

## § 127.500

EDWOSB or WOSB eligibility requirements under subpart B of this part.

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

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

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

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

(1) If the D/GC determines that the concern does not qualify as an EDWOSB or WOSB, the decision will explain the specific reasons for the adverse determination and advise the concern that it is prohibited from self-certifying as an EDWOSB or WOSB. If the concern self-certifies as an EDWOSB or WOSB notwithstanding SBA's adverse determination, the concern will be subject to the penalties under subpart F of this part.

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

(f) *Effect of decision.* The D/GC's decision is effective as of the date of the decision and applies to all solicitations issued on or after the effective date.

## 13 CFR Ch. I (1-1-10 Edition)

### Subpart E—Federal Contract Assistance

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

A contracting officer may restrict competition under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement, as specified in §127.501(a), and the procuring agency finds, pursuant to the method specified in §127.501(b), that a set-aside in that industry would be consistent with the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

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

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

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

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

(b) *Agency determination of discrimination.* Each agency that is considering restricting competition with respect to a contract in an industry pursuant to this rule is responsible for carrying out a relevant analysis that would justify a restriction on competition under the equal protection requirements of the Due Process Clause of the Fifth