



GSA Federal Acquisition Service

July 29, 2011

FAS INSTRUCTIONAL LETTER 2011-17

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM: HOUSTON W. TAYLOR 
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Women-Owned Small Business (WOSB) Program

1. **Purpose:** The purpose of this Instructional Letter (IL) is to provide guidance on the applicability of the new Women-Owned Small Business (WOSB) Program to FAS acquisitions.
2. **Background:** The WOSB Program was created by Section 8(m) (15 U.S.C. 637(m)) of the Small Business Act (Pub. L. 85-536, as amended). The Small Business Act assists in leveling the procurement playing field to enable small business concerns, which now include women-owned small businesses (WOSBs) and economically disadvantaged women-owned small businesses (EDWOSBs), to compete for Federal contracting opportunities. The WOSB Program will assist Federal agencies, including GSA, in achieving their five percent statutory goal for contracting with women-owned small businesses.

On December 21, 2000, the President signed the Small Business Reauthorization Act of 2000 ("Act") (Pub. L. 106-554). Section 811 of the Act amended the Small Business Act to include section 8(m). Section 8(m) of the Small Business Act authorizes contracting officers to limit competition to eligible EDWOSBs or WOSBs for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement. The Small Business Administration (SBA) published a final rule implementing the WOSB Program on October 7, 2010 ([75 FR 62258](#)), which became effective February 4, 2011. Then an interim Federal Acquisition Regulation (FAR) rule ([FAR Case 2010-015](#), 76 FR 18304) added FAR Subpart 19.15 which provides coverage of the WOSB Program.

3. **Effective Date:** Date of signature.
4. **Termination Date:** This IL remains in effect until it is cancelled or incorporated into a handbook.

5. Applicability. This IL applies to all GSA/FAS acquisition activities. This IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Federal Supply Schedule contracts.
6. Reference Regulations. FAR Parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52 and 53 are revised; FAR provisions 52.212-3 Offeror Representations and Certifications—Commercial Items, 52.219-1 Small Business Program Representations, 52.219-2 Equal Low Bids, and 52.219-22 Small Disadvantaged Business Status, are updated; FAR clauses 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.219-28 Post Award Small Business Program Rerepresentation, are also updated. Two new FAR clauses, 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns and 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, are prescribed.
7. Instructions/Procedures.

A. Federal Supply Schedules

i. **Solicitation Refresh:** A solicitation refresh shall be done during the next refresh cycle period, as specified in IL 2011-04 on Schedule solicitation refresh management, in order to incorporate the current or most recent versions of the below clause and provision. The Solicitation Writing System (SWS) will mark this provision and clause as “Required.”

- Provision 52.212-3, Offeror Representations and Certifications—Commercial Items
- Clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items Alternate II

ii. **In-House Offers:** A solicitation amendment shall be issued to incorporate the updated provisions and clauses in Schedule offers received prior to the solicitation refresh prior to contract award. When deciding to accept the amendment, each offeror shall have the opportunity to withdraw its offer.

iii. **Mass Modification:** Schedule contracts shall be modified to update the clause. This shall be accomplished through a typical mass modification that is issued from SWS following a solicitation refresh. There is no need for a separate modification.

iv. **Contractor Notification:** Each Acquisition Center will be responsible for drafting a message to Schedule contractors encouraging them to become certified in the WOSB Program (if eligible). When the Schedule contractor is certified in the program, they can request a “Re-representation of Business Type” modification in order to be identified as a WOSB under their FSS contract. Before executing a re-representation modification, Contracting Officers shall ensure the contractor is certified in the WOSB Program by checking the Central Contracting Registration (CCR) website.

Note: FAS acquisition system applications, including eMod, do not currently offer this modification type as an option for contractors. When the necessary systems

changes have been made, all contracting activities will be notified by additional supplement to this IL or alternate means.

B. Other FAS Contracts (i.e. Government-Wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and Indefinite Delivery/Indefinite Quantity (IDIQs))

i. Contract Modification: Contracts shall be modified to update the below clause, if it is already included in the contract :

- 52.219-28, Post Award Small Business Program Rerepresentation (APR 2009).

ii. Contractor Notification: Each Acquisition Activity will be responsible for drafting a message to contractors on acquisition vehicles that include small businesses, encouraging them to become certified in the WOSB Program (if eligible). When the contractor is certified in the WOSB Program, they can request a recertification modification in order to be identified as a WOSB under their GSA FAS contract. Before executing a recertification modification, Contracting Officers shall ensure the contractor is certified in the WOSB Program by checking the Central Contracting Registration (CCR) website.

Note: FAS acquisition system applications do not currently offer this modification type as an option for contractors. When the necessary systems changes have been made, all contracting activities will be notified by additional supplement to this IL or alternate means.

C. Open Market Acquisitions Over the Micro-Purchase Threshold (i.e. procurements in accordance with FAR Parts 12, 13, 14, and/or 15)

i. The Contracting Officer shall determine whether the NAICS code associated with the requirement has been designated by SBA as a NAICS code that is underrepresented by WOSB concerns.

ii. If so, the Contracting Officer may set-aside the acquisition for WOSB or EDWOSB concerns in accordance with the procedures in FAR [19.1505](#).

8. Questions and Answers.

General:

Q1. What are the eligibility requirements for WOSB and EDWOSB concerns?

A1. The eligibility requirements for WOSB and EDWOSB concerns can be found in the [SBA's regulations](#).

Q2. Where can I find the list of eligible industry codes?

A2. A list of the eligible industry codes is available on SBA's WOSB Federal Contracting Program [web page](#). You may also contact the SBA's Office of Government Contracting Area Office or the District Offices to obtain a list of eligible industry codes.

Q3. I noticed the Interim Rule mentions that the Standard Form 1449 was updated. Is any action required on our part?

A3. For Schedules and any other FAS vehicles that use eTool suites such as eOffer and SWS,

the SF1449 template will be automatically updated. All other FAS contracting officers can find the updated Form in the GSA [Forms Library](#).

Q4. Since the current system does not have an option to process a WOSB modification, how do we process these mods in the interim?

A4. Pending the systems modification allowing such a rerepresentation modification, no Schedule contract or GWAC can be modified to reflect the WOSB designation to the contract. Paper modifications would not suffice since the WOSB designation would not be reflected in the FPDS system nor will it be reflected in eLibrary. We anticipate that it will take some time for vendors to become certified by the SBA in the WOSB Program, thereby providing us with time to make the necessary updates to the system to process these modifications.

Set Aside-Related:

Q5. What requirements can be set aside under the WOSB Program?

A5. A contracting officer may set aside a requirement for WOSBs if:

- The North American Industry Classification Systems (NAICS) code assigned to the solicitation, invitation for bid, or request for quotation is in an industry in which SBA has designated that WOSBs are substantially underrepresented;
- The contracting officer has a reasonable expectation that two or more WOSBs will submit offers. This is sometimes referred to as the “rule of two;”
- The anticipated award price of the contract does not exceed \$6.5 million in the case of manufacturing contracts and \$4 million in the case of all other contracts; and
- In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.

A contracting officer may set aside a requirement for EDWOSBs if:

- The NAICS code assigned to the solicitation, invitation for bid, or request for quotation is in an industry in which SBA has designated that WOSBs are underrepresented;
- The contracting officer has a reasonable expectation that two or more EDWOSBs will submit offers. This is sometimes referred to as the “rule of two;”
- The anticipated award price of the contract does not exceed \$6.5 million in the case of manufacturing contracts and \$4 million in the case of all other contracts; and
- In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.

Q6. Do the \$4 million and \$6.5 million thresholds (limitation on the size of procurements that may be set-aside under the WOSB program, in accordance with FAR 19.1505) take into account all options?

A6. Yes. So if the estimated price of the base year of a requirement for services is \$2 million and there are four one-year options with an estimated price of \$2 million for each option year, the anticipated award price of the contract would exceed the \$4 million regulatory

threshold.

Q7. Why are the thresholds for this program different than for SBA's other programs?

A7. The statute authorizing the WOSB Program sets forth these specific thresholds. These thresholds are also subject to periodic inflationary adjustment by the FAR Council.

Q8. Can an EDWOSB submit an offer on a requirement set aside for WOSBs?

A8. Yes. An EDWOSB is by definition also a WOSB and therefore can submit an offer on a WOSB set-aside and receive a WOSB contract.

Q9. Does the contracting officer have to get the requirement approved by the SBA before setting it aside for WOSBs or EDWOSBs?

A9. No.

Q10. Can a contracting officer issue a sole source award to a WOSB or EDWOSB under this program?

A10. No. The statute does not authorize sole source awards to WOSBs or EDWOSBs under this program, like it does for 8(a) Business Development (BD) participants, HUBZone small business and Service- Disabled Veteran-Owned (SDVO) small businesses.

Non-Set Aside-Related:

Q11. Can I perform a WOSB set-aside under the FSS Program?

A11. Set asides are not allowed for requirements that will be filled under the FSS program (i.e. task/delivery orders placed in accordance with FAR Subpart 8.4).

However, task order contracting officers can still strive to achieve their WOSB goals by using socioeconomic status as an evaluation factor and provide a preference for WOSB Schedule-holders. For more information on this, refer to the [Small Business Utilization](#) section of the Schedules page on the GSA portal.

Q12. Can I perform a WOSB set-aside under the Alliant Small Business GWAC?

A12. Orders under multiple award, IDIQ contracts such as GWACs, need to comply with the fair opportunity requirement of the FAR (see FAR [16.505\(b\)](#)). As such, set-aside of orders under Alliant Small Business is not allowed.

Q13. How will the re-representation modification affect orders under those FSS, GWAC, and Multi-agency contracts (MACs)?

A13. The re-representation modification will update the contract record in Federal Procurement Data System (FPDS) to reflect the addition of the WOSB indicator. Agencies that place any new orders against that contract will then get credit for the order towards their agency WOSB goal.

Q14. What due diligence does a CO need to do before awarding to a WOSB or EDWOSB or processing a re-representation mod updating the business type of a contractor to reflect WOSB or EDWOSB status?

A14. In accordance with FAR 19.1503(b), a CO needs to verify the contractor is listed in CCR as a SBA-certified WOSB or EDWOSB.

Q15. How do users of our Schedules, GWACs, and MACs get credit for orders to WOSB contract-holders in the meantime, and before a re-representation modification is

executed?

A15. Ordering contracting officers can ask for a contractor size recertification at the order level, in accordance with [Section 121.404](#) of the SBA Regulations.

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