



SBA's New WOSB / EDWOSB Certification Requirement and 8(a) Economic Disadvantage Criteria Revisions: What You Need to Know

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June 16, 2020

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PilieroMazza – a business law firm – serves as a strategic partner to government contractors and commercial businesses from across the United States.

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Meghan Leemon counsels clients on a broad range of matters, including government contracts, employment, and small business matters. Her experience includes bid protests at all levels, size protests, and contractor requests for equitable adjustment, claims, and appeals. In addition, Ms. Leemon advises clients on small business procurement matters, particularly on issues related to eligibility and participation in small business federal procurement programs, such as the SBA's SDVOSB, WOSB, 8(a) BD, and HUBZone programs. She also assists clients in maintaining compliance with the FAR and small business regulations. Ms. Leemon also has experience in defending employers against alleged discrimination complaints.

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Jonathan Pomerance is primarily focused on the government contracts arena, including matters involving bid protests, government-related claims and appeals, and False Claims Act matters. Prior to joining PilieroMazza, Mr. Pomerance served as Assistant General Counsel representing the U.S. General Services Administration's (GSA) Federal Acquisition Service (FAS). He now leverages that in-agency experience and government decision-making knowledge on behalf of PilieroMazza's government contractor and commercial business clients.

Overview

- Eligibility requirements of:
 - Woman-Owned Small Business
 - Economically-Disadvantaged Woman-Owned Small Business
 - 8(a) Business Development Program
- New Certification Requirement for WOSBs / EDWOSBs
 - Relevant dates
 - How to
- Revised Economic Disadvantage Criteria for 8(a) and EDWOSB

WOSB: Ownership and Control Requirements

- Company must be at least **51%** owned and controlled by one or more women who are U.S. citizens
 - Ownership: must be unconditional and direct
 - Control: long-term decision-making and the day-to-day management and administration of the business
 - Must have the managerial experience of the extent and complexity needed to run the concern
 - Woman must hold the highest officer position
 - Can have outside employment only if it does not prevent her from devoting sufficient time and attention to the daily affairs of the concern

EDWOSB

- Same control and ownership requirements as WOSBs
- Additional requirements for EDWOSBs:
 - “Economically Disadvantaged”: must be 51% unconditionally owned and directly controlled by one or more women who are economically disadvantaged
 - Proving economic disadvantage requires a showing that one’s ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business
 - 3-part test: net worth must be less than \$750,000 (excluding equity in EDWOSB and primary residence and qualifying retirement account); income must be less than \$350,000 (averaged over 3 years); and total assets must be less than \$6 million (only exclusion is qualifying retirement account)

8(a) Business Development Program: Ownership and Control Requirements

- Company must be at least **51%** owned and controlled by one or more socially and economically disadvantaged individuals who are U.S. citizens
 - Ownership: must be unconditional and direct
 - Control: daily management and administration of business operations and strategic policy setting (long-term decision-making)
 - Must have level of managerial experience of the extent and complexity needed to run the concern
 - Disadvantaged person must hold highest officer position, must devote full-time to business, and receive highest salary unless it helps business
 - Social Disadvantage: subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities
 - Economic Disadvantage: 3-part test (net worth, personal income, and total assets)*

WOSB / EDWOSB – No More Self-Certification

- 2015 NDAA directed SBA to end self-certification for WOSBs and EDOWBs
 - Currently, self-certification
 - 2015 NDAA also granted authority to contracting officers to award WOSB / EDWOSB sole-source contracts (this has already been implemented)
- Proposed rule issued in May 2019 and final rule published on May 11, 2020 (see 85 Fed. Reg. 27650)
- Rule changes to take effect in part on July 15, 2020, and in part on October 15, 2020
- WOSB / EDWOSBs need to be certified by SBA if pursuing WOSB / EDWOSB set-asides or reserves
 - Self-certification still permitted for non-WOSB / EDWOSB set-asides and agencies may take credit

Application Process

- You will need a SAM and certify.sba.gov profile
- Self-certification still allowed until October 15, 2020, via certify.sba.gov
 - SBA is advising that all firms currently self-certified download their files from certify.sba.gov, as re-upload will be required
- On July 15, 2020, firms can begin submitting applications under the new certification process, also at certify.sba.gov
 - SBA application is free
 - If you apply with TPC, there is a fee. Four SBA-approved third-party certifiers: El Paso Hispanic Chamber of Commerce; National Women Business Owners Corporation; U.S. Women's Chamber of Commerce; and Women's Business Enterprise National Council

Required Documents

- If applicable, evidence of third-party certification or other certification (8(a), SDVOSB, and / or VOSB)
- WOSB Documents: Active SAM registration, proof of U.S. citizenship for qualifying individual(s), governing corporate documents, which vary based on whether you are a corporation, LLC, partnership, or sole proprietor, and resume (currently optional)
- EDWOSB Documents: Same as above plus documents showing economic disadvantage, including IRS Form 4506-T (Request for Tax Transcript), 3 most recent personal income tax returns (including all W2s), and detailed information regarding the value of all assets (including cash on hand and in banks, accounts and notes receivable, retirement accounts, stocks, bonds, real estate, personal property, life insurance, and any other assets), liabilities (such as loans, mortgages, tax debts, and any other liabilities), and income (including salary, investment income, real estate income, and any other income)
 - Financial information is needed for each woman claiming economic disadvantage and spouse

Streamlined Process for Certain Companies

- For WOSBs:
 - Provide evidence of certification by VA's Center for Verification and Evaluation as an SDVOSB or VOSB
 - Provide evidence of WOSB certification by SBA-approved third-party certifier
- For EDWOSBs:
 - An 8(a) company owned and controlled by one or more women qualifies as EDWOSB
 - Provide evidence of EDWOSB certification by SBA-approved third-party certifier
 - Provide evidence of certification by VA's Center for Verification and Evaluation as an SDVOSB or VOSB – BUT, SBA will still review economic disadvantage criteria

Timeline

- July 15 – application process opens on certify.sba.gov
- October 15 – decisions begin and certification is required
- Regulations contemplate that SBA will make a determination within 90 days after receipt of a complete package, “whenever practicable”
 - If you have submitted a complete application (to SBA or approved third-party) and have not received a negative determination, you are able to bid on set-aside contracts beginning October 15
 - If selected as the apparent successful offeror, determination should be made within 15 days
- No request for reconsideration or appeal process
 - Can reapply after 90 days

WOSB / EDWOSB Recertification

- Firm must recertify annually by representing that it continues to meet all eligibility criteria
- SBA or TPC will conduct a program examination three years after the concern's initial certification or three years after the date of the concern's last program examination, whichever is later
- If SBA determines that concern does not meet the program eligibility requirements, the concern fails to recertify or has failed to notify SBA of a material change, SBA will propose the concern for decertification
- Self-certified firms with active long-term contracts: you must certify before end of contract year 5

8(a) Economic Disadvantage Eligibility Criteria

- Economic disadvantage criteria is not currently consistent between 8(a) initial eligibility and EDWOSB / 8(a) continued eligibility
- Thresholds have been revised to be consistent across the board
 - Net worth: \$750,000
 - Adjusted gross income: \$350,000
 - Total assets: \$6 million
- No adjustments to EDWOSB criteria

Revised Treatment of Retirement Accounts

- Presently, value of retirement accounts only excluded if penalty for early withdrawal and individual not yet reached retirement age
- Through the final rule, with respect to EDWOSB and 8(a) programs, funds invested in an IRA or other official retirement account will not be considered at all in determining an individual's net worth
 - Blanket exclusion, regardless of individual's age
 - Should also apply for total assets test
- SBA stated this is in “accord with the valuable public policy of incentivizing, rather than punishing, saving for retirement”
 - Potentially increase the number of 8(a) and EDWOSB companies

Questions?



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