



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2021-03

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation Class Deviation: Verification of Eligibility for the Women-Owned Small Business Program

Background

Federal Acquisition Regulation (FAR) 19.1503(b) through (d) sets forth procedures to verify the eligibility of a concern for a set-aside or sole-source award under the Women-Owned Small Business (WOSB) Program. On May 11, 2020, the Small Business Administration (SBA) published a final rule to revise 13 CFR 127 that discontinued the requirement for concerns to upload documents to the WOSB Repository. Instead, the SBA uses its own certification process to designate a concern in Dynamic Small Business Search (DSBS) as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) or a WOSB concern eligible for the WOSB Program.

On January 29, 2021, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-01 to authorize agencies to implement this SBA final rule. Upon publication of the final rule for FAR Case 2020-013, both the FAR and System for Award Management (SAM) will be updated to align with these revisions.

Purpose

The purpose of this procurement memorandum is to issue a class deviation in accordance with FAR 1.404 to provide guidance to deviate from FAR 19.1503 (b) through (d).

Policy

Effective immediately, for WOSB or EDWOSB set-aside or sole-source procurements, in lieu of the procedures prescribed in FAR 19.503(b)(c) and (d), contracting officers shall verify in DSBS the eligibility of a WOSB or EDWOSB for the WOSB Program or that an application is pending with SBA. If the concern becomes the apparent successful offeror while its EDWOSB or WOSB application is pending in DSBS, the contracting officer shall notify the SBA's Director of Government Contracting by email at: WOSBpendingcertification@sba.gov. SBA will complete a determination within 15 calendar days of receipt of the email. If the determination is not received within the timeframe, the contracting officer may either grant an extension to SBA or presume the concern is not an eligible EDWOSB or WOSB and make award to another offeror.

Required Actions

This deviated process shall be addressed in solicitations through inclusion of the following statements:

For Set-Aside awards for WOSB concerns 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.”

For Sole-Source awards for WOSB concerns 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.”

Effective Date

This class deviation remains in effect until the FAR and SAM are updated to align with this SBA revision, or until the class deviation is otherwise rescinded.

Questions

Please direct any questions regarding this Procurement Memorandum to OAM_Mailbox@doc.gov.

CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION

Subpart 19.1503 — Women-Owned Small Business Program Status

Determination and Findings

In accordance with Civilian Agency Acquisition Council (CAAC) Letter 2021-01, “CAAC Consultation to Issue a Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Certification of Women-Owned Small Businesses”, the Department of Commerce is authorizing a class deviation that implements revisions made by the Small Business Administration (SBA) to its regulation at Code of Federal Regulations part 127 of title 13, concerning status as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) concern or as a Women-Owned Small Business (WOSB) eligible for the WOSB Program.

Findings

- The CAAC Letter 2021-01 allows agencies to authorize a class deviation to implement procedures for verifying eligibility of EDWOSB and WOSB concerns for the WOSB Program.
- The SBA no longer requires EDWOSB and WOSB concerns to upload documents to the WOSB Repository.
- The SBA will use its own certification process to designate an EDWOSB or WOSB concern the WOSB Program in DSBS.
- The 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).
- Contracting officers are provided procedures to follow when a concern has a pending certification application status in DSBS.
- Upon publication of a final rule for FAR Case 2020-013, both the FAR and SAM will be updated to align with these revisions.

Determination

In accordance with FAR 1.404, I hereby authorize this class deviation. The areas of the FAR that are affected by this class deviation are: 19.503(b)(c) and (d), 52.212-3, 52.219-1, and 52.219-28.

This class deviation will remain in effect until rescinded or incorporated into the FAR.

Approved:
Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

Date: