

# DSBO ORDINANCE REVISION: CERTIFICATION SIZE STANDARDS

Division of Small Business Opportunity (DSBO)

Business, Arts, Workforce &  
Aviation Services Committee

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**DENVER**  
ECONOMIC DEVELOPMENT  
& OPPORTUNITY

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# Current DSBO Small Business Certification Program

- Certification program is based on eligibility criteria which comprises:
  - ✓ Socially and/or economically disadvantage business
  - ✓ Ownership, Operation, Control, Independence and Business Size
    - Personal net worth and **Business Size standards**
- Size standards are reviewed by DSBO annually
- If a small business exceeds the size standard, they graduate the DSBO certification program and cannot obtain the certification until they meet the size standards which DSBO verifies with current or amended taxes
- Current size standards are based on Small Business Association (SBA) size standards:
  - ✓ **50% of the SBA size standards for professional services**
  - ✓ 100% of the SBA size standards for construction
- Last time size standards were changed:
  - ✓ **2014** construction went from 50% to 100% SBA size standards due to market conditions

# What is the problem we're solving?

- Today professional service MWBE firms face “a glass ceiling” within the programs because of our existing growth cap of size standards
- Firms experience so many challenges - over the last 12 months there has been inflation growth (with employment and revenue) - small professional service firms can't afford cost of doing businesses with business existence at risk
- Graduation out of a program does not immediately mean success is imminent
- Those who graduate may close their doors; not yet sustainably growing without socially and/or economically disadvantaged business programs
- Professional service firms have lost their certification and benefits of the program before they are truly prepared to compete with non-certified and/or larger firms
- Business size and success should not be measured solely by the average of three years of gross revenue
- Professional Service firms are losing contracting opportunities as Primes and Subcontractors
- Limited pool of availability of certified professional service firms for goals and SBE defined programs

“When we graduated, we lost substantial work and were removed from proposal teams. Due to this we had to layoff 1/3 of our staff.”

- Iron Horse Architects,  
Small Business

# What is the problem we're solving?

## Context from DSBO's 2018 Disparity Study:

- Graduation provisions are supposed to prevent the over-inclusion of minority firms who are able to compete
- Graduation at a given level is defined as “Having had the opportunity to overcome the effects of discrimination” and thus no longer need a goals-based inclusion program. Our 2018 Disparity Study, however,

“ . . . shows that this theory does not hold true in the market for Denver's contracts. Between 2012 and 2016, Denver awarded to certified and non-certified MWBEs just 37% of the prime level contracts that they could be expected to receive based on their availability. According to case law, it can be presumed that this extreme level of disparity did not happen by chance, and instead is likely the result of prior and current unlawful barriers and discrimination against MWBEs. **This extreme level of disparity demonstrates that MWBE firms (including those who lost their certification because of graduation provision) are far from being able to win prime level contracts like they should based on their availability to perform those contracts.**”

# What are the market conditions and trends conveying?

- **Updates in the Federal Program**
  - ✓ January 13, 2021 USDOT issued the final rule to increase the max threshold for the Disadvantaged Business Enterprise (DBE) program from \$23.98 million to \$26.26 million
  - ✓ On January 6, 2022 the SBA will move to averaging 5 years of gross receipts for business size standards
  - ✓ Currently any firm looking to be certified federally can utilize the 3 years or request 5 years
- **Updates with CDOTs Program**
  - ✓ End of May 2021 -CDOT's Transportation Commission approved to increase the size standards for the Emerging Small Business (ESB) certification with it taking effect on July 15, 2021.
    - Moving to full size standards with utilizing the DBE max threshold.
- **Community engagement**
  - ✓ Developed a Proposed Size Standards Update Plan for the Ordinance to focus on impact and support the City's goals of doing business with small minority/women owned business
  - ✓ Began community public input with professional service firms regarding size standards and graduation from 2019 through early 2021
  - ✓ Facilitated calls, emails and meetings with professional service small businesses to better understand their perspective on their certification, size standards, graduating and success in program

# What did our community engagement tell us?

Firm	Type	Communication	Position on Size Standards
JKS Industries	Small Business	Virtual Meeting	Revise to Full Size Standards
Castillo Architecture	Small Business	Virtual Meeting	Keep Partial if Revise Gross Receipts
Iron Horse Architecture	Small Business	Virtual Meeting	Revise to Full Size Standards
VINE Laboratories	Small Business	Virtual Meeting & Email	Revise to Full Size Standards
Gilmore Construction	Small Business	Virtual Meeting	Revise to Full Size Standards
GeoCal	Small Business	Virtual Meeting & Email	Revise to Full Size Standards
Shrewsberry	Small Business	Email & Virtual Meeting	Revise to Full Size Standards
Triunity	Small Business	Email & Virtual Meeting	Revise to Full Size Standards
HG Consult	Small Business	Virtual Meeting	Revise to Full Size Standards
Vivid Engineering	Small Business	Virtual Meeting	Neutral
Iron Stride Solutions	Small business	Virtual Meeting	Neutral
American Council of Engineering Companies of Colorado (ACEC)	Organization	Virtual Meeting	Neutral
PayPal	Corporation	Virtual Meeting	Revise to Full Size Standards
DigStudio	Small Business	Virtual Meeting	Revise to Full Size Standards
LS Gallegos	Small Business	Email & Virtual Meeting	Revise to Full Size Standards
Goodbee & Associates	Small Business	Virtual Meeting	Neutral

# What do other gov't entities with small business programs do?

- USDOT DBE Federal Program increased their gross receipts cap from \$23.98 Million to \$26.29 Million on January 13, 2021. Any firm working on an FAA-assisted project must meet the size standard(s) for those based on the applicable NAICS code(s) Size Standards.
- CDOT - the Transportation Commission approved to increase the size standards for ESB program, and it will take effect on July 15<sup>th</sup>.
- RTD - utilizes the full SBA size standards and the USDOT DBE federal cap of \$26.39 Million for their SBE and DBE programs
- City of Chicago – (MWBE & VBE) sets their size standards for non-construction annually utilizing the Annual Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Utilizing the formula their Gross Receipt Limit is \$40 Million utilizing the average of gross receipts over 3 years.
- City of Houston - (MWBE & PDBE) has utilized the full SBA size standards since 1978. In 2022 they will move to the 5 years of gross receipts
- City of Austin - (MWBE) utilizes the full SBA size standards but calculates inflation for the Personal Net Worth (PNW) annual. In 2022 they will move to the 5 years of gross receipts
- City of LA & City of Detroit – has no size limit for MWBEs

# What is the proposed solution for professional service size standards?

Move from partial (50%) size to full (100%) size standards for professional services NAICS

- 541310 Architectural Example:  $\frac{1}{2}$ = \$4 Million vs Full= \$8 Million
- 541330 Engineering Example:  $\frac{1}{2}$ = \$8.25 Million vs Full= \$16.5 Million
- 541611 Administrative Management Example:  $\frac{1}{2}$ = \$8.25 Million vs Full= \$16.5 Million

Measure business size based on five years of gross receipts, not three years



# What are the benefits of this solution?

- 1 - Going to full size standards will give a firm the time and opportunity to build sustainable growth in/out of small business programs
- 2 - Considering five years of gross receipts allows a broader consideration of other marketplace issues, including inflation and labor availability
- 3 - Reduce risk of “premature graduation” (i.e., having to re-apply next year)
- 4 – Reduces barriers to access contracting opportunities

“Our current size is not a threat to smaller (small) firms. There is more subcontract work that can be done by MWBEs if the pool is made bigger. There are few MWBEs in the pool now...both small and large small businesses are impacted.”

- Shrewsberry & Associates,  
Small Business

# What are the benefits of this solution?

5 - Increases availability pool of certified firms in professional service industry for DSBO programs like goals and SBE defined pool

6 - Socially and economically disadvantaged firms need more support and technical assistance than current size cap allows time for

7 - Stable, sustainable firms can afford to train/invest in talent, and provide stronger benefits as a more competitive and preferred employer

8 - Successful MWBEs are likely to sub/support each other (rising tide raising all ships) and bring revenue to underserved communities

“The MWBE program opened the doors at VINE, please do not be the program that closes them. All of us at VINE are counting on you.”

- VINE Laboratories, Small Business

# How will this be implemented into DSB0's certification program?

- Any firm that is actively certified but has graduated from specific codes may submit a NAICS Change Request form to get those codes reinstated
- Any firm that has graduated from all codes within the last year can submit a NAICS Codes Change Request form with current business taxes
- Any firm that has been graduated out of the program for year will need to submit a renewal application
- Any firm older than that will need to submit a new application

# **SUMMARY: Bill 21-0833**

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**Allowing the D.R.M.C. to be revised to reflect the change in size standards used by DSB0 in their certification process**

**DISCUSSION**

**Thank you!**