



Meeting the Small Business Classification as Defined by the Small Business Administration

Issue:

This brief explains the verification requirement that an applicant provide documentation that it meets the classification of a small business as defined by the Small Business Administration (SBA).

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans applies equally to Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulations:

13 CFR § 125.11 provides:

Veteran owned small business concern means a small business concern:

(1) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans. All of the provisions of subpart B of this part apply for purposes of determining ownership and control.

38 CFR § 74.1 provides “[s]mall business concern (SBC) has the same meaning given to such term in 13 CFR part 125.”

13 CFR § 125.11 provides “[s]mall business concern means a concern that, with its affiliates, meets the size standard corresponding to the NAICS code for its primary industry, pursuant to

part 121 of this chapter.”

13 CFR § 121.101(a) provides “SBA’s size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ‘small business’ concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).”

13 CFR § 121.1002 provides “[t]he responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination...”

13 CFR § 125.8(a) provides “[a] joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, or qualify as small under one of the exceptions to affiliation set forth in § 121.103(h)(3) of this chapter.”

13 CFR § 121.103(h)(3) provides “[a] joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.”

13 CFR § 121.103(h)(3)(iii) provides “[t]wo firms approved by SBA to be a mentor and protégé under §124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the

size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in §124.519 of these regulations...”

38 CFR § 74.2(e) states “[a]ny firm verified in the VIP database that is found to be ineligible by a SDVOSB/VOSB status protest decision will be immediately removed from the VIP database, notwithstanding the provisions of §74.22. Any firm verified in the VIP database that is found to be ineligible due to a U.S. Small Business Administration (SBA) protest decision or other negative finding may be immediately removed from the VIP database, notwithstanding the provisions of §74.22. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the grounds for the determination, that the decision is overturned on appeal, or the firm applies for and receives verified status from CVE, the firm will not be eligible to participate in the 38 U.S.C. 8127 program.”

What This Means:

- Subpart B as referred to in 13 CFR § 125.11 is saying that anywhere in the regulations where the term Service-Disabled Veteran is used, it is equally applicable to Veterans for purposes of determining eligibility.
- The North American Industry Classification System (NAICS) Code(s) listed on an applicant’s Vendor Information Pages (VIP) profile must not exceed the size standards represented by those NAICS Codes.
- An applicant should only list NAICS Codes on its VIP profile in which it qualifies as small.
- During the verification process, CVE will review the documentation submitted to confirm whether the applicant qualifies as a small business concern.
- Depending on the NAICS Code(s) selected, size is determined by either gross receipts or number of employees.
- An applicant’s average 3-year annual gross receipts must not exceed the SBA size standards established under each selected NAICS Code.
- If the size standard is based on the number of employees, CVE may review the firm’s IRS Form 941(s) or business payroll records to determine the average number of employees, employed by the firm over the most recent 12-month period.
- If an applicant is denied because it does not qualify as a small business, it will have to provide evidence that it is in fact a small business concern as defined by the SBA.
- For firms applying as joint ventures, each partner to the joint venture must individually qualify as a small business under the NAICS Codes listed on the joint venture’s VIP profile unless the joint venture has an approved mentor protégé agreement. In such case, only the protégé is required to qualify as a small business.
- If your firm has received a size determination from the SBA that it does not qualify under a particular size standard and it is in the process of applying for verification, CVE may request information demonstrating that it meets the size standards established for the NAICS Codes listed on its VIP profile, which may include official documentation demonstrating that it has either overcome the grounds for the determination or the SBA decision has been overturned on appeal.
- If a participant receives a size determination of other than small from the SBA and it is currently registered in the VA’s VIP database, CVE shall remove the firm

from the database until CVE receives official documentation demonstrating that the business has either overcome the grounds for the determination or the SBA decision has been overturned on appeal.

Alternatively, CVE may issue a Notice of Proposed Cancellation on the basis that the participant no longer qualifies as a small business.

- If the applicant has never received a size determination from the SBA, then it is up to the firm to self-represent on its VIP profile the appropriate NAICS Code(s).

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For more information about VA Small and Veteran Business Programs, visit <http://www.va.gov/osdbu>.

**VA Office of Small and Disadvantaged
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