

OMB Form 83-I SUPPORTING STATEMENT

Certification for the Women-Owned Small Business Federal Contract Program

A. Justification

1. Circumstances necessitating the collection of information.

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The U.S. Small Business Administration (SBA) is required by statute to administer the "Women-Owned Small Business Federal Contract Program (WOSB Program)." 15 U.S.C. § 637(m). A copy of the pertinent statute section is attached. Attachment 1. The Small Business Act (Act) sets forth the certification criteria for the WOSB Program. Specifically, the Act states that a WOSB or EDWOSB must: (1) be certified by a Federal agency, a State government, or a national certifying entity approved by the SBA Administrator, as a small business concern owned and controlled by women; or, (2) certify to the contracting officer that it is a small business concern owned and controlled by women and provide adequate documentation, in accordance with standards established by the SBA, to support such certification.

According to the legislative history for section 637(m), certification by a Federal agency, State government or national certifying entity should be acceptable if it tracks the statutory and regulatory definition of WOSB and economically disadvantaged women-owned small business (EDWOSB). H.R. Rep. No. 106-879, at 4 (2000). Consequently, the SBA intends to review those third party certifiers that certify WOSBs and EDWOSBs and designate those whose certification criteria meet the requirements of this program. The SBA intends that those third party certifiers will be required to collect the same information and documents as SBA will collect from those small businesses that are self-certifying.

In addition, the legislative history explains that "the Committee expects the contracting officers will accept self-certification so long as the documentation provided along with the response to the solicitation enables the contracting officer to determine that the bidder" meets the requirements of the program. As a result of this statutory provision, and the supporting legislative history, the SBA is issuing a rule that will authorize WOSBs and EDWOSBs to submit self-certifications. As a first step in this process, these small business concerns must register in the Central Contractor Registration (CCR) where they will be able to self-represent their status as a WOSB eligible under this program or an EDWOSB. CCR is an online government-maintained database of companies wanting to do business with the Federal government available at ccr.gov. The Federal Acquisition Regulation (FAR) at 48 CFR § 4.1102(a) requires that most prospective contractors be registered in the CCR database prior to award of a contract or agreement, with certain exceptions. Agencies search the database for prospective vendors. After registering, you may enter your small business profile information on the Dynamic Small Business Search page. Creating a profile in CCR and the Dynamic Small Business Search, and keeping it current, helps provide access to Federal contracting opportunities.

Next, the small business concern must provide documents supporting its EDWOSB or WOSB status to an online document repository, called that the WOSB Program Repository, that the SBA is planning to establish. The documents submitted would include those verifying that the concern has received a third party certification. A list of the documents required is attached to this statement. Attachment 2. In addition, each WOSB or EDWOSB will be required to submit a Women-Owned Small Business Program Certification – WOSB or Women-Owned Small Business Program Certification – EDWOSB, as applicable. Attachment 3 & 4.

The business concern will be placing these documents in a secure, web-based environment that would be accessible to the individual WOSBs and EDWOSBs, the contracting officer community and SBA. The contracting officer would be able to access the documents prior to contract award to review the submitted documents. The SBA chose this approach so that the WOSBs and EDWOSBs would not have to submit documents each time they receive a WOSB or EDWOSB contract. Until the repository is completed, or if the system is otherwise unavailable, then the apparent successful offeror WOSB or EDWOSBs must submit the documents directly to the contracting officer prior to each WOSB or EDWOSB award.

After registering in CCR and submitting the required documents to the repository, the EDWOSB or WOSB must represent its status in the ORCA at <https://orca.bpn.gov>. FAR § 2.101 explains that ORCA is the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. This database does not collect documents, but collects the representations and certifications required for Federal contracts. The SBA intends to work with the Federal Acquisition Regulatory Council on the OCRA representation.

The Act also states that the SBA is authorized to conduct eligibility examinations on any small business concern that certified itself as a WOSB or EDWOSB. 15 U.S.C. § 637(m)(5)(B). Further, the SBA is authorized by statute to handle protests and appeals on WOSB or EDWOSB certifications. *Id.* § 637(m)(5)(A). In conducting the eligibility examination, protests and appeals, the SBA will request the same documents that will be required to verify eligibility for award. However, with respect to eligibility examinations and protests, the SBA will also request a copy of the bid or proposal submitted in response to an EDWOSB or WOSB solicitation as well as certain financial information to verify EDWOSB status.

A copy of the final rule implementing the WOSB program and these requirements has been reviewed and approved by the Office of Management and Budget (OMB). The final regulations relating to the document collection are at 13 C.F.R. §§ 127.300, 127.402 and 127.604.

2. How, by whom and for what purpose information will be used.

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information from the current collection.

The contracting officer for WOSB or EDWOSB procurement, the SBA and the third party certifiers will collect this information in order to carry out the statutory requirements of the

program. Contracting officers will ensure that the WOSBs or EDWOSB offerors have registered in CCR, and have submitted their required documents through the repository, unless the repository is unavailable, at which time the contracting officer will collect them directly from the WOSB or EDWOSB. Third party certifiers will collect these documents from WOSBs or EDWOSBs seeking certification as such entities. SBA will also collect this information during the course of an eligibility examination or protest and appeal, unless SBA can obtain the information from a contracting officer's contract file (since it was already submitted in response to the solicitation) or the repository.

The SBA and third party certifiers will use the information submitted for verifying a concern's eligibility for award of a WOSB or EDWOSB contract. The contracting officers will use the information to determine whether he/she should protest the WOSB or EDWOSB status of an apparent successful offeror.

3. Technological collection techniques.

Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The offeror for each EDWOSB or WOSB requirement will have the option to submit its documents electronically directly to the repository or in hard copy to SBA. Third party certifiers will decide whether such documents can be submitted electronically. With its other programs, the SBA has allowed small businesses to submit documents electronically, such as via facsimile, and intends to do the same with this program. In addition, the self certification is done in ORCA, which is an online database of certifications.

4. Avoidance of duplication.

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for the purposes described in Item 2 above.

The information collected for this program is generally different from information collected for other SBA programs and therefore, there is no similar information available that can be used to satisfy program needs. In addition, in order to reduce the burden on small businesses, if a WOSB or EDWOSB submits documents to a contracting officer because it is the apparent successful offeror and there is a protest or eligibility examination, the SBA will obtain those documents from the contracting officer and not require the WOSB or EDWOSB to submit a duplicate set to SBA, or the SBA will obtain most of the documents from the repository, if it is available.

5. Impact on small businesses or other small entities.

If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The collection of this data involves small businesses (but not

governmental jurisdictions or not-for-profit enterprises), but entails basic commercial information that is usually maintained by any business. The SBA estimates that implementation of this regulation will require de minimis additional proposal costs for WOSBs or EDWOSBs, as compared to submitting proposals under any other small business set-aside program. Moreover, WOSBs currently represent their status for purposes of data collection in the Central Contractor Registration and ORCA. In addition, as noted above, if there is a protest or eligibility examination, rather than require the WOSB or EDWOSB to submit documents to SBA that it already submitted to the contracting officer, the proposed regulations require the contracting officer to forward a copy of those documents to SBA.

6. Consequences if collection of information is not conducted.

Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If SBA did not collect the information it could not fulfill its statutory mandate to ensure that WOSBs and EDWOSBs receive contracts designated for such small businesses, conduct eligibility examinations, or adequately resolve a protest and appeal.

7. Existence of special circumstances.

Explain any special circumstances that would cause any information collection to be conducted in a manner requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; requiring the use of a statistical data classification that has not been reviewed and approved by OMB; that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The statute provides authority for the SBA to conduct eligibility examinations of any WOSB or EDWOSB. To assist with these examinations, SBA's proposed regulations require applicants to retain documentation demonstrating qualifying requirements for a period of 6 years from the date of certification (initial and any subsequent certification). This will allow SBA to review certifications made at the time of prior contract awards. The SBA proposed to require the documents be kept for 6 years from the date of an initial or subsequent certification because the Government can bring an action under 31 U.S.C. § 3730 for false claims 6 years from the date the false claim is made. 31 U.S.C. § 3731.

8. Solicitation of Public Comment.

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice ...soliciting comments on the information collection... Summarize public comments received; describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format.

Consistent with 5 C.F.R. § 1320.11, a request for public comment was included in the related proposed rule that was published in the Federal Register on March 4, 2010 at 75 FR 10029. The SBA received a few comments that addressed subjects relating to this information collection (and addressed them in the final rule under the Regulatory Flexibility Act analysis). Several comments stated that SBA should consider the costs and burdens of the reporting and recordkeeping requirements for WOSBs because they could inadvertently discourage WOSBs from taking advantage of the program. These reporting and recordkeeping requirements include the representations and the submission of documents to the contracting officer if a repository for documents is unavailable.

In the final rule, the SBA explained that WOSBs have the burden of proving eligibility for the program. Although the reporting and recordkeeping requirements may seem onerous, they are necessary to reduce fraud in the program and to ensure that the benefit of the program – a set aside contract – is available to only eligible businesses. The SBA's rule adopts methods and processes aimed at meeting these objectives, while also minimizing, as much as possible, the burden on small businesses.

9. Payment or gifts.

Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There are no payments or gifts given to any respondent.

10. Assurance of confidentiality.

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

Any documents submitted as part of an offer are considered source selection sensitive under the Federal Acquisition Regulations (FAR) and cannot be released prior to award of a contract. FAR § 3.104-3. However, after award of a contract, all information and/or documents submitted to a Federal agency, including SBA, are protected to the fullest extent permitted by law, including the Privacy Act and Freedom of Information Act, 5 U.S.C. § 552.

11. Questions of a sensitive nature.

Provide justification for any questions of a sensitive nature such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be take to obtain the consent.

There are no questions asked which are of a sensitive nature although documents and information provided may be protected because they are not generally releasable to the public (e.g., Federal tax returns).

12. Estimate of the hourly burden of the collection of information.

Provide estimates of the hour burden of the collection of the information. Also, provide an estimate of the annualized cost to the respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.

Total number of respondents for certification:	12,000
Number of responses per respondent –	1
Estimated burden hours	2.0 hours
Total annual burden hours	12,000 x 2.0 hours = 24,000

Total number of respondents for eligibility examinations, protests and appeals:	200
Number of responses per respondent –	1
Estimated burden hours	2.0 hours
Total annual burden hours	200 x 2.0 hours = 400

Total: 24,400

Respondent’s Cost of Burden Hours –

Estimated officer’s salary = \$61/hour (based on General Schedule 15 Step 10, which would be equivalent to a senior manager in an average small business firm)

Total estimated burden: 24,400 x \$61/hour = \$1,488,400

EDWOSBs must also submit a Form 413, Personal Financial Statement. The burden associated with this form is currently part of the reported burden for that form. Therefore, in addition to the hour burden listed above, EDWOSBs will also be required to spend an additional 1.5 hours to complete the SBA Form 413 (OMB Control #3245-0188).

13. Estimate of total annual cost burden for submission.

Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. Do not include the cost of any hour burden shown in Items 12 and 14.

SBA estimates that there will be no additional capital or start-up costs or operation and maintenance costs and purchases of services costs to respondents as a result of this collection of

information because there should be no cost in setting up or maintaining systems to collect the required information. As stated in Answer 5, the information requested should be collected and retained in the ordinary course of business.

14. Estimated annualized cost to the Federal government.

Provide estimates of annual costs to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. (Cost estimates for items 12, 13, and 14 may aggregate in a single table.)

The annualized cost to review and analyze the documents is \$1,493,768, computed as follows:

GS-9-15 salaries, averaged: \$30.61/hour for employees reviewing documents and responses, to include contracting officers of procuring agencies

Average review of documents, including for each eligibility examination and protest and drafting of response = 2 hours

Number of responses reviewed: 24,400

Total estimated cost to government per year: $(24,400 \times 2) \times \$30.61 = \$1,493,768$

15. Explanation of program changes in Item 13 or 14 OMB Form 83-1.

Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

Not applicable – new information collection.

16. Collection of information whose results will be published.

For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of the information, completion of report, publication dates, and other actions.

The results of this information may be published in various SBA reports as aggregated data only.

17. Expiration date for collection of information.

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that the display would be inappropriate.

Because the SBA will not be using a form to collect the documents, and instead set forth the document requirement in the regulations, the SBA will not be able to display the OMB expiration date, but can make this information available to the public on its website. However, with respect to the Women-Owned Small Business Program Certification – WOSB and the

Women-Owned Small Business Program Certification – EDWOSB, the SBA will be able to show the OMB Control No. and the expiration date.

18. Exceptions to certifications in Block 19 in OMB Form 83-1.

Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-1.

This is not applicable.

B. Collections of Information Employing Statistical Methods.

This collection of information does not employ statistical methods.