or acquisition** without a novation **or**
 - ✓ If a merger, sale or acquisition occurs causes an offeror to become “other than small” after offer but prior to award, and was within 180 days of offer, the company is ineligible for contract award. If it occurs after 180 days after offer, the company may receive award but the agency cannot count it as a small business award.
- ✓ **“long-term contract” (over 5 years including options; includes MAS, MAC, and GWACS)**
- ✓ For long-term contracts, contractors must recertify before the end of the fifth year **and** every time an option is exercised thereafter.

13 CFR §121.404(g)(1)-(3); FAR §19.301-2



Size Protest & Appeals

Which Size Protests must be sent to the SBA?

ALL OF THEM

- Protests must be filed with CO, **not** SBA
 - COs must forward the protest to SBA
 - COs/agencies do not have the legal authority to:
 - decide a size protest;
 - ignore a size protest; or
 - advise the protester to modify, change, or resubmit the protest
- 13 CFR §121.1006(a); FAR §19.302(c)(1)

Size protests **ALWAYS** go to SBA **Area Offices**...not to SBA District Offices, not SBA Regional Offices, not SBA HQ.

Referral Procedure

- Notify unsuccessful offerors and then **wait five business days** before making award

FAR §15.503(a)(2)

- Which Area Office?

- The one that has jurisdiction over state in which HQ of **protested** concern is located

13 CFR §121.1003; FAR §19.302(c)(1)

SBA Size Specialists

Send protest to the contact where the protested concern is located:

Area 1 — CT, ME, MA, NH, NJ, NY, PR, RI, USVI, VT
Sandy.Liu@sba.gov or Malinda.Chen@sba.gov

Area 2 — DC, DE, MD, PA, VA, WV
Helen.Goza@sba.gov

Area 3 — AL, FL, GA, KY, MS, NC, SC, TN
Jessica.Gaskins@sba.gov

Area 4 — IL, IN, IA, KS, MI, MN, MO, NE, OH, WI
Philip.Maclean@sba.gov

Area 5 — AR, CO, LA, MT, NM, ND, OK, SD, TX, UT, WY
Mia.Fagley@sba.gov

Area 6 — AK, AZ, CA, GU, HI, ID, NV, OR, WA
Esmeralda.Sanchez@sba.gov

Status of award during protest

- May not make award for at least 15 business days (until SBA issues its formal determination)

13 CFR §121.1009(g)

- CO can award after 15 days—even if SBA’s size determination is not finished—by making a formal finding “in writing that there is an immediate need to award the contract **and** that waiting...will be disadvantageous to the Government.”

13 CFR §121.1009(a)(4)

“Other than Small” Determination

- Companies found “other than small”:
 - Are prohibited from self-certifying as small on any procurement with the same or a lower size standard
 - Must be recertified as small by SBA before self-certifying as small again;
 - Must notify COs with pending procurements; and
 - Must amend their size status in SAM and any other databases

UNLESS determination was contract specific (ostensible subcontracting or nonmanufacturer rule compliance)

Office of Hearings and Appeals (OHA)

- Any person adversely affected can appeal the size determination to OHA
- CO can also appeal
- File within 15 calendar days after issuance of the size determination
- Judge shall issue a size appeal decision, insofar as practicable, within 60 calendar days after close of the record
- OHA Prior Decisions – www.sba.gov/oha

Questions?

