

SMALL BIZ BASICS

Session 1: Small Biz Buzz

8 October 2024

Taft Stettinius & Hollister LLP

Erin R. Davis, MPA, Esq.

This presentation is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

Session 1: Roadmap

- NAICS Codes
- Size calculations
- SAM.gov Registration
- SBA Dynamic Small Business Search
- Business entity decision and state incorporation
- Solicitations/proposal information
- How to read FAR/DFARS sections and clauses
- Size protests
- Limitations on subcontracting and nonmanufacture rule
- Small business subcontracting plans
- Other compliance issues

NAICS Codes

- The North American Industry Classification System (NAICS) classifies businesses according to type of economic activity.
 - Collaboration between Canada, Mexico, and the U.S. governments.
 - U.S. is represented by Office of Management and Budget
- A size standard represents the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business for SBA and federal contracting programs.
- The definition of “small” varies by industry.
- Certain government programs, such as SBA loan programs and contracting opportunities, are reserved for small businesses.
- Assigns a six-digit code:

NAICS aggregation levels		Example of NAICS structure	
Digit designation	Aggregation level	Code	Titles of categories
2	Sector	54	Professional, scientific, and technical services
3	Subsector	541	Professional, scientific, and technical services
4	Industry group	5411	Legal services
5	Industry	54111	Offices of lawyers
6	National industry	541110	Offices of lawyers

Small Business Size Calculations

- SBA is responsible for determining the thresholds, and will update its Table of Size Standards as needed
 - Most recently on 17 March 2023, effective retroactive to 19 December 2022
 - <https://www.sba.gov/document/support-table-size-standards>
- In the last five years, Congress and the SBA have changed the calculations in order to allow more firms to qualify as small for federal procurements, for a longer period of time.
- SBA designates size standards for industries under the NAICS based upon two methods:
 - a firm's number of employees over the past twenty-four months (usually for manufacturing), or
 - a firm's average annual revenue over a specified period (usually for service-based work).

Small Businesses Size Calculations

- RECEIPTS-BASED NAICS Codes:

- a firm must average its annual revenue based on the five (5) most recently completed fiscal years.
 - Previously, the calculation period for revenue-based size standards was only a 3-year period.
 - Total income, gross receipts, all revenue

- EMPLOYEE-HEAD COUNT-BASED NAICS Codes:

- A firm must count all individuals employed on a full-time, part-time, or other basis, including those 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.
- 13 CFR 121.106(b):
 - (1) The average number of employees of the concern 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 24 calendar months.
 - (2) Part-time and temporary employees are counted the same as full-time employees.
 - (3) If a concern has not been in business for 24 months, the average number of employees is used for each of the pay periods during which it has been in business.

Small Businesses Size Calculations

- <https://www.ecfr.gov/current/title-13/chapter-I/part-121#121.201>

'NAICS Codes	NAICS Industry Description	Size standards in millions of dollars	Size standards in number of employees
541490	Other Specialized Design Services	\$13.5	
541511	Custom Computer Programming Services	\$34.0	
541512	Computer Systems Design Services	\$34.0	
541513	Computer Facilities Management Services	\$37.0	
541519	Other Computer Related Services	\$34.0	
541519 (Exception)	Information Technology Value Added Resellers ¹⁸		150
541611	Administrative Management and General Management Consulting Services	\$24.5	

Before SAM.gov Registration

- Confirm entity applying in SAM.gov is registered with Secretary of State (or comparable state office)
- Confirm or apply for Federal Tax Id. (EIN)
- Confirm or open bank account

Preliminary Contractor Requirements

- Unique Entity Identifier (UEI)
 - Individual number assigned to an entity
- Federal Employer Identification Number (FEIN, or EIN)
 - Federal Tax Id. No.
- Commercial and Government Entity (CAGE)
 - 5 character ID number issued by Defense Logistic Agency
- System of Award Management (SAM)
- NAICS
 - Need to identify primary and secondary NAICS Codes

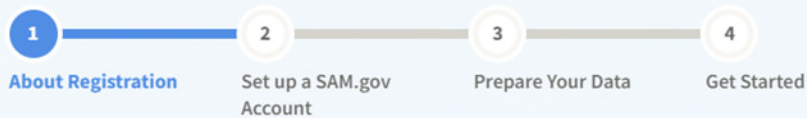
Get Started with Registration and the Unique Entity ID

[Entity Information Home](#)

Submitting a registration and getting a Unique Entity ID are FREE.

Before You Get Started

Review these steps to choose which option is right for you. You can register to bid and apply for federal awards or you can request a Unique Entity ID only without having to complete a registration.



1 About Registration

If you want to apply for federal awards as a prime awardee, you need a **registration**.

A registration allows you to bid on government contracts and apply for federal assistance. As part of registration, we will assign you a Unique Entity ID.

To see comprehensive instructions and checklist for entity registration, download

Register Your Entity or Get a Unique Entity ID

Register your entity or get a Unique Entity ID to get started doing business with the federal government.

[Get Started](#)[Renew Entity](#)[✓ Check Entity Status](#)[Already Registered?](#)

SAM.gov

Registration: have your CORE data on hand:

- Legal Business Name
 - You need to be registered as a business in Ohio (or other state)
- Tax Id Number or EIN (<https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>)
- Bank routing and bank account number
- Primary and Secondary NAICS code(s)
- Your company's Point-of-Contact (POC) – usually primary and secondary POCs.
 - You will be required to submit a notarized letter identifying the Entity Administrator.
- Note: UEI will be assigned. No longer need a DUNS number.

After you register at SAM.gov, behind-the-scenes sam.gov and the Defense Logistics Agency (DLA) share information to assign you a unique Commercial and Government Entity (CAGE) Code.

- Be on the look out for either your CAGE Code or follow up questions from the DLA.

SAM.gov Registration

- SAM.gov: System for Award Management
- This is a MANDATORY REGISTRATION.
 - The Federal Government does not do business with companies that are not registered in SAM.
 - In very rare instances, there are “suppressed” account profiles, meaning that the company may be performing highly sensitive work.
- Now a two-part authentication
 - System will sync a new registrant’s information against other database including local Secretary of State and the IRS.
 - Multiple days
- FREE registration
 - You can do it yourself, without any cost for a third party
 - Officially, the first step in the process takes 45 minutes. Give yourself extra time.
 - After you complete the SAM.gov registration, you will receive a “Congratulations” email:
 - This is a temporary status! There will be behind-the-scenes verifications with several federal agencies.
 - In about 10 days, your company’s profile will become valid and viewable.

SAM.gov

- STEP 1: Businesses must enter their name/address/etc.
 - EXACTLY how it was filed with their Secretary of State.
 - SAM.gov is very sensitive and will reject if the SOS says Dr. but they enter Drive or Dr into SAM.
 - Failure to do so will result in delay. A help desk ticket and incident number will be needed to reset, and there are only 7 days to correct the information.

SAM.gov

- STEP 2:
 - If successful at Step 1, businesses will receive an email validating their identity and inviting them to complete the registration (Core Data, Assertions, Reps and Certs, and PoCs).
 - They will receive a new number: MPIN (Marketing PIN), which is used for marketing/market research with federal agencies.
 - If the businesses do not have a CAGE code, they need to mark “No” and they will be assigned one automatically. There is a lag between submission and receipt.
 - APEX (fka PTAC) strongly recommend that businesses complete their SAM.gov registration, and then go to SBA DSBS to update their profile there. SAM allows the registrant to link over to SBA DSBS, however the sites are not compatible. It’s better to link from DSBS than from SAM.

SAM.gov

- If successful, company will receive 3 emails from SAM.gov.
 - Thank you, please proceed to step 2 (usually within 30 minutes)
 - Passed IRS validation (or didn't) (usually within a day)
 - Congrats and here's your CAGE code (usually a few days later)
- Current Registration time: approximately 10 business days.


SAM.gov Checklist

- https://uploads.mwp.mprod.getusinfo.com/uploads/sites/58/2022/05/SAMgov_Entity_Registration_Checklist.pdf#:~:text=Prepare%20for%20Entity%20Registration%20in%20SAM.gov.%20SAM.gov%20is%20an%20official



Entity Registration Checklist

Prepare for Entity Registration in SAM.gov

 SAM.gov is an official website of the United States government. SAM.gov is FREE to use. There is no charge to get a Unique Entity ID, register your entity, and maintain your entity registration at SAM.gov.

What can you do with this guide?

The questionnaires and checklists here will help you gather the information you need and prepare to answer the questions in your entity registration.



All Awards registration allows you to bid on contracts and other procurements, as well as apply for financial assistance. Look for the icon on the left to submit an All Awards registration.

[Jump to All Awards entity registration questionnaires and checklists](#)



Financial Assistance Awards Only registration allows you to apply for financial assistance, or grants and loans, only. Look for the icon on the left to submit a Financial Assistance Only registration.

[Jump to Financial Assistance Awards Only entity registration questionnaires and checklists](#)

For All Awards registrations , prepare these sections:	For Financial Assistance Awards Only registrations , prepare these sections:
<ul style="list-style-type: none"> • Unique Entity ID • Core Data • Assertions • Reps & Certs • Architect and Engineering Responses • Defense FAR Supplement (DFARS) questionnaire (if applicable) • Points of Contact (POCs) • SBA supplemental page (If you are a small business) 	<ul style="list-style-type: none"> • Unique Entity ID • Core Data • Reps & Certs • Points of Contact (POCs)

SAM.gov - HELP

- Federal Service Desk
 - Monday – Friday, 0800 to 2000 EST
 - 1.866.606.8220
 - https://www.fsd.gov/gsafsd_sp
 - Tutorials
 - Live chat

SBA Dynamic Small Business Search

- SBA has its own database of certifications based on socioeconomic status.
 - Aggregates data from SAM.gov
 - More user friendly when looking for small business information
- https://dsbs.sba.gov/search/dsp_dsbs.cfm
- Separate sections for cross referencing data:

Government Certifications

8(a) Certified or 8(a) Joint Venture:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)
- Not Required

HUBZone Certification:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)
- Not Required

Women Owned Small Business:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)
- Not Required

Economically Disadvantaged Women Owned Small Business:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)
- Not Required

The SBA's 8(a), HUBZone and SDB certifications are also made available to external software via: [SBSS Public Web Services](#).
For more information, see also [SBA Certifications](#) in the search help page.

Business Entity & State Incorporation





























- Companies need to be authorized to do business through a registration filing with a Secretary of State (or equivalent)
 - Governed by state law, not federal (mostly)
 - Renewals and filings vary by state
- Types of business associations:
 - Corporations
 - Limited Liability Companies
 - Partnerships
 - General and Limited
 - Others
- Typically the state where headquartered, except publicly traded companies
- For SAM.gov, need to be registered

Solicitation and Proposal Information

- Opportunities for Prime Contracting are posted in SAM.gov.
 - Be sure to search by “active”
 - Can search inactive to see older offers
 - Opportunities for subcontracting are NOT posted in SAM.gov.
 - There is not universal clearinghouse
 - Typically, business development efforts include speaking with the Government Customer about capabilities so that the customer can connect.
- At the federal level, the USG can issue a request for proposals (RFP), an invitation for bids (IFB), request for information (RFI) and other opportunity announcements
 - Legal ramifications vary based on which it is.
- when an offeror submits its bid or offer, its binding.
 - Carefully read – offerors must complete everything listed in the SOW
 - May take an Exception, but need to be clear
- Proposal is public information, subject to the Freedom of Information Act (FOIA)
 - Carefully mark confidential and proprietary information
 - Read the instructions. Some solicitations require specific wording.

FAR and its supplements

- Federal Acquisition Regulation (FAR) overarching system of regulation for most federal procurements.
- Applies to all federal contracts unless noted.
- Solicitations will have provisions and contracts will have clauses:
 - 52.223-01 (provision)
 - 52.223-02 (clause)
 - Generally used interchangeably
- Some agencies have special needs and have developed a FAR supplement.
 - DFARS most common
 - <https://www.acquisition.gov/content/regulations>

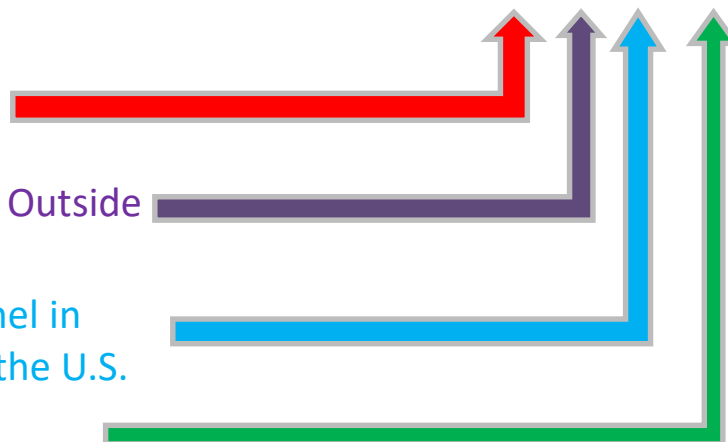
Regulations			
 FAR Federal Acquisition Regulation	 SOFARS Special Operations Federal Acquisition Regulation Supplement	 DOSAR Department of State Acquisition Regulation	 HUDAR Housing and Urban Development Acquisition Regulation
 Chapter 99 (CAS) CFR Title 48 Chapter 99	 TRANSFARS Transportation Federal Acquisition Regulation Supplement	 DTAR Department of Treasury Acquisition Regulation	 MARR Board of Governors Acquisition Regulation
 DFARS Defense Federal Acquisition Regulation Supplement	 AGAR Agriculture Acquisition Regulation	 EDAR Department of Education Acquisition Regulation	 JAB Justice Acquisition Regulation
 DFARS-PCI Defense Federal Acquisition Regulation Supplement PCI	 AIDAR USAID Acquisition Regulation	 EPAAR Environmental Protection Agency Acquisition Regulation	 LIFAR Life Insurance Federal Acquisition Regulation
 AFARS Army Federal Acquisition Regulation Supplement	 CAR Commerce Acquisition Regulations	 FEHBAAR Federal Employee Health Benefits Acquisition Regulation	 NSAAR NASA Federal Acquisition Regulation Supplement
 AFARS Air Force Federal Acquisition Regulation Supplement	 DEAR Department of Energy Acquisition Regulation	 GSAR General Services Acquisition Manual/Regulation	 NRCAR Nuclear Regulatory Commission Acquisition Regulation
 NAB	 NAB	 LIFAR	 TRB

How to read a FAR Section Number

- Example

- FAR Part 25: Foreign Acquisition
- FAR Subpart 25.3: Contracts Performed Outside the U.S.
- FAR Section 25.301: Contractor Personnel in Designated Operational Area...Outside the U.S.
- FAR Subsection 25.301-3 - Weapons

FAR 25.301-3



Subpart 25.3 - Contracts Performed Outside the United States

25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

25.301-1 Scope.

25.301-2 Government support.

★ 25.301-3 Weapons.

25.301-4 Contract clause.

Small Business Size Protests

- Any interested party may claim that a winning business (or prospective awardee) does NOT meet size standards, and therefore is NOT eligible for the contract under set-aside rules.
- A Size Protest must be filed with the Contracting Officer, who then provides it to the appropriate SBA Area Office.
 - The procedure for filing a size protest is fully explained in 13 C.F.R. §§ 121.1001-1008.
 - Any appeal is filed at the SBA Office of Hearings and Appeals (OHA)
- Strict time limits – 5 days after the KO notifies of the identity of the prospective awardee.
- Status Protest is similar to a size protest, but the challenge is to the winning business' socioeconomic status (i.e. it is not woman-owned, in a HUBZone).

Small Business Subcontractor Limitations

(FAR 52.219-14; 13 CFR 125.6)

- Every set-aside contract contains some kind of subcontracting limit
 - Depends on type of contract
 - Small business set-asides are exempt if value between \$10,000 and \$250,000*
 - All others still subject to limitations on subcontracting even below \$250,000
 - 8(a), HUBZone, SDVOSB, and WOSB

Small Business Must Satisfy the Following Percentages By Own Efforts and Those of “Similarly Situated” Subcontractors When Subcontracting:

- Construction by special trade contractors – 25% of the total amount paid by gov’t (excludes material cost)
- General construction – 15% of the total amount paid by gov’t (excludes material costs)
- Non-construction services – 50% of total amount paid by gov’t
- Supplies or products – 50% of total amount paid by gov’t (cost of materials excluded and not considered subcontracted)
- Mixed contract? Look at NAICS code!

Small Business Subcontractor Limitations

(Cont'd)

- SBA allows contractors to count “similarly situated” contractors in determining compliance with the limitations on subcontracting rule.
 - Who is similarly situated?
 - “a subcontractor that has the same small business program status as the prime contractor”
 - In other words, similarly situated subcontractors must be (1) small under the NAICS code assigned to the procurement and (2) in the same program status (i.e., HUBZone, WOSB, SDVOSB, 8(a)) as the prime contractor
 - The “similarly situated” subcontractor need only be small under the NAICS code assigned by the prime – NOT the primary NAICS code *for the contract*

Nonmanufacturer Rule FAR 52.219-33

- To guard against a large business using a small business to circumvent the regulations, the SBA regulations allow a small business to supply products that it did not manufacture under specific circumstances.
 - The actual manufacturer was another small business.
 - The SBA has granted a waiver.
 - Otherwise, the small business is expected to manufacture supplies delivered under the contract.
 - *Nonmanufacturer* means a business concern, including a supplier, that provides an end item it did not manufacture, process, or produce.
 - FAR 52.219-33 requires the Contractor to:
 - (i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers who are nonmanufacturers;
 - (ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and
 - (iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.
- (2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

Small Business Subcontracting Plans

- Federal policy is to assist small business in development
- FAR 52.219-9 applies to “other than small” (i.e. LARGE Businesses)
 - Requires large businesses to subcontract portions of the work to small businesses
 - Large businesses develop goals across several categories: small businesses, small disadvantaged businesses, WOSB, EDWOSB, VOSB, SDVOSB, and HUBZone.
- While goals are aspirational, the USG requires annual reporting as to how well the large business has performed in meeting its goals.
- Generally, good faith efforts are sufficient.
- However, the USG may incorporate FAR 52.219-16 Liquidated Damages – Subcontracting Plan on the contract.
 - Failure to make good faith efforts may result in the large business having to pay liquidated damages to the USG
 - The dollar amount is equal to the amount that the contractor failed to achieve for each subcontracting goal.
- New solicitations are even requiring subcontractors to report their participation (i.e. dollars earned) to ensure compliance.
- Why this matters: large businesses need to work with small business partners.

Other Compliance Issues

- Adopt policies and practices:
 - Prohibiting
 - Contingent fees (commission, percentage, brokerage fee contingent upon securing a Govt Contract) through improper influence (FAR 52.203-5)
 - Gifts and Gratuities (FAR 52.203-3)
 - Conflicts of Interest
 - Kickbacks (FAR 52.203-7)
 - Influence on federal transactions (FAR 52.203-12)
 - Paying Small Business Subcontractors timely:
 - FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)
 - FAR 52.242-5 Payments to Small Business Subcontractors (Jan 2017)
 - Competing subcontracting efforts (not part of original proposal) (FAR 52.244-6)
 - Regarding the Privacy Act of 1974 and appropriate training (FAR 52.224-1, and -3)
 - Posting Fraud, Waste, Abuse Hotline posters (DFARS 252.203-7004)
 - Handling confidential information (DFARS 252.204-7000)

QUESTIONS?

Connect with me

Erin R. Davis, MPA, Esq.

edavis@taftlaw.com

<https://www.linkedin.com/in/erin-davis-govcon/>