



U.S. Department of Justice
Justice Management Division
Senior Procurement Executive
Washington, D.C. 20530

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Michael H. Allen
Senior Procurement Executive

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation Regarding Certification of Women-Owned Small Businesses

1. PURPOSE

This class deviation is issued under the authority of Justice Acquisition Regulation (JAR) 2801.404 to prescribe a contract clause implementing the Small Business Administration (SBA) final rule published May 11, 2020 (85 FR 27650).

2. BACKGROUND

The Small Business Administration (SBA) revised 13 CFR 127 concerning status as a Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) to be eligible under the Women-Owned Small Business Program (WOSB Program). As of October 15, 2020, the WOSB Program Repository is no longer the source for WOSB and EDWOSB representation status. SBA's Dynamic Small Business Search (DSBS) will serve as the point of reference to determine the status of WOSB or EDWOSB concerns until SBA certification status is implemented within the System for Award Management (SAM).

3. AUTHORITY

This class deviation is issued under the authority of Justice Acquisition Regulation 2801.404.

4. DEVIATION

FAR 19.1503(b) through (d) - Women-Owned Small Business Program

5. EFFECTIVE DATE AND EXPIRATION

This class deviation is effective immediately and remains in effect until it is incorporated in the FAR or otherwise rescinded.

6. SCOPE AND APPLICABILITY

This deviation applies to procurement solicitations and contracts that are set aside or awarded as a sole source under the Women-Owned Small Business Program (WOSB Program).

7. CONTRACTING OFFICER REQUIREMENTS

Effective immediately, contracting officers shall:

- A. Utilize SBA's Dynamic Small Business Search (DSBS) to determine the status of Women-Owned Small Business (WOSB) or Economically Disadvantaged Woman-Owned Small Business (EDWOSB) concerns until SBA's certification status is implemented in the System for Award Management (SAM).
- B. Utilize the following procedures to verify the eligibility of a concern for a set-aside or sole- source award under the WOSB program (including WOSB and EDWOSB concerns), in place of FAR 19.1503(b) through (d):

1. Contracting officers shall make clear in their solicitation the inclusion of these new procedures by providing a statement in the solicitation information section similar to the statements below:

- a. For set-aside awards for WOSB or EDWOSB concerns eligible under the WOSB program:

“If the offeror is not designated as certified or does not have a pending application for certification in the Dynamic Small Business Search (DSBS) at the time of the submission of the offer, its offer is not eligible for award and will be removed from consideration. Any award resulting from this solicitation will be made to a WOSB or EDWOSB concern designated as certified as a WOSB or EDWOSB concern in DSBS. The DSBS website is located at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. The WOSB and EDWOSB representations completed in response to FAR provisions 52.212-3, 52.219-1, or 52.219-28 will not be used for this award.”

- b. For sole-source awards for WOSB or EDWOSB concerns eligible under the WOSB program:

“A concern must already be certified at the time of submission of the offer. Any award resulting from this solicitation will be made to a WOSB or EDWOSB concern designated as certified as a WOSB concern eligible under the WOSB program or EDWOSB concerns in the Dynamic Small Business Search (DSBS). The DSBS website is located at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. The WOSB and EDWOSB representations completed in response to FAR provisions 52.212-3, 52.219-1, or 52.219-28 will not be used for this award.”

2. For WOSB or EDWOSB set-asides, if the concern becomes the apparent successful offeror while its WOSB or EDWOSB application is pending, the contracting officer shall email the SBA's Director of Government Contracting at WOSBpendingcertification@sba.gov. SBA will complete a determination within 15 calendar days of receipt of the email. If a determination is not provided to the contracting officer within that timeframe, the contracting officer may either grant SBA an extension, or presume the concern is not an

eligible WOSB or EDWOSB and make award to the next highest evaluated offeror.

For WOSB or EDWOSB set-aside or sole-source procurements, contracting officers shall only make an award to a concern that is designated as certified as a WOSB or EDWOSB in DSBS.

8. ADDITIONAL INFORMATION

If you have questions, please contact DOJAcquisitionPolicy@usdoj.gov

9. ATTACHMENTS

None

**CLASS DEVIATION
FINDINGS AND DETERMINATION
CERTIFICATION OF WOMEN-OWNED
SMALL BUSINESS CONCERNS**

Findings

1. The Small Business Administration (SBA) issued a final rule published May 11, 2020 (85 FR 27650) regarding the processes required for entities to both become eligible and verified as a women-owned small business. The SBA rule revised 13 CFR 127 concerning status as a Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) to be eligible under the Women-Owned Small Business Program (WOSB Program).
2. The Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-01 on January 29, 2021, authorizing agencies to issue class deviations implementing these provisions pending publication of the formal amendment to the Federal Acquisition Regulation (FAR) via FAR case 2020-013.
3. CAAC letter 2021-01 constitutes consultation in accordance with FAR 1.404 with the Chair of the CAAC allowing agencies to authorize a class deviation to implement the changes.

Determination

It is hereby determined that a class deviation is appropriate to implement 85 FR 27650 and the procedures specified by the deviation for contracting officers to use in lieu of the procedures found at FAR 19.1503(b) through (d) to verify the eligibility of a concern for a set-aside or sole-source award under the WOSB Program. This class deviation will be effective as stated and will remain in effect until cancelled or until the new procedures are incorporated into the FAR.

Lee J. Lofthus
Assistant Attorney General
For Administration

Date