

SBA

SOP 90 01 4

**Size Determination
Program and Review of
Size Standards**

Office of Government Contracting
U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE
National**

SUBJECT: Size Determination Program	S.O.P.		REV
	SECTION 90	NO. 01	4

INTRODUCTION

1. Purpose. To outline the policies and procedures for the SBA Size Determination Program.
2. Personnel Concerned. All SBA employees involved in administering the Size Determination Program.
3. Directives Canceled. SOP 90 01 3.
4. Originator. Office of Government Contracting.

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		PAGE 1

SBA Form 989 (5-90) Ref: SOP 00 23

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Chapter 1

Size Determinations in General

1. What Is a Size Specialist?

A size specialist is an employee assigned to the Office of Government Contracting Area Office and reports to Area Director. A size specialist is required to review and analyze documentation from a protested business to determine whether or not the company is a small business concern. For further information, see Chapters 4, 5, and 6 of this Standard Operating Procedures (SOP).

2. What Is a Small Business Concern?

A small business is an entity that:

- a) is organized for profit;
- b) has a place of business in the United States;
- c) operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and;
- d) meets the size standard for the applicable North American Industry Classification System (NAICS) code (see Chapter 2, Paragraphs 1 and 2 for information on NAICS codes and size standards, and 13 CFR Part 121 for exceptions to this definition).

A business concern may be in the legal form of a sole proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities. Also, certain agricultural cooperatives do qualify as eligible small businesses.

3. Why Would a Business Want to Certify Itself as Small?

A business may want to certify itself (self-certify) as small to be eligible for Government programs and preferences reserved for "small business." For instance, small business set-aside procurements are reserved for offerors or bidders who are small. Small business may also qualify for financial assistance, such as loans.

4. How Does a Small Business Certify That It Is Small?

- a. For Federal Government contracts or subcontracts to large business prime contractors, a business self-certifies that it is small by checking the appropriate

box within the bid document or registering online through the on "Online Representation and Certification Application (ORCA)." This application takes the place of the paper version of self-certification formerly required when small businesses submitted their offers to a competitive small business contract. The self-certification is taken at face value, unless there is evidence to the contrary or a size protest is filed (see Chapter 3, Paragraph 1, What Is a Size Protest?).

- b. For other Federal programs, a business certifies that the information provided in an application is true and correct. A program official reviews that information to assess whether or not the applicant is an eligible small business. For example, when a loan officer reviews a loan application, small business eligibility is one component of the evaluation.
- c. If a small business needs to demonstrate to a particular state, city, or other non-Federal Government entity that it is small, it needs to contact the individual state or city for the applicable requirements for "small business" certification.

5. Are There Criminal Penalties for Knowingly Misrepresenting Size in a Self-Certification or Knowingly Making False Statements or Misrepresentations to SBA?

- a. There are severe criminal penalties for both knowingly misrepresenting the size status of a business (15 U.S.C. 645 (d)), and for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way, the actions of the Small Business Administration (SBA) (15 U.S.C. 645 (a)). Chapter 7, Paragraph 4 specifies these penalties. In addition, SBA may consider debarring a business that knowingly misrepresents its small business status. Other laws may also apply.
- b. If you suspect a business makes false statements or misrepresents its size to SBA, you should make a referral to the SBA Office of Inspector General. This can help ensure a level of accountability for situations involving false statements or misrepresentations to SBA or other Federal agencies. This is critical to small business size programs. Appropriate responses either in the form of prosecution or debarment can have a deterrent effect and can enhance the ability of legitimate small businesses to obtain contracts set aside for them and to participate in other programs reserved for small businesses.

As a rule of thumb, there would be a reasonable suspicion warranting referral if it is apparent that the business *knew or should have known* that its self-certification that it was small was not credible.

For example, a business that submits a bid on a set-aside and certifies that it meets the standard (either by way of the bid form or by submitting its bid) is verifying the validity of its ORCA certification. If the size standard is employee-based but payroll records show that the company clearly exceeds the standard, then a

referral to the OIG is probably appropriate. But if the business is found to be other than small based on a nuanced interpretation of the affiliation rules of which a business would not likely be aware, a referral would probably not be appropriate.

Information on how to make referrals to the OIG is available at <http://www.sba.gov/ig/hotline.html>.

6. When Should Adverse Information Obtained in a Size Determination Be Provided to Other SBA Offices?

While performing a size determination, if you find that the subject company is not small, and you are also aware that the firm participates in another SBA program, such as 8(a), HUBZone or SDVOB, you must notify the relevant program office that the business may not be eligible for program participation because of its size.

Also, if you dismiss a protest due to lack of specificity or timeliness, and you are aware that the protested firm participates in one of these SBA programs, you should forward the protest to the relevant programs office.

7. Under What Circumstances Will SBA Make a Size Determination?

- a. SBA reviews business size for eligibility for various SBA programs, such as Financial Assistance, Certificates of Competency, and 8(a) Business Development. Size specialists do not make these reviews. If such review informally concludes that the business is small, no further review of size is necessary. However, if the review indicates that the business is not small, the program office may refer the case to the appropriate Area Director for Government Contracting (AD/GC) or, alternatively, the firm will be provided the opportunity to request a formal size determination.
- b. SBA will also make a formal size determination whenever a timely and specific protest or request is received (see Chapter 3, Paragraph 2 through Paragraph 5).
- c. Formal size determinations are made only with respect to eligibility for Government programs or preferences reserved for "small business." SBA will not make a formal size determination simply at the request of a firm. SBA does not provide advisory opinions about the size of a business. However, SBA will provide guidance to a business on how to self-certify.
- d. Typical situations in which SBA will make a formal size determination of a business include:
 - (1) When an SBA program office requests a size determination of a business' eligibility for a SBA program or service.
 - (2) When a business requests that SBA make a formal size determination for an application for an SBA program or service.

- (3) When a contracting officer forwards a timely, specific size protest from an unsuccessful offeror which is entitled to file a protest (see Chapter 3, Paragraph 2 through Paragraph 4).
- (4) When SBA receives a contracting officer's size protest.
- (5) When an official of SBA, including an official of the OIG, requests a size determination.
- (6) When another Federal Government agency requests SBA to make a size determination of a business in connection with the business application for Government programs or preferences reserved for "small business", SBA may issue Procedural Notices when necessary in support of agencies that provide benefits based on size status. (*Examples*, the Food and Drug Administration (FDA) and the Patent and Trademark Office (PTO) have a reduced fee for small businesses.) For requests from agencies other than FDA or PTO, the size specialist will forward the request to Headquarters for guidance. Also, in certain cases, Freedom of Information Act (FOIA) requirements must be adhered to when issuing size determinations.
- (7) When a court orders a size determination on a business involved in litigation.

8. Who Within SBA Will Make a Formal Size Determination?

- a. The local Area Director for Government Contracting (or designee) makes all formal size determinations, except for size determinations pertaining to the Disaster Loan Program (13 CFR 121.1002). The Area Director for Government Contracting is responsible for size determinations concerning businesses with headquarters are located within your area (regardless of the location of the parent company or affiliates) operating sites within the geographical area (regardless of the location of the parent company or affiliates).
- b. Determinations for disaster loan applicants will be made by the Disaster Area Office Director (or designee) responsible for the area where the disaster occurred.

9. What Laws and Regulations Govern SBA's Small Business Size Determinations?

Statutory authority rests in the Small Business Act at 15 U.S.C. 632(a), 634(b)(6), and 637(b)(6); SBA's size regulations can be found at 13 CFR Part 121; and the applicable Federal Acquisition Regulations (FAR) are located at 48 CFR Part 19.

Chapter 2

North American Industry Classification System (NAICS) Codes and Size Standards

1. What Are North American Industry Classification System (NAICS) Codes?

NAICS codes are numerical designations of industries and types of small businesses in the U.S. economy. SBA's small business size standards are matched to a table of NAICS codes. Businesses with similar production processes are classified in the same industry. That is, they are grouped according to their similarities of the method of producing their products or providing the services they offer. The NAICS structure is a hierarchical order and uses a six-digit number system to identify particular industries/business types in each hierarchy:

Sector - 2 digit code
 Subsector - 3 digit code
 Industry Group - 4 digit code
 Industry - 5 digit code
 U.S. Industry - 6 digit code

There are 20 Sectors in SBA's table of size standards with NAICS codes for 1,175 U.S. industries/business types. The U.S. Office of Management and Budget publishes the *North American Industry Classification System, United States*. The website address is <http://www.census.gov/naics>.

2. How Does SBA Use NAICS Codes?

- a) SBA has established a small business size standard for each U.S. NAICS industry/business type using a six-digit NAICS code. SBA does not establish size standards for Public Administration (Sector 92) which consists of government entities..
- b) For SBA's financial assistance programs, an applicant must be a small business in its primary NAICS code (see 13 CFR 121.301 and 121.107.)
- c) For Federal Contracting, the Federal Government Contracting Officers must designate a NAICS code and size standard for every solicitation based on the NAICS code that best reflects the principal purpose of the contract (13 CFR § 121.402).

3. What Are Size Standards?

A SBA size standard must represent a numerical definition of a small business. Size standards represent the maximum size a business (including its affiliates) may be to be considered “small” based on a particular NAICS code. Unless SBA specifies otherwise, a size standard is stated either in average number of employees for a 12 month period prior to the date of self-certification or in average annual receipts over the last three years prior to the date of self-certification. Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms. A company must include the employees or its receipts together with those of any and all affiliates it may have. A size standard might be a number of employees (500, for example) or average annual receipts (such as \$10 million) but not both. A business concern, together with its affiliates, is small if its size is equal to or below the established size standard for the applicable NAICS code.

4. Where Are Size Standards Published?

The size standards by NAICS codes are found in 13 CFR 121.201. These are also available through the SBA's Answer Desk (800/U ASK SBA) and online on SBA's website at www.sba.gov/size. Size standards for individual programs are contained elsewhere in accordance with the following chart:

Program	CFR Location
Financial Assistance	121.301
Government Procurement	121.402
Unrestricted COCs	121.408
8(d) Subcontracts	121.410
Reserved	121.413
8(a) Business Development	121.601
SBIR Awards	121.702
Sale or Lease of government property	21.501-512
Reduced Patent Fees Patent & Trademark Office	121.802
Other Agency Programs	121.902

5. How Does One Challenge the Selection of a NAICS Code?

- a. Any interested party who disagrees with the selection of a NAICS code designation by a contracting officer may appeal to the Office of Hearings and Appeals (OHA). However, with respect to an 8(a) sole source contract, only the Director for Business Development may appeal.
- b. An appeal of a NAICS code designation must be served and filed with OHA within 10 calendar days after the issuance of the initial invitation for bids or initial request for proposals or quotations (see 13 CFR 134.304(a)(3)). OHA will dismiss untimely NAICS protests.
- c. The appeal must contain the following:
 - (1) The substance and date of the NAICS code being appealed;
 - (2) The number and date of the solicitation and the name of the contracting office that selected the NAICS code;
 - (3) The Contracting Officer's name, address, and telephone number;
 - (4) The reason for challenging the contracting officer's selection of the NAICS code;
 - (5) Documentary evidence supporting the appeal;
 - (6) A statement certifying that service of the appeal was sent to the contracting officer; and
 - (7) The name, address, telephone numbers, fax numbers and signature of the appellant or its attorney.

Chapter 3

Size Protests and Requests for Size Determinations

1. What Is a Size Protest?

- a. A size protest is an allegation that a business is other than small for a particular size standard.
- b. The filing of a proper size protest requires satisfying requirements as to:
 - 1) who may initiate a size protest;
 - 2) where must a size protest be filed;
 - 3) what information must be contained in a protest;
 - 4) the time frames for submitting a protest; and
 - 5) the specificity of the protest. Paragraphs 2 through Paragraph 4 of this chapter address these requirements (also see 13 CFR 121.1001 through 121.1007).

2. Who May Initiate a Size Protest?

A size protest may only be initiated with respect to Government procurements. There are no size *protests* with respect to non-government procurements or SBA programs (see 13 CFR 121.1001(a)). (Note, however, that you may have a size determination *request* with respect to SBA programs (see 13 CFR 121.1001(b), and Chapter 3, Paragraph 5.)

With respect to the following:	These persons may initiate a size protest:
Small Business Set-Aside Programs, including the Federal Government Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small business. 13 CFR 121.1001(a)(1)	<ol style="list-style-type: none"> (1) Any offeror whom the contracting officer has not eliminated for reasons other than size. (2) The Contracting Officer. (3) SBA's Director of Government Contracting. (4) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties. This includes (a) large businesses where only one business submitted an offer for the specific procurement in question; and (b) a business found to be other than small in connection with the procurement where there is only one remaining offeror after that business is found to be other than small.

With respect to the following:	These persons may initiate a size protest:
<p>SBA's Subcontracting Program (8(d)). 13 CFR 121.1001(a)(3)</p>	<ol style="list-style-type: none"> (1) The prime contractor. (2) The Contracting Officer. (3) Other potential subcontractors. (4) Other interested parties. (5) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates.
<p>Small Business Innovation Research (SBIR) Program. 13 CFR 121.1001(a)(4)</p>	<ol style="list-style-type: none"> (1) A prospective offeror. (2) SBA's Division Chief for Technology. (3) The funding agreement officer. (4) The Area Director for Government Contracting (having responsibility) for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties.
<p>SBA's HUBZone Program. 13 CFR 121.100 (a)(6)</p>	<ol style="list-style-type: none"> (1) Any concern that submits an offer for a specific HUBZone set-aside contract that the contracting officer has not eliminated for reasons unrelated to size. (2) Any concern that submitted any offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC. (3) The Contracting Officer; and (4) The Director of Office of HUBZone Program, or designee.
<p>Competitive 8(a) 13 CFR 121.1001(a)(2)</p> <p>Any unrestricted Government procurement in which business has represented itself as small, 13 CFR 121.1001(a)(1). Also, DoD SDB programs and similar programs of another Federal Agency (121.1001(a)(5) and Service Disabled Veterans (121.1001(a)(8)).</p>	<ol style="list-style-type: none"> (1) Any offeror that the contracting officer has not eliminated for reasons unrelated to size (2) The Contracting Officer. (3) SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Director for Business Development. <ol style="list-style-type: none"> (1) Any offeror. (2) The Contracting Officer. (3) The Area Director for Government Contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (4) SBA's Director for Government Contracting.

3. Where Must a Size Protest Be Filed?

- a. A protest must be filed with the agency contracting officer for the procurement. The agency contracting officer must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested business is located, regardless of the location of any parent company or affiliates (13 CFR 121.1003). For this purpose, headquarters should be interpreted as the offeror's primary address.
- b. When SBA initiates the protest, it must notify the contracting officer, but SBA does not file the protest with the contracting officer.

4. What Is Required for Submitting a Size Protest?

- a. The protest must pertain to a particular procurement or sale.
- b. The protest must be specific as to the reason and evidence relied upon for alleging that the protested business is "other than small." (SBA will dismiss non-specific protests, see Chapter 4, Paragraph 2) Use the following examples as a guide:

Non-Specific	Specific
An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation.	An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y.
An allegation that a business is affiliated with another business without setting forth any basis for the allegation.	An allegation that a business is affiliated with another business because a named individual is a stockholder or an officer of both businesses.
An allegation that a business is large because it has annual receipts in excess of \$10 million (where the applicable size standard is \$10 million) without setting forth any basis for the allegation.	An allegation that a business is large because it has annual receipts in excess of \$10 million (where the applicable size standard is \$10 million) because it received specified Government contracts in excess of \$10 million last year.

- c. The protest must not be premature. A protest is premature if filed before bid opening or before notification to offerors of the selection of the apparent successful offeror. SBA will dismiss premature protests (see Chapter 4, Paragraph 2).
- d. The protest must be timely and must be delivered either by hand, email, mail, fax, or telephone. If a protest is made by telephone, the contracting officer must receive a confirming letter from the protestor either within the 5-day period,

(discussed in (1) and (2) below), or postmarked no later than 1 day after the date of the telephone protest. SBA will dismiss untimely protests (see Chapter 4, Paragraph 2).

- (1) With respect to non-negotiated procurements or sales (e.g., IFB/sealed bid procurements or proposals that are accepted without negotiation), timely protests must be filed within 5 working days after bid or proposal opening or subsequent identification at the apparent request of low bidder.
- (2) With respect to negotiated procurements or sales (e.g., RFPs, RFQs), timely protests must be filed within 5 working days after receipt of the contracting officer's notification to the protestor of the identity of the prospective awardee.
- (3) With respect to long-term contracts with durations of greater than five years (including options) including all existing long term contract. See 13 CFR 1211.1004(a)(3).
- (4) A protest by the Director of Government Contracting or the Area Director or Contracting Officer is always timely, as long as it is not premature.
- (5) If a protest is timely filed, the determination will apply to that procurement even if the contract has been awarded.

5. Who May Request a Size Determination?

With respect to the following:	These persons may request a size determination
SBA's Financial Assistance Programs. 13 CFR 121.1001(b)(1)	<ol style="list-style-type: none"> (1) An applicant for assistance. (2) The SBA official with authority to take final action on loan request and AA/Investment for SBIC. (3) An official of the OIG
SBA's 8(a) BD Program and SDB Certification Program concerning initial and continued eligibility. 13 CFR 121.1001(b)(2)(i)	<ol style="list-style-type: none"> (1) The 8(a) BD applicant. (2) The Director for BD. (3) The Assistant Administrator of the Division of Program Certification and Eligibility. (4) An official of the OIG

With respect to the following:	These persons may request a size determination
SBA's 8(a) BD Program concerning individual 8(a) subcontract awards, whether sole source or competitive. 13 CFR 121.1001(b)(2)(ii) SDB Program (b)(7) HUBZone Program (b)(8) CCR (b)(9)	<ol style="list-style-type: none"> (1) The 8(a) BD participant nominated by SBA for the particular sole source 8(a) award or the apparent successful offeror for the particular competitive 8(a) award. (2) The Director for BD. (3) The SBA program official with authority to execute the 8(a) subcontract. (4) The SBA District Director in the district serving the area in which the headquarters of the 8(a) BD concern is located, regardless of the location of the parent company or affiliates. (5) An official of the OIG
SBA's Certificate of Competency (COC) Program. 13 CFR 121.1001(b)(3)	<ol style="list-style-type: none"> (1) The offeror-applicant for a COC. (2) SBA's Director for Government Contracting. (3) The responsible SBA Area Director for Government Contracting (see paragraph 1-6).
SBA's Sale or Lease of Government property. 13 CFR 121.1001(b)(4)	<ol style="list-style-type: none"> (1) The Director for Government Contracting. (2) The responsible SBA Area Director for Government Contracting (see paragraph 1-6). (3) Authorized officials of other Federal agencies administering a property sales program.
Eligibility to pay reduced patent fees. 13 CFR 121.1001(b)(5)	<ol style="list-style-type: none"> (1) The applicant for the reduced patent fees. (2) The Patent and Trademark Office.
Determining compliance with small business requirements of another Government agency program, not otherwise specified (<i>e.g.</i> , FDA's reduced fee for small businesses). SDB, HUBZone & CCR 13 CFR 121.1001(b)(6)(7)(8)&(9)	<ol style="list-style-type: none"> (1) The official with authority to administer the agency program.

Chapter 4

Beginning a Formal Size Determination

1. **As a Size Determination Specialist, What Must I Do When I Receive a Size Protest?**
 - a. Verify that the headquarters of the business whose size is protested is located within your area (regardless of the location of the parent company or affiliates).
 - b. Verify that you have all of the following information:
 - (1) A copy of the protest;
 - (2) The name of the business, point of contact, and mailing address of both the business being protested and the person filing the protest;
 - (3) The date that the contracting officer received the protest (unless the protest is a contracting officer's protest);
 - (4) A copy of the solicitation containing the solicitation number, the NAICS code and size standard.
 - (5) The size standard, the business self-certification, and the date of the self-certification or a copy of its Online Representation and Certification Application (ORCA);
 - (6) The contracting officer's mailing address and telephone number; and
 - (7) The date of bid opening in sealed bid procurement or the date of the protestor's receipt of the contracting officer's notification on a negotiated procurement.
 - c. Determine that the protest is not premature (see Chapter 3, Paragraph 4c).
 - d. Determine whether the person filing the protest is entitled to initiate the protest (see Chapter 3, Paragraph 2).
 - e. Determine whether the protest is timely (see Chapter 3, Paragraph 4d).
 - f. Determine whether the protest is specific (see Chapter 3, Paragraph 4b).
 - g. Assign a number to the case as follows:

Region Where Area Office is Located	FY	Case No.	Sequential number
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Separate each component with a hyphen, so it reads as follows:

02-2004-001

- h. Since the Size Determination Information System (SDIS) is not operating, each Government Contracting Area Office should maintain its own (manual or electronic) log until such time as SBA can create another logging system.

2. Under What Circumstances Is a Protest Dismissed?

- a. If a size protest is premature, not timely, non-specific, or is filed by a person who is not entitled to initiate a protest, you must dismiss the protest (see 13 CFR, 121.1004(d) and (e), 121.1007, and 121.1001). Before you dismiss the protest, you must consider if the protest has merit (and is not premature), and if so, consider asking your Area Director or the Director of Government Contracting to file a specific protest.
- b. Prepare a letter citing the reasons for dismissing the protest (see Appendix 2, Sample Dismissal Letters). The Area Director for Government Contracting (or designee) must sign the dismissal letter.
- c. You must send the dismissal letter in a verifiable manner, such as certified mail return receipt requested or overnight mail, to the person who filed the protest. Enclose a copy of 13 CFR Parts 121 and 134 (see 13 CFR, 121.1009(f)).
- d. You must send a copy of the dismissal letter, in a verifiable manner, to the Contracting Officer and to the business that was the subject of the protest.
- e. You must document the file by including a copy of the dismissal letter in Section 4 of the file, as well as any proof of mailing and receipts (see paragraph 4-8 for details on the organization of the file).

3. What Must I Do When I Receive a Request for a Size Determination?

- a. You must verify that the headquarters of the business whose size you are asked to determine is located within your area (regardless of the location of the parent company or affiliates).
- b. You must verify that you have the following information:

- (1) The name of the business, point of contact, and mailing address of the business; and
 - (2) The applicable size standard and applicable NAICS code, as determined, by the program.
- c. You must verify that the person requesting the size determination has standing to request a size determination (see Chapter 3, Paragraph 5).
 - d. You must assign a number and enter the case into the manual or electronic log (see Chapter 4, Paragraph 1g).

4. What Size Standard Must I Use When Making a Size Determination?

- a. For size determinations involving a particular solicitation or procurement (*e.g.*, a small business set-aside; an 8(a) contract; or a COC application), use the size standard which corresponds to the NAICS code listed in the solicitation, which was applicable on the date of the self-certification. Note that if a solicitation uses an incorrect or outdated size standard, you must use the correct size standard. You must substitute and apply the proper size standard and explain your reasons for doing so. NAICS codes and size standards are amended from time to time. You must apply the NAICS code and size standard, in effect, at the time the protested party self-certified its size.
- b. Where no specific solicitation or procurement is involved (*e.g.*, 8(a) eligibility, Financial Assistance), use the size standard for the business; primary NAICS code or the NAICS code chosen by the program official.
- c. For additional information, see paragraph 2-3.

5. What Date Must I Use in Making the Size Determination?

With respect to:	Determine size as of:
Procurements	The date the business submitted its self-certification with best and final offer, including quantity and price. If the company has completed its ORCA certifications, then it is the date of its bid.
Certificates of Competency (unrestricted procurements)	The date of the application for a COC.
Small Business Innovation Research (SBIR) Program	The date of the award. (If award is pending, use the date of the request.)
Compliance with the Non-manufacturer Rule	The date of the final proposal revision offer.
Ostensible Subcontractor Rule	The date of the final proposal revision.

With respect to:	Determine size as of:
Financial Assistance Programs (except Preferred Lenders Program)	The date the application for financial assistance is accepted for processing by SBA.
Preferred Lenders Program	The date of approval of the loan by the Preferred Lender.
8(a) BD Initial Eligibility	The date of the application and certification (121.404(b)).
SDB	The date of the request for the size determination.
HUBZone	The date of application and certification (121.404(b)).
Recertification	The date of requests

6. What Information Do I Need to Convey to the Business That Is the Subject of a Size Protest or a Request for a Size Determination, and Who Else Must I Notify?

- a. You must send the business that is the subject of the size determination an initial letter informing it of the size protest or request for size determination and of the need to respond to SBA in a timely manner, as well as the consequences for not responding. The facts of the procurement and the protest or request will dictate which initial letter you must send (see Appendix 3, Sample Initial Letters a through p).
- b. For instance, if the business whose size is being protested will be supplying the product of another manufacturer, you must send the "non-manufacturing" initial letter (see Appendix 3, Sample Initial Letter c).
- c. Or, if a request for a size determination was made by SBA's Office of Business Development (BD) in connection with a business' initial eligibility for the 8(a)/BD Program, you must send either the 8(a) Eligibility/Average Annual Receipts initial letter, or the 8(a) Eligibility/Number of Employees Initial Letter; whichever is appropriate (see Appendix 3, Sample Initial Letters e and f).
- d. With the initial letter, you must include:
 - (1) A copy of the protest or request. Include only information submitted with the initial size protest. Any supplemental information can not be included;
 - (2) An SBA Form 355, Information for Small Business Size Determination, Appendix 4;
 - (3) Notification to the protested entity where it can find SBA's Small Business Size Regulations (13 CFR part 121) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfrv1_09.html.

- (4) Notification to the protested entity where it can find more information about affiliation, with examples, including at least the following:
 - 13 CFR § 121.103 at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - SBA's discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf.
 - (5) Internal Revenue Service (IRS) Form 4506, "Request for Copy" or "Transcript of Tax Form"; and
 - (6) You must send the initial letter in a verifiable overnight manner (*e.g.*, Federal Express).
- e. You must also send a copy of the initial letter to the contracting officer (if applicable) and the person who filed the protest or made the request.

7. How Many Days Does the Business Have to Respond to the Initial Letter?

- a. With respect to active procurements, the business must respond within 3 working days from receipt of SBA's initial letter unless you grant an extension of time from the protested party because the business presented you, in writing, with a good cause for an extension (see (13 CFR 121.1008(c)). (See Paragraph 5 in Chapter 1 regarding the consequence for a business' failure to timely respond.)
- b. There is no time constraint with respect to financial assistance, 8(a), SDB or HUBZone size determinations that do not relate to a specific procurement; however the firm should be requested to respond within 5 working days. Extensions may be granted at the discretion of the Area Office. The specific program office should be kept informed.

8. How Do I Organize the File?

- a. Create a four-section file and, at a minimum, include the following information on the cover:
 - (1) Business name;
 - (2) City and State where the business is located; and
 - (3) Case number.
- b. The four sections of the file are:

- (1) Section 1, containing the referral, the protest, and all SBA initial correspondence;
- (2) Section 2, containing the business response;
- (3) Section 3, containing the continuation of the business response and other miscellaneous papers; and
- (4) Section 4, containing the determination, forwarding letters, and appeal material.

9. How Do I Update the Size Database? (Keep until new program is installed at Headquarters)

Following the instructions in the Size Program Regional Information System (SPRIS) Users' Manual, enter the following information:

- a. Size determination case number;
- b. Solicitation number;
- c. Name, address, and point of contact of the business whose size is being determined;
- d. Name, address, and point of contact at the procuring agency;
- e. Name, address, point of contact of the business that initiated a protest or requested the size determination;
- f. The initials of the person who will make the size determination;
- g. The date the protest or request was received by the Office of Government Contracting;
- h. The due date of the size determination;
- i. Extensions granted should be documented in the narrative comment section;
- j. The applicable size standard; and
- k. Any narrative comment you may wish to include.

10. How Many Days Do I Have to Complete the Size Determination?

- a. In connection with procurements, you have 10 working days from the date the protest was received to complete the size determination and inform the contracting officer of the size determination, unless you obtain additional time from the contracting officer (FAR 19.302(g) and (h)). (See Chapter 7, Paragraph 5 for information on the effect of a size determination on the contracting officer's actions.)
- b. You must confirm extensions of time in writing with the contracting officer. Send a copy of the confirmation letter to both the business whose size is being determined and the business that initiated the protest. Include a copy of the confirmation letter in Section 1 of the file. (See Appendix 5, Sample Confirmation Letter of a Contracting Officer's Verbal Deadline Extension.)
- c. Alternatively, if you have electronic communications capability with the contracting officer, you may receive the contracting officer's letter granting an extension, or transmit a letter confirming the verbal extension to the contracting officer electronically, as long as you print a copy of it and place the copy in Section 1 of the file. An electronic or paper copy must also be sent to both the business whose size is being determined and the business who initiated the protest.
- d. On the other hand, if your request for additional time is denied by the contracting officer, you must also include in the file the date you requested the extension; the name of the person you spoke to; and the date the extension was denied. You must then make all attempts to complete the size determination within the initial 10-day time frame. However, if this time frame is impossible, document the file with reasons the deadline could not be met.
- e. In connection with other programs, you must negotiate the time with the SBA program official (*e.g.*, BD) or Federal agency (*e.g.*, FDA).

11. What Are the Consequences If a Size Determination Cannot Be Completed Within the Deadline for Making the Size Determination?

The contracting officer may award the contract which could result in the contract being awarded to a business that is other than small. (See Chapter 7, Paragraph 5 for information on the effect of a size determination on the contracting officer's actions.)

Depending on the facts, the contracting officer may have to apply a size determination received after award to the procurement in question, by terminating the award or not exercising the next option. In all cases the contracting officer must reflect the concern's size status for goaling/statistical purposes.

Chapter 5

Making a Formal Size Determination

1. What If a Business Does Not Respond in a Timely Manner to SBA's Request for Size Information or Does Not Provide All Information Requested?

SBA may assume that the business failed to respond, or failed to provide all information, because disclosure would be contrary to its interests. Therefore, you may determine that the business is other than small (13 CFR, 121.1008(d)).

2. What Must I Do When I Receive a Response from the Business?

You must review the information and determine if the business meets the criteria of a small business as provided for in the regulations at 13 CFR, 121.101 through 121.904. You will need to:

- a. Determine whether the business is eligible for SBA assistance. Refer to 13 CFR, 121.105 for guidance on eligibility as a small business concern.
- b. Determine if the business is affiliated with other businesses. (See paragraph 5-5, and refer to 13 CFR, 121.103 for guidance on affiliation).
- c. Calculate the business average annual receipts (see paragraph 5-3) or number of employees (see paragraph 5-4). These calculations must include any affiliates. Which calculation you perform will depend upon the applicable size standard (paragraph 4-4 discusses how to determine the applicable size standard).
- d. Consider any applicable decisions made by the Office of Hearings and Appeals (OHA). You can view all past cases and the latest entries on OHA's website at www.sba.gov/oha.

3. How Do I Calculate Average Annual Receipts?

You must calculate average annual receipts by using the firm's and its affiliates' Federal income tax returns for the last 3 completed fiscal years divided by three. Receipts mean gross or total income plus the cost of goods sold. This includes receipts from rents, fees, commissions, and other income. If tax returns are not yet available, you may accept a certified statement from the firm's accountant, financial officer, etc. 13 CFR, 121.104 further defines receipts, periods of measurement for a firm in business less than three years, and affiliates' receipts.

4. How Do I Calculate Number of Employees?

Number of employees is based on the average number of employees, including employees of domestic and foreign affiliates, for the preceding completed 12 calendar months. Part-time and temporary employees are counted the same as full-time employees (13 CFR 121.106 further explains the calculation of average number of employees).

5. What Is Affiliation?

- a. As the size determination specialist, it is your job to determine if affiliation exists. Generally, affiliation is present when one business controls or has the power to control the other, or when a third party (or parties) controls or has the power to control both businesses. The mere existence of the power to control a business is sufficient to assume affiliation – it need not be exercised.
- b. Refer to 13 CFR 121.103 for details on what constitutes affiliation. Some factors mentioned are:
 - (1) Stock ownership (13 CFR 121.103(c)). You must consider whether a person owns or controls, or has the power to control, 50 percent or more of the voting stock of a firm. If so, that person is considered to control that firm. You must also consider instances in which two or more persons each owns and controls, or has the power to control, less than 50 percent of the voting stock of a firm. In those instances, determine whether the aggregate of these holdings is large as compared with other stock holdings. If so, those persons are considered to control that firm. Any other firms these persons own or control are considered to be affiliates of the applicant.
 - (2) Stock options, convertible securities, and agreements to merge (13 CFR 121.103(d)). Treat these as though the rights granted have been exercised. Give present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. If these rights have been granted, affiliation exists. Power to control is presumed based on the preferred rights of the holders of these securities.
 - (3) Common management (13 CFR 121.103(e)). Consider whether one or more officers, directors or general partners of the firm controls the board of directors and/or the management of another firm. If so, the firms are affiliates. This is direct influence over the conduct of the small business.
 - (4) Previous business relationships or ties with another business, including family relationships (13 CFR 121.103(f)). You must obtain detailed explanations and documentation from the firm on these issues. There is

no specific formula for finding indicators of affiliation in some of these complex areas. Some tools to use may be commercial credit reports, loan agreements, annual reports, bylaws, or advertising. Through your research, you may discover patterns of subcontracting, information from buying activities regarding joint representations of the firms, commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship. Persons with an identity of interest, such as family members or persons with common investments in more than one concern, may be treated as though they are one party, unless they demonstrate otherwise.

- (5) Contractual relationships or economic dependency (13 CFR 121.103(a), (f) and (g)). Consider whether a firm can survive on its own or if it is economically dependent upon another firm. If there is a contractual relationship between two firms for the procurement in question, you need to examine the possibility of affiliation.
- (6) Joint venture arrangements (13 CFR 121.103(f)). Firms are affiliated if they are seeking SBA financial assistance for use in connection with the joint venture or if they are bidding on a particular procurement or property sale as joint ventures. There are certain exceptions to this rule.
- (7) Ostensible subcontractors (13 CFR 121.103(f)). This refers to instances in which the prime contractor is unusually reliant upon the subcontractor or if the subcontractor will perform primary and vital requirements of a contract. To determine if ostensible subcontracting exists, you must thoroughly review the Statement of Work, subcontractor agreements, and the technical and cost proposal. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to , the terms of the proposal (such as contract management, technical responsibilities, and the percentage of the subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation. Your decision shall be based on the totality of the circumstances. Consider the following factors:
 - (a) Who will manage the contract?
 - (b) Which party possesses the requisite background and expertise to perform the contract?
 - (c) Which party chased the contract?
 - (d) What degree of collaboration was there on the proposal?

- (e) Are discrete tasks to be performed by each, as opposed to a commingling of personnel and material?
 - (f) What amount of work is to be performed by each?
 - (g) Which party performs the more complex and costly contract functions?
- (8) Franchise or license agreements (13 CFR §121.103(i)). Review the franchise or license agreement to determine whether the franchisor controls, or has the power to control, the franchisee. The restraints imposed on a franchisee or licensee by its agreement relating to standardized quality, advertising, accounting format, and other similar provisions, are usually not considered in determining affiliation providing the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. However, you may find affiliation based on other issues, such as common ownership, common management, or excessive restrictions upon the sale of the franchise interest (see SOP 70 50, Appendix 3d "Franchise Eligibility Guidelines"). As part of your research, ascertain if the franchisor is listed in SBA's Franchise Registry (www.franchiseregistry.com).
- (9) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. A newly organized concern consisting of former officers, directors, principle shareholders, managing members, or key employees of another concern, and one concern provides a significant level of assistance, will be considered affiliates of each other unless a clear line of fracture is demonstrated. In such a case, annual receipts and employees of the predecessor will have to be taken into account in determining size.
- c. Determining affiliation between two or among more than two entities can be very difficult at times. Therefore, this SOP includes as Appendix 8 a further discussion on the subject of affiliation. The discussion is also available on SBA's website at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf.
- d. You must also refer to 13 CFR §121.103(b) for the exceptions from affiliation.

6. What Are the Possible Size Determinations Which I May Make?

- a. You may determine that the business is either:
 - (1) Small;

- (2) Other than small; or
 - (3) Other than small for this procurement only.
- b. Your determination will be based on whether the business is eligible for SBA assistance and your calculation of the business (including any affiliates') average annual receipts or number of employees.
- (1) If the business is eligible for SBA assistance and its average annual receipts or number of employees do not exceed the applicable size standard, you will determine the business to be small.
 - (2) If the business is not eligible for SBA assistance and/or its average annual receipts or number of employees exceeds the applicable size standard, you will determine the business to be either "other than small" or "other than small for this procurement only."
 - (3) You must use the "other than small for this procurement only" designation if the circumstances leading to the determination are specific to the solicitation. Examples include when a business is found to be affiliated with an "ostensible subcontractor" or a joint venture partner, and as a result of the affiliation, the business average annual receipts or number of employees exceeds the applicable size standard. In such an instance, the business would be determined "other than small for this procurement only," since the affiliation exists solely with respect to the procurement.

7. What Is the Format for Writing a Formal Size Determination?

- a. Write the decision in a clear, concise manner. It should include the following: an introduction; a discussion of the evidence which addresses all of the allegations; applicable regulations citation to OHA decisions; a logical reasoning for the decision; and a conclusion (see Appendix 6, Sample Size Determination Format). The size determination must be signed by the Area Director for Government Contracting or designee.
- b. Avoid specifying the business' number of employees or its annual receipts (due to the protections of the Freedom of Information Act (FOIA)). Instead, you should make summary statements such as "the business average annual receipts are less than the applicable size standard of \$ XX million; or exceed the applicable size standard of \$ XX million."

Chapter 6

Completing the Formal Size Determination

1. What Must I Do Once I Have Written the Size Determination?

- a. Prepare a notification letter (see Appendix 7 for sample notification letters a through h) informing the business of the determination and of its right to file an appeal petition with the Office of Hearings and Appeals (OHA) (see Chapter 8 regarding appeal petitions and OHA). Your size determination and the notification letter must be signed by the Area Director or designee.
- b. Send the size determination and the notification letter, along with a copy of 13 CFR Part 134, in a verifiable fashion to:
 - (1) The business that was the subject of the size determination;
 - (2) Any persons found to be affiliated with the business;
 - (3) The person who filed the protest or made the request;
 - (4) The contracting officer; and
 - (5) The specific program office, if the determination relates to an 8(a), SDB, SBIR, or HUBZone concern.

2. How Can I Correct an Administrative or Factual Error in My Size Determination?

If your size determination contains a clear administrative error or a clear mistake of fact, you should reopen the size determination to correct the error or mistake provided an appeal has not been filed. However, you should first vacate your original determination by writing to all parties involved that a mistake has been made. You must also notify OHA if the case has been appealed so that OHA can then determine whether to remand the case to your office for another review. You do not reopen a size determination if OHA has accepted the case for review.

3. How Do I Update the File and the Size Database?

- a. File a copy of the size determination and notification letter in Section 4 of the file (see Chapter 4, Paragraph 8 regarding organization of the file). You must also file in Section 4 a copy of proof of mailing and any return receipts.
- b. Update the size database by entering the following information:
 - (1) If applicable, an extended due date. (You should document the granting of the extension in the narrative comment section.)

- (2) The date the size determination was completed.
- (3) The decision.
- (4) The names and locations of any businesses found to be affiliated with the business.
- (5) Any narrative comment you may wish to include.

4. How Long Must I Keep the Written File?

You must keep the written file for 2 years from the date of the final size determination. At the end of the 2 years, you must transfer the file to Federal Records Center (FRC) for an additional 4 years. The file may be destroyed 6 years after the date of the final size determination (see SOP 00 41).

Chapter 7

Significance of a Formal Size Determination

1. What Is the Significance of Being Found Small?

A business found to be small has met the "small business" requirements of the contract or program for which it applied.

2. What Is the Significance of Being Found Other Than Small?

A business found other than small has not satisfied the "small business" requirements of the contract or program for which it applied. As a result, without first obtaining recertification (see Paragraph 3 below) or prevailing in an OHA appeal, the business cannot self-certify that it is small at the same size standard (or a smaller size standard) for which it was found other than small.

3. What Is Recertification?

A business that has been found other than small may request to have its size status reconsidered. This is called recertification. The request for recertification must include a current completed SBA Form 355, Information for Size Determination. It must also include any pertinent information that shows it has overcome elements which resulted in its finding of other than small. SBA will then make a new size determination.

4. What Are the Penalties for a Business Knowingly Misrepresenting its Size Status or Knowingly Making False Statements or Misrepresentations?

a. Criminal penalties include:

- (1) A fine of not more than \$500,000 and/or imprisonment for not more than 10 years for knowingly misrepresenting the small business size status of a business in connection with procurement programs (other laws may also apply). See Section 16(d) of the Small Business Act, 15 U.S.C. 645(d).
- (2) A fine of not more than \$5,000 and/or imprisonment for not more than 2 years for knowingly making false statements or misrepresentations to SBA for the purpose of influencing, in any way, the actions of the Agency (other laws may also apply). See Section 16(a) of the Small Business Act, 15 U.S.C. 645(a).

b. Civil penalties include:

- (1) Administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812).

- (2) Suspension and debarment as specified in Subpart 9.4 of Title 48, CFR.
- (3) Penalties provided under the False Claims Act (31 U.S.C. 3729, et seq.).

5. What Is the Effect of a Size Determination on the Contracting Officer's Actions with Respect to a Particular Procurement?

- a. The contracting officer should wait 10 working days for SBA's size determination (FAR 19.302(h)). However, if the contracting officer makes a written determination that an award must be made to protect "the public interest," the contracting officer may make the award prior to receiving SBA's size determination (FAR 19.302(h)).
- b. Absent the unusual circumstance described above, the contracting officer must not award a small business set-aside contract to a business found to be other than small, and must award the small business set-aside contract to a business found to be small (unless objections other than size are found requiring denial of the award).
- c. After receiving the results of a size determination, the contracting officer is not required to wait any additional time to see if there will be an appeal petition filed with OHA (see FAR 19.302(i)). The contracting officer may immediately proceed with award of the contract following receipt of the size determination (see Chapter 8, Paragraph 7 regarding what impact an appeal petition could have on the procurement).

Chapter 8

Size Appeal Petitions to the Office of Hearings and Appeals (OHA)

1. What Is a Size Appeal Petition?

- a. A size appeal petition is a written argument submitted to OHA in support of the position that an SBA size determination is incorrect.
- b. There are requirements as to 1) who may file an appeal petition; 2) where and how a petition must be filed; 3) what information must be contained in the petition; and 4) the time frames for filing the petition. Paragraphs 3 and 4 of this chapter address these requirements (see 13 CFR, 134.301 through 134.318).

2. What Is OHA?

OHA is SBA's Office of Hearings and Appeals, an independent appellate administrative tribunal. One of its responsibilities is to hear appeals against SBA's size determinations.

3. Who May File a Size Appeal Petition with OHA?

- a. Any person adversely affected by a size determination;
- b. The Associate Administrator or Director for the SBA program; and
- c. The procuring agency's contracting officer responsible for the procurement affected by the size determination.

4. How Is a Size Appeal Petition Filed with OHA?

- a. An appeal from a size determination starts with the timely serving and filing of an appeal petition with the Docket Clerk of OHA at the Office of Hearings and Appeals, U.S. Small Business Administration, Mail Code 2440, 409 Third Street, S.W., Washington, DC 20416 (13 CFR, §134.204 contains the service and filing requirements).
- b. Title 13 CFR, §134.305 contains the information on what is required to be contained in the appeal petition. There is no required format for an appeal petition. However, 13 CFR, §134.304 establishes the following time frames.

With respect to the following:	Time frames:
Appeal from a size determination in a pending procurement or a pending Government property sale.	Appeal petition must be served and filed within 15 days after service of the size determination. 13 CFR, 134.304(a)(1).
Appeal from a size determination other than one in a pending procurement or a pending Government property sale.	Appeal petition must be served and filed within 30 days after service of the size determination. 13 CFR, 134.304(a)(2).

5. As a Size Determination Specialist, What Must I Do If an Appeal Petition Is Filed with OHA?

- a. Upon receipt of an appeal petition, and in response to a request by OHA, the area office which issued the size determination must immediately send to OHA (in a verifiable manner) the entire original case file relating to the size determination. (Make a copy of pertinent portions of the file and keep it in case the original is lost.)
- b. You must also update the size database by entering the date the case file was sent to OHA (see Chapter 4, Paragraph 9 regarding the database). Following OHA's decision, you must again update the size database to reflect the decision, the date of OHA's decision, and OHA's decision number.

6. What Impact Does an Appeal Petition Have on the Subject Procurement?

If the contracting officer receives OHA's decision before award of the contract, the decision will apply to the subject procurement (FAR 19.302(i)). If the contracting officer receives the OHA decision after award of the contract, he/she may apply the decision to the procurement, or may not apply it if the performance has not begun. Consult the Office of Procurement Law before making statements concerning the effect of a size determination or appeal.

7. What Outcomes Are Possible from an Appeal?

- a. If OHA grants the appeal petition for review, it may affirm, in whole or in part, the size determination, reverse the size determination, or remand the case for further review or for further information. Beyond OHA, there is no further review within SBA.

- b. If the case is remanded, you must contact the contracting officer immediately to determine the time frame in which a new determination will be made. If the contract has already been awarded, the contracting officer may give you more than 10 days. If the contract has not been awarded, you must receive a minimum of 10 days. A remand by OHA vacates the initial size determination.

Chapter 9

Freedom of Information Act (FOIA) Requests

1. What Must I Do When I Receive a FOIA Request?

Prior to issuing any information in response to a FOIA request, you must review the Disclosure of Information SOP (SOP 40 03) and 13 CFR part 102, and consult with counsel or your FOIA officer. Responding to a FOIA request will require you to, among other things:

- a. Respond within the FOIA time limits;
- b. Provide the requestor with an estimate of the fees involved;
- c. Determine which records are responsive;
- d. Determine which of the responsive records are releasable;
- e. Determine which exemptions are appropriate if any information is to be withheld;
- f. Prepare a Predisclosure Notification Letter;
- g. Create an index of withheld information (where applicable); and
- h. Provide appeal rights if information is withheld, if no information responsive to the request exists, and when fee waiver requests are denied.

2. What Documents Must I Disclose When Responding to a FOIA Request?

- a. You must disclose all documents and information not subject to a FOIA exemption (see SOP 40 03, Disclosure of Information. The two FOIA exemptions most commonly used by the size determination specialists are:
 - (1) Exemption 4 (5 U.S.C. § 552(b)(4)). This exemption allows you to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information, that, if disclosed, could:
 - (a) Be competitively harmful to the submitter of the information;
 - (b) Impair the Government's ability to obtain similar necessary information in a purely voluntary manner in the future; and
 - (c) Affect other governmental interests, such as program effectiveness and compliance.

- (2) Exemption 6 (5 U.S.C. § 552(b)(6)). This exemption covers personnel and medical files and similar files that, if disclosed, would constitute "a clearly unwarranted invasion" of individual privacy and might adversely affect the individual or his/her family.
- b. Size determination made at the request for determining eligibility of a small business is subject to FOIA protection due to the use of proprietary information in a case.
- c. Each request must be carefully analyzed. With respect to a third party requestor, Table A outlines which documents and information will generally be withheld or disclosed. You must provide Predisclosure Notification in accordance with EO 12600 and 13 CFR §102.7(d), to submitters of confidential commercial information if you decide such information may be disclosed. Always consult with Counsel prior to responding to a FOIA request.

3. How Do I Finalize a Response to a FOIA Request?

Prepare a cover letter and include copies of both the documents you are releasing (including copies of any redacted documents), and an index of records withheld in full or in part (redacted) and the reasons for withholding the records. Consult with counsel and review SOP 40 03, Disclosure of Information and 13 CFR part 102. The letter must contain the appeals paragraph from the SOP if information is withheld or if no records exist that are responsive to the request. The Area Director for Government Contracting, or designee, should sign the cover letter and a copy should be sent to the FOIA office.

Table A

Document:	Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:	
			Information:
Application for Small Business Size Determination (SBA Form 355)			
a.	Name and address of business	Disclose	--
b.	Name of person to contact	Disclose	--
c.	Sales, assets, net worth & # of employees	Withhold	Ex. 4
d.	Primary business	Disclose	--
e.	Average income	Withhold	Ex. 4
f.	Why the business applied	Disclose	-
g.	Major products	Disclose	--

Document:		Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
h.	Total sales of products	Withhold	Ex. 4
i.	Whether business operates under a license	Unless already public, withhold along with licensing agreement.	Ex. 4
j.	Principals of applicant business	Disclose names & titles <input type="checkbox"/> ; Withhold home addresses;	-- Ex. 6 Ex. 4 and Ex. 6
k.	Information on affiliates	Disclose names & business addresses	--
Application for Small Business Size Determination (SBA Form 355) <i>continued</i>	l.	Principals of affiliates	-- Ex. 6 Ex. 4 and Ex. 6
		Products of affiliates	Withhold sales; Disclose products. --
	n.	Remaining financial information	Withhold Ex. 4
Articles of Incorporation		Withhold if not on file with the State; Disclose if on file with the State.	Ex. 4 --
By-Laws		Disclose	--
Breakdown of number of Employees		Withhold	Ex. 4
Tax Returns		Withhold	Ex. 4 and Ex. 6
Financial Statements		Withhold	Ex. 4
Breakdown of purchased parts and their respective value		Withhold	Ex. 4
Operations to be performed in-house		Withhold	Ex. 4

Document:	Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
Method or equipment to be utilized	Withhold	Ex. 4
Value of labor contribution	Withhold	Ex. 4
Business' operations toward the manufacture of the end product	Withhold	Ex. 4
Information contained in a cover letter, or other unsolicited information.	Determine on a case-by-case basis. Consult counsel.	Determine on a case-by-case basis.

Chapter 10

Establishment and Review of Size Standards by the Size Standards Division

1. How Do Size Standards Get Reviewed?

The SBA may establish or review a size standard for an industry or program as it considers appropriate. In addition, SBA will allow an interested person to petition the Administrator to establish, amend or rescind a NAICS code or for a permanent or temporary exemption from a SBA size standard.

2. To Whom Within SBA Are Requests for Changes to Size Standards Sent?

Send requests for changes to a particular size standard, as well as concerns or suggestions for new size standards, to the Division Chief for Size Standards, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C., 20416. The Size Standards Division will usually be the office within the SBA that reviews the request.

3. What Must Be Included in a Size Standards Petition for Rulemaking Request?

No specific information or format is required of a request to review a size standard. The following information should be included in a request for a petition for rulemaking:

1. The name, street and mailing address, and telephone number of the petitioner; if the petitioner is not an individual, state the name, street and mailing addresses and telephone numbers of an individual designated as an agent of the petitioner for all purposes related to the petition;
2. An explanation of petitioner's proposed action [commencement of a rulemaking, amendment to an existing rule, or deregulation] and its purpose.
3. The language petitioner proposes for a new or amended rule, or the language petitioner would remove from a current rule.
4. An explanation of why petitioner's proposed action would be in the public interest.
5. Information and arguments that support petitioner's proposed action, including relevant technical and scientific data available to you.
6. Any specific facts or circumstances that support or demonstrate the need for the action petitioner proposes.

The requestor should, however, explain why he or she believes the current size standard is inappropriate and how it is a problem for small business. Also, the requestor should provide reasons why another size standard would be a better definition of a small business.

4. What Will the Size Standards Division Do with the Petition for Rule-Making Request?

The Size Standards Division will review the information contained in the request, as well as other information available to it, and decide whether or not to conduct an in-depth industry analysis of the size standard. Unless it is determined otherwise no public hearing, argument or other proceeding will be held directly on a petition before its disposition.

If it is determined that the petition contains adequate justification, and the Regulatory Policy Officer agrees that a rulemaking should commence the Size Standards Division will initiate a rulemaking action. If it is determined that the petition does not justify a rulemaking action the petition will be denied.

Whenever the Size Standards Division makes a determination on a petition, the Office will prepare a response that will be issued to the petitioner in a timely manner. This response should be reviewed by the Office of General Counsel before being issued.

5. As an Economist or Program Analyst in the Size Standards Division, How Do I Review a Size Standards Request?

- a.) Size standards requests should be reviewed by evaluating the following information:
 - (1) Reasons why a change to the size standard is being requested and decide whether or not those reasons are credible and, if so, whether they would constitute a sufficient reason for establishing or changing the size standard.
 - (2) Key industry characteristics to determine if the industry structure supports the current size standard.
- b.) Based on these considerations, provide a recommendation to the Division Chief for Size Standards.
- c.) If the Division Chief for Size Standards determines that the request warrants further analysis, then the Economist or Program Analyst shall apply the procedures spelled out in the division's "Size Standards Methodology."

6. What Factors Do I Consider When Conducting an Industry Analysis?

- a. As an economist or program analyst in the Size Standards Division examine the following in accordance with the Size Standards Division Methodology Manual, See Size Standards Division web site at www.sba.gov/size for February 2009 version:

- (1) The structure of an industry and its various economic characteristics, including the degree of competition, average business size, start-up costs, barriers to entry, and the distribution of firms, revenues and/or employees by firm size.
 - (2) SBA program objectives and the impact of different size standards on those programs.
 - (3) Whether a size standard successfully excludes those businesses which are dominant in the industry.
- b. Other factors may be considered if applicable to the industry.
- c. To adopt a new size standard, SBA will publish a notice of proposed rulemaking in the *Federal Register*. SBA then considers the public's comments in establishing the final size standard. Once the final size standard is determined, SBA will publish a Final Rule in the *Federal Register*.

7. How Do I Make a Recommendation?

As an economist or program analyst in the Size Standards Division, you should prepare a report making a recommendation to the Division Chief for Size Standards. Your report should consist of an assessment of the factors reviewed and the basis of your recommendation.

8. Who Approves the Recommendation?

Only the SBA's Administrator can approve changes to a size standard after internal review is completed. A recommendation for approval is forwarded to the Administrator in a Decision and Information Memorandum (SBA Form 606), usually after circulation to and clearance from all appropriate SBA officials.

9. When Does an Approval Take Effect?

A size standard can only be implemented after a final rule has been published in the *Federal Register*, and becomes effective on the date specified in the final rule (usually 30 days after publication).

10. How Do I Prepare a Notice of Proposed Rulemaking?

As an economist or program analyst in the Size Standards Division, you must prepare a notice of proposed rule (NPR) following the instructions contained in the Office of *Federal Register* publication Document Drafting Handbook and SOP 00 03, "*Federal Register* Documents" and SOP 70 20, "Regulation Development and Program Review." The document must explain what the current regulation say and its relation with the law (current statues) and why it is being changed, either to further explain application of the

law or how it is different. Additionally, the NPR should explain why changes are necessary to bring it into compliance with the law, including the changed version of the regulations

11. How Do I Evaluate Public Comments to a Proposed Rule?

- a. As an economist or program analyst in the Size Standards Division, your evaluation of public comments should include three parts: (1) a statistical summary of the comments; (2) an evaluation of major issues; and (3) the development of a recommendation and options. No specific format is required other than to prepare a clear and concise evaluation of the comments for senior management.
- b. The statistical summary of the comments should show the number received, the number for and against the proposal, a general identification of commentators (*e.g.*, associations, Federal agencies, 8(a) firms), and if appropriate, a summary of any other relevant information.
- c. The most important part is the evaluation of the major issues raised by the public comments. This evaluation, or a similar evaluation, will be included in a final rule. It must describe the major issues raised by the commentators, explain why they are an issue, and make an assessment of the issue. (Is it a valid point? If not, why not?) In the final rule, SBA will state its position on an issue and provide a reasonable basis for that position. The evaluation of major issues should be concise, but it must provide enough information so anyone can understand the issue and the reasons for SBA's position.
- d. The final part consists of a recommendation of the office and presents options for internal review. These shall include a brief statement in support or against the recommendation or option.

12. How Do I Make a Recommendation for a Final Rule?

As an economist or program analyst in the Size Standards Division, prepare a report that makes a recommendation to the Division Chief for Size Standards based on your evaluation of public comments and a reassessment of the factors previously reviewed.

13. How Do I Prepare a Final Rule?

As an economist or program analyst in the Size Standards Division, you must prepare a final rule following the instructions contained in the Office of *Federal Register* publication Document Drafting Handbook and SOP 00 03 (*Federal Register* Documents) and SOP 70 20 (Regulation Development and Program Review.) The final rule will include a summary of the proposed rule, the reasons for SBA's decision, and an evaluation of public comments.

14. Who Approves the Final Rule?

As an economist or program analyst in the Size Standards Division, you should know that, as described in paragraph 10-8, only the Administrator can approve a size standard. The approval process of a final rule is the same as with a notice of proposed rulemaking.

15. **What Information Should I Keep on a New or Revised Size Standard?**

As an economist or program analyst in the Size Standards Division, you should know that the information supporting the development of a size standard and all official correspondence become part of the administrative record. The administrative record should consist of a "documentation file" and an "administrative file."

- a. Documentation File: At a minimum, the documentation must be sufficient to support the basis of a size standard. Several specific types of information are noted below:
 - (1) All statistical data used in the rule to support the size standard and its impact;
 - (2) Letters requesting or commenting on the size standard (other than public comments, which are to be filed as part of the administrative file);
 - (3) Copies of, or full citation of, publications referenced in the rule or significantly relied upon in analyzing the size standard;
 - (4) Memos on the size standard, if appropriate; and
 - (5) A copy of analysis of size standard issues, including the analysis of public comments.

- b. Administrative File: This file contains formal documents concerning the size standard action. If it includes proprietary information to be protected from disclosure, place the information into a separate folder and reference it in the administrative file. Several specific types of information for inclusion into the administrative file are noted below:
 - (1) Copy of SBA Form 606 and all clearances;
 - (2) Correspondence memorandum with discussion of internal clearance comments and revisions to document;
 - (3) Dates that the rule was forwarded to OMB, cleared by OMB, and sent to the *Federal Register* for publication;
 - (4) Public comments on the rule; and
 - (5) Memos and other official correspondence on the size standard action.

16. What Process Does the SBA Follow to Approve Size Standards of Another Federal Agency?

As an economist or program analyst in the Size Standards Division, you should know that any requests from Federal agencies that require the approval of the Administrator of the SBA before using a size standard different from the SBA's size standard must be submitted to the Administrator following the procedure in 13 CFR 121.901-903. For most requests, the Size Standards Division will review the request and make a recommendation to the administrator.

17. How Do I Review a Size Standard for Another Federal Agency?

- a. As an economist or program analyst in the Size Standards Division, you should know that a request by a Federal agency to establish a size standard different from SBA's size standard should be summarized in a brief (one to two page) issue paper. If more information is necessary, attachments may be included with the issue paper. The issue paper should contain the following information:
 - (1) Concise statement of what is being proposed or recommended by the Federal agency;
 - (2) The applicable SBA size standard;
 - (3) Issues concerning the proposed size standard. These issues may include topics such as the reason for a standard different from SBA's size standard or the advantages and disadvantages of the proposed size standard;
 - (4) The impact on small business of the proposed size standard; and
 - (5) A recommendation along with your reasons.
- b. Prepare a letter for the administrator's signature.

Appendix 1

Index to Forms and Reports

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Report

Reserved

Appendix 2
(paragraph 4-2)
Sample Dismissal Letters

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Appendix 2 (cont'd)

a. Protest Is Not Specific

Mailing information/tracking number

Date

Business
Address
City, State, ZipAttention: Point of Contact
TitleSubject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest failed to set forth specific grounds for the allegation as required in 13 CFR 121.1007.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date the size determination was received;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

b. Protest Is Premature

Mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
TitleSubject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since it is premature according to 13 CFR 121.1003-1006. This dismissal does not preclude you from submitting a timely protest in accordance with the regulations at 13 CFR 121.1001 through 121.1010.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date the size determination was received;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)
c. Protest Is Not Timely

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest was not filed in a timely manner as required in the regulations at 13 CFR 121.1004.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date the size determination was received;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name

Effective Date: June 17, 2009

Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)
d. Protestor Is Not Entitled to Protest

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. According to the regulations at 13 CFR 121.1001, you are not entitled to initiate a size protest. Therefore, the protest has been dismissed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date the size determination was received;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)
e. Protestor Is Not Entitled to Protest an 8(a) Business

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. Based on the regulations at 13 CFR 121.1001, the SBA has concluded that you are not entitled to initiate a size protest of participants in the 8(a) Business Development (8a/BD) Program. Therefore, your protest is dismissed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date the size determination was received;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer
ADD/MED

Appendix 3
(paragraph 4-6)
Sample Initial Letters

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Appendix 3 (cont'd)

a. Number of Employees

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (6) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

b. Annual Receipts

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders; and
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.
- (7) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)
c. Non-Manufacturing (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (6) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

If your business is supplying a product of another manufacturer, SBA Form 355 must be completed by that business as well. (See 13 CFR 121.406.)

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

d. Manufacturer (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification; and
- (6) a complete breakdown of your purchased parts or components and their respective value; the operations to be performed in-house with your own personnel; the methods or equipment to be utilized; and the value of labor contribution. Describe in detail your operations toward the manufacture of the end product.
- (7) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and

- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

e. 8(a) Eligibility (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: 8(a) Program Eligibility
 NAICS Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of Minority Enterprise Development (MED) in connection with your application for participation in the 8a/Business Development (8a/BD) Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at 121.602 state an "8a/BD applicant must be small for its primary industry at the time SBA certifies it for admission into the program"; therefore, the most current information will be used to make the determination. The size standard corresponding to the NAICS code for your primary industry is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) a completed SBA Form 355; and
- (2) a breakdown of the number of persons employed by your firm and any affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (3) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.
Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: MED Program Office

Appendix 3 (cont'd)

f. 8(a) Eligibility (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: 8(a) Program Eligibility
 NAICS Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of 8(a) Business Development (8a/BD) in connection with your application for participation in the 8a/BD Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at 121.602 state an "8a/BD applicant must be small for its primary industry at the time SBA certifies it for admission into the program"; therefore, the most current information will be used to make the determination. The size standard corresponding to the NAICS code for your primary industry is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form; and
- (3) complete financial statements and Federal income tax returns for the last three completed fiscal years for your business and any affiliates.
- (4) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: MED Program Office

Appendix 3 (cont'd)

g. 8(a) Continued Participation (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: Continued 8(a) Participation
 Solicitation:
 NAICS Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Assistant Administrator of the Division of Program Certification and Eligibility or Director, Office of Business Development (BD) in connection with your continued participation in the 8a Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date. The size standard corresponding to the NAICS code for your primary industry is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (6) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
SBA Form 355
13 CFR Part 121 (size regulations)

cc: 8a Business Development Office

Appendix 3 (cont'd)
h. 8(a) Continued Participation (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: Continued 8(a) Participation
 Solicitation:
 NAICS Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Assistant Administrator of the Division of Program Certification and Eligibility or the Director, Office of Business Development (BD) in connection with your continued participation in the Section 8a Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date. The size standard corresponding to the NAICS code for your primary industry is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (4) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.
- (5) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: 8a Business Development Office

Appendix 3 (cont'd)

i. Financial Assistance (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: SBA Financial Assistance
 NAICS Code:
 Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance. Your firm's size will be determined based on the size standard corresponding to the NAICS code for your primary industry; and the size standard corresponding to the NAICS code for the primary industry of your firm and its affiliates or your primary industry, whichever is higher. These size standards are base based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (5) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

Effective Date: June 17, 2009

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All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
SBA Form 355
13 CFR Part 121 (size regulations)

cc: Financial Assistance Office

Appendix 3 (cont'd)

j. Financial Assistance (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: SBA Financial Assistance
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance.

Your firm's size will be determined based on (1) the size standard corresponding to the NAICS code for your primary industry; and the size standard corresponding to the NAICS code for the primary industry of your firm and its affiliates or corresponding industry, whichever is higher. The size standards are based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification for your business and any affiliates.
- (6) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: Financial Assistance Office

Appendix 3 (cont'd)

k. Joint Venture/Ostensible Subcontractor (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
NAICS Code:
Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of its self-certification in its bid or offer on this procurement.

Your firm's size will be determined based on (1) the size standard corresponding to the NAICS code for your primary industry; and the size standard corresponding to the NAICS code for the primary industry of your firm and its affiliates or corresponding industry, whichever is higher. The size standards are based on annual receipts.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed by your firm and its affiliates on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) copies of technical & cost proposals, including Best and Final Offer; and
- (7) any agreements with subcontractors.
- (8) Please see

- SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

I. Joint Venture/Ostensible Subcontractor (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of its self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders;
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates;
- (7) copies of technical & cost proposals; and

- (8) copies of agreements with subcontractors.
- (9) Please see
- SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and
 - A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

m. Franchise Agreement (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is base on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Information for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders;
- (5) a breakdown of the number of persons employed by your firm and its affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification; and
- (6) a copy of your franchise agreement.
- (7) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and

- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

n. Franchise Agreement (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement. The size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Information for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders;
- (6) a copy of your franchise agreement; and
- (7) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.
- (8) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and

- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

o. Certificate of Competency (Number of Employees)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by: COC Program
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process. The size standard applicable to this procurement is based on number of employees.

Number of employees is defined in SBA's size regulations at 13 CFR 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations.

The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed by your firm and its affiliate on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.
- (5) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and

- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosure: 13 CFR Part 121 (size regulations)

cc: COC Program

Appendix 3 (cont'd)
p. Certificate of Competency (Annual Receipts)

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by: COC Program
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process. This size standard applicable to this procurement is based on annual receipts.

Annual receipts are defined in SBA's size regulations at 13 CFR 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders;
- (4) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates; and
- (5) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form.
- (6) Please see
 - SBA's Small Business Size Regulations (13 CFR § 121.103) at http://www.access.gpo.gov/nara/cfr/waisidx_09/13cfr103_09.html; and

- A discussion of and examples of affiliation at http://www.sba.gov/idc/groups/public/documents/sba_homepage/affiliation_discussion.pdf

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: 13 CFR Part 121 (size regulations)
IRS Form 4506

cc: COC Program

Appendix 4
(paragraphs 4-6, 7-3, and 9-3)
Sample SBA Form 355, "Information for Small Business Size Determination"

This page is reserved for future use.

The current SBA Form 355, "Information for Small Business Size Determination" will expire on October 31, 2009.

Please use the current form on SBA's website at
http://www.sba.gov/idc/groups/public/documents/sba_homepage/tools_sbic355.pdf.

Appendix 5
(paragraph 4-10)
Sample Confirmation Letter of a Contracting Officer's Verbal Deadline Extension

VIA FAX

Date

Name
 Contracting Officer
 Agency
 Address
 City, State, Zip

Subject: Solicitation No:
 Size Determination No:
 Name of Business:

Dear _____:

This is to confirm our telephone conversation of [date] wherein you agreed to grant SBA additional time to complete the size determination of [name of business] with respect to this solicitation.

SBA understands that you will wait for the size determination applicable to this procurement until at least [date] .

If for any reason you do not agree with the above summarization of our telephone conversation, please immediately notify me in writing. My fax number is [#] .

Sincerely,

Name
 Size Determination Specialist

cc: [the business whose size is being determined]
 [the business that filed the protest]

Appendix 6
(paragraph 5-5)
Sample Size Determination Format

Size Determination
 File Number ___-SD-__-___

Date:
 Size Determination of:
 Address of Business:
 City, State, Zip:

Solicitation No:
 Procuring Activity:

NAICS Code:
 Size Standard:

INTRODUCTION: On [date], the U.S. Small Business Administration (SBA), Office of Government Contracting, received a timely and specific protest against [business], forwarded by the Contracting Officer, [agency, location]. The protest, filed by [protestor], alleged that [business] failed to meet the applicable small business criteria for the following reasons:

The subject solicitation is for [brief description of product or service]. This solicitation is a 100% small business set-aside classified under the NAICS Code and Size Standard listed above.

The size of the subject business will be determined in accordance with 13 CFR Part 121.

EVIDENCE:

CONCLUSION: Based on the evidence above, [business] is found to be a small business for the referenced size standard and for this solicitation.

OR

Based on the evidence above, [business] is found to be other than a small business for this solicitation and for the referenced size standard.

Name
 Area Director
 for Government Contracting

Appendix 7
(paragraph 6-1)
Sample Notification Letters

<u>Notification Letters for:</u>	<u>Page</u>
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Appendix 7 (cont'd)

a. Small Business

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is a small business under the size standard listed above. A copy of the formal size determination is enclosed.

If your business is adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
13 CFR Part 134 (OHA regulations)

cc: [the protestor]
Contracting Officer

Appendix 7 (cont'd)
b. Other Than Small

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals (OHA) of the SBA or by a Court of competent jurisdiction. Your firm may not self-certify as a small business at or below the size standard above, unless and until this decision is reversed or your firm is recertified. Failure to comply will subject you and your firm to criminal and civil penalties as well as possible debarment. You are required to update immediately your company's profile on the Federal government's vendor list, the Central Contractor Registry (CCR) and any other reporting system that requires size of a business to show its average annual receipts an/or average number of employees. Additionally, you are required to update your Online Representations and Certifications Application (ORCA) to correct the size of your business based on this size determination.

Any false information upon which the Federal government relies and for which your company may receive a benefit as a small business is punishable by Federal law. Both the business and its principals (13 CFR § 121.1009) are subject to this punishment.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

· the Area Office which issued the size determination;
 · the date of receipt of the size determination;

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- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

Appendix 7 (cont'd)
c. Other than Small for this Procurement

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small for this procurement. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals of the SBA or by a Court of competent jurisdiction. Your firm may not self-certify as a small business at or below the size standard above, unless and until this decision is reversed or your firm is recertified. Failure to comply will subject you and your firm to criminal and civil penalties as well as possible debarment. Additionally, you are required to update your Online Representations and Certifications Application (ORCA) to correct the size of your business based on this size determination.

If your business is adversely affected by this decision you may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance

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If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

**d. Appendix 7 (cont'd)
Recertification Granted (Small)**

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Purpose: Recertification Request
NAICS Code:
Size Standard:

Dear:

The Small Business Administration has made a formal size determination that your business is small under the size standard listed above. Therefore, your business is recertified as small under the above size standard. A copy of the formal size determination is enclosed.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosure

Appendix 7 (cont'd)
e. Recertification Denied (Other than Small)

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Purpose: Recertification Request
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above and has denied your application for recertification as a small business. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
13 CFR Part 134 (OHA regulations)

Appendix 7 (cont'd)
f. Failure to Respond (Other than Small)

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small since your business failed to respond to our request for information. A copy of the formal size determination is enclosed.

The finding is final, unless reversed by the Office of Hearings and Appeals of the SBA or by a Court of competent jurisdiction. You are required to update immediately your company's profile on the Federal Government's vendor list, the Central Contractor Registry (CCR) or any other reporting system that requires size of a business to show the correct average annual receipts and average number of employees. You are reminded any information about your business that is false upon which the Federal Government relies on to which a benefit is received is punishable by Federal Law to both the business and its principals (13 CFR § 121.1009 (g)(5)). Additionally, SBA may decide to debar your firm from contracting with the Federal government in the future (13 CFR § 125.29 (a)(7)(b)). Compliance is mandatory, as well as a responsibility of all businesses that participate in Federal Government contracting. Additionally, you are required to update your Online Representations and Certifications Application (ORCA) to correct the size of your business based on this size determination.

If your business is adversely affected by this decision you may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;

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a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
13 CFR Part 134 (OHA regulations)

cc: [the protestor]
Contracting Officer

Appendix 7 (cont'd)
g. Small for 8a/BD or Financial Assistance

Mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: [8a/BD Eligibility or Financial Assistance]
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is small under the size standard listed above. A copy of the formal size determination is enclosed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the area office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name

Effective Date: June 17, 2009

Area Director
for Government Contracting

Enclosures: size determination
13 CFR Part 134 (OHA regulations)

cc: 8a Business Development Office or Financial Assistance

Appendix 7 (cont'd)
h. Other than Small for 8a/BD or Financial Assistance

Mailing information/tracking number

Date

Business
 Address
 City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose:
 NAICS Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA).

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- . the Area Office which issued the size determination;
- . the date of receipt of the size determination;
- . the solicitation or contract number;
- . name, address and telephone number of the contracting officer;
- . a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- . the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance.

If additional information or assistance is needed, please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
13 CFR Part 134 (OHA regulations)

cc: 8a Business Development Office or Financial Assistance

Appendix 8

Affiliation

Why is Affiliation an Important Issue?

SBA determines whether an entity qualifies as a small business concern by counting its receipts, employees, or other measure including those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit. 13 CFR § 121.103(a)(6).

What are the General Principles of Affiliation?

Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. SBA's regulations on affiliation are contained in 13 CFR § 121.103 (available at <http://www.sba.gov/contractingopportunities/officials/size/index.html>).

The following are some of the affiliation rules that may apply when a business concern receives equity investment from one or more venture capital companies:

1. Stock ownership (13 CFR § 121.103(c))

- Control of 50% or more of voting stock. A person is an affiliate of a concern if the person owns or controls, or has the power to control, 50% or more of the concern's voting stock.

Example 1: Company A is the majority owner of Companies B, C and D (54.5%, 81%, and 60% respectively). Company A has the power to control Companies B, C and D. The companies are all affiliated. The receipts and/or number of employees of all four companies will be aggregated in determining the size of any one of them.

- Control of less than 50% voting stock, but large compared to others. Affiliation may also occur when a person owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock.

Example 1: Company A owns 40 percent of the voting stock of Company B and the next largest share is 2 percent. Company A controls Company B due to the fact it owns the largest block of voting stock compared to all other outstanding blocks of voting stock. Company A and Company B are affiliates. In addition, all other companies controlled by Company A will be considered affiliates of Company B.

Example 2: Two individuals each own blocks of shares of Company A. One individual owns 46.67% of the business and the other owns 33.333%. The individual that owns 46.67% of the stock owns the largest single block, which is large compared to any other block, and therefore probably has the power to control the concern. This individual also controls Company B. There is affiliation between Company A and Company, but it is rebuttable .

- Control of less than 50% voting stock by multiple minority owners. In addition, if two or more persons each owns or controls (or has the power to control) less than 50% of a concern's voting stock and (i) the minority holdings are all approximately equal in size and (ii) all of the minority holdings taken together are large compared to any other stock holdings, affiliation is presumed to exist with each of those persons. It is important to note that this is a rebuttable presumption .

¹ The term "person" used throughout this document and the regulations includes an individual, entity, or business concern. § 121.103(c)(1).

Example: Investor X, Investor Y, and Company A each own 23% of Company B. No other stockholder owns more than 5% of Company B. All three persons will be presumed to control Company B, unless they successfully rebut this presumption. If the presumption is not overcome, then Company A and Investors X and Y will all be considered affiliates of Company B. In addition, all companies controlled by Company A and Investors X and Y are affiliates of Company B.

- Voting stock is widely held. When a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the business concern's Board of Directors and Chief Executive Officer (CEO) or President are deemed to have the power to control the concern unless evidence is provided to show otherwise.

Example: In a corporation where no one stockholder has a block of voting stock sufficient to give it control or the power to control the concern, control instead rests in each member of the Board of Directors and the CEO or President. This means that any business controlled by a member of the Board and by the CEO or President is an affiliate of the business concern in question, unless the individual Board members and CEO or President can rebut this presumption.

2. Stock options, convertible securities, and agreements to merge (13 CFR § 121.103(d))

SBA treats each of these cases as though the rights granted have been actually exercised. Regulations give present effect to an agreement to merge (including an agreement in principle) or to sell stock. If these rights have been granted and they confer the power to control, affiliation exists.

Example 1: If Company A holds an option to purchase a controlling interest in Company B, the situation is treated as though Company A had exercised its rights and had become owner of the controlling interests in Company B. Company A and B are affiliates. In addition, all companies controlled by Company A will be considered affiliates of Company B.

Example 2: Company A and Company B are in discussion about a merger between the two of them. Both companies' representatives have met several times over the past two months. There is neither a formal nor informal agreement to merge, although merging -the two companies is their stated objective. Unless the two companies have an agreement to merge, SBA will not find affiliation between the two companies based on these open and continuing discussions of merger alone.

3. Common management (13 CFR § . 121.103(e)).

If one or more officers, directors, managing members, or general partners of a business controls the Board of Directors and/or the management of another business the businesses are affiliates. SBA usually finds affiliation in these examples:

Example 1: Members of Company A's Board of Directors occupy three out of five positions in Company B's Board of Directors. Company A has control of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B.

Example 2: A member of Company A's Board of Directors has veto rights over the majority decisions of Company B's Board of Directors. By possessing such negative control, Company A has control of the Board of Directors of Company B and the two concerns are affiliated. In addition, all companies controlled by Company A will be considered affiliates of Company B.

4. Identity of interest between individuals or businesses , including family members (13 CFR § 121.103(f))

Individuals or firms that have identical (or substantially identical) business or economic interests may be treated as though they are affiliated unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual (or other) relationships, are among those treated this way. However, individuals or firms may seek to demonstrate that no affiliation exists by providing convincing proof that apparently identical interests are, in fact, separate. Patterns of subcontracting,

commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship may evidence an identity of interest.

Example 1: Several officers of Company A are also officers of Company B. The two companies are in the same line of work and extensively subcontract with each other. The interrelationship between the two companies results in them acting as one, and therefore, the two are considered affiliates.

Example 2: Company A and B share office space and equipment in the same location and also share key employees. In addition, Company A has sent a substantial amount of business to Company B for each of the last three years. All this, taken together, is an indication that the two companies have combined their resources to each other's benefit, and therefore, are likely to be affiliated

Example 3: When three of four members of a concern's Board of Directors have investments in common with each other outside the concern and have also provided the concern with substantial financial assistance, they may be viewed as sharing an identity of interest. The three directors would be deemed to control the Board and to therefore also control the business. Each outside business that these three directors control would be an affiliate of the business concern in question.

Example 4: A husband and wife founded an accounting firm in 1974. Their daughter was a division head for two years in 2005-2007. In 2008, the daughter opened an office supply store using her own funds and a bank loan. Her parents purchase supplies from the daughter's store, and sales to her parents represent 10% of the daughter's revenues. Although the parents and daughter have business dealings, they are minimal in nature. There are no other business interactions between the daughter and her parents. If there are no other indicia of affiliation, SBA would find that affiliation due to family relationships is rebuttable.

5. Contractual relationships or economic dependency (13 C.F.R § 121.103(a),(f) and (g))

A concern that is unlikely to be able to survive on its own or is economically dependent upon another person will probably be found to be affiliated with the concern(s) on which it is dependent.

Example 1: Company A performs subcontracts for Company B, and Company B accounts for 90% of Company A's revenues. Company A's existence depends on work from Company B and the two are deemed affiliates.

Example 2: Company A provides significant loans to Company B and guarantees other loans to Company B. Company B's over reliance of dependence on Company A's financial support (both direct and indirect) results in their affiliation.

Example 3: A loan between two businesses is not an arm's-length transaction and the terms and conditions of the loan demonstrate financial dependence by one business on the other. The two are deemed affiliates.

Example 4: Company A obtained a patent for a product it developed. It licenses the use of the product to Company B, and makes it available for other companies to obtain a license. No affiliation exists between Company A and Company B based solely on the licensing agreement.

CONCLUSION

The above is an overview of some basic principles of affiliation as set forth in SBA's regulations and the Office of Hearings and Appeals rulings (see http://www.sba.gov/aboutsba/sbaprograms/oha/OHADecisions/OHA_DECISIONS.html). The reader must review all applicable regulations carefully before certifying a business's size status. For further information or questions, please contact the SBA Size Specialist who is responsible for the area in which the company is located. Below is a listing of Size Specialists and the geographical areas they serve.