

accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What are the requirements for representing EDWOSB or WOSB status, and what are the penalties for misrepresentation?

(a) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to EDWOSBs or WOSBs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a EDWOSB or WOSB willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of EDWOSB or WOSB status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to EDWOSBs or WOSBs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a EDWOSB or WOSB.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as an EDWOSB or WOSB.

(c) *Signature Requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the EDWOSB or WOSB status of a business concern seeking the Fed-

eral contract, subcontract or grant. An authorized official must sign the certification on the same page containing the EDWOSB or WOSB status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)–(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of EDWOSB or WOSB status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' EDWOSB or WOSB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing EDWOSB or WOSB status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as an EDWOSB or WOSB without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for Misrepresentation.* (1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as an EDWOSB or WOSB pursuant to the procedures set forth in 48 CFR subpart 9.4.

(2) *Civil Penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including 13 CFR part 142.

(3) *Criminal Penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the EDWOSB or WOSB status of a concern in connection with procurement programs pursuant to section

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16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

[78 FR 38820, June 28, 2013, as amended at 81 FR 31492, May 19, 2016]

§ 127.701 What must a concern do in order to be identified as an EDWOSB or WOSB in any Federal procurement databases?

(a) In order to be identified as an EDWOSB or WOSB in the System for Award Management (SAM) database (or any successor thereto), a concern must certify its EDWOSB or WOSB status in connection with specific eligibility requirements at least annually.

(b) If a firm identified as an EDWOSB or WOSB in SAM fails to certify its status within one year of a status certification, the firm will not be listed as an EDWOSB or WOSB in SAM, unless and until the firm recertifies its EDWOSB or WOSB status.

[78 FR 38821, June 28, 2013]

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