

# NAICS CODE FAQs (March 7, 2022)

## **1. What are NAICS codes?**

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments to collect, analyze, and publish statistical data related to the U.S. business economy. NAICS codes are updated every five years. Each type of business is given at least one six-digit NAICS code number. The North American Industry Classification Manual—United States describes the various codes. See <http://www.census.gov/eos/www/naics>.

## **2. How are NAICS codes relevant to the Disadvantaged Business Enterprise (DBE) program, including Airport Concession Disadvantaged Business Enterprises (ACDBEs)?**

The Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) administer the DBE program; and the Departmental Office of Civil Rights provides oversight. State and local recipients of FHWA, FTA, and FAA funds certify small, disadvantaged businesses as DBEs to perform specific types of work that the firm currently performs and its disadvantaged owners control. See generally 49 CFR 26.71.

## **3. How do firms and recipients determine which code applies?**

The DBE Uniform Certification Application requires that a firm applying for certification identify its main business activities. The firm may request a corresponding NAICS code. If the recipient (certifier) determines that the firm is eligible for certification, it assigns the NAICS code(s) that most specifically describes the type of work the applicant performs, regardless of whether that is the code requested. The firm gets DBE credit only for work described in the assigned NAICS code(s).

## **4. How does the NAICS assignment affect contracting opportunities?**

When a recipient certifies a firm, it adds the firm and its code or codes to the state's DBE directory. Recipients use the directory to set goals for DBE participation, and prime contractors use it to find DBE subcontractors.

## **5. What is the relationship between NAICS codes and the small business requirement?**

To be eligible for DBE certification, a firm must be a small business, as defined in DBE and Small Business Administration (SBA) regulations. See 49 CFR 26.65(a). SBA assigns a business size cap to each NAICS code, for the most part by reference to a firm's gross receipts averaged over several years. The Department generally uses the same caps and computation methods but

not in all cases. See <http://www.sba.gov/content/small-business-size-standards>; 13 CFR 121.201; 49 CFR 26.65(b).

A determination of whether a firm satisfies the small business requirement is based on all of its gross receipts—not just those that derive from work described in a particular NAICS code. For example, a firm with \$20 million in gross receipts is ineligible for the electrical specialty contractor code in all cases, regardless of whether electrical work accounts for some or all of its revenue. Gross receipts are never divided by type of work.

#### **6. What does the term “average annual gross receipts” mean for purposes of the small business requirement?**

Average annual gross receipts means “all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances,” averaged over a specified period. See 13 CFR 121.104(a); 49 CFR 26.65(b). In general, annual gross receipts are “‘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.” However, “receipts” do not include net capital gains or losses, certain taxes (e.g., sales) or other amounts received on behalf of others, or proceeds from affiliate transactions. 13 CFR 121.104(a). There are no exclusions other than those specified in 13 CFR 121.104(a).

#### **7. Which NAICS code(s) should a certifier assign to a firm applying for DBE certification?**

The certifier assigns the NAICS code that it believes most specifically describes the principal goods and services that the applicant would provide to DOT recipients. 49 CFR 26.71(n). The correct code is the one that most closely describes the work that the firm performs. The code assigned should not cover types of work that the disadvantaged owner does not control or the firm does not perform. See generally 49 CFR 26.73(b)(1). The best available code may require tailoring to make it suitable. See Q&A 13.

The certifier and applicant should communicate during the application review process to delineate the type and scope of the work that the disadvantaged owner controls. The applicant bears the burden of demonstrating that it meets all certification requirements, including providing sufficient information to show that its owner controls the work associated with a specific code. 49 CFR 26.61(b).

#### **8. May a certifier assign a firm more than one NAICS code?**

Yes. A certifier may assign multiple NAICS codes when the disadvantaged owner demonstrates that she or he controls the business with respect to each type of work involved.

#### **9. How does a DBE firm obtain an additional NAICS code?**

The firm may make a written request to be certified in one or more additional NAICS codes. In this “expansion request,” the DBE must demonstrate only that its disadvantaged owner controls the work within the meaning of 49 CFR 26.71. See 49 CFR 26.71(n). The certifier reviews the request and performs an on-site review, if necessary to confirm control. See 49 CFR 26.71(n). The DBE and certifier do not repeat the entire process that applies to initial applications for certification. There is no requirement that the DBE re-prove other aspects of eligibility.

**10. If a firm “outgrows” a NAICS code, can it remain certified to perform that kind of work?**

No. Once the firm exceeds the size standard, the certifier must begin proceedings to remove the NAICS code. See 49 CFR 26.87(b).

**11. Can a firm be certified in a broad NAICS code and a more specialized one, when the more generalized code includes the more specialized work the firm performs?**

Yes, but overlapping assignments are unusual. For example, a NAICS code for general contractors may include specialty work (e.g., electrical, heating/cooling, plumbing) more specifically described in one or more specialty-trade NAICS codes. The overlap does not mean a certifier should assign an electrical or plumbing contractor the general contractor code; the umbrella code is usually not the narrowest fit. On the other hand, when the owner proves that she controls her firm’s work in the specialty trade, and other kinds of work included in the broader code, the firm may be certified in both codes. Infrequent, insubstantial, or incidental work outside the specialty is insufficient for certification in the broader NAICS code. Certifiers assign NAICS codes based on work the firm currently performs, not based on its plans or aspirations. See 49 CFR 26.73(b)(1).

**12. If a firm exceeds the size standard for a narrower NAICS code, can its work be counted toward DBE goals if it remains certified in a broader code that includes the more specialized work?**

No. When the same work falls within an outgrown code and a code with a higher size cap, the work cannot be counted at all. For example, Firm Q is certified in NAICS code 238210 (electrical specialty work) and NAICS code 237310 (general highway construction). Firm Q later loses certification in code 238210. If Firm Q performs code 238210 specialty and other work described in code 237310, only the non-electrical work counts.

**13. What if there is not a NAICS code that adequately describes what a firm does?**

The closest-fitting NAICS code should be supplemented with a narrative that more specifically describes the firm’s work. The certifier should work with the firm to craft an appropriately tailored descriptor, one that specifies concisely how the applicant’s work differs from work the NAICS code includes. See 49 CFR 26.71(n)(3).

**14. May a certifier assign a state or local DBE work code to a firm in addition to a NAICS code?**

Yes, but the regulations require a NAICS code. See 49 CFR 26.71(n)(1). Any state or local classification is strictly supplemental. It does not supplant or supersede the applicable NAICS code, and it cannot be used to determine what work counts toward DBE contract goals.

**15. Is there a NAICS code that a certifier can use to designate a firm a “regular dealer?”**

No. The term “regular dealer” pertains exclusively to counting a DBE’s participation on a particular contract. See 49 CFR 26.55(e)(2), 26.73(a)(1). There are supplier, wholesaler, and brokerage NAICS codes for firms that primarily supply materials.

*The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26. The contents of the document do not have the force and effect of law and are not meant to bind the public in any way. The document is intended only to provide information to the public regarding existing requirements under the law and agency policies.*