



U.S. Small Business
Administration



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SBA's Small Business The Size Program

Not intended for public distribution

Hosts

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Welcome to “SBA Virtual Learning 2023”

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.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APEX/APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs 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.

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QIZJiMLcc5o>
- 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:
- Jun 7, 2023 – Legislature and Regulatory Updates:
- July 5, 2023 – Market Research:
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB):

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2023 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2023	Date	Topic
1	October 5, 2022	8(a) Business Development Program Updates
2	November 2, 2022	Surety Bond Guarantee Program
3	December 7, 2022	Subcontracting Program
4	January 4, 2023	Surveillance Review Program
5	February 1, 2023	HUBZone Program
6	March 1, 2023	The Mentor Protégé Program
7	April 5, 2023	Non-Manufacture Rule (NMR)
8	May 3, 2023	Size Program
9	June 7, 2023	Legislature and Regulatory Updates
10	July 5, 2023	Market Research
11	August 2, 2023	Service-Disabled Veteran Owned Program (SDVOSB)

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

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 2023”

This Certificate is awarded to

Insert Your Name Here

For completion of

The Size Program

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

5/03/2023

DATE

Today's Speakers

Sandy Liu

Industrial Specialist

Office of Government Contracting, Area I

U.S. Small Business Administration

Malinda Chen

Industrial Specialist

Office of Government Contracting, Area I

U.S. Small Business Administration



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The Size Program

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Topics Covered

- Size
 - ✓ Size Standards
 - ✓ NAICS Codes
 - ✓ Non-Manufacturer Rule (NMR)

- Affiliation
 - ✓ Types of Affiliation
 - ✓ Joint Ventures
 - ✓ Mentor-Protégé Program

- Size Protests & Appeals



SIZE



Why is size important?

- ❑ Federal procurement: Size qualification for set-aside contracts
- ❑ Other situations
 - ✓ SBA Programs/Certifications: 8(a), Women-Owned Small Business (WOSB) , HUBZone, SBA Financial Assistance
 - ✓ Programs of other agencies – patents and licensing
 - ✓ Obtaining federal property

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
- ❑ Must meet the size standard for the North American Industrial Classification System (NAICS) code
 - ✓ Its size must include all affiliate(s).

- 13 CFR § 121.105 & 13 CFR § 121.201

Assigning NAICS Codes

- For prime contracts
 - ✓ Determined by procurement agency
 - ✓ Best describes the principal purpose of the **product or service** being acquired

- For subcontracts
 - ✓ Determined by prime contractor
 - ✓ Reflects product or service being procured in the subcontract

NAICS code and Size Standard

- ❑ Each North American Industrial Classification System (NAICS) code has a small business size standard
- ❑ Each NAICS code has a monetary-based or employee-based size standard

Wholesale and retail NAICS are not used in government procurements

SBA Size Standards



NAICS	NAICS U.S. Industry Title	2017 Size Standard	2023 Size Standard
236220	Commercial and Institutional Building Construction	\$36.5 million	\$45.0 million
541310	Architectural Services	\$7.5 million	\$12.5 million
541320	Landscape Architectural Services	\$7.5 million	\$9.0 million
541330	Engineering Services	\$15.0 million	\$25.5 million
541330 Exception 1	Military and Aerospace Equipment and Military Weapons	\$38.5 million	\$47.0 million
332322	Sheet Metal Work Manufacturing	500 employees	500 employees
334413	Semiconductor and Related Device Manufacturing	1,250 employees	1,250 employees

Size Standards Tool: <https://www.sba.gov/size-standards/index.html>

Table of size standards: <https://www.sba.gov/document/support-table-size-standards>

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.

Company X's SAM profile

Company X is both a small and other than small business -

It is small for NAICS codes 334519, 336411, 336413 and 336992

It is large for NAICS codes 488190, 493190, 541330 and 541330

NAICS Code	Name	NAICS Exception	Size Standard	Small Business?
334519	Other Measuring and Controlling Device Manufacturing		500	Y
336411	Aircraft Manufacturing		1500	Y
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing		1250	Y
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing		1500	Y
488190	Other Support Activities for Air Transportation		\$40,000,000	N
493190	Other Warehousing and Storage		\$36,500,000	N
541330	Engineering Services	1	\$25,500,000	N
541330	Military and Aerospace Equipment and Military Weapons	2	\$47,000,000	N

How SBA sets Size Standards

- ❑ SBA has exclusive authority to set size standard for each NAICS code
- ❑ Rolling reviews every five years
- ❑ Adjustments for inflation
- ❑ Adjustments for Dept of Census NAICS codes every five years

- 13 CFR § 121.102

Recent Final Rules Increasing Size Standards: Revised Monetary Based Size Standards [87 FR 18607](#) ; [87 FR 18627](#); [87 FR 18646](#); [87 FR 18665](#) (March 31, 2022)

- ❑ SBA issued four final rules to address monetary-based size standards, including all those used in government procurement
- ❑ Reviewed 468 size standards
 - ✓ 229 increases
 - ✓ No decreases because of COVID-19
- ❑ 2022 NAICS/Size Standards effective on **October 1, 2022.**
- ❑ 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 **5** completed fiscal years for procurements (effective January 6, 2022).

- 13 CFR § 121.104

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 (change from 12 month to 24 months average effective July 6, 2022).

- 13 CFR § 121.106

Exclusions

- ❑ Listed in 13 CFR § 121.104(a)
- ❑ 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 (for example, travel agent)

Inclusions

- ❑ Receipts or employees of all affiliates

Recognizing a small business

- ❑ General rule: Contracting Officer “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 “**Version**” field to look up size for previous certifications

SAM contains a size representation for every company, for every NAICS code. Click on “**View More**” at bottom of the company’s size table.

For Instance...

FAR 52.219-1

Small Business Program Representations

Nov 2020

The NAICS Codes you selected on the Goods and Services page of this registration are listed in the table under 52.219-1(c). Those NAICS Codes for which you are identified as small serve to complete the small business concern representation in 52.219-1(c)(1).

(c) Representations

NAICS Code	Name	NAICS Exception	Size Standard	Small Business?
334413	Semiconductor and Related Device Manufacturing		1250	Y
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing		1250	Y
423690	Other Electronic Parts and Equipment Merchant Wholesalers		250	Y
423710	Hardware Merchant Wholesalers		150	Y
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers		175	Y

[View More](#)

Click here

Manufacturing Contracts

- ❑ On a small business set-aside contract, the offeror must either be the manufacturer or meet the requirements of the Non-Manufacturer Rule

- 13 CFR § 121.406

- ❑ Non-Manufacturer Rule (NMR) training was presented during SBA First Wednesday Training on April 5, 2023. The YouTube link is <https://youtu.be/AqwYMWoe9f0>

- ❑ Non-Manufacturer Rule does not apply to subcontracts

**Watch SBA First Wednesday
Training on YouTube**



Non-Manufacturer Rule (NMR)

- If the contract is over the Simplified Acquisition Threshold (currently \$250,000), a small business must:
 - ✓ (i) have **less than 500** employees;
 - ✓ (ii) be **primarily engaged** in the retail or wholesale trade and **normally** sells the type of item being supplied;
 - ✓ (iii) take **ownership or possession** of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
 - ✓ (iv) supply the **end item** of a small business manufacturer made in the United States **OR** obtain a waiver of such requirement...
 - 13 CFR §121.406(b)(1)

- Non-Manufacturer Rule Waivers may be either class or individual and must be in place **before** receipt of offers. Procedures are contained in 13 CFR § 121.1204.

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)

- ❑ Two types of affiliation -
 - ✓ General Affiliation - On-going basis
 - ✓ Procurement Only - Applies only to the specific procurement

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)

How does control arise?

- SBA considers many factors when deciding whether control exists:
 - ✓ stock ownership
 - ✓ stock options and convertible securities
 - ✓ agreements to merge
 - ✓ common management
 - ✓ identity of interest
 - ✓ economic dependence
 - ✓ previous relationships or ties (e.g., spin-offs)
 - ✓ franchises/licenses and joint ventures
 - ✓ ostensible subcontracting
 - ✓ negative control
 - ✓ potential control (need not be actual)
 - et cetera*

- 13 CFR §121.103

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



- 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



Small Business Joint Ventures (JV)

- ❑ JV must be in writing and registered in SAM
- ❑ Organized for a specific and limited purpose
- ❑ Each JV member must qualify as small for the NAICS code assigned to the procurement (exception for SBA-approved mentor-protégé JVs)



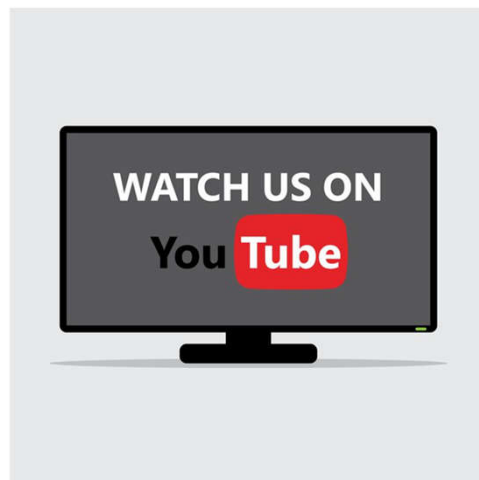
- 13 CFR § 121.103(h)

Mentor-Protégé JVs

- ❑ An SBA-approved mentor and protégé may bid on a federal procurement as an SBC **if** the protégé is small....

- 13 CFR §121.103(h)(ii)

- ❑ SBA must:
 - ✓ approve mentor-protégé agreements before offer
 - ✓ approve JV agreement before award - for 8(a) sole source awards only
 - ✓ For other types of procurements, the joint venture agreement may be examined in a size or status protest



- ❑ The Mentor Protégé Program was presented during SBA First Wednesday Training on March 1, 2023. The YouTube link is <https://youtu.be/A9KbCm4FP1c>

Ostensible Subcontracting

- ❑ A subcontractor is an ostensible subcontractor if:
 - ✓ is not a similarly situated entity
 - ✓ The subcontractor performs the **primary and vital requirements**, or
 - ✓ The prime contractor is **unduly reliant** upon the subcontractor
- ❑ An ostensible subcontractor will be treated as a joint venture.

- 13 CFR § 121.103(h)(2)

SIZE PROTESTS

What is a size protest?

- ❑ A size protest is a challenge to a proposed awardee's size.
- ❑ Likely receive size protests for set-aside procurements, i.e., Small Business Set-Aside, HUBZone Small Business set-aside, Service-Disabled Veteran-Owned Small Business set-aside, etc.
- ❑ If SBA determines that the prospective awardee is not a small business, it can lose the award.



Who may file a size protest?

For set-aside procurements (including partial set-aside) –

- Any offeror that the contracting officer has not eliminated from consideration for any procurement related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;
- The contracting officer;
- The SBA Officials
 - ✓ The Area Director;
 - ✓ The Director for Office of Government Contracting,
 - ✓ The Associate General Counsel for Procurement Law
- Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question.

- 13 CFR § 121.1001(a)(1)

Who may file a size protest?

For competitive 8(a) contracts–

- ❑ Any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

- ❑ The contracting officer;

- ❑ The SBA Officials
 - ✓ The SBA District Director, or designee;
 - ✓ The Associate Administrator for Business Development,
 - ✓ The Associate General Counsel for Procurement Law

- 13 CFR § 121.1001(a) (2)

Who may file a size protest?

For Subcontracting Program –

- The prime contractor;
- The contracting officer;
- Other potential subcontractors;
- The SBA Officials
 - ✓ The Area Director;
 - ✓ The Director for Office of Government Contracting,
 - ✓ The Associate General Counsel for Procurement Law
- Other interested parties.

- 13 CFR § 121.1001(a)(3)

When can agency receive size protests ?



Anytime!!

More likely within ...

- 5 working days after CO sending out pre-award notifications.

or

- 5 working days after award notifications being posted on SAM.gov.

or

- 5 working days after bid openings.

Which Size Protests Must be Sent to SBA?

ALL OF THEM

- ❑ Protests must be filed with CO, **not** SBA.
- ❑ COs must forward all size protests to SBA.
- ❑ COs/agencies do not have the legal authority to:
 - ✓ decide a size protest;
 - ✓ ignore a size protest;
 - ✓ advise the protester to modify, change, or resubmit the protest.

- 13 CFR §121.1006(a); FAR §19.302(c)(1)

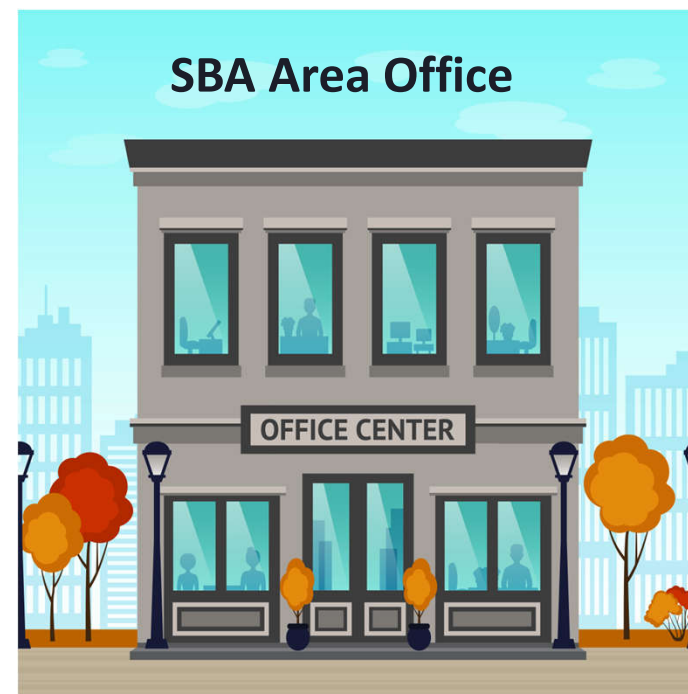
Which office do you send your size protest to?

ALWAYS send your size protests to:

SBA **Area Office** that has jurisdiction over state in which HQ of **protested concern** is located.

DO NOT send your size protests to:

- ✓ SBA District Offices
 - ✓ SBA Regional Offices
 - ✓ SBA HQ
- 13 CFR §121.1003; FAR §19.302(c)(1)



SBA Area Offices

Area Office	If the headquarters of a protested concern is located in:	Forward the protest to the SBA Office of Government Contracting:
I	CT, ME, MA, NH, NJ, NY, RI, VT	26 Federal Plaza, Room 3100, New York, NY 10278 Carolyn Clark, (212) 264-3231 Carolyn.clark@sba.gov
II	DE, DC, MD, PA, VA, WV	1150 First Avenue, Parkview Towers, King of Prussia, PA 19406 Helen Goza, (610) 382-3190 Helen.Goza@sba.gov
III	AL, FL, GA, KY, MS, NC, SC, TN	233 Peachtree Street NE, Atlanta GA 30303 Eddie King, (202) 941-8051 eddie.king@sba.gov
IV	IL, IN, IA, KS, MI, MN, MO, NE, OH, WI	65 E. State St, Suite 1350, Columbus OH 43215 Philip MacLean, (614) 692-1894 philip.maclean@sba.gov
V	AR, CO, LA, UT,WY, NM, OK, TX, MT, ND, SD	721 19th Street, 4th Floor, Denver CO 80202 Mia Fagley, (303) 927-3487 mia.fagley@sba.gov
VI	AK, AZ, CA, HI, ID, NV, OR, WA, Guam	455 Market Street, 6th floor, San Francisco, CA 94105 Esmeralda Sanchez, (415) 744-4242 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) unless CO “determines in writing that an award must be made to protect the public interest.”

- 13 CFR §121.1009(a)(2); FAR §19.302(g)(1)

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)(3); FAR §19.302(g)(2)



When sending a size protest to SBA...

CO's referral letter must include the following information to allow SBA to determine timeliness and standing:

- The protest and any accompanying materials.
- A copy of the size self-certification.
- Identification of the applicable size standard.
- A copy or an electronic link to the solicitation and any amendments.
- The name, address, telephone number, email address of the contracting officer.
- Identification of the bid opening date or the date of notification provided to unsuccessful offerors.
- The date the contracting officer received the protest.
- A complete address and point of contact for the protested concern and the protestor.
- CO shall inform SBA if there is also a GAO protest

- 13 CFR § 121.1006(b); FAR § 19.302(c)(3)

Processing a Size Protest

- ❑ If timely and specific, SBA (not CO) will notify the protested concern; firm has 3 business days to respond.
- ❑ SBA has 15 business days to render its determination—assuming there is no extension.

- 13 CFR §121.1009(a)

- ❑ Copy of final determination will be sent to the protester, the protested concern, and the CO.

“Other than Small” Determinations

- ❑ UNLESS determination was contract specific, companies that were found to be “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 or OHA reverses the determination ;
 - ✓ Must notify contracting officers with pending procurements;
 - ✓ Must amend their size status in SAM.gov or its successor databases within **2 days** after **final** other than small size determinations.

Office of Hearings and Appeals (OHA)

- ❑ Any person adversely affected by a size determination can appeal to OHA
- ❑ Contracting Officer can also appeal
- ❑ File within **15 calendar days** after receipt of the size determination
- ❑ Judge shall issue a size appeal decision, in so far as practicable, within **60 calendar days** after close of the record.





Things to keep in mind when filing a size protest


- ❑ Protests must be in connection with a “particular” (i.e., pending) procurement
- ❑ Protester must have standing to protest or will be dismissed
- ❑ In order to affect a specific solicitation, a protest must be timely.
- ❑ Date of debrief is irrelevant for protest purposes
- ❑ Size protests cannot be used to vet potential awardees
- ❑ Premature protests (i.e., before notification of successful offeror) will be dismissed, even if made by CO

Things to keep in mind when filing a size protest

- A protest must contain “specific, detailed evidence to support the allegation that the offeror is not small.”

 Example 1: Concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard); this is **non-specific**.

 Example 2: Concern X is affiliated with concern Y without providing any basis for why X and Y are affiliated; this is **non-specific**.

 Example 3: Concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns; this is **sufficiently specific**.

- 13 CFR §121.1007; FAR §19.302(c)(2)

Relevant Websites

SBA “Affiliation Guide for size standards”

<https://www.sba.gov/document/support-affiliation-guide-size-standards>

SBA Federal contracting “Governing rules and responsibilities”

<https://www.sba.gov/federal-contracting/contracting-guide/governing-rules-responsibilities>

Bureau of the Census, NAICS code information

<https://www.census.gov/naics/>

Thank you for your time.

Any Questions?

