

laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

[78 FR 38820, June 28, 2013, as amended at 81 FR 31492, May 19, 2016]

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

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Subpart A—General Provisions

§ 127.100 What is the purpose of this part?

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to ensure that Women-Owned Small Businesses (WOSBs) have an equal opportunity to participate in Federal contracting. This part implements these mechanisms and ensures that the program created, referred to as the WOSB Program, is substantially related to this important Congressional goal in accordance with applicable law.

§ 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition or award sole source contracts or orders to eligible Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) for certain Federal contracts or orders in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented in Federal procurement. It also authorizes contracting officers to restrict competition or award sole source contracts or orders to eligible WOSBs for certain Federal contracts or orders in industries in which SBA determines that WOSBs are substantially underrepresented in Federal procurement and has waived the economically disadvantaged requirement.

[80 FR 55021, Sept. 14, 2015]

§ 127.102 What are the definitions of the terms used in this part?

For purposes of this part:

8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant and whose term has not expired or otherwise left the 8(a) BD program early.

AA/GC&BD means SBA's Associate Administrator for Government Contracting and Business Development.

Citizen means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in § 121.105 of this chapter.

Contracting officer has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

D/GC means SBA's Director for Government Contracting.

Economically Disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this chapter and that is at least 51 percent owned and controlled by one or more women who are citizens and who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition or awarded a sole source contract or order to eligible EDWOSBs, including Multiple Award Contracts, partial set-asides, reserves, sole source awards, and orders set aside for EDWOSBs issued against a Multiple Award Contract.

Immediate family member means father, mother, husband, wife, son, daughter, stepchild, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement (including Multiple Award Contracts), any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given a WOSB or EDWOSB, the contracting activity's contracting officer, or SBA.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern.

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The NAICS code designations are described in the NAICS manual available via the Internet at <http://www.census.gov/NAICS>. In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in §121.107 of this chapter.

Same or similar line of business means business activities within the same four-digit “Industry Group” of the NAICS Manual as the primary industry classification of the WOSB or EDWOSB.

Substantial underrepresentation is determined by a study using a reliable and relevant methodology.

System for Award Management (SAM) (or any successor system) means a federal system that consolidates various federal procurement systems (*e.g.*, Central Contractor Registration (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application (ORCA), Excluded Parties List System (EPLS)) and the Catalog of Federal Domestic Assistance into one system.

Underrepresentation is determined by a study using a reliable and relevant methodology.

WOSB means a concern that is small pursuant to part 121 of this chapter, and that is at least 51 percent owned and controlled by one or more women who are citizens in accordance with §§ 127.200, 127.201 and 127.202.

WOSB Program Repository means a secure, Web-based application that collects, stores and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under a WOSB or EDWOSB requirement.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition or awarded a sole source contract or order to eligible WOSBs, including Multiple Award Contracts, partial set-asides, reserves, sole source awards, and orders set aside for WOSBs issued against a Multiple Award Contract.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61146, Oct. 2, 2013; 80 FR 55022, Sept. 14, 2015]

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Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter for its primary industry classification; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB one or more economically disadvantaged women must unconditionally and directly own at least 51 percent of the concern. To qualify as a WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business

entity or a trust (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, the trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women, or in the case of an EDWOSB, economically disadvantaged women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as a WOSB, the management and daily business operations of the concern must be con-

trolled by one or more women. To qualify as an EDWOSB, the management and daily business operations of the concern must be controlled by one or more women who are economically disadvantaged. Control by one or more women or economically disadvantaged women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women or economically disadvantaged women.

(b) *Managerial position and experience.* A woman, or in the case of an EDWOSB an economically disadvantaged woman, must hold the highest officer position in the concern and must have managerial experience of the extent and complexity needed to run the concern. The woman or economically disadvantaged woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman or economically disadvantaged woman who holds the highest officer position of the concern must manage it on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. The woman or economically disadvantaged woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women, or in the

case of an EDWOSB, economically disadvantaged women, must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women, or in the case of an EDWOSB, economically disadvantaged women, must control the Board of Directors of the concern. Women or economically disadvantaged women are considered to control the Board of Directors when either:

(1) One or more women or economically disadvantaged women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women or economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51 percent owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. SBA does not take into consideration community property laws when determining economic disadvantage when the woman has no direct, individual or separate ownership interest in the property.

(b) *Limitation on personal net worth.*

(1) In order to be considered economically disadvantaged, the woman's per-

sonal net worth must be less than \$750,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.

(2) Income received from an EDWOSB that is an S corporation, LLC or partnership will be excluded from net worth where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the business concern or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce an individual's net worth.

(3) Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable until retirement age without a significant penalty will not be considered in determining a woman's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from a woman's net worth, she must provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

(c) *Factors to be considered.* (1) *General.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past three years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, will be considered in determining whether she is economically disadvantaged.

(2) *Spouse's financial situation.* SBA may consider a spouse's financial situation in determining a woman's access to credit and capital. When married, an individual claiming economic disadvantage must submit separate financial information for her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g., an officer, employee or director) or has lent money

to, provided credit or financial support to, or guaranteed a loan of the business. SBA may also consider the spouse's financial condition if the spouse's business is in the same or similar line of business as the EDWOSB or WOSB and the spouse's business and WOSB share similar names, Web sites, equipment or employees. In addition, all transfers to a spouse within two years of a certification will be attributed to a woman claiming economic disadvantage as set forth in paragraph (d) of this section.

(3) *Income.*

(i) When considering a woman's personal income, if the adjusted gross yearly income averaged over the three years preceding the certification exceeds \$350,000, SBA will presume that she is not economically disadvantaged. The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage.

(ii) Income received by an EDWOSB that is an S corporation, LLC, or partnership will be excluded from an individual's income where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce a woman's personal income.

(4) *Fair market value of all assets.* A woman will generally not be considered economically disadvantaged if the fair market value of all her assets (including her primary residence and the value of the business concern) exceeds \$6 million. The only assets excluded from this determination are funds excluded under paragraph (b)(3) of this section as being invested in a qualified IRA account or other official retirement account.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years

of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

Subpart C—Certification of EDWOSB or WOSB Status

§ 127.300 How is a concern certified as an EDWOSB or WOSB?

(a) *General.* At the time a concern submits an offer on a specific contract (including a Multiple Award Contract) or order reserved for competition among EDWOSBs or WOSBs under this Part, it must be registered in the System for Award Management (SAM) (or any successor system), have a current representation posted on SAM (or any successor system) that it qualifies as an EDWOSB or WOSB, and have provided the required documents to the WOSB Program Repository, or if the repository is unavailable, be prepared to submit the documents to the contracting officer if selected as the apparent successful offeror.

(b) *Form of certification.* In conjunction with its required registration in the SAM (or any successor system), the concern must submit a copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB) to the WOSB Program Repository and representations to the electronic annual representations and certifications at <http://orca.bpn.gov>, that it is a qualified EDWOSB or WOSB. The Women-Owned Small Business Program Certification (WOSB or EDWOSB) and representation must state, subject to penalties for misrepresentation, that:

(1) The concern is an EDWOSB or WOSB or is certified as an EDWOSB or

WOSB by a certifying entity approved by SBA, and there have been no changes in its circumstances affecting its eligibility since certification;

(2) The concern meets *each* of the applicable individual eligibility requirements described in subpart B of this part, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as an EDWOSB or WOSB.

(c) *Documents provided to contracting officer.* All of the documents set forth in paragraphs (d) and (e) of this section must be provided to the contracting officer to verify eligibility at the time of initial offer. The documents will be provided via the WOSB Program Repository or, if the repository is unavailable, directly to the contracting officer. The documents must be retained for a minimum of six (6) years.

(d) *Third-Party Certification.* (1) Prior to certification in SAM (or any successor system), the WOSB or EDWOSB that has been certified as a WOSB or EDWOSB by a certifying entity approved by SBA, including those certifiers from which SBA will accept certifications from the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) Program, or by SBA as an 8(a) BD Participant, must provide a copy of the third-party Certification to the WOSB Program Repository. If the WOSB Program Repository is unavailable, then prior to the award of a WOSB or EDWOSB contract, the apparent successful offeror WOSB or EDWOSB that has been certified as a EDWOSB or WOSB by a certifying entity approved by SBA must provide a copy of the third-party Certification to the contracting officer verifying that it was a WOSB or EDWOSB at the time of initial offer.

(2) The EDWOSB or WOSB must also provide a copy of the joint venture agreement, if applicable.

(3) The EDWOSB or WOSB must also provide a signed copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB).

(4) The EDWOSB or WOSB must also provide any additional documents as requested by SBA in writing that are necessary to satisfy the WOSB Program requirements.

(5) Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the repository.

(e) *Non-Third Party Certification.* A concern that has not been certified as a WOSB or EDWOSB by a third-party certifier approved by SBA or as a DBE or by SBA as an 8(a) BD Participant must also provide documents to the WOSB Program Repository. If the WOSB Program Repository is unavailable, then prior to award of a WOSB or EDWOSB contract, the apparent successful offeror must provide a copy of the documents to the contracting officer verifying that it was a WOSB or EDWOSB at the time of initial offer. Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the WOSB Program Repository. These documents must be signed and include the following:

(1) Birth certificates, Naturalization papers, or unexpired passports for owners who are women;

(2) Copy of the joint venture agreement, if applicable;

(3) For limited liability companies:

(i) Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments; and

(ii) Operating agreement, and any amendments;

(4) For corporations:

(i) Articles of incorporation and any amendments;

(ii) By-laws and any amendments;

(iii) All issued stock certificates, including the front and back copies, signed in accord with the by-laws;

(iv) Stock ledger; and

(v) Voting agreements, if any;

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(5) For partnerships, the partnership agreement and any amendments;

(6) For sole proprietorships (and corporations, limited liability companies and partnerships if applicable), the assumed/fictitious name certificate(s);

(7) A signed copy of the Women-Owned Small Business Program Certification-WOSBs; and

(8) For EDWOSBs, in addition to the above:

(i) SBA Form 413, Personal Financial Statement, available to the public at <http://www.sba.gov/tools/Forms/index.html>, for each woman claiming economic disadvantage; and

(ii) A signed copy of the Women-Owned Small Business Program Certification-EDWOSBs.

(f) *Update of certification and documents.* (1) The concern must update its Women-Owned Small Business Program Certification (WOSB or EDWOSB) and EDWOSB and WOSB representations and self-certification in SAM (or any successor system) as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The certification and representations are effective for a period of one year from the date of submission or update.

(2) The WOSB or EDWOSB must update the documents submitted to the contracting officer via the WOSB Program Repository as necessary to ensure they are kept current, accurate and complete. If the WOSB Program Repository is not available, the WOSB or EDWOSB must provide current, accurate and complete documents to the contracting officer for each contract award. Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the WOSB Program Repository.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61146, Oct. 2, 2013]

§ 127.301 When may a contracting officer accept a concern's self-certification?

(a) *General.* (1) *Third-Party Certifications.* A contracting officer may accept a concern's self-certification in SAM (or any successor system) as accurate for a specific procurement reserved for award under this Part if the

apparent successful offeror WOSB or EDWOSB provided the required documents, which are set forth in §127.300(d), and there has been no protest or other credible information that calls into question the concern's eligibility as a EDWOSB or WOSB. An example of such credible evidence includes information that the concern was determined by SBA or an SBA-approved certifier not to qualify as an EDWOSB or WOSB.

(2) *Non-Third Party Certification.* A contracting officer may accept a concern's self-certification in SAM (or any successor system) if the apparent successful offeror WOSB or EDWOSB has provided the required documents, which are set forth in §127.300(e), and there has been no protest or other credible information that calls into question the concern's eligibility as an EDWOSB or WOSB.

(b) *Referral to SBA.* When the contracting officer has information that calls into question the eligibility of a concern as an EDWOSB or WOSB or the concern fails to provide all of the required documents to verify its eligibility, the contracting officer shall refer the concern to SBA for verification of the concern's eligibility by filing an EDWOSB or WOSB status protest pursuant to subpart F of this part. If the apparent successful offeror WOSB or EDWOSB fails to submit any of the required documents, the contracting officer cannot award a WOSB or EDWOSB contract to that business concern.

[75 FR 62282, Oct. 7, 2010, as amended at 77 FR 1861, Jan. 12, 2012; 78 FR 61146, Oct. 2, 2013]

§ 127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

In order for a concern to use a certification by another entity as evidence of its status as a qualified EDWOSB or WOSB in support of its representations in SAM (or any successor system) pursuant to §127.300(b), the concern must have a current, valid certification from:

(a) SBA as an 8(a) BD Program participant; or

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(b) An entity designated as an SBA-approved certifier on SBA's Web site located at <http://www.sba.gov/GC>.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.303 How will SBA select and identify approved certifiers?

(a) *General.* SBA may enter into written agreements to accept the EDWOSB or WOSB certification of a Federal agency, State government, or national certifying entity if SBA determines that the entity's certification process complies with SBA-approved certification standards and tracks the EDWOSB or WOSB eligibility requirements set forth in subpart B of this part. The written agreement will include a provision authorizing SBA to terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same EDWOSB or WOSB eligibility requirements as set forth in subpart B of this part.

(b) *Required certification standards.* In order for SBA to enter into an agreement to accept the EDWOSB or WOSB certification of a Federal agency, State government, or national certifying entity, the entity must establish the following:

(1) It will render fair and impartial EDWOSB or WOSB eligibility determinations.

(2) It will retain the documents submitted by the approved WOSB or EDWOSB for a period of six (6) years from the date of certification (initial and any recertification) and provide any such documents to SBA in response to a status protest or eligibility examination or agency investigation or audit.

(3) Its certification process will require applicant concerns to pre-register in SAM (or any successor system) and submit sufficient information as determined by SBA to enable it to determine whether the concern qualifies as an EDWOSB or WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under SBA's size standards for its primary industry classification;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(iii) In the case of a concern applying for EDWOSB certification, at least 51 percent owned and controlled by one or more women who are United States citizens and economically disadvantaged.

(4) It will not decline to accept a concern's application for EDWOSB or WOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, or marital or family status.

(c) *List of SBA-approved certifiers.* SBA will maintain a list of approved certifiers, including certifiers from which SBA will accept DOT DBE certifications, on SBA's Internet Web site at <http://www.sba.gov/GC>. Any interested person may also obtain a copy of the list from the local SBA district office or SBA Area Office for Government Contracting.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.304 How does a concern obtain certification from an approved certifier?

A concern that seeks EDWOSB or WOSB certification from an SBA-approved certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier. Any interested party may obtain such certification information and application by contacting the approved certifier at the address provided on SBA's list of approved certifiers.

§ 127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

A concern that SBA or an SBA-approved certifier determines does not qualify as an EDWOSB or WOSB may not represent itself to be an EDWOSB or WOSB, as applicable, unless SBA subsequently determines that it is an eligible EDWOSB or WOSB pursuant to the examination procedures under

§ 127.405, and there have been no material changes in its circumstances affecting its eligibility since SBA's eligibility determination. Any concern determined not to be a qualified EDWOSB or WOSB may request that SBA conduct an examination to determine its EDWOSB or WOSB eligibility at any time once it believes in good faith that it satisfies all of the eligibility requirements to qualify as an EDWOSB or WOSB.

Subpart D—Eligibility Examinations

§ 127.400 What is an eligibility examination?

(a) *Purpose of examination.* Eligibility examinations are investigations that verify the accuracy of any certification made or information provided as part of the certification process (including third-party certifications) or in connection with an EDWOSB or WOSB requirement. In addition, eligibility examinations may verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA will, in its sole discretion, perform eligibility examinations at any time after a concern self-certifies in SAM (or any successor system) that it is an EDWOSB or WOSB. SBA may conduct the examination, or parts of the examination, at one or all of the concern's offices.

(b) *Determination on conduct of an examination.* SBA may consider protest allegations set forth in a protest in determining whether to conduct an examination of a concern pursuant to subpart D of this part, notwithstanding a dismissal or denial of a protest pursuant to § 127.604. SBA may also consider information provided to the D/GC by a third-party that questions the eligibility of a WOSB or EDWOSB that has certified its status in SAM in determining whether to conduct an eligibility examination.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Eligibility examination.* An eligibility examination is the formal process through which SBA verifies and monitors the accuracy of any certification made or information provided as part of the certification process or in connection with an EDWOSB or WOSB requirement. If SBA is conducting an eligibility examination on a concern that has submitted an offer on a pending EDWOSB or WOSB procurement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, then SBA may initiate a protest pursuant to § 127.600 to suspend award of the contract for fifteen (15) business days pending SBA's determination of the concern's eligibility.

(b) *EDWOSB or WOSB protests.* An EDWOSB or WOSB status protest provides a mechanism for challenging or verifying the EDWOSB or WOSB eligibility of a concern in connection with a specific EDWOSB or WOSB requirement. SBA will process EDWOSB or WOSB protests in accordance with the procedures and timeframe set forth in subpart F, and will determine the EDWOSB or WOSB eligibility of the protested concern as of the date the concern represented its EDWOSB or WOSB status as part of its initial offer including price. SBA's protest determination will apply to the specific procurement to which the protest relates and to future procurements.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.402 How will SBA conduct an examination?

(a) *Notification.* No less than five (5) business days before commencing an examination, SBA will notify the concern in writing that it will conduct an examination to verify the status of the concern as an EDWOSB or WOSB. However, SBA reserves the right to conduct a site visit without prior notification to the concern.

(b) *Request for information.* SBA will request that the concern or contracting officer provide documentation

and information related to the concern's EDWOSB or WOSB eligibility. These documents will include those submitted under §127.300 and any other pertinent documents requested by SBA at the time of eligibility examination to verify eligibility, including but not limited to, documents submitted by a concern in connection with any WOSB or EDWOSB certification. SBA may also request copies of proposals or bids submitted in response to an EDWOSB or WOSB solicitation. In addition, EDWOSBs will be required to submit signed copies of SBA Form 413, Personal Financial Statement, the three most recent personal income tax returns (including all schedules and W-2 forms) for the women claiming economic disadvantage and their spouses, unless the individuals and their spouses are legally separated, and SBA Form 4506-T, Request for Tax Transcript Form, available to the public at <http://www.sba.gov/tools/Forms/index.html>. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information. The WOSB or EDWOSB must retain documentation demonstrating satisfaction of the eligibility requirements for six (6) years from date of self-certification.

§ 127.403 What happens if SBA verifies the concern's eligibility?

If SBA verifies that the concern satisfies the applicable EDWOSB or WOSB eligibility requirements, then the D/GC will send the concern a written decision to that effect and will allow the concern's EDWOSB or WOSB designation in SAM (or any successor system) to stand and the concern may continue to self-certify its EDWOSB or WOSB status.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.404 What happens if SBA is unable to verify a concern's eligibility?

(a) *Notice of proposed determination of ineligibility.* If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written notice explaining the reasons SBA believes the concern did not qualify at the time of

certification or does not qualify as an EDWOSB or WOSB. The notice will advise the concern that it has fifteen (15) calendar days from the date of the notice to respond.

(b) *SBA determination.* Following the fifteen (15) day response period, the D/GC or designee will consider the reasons of proposed ineligibility and any information the concern submitted in response, and will send the concern a written decision with its findings. The D/GC's decision is effective immediately and remains in full force and effect unless a new examination verifies the concern is an eligible EDWOSB or WOSB or the concern is certified by a third-party certifier.

(1) If SBA determines that the concern does not qualify as an EDWOSB or WOSB, then the D/GC will send the concern a written decision explaining the basis of ineligibility, and will require that the concern remove its EDWOSB or WOSB designation in SAM (or any successor system) within five (5) calendar days after the date of the decision.

(2) If the concern has already certified itself as a WOSB or EDWOSB on a pending procurement the concern must immediately inform the officials responsible for the procurement of the adverse determination.

(3) If SBA determines that the concern did not qualify as an EDWOSB or WOSB at the time it submitted its initial offer for an EDWOSB or WOSB requirement, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(4) Whether or not a contracting officer decides to allow or not allow an ineligible concern to fully perform a contract under paragraph (b)(2) of this section, the contracting officer cannot count the award as one to an EDWOSB or WOSB and must update the Federal Procurement Data System-Next Generation (FPDS-NG) and other databases from the date of award accordingly.

(c) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB until it cures the reason for its ineligibility and SBA determines that the concern qualifies as a WOSB or EDWOSB. A concern that

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believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in this section.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013]

§ 127.405 What is the process for requesting an eligibility examination?

(a) *General.* A concern may request that SBA conduct an examination to verify its eligibility as an EDWOSB or WOSB at any time after it is determined by SBA not to qualify as an EDWOSB or WOSB, if the concern believes in good faith that it satisfies all of the EDWOSB or WOSB eligibility requirements under subpart B of this part.

(b) *Format.* The request for an examination must be in writing and must specify the particular reasons the concern was determined not to qualify as an EDWOSB or WOSB.

(c) *Submission of request.* The concern must submit its request directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205-6390, marked "Attn: Request for Women-Owned Small Business Eligibility Examination."

(d) *Notice of receipt of request.* SBA will immediately notify the concern in writing once SBA receives its request for an examination. SBA will request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility and may draw an adverse inference if the concern fails to cooperate in providing the requested information.

(e) *Determination of eligibility.* The D/GC will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If the D/GC determines that the concern does not qualify as an EDWOSB or WOSB, the decision will explain the specific reasons for the adverse determination and advise the concern that it is prohibited from self-certifying as an EDWOSB or WOSB. If the concern self-certifies as an EDWOSB or WOSB notwithstanding SBA's adverse determination, the con-

cern will be subject to the penalties under subpart G of this part.

(2) If the D/GC determines that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written decision to that effect and will advise the concern that it may self-certify as an EDWOSB or WOSB, as applicable.

(f) *Effect of decision.* The D/GC's decision is effective immediately and remains in full force and effect unless a new examination verifies the concern is an eligible EDWOSB or WOSB or the concern is certified by a third-party certifier. If the concern has already certified itself as a WOSB or EDWOSB on a pending procurement the concern must immediately inform the officials responsible for the procurement of the adverse determination.

(g) *Determinations of Ineligibility.* A concern that has been found to be ineligible shall not represent itself as a WOSB or EDWOSB until it cures the reason for its ineligibility and SBA determines that the concern qualifies as a WOSB or EDWOSB. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in this section.

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition or make a sole source award under this part?

A contracting officer may restrict competition or make a sole source award under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement, as specified in § 127.501, regardless of the place of performance.

[80 FR 55022, Sept. 14, 2015, as amended at 81 FR 48593, July 25, 2016]

§ 127.501 How will SBA determine the industries that are eligible for EDWOSB or WOSB requirements?

(a) Based upon its analysis, SBA will designate by NAICS Industry Subsector Code those industries in which

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WOSBs are underrepresented and substantially underrepresented.

(b) In determining the extent of underrepresentation of WOSBs, SBA may request that the head of any Federal department or agency provide SBA, data or information necessary to analyze the extent of underrepresentation of WOSBs.

[75 FR 62282, Oct. 7, 2010, as amended at 80 FR 55022, Sept. 14, 2015]

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site at <http://www.sba.gov> a list of NAICS Industry Subsector industries it designates under §127.501. The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?

(a) *Competition restricted to EDWOSBs.* For requirements in industries designated by SBA as underrepresented pursuant to §127.501, a contracting officer may restrict competition to EDWOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more EDWOSBs will submit offers for the contract; and

(2) Contract award may be made at a fair and reasonable price.

(b) *Competition restricted to WOSBs.* For requirements in industries designated by SBA as substantially underrepresented pursuant to §127.501, a contracting officer may restrict competition to WOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more WOSBs will submit offers (this includes EDWOSBs, which are also WOSBs); and

(2) Contract award may be made at a fair and reasonable price.

(c) *Sole source awards to EDWOSBs.* For requirements in industries designated by SBA as underrepresented pursuant to §127.501, a contracting officer may issue a sole source award to an

EDWOSB when the contacting officer determines that:

(1) The EDWOSB is a responsible contractor with respect to performance of the requirement and the contracting officer does not have a reasonable expectation that 2 or more EDWOSBs will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed \$6,500,000 in the case of a contract assigned a North American Industry Classification System (NAICS) code for manufacturing, or \$4,000,000 in the case of any other contract opportunity; and

(3) In the estimation of the contracting officer, the award can be made at a fair and reasonable price.

(d) *Sole source awards to WOSBs.* For requirements in industries designated by SBA as substantially underrepresented pursuant to §127.501, a contracting officer may issue a sole source award to a WOSB when the contacting officer determines that:

(1) The WOSB is a responsible contractor with respect to performance of the requirement and the contracting officer does not have a reasonable expectation that 2 or more WOSBs will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed \$6,500,000 in the case of a contract assigned a NAICS code for manufacturing, or \$4,000,000 in the case of any other contract opportunity; and

(3) In the estimation of the contracting officer, the award can be made at a fair and reasonable price.

(e) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(f) *Contracting Among Small Business Programs.* (1) *Acquisitions Valued At or Below the Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding

the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) *Acquisitions Valued Above the Simplified Acquisition Threshold.* (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's certifications in SAM (or any successor system) and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

(g) *Contract file.* When restricting competition to WOSBs or EDWOSBs in

accordance with §127.503, the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as an underrepresented or, with respect to WOSBs, substantially underrepresented, industry. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's documents and certifications in SAM (or any successor system) and associated representations were reviewed.

(h) *Recertification.* (1) A concern that represents itself and qualifies as a WOSB or EDWOSB at the time of initial offer (or other formal response to a solicitation), which includes price, including a Multiple Award Contract, is considered a WOSB or EDWOSB throughout the life of that contract. This means that if a WOSB/EDWOSB is qualified at the time of initial offer for a Multiple Award Contract, then it will be considered an WOSB/EDWOSB for each order issued against the contract, unless a contracting officer requests a new WOSB or EDWOSB certification in connection with a specific order. Where a concern later fails to qualify as a WOSB/EDWOSB, the procuring agency may exercise options and still count the award as an award to a WOSB/EDWOSB. However, the following exceptions apply to this paragraph (h)(1):

(i) Where a contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as a WOSB/EDWOSB to the procuring agency, or inform the procuring agency that it does not qualify as a WOSB/EDWOSB, within 30 days of the novation approval. If the concern cannot certify its status as a WOSB/EDWOSB, the agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(ii) Where a concern that is performing a contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final,

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recertify its WOSB/EDWOSB status to the procuring agency, or inform the procuring agency that it no longer qualifies as a WOSB/EDWOSB. If the concern is unable to recertify its status as a WOSB/EDWOSB, the agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new status if necessary.

(iii) Where there has been a WOSB or EDWOSB status protest on the solicitation or contract, *see* §127.604(f) for the effect of the status determination on the contract award.

(2) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its WOSB/EDWOSB status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(3) A business concern that did not certify itself as a WOSB/EDWOSB, either initially or prior to an option being exercised, may recertify itself as a WOSB/EDWOSB for a subsequent option period if it meets the eligibility requirements at that time.

(4) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(5) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(6) A concern's status may be determined at the time of a response to a solicitation for an Agreement and each

order issued pursuant to the Agreement.

[75 FR 62282, Oct. 7, 2010, as amended at 77 FR 1861, Jan. 12, 2012; 78 FR 26506, May 7, 2013; 78 FR 61147, Oct. 2, 2013; 79 FR 31849, June 3, 2014; 80 FR 55022, Sept. 14, 2015; 83 FR 12852, Mar. 26, 2018; 84 FR 65665, Nov. 29, 2019]

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

(a) In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations and certifications in SAM (or any successor system) are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

(1) It is small under the size standard corresponding to the NAICS code assigned to the contract;

(2) It is listed in SAM (or any successor system) as an EDWOSB or WOSB; and

(3) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility.

(b) The concern must also meet the applicable limitations on subcontracting requirements as set forth in §125.6 of this chapter.

(c) *Ostensible subcontractor.* Where a subcontractor that is not similarly situated performs primary and vital requirements of a set-aside service contract, or where a prime contractor is unduly reliant on a small business that is not similarly situated to perform the set-aside service contract, the prime contractor is not eligible for award of a WOSB or EDWOSB contract.

(1) When the subcontractor is small for the size standard assigned to the procurement, this issue may be grounds for a WOSB or EDWOSB status protest, as described in subpart F of this part. When the subcontractor is other than small or alleged to be other than small for the size standard assigned to the procurement, this issue may be a ground for a size protest, as described at §121.103(h)(4) of this chapter.

(2) SBA will find that a prime WOSB or EDWOSB contractor is performing

the primary and vital requirements of a contract or order and is not unduly reliant on one or more non-similarly situated subcontracts where the prime contractor can demonstrate that it, together with any similarly situated entity, will meet the limitations on subcontracting provisions set forth in § 125.6.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013; 81 FR 34265, May 31, 2016; 84 FR 65665, Nov. 29, 2019]

§ 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

An EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in § 121.406(b) of this chapter.

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture, including those between a protégé and a mentor under § 125.9 of this chapter (or, if also an 8(a) BD Participant, under § 124.520 of this chapter), may submit an offer on a WOSB Program contract if the joint venture meets all of the following requirements:

(a)(1) A joint venture of at least one WOSB or EDWOSB and one or more other business concerns may submit an offer as a small business for a WOSB Program procurement or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm and its SBA-approved mentor (*see* § 125.9 and § 124.520 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the WOSB Program procurement or sale.

(b) The EDWOSB or WOSB participant of the joint venture must be designated in SAM (or any successor system) as an EDWOSB or WOSB;

(c) *Contents of joint venture agreement.* The parties to the joint venture must enter into a written joint venture

agreement. The joint venture agreement must contain a provision:

(1) Setting forth the purpose of the joint venture.

(2) Designating a WOSB as the managing venturer of the joint venture, and an employee of the WOSB managing venturer as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the WOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the WOSB if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the WOSB for purposes of performance under the joint venture;

(3) Stating that with respect to a separate legal entity joint venture, the WOSB must own at least 51% of the joint venture entity;

(4) Stating that the WOSB(s) must receive profits from the joint venture commensurate with the work performed by the WOSB;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on a WOSB Program contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such

resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the WOSB contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the WOSB managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(10) Requiring that the final original records be retained by the WOSB managing venturer upon completion of the WOSB Program contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* (1) For any WOSB Program contract, the joint venture (including one between a protégé and a mentor authorized by §125.9 or §124.520 of this chapter) must perform the applicable percentage of work required by §125.6 of this chapter.

(2) The WOSB partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the WOSB partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the WOSB partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by the non-WOSB partner, all work done by the non-WOSB partner and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance.* Prior to the performance of any WOSB Program contract as a joint venture, the WOSB Program participant in the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (d) of this section.

(f) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for a WOSB Program contract as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(g) *Contract execution.* The procuring activity will execute a WOSB Program contract in the name of the joint venture entity or the WOSB, but in either case will identify the award as one to a WOSB Program joint venture or a WOSB Program mentor-protégé joint venture, as appropriate.

(h) *Submission of joint venture agreement.* The WOSB Program participant must provide a copy of the joint venture agreement to the contracting officer.

(i) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(j) *Performance of work reports.* The WOSB Program participant in the joint venture must describe how it is meeting or has met the applicable performance of work requirements for each WOSB Program contract it performs as a joint venture.

(1) The WOSB partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how the performance of work requirements are being met for each WOSB Program contract performed during the year.

(2) At the completion of every WOSB Program contract awarded to a joint venture, the WOSB partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (c) of this section.

(k) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) or comply with paragraph (i) of this section.

(1) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013; 81 FR 34265, May 31, 2016; 81 FR 48593, July 25, 2016; 81 FR 94942, Dec. 27, 2016]

§ 127.507 Are there EDWOSB and WOSB contracting opportunities at or below the simplified acquisition threshold?

If the requirement is valued at or below the simplified acquisition threshold, the contracting officer may set aside the requirement or award the requirement on a sole source basis as set forth in § 127.503.

[80 FR 55022, Sept. 14, 2015]

§ 127.508 May SBA appeal a contracting officer's decision not to make a requirement available for award as a WOSB Program contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award under the WOSB Program.

§ 127.509 What is the process for such an appeal?

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for the WOSB Program, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five (5) business days after receiving

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notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within fifteen (15) business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

Subpart F—Protests

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's EDWOSB or WOSB status.

(b) *For all other EDWOSB or WOSB requirements.* An interested party may protest the apparent successful offeror's EDWOSB or WOSB status.

[80 FR 55022, Sept. 14, 2015]

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the con-

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tracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

(a) SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents sufficient credible evidence to show that the concern may not be owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51 percent owned and controlled by one or more women who are economically disadvantaged. SBA will also consider a protest challenging the status of a concern as an EDWOSB or WOSB if the contracting officer has protested because the WOSB or EDWOSB apparent successful offeror has failed to provide all of the required documents, as set forth in § 127.300. In addition, when sufficient credible evidence is presented, SBA will consider a protest challenging whether the prime contractor is unusually reliant on a small, non-similarly situated entity subcontractor, as defined in § 125.1 of this chapter, or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB contract.

(b) For a protest filed against an EDWOSB or WOSB joint venture, the protest must state all specific grounds for why—

(1) The EDOWSB or WOSB partner to the joint venture did not meet the EDWOSB or WOSB eligibility requirements set forth in § 127.200; and/or

(2) The protested EDWOSB or WOSB joint venture did not meet the requirements set forth in § 127.506.

[75 FR 62282, Oct. 7, 2010, as amended at 84 FR 65251, Nov. 26, 2019; 84 FR 65665, Nov. 29, 2019]

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting

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forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, e-mail, or by U.S. mail (received by the applicable date) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA. IF SBA initiates a protest, the D/GC will notify the contracting officer of such protest.

(c) *Timeliness.* (1) For negotiated acquisitions, a protest from an interested party must be received by the contracting officer prior to the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award.

(2) For sealed bid acquisitions, a protest from an interested party must be received by close of business on the fifth business day after bid opening.

(3) Any protest received after the time limit is untimely, unless it is from SBA or the contracting officer. A contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA.* The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter and documents, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205-6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation

number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. In addition, the contracting officer must send copies of any documents provided to the contracting officer pursuant to §127.300 (if the repository is unavailable). The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part or submit a protest itself.

(c) *Notice to protested concern.* If SBA determines that the protest is timely,

sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and request information and documents responding to the protest within five (5) business days from the date of the notice. These documents will include those that verify the eligibility of the concern, respond to the protest allegations, and copies of proposals or bids submitted in response to an EDWOSB or WOSB requirement. In addition, EDWOSBs will be required to submit signed copies of SBA Form 413, Personal Financial Statement, the three most recent personal income tax returns (including all schedules and W-2 forms) for the women claiming economic disadvantage and their spouses, unless the individuals and their spouses are legally separated, and SBA Form 4506-T, Request for Tax Transcript Form. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information and documents; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within fifteen (15) business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the fifteen (15) business day period (or within any extension of that time the contracting officer has granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question. The determination must be included in the contract file and a written copy sent to the D/GC.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation in SAM

(or any successor system) as an EDWOSB or WOSB, as appropriate. Regardless of a decision not to sustain the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by SBA's Office of Hearings and Appeals (OHA) on appeal pursuant to §127.605.

(1) A contracting officer may award the contract to a protested concern after the D/GC either has determined that the protested concern is an eligible WOSB or EDWOSB or has dismissed all protests against it. If OHA subsequently overturns the D/GC's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer shall not award the contract to a protested concern that the D/GC has determined is not an EDWOSB or WOSB for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal has been filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the D/GC's determination finding that the protested concern is ineligible, the contracting officer shall either terminate the contract, not exercise the next option or not award further task or delivery orders.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency decision (the D/GC's decision if no appeal is filed or OHA's decision).

(4) A concern that has been found to be ineligible may not submit an offer as a WOSB or EDWOSB on another procurement until it cures the reason(s) for its ineligibility and SBA issues a decision to this effect. A concern that believes in good faith that it has cured

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the reason(s) for its ineligibility may request an examination under the procedures set forth in § 127.405.

[75 FR 62282, Oct. 7, 2010, as amended at 77 FR 1861, Jan. 12, 2012; 78 FR 61148, Oct. 2, 2013]

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What are the requirements for representing EDWOSB or WOSB status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to EDWOSBs or WOSBs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a EDWOSB or WOSB willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of EDWOSB or WOSB status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to EDWOSBs or WOSBs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to

classify the bid or proposal, if awarded, as an award to a EDWOSB or WOSB.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as an EDWOSB or WOSB.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the EDWOSB or WOSB status of a business concern seeking the Federal contract, subcontract or grant. An authorized official must sign the certification on the same page containing the EDWOSB or WOSB status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of EDWOSB or WOSB status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' EDWOSB or WOSB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing EDWOSB or WOSB status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as an EDWOSB or WOSB without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.* (1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's

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status as an EDWOSB or WOSB pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the EDWOSB or WOSB status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

[78 FR 38820, June 28, 2013, as amended at 81 FR 31492, May 19, 2016]

§ 127.701 What must a concern do in order to be identified as an EDWOSB or WOSB in any Federal procurement databases?

(a) In order to be identified as an EDWOSB or WOSB in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its EDWOSB or WOSB status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as an EDWOSB or WOSB in SAM fails to certify its status within one year of a status certification, the firm will not be listed as an EDWOSB or WOSB in SAM, unless and until the firm recertifies its EDWOSB or WOSB status.

[78 FR 38821, June 28, 2013]

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PART 129—CONTRACTS FOR SMALL BUSINESSES LOCATED IN DISASTER AREAS

Sec.

129.100 What definitions are important in this part?

129.200 What contracting preferences are available for small business concerns located in disaster areas?

129.300 What small business goaling credit do agencies receive for awarding an emergency response contract to a small business concern under this part?

129.400 What are the applicable performance requirements?

129.500 What are the penalties of misrepresentation of size or status?

AUTHORITY: 15 U.S.C. 636(j)(13)(F)(ii), 644(f).

SOURCE: 84 FR 65665, Nov. 29, 2019, unless otherwise noted.

§ 129.100 What definitions are important in this part?

For the purposes of this part:

Concern located in a disaster area is a firm that during the last twelve months—

(1)(i) Had its main operating office in the area; and

(ii) Generated at least half of the firm’s gross revenues and employed at least half of its permanent employees in the area.

(2) If the firm does not meet the criteria in paragraph (1) of this definition, factors to be considered in determining whether a firm resides or primarily does business in the disaster area include—

(i) Physical location(s) of the firm’s permanent office(s) and date any office in the disaster area(s) was established;

(ii) Current state licenses;

(iii) Record of past work in the disaster area(s) (*e.g.*, how much and for how long);

(iv) Contractual history the firm has had with subcontractors and/or suppliers in the disaster area;

(v) Percentage of the firm’s gross revenues attributable to work performed in the disaster area;

(vi) Number of permanent employees the firm employs in the disaster area;

(vii) Membership in local and state organizations in the disaster area; and

(viii) Other evidence that establishes the firm resides or primarily does business in the disaster area. For example,