



Government Contracts Update

September 2020

SBA's New Certification Regulations for Women-Owned Small Businesses

Key Notes:

- On October 15, 2020, WOSBs or EDWOSBs may no longer self-certify for a set-aside or sole source contract.
- WOSB and EDWOSB certifications can be obtained from the SBA, other federal agencies, or a certifying entity approved by SBA.
- The final rule also makes economic disadvantage criteria consistent between the EDWOSB Program and 8(a) BD Program.

Background

Since 2015, women-owned small businesses ("WOSBs") and economically disadvantaged women-owned small businesses ("EDWOSBs") have been allowed to self-certify their status to compete for sole source contracts and set-asides under the U.S. Small Business Administration's ("SBA") Procurement Program for Women-Owned Small Business Concerns ("Program"), as well as for multiple award contracts for pools reserved for WOSBs and EDWOSBs based on their female ownership, control, or economic disadvantage. SBA's [new final rule](#) issued on May 11, 2020 now requires WOSBs and EDWOSBs to obtain certification from SBA or through a third-party certifier to continue to seek contracts under the Program.

SBA began implementing these changes to the certification process on July 15, 2020, and WOSBs/EDWOSBs that are not certified by October 15, 2020 will become ineligible for new contracts under the Program. Other WOSB concerns that currently do not participate in the Program will be able

to continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs. According to the SBA, the rule change will not affect existing contracts awarded under the Program. As a result, a small business that was awarded a WOSB or EDWOSB contract previously under the Program may continue to perform that contract. However, WOSBs or EDWOSBs who hold contracts (including multiple-award contracts) with durations of five or more years (including options) will be required to complete the necessary certification prior to the end of the fifth year of the contract. In addition, the final rule also made economic disadvantage criteria consistent between the EDWOSB Program and 8(a) Business Development Program.

Summary of New Certification Requirements

As of July 15, 2020, contractors have been able to submit applications for certification to SBA for initial processing. SBA will begin issuing certification decisions on October 15, 2020.

Under SBA's final rule, three options exist for small businesses seeking certification as WOSBs or EDWOSBs bidding on set-aside, sole source, or multiple-award contracts with pools reserved for WOSBs and EDWOSBs:

1. Applying via SBA's free online application;
2. Submitting evidence of certification from another approved government entity (e.g., the 8(a) Business Development Program or the Department

of Veterans Affairs Center for Verification and Evaluation); or

3. Submitting evidence of certification from an approved third-party certifier (the final rule noted that third-party certifiers charge an average of \$380 annually for the certifications).

Once certified, a WOSB or EDWOSB must notify SBA of any material changes that could affect its eligibility within 30 calendar days. Additionally, all WOSBs and EDWOSBs, whether certified directly by SBA or otherwise, will be required to attest to SBA annually that they remain eligible for the Program and to undergo a full program examination every three years.

The final rule states that SBA will make its WOSB/EDWOSB determination within 90 calendar days after receipt of a completed application. The final rule also reflects that the SBA or third-party certification determination timeframe may be accelerated if a contract award is pending while the application is under review, but also notes that there is no guarantee certification will be received prior to an award.

8(a) Eligibility Economic Disadvantage Criteria

Under the final rule, individuals with a personal net worth of up to \$750,000 are eligible to participate in the 8(a) Business Development Program based on economic disadvantage (previously capped at \$250,000). Previously, a small business concern applying for EDWOSB and 8(a) Business Development status simultaneously could be found economically disadvantaged from EDWOSB purposes, but not for the 8(a) Business Development Program. Both programs now have a consistent \$750,000 net worth standard, a \$350,000 gross income standard, and a fair market value threshold of \$6 million. Lastly, retirement accounts will now be excluded from the calculation of an economically disadvantaged individual's net worth, regardless of an individual's age. Overall, this should help expand the pool of potential EDWOSB and 8(a) Business Development Program participants going into the new fiscal year.

CONCLUSION

With less than 30 days before the October 15, 2020 deadline, it is important that businesses seeking WOSB and EDWOSB certifications closely review the final rule as it may require some businesses to change their certification approaches, while others may not need to change their processes at all.

This final rule is likely to impact many new applicants to the WOSB, EDWOSB, and 8(a) programs. If you have any questions about the final rule, or its impact on your eligibility, our team is on standby to help with any questions you may have, and we will provide updates as any developments occur.

FOR MORE INFORMATION

If you have any questions about the final rule or about SBA's small business programs, please contact any of these Thompson Hine attorneys for additional information, including any updates, and other steps your business may need to take:

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