

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

(a) *Definition.* Interested party, as used in this section, has the meaning given in 13 CFR 127.102.

(b)

(1) For *sole source acquisitions*, the contracting officer or SBA may protest the offeror's status as an *economically disadvantaged women-owned small business (EDWOSB) concern* or as a *WOSB concern* eligible under the WOSB Program. For all other *acquisitions*, an interested party (see 13 CFR 127.102) may protest the apparent successful offeror's EDWOSB or WOSB status.

(2) SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of [19.302](#). An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if-

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are *United States* citizens;

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women who are *United States* citizens, when it is in connection with an EDWOSB contract; or

(iii) For WOSB or EDWOSB set-aside or sole-source service contracts or orders, the protest presents evidence that the prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in [13 CFR 125.1](#), 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. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and [13 CFR 121.103\(h\)\(2\)](#), which treats the pair as joint venturers for size determination purposes (the "ostensible subcontractor rule").

(2) Assertions that a protested concern is not an EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) *Protest by an interested party.*

(1) An *offeror* shall submit its protest to the *contracting officer*—

(i) To be received by the close of business by the fifth business *day* after bid opening for sealed bid *acquisitions*;

(ii) To be received by the close of business by the fifth business *day* after receipt of the special notification from the *contracting officer* (see [15.503\(a\)\(2\)](#)) that identifies the apparently successful *offeror* for negotiated *acquisitions* including—

(A) Orders placed under *multiple-award contracts* where the *contracting officer* requested rerepresentation for the order (see [13 CFR 127.603\(c\)\(1\)](#)); and

(B) Orders set aside for EDWOSB or WOSB *concerns* under *multiple-award contracts* that are not partially or totally set aside or reserved for EDWOSB or WOSB *concerns* (see [13 CFR 127.603\(c\)\(1\)](#)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see [8.405](#) and [19.302\(d\)\(5\)](#)); or

(iii) To be received by the close of business on the fifth business *day* after receipt of notification using other communication means when written notification is not required.

(2) Any protest received after the designated time limit is untimely, unless it is from the *contracting officer* or SBA.

(f)

(1) The *contracting officer* shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government *Contracting* by email at wosbprotest@sba.gov .

(2) The protest shall include a referral letter written by the *contracting officer* with information pertaining to the *solicitation*. The referral letter *must* include the following information to allow SBA to determine timeliness and standing:

(i) The *solicitation* number or electronic link to or a paper copy of the *solicitation*.

(ii) The name, address, telephone number, email address, and facsimile number of the *contracting officer*.

(iii) Whether the protestor submitted an *offer*.

(iv) Whether the protested *concern* was the apparent successful *offeror*.

(v) When the protested *concern* submitted its *offer*.

(vi) Whether the *acquisition* was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the *contracting officer* received the protest.

(ix) The date the protestor received notification about the apparent successful *offeror*, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the *contracting officer* of the date SBA received the protest.

(h) *Before SBA decision.*

(1) After receiving a protest involving the apparent successful *offeror's* status as an EDWOSB or WOSB *concern* eligible under the WOSB Program, the *contracting officer shall* either-

(i) Withhold award of the contract until SBA determines the status of the protested *concern*; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the *contracting officer* determines *in writing* that an award *must* be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time granted by the *contracting officer*.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the *contracting officer may* award the contract after determining *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. This determination *shall* be provided to the SBA Director for Government Contracting and a copy *shall* be included in the contract file.

(i) *After SBA decision.* SBA will notify the *contracting officer*, the protester, and the protested *concern* of its determination. The determination is effective immediately and is final unless overturned on appeal by OHA pursuant to 13 CFR part 134.

(1) If the *contracting officer* has withheld contract award and SBA has denied or dismissed the protest, the *contracting officer may* award the contract to the protested *concern*. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the *contracting officer may* apply the OHA decision to the *procurement* in question.

(2) If the *contracting officer* has withheld contract award, SBA has sustained the protest and determined that the *concern* is not eligible under the WOSB Program, and no OHA appeal has been filed, then the *contracting officer shall* not award the contract to the protested *concern*.

(3) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then-

(i) The *contracting officer shall* terminate the contract, unless the *contracting officer* has made a written determination that termination is not in the best interests of the Government. However, the *contracting officer shall* not exercise any *options* or award further task or *delivery orders*;

(ii) The *contracting officer shall* update the FPDS to reflect the final SBA decision; and

(iii) SBA will remove the *concern's* designation in the Dynamic Small Business Search (DSBS) as an EDWOSB or WOSB *concern* eligible under the WOSB Program. The *concern shall* not submit an *offer* as an EDWOSB *concern* or WOSB *concern* eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the *contracting officer* has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the *concern* is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the

contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government *Contracting's* determination finding the protested *concern* is *ineligible*, then-

(i) The *contracting officer shall* terminate the contract, unless the *contracting officer* has made a written determination that termination is not in the best interests of the Government. However, the *contracting officer shall* not exercise any *options* or award further task or *delivery orders*;

(ii) The *contracting officer shall* update the FPDS to reflect OHA's decision; and

(iii) SBA will remove the *concern's* designation in DSBS as an EDWOSB or WOSB *concern* eligible under the WOSB Program. The *concern shall* not submit an *offer* as an EDWOSB *concern* or WOSB *concern* eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the *concern* is eligible on appeal.

(j) Appeals of EDWOSB or WOSB *concerns* eligible under the WOSB Program status determinations.

(1) The protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program, the protester, or the *contracting officer may* file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA *must* receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G "Rules of Practice for Appeals From *Women-Owned Small Business Concerns* (WOSB) and Economically Disadvantaged WOSB *Concern* (EDWOSB) Protests" at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal *must* identify the protest determination being appealed and *must* set forth a full and specific statement as to why the EDWOSB *concern* or WOSB *concern* eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision *must* provide notice of the appeal to-

(1) The *contracting officer*;

(2) Director, Office of Government *Contracting*, U.S. Small Business Administration, by email at wosbprotest@sba.gov ;

(3) The protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for *Procurement* Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or e-mail at OPLService@sba.gov.

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the *contracting officer*, the protester, and the protested EDWOSB *concern* or WOSB *concern* eligible under the WOSB program. The OHA decision is the

final agency decision and is binding on the parties.

Parent topic: Subpart 19.3 - Determination of Small Business Size and Status for Small Business Programs