

a person or concern under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4.

(b) *Civil penalties.* Persons or concerns are subject to civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(c) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a small business 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; and 31 U.S.C. 3729–3733. Persons or concerns also 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.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29428, May 24, 2004]

## **PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES (Eff. until 2-4-11)**

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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 increase Federal contracting opportunities for women-owned small businesses (WOSBs) and to assist agencies in achieving their WOSB participation goals established under Section 15(g) of the Small Business Act.

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

This part authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented or substantially underrepresented in Federal procurement and in which the procuring agency has satisfied itself through appropriate analysis (including analysis of its own procurement history), that the set-aside would meet all applicable legal requirements, including the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

#### § 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.

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

*Central Contractor Registration (CCR)* means the system that functions as the central registration and repository of contractor data for the Federal government. CCR also serves as the single portal for conducting searches of small business contractors. Prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

*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 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 title and that is at least 51% owned and controlled by one or more women who are U.S. 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 to EDWOSBs.

*Immediate family member* means father, mother, husband, wife, son, daughter, 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, the contracting activity's contracting officer, or SBA.

*ORCA* means the Online Representations and Certifications Application at <https://orca.bpn.gov>, a required registration for contractors interested in bidding on most Federal contracts.

*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. 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.

*Small disadvantaged business (SDB)* means a concern that SBA has certified in accordance with subpart B of part 124 of this chapter, and is designated on CCR as an SDB.

*Substantial underrepresentation* means a disparity ratio between 0.0 and 0.5; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

*Underrepresentation* means a disparity ratio between 0.5 and 0.8; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

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

*WOSB requirement* means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

### **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; 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 or 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 trusts) 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, a 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. 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.

(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. 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 an EDWOSB or WOSB, the management and daily business operations of the concern must be controlled by one or more women. Control by one or more 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.

(b) *Managerial position and experience.* A woman must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to run the concern. The 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 who holds the highest officer position of the concern 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 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 must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women must control the Board of Directors of the concern. Women are considered to control the Board of Directors when either:

(1) One or more 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 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% 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.

(b) *Limitation on personal net worth.* In order to be considered economically disadvantaged, the woman's personal net worth must be less than \$750,000, excluding her ownership interest in the concern and equity in her primary personal residence.

(c) *Factors that may be considered.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past two 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, may be considered in determining whether she is economically disadvantaged.

(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 reserved for competition under this Part, it must be registered in the Central Contractor Registration (CCR) and have a current self-certification posted on the Online Representations and Certifications Application (ORCA) that it qualifies as an EDWOSB or WOSB.

(b) *Form of certification.* In conjunction with its required registration in the CCR database, the concern must submit a self-certification to the elec-

tronic annual representations and certifications at <http://orca.bpn.gov>, that it is a qualified EDWOSB or WOSB. The self-certification must include a representation, subject to penalties for misrepresentation, that:

(1) The concern is certified as a EDWOSB or WOSB by a certifying entity approved by SBA and there have been no changes in its circumstances affecting its eligibility since certification; or

(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 a EDWOSB or WOSB.

(c) *Update of certification.* The concern must update its EDWOSB and WOSB representations and self-certification on ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and self-certification are effective for a period of one year from the date of submission or update to ORCA.

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

(a) *General.* A contracting officer may accept a concern's self-certification on ORCA as accurate for a specific procurement reserved for award under this Part in the absence of a 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.

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(b) *Referral to SBA.* When the contracting officer has information that calls into question the eligibility of a concern as an EDWOSB or WOSB, the contracting officer must refer the concern's self-certification to SBA for verification of the concern's eligibility by filing an EDWOSB or WOSB status protest pursuant to subpart F of this Part.

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

(a) *General.* 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 ORCA pursuant to § 127.300(b), the concern must have a current, valid certification from:

- (1) SBA as an 8(a) BD or SDB women-owned concern in good standing;
  - (2) The Department of Transportation as a disadvantaged business enterprise (DBE) that is at least 51 percent owned and controlled by one or more women; or
  - (3) An entity designated as an SBA-approved certifier on SBA's Web site located at <http://www.sba.gov/GC>.
- (b) [Reserved]

### § 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 or national certifying entity if SBA determines that the entity's certification process complies with SBA-approved certification standards and is based upon the same 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) Its certification process will require applicant concerns to pre-register on CCR and submit sufficient information 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.
- (3) 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 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.

### § 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 of subpart D, 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?**

An eligibility examination is an investigation by SBA to verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA may, in its sole discretion, perform an examination at any time after a concern self-certifies in CCR or ORCA that it is an EDWOSB or WOSB.

**§ 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 continuing eligibility of a concern that is designated on CCR or ORCA as an EDWOSB or WOSB. For purposes of an examination, the D/GC will determine the eligibility of a concern as of the date SBA notifies the concern that it will conduct the examination. The D/GC's eligibility decision constitutes the final agency decision and will be effective and apply to all solicitations issued on or after the date

of the decision issued pursuant to §§ 127.403, 127.404(b), or 127.405(e). 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 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.

**§ 127.402 How will SBA conduct an examination?**

(a) *Notification.* No less than 5 business days before commencing an examination, SBA will notify the concern in writing that it will conduct an examination to determine the status of the concern as an EDWOSB or WOSB. The notification also will advise the concern that its EDWOSB or WOSB eligibility will be determined based on the status of the concern on the date of the notification.

(b) *Request for information.* SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information.

**§ 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 at the time of the eligibility examination, then the D/

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GC will send the concern a written decision to that effect and will allow the concern's EDWOSB or WOSB designation in CCR and ORCA to stand.

**§ 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 at the time of the examination, then the D/GC will send the concern a written notice explaining the reasons SBA believes the concern does not qualify as an EDWOSB or WOSB. The notice will advise the concern that it has 15 calendar days from the date it receives the notice to respond.

(b) *SBA determination.* Following the 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 finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If SBA verifies that the concern qualifies as an EDWOSB or WOSB at the time of the examination, then the D/GC will send the concern a decision to that effect and will allow the concern to continue to self-certify its EDWOSB or WOSB status.

(2) 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 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 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 manufacturing; 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;

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(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 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).

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### **§ 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.

**§ 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 forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) 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.

(c) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by 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, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits 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, 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,

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if applicable; and whether a contract has been awarded. 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.

(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.

(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 of its right to submit information responding to the protest within five business days from the date of the notice; 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 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 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract or begin performance after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(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 on the CCR and ORCA as an EDWOSB or WOSB, as appropriate.

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

(1) The purpose of the protest process is to ensure that contracts are awarded to, and performed by, eligible WOSB and EDWOSB concerns. A contracting officer shall not award a contract to an ineligible concern, and shall not authorize an ineligible concern to begin performance.

(2) Where award was made and performance commenced before receipt of a negative final agency decision, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(3) Whether or not a contracting officer decides to not allow an ineligible concern to fully perform a contract under paragraph (f)(2) of this section or under § 134.704 of this title, 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.

(4) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB on another procurement until it cures the reason for its ineligibility. 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 § 127.405.

### **§ 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 the SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

**Subpart G—Penalties****§ 127.700 What penalties may be imposed under this part?**

Persons or concerns that falsely self-certify or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, subpart 9.4 of title 48 of the Code of Federal Regulations;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

EFFECTIVE DATE NOTE: At 75 FR 62282, Oct. 7, 2010, part 127 was revised, effective Feb 4, 2011. For the convenience of the user, the revised text is set forth as follows:

**PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM (Eff. 2-4-11)****Subpart A—General Provisions**

Sec.

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127.101 What type of assistance is available under this part?

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

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

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- 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?
- 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?
- 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?
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**Subpart G—Penalties**

- 127.700 What penalties may be imposed under this part?

AUTHORITY: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

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

**§ 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.

*Central Contractor Registration (CCR) Database* means the primary Government repository for contractor information required for the conduct of business with the Government. It is also a means for conducting searches for small business contractors. In general, prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement. CCR is located at <https://www.bpn.gov/ccr/>.

*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 to EDWOSBs.

*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, the contracting activity's contracting officer, or SBA.

*ORCA* (the Online Representations and Certifications Application) means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. ORCA is located at <https://orca.bpn.gov>.

*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. 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* means a disparity ratio which is less than 0.5.

*Underrepresentation* means a disparity ratio between 0.5 and 0.8.

*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 to eligible WOSBs.

### 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 owner-

ship 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 controlled 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 con-

cern 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 personal 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 reserved for competition under this part, it must be registered in the Central Contractor Registration (CCR), have a current representation posted on the Online Representations and Certifications Application (ORCA) 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 CCR database, 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 ORCA, 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;

(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 on ORCA 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.

**§ 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 on ORCA 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 ORCA if the apparent successful offeror WOSB or EDWOSB has provided the required documents, which are set forth in §127.300(e).

(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.

**§ 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 ORCA pursuant to §127.300(b), the concern must have a current, valid certification from:

- (a) SBA as an 8(a) BD Program participant; or
- (b) An entity designated as an SBA-approved certifier on SBA's Web site located at <http://www.sba.gov/GC>.

**§ 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 on CCR 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.

**§ 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 contract. 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 CCR or ORCA 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 ORCA or CCR in determining whether to conduct an eligibility examination.

##### § 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 contract. 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.

##### § 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 CCR and ORCA to stand and

the concern may continue to self-certify its EDWOSB or WOSB status.

**§ 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 the CCR and ORCA 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 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.

**§ 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 concern 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 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.

#### § 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 WOSBs are underrepresented and substantially underrepresented.

(b) In determining the extent of disparity 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 disparity of WOSBs.

#### § 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 under this part?

(a) *EDWOSB requirements.* 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;

(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 manufacturing; 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.* 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);

(2) 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

(3) 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) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below \$100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition 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 setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above \$100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition 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 ORCA certifications 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.

(e) *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 ORCA certifications and associated representations were reviewed.

**§ 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 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:

- (1) It is small under the size standard corresponding to the NAICS code assigned to the contract;
- (2) It is listed on CCR and ORCA 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 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) of this chapter.

**§ 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 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 an EDWOSB or WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;
  - (3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB or WOSB;
  - (4) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB or WOSB contract; and
  - (5) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB or WOSB contract performed by the joint venture.

(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);

(e) The procuring activity will execute the contract in the name of the EDWOSB or WOSB or joint venture.

(f) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

(g) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

(h) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

(i) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

(j) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

(k) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

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

If the requirement is at or below the simplified acquisition threshold, the contracting officer may set-aside the requirement as set forth in §127.503.

**§ 127.508 May SBA appeal a contracting officer's decision not to reserve a procurement 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 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?**

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 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. In addition, SBA will 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.

**§ 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 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 prevent significant harm to the public interest.

(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) busi-

ness 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 two 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) day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issue its decision. After contacting SBA, 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 harm the public interest. 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 on the CCR and ORCA 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) Where the contracting officer has made a written determination under paragraph (d) of this section that there is an immediate need to award the contract and waiting until SBA makes its determination will harm the public interest, the contracting officer receives the D/GC's determination after contract award finding the business concern does not qualify as EDWOSB or WOSB, and no OHA appeal has been filed, the contracting officer may terminate the award, and shall not exercise any options, or not award further task or delivery orders. If no such written determination by the contracting officer has been made, the contracting officer receives the D/GC's determination after contract award finding the business concern does not qualify as an EDWOSB or WOSB, 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 the reason(s) for its ineligibility may request an examination under the procedures set forth in §127.405.

**§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 penalties may be imposed under this part?**

Persons or concerns that falsely self-certify, provide false information to the Gov-

ernment, or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, 48 CFR 9.4;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

**PART 130—SMALL BUSINESS DEVELOPMENT CENTERS**

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- 130.820 Reports and recordkeeping.
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AUTHORITY: Sections 5(b)(6) and 21 of the Small Business Act, as amended, 15 U.S.C. 634(b)(6) and 648; Pub. L. 101-515, 101 Stat. 2101; Pub. L. 101-574, 104 Stat. 2814; Pub. L. 102-366, 106 Stat. 986; and Pub. L. 102-395, 106 Stat. 1828.