

## What is a "Small Business"?

What do you think of when you read or hear the term "small business"? For most people, they likely imagine some kind of mom-and-pop type local business with a handful of employees and a few thousand dollars a week in revenue. However, for those well versed in federal government contracts, the mind probably conjures up a much larger operation. That is because in the realm of federal government contracting, a really small company may still have several million dollars in annual revenue. In fact, it's not unheard of to find a "small" business with annual revenue in the neighborhood of \$100 million. Given this—and the federal government's emphasis on contracting with small businesses—it is important for small government contractors to really understand what it means to be a "small business" for the purpose of government contracting.

The small business status of a company is basically determined in two different contexts: (1) for certification into one of the small business programs operated by the Small Business Administration or the Department of Veterans Affairs; and (2) for individual procurements.

### **Small Business Certifications**

Both the SBA and VA have programs to assist small businesses by increasing contracting opportunities with the federal government. Some of these programs (SBA: 8(a), HUBZone; VA: Veteran-Owned, Service-Disabled Veteran-Owned) require the small business to apply for certification before it can benefit from the program. The SBA/VA will examine the size of the business to determine if it is "small" and thus eligible for the applicable certification.

### NAICS Codes

To determine whether a business is "small," the SBA utilizes the North American Industry Classification System (NAICS codes) to establish size standards across different industries. There are two types of NAICS size standards: (1) revenue based size standards—which look at the company's annual revenue, and (2) employee based size standards—which look at the number of employees the company has. To be considered a small business, the subject company must fall under the applicable size standard for its industry. For revenue based NAICS codes, the company's total receipts from the three most recent fiscal years are averaged together. For employee based NAICS codes, the number of employees is calculated by taking the average number of employees for each pay period over the previous 12 months.

In order to determine if a company is small for small business certification purposes, the SBA/VA will look at that company's primary NAICS code. A company can compete for procurements under basically any NAICS code, but every company has one primary NAICS code that represents the majority of its work. In small business certification inquiries, the SBA/VA will determine if the company falls under the size threshold for the primary NAICS code, and if so, the company will be eligible for certification (there are obviously other factors for certification, but we're only talking about size at the moment).

### Certification

Once a small business is certified by the SBA or VA into one of the small business contracting programs, it is then eligible to compete for contracts set aside for that particular program. But the certification is only the first step in the process. The company must still meet the small business size standard applicable to whatever procurement it is pursuing.

### **Small for Individual Procurements**

While a company is determined to be small or other than small for certification purposes by its primary NAICS code, things work a little differently for individual procurements.

### Solicitation-Specific NAICS Codes

For each individual procurement, the contracting officer will generally designate in the solicitation one NAICS code and corresponding size standard (either employee or revenue based). Annual revenue and total employees are calculated with the same methods discussed above, however the numbers are compared to the threshold specific to the NAICS code listed in the solicitation rather than the company's primary NAICS code. For instance, a company with \$15 million in annual receipts and a primary NAICS code with a size standard of

\$17 million can be certified as small under one of the SBA/VA programs. However, that same company would not be an eligible small business on an individual procurement with a solicitation listing a NAICS code with a \$7 million size standard.

#### Certification of Size Status Required

When submitting its proposal, a contractor must certify to the agency that it meets the applicable size standard for that procurement. In procurements set aside for small businesses, the mere act of submitting a proposal is deemed to be an affirmative certification of the applicable small business status. Further, recent regulations have required an authorized official for any company submitting a proposal on a small business set-aside to sign the certification of the company's small business status. Misrepresenting small business status in connection with a government contract can result in civil and criminal penalties, as well as suspension or debarment, for both the individual and the company.

#### Challenges to Size Status

The contracting officer of a procurement, as well as the SBA, has the ability to challenge the size status of an offeror. However, absent credible evidence calling a company's size status into question, contracting officers are allowed to accept a company's self-certification. Thankfully, there are procedures by which other offerors to a procurement have the ability to file a protest with the SBA challenging the size status of an awardee. Whether a company meets the size standard of a solicitation is determined by the size of the company as of the date of the proposal. And generally, if a company is determined to be small on the date of proposal submission, it will be considered small for that particular contract, for the life of the contract.

#### **When Must a Company Be Small?**

A small business must register its size and disadvantaged status (HUBZone, 8(a), SDVOSB, etc.) in the federal government's System for Award Management—[www.sam.gov](http://www.sam.gov). Regulations require small businesses to update their status in SAM annually. In addition, each small business program has its own regulations dictating when a company must be small in order to be eligible to receive set-aside contracts. These regulations are quite expansive; however, below is a brief summary:

- General Small Business Set-Asides – The SBA will determine the size of the company as of the date of the proposal submission.
- 8(a) Business Development Program Set-Asides – Certification with the SBA is required. The company must be small as of the date of the certification and also as of the date of the submission of a proposal.
- HUBZone Set-Asides – Certification with the SBA is required. The company must be small as of the date of the certification and also as of the date of the submission of a proposal.
- Service Disabled, Veteran Owned Small Business Set-Asides (non-VA) – The company must self-certify as small as of the date of proposal submission.
- SDVOSB & Veteran Owned Small Business Set-Asides (VA) – Certification with the VA is required. The company must be small as of the date of the certification and also as of the date of the submission of a proposal.
- Small Disadvantaged Business Set-Asides – The company must be certified as a small disadvantaged business by either the SBA or the procuring agency. The company must be small as of the date of the certification, and as of the date a proposal is submitted.
- Women Owned Small Business Set-Asides – The company must certify as a WOSB or Economically Disadvantaged WOSB with the SBA, and be listed in the SAM database as WOSB or EDWOSB prior to the date of proposal submission.

#### **Conclusion**

The federal government has a goal that 23% of all federal contracting dollars go to small businesses. Given that the federal government spends over \$400 billion on goods and services, the amount aimed for small business contractors is quite significant. The most recent data from the Federal Procurement Data System shows that nearly \$90 billion dollars went to small businesses in fiscal year 2012. Thus, a proper understanding of what qualifies as a "small business" is fundamental

