MARYLAND DEPARTMENT OF TRANSPORTATION

What is Graduation?

Section 14-303 (b) (12) of the State Finance and Procurement Article of the Maryland Annotated Code requires the Board of Public Works to adopt regulations "establishing a graduation program based on the financial viability of the minority business enterprise, using annual gross receipts or other economic indicators as may be determined by the Board."

COMAR 21.11.03.15 sets forth the graduation standard for the State's Minority Business Enterprise ("MBE") Program:

> (2) Graduation.
>
> (a) If a certified MBE meets or exceeds the small business size standards specified in 13 CFR Part 121, as amended, which is incorporated by reference, the MBE is no longer eligible to participate in a procurement as a certified MBE. The MBE is still eligible for credit towards an MBE goal under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.
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> (b) If, during the next 3 years, the MBE again becomes qualified under the small business size standards specified in 13 CFR Part 121, as amended, which is incorporated by reference, the MBE may resume participation as a certified MBE through the recertification process.
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> (c) If, after 3 years of nonparticipation, the MBE continues to meet or exceed the small business size standards under 13 CFR Part 121, as amended, which is incorporated by reference, the MBE is considered to have graduated and will no longer be certified.

Like its federal counterpart, the Disadvantaged Business Enterprise ("DBE") Program, the State's MBE Program incorporates the U.S. Small Business Administration ("SBA") size standards at 13 C.F.R. Part 121. Size standards are established by North American Industry Classification System ("NAICS") Codes based on dollar amounts or number of employees. Size determinations are based on a three-year average of a firm's annual gross receipts *or* the number of a firm's employees in the preceding 12 months.

How Are Size Standards Calculated?

Annual Receipts – 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 tax return forms. The term does not include: 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 firm or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a firm's latest three (3) completed fiscal years to determine its average annual receipts. If a business has not existed for three years, the gross sales average is computed for the period of the business’ existence.