

Meeting the Definition of a Small Business Concern Checklist

by Erin L. Toomey, Foley & Lardner LLP, with Practical Law Commercial Transactions

Status: **Maintained** | Jurisdiction: **United States**

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/w-012-5527

Request a free trial and demonstration at: us.practicallaw.tr.com/practical-law

A Checklist for existing or prospective federal government contractors to determine whether they can meet the definition of a small business concern (SBC) under the Small Business Act (SBA). This Checklist includes the definitional thresholds and size standards for SBCs. This Checklist can also be used to determine if an SBC can qualify under a specific small business category, including the 8(a) Business Development Program, a Veteran-Owned Small Business (VOSB), a Service-Disabled Veteran-Owned Small Business (SDVOSB), a Women-Owned Small Business (WOSB), an Economically Disadvantaged Women-Owned Small Business (EDWOSB), and a Historically Underutilized Business Zone (HUBZone) SBC.

Determine Whether the Business Meets the General Definition of a Small Business Concern (SBC)

Determine Whether the Business Meets the Definition of an SBC Under the Small Business Act (SBA)

- A small business concern (SBC) must:
 - be independently owned and operated;
 - not be dominant in its field of operation; and
 - not exceed the relevant small business size standard for the particular procurement action.

(15 U.S.C. § 632(a)(1).)

Determine Whether the Business Meets Location Requirements

- An SBC must be located in the US and:
 - operate primarily within the US; or
 - contribute significantly to the US economy by paying taxes or using American products, materials, or labor.

(13 C.F.R. § 121.105(a)(1).)

Determine Whether the Business Meets Legal Form Requirements

- An SBC must be a for-profit entity in the form of:
 - a corporation;
 - a partnership;
 - a limited liability company;
 - a joint venture, with no more than 49 percent participation by foreign businesses;
 - an individual proprietorship;
 - an association;
 - a trust; or
 - a cooperative.

(13 C.F.R. § 121.105(b).)

Determine Whether the Business Meets the Relevant Size Standard for an SBC

Determine Which Size Standard Applies

- Look up the North American Industry Classification System (NAICS) code listed in the government



Meeting the Definition of a Small Business Concern Checklist

solicitation and the corresponding size standard in the SBA's [Table of Small Business Size Standards Matched to NAICS Codes](#) (the size standards table).

- The size standards table lists the relevant size standard under:
 - number of employees (see [Calculate the Number of Employees](#)); or
 - annual receipts (see [Calculate Annual Receipts](#)).
- A company's products and services may fall under multiple NAICS codes, so ensure that the company enters all NAICS codes applicable to its business in the [System for Award Management](#) (SAM) when responding to a government solicitation.

For information on how to respond to a federal government solicitation in general, see [Practice Note, Federal Government Contracts: Overview: Eligibility](#). For more information on NAICS codes and certifying small business size in SAM, see [Practice Note, Government Contracts: Small Business Concerns: NAICS Codes](#).

Calculate the Number of Employees

- Determine the average number of employees during each pay period of the preceding 12 months, including employees who are:
 - full-time;
 - part-time; and
 - temporary.(13 C.F.R. § 121.106.)
- Include employees of all domestic and foreign affiliates (13 C.F.R. § 121.106(b)(4)).

Calculate Annual Receipts

- Determine the average of the annual gross receipts of the business in the last five fiscal years (for certifications submitted on or before January 6, 2022, the concern may use three fiscal years instead) (13 C.F.R. § 121.104).
- For companies in business for less than five years, calculate annual receipts by:
 - determining the total gross receipts since the start of the business;
 - dividing by the number of weeks in business (count a fraction of a week as a week); and
 - multiplying by 52.(13 C.F.R. § 121.104(c)(2).)

- Include the average gross receipts of all domestic and foreign affiliates (13 C.F.R. § 121.104(d)).
- For detailed descriptions of what is included when calculating gross receipts, consult the SBA regulations (13 C.F.R. § 121.104(a)).

Determine Affiliation with Other Entities

- Two businesses are affiliates when:
 - one entity controls or has the power to control the other; or
 - a third party controls or has the power to control both entities.(13 C.F.R. § 121.103.)
- When determining whether one entity controls another, consider:
 - common ownership (for example, control through stock ownership, stock options, and voting trusts);
 - common management (for example, interlocking management and common facilities);
 - previous relationships with, or ties to, another business, referred to as the “newly organized concern” factor; and
 - contractual relationships (for example, joint venture, franchise, and license agreements).(13 C.F.R. § 121.103.)

For more information on how to determine whether two entities are affiliates, see [Practice Note, Government Contracts: Small Business Concerns: Affiliation Rules](#).

Determine Whether the SBC Qualifies for a Specific Small Business Program

- To qualify for one of the small business programs below, the business must first qualify as an SBC (see [Determine Whether the Business Meets the General Definition of a Small Business Concern \(SBC\)](#) and [Determine Whether the Business Meets the Relevant Size Standard for an SBC](#)).

SBC Requirements for the 8(a) Business Development Program

- The SBC must be owned and operated by one or more socially and economically disadvantaged individuals, who are:

Meeting the Definition of a Small Business Concern Checklist

- US citizens;
- residing in the US; and
- of good character.
- The SBC must be able to demonstrate potential for success.
- Socially disadvantaged individuals include members of the following designated groups that have been subjected to racial, ethnic, or cultural discrimination:
 - Black Americans;
 - Hispanic Americans;
 - Native Americans;
 - Asian-Pacific Americans; and
 - Subcontinent Asian Americans.
- Consult 13 C.F.R. Section 124.103(b)(1) for a complete list of the designated socially disadvantaged groups, including country listings.
- Individuals who do not belong to a designated group may be considered socially disadvantaged if they can demonstrate that they have at least one distinguishing feature that has contributed to social disadvantage (13 C.F.R. § 124.103(c)).
- Economically disadvantaged individuals are socially disadvantaged individuals whose net worth is below:
 - \$250,000 for initial 8(a) eligibility; and
 - \$750,000 for continued 8(a) eligibility.

(13 C.F.R. § 124.104.)

For information on the 8(a) Business Development Program, see [Practice Note, Government Contracts: Small Business Concerns: 8\(a\) Business Development Program](#).

SBC Requirements for the Veteran-Owned Small Business (VOSB) Program

- A VOSB is an SBC that:
 - is at least 51% owned by one or more veterans; and
 - has its management and daily operations controlled by one or more veterans.

(48 C.F.R. § 2.101.)

SBC Requirements for the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program

- An SDVOSB is an SBC that:

- is at least 51% unconditionally and directly owned by one or more service-disabled veterans; and
- has its management and daily business operations controlled by one or more service-disabled veterans.
- If the service-disabled veteran has a permanent and severe disability, his spouse or permanent caregiver can operate and control the management and daily business operations.

(13 C.F.R. § 125.9; 48 C.F.R. § 2.101.)

For more information on the SDVOSB program, see [Practice Note, Government Contracts: Small Business Concerns: Service-Disabled Veteran-Owned Small Business \(SDVOSB\) Program](#).

SBC Requirements for the Women-Owned Small Business (WOSB) Program

- A WOSB is an SBC that:
 - is at least 51% directly and unconditionally owned by one or more women who are US citizens; and
 - has its management and daily business controlled by one or more women who are US citizens.

(48 C.F.R. § 2.101.)

For more information on WOSBs, see [Practice Note, Government Contracts: Small Business Concerns: Women-Owned Small Business \(WOSB\) Program](#).

SBC Requirements for the Economically Disadvantaged WOSB (EDWOSB) Program

- An EDWOSB is a WOSB owned and controlled by one or more women who are also economically disadvantaged (13 C.F.R. § 127.200(a)).
- An economically disadvantaged woman is one:
 - whose net worth is less than \$750,000, excluding her ownership in the EDWOSB and her primary residence; and
 - who can demonstrate an impaired ability to compete in the free market due to diminished capital and credit opportunities compared to others in the same or similar line of business.

(13 C.F.R. § 127.203.)

For more information on EDWOSBs, see [Practice Note, Government Contracts: Small Business Concerns: Women-Owned Small Business \(WOSB\) Program](#).

Meeting the Definition of a Small Business Concern Checklist

SBC Requirements for the Historically Underutilized Business Zone (HUBZone) Program

- To qualify for the HUBZone Program, an SBC must:
 - be located in an SBA-designated HUBZone; and
 - have at least 35% of its employees living in a HUBZone.

(13 C.F.R. § 126.200.)

For more information on HUBZone SBCs, see [Practice Note, Government Contracts: Small Business Concerns: Historically Underutilized Business Zone \(HUBZone\) Program](#).

For information on the benefits to qualifying as an SBC, see [Practice Note, Government Contracts: Small Business Concerns: Advantages Provided to Small Business Concerns](#).

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.