

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