

## Small Business Administration

## § 127.501

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 the CCR and ORCA within five business days after the date of the decision.

### § 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 or an SBA-approved certifier 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 Procedures Examination."

(d) *Notice of receipt of request.* SBA will immediately notify the concern in writing once SBA receives its request for an examination. The notification will advise the concern that its eligibility will be determined based on the status of the concern on the date of the notification. SBA may 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 concern will be subject to the penalties under subpart F 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 as of the date of the decision and applies to all solicitations issued on or after the effective date.

## Subpart E—Federal Contract Assistance

### § 127.500 In what industries is a contracting officer authorized to restrict competition under this part?

A contracting officer may restrict competition 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(a), and the procuring agency finds, pursuant to the method specified in §127.501(b), that a set-aside in that industry would be consistent with the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

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

(a) *SBA determination of underrepresented or substantially underrepresented industries.*

(1) Approximately every five years, SBA will conduct a study to identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal contracting. The study will include an analysis of the extent of disparity of WOSBs in Federal contracting.

(2) *Data collection.* In determining the extent of disparity of WOSBs in Federal contracting, SBA may request that the head of any Federal department or agency provide SBA, or other

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designated entity, data or information necessary to analyze the extent of disparity of WOSBs in Federal contracting.

(3) Based upon its analysis, SBA will designate by 4-digit NAICS Industry Subsector industries in which WOSBs are underrepresented or substantially underrepresented.

(b) *Agency determination of discrimination.* Each agency that is considering restricting competition with respect to a contract in an industry pursuant to this rule is responsible for carrying out a relevant analysis that would justify a restriction on competition under the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution. Where an agency seeks to reserve a procurement for competition exclusively among WOSBs or EDWOSBs within an industry designated by SBA in paragraph (a)(3) of this section, the agency must conduct an appropriate analysis of the agency's procurement history and make a determination of whether there is evidence of relevant discrimination in that industry by that agency.

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

SBA will post on its Internet Web site a list of 4-digit NAICS Industry Subsector industries it designates under § 127.501(a). 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 under this part?**

(a) *EDWOSB requirements.* For requirements in industries designated by SBA 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;

(2) The anticipated award price of the contract (including options) does not exceed \$5,000,000, in the case of a contract assigned an NAICS code for man-

ufacturing; or \$3,000,000, in the case of all other contracts; and

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

(b) *WOSB requirements.* If market research indicates that the criteria in paragraph (a) are not met for restricting competition to EDWOSBs, then the contracting officer may restrict competition to WOSBs if:

(1) The requirement is in an industry that SBA has designated as substantially underrepresented with respect to WOSBs; and

(2) The contracting officer has a reasonable expectation based on market research that—

(i) Two or more WOSBs will submit offers;

(ii) The anticipated award price of the contract (including options) will not exceed \$5,000,000, in the case of a contract assigned an NAICS code for manufacturing, or \$3,000,000 in the case of all other contracts; and

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

(c) *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.

(d) *Contract file.* When restricting competition to WOSBs in accordance with § 127.503(b), 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 a substantially underrepresented industry with respect to WOSBs.

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

In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations

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and certifications on ORCA are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

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

(b) It is listed on CCR and ORCA as an EDWOSB or WOSB;

(c) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility; and

(d) It will meet the applicable percentages of work requirement as set forth in §125.6 of this chapter (limitations on subcontracting rule).

### **§ 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).

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

A joint venture may submit an offer on an EDWOSB or WOSB contract if the joint venture meets all of the following requirements:

(a) Except as provided in §121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract;

(b) The EDWOSB or WOSB participant of the joint venture must be designated on the CCR and the ORCA as an EDWOSB or WOSB;

(c) The EDWOSB or WOSB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for the performance of the contract;

(d) The joint venture must perform the applicable percentage of work required of the EDWOSB or WOSB offerors in accordance with §125.6 of

this chapter (limitations on subcontracting rule); and

(e) The EDWOSB or WOSB venturer must perform a significant portion of the contract.

## Subpart F—Protests

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

An interested party may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. Any other party or individual may submit information to the contracting officer or SBA in an effort to persuade them to initiate a protest or to persuade SBA to conduct an examination pursuant to subpart D of this part.

### **§ 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 contracting officer pursuant to part 121 of this chapter.

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

SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents credible evidence that the concern is not 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% owned and controlled by one or more women who are economically disadvantaged.