

Small Business Set Asides: How to Qualify and Compete

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Presented by: Sarah Osborne

SBA Overview

Small Business Program Qualifications and Registrations

How To Qualify For Set-Asides

Set-Asides Generally

Specific Set-Aside Programs And Direct Awards

Size Challenges and Protests

Agenda Items

Small Business Administration

- Congressional authority to administer programs to assist small businesses
 - 15 U.S.C. § 631
- General procurement functions:
 - Small business size standards
 - Rules on size appeals
 - Responsibility determinations
- Size Standard
 - Size standards are established by the SBA and represent numerical definitions for specific NAICS codes
 - 13 C.F.R. § 121.201
 - Average annual sales or the number of employees
 - Used to determine eligibility for government preferences and reservations for small businesses

Size Determinations

- When a procurement is directed to small businesses, the contracting officer is required to identify the appropriate NAICS code in the solicitation, [FAR 19.303](#) (a)
- Self-certification: [13 C.F.R. § 121.405\(a\)](#)
 - **Annual receipts:** [13 C.F.R. Part 121](#)
 - Average annual receipts (that is, its total income added to its cost of goods sold, as reported on the company's tax returns) over its preceding five completed fiscal years
 - SBA will allow firms to choose either a 3-year or a 5-year receipts calculation period until January 6, 2022
 - **Employee calculation:** [13 C.F.R. Part 121](#)
 - Average number of people employed for each pay period over the business's latest **12** calendar months
 - Any person on the payroll must be included as one employee regardless of hours worked or temporary status
 - **Affiliates:** [FAR 19.101](#); [13 C.F.R. § 121.103](#)
 - Shared control, common owners or management, percentage of revenue/reliance on large business

8(a) BD Program

- General Requirements:
 - Is a small business
 - Has not participated in the 8(a) BD Program before
 - Is at least **51%** owned and controlled by U.S. Citizens who are economically and socially disadvantaged
 - Requirements to qualify for economic and social disadvantage are found in 13 C.F.R. 124 et seq
 - The owner of the business has a personal net worth of less than **\$750,000**, AGI of **\$350,000** or less, and **\$6M** or less in assets

Registration for 8(a) BD Program

The SBA has a seven-step process to apply for the 8(a) BD Program which are as follows:

- 1 View the SBA online course Pre 8(a) Business Development Program Module 1-Setting Expectations.
- 2 Get official copies of all governing documents required by the state of business.
- 3 Get a free D-U-N-S number from Dunn and Bradstreet.
- 4 Obtain a free Tax Identification Number (TIN) or Employer Identification Number (EIN) from the IRS.²⁷
- 5 Create a profile in the federal government's System for Award Management (SAM).
- 6 Get a free SBA General Login System user ID.
- 7 Complete and submit the free 8(a) online application.

Registration for 8(a) BD Program

How Must Application Be Filed

According to 13 CFR § 124.202, all applications for the 8(a) BD Program must be filed online at <http://sba.gov>. Each SBA district office can provide additional information to the applicant.

Forms Required for Application

The forms and information required by the SBA vary depending on the business structure and whether the firm has participated in other SBA programs. However, the forms and attachments required could likely include financial statements, personal and business tax returns, personal and business bank statements, and personal history statements. Signatures of individuals claiming a disadvantaged status is also required. 13 CFR § 124.203.

Registration for 8(a) BD Program

SBA's Process of Application:

Within **15** days of receiving an application, the SBA will inform the applicant whether the application is complete and if not, what additional information is needed. Once any additional information is supplied, the SBA will process the application within **90** days.

The applicant is required to inform the SBA if any changes have occurred since submitting the application. 13 CFR § 124.204.

WOSB/EDWOSB Qualifications

General Requirements:

- Ownership: 51% or more owned and controlled by women who are U.S. citizens
- Unconditional Control: Women have total control over voting and major decisions
- Managerial Control: Women hold highest officer position and manage day-to-day operations
- Qualifies as a small business

EDWOSB:

- Be owned and controlled by one or more women, each with a personal net worth less than \$750,000
- Be owned and controlled by one or more women, each with \$350,000 or less in adjusted gross income averaged over the previous three years
- Be owned and controlled by one or more women, each \$6 million or less in personal assets

Registration for WOSB / EDWOSBs

- Self Certification option was eliminated effective Oct. 15, 2020. The certification may be performed by SBA, other federal agencies, or a certifying entity approved by SBA.
- All WOSB firms need to take action in beta.certify.sba.gov in order to compete for WOSB Federal Contracting Program set-aside contracts
- There are four organizations approved by SBA to provide third-party certification. They are:
 1. [El Paso Hispanic Chamber of Commerce](#)
 2. [National Women Business Owners Corporation](#)
 3. [U.S. Women's Chamber of Commerce](#)
 4. [Women's Business Enterprise National Council](#)
- SBA retains ultimate authority

Registration for WOSB/EDWOSB

- Similar to 8(a) program, obtain DUNS, sam.gov, and SBA.gov registrations.
- SBA's new, free online certification process for WOSBs and EDWOSBs is live on beta.certify.sba.gov.
- Prepare documentation to prove:



HUBZone Qualifications

General Requirements:

- Be a small business
- Be at least **51%** owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe
- Have its principal office located in a HUBZone
- Have at least **35%** of its employees living in a HUBZone
- <https://maps.certify.sba.gov/hubzone/map>

Registration for HUBZone Program

- Similar to 8(a) program, obtain DUNS, sam.gov, and SBA.gov registrations
- Submit all requested supporting documentation and respond timely to all follow-up requests from HUBZone team (e.g., **5** business days)
- Check that your status was updated in DSBS and SAM. Within **48** hours of your approval, SBA will automatically update your status in DSBS and SAM
- Applications should be processed within **60** days

SDVOSB Qualifications

- “Service disabled veteran owned small business” (SDVOSB) means a concern that is at least **51%** unconditionally and directly owned by one or more veterans with a service-connected disability.
- Non-manufacturers. An SDVOSB which is a non-manufacturer may submit an offer if it satisfies the general non-manufacturer rule (13 CFR § 121.406(b)(1)).
 - Generally (and subject to various rules/waiver), the non-manufacturer rule requires that if a contract is set aside for small businesses, then the final manufactured product must be produced by a small business.

Registration for SDVOSB

- You can self-represent your business to the federal government as being owned by a service-disabled veteran via [SAM.gov](https://sam.gov).
- To gain access to VetBiz for set-aside information:
 1. Create a DS or ID.me logon account or registration.
 2. Select Help Center for assistance with DS or ID.me logon
 3. Create a Vendor Information Page (VIP) account <https://vetbiz.va.gov/vip/>, log into VIP and select “Apply for Verification”.
 4. Upload required documents into the VIP profile.
 - Required documents for business structure, e.g., LLC, Inc, etc.
 - <https://www.va.gov/OSDBU/docs/RequiredDocuments-for-VIP-Application-4Dec2018.pdf>
 5. Submit completed online application to the Center for Verification and Evaluation (CVE).

Mentor-Protégé Program

13 CFR 125.9

The small business mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts.

Small Business Mentor-Protégé Program

Who can be a mentor?

“Any concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor.”

Who can be a protégé?

“In order to initially qualify as a protégé firm, a concern must qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code.”

What are the benefits?

The ability to form a joint venture; exception from affiliation.

Mentor-Protégé Program

13 CFR 125.9

- A mentor and its protégé can joint venture as a small business for any small business contract, provided the protégé individually qualifies as small. The joint venture may also pursue any type of set-aside contract for which the protégé qualifies, including contracts set aside for 8(a), service-disabled veteran-owned, women-owned, and HUBZone businesses.
- The ability to form a joint venture; exception from affiliation
- Note that Protégé must perform at least 40% of the work (cannot rely on similarly situated small business)

Small Business Joint Ventures

13 CFR 125.8

- Who can joint venture? Small business concerns, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract; and mentor-protégé firms
- There must be a joint venture agreement, meeting certain criteria
- Provides an exception to affiliation under certain circumstances (13 CFR 121.103(h)):
 - Rule has recently changed from **3-in-2**; a joint venture can now be awarded contracts over a two-year period
 - The same entities can form more than one joint venture, but at some point the SBA will find the entities to be affiliated

Small Business Set Asides: General Principles

- Small Business Set-asides
 - Rule of Two: FAR 19.502-2
 - Acquisitions over **\$250,000** are to be set-aside for small businesses when there is a reasonable expectation that offers will be obtained from at least two responsible small businesses.
 - Status
 - 8(a) Business Development Program
 - Woman-Owned Small Business Program
 - Service-disabled Veteran Owned Small Business
 - HUBZone

Small Business Set Asides: General Principles

- Subcontracting limitations apply to contract set-asides for small businesses when the contract amount exceeds **\$150,000**, and all other set-aside or sole-source contracts under the 8(a), HUBZone, SDVOSB, and WOSB programs.
 - **Service contracts:** The small business prime contractor must provide at least **50%** of the contract cost for personnel.
 - **Supply contracts:** The small business prime contractor must perform work for at least **50%** of the cost of manufacturing the supplies, not including the cost of materials, unless the business qualifies as a non-manufacturer.
 - **General construction contracts:** The small business prime contractor must perform at least **15%** of the cost of the contract with its own employees, not including the cost of materials.
 - **Specialty construction contracts:** The small business prime contractor must perform at least **25%** of the cost of the contract with its own employees, not including the cost of materials.
 - Work performed by similarly-situated small business may be excluded from the calculation

The 8(a) Program

- Set-Asides:
 - Reasonable Expectation that at least two qualified 8(a) small businesses will submit offers
 - Resulting contract can be awarded at fair market price
 - Estimate exceeds **\$7M** for manufacturing and **\$4M** for other requirements
- Sole Source Awards available if:
 - Responsible, fair market price offer
 - Up to **\$4M** for goods and services and **\$7M** for manufacturing per contract, up to **\$100M** or five times the value of its primary NAICS code over the life of the entity's participation in the 8(a) BD Program (whichever is less).

The 8(a) Program

Alaskan Native Corporations and Indian Tribal Organizations

- To participate in the 8(a) Program, Indian Tribal Organizations and ANCs must be “small” under their primary NAICS Code.
- However:
 - ANCs are not subject to the social or economic disadvantage requirements.
 - Indian Tribal Organizations:
 - If the Indian Tribe is economically disadvantaged, businesses owned by the Tribe are economically disadvantaged;
 - Social disadvantage is presumed
 - Both are eligible for sole source awards above the competitive threshold even if there 2+ qualified firms (19.805-1(b)(2))

Contracting With HUBZone Firms

- Offers from two or more qualified HUBZone concerns and award will be made at fair market price
- Set-Asides not required if:
 - A mandatory source will be used (e.g., Ability One);
 - Order will be placed against an ID/IQ or Federal Supply Schedule contract
 - An 8(a) is currently performing the work Contract is less than the micro-purchase threshold (**\$10,000**) (FAR 19.1304)

Direct Award Contracting With HUBZone Firms

- FAR 19.1306:
- CO “shall consider” a sole source award to a HUBZone firm if:
 - Contract amount not expected to exceed **\$7.5M** (manufacturing) or **\$4.5M** (all other NAICS codes);
 - There is a reasonable expectation that two or more qualified HUBZone SBCs are not likely to submit offers;
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries; is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1304);
 - Award can be made at a fair and reasonable price; and
 - Award is higher than the micro-purchase threshold.
 - Note: The SBA has the right to appeal the contracting officer’s decision not to make a HUBZone sole source award. (FAR 19.1306(b))

SDVOSBs

Sole Source Awards - FAR 19.1406

- CO “shall consider” a sole source award to an SDVOSB if:
 - There is no reasonable expectation that offers would be received from two or more responsible SDVOSBs
 - Contract is less than **\$7M** (manufacturing) or **\$4M** (all other NAICS codes)
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1404)
 - Award can be made at a fair and reasonable price

****Note: The SBA has the right to appeal the contracting officer’s decision not to make a SDVOSB sole source award. (FAR 19.1406(b))****

Women-Owned Small Business Program

- Set-asides authorized only in SBA-designated industries (<http://www.sba.gov/WOSB>).
- The dollar thresholds for WOSB/EDWOSB set-asides were eliminated via FAC 05-67.
- Set-asides to EDWOSBs and WOSBs are authorized in “underrepresented” industries if:
 - CO expects 2+ ED/WOSBs will submit offers
 - Contract award may be made at a fair and reasonable price

Women-Owned Small Business Program

Direct Award - 19.1506

- CO “shall consider” a sole source award to an EDWOSB or WOSB if:
 - The acquisition is assigned a NAICS code in which SBA has determined that EDWOSB/WOSB concerns are underrepresented in Federal procurement
 - The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB/WOSB concerns
 - Contract is less than **\$7M** (manufacturing) or **\$4.5M** (all other NAICS codes)
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries; is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1504)
 - Award can be made at a fair and reasonable price

****Note: The SBA has the right to appeal the contracting officer’s decision not to make a EDWOSB/WOSB sole source award. (FAR 19.1506(d))****

Size/Status Protests and Appeals

- Size Protests
 - Protest to CO or SBA area office **5** business days after unsuccessful bidder notified
 - SBA will make size determination within **15** business days
 - If not small/eligible, CO must set aside award
- Status Protest
 - Protest to CO 5 business days after notice of successful offeror or opening sealed bid
 - SBA will make size determination within **15** business days
 - If not small/eligible, CO must set aside award
- The Office of Hearings and Appeals (OHA) hears quasi-judicial appeals of certain SBA program decisions. 13 C.F.R. § 134.102.
- Appeals to OHA
 - Due **15** calendar days after receiving the size determination
 - [13 C.F.R. § 121](#); [13 C.F.R. §§ 134.101-317](#) (OHA Regulations)

Questions?



Sarah Osborne

Associate
Huntsville, AL

sosborne@bradley.com

256.517.5127