

Date: March 12, 2021

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Class Deviation from the Federal Acquisition Regulation Regarding Certification of Women-Owned Small Businesses (VIEWS 04486767)

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, to implement the Small Business Administration (SBA) final rule published May 11, 2020 ([85 FR 27650](#)). Federal agencies are authorized by the Civilian Agency Acquisition Council (CAAC) letter [2021-01](#), dated January 29, 2021 to issue a class deviation.

2. Effective Date. Immediately.

3. Expiration Date. This deviation expires when incorporated into the FAR or is otherwise rescinded.

4. Applicability. This class deviation applies to all VA contracting activities.

5. Current FAR Policy. The contracting officer is required to follow the procedures at FAR 19.1503(b) through (d) to verify eligibility of a concern for a set-aside or sole source award under the WOSB Program. Specifically, FAR 19.1503(b) requires that the contracting officer verify that the offeror: 1) is registered in the System for Award Management (SAM); 2) is self-certified as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) or Women-Owned Small Business (WOSB) concern in SAM; and, (3) has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository, and states that the contract shall not be awarded until all required documents are received. FAR 19.1503(c) and (d) provide third party certification and self-certification requirements.

6. Need for Deviation. The SBA rule revised 13 CFR 127 concerning status as a WOSB and 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 SAM.

7. Required Action. The SBA regulations provided procedures for contracting officers to follow when a concern has a pending certification application status in DSBS. The following procedures are for contracting officers to use in lieu of the

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procedures 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:

a. 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:

(1) 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.”

(2) 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.”

b. For WOSB or EDWOSB set-asides, if the concern becomes the apparently 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.

c. 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](#).

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The procedures outlined in this class deviation should be followed until FAR case 2020-013, Certification of Women-Owned Small Businesses is effective.

8. Additional information. Send questions to va.procurement.policy@va.gov.

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