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# ***MBE/WBE Graduation /Small Business Administration (SBA) Size Guidelines***

*City of Austin  
Small & Minority Business Resources  
(SMBR)*

*(512) 974-7645*

*April 5, 2016*



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## ***MBE/WBE Determination of Business Size***

- *Only a firm that is a small business is eligible for certification and program participation, even if the firm meets all other eligibility criteria.*
- *In determining whether an applicant is a small business, the City will apply the standards established by the United States Small Business Administration (SBA), in 13 C.F.R. Parts 121 & 124.*





## ***Graduation From MBE/WBE Program***

- *Review tax returns or number of employees documentation of applicant firms annually and at recertification to determine if business and affiliates meet small business size standard for Primary Industry Code based on the Small Business Administration (SBA) guidelines established in 13 C.F.R. Part 121*
- *Small business size could be determined by gross receipts or number of employees in the NAICS code that best describes the product or service being purchased*



## ***Graduation From MBE/WBE Program***

- *If the annual gross receipts of the firm and its affiliates exceed the federal small business size standard, for that industry code as promulgated in 13 CFR Part 121, the firm shall graduate from the Program.*
- *The firm may appeal the decision pursuant to these rules.*
- *The firm shall not be eligible to apply for certification for at least one year from the effective date of its graduation, and it must establish that its gross receipts during that year did not exceed the applicable federal size standard.*



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# **North American Industry Classification System (NAICS) Primary Industry Code**

- **How does SBA determine a concern's “primary industry”?**
- *In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year.*
- *SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.*
- *A company may have a primary NAICS code in one sector and still do business in another. If it is a small business set-aside, it must qualify as small for whatever NAICS code is assigned to the procurement*



# Affiliation

- *Affiliation is the power to control*
- *Companies are affiliated with each other if:*
  - *one business or individual controls or has the power to control the other, or*
  - *if a third party has the power to control both.*
- *Determinations will consider factors such as:*
  - *stock ownership*
  - *agreements to merge*
  - *common management*
  - *substantially identical business/economic interests*
  - *previous relationships or ties (e.g., spin-offs)*
  - *businesses owned by immediate family members*
  - *economic dependency through contractual or other relations*



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## ***Change in Primary Industry Code***

- *Change in primary industry classification. A business may request that the primary industry classification contained in its business plan be changed by filing such a request with SBA.*
- *SBA will grant such a request where the business can demonstrate that the majority of its total revenues during a three-year period have evolved from one NAICS code to another.*





## ***What Determines Receipts***

- ▶ *Receipts/Revenue means “total income” plus “cost of goods sold” as reported on the Federal Tax Return.*
- ▶ *Receipts/Revenue are averaged over company’s three most recently completed fiscal years*
  - *Alternate annualization calculation for a company that has not been in business three complete fiscal years or have a short year*







## ***What Determines Receipts cont.***

- *Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.*
- *Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.*
- *Receipts of affiliates must be included.*



# Revenue Exclusions

- ▶ *Limited exclusions from revenue include:*
  - *Transactions between affiliates*
  - *Amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker*
  - *Net capital gains or losses*
  - *Taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees*
  - *No Other exclusions are granted*



## *What Determines the Number of Employees*

- *Average number of employees based on number of employees for each pay period for the preceding twelve calendar months.*
- *Everyone counts as one employee: full-time, part-time; temporary.*
- *When affiliates exist, regardless of location, their employees are added to the total count*
- *In determining a businesses' number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.*



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## ***What Determines the Number of Employees cont.***

- *Where the size standard is number of employees, the method for determining a concern's size includes the following principles:*
- *The average number of employees of the business is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.*
- *If a entity has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.*



## Helpful Links

➤ *SMBR*

- <http://www.austintexas.gov/department/small-and-minority-business/documents>

➤ *SBA*

- <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17>

➤ *NAICS*

- <http://www.naics.com/>





## ***Contacting SMBR***

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