

WOSB/EDWOSB amendments to the FAR are here

(October 14, 2021) - Bradley Arant Boult Cummings LLP attorneys Aron C. Beezley and Sarah Osborne examine proposed changes to the Federal Acquisition Regulation and highlight how they affect women-owned small businesses seeking a government contract.

The Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) recently proposed a series of noteworthy amendments to the Federal Acquisition Regulation (FAR)¹ that impact Women-Owned Small Business (WOSB) concerns and Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns.

The key proposed amendments to the FAR — which pertain to such things as status protests, proposals while a firm is awaiting certification, and sole-source awards — are discussed below.



Background





Section 825(a)(1) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015², [Public Law 113–291](#), requires WOSB and EDWOSB concerns to be certified by the Small Business Administration (SBA), a federal agency, a state government, or a national certifying entity approved by the SBA in the WOSB Program to be eligible for set-aside or sole-source awards.


On May 11, 2020, the SBA issued a final rule to implement section 825(a)(1) by amending 13 CFR part 127.


Key proposed changes to the FAR

To implement the final rule published by the SBA on May 11, 2020, DoD, GSA, and NASA are proposing to make a series of amendments to the FAR, including the following:

- Changes are proposed to  [FAR 2.101](#), Definitions, to update the definition of EDWOSB and WOSB concern eligible under the WOSB Program to add that the concern is certified by the SBA or an approved third-party certifier in accordance with [13 CFR 127.300](#).
- Changes are proposed to  [FAR 19.308\(d\)](#), Protesting a firm's status as an EDWOSB concern or WOSB concern eligible under the WOSB Program, to:
- Require a protest to be submitted by email to the SBA at wosbprotest@sba.gov.
- Propose deletion of text requiring the SBA to consider protests by contracting officers when the apparent successful offeror has failed to provide all of the required documents, as set forth in [FAR 19.1503\(c\)](#).

- Changes are also proposed to  [FAR 19.308](#) to add the requirement that the protest present evidence that the concern is not at least 51% owned and controlled by one or more economically disadvantaged women "who are United States citizens," based on the requirements of 13 CFR part 127. The addition of "United States citizens" aligns the FAR text with the SBA's regulations.
-  [FAR 19.1501](#), Definition, is revised to delete the definition of WOSB Program Repository since the WOSB Program Repository is no longer the source for WOSB Program eligibility as of October 15, 2020.
-  [FAR 19.1503](#), Status, is amended to add the requirement for the contracting officer to verify the designation as a certified WOSB or EDWOSB small business in the Dynamic Small Business Search.³
-  [FAR 19.1504](#), Exclusions, is amended at paragraph (b) to replace Federal Prison Industries, Inc., and AbilityOne with "mandatory Government sources (see section 8.002)," since both entities are referenced at [FAR 8.002](#), Priorities for use of mandatory government sources.

 [FAR 19.1505](#), Set-aside procedures, is amended to allow an offeror to submit an offer while awaiting certification under the WOSB Program. In this regard, the proposed amendments to the FAR also provide that:

- Within 15 days from the date of the contracting officer's notification, the SBA will make a determination regarding the offeror's status as an EDWOSB or WOSB eligible under the WOSB Program.
- If the contracting officer does not receive a determination from the SBA within 15 days, the contracting officer, at his or her discretion, may provide the SBA additional time to make a determination, or may proceed with award to the next highest evaluated offeror.
- The contracting officer shall not make award to an offeror who is not a certified EDWOSB or WOSB concern eligible under the WOSB Program.
-  [FAR 19.1506](#), Women-Owned Small Business Program sole-source awards, is amended to:
 - Instruct a contracting officer that a sole-source award can only be made to a concern that has been certified pursuant to [13 CFR 127.300](#) as an EDWOSB or WOSB eligible under the WOSB Program.
 - Notify contracting officers that they shall not request an eligibility determination from SBA on pending certification applications for EDWOSB or WOSB sole-source awards.

Conclusion

Comments on the proposed amendments to the FAR are due by December 6, 2021.

Notes

¹ <https://bit.ly/3DGxLhg>

2  15 U.S.C. § 637(m)

3 <https://bit.ly/3BTwIA>

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