



# **WOMEN-OWNED SMALL BUSINESS (WOSB) PROGRAM**

## **Contracting Officer's Guide to the WOSB Program**

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U.S. Small Business Administration

A handbook for Federal officials interested in learning about the WOSB Program, including eligibility requirements, Federal contracting opportunities, and how the program works in general.

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*This document is published by the U.S. Small Business Administration as a guide to assist contracting officials in carrying out the WOSB Program.*

*This guide has no legal effect and does not create any legal rights. Compliance with the procedures described in this guide does not establish compliance with the rule or establish a presumption or inference of compliance. The legal requirements that apply are governed by SBA's Women-Owned Small Business Federal Contract Assistance Procedures regulations, which control if there is any inconsistency between the rule and the information in this guide.*

## **Who Should Read this Guide?**

All Federal agency personnel involved in contracting, including contracting officers, contract specialists, and agency small business specialists. Although this guide is specifically written for contracting officers, all interested agency personnel should read the guide.

## **What is the purpose of this Guide?**

The purpose of the guide is to provide an easy to use summary of the requirements of the WOSB Program, including the contracting officer's role and responsibility with respect to this program. However, to ensure compliance with the program requirements, all agency personnel should also read the complete rule on which the program is based as well as the Federal Acquisition Regulations (FAR). While SBA has summarized the provisions of the rule in this guide, the legal requirements that apply to the program are governed by 13 C.F.R. part 127, —The Women-Owned Small Business Federal Contract Assistance Procedures. A copy of the rule is available on the U.S. Small Business Administration's (SBA's) website at [www.sba.gov/wosb](http://www.sba.gov/wosb).

A companion guide has been prepared for distribution to small businesses interested in the program.

The guide may be photocopied for distribution as long as the text and graphics are readable.

## **Who can I contact about this guide or the WOSB Program?**

For more information on this guide or the program, please contact: Director, Office of Government Contracting, U.S. Small Business Administration, 409 – 3<sup>rd</sup> Street, S.W., Washington, DC 20416.

Your feedback is important. Please review this guide and contact us with any comments regarding its usefulness and readability, and improvements you think are needed.

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# ***BACKGROUND ON THE PROGRAM***

## **What is the WOSB Program?**

The WOSB Program is a program that authorizes contracting officers to restrict competition (or set aside) certain requirements for competition solely amongst women-owned small businesses (WOSBs) or economically disadvantaged women-owned small businesses (EDWOSBs).

## **What is the purpose of the WOSB Program?**

The Federal government has both prime contracting and subcontracting goals for small businesses. More specifically, the Small Business Act requires 23% of Federal prime contracts dollars shall be awarded to small businesses, with individual prime and subcontracting goals for certain identified small business groups. The Federal government must award 5% of its prime and subcontract dollars to women-owned small businesses. In addition, each Federal agency negotiates annual small business goals with the Small Business Administration (SBA) that presents, for that agency, the maximum practicable opportunity for small businesses. The goal attained by the individual agency is then used to calculate the Government-wide small business goal, including the individual prime and subcontracting goals for the identified small business groups, such as women-owned small businesses.

Prior to implementation of this program, contracting officers did not have specific authority to set-aside acquisitions for WOSBs or EDWOSBs. They could (and still can), however, receive credit if they happened to make an award to a women-owned small business. Nonetheless, without a specific set-aside mechanism, it was clear that agencies could not meet their goals. Thus, one purpose of this program is to enable contracting officers to meet these goals by specifically limiting, or setting aside, certain requirements for competition solely amongst WOSBs or EDWOSBs and ensure a level playing field on which such small businesses can compete for Federal contracting opportunities.

## **Who runs the program?**

The SBA is charged with the responsibility of implementing and administering the program. This means that SBA publishes regulations that provide the framework for the program, conducts eligibility examinations of WOSB and EDWOSBs, decides protests, conducts studies to determine eligible industries, and works with other Federal agencies in assisting WOSBs and EDWOSBs.

In addition, the Federal Acquisition Regulatory Council is responsible for implementing SBA's WOSB Program regulations as procedures for SBA's procurement programs in the FAR. FAR regulations addressing SBA's small business programs are set forth in FAR part 19.

# WOSB AND EDWOSB CONTRACTING

## BASIC FACTS:

- *There are set asides for WOSBs or EDWOSBs.*
- *The set asides must be in industries designated by SBA as underrepresented or substantially underrepresented.*
- *If the contract will be for services, the estimated value cannot exceed \$3 million.*
- *If the contract will be for manufacturing, the estimated value cannot exceed \$5 million.*
- *There are no sole source awards for WOSBs or EDWOSBs under this program.*
- *The WOSB or EDWOSB must meet certain limitations on subcontracting.*
- *Joint ventures are permitted if certain requirements are met.*

## What requirements can be set aside under the WOSB Program?

1. A contracting officer may set aside a requirement for WOSBs if:
  - The North American Industry Classification Systems (NAICS) code assigned to the solicitation, invitation for bid, or quote is in an industry in which SBA has designated that WOSBs are substantially underrepresented.
  - The contracting officer has a reasonable expectation that two or more WOSBs will submit offers that meet the quantity, quality and delivery requirements of the acquisition. This is sometimes referred to as the “rule of two.”
  - The anticipated award price of the contract does not exceed \$5.0 million in the case of manufacturing contracts and \$3.0 million in the case of all other contracts.
  - In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.
2. A contracting officer may set aside a requirement for EDWOSBs if:
  - The NAICS code assigned to the solicitation, invitation for bid, or quote is in an industry in which SBA has designated that WOSBs are underrepresented.
  - The contracting officer has a reasonable expectation that two or more EDWOSBs will submit offers that meet the quantity, quality and delivery requirements of the acquisition. This is sometimes referred to as the “rule of two.”

- The anticipated award price of the contract does not exceed \$5 million in the case of manufacturing contracts and \$3 million in the case of all other contracts.
- In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.

### **How does SBA designate industries as underrepresented or substantially underrepresented?**

SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a study of the underrepresentation of WOSBs in Federal prime contracts by industry code. The resulting study—the RAND Report—was published in April 2007 and is available to the public at [http://www.RAND.org/pubs/technical\\_reports/TR442](http://www.RAND.org/pubs/technical_reports/TR442).

Underrepresentation is typically expressed as a disparity ratio. A “disparity ratio” is calculated by comparing the utilization of WOSBs in Federal contracting in a particular NAICS code to their availability for such contracts in a particular NAICS code. An industry is not underrepresented if it has a disparity ratio of 1.0 because this suggests that there is no disparity since firms of a particular type are awarded contracts in the same proportion as their representation in the industry. An industry is substantially underrepresented if the disparity ratio is less than 0.5. And an industry is underrepresented if the disparity ratio is between 0.5 and 0.8.

Using the RAND Report, the SBA has designated 83 4-digit NAICS codes as either underrepresented or substantially underrepresented. A list of these can be found in Appendix A to this guide and on our website at [www.sba.gov/wosb](http://www.sba.gov/wosb).

### **Can anyone submit an appeal to SBA to get a NAICS code designated as an underrepresented or substantially underrepresented industry?**

No. The statute (15 USC § 637(m)), requires that SBA conduct a study to identify these industries (NAICS codes). So, there is no appeal process.

### **Can you provide some examples of how this works? What contracts can be set aside under this program?**

- The SBA study that identified the 83 industry sectors that WOSBs are underrepresented or substantially underrepresented uses 4-digit NAICS codes. Federal procurements use 6-digit NAICS codes to identify the appropriate industry applicable to the contract. Generally, for every 4-digit NAICS code, there are several 6-digit NAICS codes that identify the detailed industry that is specific to the requirement for a particular procurement. The second example below references NAICS 8129 – Other Personal Services. Six digit NAICS codes that would apply to procurements conducted under NAICS 8129 would include: 812921- Photofinishing Laboratories (except One-Hour); 812922 One-Hour Photofinishing; 812930 Parking Lots and

Garages; 812990 All Other Personal Services. Please refer to the NAICS code descriptions available at <http://www.sba.gov/size>

- If the requirement is assigned a 6-digit NAICS code under NAICS 5313 - Activities Related to Real Estate, the contracting officer may not set aside the procurement under the WOSB Program. NAICS 5313 is not an industry SBA has designated as underrepresented or substantially underrepresented.
- If the requirement is assigned a 6-digit NAICS code under NAICS 8129 - Other Personal Services, then, assuming all other requirements are met, the contracting officer may set aside the procurement under the WOSB Program to all eligible WOSBs. NAICS 8129 is an industry in which WOSBs are substantially underrepresented.
- If the requirement is assigned a 6-digit NAICS code under a contract in NAICS 5614- Business Support Services, then, assuming all other requirements are met, the contracting officer may set aside the procurement under the WOSB Program to all eligible EDWOSBs. NAICS 5614 is an industry in which WOSBs are underrepresented.
- If the requirement is assigned a 6-digit NAICS code under a contract in NAICS 5614- Business Support Services, and the government estimate is \$10 million, the contracting officer may not set aside the procurement under the WOSB Program. Although NAICS 5614 is an industry in which WOSBs are underrepresented, the estimated value of the contract is above the statutory limit of \$3 million.

**None of the designated industries are for nonmanufacturers (retailers and wholesalers).  
Can they still participate in the program?**

Yes, eligible WOSB and EDWOSB nonmanufacturers are eligible to participate. The SBA did not designate any NAICS codes in sectors 42, 44, and 45 for contracting assistance under the WOSB Program because these NAICS codes cover wholesalers and retailers. Contracting officers cannot assign these NAICS codes to solicitations or contracts. See 13 C.F.R. § 121.402(b). SBA size regulations specifically state that sectors 42, 44 and 45 are “not applicable to Government procurement of supplies.” 13 C.F.R. § 121.201. Rather, contracting officers must assign the applicable manufacturing NAICS code to the acquisition at which point the provisions of the nonmanufacturer rule would apply to any offerors that are nonmanufacturers of the items being supplied. 13 C.F.R. § 121.402.

This does not preclude a distributor or wholesaler (aka nonmanufacturer) that is an eligible WOSB or EDWOSB from submitting an offer on a WOSB or EDWOSB set-aside. The WOSB or EDWOSB nonmanufacturer would have to meet the requirements set forth in SBA’s WOSB Program regulation at 13 C.F.R. § 127.505.

**Do the \$3 million and \$5 million anticipated award price of the contract include all options?**

Yes. So if the estimated price of the base year of a requirement for services is \$3 million and there are four one-year options with an estimated price of \$2 million, the anticipated award price of the contract would exceed the \$3 million statutory threshold.

**What if the contract award results in a price greater than the \$3 million and \$5 million thresholds? Do I have to cancel the acquisition and re-procure?**

You do not have to cancel and re-procure. You are authorized to have set aside the requirement for WOSBs or EDWOSBs if you had a reasonable expectation that the anticipated award price of the contract (including options) would not exceed \$5 million for contracts assigned a manufacturing NAICS code and \$3 million for all other contracts.

**Why are the thresholds for this program different than for SBA's other programs?**

The statute authorizing the WOSB Program sets forth these specific thresholds. These thresholds are also subject to periodic inflationary adjustment by the FAR Council.

**Is a justification and approval (J&A) required for a set aside under this program?**

No, because there is specific statutory authority for this set-aside.

**Do these set-asides apply to commercial item acquisitions, simplified acquisitions, invitation for bids, competitive acquisitions, two step sealed bidding, etc.?**

Yes, a contracting officer may set-aside any acquisition for WOSBs or EDWOSBs so long as the above requirements are met.

**Does the contracting officer have to offer the requirement to SBA before setting it aside for WOSBs or EDWOSBs?**

No.

**Can a contracting officer issue a sole source award to a WOSB or EDWOSB under this program?**

No. The statute does not authorize sole source awards to WOSBs or EDWOSBs under this program, like it does for 8(a) Business Development (BD) Participants, HUBZone small businesses and Service Disabled Veteran Owned (SDVO) small businesses.

**What do I need to do? Where do I start?**

The following is a list of guidelines to help in using the WOSB Program:



- Determine the NAICS code for acquisition.
- Check SBA’s website (or see Appendix A to this guide) for industries it has designated as underrepresented or substantially underrepresented.
- If the NAICS code assigned to the acquisition is in an underrepresented industry, then the acquisition can be set aside for EDWOSBs, depending on the market research. If it is in a substantially underrepresented industry, it can be set aside for WOSBs, depending on the market research.
- Get the government estimate for the acquisition.
- Determine whether the government estimate limits use of a certain small business program. For example, if the government estimate shows that the resulting contract will exceed \$5 million in the case of a contract for manufacturing, you cannot set aside the acquisitions under the WOSB Program, regardless of whether the NAICS code is in a substantially underrepresented or underrepresented industry.
- Conduct your market research. FAR part 10 outlines how market research can be conducted. Generally, agencies use past (but recent) acquisition history and searches on the Dynamic Small Business Search (DSBS) engine to determine whether small businesses are available for an acquisition. In conducting market research, it is important that the search not be too limiting (e.g., use of a NAICS and key word). It’s best to start the search broadly (e.g. NAICS code search) and then narrow it down if necessary.
- Review the market research to determine whether the acquisition can be set aside (and in some cases sole sourced) to WOSBs or EDWOSBs, HUBZone small businesses, Service Disabled Veteran Owned Small Businesses or 8(a) Business Development Participants. For example, are there at least two WOSBs that you believe will submit an offer and that award can be made at fair market price?
- If you decide to set aside for WOSBs or EDWOSBs, you must notify all potential offerors in the solicitation (e.g., cover letter notification and pertinent FAR clauses).

**How does this program fit in with “parity”? What is “parity”? Am I going to lose a GAO protest if I do a WOSB set aside instead of a HUBZone set aside?**

Parity is the term that has been used over the past several years to describe which small business program can be used for an acquisition. The SBA’s regulations provided contracting officers with the discretion to utilize either the 8(a) BD, SDVO SBC, or HUBZone Programs, depending on the acquisition history, dollar value of the contract, results of the market research, programmatic needs specific to the procuring agency, and the need to meet the agency’s goals.

At one point, the U.S. Government Accountability Office (GAO) disagreed with SBA's interpretation of the Small Business Act, as set forth in SBA's regulations, and sustained numerous protests because an agency had failed to set aside an acquisition for HUBZone small businesses. However, the President enacted Public Law 111-240, known as the Small Business Jobs and Credit Act of 2010. In this law, the Small Business Act was amended to delete language stating that a contracting opportunity "shall" be awarded as a HUBZone set-aside if the HUBZone "rule of two" is met. The new statutory language explains that a contracting opportunity "may" be awarded as a HUBZone set-aside if the HUBZone "rule of two" is met. Consequently, the HUBZone provisions do not direct contracting officers to reserve every available contract opportunity for HUBZone small businesses whenever the rule of two is met for HUBZones. The SBA amended its regulations to clarify this issue. The SBA's regulations provide the following and address the interplay of all of its programs, including the WOSB Program:

**1) Procurements exceeding \$3,000 and not expected to exceed \$150,000 (or \$300,000 in limited cases):**

- Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 but not exceeding \$150,000 is automatically reserved exclusively for small business concerns (SBCs) and shall be set aside for small business unless the contracting officer (CO) determines there is not a reasonable expectation of obtaining offers from two or more SBCs that are competitive in terms of market prices, quality, and delivery. These reserves are also known as small business set asides.
- These small business set asides valued from \$3,000 to \$150,000 do not preclude award of a contract to a qualified HUBZone SBC pursuant to the HUBZone Program, an 8(a) BD Participant pursuant to the 8(a) BD Program, a SDVO SBC pursuant to the SDVO SBC Program, a WOSB under the WOSB Program or an EDWOSB under the WOSB Program. SBA's regulations give the CO discretionary authority to utilize the HUBZone, 8(a) BD, SDVO SBC and WOSB Programs at these dollar levels.
- Pursuant to 13 C.F.R. §§ 126.605(b), 125.18(b) and 127.503(c), if an 8(a) BD Participant is currently performing the requirement through the 8(a) BD Program, the CO may not procure a follow-on requirement through the HUBZone, SDVO SBC or WOSB Programs unless SBA has consented to release the requirement from the 8(a) BD Program.
- If a SBC is currently performing the specific requirement or had performed the requirement (*i.e.*, the specific requirement had previously been set aside for SBCs and resulted in an award to a SBC), the CO may still award a follow-on contract to a qualified HUBZone SBC pursuant to the HUBZone Program, an SDVO SBC pursuant to the SDVO SBC Program, or an EDWOSB/WOSB pursuant to the WOSB Program, at the discretion of the CO. The CO may also award a contract to an 8(a) BD Participant pursuant to the 8(a) BD Program, if there is no adverse impact or it is a new requirement and the SBA accepts the acquisition into the 8(a) BD Program.
- The CO may select any of the five small business programs based on market research, historical data, and progress towards small business goals.

- If the CO determines that none of the small business programs are appropriate based on market research, then full and open competition procedures may be used with appropriate contract file documentation.

	<b>Procurements valued from \$3,000 to \$150,000</b>
#1	Small business, which includes HUBZone <u>or</u> 8(a) <u>or</u> SDVO SBC <u>or</u> WOSB/EDWOSB
#2	Full and open competition (unrestricted; not set aside for one of the five major small business prime contracting programs)

**2) Procurements expected to exceed \$150,000 (or \$300,000 in limited cases):**

- The CO must consider the HUBZone, 8(a) BD, SDVO SBC and WOSB Programs before using the traditional small business set aside program. In determining which program to use, the CO must conduct market research. In addition, the CO should take into consideration historical data, anticipated award price, and other pertinent factors such as the procuring activity’s progress towards meeting its HUBZone, 8(a), SDVO SBC, women-owned small business and small business goals.
- Pursuant to 13 C.F.R. §§ 126.605(b), 125.18(b) and 127.503(c), if an 8(a) BD Participant is currently performing the requirement through the 8(a) BD Program, the CO may not procure a follow-on requirement through the HUBZone, SDVO SBC or WOSB Programs unless SBA has consented to release the requirement from the 8(a) BD Program.
- If a SBC is currently performing the specific requirement or had performed the requirement (*i.e.*, the specific requirement had previously been set aside for SBCs and resulted in an award to a SBC), the CO may still award a follow-on contract to a qualified HUBZone SBC pursuant to the HUBZone Program, an SDVO SBC pursuant to the SDVO SBC Program, or an EDWOSB/WOSB pursuant to the WOSB Program, at the discretion of the CO. The CO may also award a contract to an 8(a) BD Participant pursuant to the 8(a) BD Program, if there is no adverse impact or it is a new requirement and the SBA accepts the acquisition into the 8(a) BD Program.
- If the CO determines that none of the small business programs is appropriate based on market research, then full and open competition procedures may be used with appropriate contract file documentation.

	<b>Procurements valued over \$150,000</b>
#1	Consider HUBZone <u>or</u> 8(a) <u>or</u> SDVO SBC <u>or</u> WOSB/EDWOSB first
#2	Small business set aside
#3	Full and open competition (unrestricted; not set aside for one of

	the five major small business prime contracting programs)
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**As a result of parity, can a contracting officer decide to set aside a requirement for WOSBs instead of EDWOSBs?**

No. A contracting officer can only set aside a requirement for WOSBs if the NAICS codes assigned to the solicitation is in an industry that SBA has designated as substantially underrepresented. A contracting officer can only set aside a requirement for EDWOSBs if the NAICS codes assigned to the solicitation is in an industry that SBA has designated as underrepresented. Therefore, the contracting officer cannot really choose between an EDWOSB or WOSB set aside.

**Can an EDWOSB submit an offer on a requirement set aside for WOSBs or can they only submit an offer on a requirement set aside for EDWOSBs?**

An EDWOSB is by definition also a WOSB and therefore can submit an offer and receive a WOSB contract in addition to an EDWOSB contract.

**I checked the Central Contractor Registration (CCR) and I see a lot of small businesses that have checked the box that they are women-owned? Does that mean they are eligible for a set-aside under this program?**

No, not if they have only checked the box on CCR showing they are women-owned. There are actually three different types of women-owned businesses that can be represented in CCR – a women-owned business, a WOSB eligible for the WOSB Program and an EDWOSB eligible for the WOSB Program.

According to CCR, a women-owned business is a business concern owned and controlled by women if at least 51 percent of the business concern is owned by one or more women or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women, and the management and daily business operations of the business are controlled by one or more women. A women-owned business that checks this box may not be a WOSB or EDWOSB eligible for a set-aside under the WOSB Program.

For example, a WOSB or EDWOSB eligible for a set-aside under this program must be 51% owned and controlled by U.S. citizens and a women-owned small business as defined in CCR need only be 51% owned and controlled by women. A WOSB or EDWOSB eligible for a set-aside under this program must make a certain representation in the Online Representations and Certifications Application (ORCA) and submit documents to the WOSB Program Repository, but a women-owned business does not have to.

So, a WOSB or EDWOSB eligible for a set-aside under this program must also check the box in CCR showing that they are such. In most cases, the WOSB or EDWOSB should have also checked the box in CCR showing they are also a women-owned business.

**I've issued the solicitation and now the offers are in. What next?**

- Check CCR to make sure the small business offeror represented it is a WOSB eligible for the program or an EDWOSB.
- Check the small business' ORCA to make sure the WOSB or EDWOSB representations and certifications are there.

In addition, you should evaluate the offers based upon the evaluation criteria set forth in the solicitation.

**How will I know whether the apparent successful offeror is eligible for award?**

See the next section for more details.

**What if I find that the WOSB or EDWOSB apparent successful offeror is not responsible?**

Then you must refer the matter to SBA for a Certificate of Competency determination (see FAR subpart 19.6 and 13 C.F.R. 125.5).

**What happens if all of the proposals came back with prices higher than the government estimate?**

Award must be made at fair and reasonable price. The FAR refers you to FAR 15.404-1 for determining fair market price. Based upon this, it is clear that a determination of fair market price should not be based on the government estimate alone. In making such a determination, the contracting officer may consider such factors as the government estimate, the procurement history for the solicited services, the current market climate, and the "courtesy bid" of an otherwise ineligible large business offeror. However, we note that in view of the congressional policy favoring small businesses, contracts may be awarded under small business set-aside procedures to small business firms at premium prices, so long as those prices are not unreasonable. The determination of whether a small business price premium is unreasonable depends on the circumstances of each case.

**What do I have to document in the contract file if I set-aside for WOSBs or EDWOSBs?**

You must include the type and extent of market research conducted and state that the NAICS code assigned to the acquisition is for an industry that SBA has designated as underrepresented for EDWOSB set-asides or substantially underrepresented for WOSB set-asides. In addition,

you must document that you have checked the ORCA representation and WOSB Repository for the apparent successful offeror.

**Is there a pre-award notification requirement like there is for other small business programs?**

Yes. FAR 15.503 requires you to provide pre-award notification to unsuccessful offerors for all small business programs, including the WOSB Program. The notice shall state that no response to the notice is required unless a basis exists to challenge the size status or WOSB/EDWOSB status of the apparent successful offeror.

**Does the EDWOSB qualify as a Socially and Economically Disadvantage Small Business (SDB)?**

It qualifies as an SDB ONLY if the EDWOSB is also currently in the SBA's 8(a) BD Program.

**Does the EDWOSB qualify as a Disadvantaged Small Business (DSB) or Disadvantaged Business Enterprise (DBE)?**

The EDWOSB qualifies as a women-owned small business for Federal goaling purposes, as a woman-owned small business or woman-owned business for subcontracting purposes, and as an EDWOSB/WOSB for Federal prime contracting purposes (i.e., an EDWOSB or WOSB set aside under the WOSB Program). It will qualify as a DSB or DBE if it meets the eligibility requirements of those programs; however, qualification as an EDWOSB does not mean it automatically qualifies as a DSB or DBE.

**What happens if I award a contract for more than five years? Do I have to be concerned if the WOSB or EDWOSB grows to be other than small?**

You must require that the WOSB or EDWOSB re-certify its size status at least 120 days prior to the end of the fifth year of the contract and no more than 120 days prior to exercising any option thereafter. If the contractor is no longer small, you cannot count the options or orders issued pursuant to the contract toward the agency's small business goals. You are also required to revise the applicable Federal databases (FPDS) to reflect the new size status.

**What happens if the WOSB or EDWOSB is bought out or merges with another company?**

If the change results in a novation of the contract, then within 30 days of the contracting officer approving the novation, the business concern must re-certify its size status to the procuring agency. If the contractor is now other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals.

If the change does not result in a novation, then the contractor must, within 30 days of the transaction becoming final, re-certify its size status to the procuring agency. If the contractor is

now other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals.

In either case, if the contractor is no longer small, you are also required to revise the applicable Federal databases (FPDS) to reflect the new size status.

# ***ELIGIBILITY FOR AWARD***

## **How will I know a WOSB or EDWOSB is eligible for an award?**

Once you have selected the apparent successful offeror, you will need to do the following:

- Check the WOSB Program Repository to make sure all required documents have been submitted.
- Notate the contract file that you have done all of the foregoing.

Each of these steps is explained in more detail below.

## **I don't follow – doesn't SBA certify the WOSBs and EDWOSBs into the program and all I need to do is check some list or verify this with SBA?**

The SBA does not certify companies into the program like it does for the 8(a) BD and HUBZone Programs.

## **So this is a self certification like the small business or SDVO SBC Programs?**

Yes, in part. A WOSB or EDWOSB must: (1) be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by one or more women (referred to as a Third Party Certifier); or, (2) certify to the contracting officer that it is a small business concern owned and controlled by women. In both cases, the WOSB or EDWOSB must provide adequate documentation, in accordance with standards established by SBA, to support such certification.

So, the WOSB or EDWOSB can receive a certification from a Third Party Certifier or self certify its status. Although a WOSB or EDWOSB can self certify its status in its offer and contract, they must also provide documents to support this self certification. This is different from the other self certification programs like the small business and SDVO Programs.

## **What is a Third Party Certifier?**

A Third Party Certifier is a Federal agency, a State government, or a national certifying entity approved by the Administrator to provide certifications of WOSBs or EDWOSBs. The SBA will maintain a list of approved Third Party Certifiers at [www.sba.gov/WOSB](http://www.sba.gov/WOSB). If a State government or entity are NOT on that list, then they are NOT an SBA approved Third Party Certifier.

In the regulations, the SBA has stated that it will accept certifications by SBA of a 8(a) BD Participants as long as the 8(a) BD Participant is 51% owned and controlled by one or more women and the business is currently in the 8(a) BD Program. However, a certified 8(a) BD



Participant needs to submit their 8(a) certification and WOSB Program Certification form (OMB #3245-0374) to the WOSB Program Repository.

**Can I require that all WOSBs or EDWOSBs have a Third Party Certification?**

No. It is up to the WOSB or EDWOSB whether they want to self certify or receive a Third Party Certification.

**Are 8(a) firms considered WOSBs or EDWOSBs?**

Some, but not all are eligible as WOSBs or EDWOSBs. If the small business is currently an 8(a) BD Participant and is 51% owned and controlled by one or more women, then it will be considered a WOSB and EDWOSB. If the small business graduated from the 8(a) BD Program, it must either self certify or provide evidence that it has a current, valid Third Party Certification from another approved Third Party Certifier.

**Are small businesses with a certification from the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) Program considered a WOSB or EDWOSB? It's a Third Party Certification, right?**

At this time, certifications from the DOT DBE Program are not acceptable Third Party Certifications. The SBA researched the DOT DBE Program and spoke with officials from DOT. Under DOT's DBE Program, recipients are state or local entities and they actually perform the certifications. These certifiers must submit to DOT for approval an agreement establishing a Unified Certification Program (UCP), which identifies a plan for certification as a certifier for the DOT DBE Program. Once the UCP is approved by DOT, the certifier can certify participants for the DBE Program. In other words, the certification for the DOT DBE Program is done by various state and local certifiers.

Although there is a unified certification, not all state and local certifiers have the same requirements. Therefore, SBA must examine each state or local entity's UCP to determine whether it will satisfy all the requirements of the WOSB Program regulations. For example, SBA's WOSB Program regulation at 13 C.F.R. § 127.201(f) states that in determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. DOT DBE regulations do not discuss how unexercised stock options or similar agreements will be treated under the DBE Program so we will have to look and determine how each state treats such unexercised stock options.

Once SBA believes it can accept DOT DBE certifications, it will post a list of approved state and local entities from which it will accept DOT DBE certifications on SBA's Internet Web site at <http://www.sba.gov/wosb>.

### **How does a WOSB or EDWOSB self certify its status?**

The EDWOSB or WOSB must register in the CCR first. Next, it must provide documents supporting its EDWOSB or WOSB status to an online document repository, called that the WOSB Program Repository, that SBA has established. Please note that a WOSB or EDWOSB needs a General Log-In (GLS) account to access the repository.

The EDWOSB or WOSB must also submit a copy of a certification to the WOSB Program Repository (the certification is pending approval by the Office of Management and Budget under the Paperwork Reduction Act). This certification requires the owner of the WOSB or EDWOSB to verify its eligibility and state that all of the documents and information provided are true and accurate. The certification must be signed. See Appendix B for the WOSB Program Certification - WOSBs and Appendix C for the WOSB Program Certification – EDWOSBs. An EDWOSB need only submit a copy of the WOSB Program Certification – EDWOSBs and does not need to submit a copy of the WOSB Program Certification – WOSBs.

Finally, after registering in CCR and submitting the required documents, including the certification, to the repository, the EDWOSB or WOSB must represent its status in the ORCA at <https://orca.bpn.gov> prior to submitting an offer on a WOSB or EDWOSB requirement.

### **So every WOSB or EDWOSB eligible for a set-aside has to be in CCR?**

Yes.

### **And they have to have a representation in ORCA?**

Yes.

### **And they also have to provide documents to the WOSB Repository?**

Yes, even if they have received a Third Party Certification. The documents provided by WOSBs and EDWOSBs that have self-certified will be different than those that have a Third Party Certification.

### **What is the WOSB Program Repository?**

The WOSB Program Repository is a document repository maintained by SBA to house the documents submitted by EDWOSBs and WOSBs that would verify the concern's eligibility, to include copies of Third Party Certifications. The WOSB Program Repository is a secure, web-based environment that is accessible to the individual WOSBs and EDWOSBs, the contracting officer community and SBA. The contracting officer will be able to access the documents prior to contract award to review the submitted documents.

### **Why did SBA create this repository? It seems complicated.**

The statute requires that the documents be submitted to the contracting officer. There was concern about housing birth certificates, corporate information and other personal or business information in a contract file. In addition, the SBA was going to need access to these documents at some point in time to perform an eligibility review or in the event of a protest or appeal. In order to ease the burden on small businesses and the contracting community, the SBA created this document repository to house the documents needed to verify eligibility of the WOSB or EDWOSB. We believe it makes the process less complicated.

### **I still don't understand how this repository works.**

All WOSBs will have to first register in CCR. Next, the WOSB must register in SBA's General Log-In System (GLS). WOSBs can obtain this registration form via a link on [www.sba.gov/wosb](http://www.sba.gov/wosb). The WOSB will need to provide their DUNS and EIN number as part of their registration.

After registration is complete, the WOSB will have access to the repository where they may begin uploading the required documents. The repository will have a drop down menu of documents that the WOSB can use to tag the uploaded documents and attach them to her businesses profile.

If selected as the apparent successful offeror, the WOSB will log into GLS and WOSB Program Repository and select the Federal Agency and contracting officer for that requirement from a drop down menu to then authorize that individual to have access to the business' documents. The WOSB will also have to enter the solicitation number. Government contracting officers will be authorized access by the WOSB for a 120 day period. The WOSB will have to repeat these steps each time additional access needs to be authorized for a contracting officer. For example, if the contracting officer for the requirement changes after the WOSB has selected a contracting officer, but before award, the WOSB will need to grant the new contracting officer access to the uploaded documents.

WOSBs must upload the documents to the WOSB Program Repository in a PDF or ZIP format and must verify that the transferred files will unzip correctly. It is recommended that documents be in a ZIP format to reduce size.

You can find out more information on the repository at [www.sba.gov/wosb](http://www.sba.gov/wosb).

### **What do I have to do? How do I get access to the WOSB Program Repository?**

You will have to gain access to the WOSB Program Repository. You must first register and request a password for an account in the SBA's GLS, [https://eweb.sba.gov/gls/dsp\\_login.cfm](https://eweb.sba.gov/gls/dsp_login.cfm). Once you receive the account, SBA will place you in the system as a contracting official and

show for which agency you work. When the WOSB or EDWOSB is the apparent successful offeror, they will check to see whether you are on the GLS system and authorize only you to view its documents. You will be authorized to review these documents for a limited amount of time.

**Does the contracting officer have to check the repository or can the contracting specialist check it?**

That is up to you. However, the contracting officer is the one ultimately responsible for ensuring the award is made to an eligible WOSB or EDWOSB. If the contract specialist is the one who will be checking the documents, that person will need access to GLS. You will have to inform the WOSB that she should give authorization for the contract specialist to review the documents.

**I have access to the documents, what do I do now?**

You must review the documents to determine whether all of the required documents have been provided. See Appendix D for the checklist to assist you with this.

**What documents must be submitted to the WOSB Program Repository?**

That depends. All WOSBs and EDWOSBs must submit some documents to the repository, regardless of whether they have received a Third Party Certification or are self certifying prior to submitting an offer in response to a WOSB or EDWOSB requirement. In addition, after submitting these initial documents, they may have been required to submit additional documents if a protest is filed or SBA conducts an eligibility examination on the small business.

The following is a list of documents that must be submitted to the WOSB Program Repository prior to submitting an offer on a WOSB or EDWOSB Requirement.

1. Third Party Certifications – If the WOSB or EDWOSB has received a Third Party Certification then it must provide the following:
  - a copy of the Third Party Certification to the WOSB Program Repository prior to initial offer.
  - a copy of the joint venture agreement, if applicable to the requirement.
  - a signed copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB).
2. Self Certification – If the WOSB or EDWOSB is self-certifying, then it must provide the following:

- Copies of birth certificates, Naturalization papers, or unexpired passports for owners who are women;
- Copy of the joint venture agreement, if applicable;
- For limited liability companies:
  - Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments; and
  - Operating agreement, and any amendments;
- For corporations:
  - Articles of incorporation and any amendments;
  - By-laws and any amendments;
  - All issued stock certificates, including the front and back copies, signed in accord with the by-laws;
  - Stock ledger; and
  - Voting agreements, if any;
- For partnerships, the partnership agreement and any amendments;
- The assumed/fictitious name (doing business as) certificate(s); and
- A copy of the WOSB Program Certification – WOSBs only.
- For EDWOSBs, in addition to the above, 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 a copy of the WOSB Program Certification – EDWOSBs instead of the WOSB Program Certification -WOSBs.

**How often will these small businesses be putting documents into the WOSB Program Repository? If I checked it for one procurement, do I need to check again for another?**

EDWOSBs and WOSBs are required to upload certain documents into the repository prior to submitting an initial offer for a WOSB or EDWOSB requirement. If the documents provided are updated or amended (e.g., amendments to the By-Laws) they will need to provide those updated or amended documents. In addition, they will be required to provide additional documents in the event of a protest or during an eligibility examination.

Therefore, even if you check the repository once for a WOSB for one acquisition, you must check again for another acquisition because things change.

**What if the WOSB Program Repository is not up and offers are due? Do I have to postpone or amend the offer due date?**

If the WOSB Program Repository is not available, the WOSB or EDWOSB must provide current, accurate and complete documents to the contracting officer prior to contract award. Within 30 days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the WOSB Program Repository. Therefore, you do not have to postpone or amend the offer due date. However, you can wait until the repository is up and running and the WOSB or EDWOSB has submitted documents before making an award.

**Does this mean the repository is not going to be up and running often?**

No. However, there may be times that the system is down and therefore SBA adhered to statutory requirements and permits the documents to be submitted to the contracting officer at those times rather than the repository.

**Do I have to print out the documents in the repository and place in the contract file?**

No. Instead, you must document that you have checked CCR, ORCA and the repository and all of the documents are there.

**How long can a company participate in the WOSB Program?**

There is no term limit on program participation like there is in the 8(a) BD Program. They can receive WOSB Program contracts as long as they are eligible for the program and have met all of the requirements set forth in the regulations.

**As I'm checking to make sure the documents are in the WOSB Program Repository, I might notice an eligibility issue. What are the eligibility requirements?**

See the next two sections on eligibility of WOSBs and EDWOSBs for the program.

**What if a WOSB forgot to post one of the required documents on the WOSB Program Repository?**

If the EDWOSB or WOSB fails to provide all of the required documents to verify its eligibility, the contracting officer has to file an EDWOSB or WOSB status protest with SBA. 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. This is a matter of eligibility not responsiveness.

**Does the WOSB have to perform any particular amount of work on a WOSB or EDWOSB contract or can it subcontract most of it out?**

Yes, the WOSB has to perform a certain amount of the work. This is often referred to as the limitations on subcontracting because it limits how much work a small business can subcontract out. These limits for this program are:

- For service contracts (that are not construction), the WOSB/EDWOSB must perform at least 50% of the cost of the contract for personnel with its own employees.
- For supply contracts (if you are the manufacturer), the WOSB/EDWOSB must perform at least 50% of the cost of manufacturing the supplies or products (not including the cost of materials).
- For general construction contracts, the WOSB/EDWOSB must perform at least 15% of the cost of the contract with your own employees (not including cost of materials).
- For specialty construction contracts, the WOSB/EDWOSB must perform at least 25% of the cost of the contract with your own employees (not including cost of materials).

**What if the WOSB is a reseller, can it submit an offer for a supply contract that has been set aside for EDWOSB or WOSBs?**

Yes, as long as the WOSB meets the requirements of 13 C.F.R. § 121.406(b). In other words, the WOSB must have less than 500 employees, be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied, and supply the end item of a small business manufacturer or processor made in the United States or obtain a waiver from the SBA.

**Can a WOSB or EDWOSB joint venture with another small business to submit an offer on a WOSB or EDWOSB requirement?**

Yes, if the joint ventures meets all of the following requirements:

- Unless there is an exception to the affiliation rule set forth in 13 C.F.R. § 121.103(h)(3), 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;
- The EDWOSB or WOSB participant of the joint venture must be designated on the CCR and the ORCA as an EDWOSB or WOSB; and
- The parties to the joint venture must enter into a written joint venture agreement.

**Does the written joint venture agreement have to contain any special conditions?**

The joint venture agreement must contain a provision:

- Setting forth the purpose of the joint venture;
- 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;
- Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the EDWOSB or WOSB;
- Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB or WOSB contract; and
- Requiring retention of the final original records by the managing venturer upon completion of the EDWOSB or WOSB contract performed by the joint venture.

**Does the joint venture have to be approved by SBA?**

No. Unlike in the 8(a) BD Program, the joint venture does not have to be pre-approved by SBA.

**Does the joint venture get submitted to the WOSB Program Repository?**

Yes.

**Must the WOSB/EDWOSB meet the limitations on subcontracting itself or can the joint venture meet the requirement?**

The joint venture can meet the limitations on subcontracting.

**Whose name is on the contract – the WOSB or joint venture?**

The procuring activity can execute the contract in the name of the EDWOSB or WOSB or joint venture.

**How will I know that the WOSB is submitting an offer as a joint venture?**

The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer via the WOSB Program Repository. In addition, per the FAR, both parties to the joint venture must sign the contract.

**Is there a mentor protégé program?**

Not at this time. The President recently enacted Public Law 111-240, which authorizes a Mentor-Protégé Program for SBA's small business programs. Because the SBA did not propose guidance for such a program in the WOSB proposed rule, and is in the process of reviewing the



statutory language and determining guidance on this for its programs, the final WOSB Program rule did not establish a Mentor-Protégé Program for the WOSB Program.

However, those EDWOSBs that are also in the 8(a) BD Program may participate in that mentor protégé program as long as it does not affect the businesses' eligibility for this program. In addition, other Federal agencies, such as the Department of Defense, Department of Energy, Department of Homeland Security, Department of Veterans Affairs, Department of Treasury, Environmental Protection Agency, National Aeronautics and Space Administration, General Services Administration, Environmental Protection Agency and U.S. Agency for International Development have established Mentor-Protégé programs that include WOSBs (EDWOSBs are also WOSBs), HUBZone Small Businesses and Service-Disabled Veteran-Owned Small Businesses. WOSB's should contact or visit these agency web sites for more information.

# ELIGIBILITY - WOSBs

## *Basic Facts:*

*A WOSB is a small business that is at least 51% owned and controlled by one or more women who are U.S. citizens.*

- *The ownership must be direct.*
- *The ownership cannot be subject to conditions.*
- *The woman must manage the day-to-day operations of the business.*
- *The woman must make the long term decisions for the business.*
- *The woman must be able to provide documents demonstrating she meets these requirements.*

## **What is a WOSB?**

A WOSB:

- (1) Is a small business;
- (2) Is not less than 51% unconditionally and directly owned and controlled by one or more women who are United States citizens.
- (3) Has shown in CCR that it is a WOSB;
- (4) Has made the appropriate representations in ORCA that it is a WOSB; and
- (5) Has provided documents to the WOSB Program Repository.

## **Is a WOSB automatically an EDWOSB?**

No. A WOSB is only an EDWOSB if the WOSB is also economically disadvantaged and meets the requirements set forth in the regulations for EDWOSBs.

## **How do I, as a contracting officer, know if the WOSB is a small business?**

As with the SBA's other small business programs, the WOSB must meet the size standard corresponding to the North American Industry Classification System (NAICS) code that you have assigned to the solicitation. The NAICS code designations are described in the NAICS manual available via the Internet at <http://www.census.gov/NAICS>.

## **Is a business eligible if the husband owns 49.2% and the woman owns 50.8%?**

No. A woman or women must own at least 51% of the small business.

**What if the woman owns 100% of a holding company, which owns 100% of the small business? Is that small business 100% owned by a woman?**

No. The small business is owned by another company and is not directly owned by a woman. Therefore, it would not be eligible for the program.

**What if the company is 100% owned by an employee stock ownership plan and 51% of those employees are female? Does it qualify as WOSB?**

No. The small business is not directly owned at least 51% by a woman or women.

**What if the small business is owned by a trust, for tax reasons?**

SBA will treat ownership by a trust, such as a living trust, as the functional equivalent of ownership by a woman where the trust is revocable, and the woman is the grantor, the trustee, and the sole current beneficiary of the trust.

**What is a U.S. citizen?**

It is a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens. That is why the WOSB provides copies of birth certificates, passports or naturalization papers to show that it is owned by U.S. citizens.

**What if the woman lives in a community property state, does this mean SBA will consider the husband to own 50% of the small business?**

By statute, the SBA will not consider community property laws when determining ownership.

**What does it mean the business has to be at least 51% unconditionally owned by one or more women? What does unconditional mean?**

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.

**Can you provide examples of when you might find there is not unconditional ownership?**

Example: An operating agreement provides that the company may be terminated in the event of any of four conditions: the sale of all the company's assets, the unanimous agreement of the members, the entry of a decree of judicial dissolution, and at the direction of one of the male members. Thus, only the male member possesses the unilateral ability to terminate the company.

The fact that he may do so without the woman owner's consent is a restriction on the woman's ownership rights.

Example: The by-laws state that if the majority shareholder (the woman) wants to sell her shares in the business concern, she must find a buyer for the minority (male) shareholder and the minority shareholder must approve the buyer. This places a condition on the ownership of the business concern.

Example: A transfer of ownership agreement shows that the 51% woman owner of a company must give right of first refusal to a male if she decided to sell her shares. The agreement also stated that the sale price to the male could not exceed the amount she paid for the shares initially. This is not unconditional ownership; instead, her rights are conditional and encumbered.

**What if the small business is a partnership, how does it verify it meets the ownership requirement?**

The partnership agreement must evidence that at least 51% of each class of partnership interest is unconditionally owned by one or more women. SBA treats general and limited partnership interests as different classes of partnership interest.

**What if the small business is a limited liability company, how does it verify it meets the ownership requirements?**

The articles of organization and any amendments, and the operating agreement and any amendments must evidence that at least 51% of each class of member interest is unconditionally owned by one or more women.

**What if the small business is a corporation, how does it verify it meets the ownership requirements?**

The stock ledger and stock certificates must evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is 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.

**What if there is no stock ledger?**

Then a required document is missing and you must file a status protest with SBA and you cannot award the contract.

**What if the documents show that a woman has 300 shares of stock of a small business and a male has 300 shares of stock? The woman has 100 shares of unexercised stock options and the male only has 50 shares. Is the company eligible?**

No. SBA would disregard the 100 shares of unexercised stock options you hold and would treat as having been exercised the 50 shares that the male owns. That would mean he owns 53% of the small business (350/650).

**How do you know if a woman or women controls the small business?**

The management and daily business operations of the concern must be controlled by one or more women. Control 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.

**Can you provide examples of when you might find that a woman does not control a small business?**

Example: Provisions of the business concern's operating agreement state the following: "Submission of Bids, Negotiation, and Execution of the Contracts," provides that "an authorized representative of each Member on behalf of the Company will sign the Contracts, all modifications to the Contracts which require the signature of the contractor, and all certifications of claims where certifications are required"; "Labor Issues," provides that "neither member has the authority to sign a labor agreement on behalf of the Company related to any activities related to the Contracts without the written authorization of the other Member"; "Bank Account," provides that "all withdrawals and transfers from the account will require the signature of at least one appointed signatory from each Member"; and "Restricted Activities," provides a list of activities that "no Member, without the written consent of the other Member shall" undertake, including releasing company debts, engaging in transactions outside the ordinary course of business, and selling or otherwise disposing of company assets.

These provisions would undoubtedly allow the minority member to limit some level of the majority member woman's control over the company.

Example: The articles of organization state that management is vested in all the members. In addition, it also states that 80% of the membership interest must agree to the member's compensation, spending more than \$10,000, and borrowing any money. The woman that owns 51% of the LLC would not be deemed to control the company.

**Does it matter what position in the company the woman holds? What if the woman makes the day-to-day management decisions as the Vice President, even though the President is a male?**

Yes, it matters. The company would not be eligible for the program. A woman must hold the highest officer position in the concern.

**What kind of experience does the woman need to show to prove she runs the WOSB?**

The woman or women 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.

**What if the small business is a partnership, how does it verify it meets the control requirement?**

The partnership agreement must show that one or more women must serve as general partners, with control over all partnership decisions.

**What if my small business is a limited liability company, how does it verify it meets the control requirement?**

The articles of organization and any amendments, and operating agreement and any amendments, must show that one or more women serve as management members, with control over all decisions of the limited liability company.

**What if the small business is a corporation, how does it verify it meets the control requirement?**

The articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voter agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more women control the Board of Directors of the concern.

**What does it mean to “control the Board of Directors”?**

Women control the Board of Directors if:

(1) One or more women own at least 51% 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.

**Is there a minimum amount of time the WOSB must be in business?**

No.

# ELIGIBILITY - EDWOSBs

## *Basic Facts:*

*An EDWOSB is a small business that is at least 51% owned and controlled by one or more women who are U.S. citizens and economically disadvantaged.*

- *The ownership must be direct and not subject to conditions.*
- *The economically disadvantaged woman must manage the day-to-day operations of the business.*
- *The economically disadvantaged woman must make the long term decisions for the business.*
- *The woman must meet certain thresholds for personal net worth, adjusted gross income, and fair market value of all assets to be considered economically disadvantaged.*
- *The economically disadvantaged woman must be able to provide documents demonstrating she meets these requirements.*

## **What is an EDWOSB?**

An EDWOSB is:

- (1) A small business; and
- (2) Not less than 51% unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.
- (3) That has shown in CCR that it is an EDWOSB;
- (4) Has made the appropriate representations in ORCA that it is an EDWOSB; and
- (5) Has provided documents to the WOSB Program Repository.

## **Is a WOSB automatically an EDWOSB?**

No. A WOSB is only an EDWOSB if the WOSB is also economically disadvantaged and meets the requirements set forth in the regulations for EDWOSBs.

## **Is an EDWOSB also a WOSB under this program?**

Yes.

## **How do I, as the contracting officer, know if the EDWOSB is a small business?**

As with the SBA's other small business programs, the EDWOSB must meet the size standard corresponding to the North American Industry Classification System (NAICS) code that you have assigned to the solicitation. The NAICS code designations are described in the NAICS manual available via the Internet at <http://www.census.gov/NAICS>.

## **What if the husband owns 49.2% and the wife owns 50.8%, is the company eligible?**

No. An economically disadvantaged woman or women must own at least 51% of the small business.



**What if the woman owns 100% of a holding company, which owns 100% of the small business? Is that small business 100% owned by an economically disadvantaged woman?**

No. The small business is owned by another company and is not directly owned by an economically disadvantaged woman. Therefore, it would not be eligible for the program.

**What if the company is 100% owned by an employee stock ownership plan and 51% of those employees are female? Does it qualify as WOSB?**

No. The small business is not directly owned at least 51% by an economically disadvantaged woman or women.

**What if the small business is owned by a trust, for tax reasons?**

SBA will treat ownership by a trust, such as a living trust, as the functional equivalent of ownership by an economically disadvantaged woman where the trust is revocable, and the economically disadvantaged woman is the grantor, the trustee, and the sole current beneficiary of the trust.

**What if the wife lives in a community property state, does this mean SBA considers the husband to own 50% of the small business?**

By statute, the SBA will not consider community property laws when determining ownership.

**What does it mean the business has to be at least 51% unconditionally owned by one or more economically disadvantaged women? What does unconditional mean?**

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.

**Can you provide examples of when SBA might find there is not unconditional ownership?**

Example: An operating agreement provides that the company may be terminated in the event of any of four conditions: the sale of all the company's assets, the unanimous agreement of the members, the entry of a decree of judicial dissolution, and at the direction of one of the male members. Thus, only the male member possesses the unilateral ability to terminate the company. The fact that he may do so without the woman owner's consent is a restriction on the woman's ownership rights.

Example: The by-laws state that if the majority shareholder (the woman) wants to sell her shares in the business concern, she must find a buyer for the minority (male) shareholder and the minority shareholder must approve the buyer. This places a condition on the ownership of the business concern.

Example: A transfer of ownership agreement shows that the 51% woman owner of a company must give right of first refusal to a male if she decided to sell her shares. The agreement also stated that the sale price to the male could not exceed the amount she paid for the shares initially. This is not unconditional ownership; instead, her rights are conditional and encumbered.

**What if the small business is a partnership, how does it verify it meets the ownership requirement?**

The partnership agreement must evidence that at least 51% of each class of partnership interest is unconditionally owned by one or more economically disadvantaged women. SBA treats general and limited partnership interests as different classes of partnership interest.

**What if the small business is a limited liability company, how does it verify it meets the ownership requirements?**

The articles of organization and any amendments, and the operating agreement and any amendments must evidence that at least 51% of each class of member interest is unconditionally owned by one or more economically disadvantaged women.

**What if the small business is a corporation, how does it verify it meets the ownership requirements?**

The stock ledger and stock certificates must evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is unconditionally owned by one or more economically disadvantaged women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by economically disadvantaged women 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.

**What if there is no stock ledger?**

Then a required document is missing and you must file a status protest with SBA and you cannot award the contract.

**What if the documents show that a woman has 300 shares of stock of a small business and a male has 300 shares of stock? The woman has 100 shares of unexercised stock options and the male only has 50 shares. Is the company eligible?**

No. SBA would disregard the 100 shares of unexercised stock options you hold and would treat as having been exercised the 50 shares that the male owns. That would mean he owns 53% of the small business (350/650).

**How do you know if a woman or women controls the small business?**

The management and daily business operations of the concern must be controlled by one or more women. Control 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.

**Can you provide examples of when you might find that a woman does not control a small business?**

Example: Provisions of the business concern's operating agreement state the following: "Submission of Bids, Negotiation, and Execution of the Contracts," provides that "an authorized representative of each Member on behalf of the Company will sign the Contracts, all modifications to the Contracts which require the signature of the contractor, and all certifications of claims where certifications are required"; "Labor Issues," provides that "neither member has the authority to sign a labor agreement on behalf of the Company related to any activities related to the Contracts without the written authorization of the other Member"; "Bank Account," provides that "all withdrawals and transfers from the account will require the signature of at least one appointed signatory from each Member"; and "Restricted Activities," provides a list of activities that "no Member, without the written consent of the other Member shall" undertake, including releasing company debts, engaging in transactions outside the ordinary course of business, and selling or otherwise disposing of company assets.

These provisions would undoubtedly allow the minority member to limit some level of the majority member woman's control over the company.

Example: The articles of organization state that management is vested in all the members. In addition, it also states that 80% of the membership interest must agree to the member's compensation, spending more than \$10,000, and borrowing any money. The woman that owns 51% of the LLC would not be deemed to control the company.

**Does it matter what position in the company the woman holds? What if the woman makes the day-to-day management decisions as the Vice President, even though the President is a male?**

Yes, it matters. The company would not be eligible for the program. A woman must hold the highest officer position in the concern.

**What kind of experience does the woman need to show to prove she runs the WOSB?**

The woman or women 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.

**What if the small business is a partnership, how does it verify it meets the control requirement?**

The partnership agreement must show that one or more women must serve as general partners, with control over all partnership decisions.

**What if my small business is a limited liability company, how does it verify it meets the control requirement?**

The articles of organization and any amendments, and operating agreement and any amendments, must show that one or more women serve as management members, with control over all decisions of the limited liability company.

**What if the small business is a corporation, how does it verify it meets the control requirement?**

The articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voter agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more women control the Board of Directors of the concern.

**What does it mean to “control the Board of Directors”?**

Women control the Board of Directors if:

(1) One or more women own at least 51% 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.

**Is there a minimum amount of time the EDWOSB must be in business?**

No.

**What does SBA look at to determine economic disadvantage?**

We look at personal net worth, adjusted gross income, and the fair market value of all of your assets.

**What is economic disadvantage?**

A woman is presumed economically disadvantaged if she has a personal net worth of less than \$750,000, her adjusted gross yearly income averaged over the three years preceding the certification does not exceed \$350,000, and the fair market value of all her assets (including her primary residence and the value of the business concern) does not exceed \$6 million.

**Do community property laws affect economic disadvantage status?**

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 her spouse's property.

**What is personal net worth?**

Personal net worth includes all of a woman's assets minus her liabilities.

**Is anything excluded when calculating personal net worth?**

Yes, the woman would exclude:

- her ownership interest in the WOSB/EDWOSB
- her equity interest in your primary personal residence
- any income received from the EDWOSB that is an S corporation, LLC or partnership if you can provide documents showing that the income was reinvested in the WOSB/EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business.

- Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable until retirement age without a significant penalty if you can provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

The woman cannot count losses from the S corporation, LLC or partnership, however, as a personal liability because they are losses to the EDWOSB only, not losses to the individual.

### **What does SBA look at when determining income? Does SBA exclude anything?**

We look at the woman's personal income for the past three years. This includes bonuses and the value of company stock given in lieu of cash. However, she can exclude any income received by your EDWOSB that is an S corporation, LLC, or partnership if she can provide document 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. The woman cannot count losses from the S corporation, LLC or partnership, to reduce your personal income since these are losses to the EDWOSB only, not losses to the individual.

If the adjusted gross yearly income averaged over the three years preceding the certification exceeds \$350,000, SBA will presume that the woman is not economically disadvantaged.

### **So if a woman makes more than \$350,000 a year, she's automatically not eligible?**

Not necessarily. She can show 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.

For example, she may have just won the lottery and that is why the three year average income is higher than normal. However, she may exceed the thresholds for personal net worth.

### **What about fair market value -- what does SBA look at and what can the woman exclude in the calculation?**

The fair market value of all her assets cannot exceed \$6 million. This includes her primary residence and the value of the business concern. She can only exclude her IRA or other official retirement account if they are unavailable until retirement age without a significant penalty and she can provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

### **Does SBA look at the spouse's financial situation when determining my economic status?**

Yes. SBA may consider a spouse's financial situation in determining a woman's access to credit and capital if 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, websites, equipment or employees.

**So what does the spouse have to do? Does he have to provide any documents to the repository?**

When married, the woman must submit separate financial information for her spouse, unless legally separated. Therefore, both must submit a Form 413, "Personal Financial Statement." However, this document (for the spouse) is only provided in the event of a protest or eligibility examination.

**Can a woman give money to her husband and exclude this amount from her assets (personal net worth)?**

No. If you have transferred assets within two years of the WOSB's certification, it will be attributed to you (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.

**What is an immediate family member?**

It is a 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.

**What if she gives money to her daughter for college? That should be excluded from net worth and assets, shouldn't it?**

Yes.

The SBA will exclude certain transferred assets within the two-year period as follows:

- Assets to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or
- Assets to an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

# ***PROTESTS AND APPEALS***

## **What is a protest?**

An EDWOSB or WOSB status protest is a challenge to the EDWOSB or WOSB status of a concern in connection with a specific EDWOSB or WOSB requirement or contract.

## **Who can file a protest?**

Only an “interested party” may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. An “interested party” is any concern that submits an offer for a specific EDWOSB or WOSB requirement, the contracting activity's contracting officer, or SBA.

## **Do I make the determination whether someone is an interested party?**

No, SBA makes that determination.

## **What if they protest the business' size, too?**

The interested party should have filed two separate protests -- a size protest pursuant to 13 C.F.R. part 121 and an EDWOSB or WOSB status protest.

## **Why do they have to file two separate protests?**

An interested party must file two separate protests because a size protest is decided by the Size Specialist located in the SBA Government Contracting Office serving the area in which the headquarters of the protested concern is located. A WOSB status protest is decided by the Director/Government Contracting located at SBA Headquarters.

## **How will I know it's a protest?**

- The protest will challenge the status of a particular concern as an EDWOSB or WOSB by setting forth specific and credible evidence showing that concern may not be owned and controlled by one or more women who are United States citizens. If they are protesting an EDWOSB, then the protest must set forth specific and credible evidence showing that the concern is not at least 51% owned and controlled by one or more women who are economically disadvantaged.
- If you file a protest, you must explain any of the above or that the WOSB or EDWOSB apparent successful offeror has failed to provide all of the required documents, as set required by the regulations.
- If you are not sure whether it is a WOSB status protest, forward it on to the D/GC.



**Who decides if the protest presents specific and credible evidence?**

The SBA makes that decision. SBA will determine whether the protester merely states that they think the WOSB is not eligible (e.g., because it's their opinion the husband or another male runs the company) or provides evidence that the WOSB is not eligible.

**Does the protest have to be in writing?**

Yes.

**Where and how do they file the protest?**

They will file the protest with you, the contracting officer in person, by facsimile, by express delivery service, email, or by U.S. mail (received by the applicable date). If the contracting officer or SBA protests, they must file the protest directly with the D/GC. The contracting officer sends all protests to: 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.

**How much time do they have to file the protest?**

If it was a negotiated acquisition, the contracting officer must receive the protest 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. For example, if they received notification from the contracting officer on Friday, August 20, 2010, they must file the protest by Friday, August 27, 2010.

If it was a sealed bid acquisition, the contracting officer must receive the protest prior to the close of business on the fifth business day after bid opening. For example, if the bid opening was Wednesday, September 1, 2010, they must file the protest by Thursday, September 9, 2010 (Labor Day holiday is not a business day).

**What if they send the protest in a few hours after close of business?**

It would be considered 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.

**What if they file the protest prior to bid opening or notification of the apparent successful offer?**

The protest would be considered premature and SBA would dismiss the protest. However, the SBA, not the contracting officer, makes this determination.

### **What do I do with the protest once I receive it?**

The contracting officer will forward all protests to SBA, even if the contracting officer thinks it is premature, not sufficiently specific, or untimely.

The contracting officer also sends a referral letter that includes information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing.

### **What does the referral letter have to say?**

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;
- whether a contract has been awarded.
- copies of any documents provided to the contracting officer pursuant to § 127.300 (if the repository is unavailable).

### **Why do I need to send a referral letter?**

The SBA uses this information to determine whether the protestor is an interested party, whether the protested concern is the apparent successful offeror, and whether the protest has been submitted on time.

### **How will anyone know that SBA received the 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 because it is premature, untimely or not specific.

### **If SBA dismisses a protest then an ineligible concern may continue to get WOSB contracts. What may SBA do?**

SBA may consider the protest allegations in determining whether to conduct an examination of the protested concern or submit a protest itself.

### **Does the contracting officer have to stay performance or not issue the contract?**

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.

### **What does the protested concern have to do?**

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

### **How long will it take SBA to make a decision?**

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.

### **What if SBA does not issue the decision within 15 business days or receive an extension?**

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 public interest. The determination must be included in the contract file and a written copy sent to the D/GC.

**How will I know when a decision is made?**

SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination.

**What if someone does not agree with the D/GC's decision, can they file an appeal?**

Yes. 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).

**When must an appeal be filed?**

You must file and serving an appeal petition within 10 business days after you receive the WOSB or EDWOSB protest determination.

**To whom is the appeal sent?**

The appeal is sent to each of the following:

- The D/GC at U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, facsimile (202) 205-6390;
- The contracting officer responsible for the procurement affected by a WOSB or EDWOSB determination;
- The protested concern (the business concern whose WOSB or EDWOSB status is at issue) or the protestor; and
- SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, facsimile number (202) 205-6873.

**When will an OHA Judge dismiss an appeal?**

The presiding Judge must dismiss the appeal if the appeal is untimely or the matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters. However, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not prevent the Judge from rendering a final decision.

**Who can file a response an appeal petition and when must it be filed?**

Any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must

be filed within 7 business days after service of the appeal petition. The response should present argument. For example, SBA may file a response on the appeal.

**When will the Judge issue his or her decision?**

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

**Can a Judge reconsider his decision?**

Yes. The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

**Can the Judge remand the decision back to SBA for another decision?**

Yes. The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new WOSB or EDWOSB determination.

**What happens if SBA sustains a protest (agrees with the protester that the protested concern is not eligible)?**

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.

The protested concern (i.e., the 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 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 eligibility examination.

**How does a protest affect the contract award? How does a sustained protest affect the contract award if no OHA appeal has been filed?**

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.

However, if the contracting officer has made a written determination (prior to the D/GC's decision) that it must proceed with the contract or it will harm the public interest, the contracting officer receives the D/GC's determination after contract award, and no 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 has been made, the contracting officer receives the D/GC's determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

**What happens if SBA denies the protest (finds the protested concern is eligible) and no OHA appeal is filed?**

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.

**What if SBA denies the protest, but an appeal is filed?**

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.

**What happens if SBA denies the protest, but an appeal is filed and OHA overturns the original decision months later on an appeal?**

If OHA subsequently overturns the D/GC's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

**What happens if SBA denies the protest, but an appeal is filed and OHA agrees with the original decision months later on an appeal?**

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

# ***ELIGIBILITY EXAMINATIONS***

## **What is an Eligibility Examination?**

An eligibility examination is an investigation that verifies 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. Eligibility examinations may verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination.

## **What is the difference between an eligibility examination and an EDWOSB or WOSB status protest? They sound like the same thing.**

An EDWOSB or WOSB status protest is a challenge to the EDWOSB or WOSB status of a concern in connection with a specific EDWOSB or WOSB requirement or contract.

An eligibility examination is the formal process through which SBA verifies the accuracy of any certification made or information provided as part of the certification process or in connection with an EDWOSB or WOSB contract. An eligibility examination can be conducted at any time and is not tied to a particular solicitation or contract award.

## **What is the purpose of an Eligibility Examination?**

It enables SBA to verify and monitor the accuracy of any certification made or information provided as part of the certification process or in connection with an EDWOSB or WOSB contract.

## **When will SBA perform an Eligibility Examination?**

SBA may perform eligibility examinations at any time after a concern self certifies in CCR or ORCA that it is an EDWOSB or WOSB.

## **How will SBA decide to conduct an examination?**

SBA may consider protest allegations set forth in a protest. SBA may also consider information provided by a third-party that questions the eligibility of a WOSB or EDWOSB that has certified its status in ORCA or CCR.

## **How will I know if a WOSB/EDWOSB is subject to an eligibility examination?**

You won't. SBA will notify the WOSB/EDWOSB within 5 business days before commencing an examination. However, SBA may conduct a site visit without prior notification. SBA generally does not notify the contracting officer unless it decides to file a protest on the WOSB/EDWOSB.

### **What happens during an examination?**

SBA will request that the WOSB/EDWOSB provide documents and information relating to its eligibility. SBA may request copies of proposals or bids submitted in response to an EDWOSB or WOSB solicitation. 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>.

### **Do they have to do this during a contract? They are pretty busy with work for the agency.**

The WOSB/EDWOSB may request an extension in providing the document or information to SBA. However, SBA is not required to grant the extension and may draw an adverse inference if the WOSB/EDWOSB fails to cooperate in providing the requested information.

### **What happens if everything turns out ok?**

If SBA determines that the WOSB/EDWOSB satisfies the applicable EDWOSB or WOSB eligibility requirements, then the Director/Government Contracting (D/GC) will send you a written decision to that effect and will allow the concern's EDWOSB or WOSB designation in CCR and ORCA to stand. They can continue to self certify their EDWOSB or WOSB status.

### **What happens if something goes wrong?**

If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send 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.

They will then have 15 calendar days from the date of the notice to respond. After that, the D/GC will consider the reasons of proposed ineligibility and any information submitted in response, and will send a written decision with the findings.

If SBA determines that the business 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 5 calendar days after the date of the decision.

### **What does it mean they do not qualify? Can't they just self certify again in CCR a few weeks later?**

No. 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. So, if the WOSB/EDWOSB believes in good faith that it has cured the reasons for its ineligibility, it may request an examination.

**What if the D/GC decides the business is not eligible and it is waiting to hear if it is the apparent successful offeror?**

The business concern must immediately inform the officials responsible for the procurement of the adverse determination.

**Will they lose the contract?**

The contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

Whether or not a contracting officer decides to allow or not allow an ineligible concern to fully perform on the contract, 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.

**Can the WOSB/EDWOSB appeal this decision to someone at SBA?**

No. They can request that SBA conduct a new examination once they believe they are eligible.

**How do they request a new eligibility examination?**

They may send a written request specifying the particular reasons they were determined not to qualify as an EDWOSB or WOSB to: 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.”

**What happens after they send in the request?**

SBA will immediately notify them in writing once it receives the request and will ask them to provide documentation and information related to the concern's EDWOSB or WOSB eligibility. The D/GC will send you a written decision finding that your small business either qualifies or does not qualify as an EDWOSB or WOSB.

If the D/GC determines that the concern does not qualify again 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 D/GC determines that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send you a written decision to that effect and will advise the concern that it may self-certify as an EDWOSB or WOSB, as applicable.

**Can they appeal this decision?**

No. 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.

# ***PENALTIES FOR MISREPRESENTATION***

## **What happens if someone falsely self certifies, misrepresents its status as an EDWOSB or WOSB or provides false information to the Government?**

The SBA or another Federal agency may propose to suspend and debar you pursuant to the procedures set forth in the FAR, 48 CFR 9.4.

In addition, the Federal government can seek 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.

Further, the Federal government may seek 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.

The Federal government may also prosecute you for criminal penalties under 18 U.S.C. 1001 and any other penalties as may be available under law.

## **What happens if I think that someone has provided false documents or false information?**

You can notify the SBA so that it can consider whether to conduct an eligibility examination or file a protest.

In addition, you can refer the matter to your Inspector General's office and/or the SBA's Inspector General's office. You may report fraud, waste, mismanagement, or misconduct involving SBA programs or employees either online (<http://www.sba.gov/ig/aboutus/overview/rsw/index.html>) or by calling the OIG Hotline toll-free at (800) 767-0385. You may choose to remain anonymous; however, the SBA OIG will not be able to contact you for more information regarding your complaint. This may hinder our ability to fully investigate the complaint, and we will not be able to inform you about the results of our review. You may also request that your identity remain confidential. In this case, the SBA OIG will not release your name without your prior consent unless we determine that such disclosure is absolutely unavoidable during the course of an investigation or audit.

## **Appendix A**

### **List of 83-four digit NAICS Codes Eligible for Contracting under WOSB Program**

The SBA has designated 83 NAICS codes as eligible for Federal contracting under the WOSB Program. There are forty-five NAICS codes in which WOSBs are underrepresented and thirty-eight NAICS codes in which WOSBs are substantially underrepresented.

The forty-five NAICS codes in which WOSBs are underrepresented are:

1. 2213-Water, Sewage and Other systems;
2. 2361-Residential Building Construction;
3. 2371-Utility System Construction;
4. 2381-Foundation, Structure, and Building Exterior Contractors;
5. 2382-Building Equipment Contractors;
6. 2383-Building Finishing Contractors;
7. 2389-Other Specialty Trade Contractors;
8. 3149-Other Textile Product Mills;
9. 3159-Apparel Accessories and Other Apparel Manufacturing;
10. 3219-Other Wood Product Manufacturing;
11. 3222-Converted Paper Product Manufacturing;
12. 3321- Forging and Stamping;
13. 3323-Architectural and Structural Metals Manufacturing;
14. 3324-Boiler, Tank, and Shipping Container Manufacturing;
15. 3333-Commercial and Service Industry Machinery Manufacturing;
16. 3342-Communications Equipment Manufacturing;
17. 3345-Navigational, Measuring, Electromedical, and Control Instruments Manufacturing;
18. 3346-Manufacturing and Reproducing Magnetic and Optical Media;
19. 3353-Electrical Equipment Manufacturing;

20. 3359-Other Electrical Equipment and Component Manufacturing;
21. 3369-Other Transportation Equipment Manufacturing;
22. 4842-Specialized Freight Trucking;
23. 4881-Support Activities for Air Transportation;
24. 4884-Support Activities for Road Transportation;
25. 4885-Freight Transportation Arrangement;
26. 5121-Motion Picture and Video Industries;
27. 5311-Lessors of Real Estate;
28. 5413-Architectural, Engineering, and Related Services;
29. 5414-Specialized Design Services;
30. 5415-Computer Systems Design and Related Services;
31. 5416-Management, Scientific, and Technical Consulting Services;
32. 5419-Other Professional, Scientific, and Technical Services;
33. 5611-Office Administrative Services;
34. 5612-Facilities Support Services;
35. 5614-Business Support Services;
36. 5616-Investigation and Security Services;
37. 5617-Services to Buildings and Dwellings;
38. 6116-Other Schools and Instruction;
39. 6214-Outpatient Care Centers;
40. 6219-Other Ambulatory Health Care Services;
41. 7115-Independent Artists, Writers, and Performers;
42. 7223-Special Food Services;
43. 8111-Automotive Repair and Maintenance;

44. 8113-Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance; and
45. 8114-Personal and Household Goods Repair and Maintenance.

The thirty-eight NAICS codes in which WOSBs are substantially underrepresented are:

1. 2372-Land Subdivision;
2. 3152-Cut and Sew Apparel Manufacturing;
3. 3231-Printing and Related Support Activities;
4. 3259-Other Chemical Product and Preparation Manufacturing;
5. 3328-Coating, Engraving, Heat Treating, and Allied Activities;
6. 3329-Other Fabricated Metal Product Manufacturing;
7. 3371-Household and Institutional Furniture and Kitchen Cabinet Manufacturing;
8. 3372-Office Furniture (including Fixtures) Manufacturing;
9. 3391-Medical Equipment and Supplies Manufacturing;
10. 4841-General Freight Trucking;
11. 4889-Other Support Activities for Transportation;
12. 4931-Warehousing and Storage;
13. 5111-Newspaper, Periodical, Book, and Directory Publishers;
14. 5112-Software Publishers;
15. 5171-Wired Telecommunications Carriers;
16. 5172-Wireless Telecommunications Carriers (except Satellite);
17. 5179-Other Telecommunications;
18. 5182-Data Processing, Hosting, and Related Services;
19. 5191-Other Information Services;
20. 5312-Offices of Real Estate Agents and Brokers;
21. 5324-Commercial and Industrial Machinery and Equipment Rental and Leasing;

22. 5411-Legal Services;
23. 5412-Accounting, Tax Preparation, Bookkeeping, and Payroll Services;
24. 5417-Scientific Research and Development Services;
25. 5418-Advertising, Public Relations, and Related Services;
26. 5615-Travel Arrangement and Reservation Services;
27. 5619-Other Support Services;
28. 5621-Waste Collection;
29. 5622-Waste Treatment and Disposal;
30. 6114-Business Schools and Computer and Management Training;
31. 6115-Technical and Trade Schools;
32. 6117-Educational Support Services;
33. 6242-Community Food and Housing, and Emergency and Other Relief Services;
34. 6243-Vocational Rehabilitation Services;
35. 7211-Traveler Accommodation;
36. 8112-Electronic and Precision Equipment Repair and Maintenance;
37. 8129-Other Personal Services; and
38. 8139-Business, Professional, Labor, Political, and Similar Organizations.



## Appendix B

OMB Approval No. 3245-0374

Expiration Date: 01/31/14

### WOMEN-OWNED SMALL BUSINESS (WOSB) PROGRAM CERTIFICATION-- WOSBs

All small businesses that are interested in submitting an offer on a solicitation that has been set aside for WOSBs under the WOSB Program must complete this certification prior to submitting the offer. This includes checking all of the boxes, having an authorized officer of the WOSB sign and date the certification and having it notarized. Once the certification is complete, you must upload it to the WOSB Program Repository (go to [www.sba.gov/wosb](http://www.sba.gov/wosb)) along with all other required documents.

Please read carefully the following certification statements. The Federal government relies on the information in this form and any documents or supplemental information submitted to determine whether the business is eligible for a contract authorized under the WOSB Program. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 127), and also any statutory and regulatory provisions referenced in those authorities. In addition, please note that the U.S. Small Business Administration (SBA) may request further clarification or supporting documentation in order to assist in the verification of any of the information provided and that each person signing this certification may be prosecuted if they have provided false information. Any action taken with respect to this certification does not affect the Government’s right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given, even if correct information has been included in other materials submitted to SBA.

**The undersigned has reviewed, verified and certifies that (all boxes must be checked):**

(i) It is certified as a WOSB by a certifying entity approved by SBA, the certifying entity has not issued a decision currently in effect finding that the concern does not qualify as a WOSB, and there have been no changes in its circumstances affecting its eligibility since its certification.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(ii) It is currently certified by the U.S. Small Business Administration as an 8(a) BD Program Participant.

Yes  No  N/A Explain why N/A: \_\_\_\_\_



(iii) If a corporation, the stock ledger and stock certificates evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is unconditionally and directly 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.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(iv) If a partnership, the partnership agreement evidences that at least 51% of each class of partnership interest is unconditionally and directly owned by one or more women.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(iv) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that at least 51% of each class of member interest is unconditionally and directly owned by one or more women.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(v) The birth certificates, naturalization papers, or passports for owners who are women show that the business concern is at least 51% owned and controlled by women who are U.S. citizens.

Yes  No

(vi) The ownership by women is not subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another.

Yes  No

(vii) The 51% ownership by women is not through another business entity (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women.

Yes  No

(viii) The 51% ownership by women is held through a trust, the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(ix) The management and daily business operations of the concern are controlled by one or more women. Control means that both the long-term decision making and the day-to-day management and administration of the business operations are conducted by one or more women.

Yes  No

(x) A woman holds the highest officer position in the concern and her resume evidences that she has the managerial experience of the extent and complexity needed to run the concern.

Yes  No

(xi) The woman manager does not have the technical expertise or possess the required license for the business but has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xii) The woman who holds the highest officer position of the concern manages it on a full-time basis and devotes full-time to the business concern during the normal working hours of business concerns in the same or similar line of business.

Yes  No

(xiii) The woman who holds the highest officer position does 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.

Yes  No

(xiv) If a corporation, the articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more women 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% 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.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xv) If a partnership, the partnership agreement evidences that one or more women serve as general partners, with control over all partnership decisions.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xvi) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments evidence that one or more women serve as management members, with control over all decisions of the limited liability company.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xvii) No males or other entity exercise actual control or have the power to control the concern.

Yes  No

(xviii) SBA, in connection with an examination or protest, has not issued a decision currently in effect finding that this business concern does not qualify as a WOSB.

Yes  No

(xix) All required documents verifying eligibility for a WOSB requirement have been submitted to the WOSB Program Repository, including any supplemental documents if there have been changes since the last representation, or will be submitted to the contracting officer if the repository is unavailable and then posted to the WOSB Program Repository within thirty (30) days of the repository becoming available.

Yes  No

All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that these statements are made for the purpose of determining eligibility for a WOSB Program contract.

I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes. The certifications in this document are continuing in nature. Each WOSB prime contract for which the WOSB submits an offer/quote or receives an award constitutes a restatement and reaffirmation of these certifications. I understand that the WOSB may not misrepresent its status as a WOSB to: 1) obtain a contract under the Small Business Act; or 2) obtain any benefit under a provision of Federal law that references the WOSB Program for a definition of program eligibility.

I am an **officer** of the WOSB authorized to represent it and sign this certification on its behalf.

**Warning: By signing this certification you are representing on your own behalf, and on behalf of the WOSB, that the information provided in this certification, and any document or supplemental information submitted, is true and correct as of the date set forth opposite your signature. Any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions including, but not limited to: 1) fines of up to \$500,000, and imprisonment of up to 10 years, or both, as set forth in 15 U.S.C. § 645 and 18 U.S.C. § 1001, as well as any other applicable criminal laws; 2) treble damages and civil penalties under the False Claims Act; 3) double damages and civil penalties under the Program Fraud Civil Remedies Act; 4) suspension and/or debarment from all Federal procurement and nonprocurement transactions; and 5) program termination.**

<i>Signature</i>	<i>Date</i> __/__/__
<i>Print Name (First, Middle, Last)</i>	
<i>Title</i>	
<i>Business Name</i>	

PLEASE NOTE: According to the Paperwork Reduction Act, you are not required to respond to this information collection unless it displays a valid OMB approval number. The estimated burden for completing this form is 2 hours per response. If you have questions or comments concerning this estimate or other aspects of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.



## Appendix C

OMB Approval No. 3245-0374

Expiration Date: 01/31/14

### WOMEN-OWNED SMALL BUSINESS (WOSB) PROGRAM CERTIFICATION-- EDWOSBs

All EDWOSBs that are interested in submitting an offer on a solicitation that has been set aside for WOSBs or EDWOSBs under the WOSB Program must complete this certification prior to submitting the offer. This includes checking all of the boxes, having an authorized officer of the EDWOSB sign and date the certification and having it notarized. Once the certification is complete, you must upload it to the WOSB Program Repository (go to [www.sba.gov/wosb](http://www.sba.gov/wosb)) along with all other required documents.

Please read carefully the following certification statements. The Federal government relies on the information in this certification and any documents or supplemental information submitted to determine whether the business is eligible for a contract authorized under the WOSB Program. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 C.F.R. Part 127), and also any statutory and regulatory provisions referenced in those authorities. In addition, please note that the U.S. Small Business Administration (SBA) may request further clarification or supporting documentation in order to assist in the verification of any of the information provided and that each person signing this certification may be prosecuted if they have provided false information. Any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given, even if correct information has been included in other materials submitted to SBA.

**The undersigned has reviewed, verified and certifies that (all boxes must be checked):**

(i) It is certified as an EDWOSB by a certifying entity approved by SBA, the certifying entity has not issued a decision currently in effect finding that the concern does not qualify as a EDWOSB, and there have been no changes in its circumstances affecting its eligibility since its certification.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(ii) It is currently certified by the U.S. Small Business Administration as an 8(a) BD Program Participant.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(iii) If a corporation, the stock ledger and stock certificates evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is unconditionally and directly owned by one or more women who are economically disadvantaged. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by an economically disadvantaged 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.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(iv) If a partnership, the partnership agreement evidences that at least 51% of each class of partnership interest is unconditionally and directly owned by one or more economically disadvantaged women.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(v) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that at least 51% of each class of member interest is unconditionally and directly owned by one or more economically disadvantaged women.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(vi) The birth certificates, naturalization papers, or passports show that the business concern is at least 51% owned and controlled by economically disadvantaged women who are U.S. citizens.

Yes  No

(vii) The ownership by economically disadvantaged women is not subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another.

Yes  No

(viii) The 51% ownership by economically disadvantaged women is not through another business entity (including employee stock ownership plan) that is, in turn, owned and controlled by one or more economically disadvantaged women.

Yes  No

(ix) The 51% ownership by economically disadvantaged women is held through a trust, the trust is revocable, and the economically disadvantaged woman is the grantor, a trustee, and the sole current beneficiary of the trust.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(x) The management and daily business operations of the concern are controlled by one or more economically disadvantaged women. Control means that both the long-term decision making and the day-to-day management and administration of the business operations are conducted by one or more economically disadvantaged women.

Yes  No

(xi) An economically disadvantaged woman holds the highest officer position in the concern and her resume evidences that she has the managerial experience of the extent and complexity needed to run the concern.

Yes  No

(xi) The economically disadvantaged woman manager does not have the technical expertise or possess the required license for the business but has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xii) The economically disadvantaged woman who holds the highest officer position of the concern manages it on a full-time basis and devotes full-time to the business concern during the normal working hours of business concerns in the same or similar line of business.

Yes  No

(xiii) The economically disadvantaged woman who holds the highest officer position does 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.

Yes  No

(xiv) If a corporation, the articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more economically disadvantaged women control the Board of Directors of the concern. Economically disadvantaged women are

considered to control the Board of Directors when either: (1) one or more economically disadvantaged women own at least 51% 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) economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xv) If a partnership, the partnership agreement evidences that one or more economically disadvantaged women serve as general partners, with control over all partnership decisions.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xvi) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments evidence that one or more economically disadvantaged women serve as management members, with control over all decisions of the limited liability company.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xvii) No males or other entity exercise actual control or have the power to control the concern.

Yes  No

(xviii) The economically disadvantaged woman upon whom eligibility is based has read the SBA's regulations defining economic disadvantage and can demonstrate that her personal net worth is less than \$750,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.

Yes  No

(xix) 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, evidences that she is economically disadvantaged.

Yes  No

(xx) The adjusted gross income of the woman claiming economic disadvantage averaged over the three years preceding the certification does not exceed \$350,000.

Yes  No

(xxi) The adjusted gross income of the woman claiming economic disadvantage averaged over the three years preceding the certification exceeds \$350,000; however, the woman can show 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 that the income is not indicative of lack of economic disadvantage.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xxii) The fair market value of all the assets (including her primary residence and the value of the business concern but excluding funds invested in an Individual Retirement Account or other official retirement account that are unavailable until retirement age without a significant penalty) of the woman claiming economic disadvantage does not exceed \$6 million.

Yes  No

(xxiii) The woman claiming economic disadvantage has not transferred any assets within two years of the date of the certification.

Yes  No

(xxiv) The woman claiming economic disadvantage has transferred assets within two years of the date of the certification. However, the transferred assets were: (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.

Yes  No  N/A Explain why N/A: \_\_\_\_\_

(xxv) SBA, in connection with an examination or protest, has not issued a decision currently in effect finding that this business concern does not qualify as a EDWOSB.

Yes  No

(xxvi) All required documents verifying eligibility for the EDWOSB requirement have been submitted to the WOSB Program Repository, including any supplemental documents if there have been changes since the last representation, or will be submitted to the contracting officer if the repository is unavailable and then posted to the WOSB Program Repository within thirty (30) days of the repository becoming available.

Yes  No

All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that these statements are made for the purpose of determining eligibility for a WOSB Program contract.

I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes. The certifications in this document are continuing in nature. Each EDWOSB or WOSB prime contract for which the EDWOSB submits an offer/quote or receives an award constitutes a restatement and reaffirmation of these certifications. I understand that the EDWOSB may not misrepresent its status as a EDWOSB or WOSB to: 1) obtain a contract under the Small Business Act; or 2) obtain any benefit under a provision of Federal law that references the WOSB Program for a definition of program eligibility.

I am an **officer** of the EDWOSB authorized to represent it and sign this certification on its behalf.

**Warning: By signing this certification you are representing on your own behalf, and on behalf of the EDWOSB, that the information provided in this certification, and any document or supplemental information submitted, is true and correct as of the date set forth opposite your signature. Any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions including, but not limited to: 1) fines of up to \$500,000, and imprisonment of up to 10 years, or both, as set forth in 15 U.S.C. § 645 and 18 U.S.C. § 1001, as well as any other applicable criminal laws; 2) treble damages and civil penalties under the False Claims Act; 3) double damages and civil penalties under the Program Fraud Civil Remedies Act; 4) suspension and/or debarment from all Federal procurement and nonprocurement transactions; and 5) program termination.**

<i>Signature</i>	<i>Date</i> __/__/__
<i>Print Name (First, Middle, Last)</i>	
<i>Title</i>	
<i>Business Name</i>	

PLEASE NOTE: According to the Paperwork Reduction Act, you are not required to respond to this information collection unless it displays a valid OMB approval number. The estimated burden for completing this form is 2 hours per response. If you have questions or comments concerning this estimate or other aspects of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.

## Appendix D

### WOSB Program Repository Checklist – WOSB Set-Aside

#### Has the Apparent Successful Offeror Provided the Following:

##### I. WOSBs/EDWOSBs – Third Party Certification

If the WOSB or EDWOSB has received a Third Party Certification then it must have provided the following to the WOSB Program Repository at the time of initial offer and prior to contract award.

1. Copy of the Third Party Certification showing it received the Third Party Certification prior to initial offer and that the Third Party Certifier is an approved SBA Third Party Certifier

Date initial offers due \_\_\_\_\_

Date of Third Party Certification \_\_\_\_\_

Yes  No

2. Copy of a joint venture agreement IF the offeror has submitted the offer as a joint venture

Yes  No  N/A

3. Signed copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB)

Yes  No

##### II. WOSBs-Self Certification

If the WOSB or EDWOSB is self-certifying as a WOSB, then it must have provided the following to the WOSB Program Repository at the time of initial offer and prior to contract award. If the WOSB or EDWOSB has submitted a Third Party Certification then you do not need to complete this section – complete section I above.

1. Copies of birth certificates, Naturalization papers, or unexpired passports for owners who are women

The women owners are: \_\_\_\_\_

Documents have been provided for all of the above

Yes  No

2. Copy of a joint venture agreement IF the offeror has submitted the offer as a joint venture

Yes  No  N/A

3. The assumed/fictitious name (doing business as) certificate(s)

Yes  No  N/A

4. A copy of the WOSB Program Certification – WOSB or EDWOSB

Yes  No

5. If the apparent successful offeror is a **limited liability company**, it has provided:

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

Yes  No

Operating agreement, and any amendments

Yes  No

6. If the apparent successful offeror is a **corporation**, it has provided:

Articles of incorporation and any amendments

Yes  No

By-laws and any amendments

Yes  No

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

Yes  No

Stock ledger

Yes  No

Voting agreements, if any

Yes  No  N/A

7. If the apparent successful offeror is a **partnership**, it has provided:

The partnership agreement and any amendments

Yes  No

# WOSB Program Repository Checklist –EDWOSB Set-Aside

## Has the Apparent Successful Offeror Provided the Following:

### I. EDWOSBs – Third Party Certification

If the EDWOSB has received a Third Party Certification then it must have provided the following to the WOSB Program Repository at the time of initial offer and prior to contract award.

1. Copy of the Third Party Certification showing it received the Third Party Certification as an EDWOSB prior to initial offer and that the Third Party Certifier is an approved SBA Third Party Certifier

Date initial offers due \_\_\_\_\_

Date of Third Party Certification \_\_\_\_\_

Yes  No

2. Copy of a joint venture agreement IF the offeror has submitted the offer as a joint venture

Yes  No  N/A

3. Signed copy of the Women-Owned Small Business Program Certification (EDWOSB)

Yes  No

### II. EDWOSBs- Self Certification

If the EDWOSB is self-certifying, then it must have provided the following to the WOSB Program Repository at the time of initial offer and prior to contract award. If the EDWOSB has submitted a Third Party Certification then you do not need to complete this section – complete section I above.

1. Copies of birth certificates, Naturalization papers, or unexpired passports for owners who are women

The economically disadvantaged women owners are: \_\_\_\_\_

Documents have been provided for all of the above

Yes  No

2. SBA Form 413, Personal Financial Statement for each woman claiming economic disadvantage

Yes  No

3. Copy of a joint venture agreement IF the offeror has submitted the offer as a joint venture

Yes  No  N/A

4. The assumed/fictitious name (doing business as) certificate(s)

Yes  No  N/A

5. A copy of the WOSB Program Certification – EDWOSB

Yes  No

6. If the apparent successful offeror is a **limited liability company**, it has provided:

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

Yes  No

Operating agreement, and any amendments

Yes  No

7. If the apparent successful offeror is a **corporation**, it has provided:

Articles of incorporation and any amendments

Yes  No

By-laws and any amendments

Yes  No

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

Yes  No

Stock ledger

Yes  No

Voting agreements, if any

Yes  No  N/A

8. If the apparent successful offeror is a **partnership**, it has provided:

The partnership agreement and any amendments

Yes  No