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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]

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

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AUTHORITY: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

SOURCE: 75 FR 62282, Oct. 7, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 127.100 What is the purpose of this part?

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to ensure that Women-Owned Small Businesses (WOSBs) have an equal opportunity to participate in Federal contracting. This part implements these mechanisms and ensures that the program created, referred to as the WOSB Program, is substantially related to this important Congressional goal in accordance with applicable law.

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

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

[80 FR 55021, Sept. 14, 2015]

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

For purposes of this part:

8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant and whose term has not expired or otherwise left the 8(a) BD program early.

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

Citizen means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in §121.105 of this chapter.

Contracting officer has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

D/GC means SBA's Director for Government Contracting.

Economically Disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this chapter and that is at least 51 percent owned and controlled by one or more women who are citizens and who are economically disadvantaged in accordance with §§127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition or awarded a sole source contract or order to eligible EDWOSBs, including Multiple Award Contracts, partial set-asides, reserves, sole source awards, and orders set aside for EDWOSBs issued against a Multiple Award Contract.

Immediate family member means father, mother, husband, wife, son, daughter, stepchild, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific

EDWOSB or WOSB requirement (including Multiple Award Contracts), any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given a WOSB or EDWOSB, the contracting activity's contracting officer, or SBA.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at *http://www.census.gov/NAICS*. In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in §121.107 of this chapter.

Same or similar line of business means business activities within the same four-digit ''Industry Group'' of the NAICS Manual as the primary industry classification of the WOSB or EDWOSB.

Substantial underrepresentation is determined by a study using a reliable and relevant methodology.

System for Award Management (SAM) (or any successor system) means a federal system that consolidates various federal procurement systems (*e.g.*, Central Contractor Registration (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application (ORCA), Excluded Parties List System (EPLS)) and the Catalog of Federal Domestic Assistance into one system.

Underrepresentation is determined by a study using a reliable and relevant methodology.

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

WOSB Program Repository means a secure, Web-based application that collects, stores and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under a WOSB or EDWOSB requirement.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition or awarded a sole source contract or order to eligible WOSBs, including Multiple Award Contracts, partial set-asides, reserves, sole source awards, and orders set aside for WOSBs issued against a Multiple Award Contract.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61146, Oct. 2, 2013; 80 FR 55022, Sept. 14, 2015]

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

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter for its primary industry classification; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

(c) *WOSB and EDWOSB certifications.* (1) A concern must be certified as a WOSB or EDWOSB pursuant to §127.300 in order to be awarded a WOSB or EDWOSB set-aside or sole-source contract.

(2) Other women-owned small business concerns that do not seek WOSB or EDWOSB set-aside or sole-source contracts may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs.

(d) *Suspension and debarment.* In order to be eligible for WOSB and EDWOSB certification and to remain certified, the concern and any of its owners must not have an active exclusion in the

System for Award Management at the time of application or recertification.

[75 FR 62282, Oct. 7, 2010, as amended at 85 FR 27660, May 11, 2020]

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB one or more economically disadvantaged women must unconditionally and directly own at least 51 percent of the concern. To qualify as a WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, the trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women, or in the case of an EDWOSB, economically disadvantaged women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as a WOSB, the management and daily business operations of the concern must be controlled by one or more women. To qualify as an EDWOSB, the management and daily business operations of the concern must be controlled by one or more women who are economically disadvantaged. Control by one or more women or economically disadvantaged women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women or economically disadvantaged women.

(b) *Managerial position and experience.* A woman, or in the case of an EDWOSB an economically disadvantaged woman, must hold the highest officer position in the concern and must have managerial experience of the extent and complexity needed to run the concern. The woman or economically disadvantaged

woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman or economically disadvantaged woman who holds the highest officer position of the concern must manage it on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. The woman or economically disadvantaged woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women, or in the case of an EDWOSB, economically disadvantaged women, must control the Board of Directors of the concern. Women or economically disadvantaged women are considered to control the Board of Directors when either:

(1) One or more women or economically disadvantaged women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women or economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51 percent owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. SBA does not take into consideration community property laws when determining economic disadvantage when the woman has no direct, individual or separate ownership interest in the property.

(b) *Limitation on personal net worth.* (1) In order to be considered economically disadvantaged, the woman's personal net worth must be less than $850,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.

(2) Income received from an EDWOSB that is an S corporation, LLC or partnership will be excluded from net worth where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the business concern or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce an individual's net worth.

(3) Funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be

considered in determining an individual's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from a woman's net worth, she must provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

(c) *Factors to be considered.* (1) *General.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past three years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, will be considered in determining whether she is economically disadvantaged.

(2) *Spouse's financial situation.* SBA may consider a spouse's financial situation in determining a woman's access to credit and capital. When married, an individual claiming economic disadvantage must submit separate financial information for her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g., an officer, employee or director) or has lent money to, provided credit or financial support to, or guaranteed a loan of the business. SBA may also consider the spouse's financial condition if the spouse's business is in the same or similar line of business as the EDWOSB or WOSB and the spouse's business and WOSB share similar names, Web sites, equipment or employees. In addition, all transfers to a spouse within two years of a certification will be attributed to a woman claiming economic disadvantage as set forth in paragraph (d) of this section.

(3) *Income.*

(i) When considering a woman's personal income, if the adjusted gross yearly income averaged over the three years preceding the certification exceeds $400,000, SBA will presume that she is not economically disadvantaged. The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage.

(ii) Income received by an EDWOSB that is an S corporation, LLC, or partnership will be excluded from an individual's income where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce a woman's personal income.

(4) *Fair market value of all assets.* A woman will generally not be considered economically disadvantaged if the fair market value of all her assets (including her primary residence and the value of the business concern) exceeds $6.5 million. The only assets excluded from this determination are funds excluded under paragraph (b)(3) of this section as being invested in a qualified IRA account or other official retirement account.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

[75 FR 62282, Oct. 7, 2010, as amended at 85 FR 27660, May 11, 2020; 87 FR 69154, Nov. 17, 2022]

Subpart C—Certification of EDWOSB or WOSB Status

CERTIFICATION

§ 127.300 How is a concern certified as an WOSB or EDWOSB?

(a) *WOSB certification.* (1) A concern may apply to SBA for WOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A concern may submit evidence to SBA that it is a women-owned and controlled small business that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation as a Service-Disabled Veteran Owned Business or Veteran-Owned Business.

(3) A concern may submit evidence that it has been certified as a WOSB by an approved Third-Party Certifier in accordance with this subpart.

(b) *EDWOSB certification.* (1) A concern may apply to SBA for EDWOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A concern that is a certified participant in the 8(a) BD Program and owned and controlled by one or more women qualifies as an EDWOSB.

(3) A concern may submit evidence to SBA that it is an economically disadvantaged women-owned and controlled small business that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation as a Service-Disabled Veteran Owned Business or Veteran-Owned Business.

(4) A concern may submit evidence that it has been certified as an EDWOSB by a Third-Party Certifier under this subpart.

(c) *SBA notification and designation.* If SBA determines that the concern is a qualified WOSB or EDWOSB, it will issue a letter of certification and designate the concern as a certified WOSB or EDWOSB on the Dynamic Small Business Search (DSBS) system, or successor system.

[85 FR 27660, May 11, 2020]

§ 127.301 When may a concern apply for certification?

A concern may apply for WOSB or EDWOSB certification and submit the required information whenever it can represent that it meets the eligibility requirements, subject to the restrictions of §127.306. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

[85 FR 27661, May 11, 2020]

§ 127.302 Where can a concern apply for certification?

A concern seeking certification as a WOSB or EDWOSB may apply to SBA for certification via *https://certify.sba.gov* or any successor system. Certification pages must be validated electronically or signed by a person authorized to represent the concern.

[85 FR 27661, May 11, 2020]

§ 127.303 What must a concern submit for certification?

(a)(1) *SBA certification.* (i) To be certified by SBA as a WOSB or EDWOSB, a concern must provide documents and information demonstrating that it meets the requirements set forth in part 127, subpart B. SBA maintains a list of the minimum required documents that can be found at *https://certify.sba.gov* or any successor system. A

concern may submit additional documents and information to support its eligibility. The required documents must be provided to SBA during the application process electronically. This may include, but is not limited to, corporate records, business and personal financial records, including copies of signed Federal personal and business tax returns, and individual and business bank statements.

(ii) A concern that is certified by the 8(a) BD Program and is owned and controlled by one or more women may use documentation of its most recent annual review, or documentation of its 8(a) acceptance if it has not yet had an annual review, in support of its application for certification.

(iii) A concern that is certified through a program examination or status protest may use the positive determination from SBA as evidence for certification.

(2) *CVE certification.* (i) To be certified as a WOSB, a concern that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation may submit documentation of its most recent certification, along with documentation confirming that it is owned and controlled by one or more women, in support of its application for certification.

(ii) To be certified as an EDWOSB, a concern that is certified by the U.S. Department of Veterans Affairs Center for Verification and Evaluation may submit documentation of its most recent certification, along with documentation confirming that it is owned and controlled by one or more women who are economically disadvantaged in accordance with §127.203(b)(3), in support of its application for certification.

(3) *Third-Party Certifier certification.* A concern that is certified by a Third-Party Certifier must provide a current, valid certification from an entity designated as an SBA-approved certifier.

(b) In addition to the minimum required documents, SBA may request additional information from applicants in order to verify eligibility.

(c) After submitting the required documentation, an applicant must notify SBA of any changes that could affect its eligibility.

(d) If a concern was decertified or previously denied certification, it must include with its application for certification a full explanation of why it was decertified or denied certification, and what, if any, changes have been made. If SBA is not satisfied with the explanation provided, SBA will decline to certify the concern.

(e) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to §127.401, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA will decline to certify the concern.

[85 FR 27661, May 11, 2020]

§127.304 How is an application for certification processed?

(a) The SBA's Director of Government Contracting (D/GC) or designee is authorized to approve or decline applications for certification. SBA must receive all required information and supporting documents before it will begin processing a concern's application. SBA will not process incomplete applications. SBA will advise each applicant within 15 calendar days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will make its determination within ninety (90) calendar days after receipt of a complete package, whenever practicable.

(b) SBA may request additional information or clarification of information contained in an application or document submission at any time.

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern's eligibility or demonstrate a lack of eligibility in the area or areas to which the information relates.

(d) The applicant must be eligible as of the date it submitted its application and up until the time the D/GC issues a decision. The decision will be based on the facts contained in the application, any information received in response to SBA's request for clarification, and any changed circumstances since the date of application.

(e) Any changed circumstances occurring after an applicant has submitted an application will be considered and may constitute grounds for decline. After submitting the application and signed representation, an applicant must notify SBA of any changes that could affect its eligibility. The D/GC may propose decertification for any EDWOSB or WOSB that fails to inform SBA of any changed circumstances that affected its eligibility for the program during the processing of the application.

(f) If SBA approves the application, SBA will send a written notice to the concern and update *https://certify.sba.gov* or any successor system, and update DSBS and the System for Award Management (or any successor systems) to indicate the concern has been certified by SBA as a WOSB and/or EDWOSB.

(g) A decision to deny eligibility must be in writing and state the specific reasons for denial.

(h) SBA will send a copy of the decision letter to the electronic mail address provided with the application. SBA will consider any decision sent to this electronic mail address provided to have been received by the applicant concern.

(i) The decision of the D/GC to decline certification is the final agency decision. The concern can reapply for certification after ninety (90) days, as set forth in § 127.305.

[85 FR 27661, May 11, 2020]

§ 127.305 May declined or decertified concerns seek recertification at a later date?

(a) A concern that SBA or a third-party certifier has declined or that SBA has decertified may seek certification after ninety (90) days from the date of decline or decertification if it believes that it has overcome all of the reasons for decline or decertification and is currently eligible. A concern that has been declined may seek certification by any of the certification options listed in § 127.300.

(b) A concern found to be ineligible during a WOSB/EDWOSB status protest or program examination is precluded from applying for certification for ninety (90) days from the date of the final agency decision (the D/GC's decision if no appeal is filed or the decision of SBA's Office of Hearings and Appeals (OHA) where an appeal is filed pursuant to § 127.605).

[85 FR 27661, May 11, 2020]

Requirements for Third-Party Certifiers

§ 127.350 What is a third-party certifier?

A third-party certifier is a non-governmental entity that SBA has authorized to certify that an applicant concern is eligible for the WOSB or EDWOSB contracting program. A third-party certifier may be a for-profit or non-profit entity. The list of SBA-approved third-party certifiers may be found on SBA's website at *sba.gov*.

[85 FR 27662, May 11, 2020]

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

In order for SBA to accept a third-party certification that a concern qualifies as a WOSB or EDWOSB, the concern must have a current, valid certification from an entity designated as an SBA-approved certifier. The third-party certification must be submitted to SBA through *https://certify.sba.gov* or a successor system.

[85 FR 27662, May 11, 2020]

§ 127.352 What is the process for becoming a third-party certifier?

SBA will periodically hold open solicitations. All entities that believe they meet the criteria to act as a third-party certifier will be free to respond to the solicitation.

[85 FR 27662, May 11, 2020]

§ 127.353 May third-party certifiers charge a fee?

(a) Third-party certifiers may charge a reasonable fee, but must notify applicants first, in writing, that SBA offers certification for free.

(b) The method of notification and the language that will be used for this notification must be approved by SBA. The third-party certifier may not change its method or the language without SBA approval.

[85 FR 27662, May 11, 2020]

§ 127.354 What requirements must a third-party certifier follow to demonstrate capability to certify concerns?

(a) All third-party certifiers must enter into written agreements with SBA. This agreement will detail the requirements that the third-party certifier must meet. SBA may terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same program eligibility requirements as set forth in subpart B of this part or if, upon review, SBA determines that the third-party certifier has demonstrated a pattern of certifying concerns that SBA later determines to be ineligible for certification.

(b) Third-party certifiers' certification process must comply with SBA-approved certification standards and track the WOSB or EDWOSB eligibility requirements set forth in subpart B of this part.

(c) In order for SBA to enter into an agreement with a third-party certifier, the entity must establish the following:

(1) It will render fair and impartial WOSB/EDWOSB Federal Contract Program eligibility determinations;

(2) It will provide the approved applicant a valid certificate for entering into the SBA electronic platform, and will retain documents used to determine eligibility for a period of six (6) years to support SBA's responsibility to conduct a status protest, eligibility examination, agency investigation, or audit of the third party determinations;

(3) Its certification process will require applicant concerns to register in SAM (or any successor system) and submit sufficient information as determined by SBA to enable it to determine whether the concern qualifies as a WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under the SBA size standard corresponding to the concern's primary industry, as defined in § 121.107 of this part;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(4) It will not decline to accept a concern's application for WOSB/EDWOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, marital or family status, or political affiliation.

[85 FR 27662, May 11, 2020]

§ 127.355 How will SBA ensure that approved third-party certifiers are meeting the requirements?

(a) SBA will require third-party certifiers to submit monthly reports to SBA. These reports will contain information including the number of applications received, number of applications approved and denied, and other information that SBA determines may be helpful for ensuring that third-party certifiers are meeting their obligations or information or data that may be useful for improving the program.

(b) SBA will conduct periodic compliance reviews of third-party certifiers and their underlying certification determinations to ensure that they are properly applying SBA's WOSB/EDWOSB requirements and certifying concerns in accordance with those requirements.

(1) SBA will conduct a full compliance review on every third-party certifier at least once every three years.

(2) At the conclusion of each compliance review, SBA will provide the third-party certifier with a written report detailing SBA's findings with regard to the third-party certifier's compliance with SBA's requirements. The report will include recommendations for possible improvements, and detailed explanations for any deficiencies identified by SBA.

(c) If SBA determines that a third-party certifier is not properly applying

SBA's eligibility requirements, SBA may revoke the approval of that third-party certifier.

[85 FR 27662, May 11, 2020]

§ 127.356 How does a concern obtain certification from an approved certifier?

(a) A concern that seeks WOSB or EDWOSB certification from an SBA-approved third-party certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier.

(b) The concern must register in the System for Award Management (SAM), or any successor system.

(c) The approved certifier must ensure that all documents used to determine that a concern is approved for certification are uploaded in *https://certify.sba.gov* or any successor system.

[85 FR 27662, May 11, 2020]

Subpart D—Eligibility Examinations

§ 127.400 How does a concern maintain its WOSB or EDWOSB certification?

(a) Any concern seeking to remain a certified WOSB or EDWOSB must annually represent to SBA that it continues to meet all WOSB/EDWOSB eligibility criteria.

(1) Except as provided in paragraph (b) of this section, unless SBA has reason to question the concern's representation of its continued eligibility, SBA will accept the representation without requiring the certified WOSB or EDWOSB to submit any supporting information or documentation.

(2) The concern's recertification must be submitted within 30 days of the anniversary date of its original certification. The date of certification is the date specified in the concern's certification letter. If the concern fails to recertify, SBA may propose the concern for decertification pursuant to § 127.405.

(b) Any concern seeking to remain a certified WOSB or EDWOSB must undergo a program examination and recertify its continued eligibility to SBA every three years.

(1) SBA or a third-party certifier will conduct a program examination three years after the concern's initial WOSB or EDWOSB certification (whether by SBA or a third-party certifier) or three years after the date of the concern's last program examination, whichever date is later.

Example 1 to paragraph (b)(1). Concern A is certified by SBA to be eligible for the WOSB program on July 20, 2021. Concern A will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2022. To participate in the WOSB Program the following year, Concern A must recertify its eligibility to SBA between June 20, 2022, and July 19, 2022. Concern A will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2023. To participate in the WOSB Program the following year, Concern A must recertify its eligibility to SBA between June 20, 2023, and July 19, 2023. Concern A will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2024. To participate in the WOSB Program the following year, Concern A must recertify its eligibility to SBA between June 20, 2024, and July 19, 2024. Because three years will have elapsed since its application and original certification, SBA will conduct a program examination of Concern A at that time. In addition to its representation that it continues to be an eligible WOSB, Concern A must provide additional information as requested by SBA to demonstrate that it continues to meet all the eligibility requirements of the WOSB Program.

Example 2 to paragraph (b)(1). Concern B is certified by a third-party certifier to be eligible for the WOSB program on September 27, 2021. Concern B will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2022. To participate in the WOSB Program the following year, Concern B must recertify its eligibility to SBA between August 28, 2022, and September 26, 2022. Concern B will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2023. On March 31, 2023, Concern B is awarded a WOSB set-aside contract. Subsequently, Concern B's status as an eligible WOSB is protested. On June 28, 2023, Concern B receives a positive determination from SBA confirming that it is an eligible WOSB. Concern B's new certification

date is June 28, 2023. Concern B will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through June 27, 2024. To participate in the WOSB Program the following year, Concern B must recertify its eligibility to SBA between May 29, 2024, and June 27, 2024. Concern B will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through June 27, 2025. To participate in the WOSB Program the following year, Concern B must recertify its eligibility to SBA between May 29, 2025, and June 27, 2025. Concern B will be considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) until June 27, 2026. To participate in the WOSB Program the following year, Concern B must recertify its eligibility to SBA between May 29, 2026, and June 27, 2026. Because three years will have elapsed since its certification date of June 28, 2023, Concern B must seek a program examination, by SBA or a third-party certifier, at that time. In addition to its representation that it continues to be an eligible WOSB, Concern B must provide additional information as requested by SBA or a third-party certifier to demonstrate that it continues to meet all the eligibility requirements of the WOSB Program.

(2) The concern must either request a program examination from SBA or notify SBA that it has requested a program examination by a third-party certifier no later than 30 days prior to its certification anniversary. Failure to do so will result in the concern being decertified.

[85 FR 27663, May 11, 2020, as amended at 86 FR 2960, Jan. 14, 2021]

§ 127.401 What are a WOSB's and EDWOSB's ongoing obligations to SBA?

Once certified, a WOSB or EDWOSB must notify SBA of any material changes that could affect its eligibility within 30 calendar days of any such change. Material change includes, but is not limited to, a change in the ownership, business structure, or management. The notification must be in writing and must be uploaded into the concern's profile with SBA. The method for notifying SBA can be found on *https://certify.sba.gov*. A concern's failure to notify SBA of such a material change may result in decertification and removal from SAM and DSBS (or any successor system) as a designated certified WOSB/EDWOSB concern. In addition, SBA may seek the imposition of penalties under § 127.700.

[85 FR 27663, May 11, 2020]

§ 127.402 What is a program examination, who will conduct it, and what will SBA examine?

(a) A program examination is an investigation by SBA officials or authorized third-party certifier that verifies the accuracy of any certification of a concern issued in connection with the concern's WOSB or EDWOSB status. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a WOSB or EDWOSB contract.

(b) Examiners may review any information related to the concern's eligibility requirements. SBA may also conduct site visits.

(c) It is the responsibility of program participants to ensure the information provided to SBA is kept up to date and is accurate. SBA considers all required information and documents material to a concern's eligibility and assumes that all information and documentation submitted are up to date and accurate unless SBA has information that indicates otherwise.

[85 FR 27664, May 11, 2020]

§ 127.403 When will SBA conduct program examinations?

(a) SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is a certified WOSB or EDWOSB.

(b) SBA will conduct program examinations periodically as part of the recertification process set forth in § 127.400.

[85 FR 27664, May 11, 2020]

§ 127.404 May SBA require additional information from a WOSB or EDWOSB during a program examination?

At the discretion of the D/GC, SBA has the right to require that a WOSB or EDWOSB submit additional information at any time during the program examination. SBA may draw an adverse inference from the failure of a concern to cooperate with a program examination or provide requested information.

[85 FR 27664, May 11, 2020]

§ 127.405 What happens if SBA determines that the concern is no longer eligible for the program?

If SBA believes that a concern does not meet the program eligibility requirements, the concern fails to recertify in accordance with the requirements in § 127.400, or the concern has failed to notify SBA of a material change, SBA will propose the concern for decertification from the program.

(a) *Proposed decertification.* The D/GC or designee will notify the concern in writing that it has been proposed for decertification. This notice will state the reasons why SBA has proposed decertification, and that the WOSB or EDWOSB must respond to each of the reasons set forth.

(1) The WOSB or EDWOSB must respond in writing to a proposed decertification within 20 calendar days from the date of the proposed decertification.

(2) If the initial certification was done by a third-party certifier, SBA will also notify the third-party certifier of the proposed decertification in writing.

(b) *Decertification.* The D/GC or designee will consider the reasons for proposed decertification and the concern's response before making a written decision whether to decertify. The D/GC may draw an adverse inference where a concern fails to cooperate with SBA or provide the information requested. The D/GC's decision is the final agency decision.

(c) *Reapplication.* A concern decertified pursuant to this section may reapply to the program pursuant to § 127.305.

[85 FR 27664, May 11, 2020]

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition or make a sole source award under this part?

A contracting officer may restrict competition or make a sole source award 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, regardless of the place of performance.

[80 FR 55022, Sept. 14, 2015, as amended at 81 FR 48593, July 25, 2016]

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

(a) Based upon its analysis, SBA will designate by NAICS Industry Subsector Code those industries in which WOSBs are underrepresented and substantially underrepresented.

(b) In determining the extent of underrepresentation of WOSBs, SBA may request that the head of any Federal department or agency provide SBA, data or information necessary to analyze the extent of underrepresentation of WOSBs.

[75 FR 62282, Oct. 7, 2010, as amended at 80 FR 55022, Sept. 14, 2015]

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site at *http://www.sba.gov* a list of NAICS Industry Subsector industries it designates under § 127.501. The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?

(a) *Competition restricted to EDWOSBs.* For requirements in industries designated by SBA as underrepresented pursuant to § 127.501, a contracting officer may restrict competition to EDWOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more EDWOSBs will submit offers for the contract; and

(2) Contract award may be made at a fair and reasonable price.

(b) *Competition restricted to WOSBs.* For requirements in industries designated by SBA as substantially underrepresented pursuant to § 127.501, a contracting officer may restrict competition to WOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more WOSBs will submit offers (this includes EDWOSBs, which are also WOSBs); and

(2) Contract award may be made at a fair and reasonable price.

(c) *Sole source awards to EDWOSBs.* For requirements in industries designated by SBA as underrepresented pursuant to § 127.501, a contracting officer may issue a sole source award to an EDWOSB when the contacting officer determines that:

(1) The EDWOSB is a responsible contractor with respect to performance of the requirement and the contracting officer does not have a reasonable expectation that 2 or more EDWOSBs will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed $7,000,000 in the case of a contract assigned a North American Industry Classification System (NAICS) code for manufacturing, or $4,500,000 in the case of any other contract opportunity; and

(3) In the estimation of the contracting officer, the award can be made at a fair and reasonable price.

(d) *Sole source awards to WOSBs.* For requirements in industries designated by SBA as substantially underrepresented pursuant to § 127.501, a contracting officer may issue a sole source award to a WOSB when the contacting officer determines that:

(1) The WOSB is a responsible contractor with respect to performance of the requirement and the contracting officer does not have a reasonable expectation that 2 or more WOSBs will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed $7,000,000 in the case of a contract assigned a NAICS code for manufacturing, or $4,500,000 in the case of any other contract opportunity; and

(3) In the estimation of the contracting officer, the award can be made at a fair and reasonable price.

(e) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(f) *Contracting Among Small Business Programs.* (1) *Acquisitions Valued At or Below the Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micropurchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) *Acquisitions Valued Above the Simplified Acquisition Threshold.* (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns

that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's certifications in SAM (or any successor system) and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

(g) *Contract file.* When restricting competition to WOSBs or EDWOSBs in accordance with §127.503, the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as an underrepresented or, with respect to WOSBs, substantially underrepresented, industry. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's documents and certifications in SAM (or any successor system) and associated representations were reviewed.

[75 FR 62282, Oct. 7, 2010, as amended at 77 FR 1861, Jan. 12, 2012; 78 FR 26506, May 7, 2013; 78 FR 61147, Oct. 2, 2013; 79 FR 31849, June 3, 2014; 80 FR 55022, Sept. 14, 2015; 83 FR 12852, Mar. 26, 2018; 84 FR 65665, Nov. 29, 2019; 85 FR 27664, May 11, 2020; 85 FR 66197, Oct. 16, 2020; 86 FR 61673, Nov. 8, 2021]

§127.504 What requirements must an EDWOSB or WOSB meet to be eligible for an EDWOSB or WOSB requirement?

(a) *General.* In order for a concern to submit an offer on a specific EDWOSB or WOSB set-aside requirement, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract, and either be a certified EDWOSB or WOSB pursuant to §127.300, or represent that it has submitted a complete application for WOSB or EDWOSB certification to SBA or a third-party certifier and has not received a negative determination regarding that application from SBA or the third party certifier.

(1) If a concern becomes the apparent successful offeror while its application for WOSB or EDWOSB certification is pending, either at SBA or a third-party certifier, the contracting officer for the particular contract must immediately inform SBA's D/GC. SBA will then prioritize the concern's WOSB or EDWOSB application and make a determination regarding the firm's status as a WOSB or EDWOSB within 15 calendar days from the date that SBA received the contracting officer's notification. Where the application is pending with a third-party certifier, SBA will immediately contact the third-party certifier to require the third-party certifier to complete its determination within 15 calendar days.

(2) If the contracting officer does not receive an SBA or third-party certifier determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer may presume that the apparently successful offeror is not an eligible WOSB or EDWOSB and may make award accordingly, unless the contracting officer grants an extension to the 15-day response period.

(b) *Sole source EDWOSB or WOSB requirements.* In order for a concern to seek a specific sole source EDWOSB or WOSB requirement, the concern must be a certified EDWOSB or WOSB pursuant to §127.300 and qualify as small under the size standard corresponding to the requirement being sought.

(c) *Joint ventures.* A business concern seeking an EDWOSB or WOSB contract

as a joint venture may submit an offer if the joint venture meets the requirements as set forth in §127.506.

(d) *Multiple Award Contracts.* With respect to Multiple Award Contracts, orders issued against a Multiple Award Contract, and Blanket Purchase Agreements issued against a Multiple Award Contract:

(1) SBA determines EDWOSB or WOSB eligibility for the underlying Multiple Award Contract as of the date a concern certifies its status as an EDWOSB or WOSB as part of its initial offer (or other formal response to a solicitation), which includes price, unless the concern was required to recertify its status as a WOSB or EDWOSB under paragraph (f) of this section.

(i) *Unrestricted Multiple Award Contracts or Set-Aside Multiple Award Contracts for Other than EDWOSB or WOSB.* For an unrestricted Multiple Award Contract or other Multiple Award Contract not set aside specifically for EDWOSB or WOSB, if a business concern is an EDWOSB or WOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is an EDWOSB or WOSB for goaling purposes for each order issued against the contract, unless a contracting officer requests recertification as an EDWOSB or WOSB for a specific order or Blanket Purchase Agreement. Except for orders and Blanket Purchase Agreements issued under any Federal Supply Schedule contract, if an order or a Blanket Purchase Agreement under an unrestricted Multiple Award Contract is set aside exclusively for EDWOSB or WOSB, a concern must recertify it qualifies as an EDWOSB or WOSB at the time it submits its initial offer, which includes price, for the particular order or Agreement. However, where the underlying Multiple Award Contract has been awarded to a pool of WOSB or EDWOSB concerns for which WOSB or EDWOSB status is required, if an order or a Blanket Purchase Agreement under that Multiple Award Contract is set aside exclusively for concerns in the WOSB or EDWOSB pool, concerns need not recertify their status as WOSBs or EDWOSBs (unless a contracting officer requests size certifications with respect to a specific order or Blanket Purchase Agreement).

(ii) *EDWOSB or WOSB Set-Aside Multiple Award Contracts.* For a Multiple Award Contract that is set aside specifically for EDWOSB or WOSB, if a business concern is an EDWOSB or WOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is an EDWOSB or WOSB for each order issued against the contract, unless a contracting officer requests recertification as an EDWOSB or WOSB for a specific order or Blanket Purchase Agreement.

(2) SBA will determine EDWOSB or WOSB status at the time a business concern submits its initial offer (or other formal response to a solicitation) which includes price for an order or an Agreement issued against a Multiple Award Contract if the contracting officer requests a new EDWOSB or WOSB certification for the order or Agreement.

(e) *Limitations on subcontracting.* A business concern seeking an EDWOSB or WOSB requirement must also meet the applicable limitations on subcontracting requirements as set forth in §125.6 of this chapter for the performance of EDWOSB or WOSB contracts (both sole source and those totally set aside for EDWOSB or WOSB), the performance of the set-aside portion of a partial set-aside contract, or the performance of orders set-aside for EDWOSB or WOSB.

(f) *Non-manufacturers.* An EDWOSB or WOSB that is a non-manufacturer, as defined in §121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in §121.406(b) of this chapter.

(g) *Ostensible subcontractor.* Where a subcontractor that is not similarly situated performs primary and vital requirements of a set-aside service contract, or where a prime contractor is unduly reliant on a small business that is not similarly situated to perform the set-aside service contract, the prime contractor is not eligible for award of a WOSB or EDWOSB contract.

(1) When the subcontractor is small for the size standard assigned to the procurement, this issue may be grounds for a WOSB or EDWOSB status protest, as described in subpart F of

this part. When the subcontractor is other than small or alleged to be other than small for the size standard assigned to the procurement, this issue may be grounds for a size protest, as described at §121.103(h)(2) of this chapter.

(2) SBA will find that a prime WOSB or EDWOSB contractor is performing the primary and vital requirements of a contract or order and is not unduly reliant on one or more non-similarly situated subcontracts where the prime contractor can demonstrate that it, together with any similarly situated entity, will meet the limitations on subcontracting provisions set forth in §125.6.

(h) *Recertification.* (1) Where a contract being performed by an EDWOSB or WOSB is novated to another business concern, the concern that will continue performance on the contract must recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract) to the procuring agency, or inform the procuring agency that it does not qualify as an EDWOSB or WOSB, (or qualify as a certified EDWOSB or WOSB for a WOSB contract) within 30 days of the novation approval. If the concern cannot recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract), the agency must modify the contract to reflect the new status, and may not count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(2) Where an EDWOSB or WOSB concern that is performing a contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract) to the procuring agency, or inform the procuring agency that it no longer qualifies as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract). If the concern is unable to recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract), the agency must modify the contract to reflect the new status, and may not count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(3) For purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract) no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option. If the concern is unable to recertify its status as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract), the agency must modify the contract to reflect the new status, and may not count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(4) A business concern that did not certify as an EDWOSB or WOSB, either initially or prior to an option being exercised, may recertify as an EDWOSB or WOSB (or qualify as a certified EDWOSB or WOSB for a WOSB contract) for a subsequent option period if it meets the eligibility requirements at that time. The agency must modify the contract to reflect the new status, and may count the options or orders issued pursuant to the contract, from that point forward, towards its women-owned small business goals.

(5) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(6) A concern's status will be determined at the time of a response to a solicitation for an Agreement and each order issued pursuant to the Agreement.

[85 FR 66197, Oct. 16, 2020, as amended at 86 FR 10732, Feb. 23, 2021]

§ 127.505 [Reserved]

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture, including those between a protégé and a mentor under §125.9 of this chapter (or, if also an 8(a) BD Participant, under §124.520 of this chapter), may submit an offer on a WOSB Program contract if the joint venture meets all of the following requirements:

(a)(1) A joint venture of at least one WOSB or EDWOSB and one or more other business concerns may submit an offer as a small business for a WOSB Program procurement or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm and its SBA-approved mentor (*see* §125.9 and §124.520 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the WOSB Program procurement or sale.

(b) The EDWOSB or WOSB participant of the joint venture must be designated in SAM (or any successor system)as an EDWOSB or WOSB;

(c) *Contents of joint venture agreement.* The parties to the joint venture must enter into a written joint venture agreement. The joint venture agreement must contain a provision:

(1) Setting forth the purpose of the joint venture.

(2) Designating a WOSB or EDWOSB as the managing venturer of the joint venture, and designating a named employee of the WOSB or EDWOSB managing venturer as the manager with ultimate responsibility for performance of the contract (the ''Responsible Manager'').

(i) The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.

(ii) The individual identified as the Responsible Manager of the joint venture need not be an employee of the WOSB or EDWOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the WOSB or EDWOSB if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed by the mentor and become an employee of the WOSB or EDWOSB for purposes of performance under the joint venture.

(iii) Although the joint venture managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, those managers must report to and be supervised by the joint venture's Responsible Manager.

(3) Stating that with respect to a separate legal entity joint venture, the WOSB must own at least 51% of the joint venture entity;

(4) Stating that the WOSB or EDWOSB must receive profits from the joint venture commensurate with the work performed by the WOSB or EDWOSB, or a percentage agreed to by the parties to the joint venture whereby the WOSB or EDWOSB receives profits from the joint venture that exceed the percentage commensurate with the work performed by the WOSB or EDWOSB;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature or consent of all parties to the joint venture for any payments made by the joint venture to its members for services performed. All payments due the joint venture for performance on a WOSB Program contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of

effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the WOSB contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the WOSB managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(10) Requiring that the final original records be retained by the WOSB managing venturer upon completion of the WOSB Program contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* (1) For any WOSB Program contract, the joint venture (including one between a protégé and a mentor authorized by §125.9 or §124.520 of this chapter) must perform the applicable percentage of work required by §125.6 of this chapter.

(2) The WOSB partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the WOSB partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the WOSB partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by the non-WOSB partner, all work done by the non-WOSB partner and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance.* Prior to the performance of any WOSB Program contract as a joint venture, the WOSB Program participant in the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (d) of this section.

(f) *Capabilities, past performance, and experience.* When evaluating the capabilities, past performance, experience, business systems, and certifications of an entity submitting an offer for an EDWOSB or WOSB contract as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously. A procuring activity may not require the EDWOSB or WOSB small business concern to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems, and certifications necessary to perform the contract.

(g) *Contract execution.* The procuring activity will execute a WOSB Program contract in the name of the joint venture entity or the WOSB, but in either case will identify the award as one to a WOSB Program joint venture or a WOSB Program mentor-protégé joint venture, as appropriate.

(h) *Submission of joint venture agreement.* The WOSB Program participant must provide a copy of the joint venture agreement to the contracting officer.

(i) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(j) *Performance of work reports.* The WOSB Program participant in the joint venture must describe how it is meeting or has met the applicable performance of work requirements for each WOSB Program contract it performs as a joint venture.

(1) The WOSB partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how the performance of work requirements are being met for each WOSB Program contract performed during the year.

(2) At the completion of every WOSB Program contract awarded to a joint venture, the WOSB partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (c) of this section.

(k) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) or comply with paragraph (i) of this section.

(l) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

[75 FR 62282, Oct. 7, 2010, as amended at 78 FR 61147, Oct. 2, 2013; 81 FR 34265, May 31, 2016; 81 FR 48593, July 25, 2016; 81 FR 94942, Dec. 27, 2016; 85 FR 66199, Oct. 16, 2020; 86 FR 2960, Jan. 14, 2021]

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

If the requirement is valued at or below the simplified acquisition threshold, the contracting officer may set aside the requirement or award the requirement on a sole source basis as set forth in § 127.503.

[80 FR 55022, Sept. 14, 2015]

§ 127.508 May SBA appeal a contracting officer's decision not to make a requirement available for award as a WOSB Program contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award under the WOSB Program.

§ 127.509 What is the process for such an appeal?

(a) *Notice of appeal.* When the contacting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for the WOSB Program, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five (5) business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within fifteen (15) business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

Subpart F—Protests

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's EDWOSB or WOSB status.

(b) *For all other EDWOSB or WOSB requirements.* An interested party may protest the apparent successful offeror's EDWOSB or WOSB status.

[80 FR 55022, Sept. 14, 2015]

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the contracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

(a) SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents sufficient credible evidence to show that the concern may not be owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51 percent owned and controlled by one or more women who are economically disadvantaged. SBA will also consider a protest challenging the status of a concern as an EDWOSB or WOSB if the contracting officer has protested because the WOSB or EDWOSB apparent successful offeror has failed to provide all of the required documents, as set forth in § 127.300. In addition, when sufficient credible evidence is presented, SBA will consider a protest challenging whether the prime contractor is unusually reliant on a small, non-similarly situated entity subcontractor, as defined in § 125.1 of this chapter, or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB contract.

(b) For a protest filed against an EDWOSB or WOSB joint venture, the protest must state all specific grounds for why—

(1) The EDOWSB or WOSB partner to the joint venture did not meet the EDWOSB or WOSB eligibility requirements set forth in § 127.200; and/or

(2) The protested EDWOSB or WOSB joint venture did not meet the requirements set forth in § 127.506.

[75 FR 62282, Oct. 7, 2010, as amended at 84 FR 65251, Nov. 26, 2019; 84 FR 65665, Nov. 29, 2019]

§ 127.603 What are the requirements for filing an EDWOSB or WOSB status protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, e-mail, or by U.S. mail (received by the applicable date) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA. IF SBA initiates a protest, the D/GC will notify the contracting officer of such protest.

(c) *Timeliness.* (1) For negotiated acquisitions, a protest from an interested party must be received by the contracting officer prior to the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award. Except for an order or Blanket Purchase Agreement issued under any Federal Supply Schedule contact, for an order or a Blanket Purchase Agreement that is set-aside for EDWOSB or WOSB small business under a Multiple Award Contract that is not itself set aside for EDWOSB or WOSB small business or have a reserve for EDWOSB or WOSB small business (or any EDWOSB or WOSB order where the contracting officer has requested recertification of such status), an interested party must submit its protest challenging the EDWOSB or WOSB status of a concern for the order or Blanket Purchase Agreement by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions, a protest from an interested party must be received by close of business on the fifth business day after bid opening.

(3) Any protest received after the time limit is untimely, unless it is from SBA or the contracting officer. A contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA.* The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter and documents, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been

awarded. The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

[75 FR 62282, Oct. 7, 2010, as amended at 85 FR 27665, May 11, 2020; 85 FR 66199, Oct. 16, 2020]

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part or submit a protest itself.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and request information and documents responding to the protest within five (5) 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. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information and documents; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within fifteen (15) business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the fifteen (15) business day period (or within any extension of that time the contracting officer has granted), 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 be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question. The determination must be included in the contract file and a written copy sent to the D/GC.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation in SAM (or any successor system) as an EDWOSB or WOSB, as appropriate. Regardless of a decision not to sustain the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

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

(1) A contracting officer may award the contract to a protested concern after the D/GC either has determined

that the protested concern is an eligible WOSB or EDWOSB or has dismissed all protests against it. If OHA subsequently overturns the D/GC's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer shall not award the contract to a protested concern that the D/GC has determined is not an EDWOSB or WOSB for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal has been filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

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

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency decision (the D/GC's decision if no appeal is filed or OHA's decision).

(4) A concern that has been found to be ineligible will be decertified from the program and may not submit an offer as a WOSB or EDWOSB on another procurement until it is recertified. A concern may be recertified by reapplying to the program pursuant to § 127.305.

[75 FR 62282, Oct. 7, 2010, as amended at 77 FR 1861, Jan. 12, 2012; 78 FR 61148, Oct. 2, 2013; 85 FR 27665, May 11, 2020]

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What 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 Federal 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 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]

PART 128—VETERAN SMALL BUSINESS CERTIFICATION PROGRAM

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Sec.

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