



Women Construction Owners & Executives, USA

July 15, 2019

Brenda Fernandez
Office of Policy, Planning and Liaison
8th Floor
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

Submitted electronically via <http://www.regulations.gov/>

Ref: (RIN 3245-AG75); Proposed rule “Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business – Certification”

Dear Ms. Fernandez:

On behalf of Women Construction Owners and Executives, USA (WCOE), I am pleased to submit the following comments and answers to posed questions regarding the proposed rule to implement the requirement for SBA to put in place a new certification process for Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs), eliminating the ability of firms to self-certify. Under the proposed regulations, firms would be required to be certified by a federal agency, a state government, the Small Business Administration or a national certifying entity in order to be awarded a set aside or a sole source contract under the authority of section 8(m) of the Small Business Act.

Introduction:

WCOE, USA is a national trade association representing the interests of women owners and executives in the construction industry. We were founded in 1984 and have continued to be the voice of women business owners in the construction industry across the nation for the last 35 years. WCOE has always supported a full certification program and we appreciate that SBA has issued this proposed rule to implement section 825 of the 2015 National Defense Authorization Act (NDAA).

Women-owned companies have continued to face an uphill battle in winning contracts both in the private and the public sector. WCOE has worked throughout its 35 years as an organization to create fairer procurement processes under the WOSB program so that female construction firm owners will have greater opportunities for success. The self-certification process has allowed rampant intentional deception to secure unfair and unlawful advantage of a law intended to help women-owned firms in the federal marketplace, and it has gone on too long. We believe that under the new proposed rules, fraud will be reduced and that contracts awarded under the WOSB and EDWOSB program will go to firms legitimately owned and controlled by one or more women, as envisioned and intended.

WCOE wants to express its confidence in the U.S. Department of Transportation (DOT) certification process, which has demonstrated benefits to legitimate firms. It is the only agency that requires full certification and proper oversight of its DBE program. Thus, a certification from such agencies is a natural extension to the WSOB and EDWOSB certification process. State Departments of Transportation, because they accept federal money, must follow federal DOT certification processes and procedures. Therefore, WCOE feels confident that state DOT agencies are an appropriate entity to certify WOSB and EDWOSB.

Response to Questions

Third Party Certification

1. How many third-party certifiers would be needed to adequately serve the full community of WOSBs and EDWOSBs seeking certification?

Answer: There is not an ideal number of third-party certifying agencies. Rather the SBA should approve as many third-party certifying agencies as meet a full certification criterion reviewing the ownership and control of the women-owned business as well as the financial requirements of the program.

2. Should SBA modify its regulations to add more information about the procedures and processes used by third party certifiers to certify firms as WOSBs and EDWOSBs for SBA's WOSB program?

Answer: The SBA should set forth the criteria it requires all WOSB and EDWOSB's to meet and then require any third-party certifying agency to meet those requirements, as long as they can meet the strict requirements.

3. Should SBA regulations contain information on how to become an approved third-party certifier?

Answer: Yes.

4. What type of notice should be required to identify third party certifiers?

Answer: All approved third-party certifiers should be placed on the SBA's website with their respective contact information.

5. Should cost to EDWOSB and WOSBs be part of the criteria that SBA considers when deciding whether to approve one or more additional third-party certifiers? If so, what if any methodology should SBA utilize when considering cost?

Answer: Although DOT certification is free, most third-party programs include some cost. Many engage in a sliding scale from between \$300 - \$1500 depending on the size of the business. WCOE recommends that the cost not exceed \$1,000.

6. Should SBA consider the ongoing cost of recertification when evaluating third party certifiers?

Answer: Yes.

7. Should SBA determine the term period a third-party certification is valid? If so, what should be an appropriate term for certification validity?

Answer: Three to five years should be the time frame for which the SBA should certify businesses and a 3rd party certification should cover a similar time period.

8. Should SBA authorize a third-party limited access to an applicant's repository file for the purpose of directly uploading approved certification documents?

Answer: Third party access should be allowed only with the applicant's permission.

9. Should SBA change its current processes regarding denials by third party certifiers?

Answer: Yes. Our understanding is that the SBA does not generally recognize third party certifiers. WCOE supports the use of legitimate third party certifiers.

10. In the future, should SBA consider allowing third party certifiers to approve mentor-protégé agreements and joint venture agreements involving EDWOSB and WOSB participants?

Answer: Third Party certifiers should NOT be allowed to approve mentor-protégé agreements and joint venture agreements at this time.

Certification by States and Other Federal Agencies

The changes to the WOSB program made by section 825 of the 2015 NDAA authorize WOSB and EDWOSB certifications by other Federal agencies and State governments. SBA's current regulations authorize SBA to recognize WOSB certifications made by states that have certified firms that are owned and controlled by women to be DBEs for the DOT's DBE program. The regulations do not, however, recognize any other State certifications and do not authorize other Federal agencies to certify WOSBs and EDWOSBs.

Answer: WCOE, USA feels strongly that any state Department of Transportation program which engages in a full certification program where the agency does a review of the entities eligibility to participate in the program and evaluates the ownership and control exercised by the qualifying individual (no self-certification) is an appropriate entity to certify WOSB and EDWOSB. We feel strongly that once you begin to take certification from state agencies, there needs to be an evaluation of whether the state's criteria for certification equals or meets the WOSB or EDWOSB criteria. State DOT programs generally meet this criterion. If it does, reciprocity should be permitted by the submission of a short form application, i.e., a one-page document which an applicant can fill out, attaching a copy of the company's DBE or WBE certification. That certification should be granted reciprocity within the SBA within 30 days of submittal. For EDWOSB certification, an additional one-page financial form (similar to that

provided to DOT agencies) can be submitted to determine if the women-owned company meets the EDWOSB financial criteria.

1. Should the authority to certify WOSBs and EDWOSBs be extended to States generally? If the authority should be extended, how should SBA authorize individual States to participate as WOSB and EDWOSB certifying entities (*i.e.*, what sort of approval process should be implemented to ensure that SBA's WOSB and EDWOSB requirements are properly applied)?

Answer: At this juncture, we do not support other state agencies performing certification for the SBA. However, in the future, we could support other state agencies performing this certification so long as the certification criteria imposed by the DOT program was the standard used for certification. Self-certification should never be allowed.

2. Should SBA accept DBE certifications for women-owned firms as conclusive of WOSB ownership and control status or should SBA look further at one or more specific eligibility requirement(s)?

Answer: Providing that the State DOT agency implemented the full certification process, the DBE certification given to a WOSB should be honored without further review.

3. What other State entities might have sufficient expertise to make WOSB and EDWOSB certifications?

Answer: It is possible a General Services Administration or similar small business office could be considered to have the expertise needed to make certifications in the future.

4. Should SBA consider other Federal agencies as entities that can certify WOSBs and EDWOSBs?

Answer: No, not at this time. The DOT standard is the best standard currently in use. We believe all other federal agencies use a self-certification model or a watered-down certification model. In the future, other federal agencies which conduct full certification review on par with that mandated by the DOT should be allowed to certify for the WOSB and EDWOSB programs.

If so, how should that occur? Should an agency be able to certify a WOSB or EDWOSB only for purposes of a specific WOSB or EDWOSB contract with that agency?

Answer: No, not at this time. Only if the agency certification meets the full certification mandated by DOT, should the certification be allowed. Once the certification is complete, it should be granted full reciprocity within the SBA program.

Which office within those agencies should bear the responsibility for this certification authority?

Answer: Perhaps in the future the OSDBU office within each agency might be allowed certification authority.

5. Should there be a protest mechanism that would allow an interested party to protest the WOSB or EDWOSB status of a firm certified by a State or other Federal agency to SBA?

Answer: Yes. Although, any protest process should be expedient and concluded within 6 months of the protest.

6. Should SBA limit its WOSB and EDWOSB certifications only to those made through the 8(a) Business Development (BD) program, as is currently authorized in SBA's regulations?

Answer: No.

7. Should SBA's regulations be clarified to specify how a women-owned firm applying to the 8(a) BD program can simultaneously receive certification as a WOSB and EDWOSB?

Answer: Yes.

8. Recognizing that SBA has limited resources, should SBA create a new certification program specific to WOSBs and EDWOSBs? If so, how should SBA structure such a certification program so that the limited resources do not cause the time period for certification to be overly lengthy?

Answer: The SBA should model its certification program under the WOSB and EDWOSB after the DOT certification program. The DOT certification program generally takes 60-120 days.

How should SBA handle the likelihood of a large number of firms seeking certification once the certification process is operational?

Answer: The SBA should create a streamline process to grant reciprocity to 8a WOSBs and those certified as DBEs or WBE through a State Transportation agency using DOT guidelines or through a third-party certification process (eliminating any program that permits self-certification). That should be a simple 1-page application with a copy of the applicable certification already granted. Then, a single second sheet detailing financial net worth, as needed. SBA should complete its review of this streamlined process within 30 days of submission.

Should SBA consider or attempt to establish an online WOSB/EDWOSB certification program, with dynamic feedback during the certification process?

Answer: No certification program should be relegated to merely an online system, no matter how robust. Although, the submission of the streamlined forms should be allowed to be submitted via sam.gov. It is acceptable that an applicant can submit all of her documentation through an online system, but actual review of the application must be conducted and no certification should be issued without review.

9. What, if any, documents should SBA collect when certifying a firm as a WOSB or EDWOSB? Are the current repository document requirements unnecessary or significantly burdensome and if so, why?

Answer: Please review the documents requested by US DOT certification requirements. While the DOT program requires many documents, that level of documentation should not be required for future recertifications. However, items such as purchase or ownership of the business as well as authority and control of the day to day business operations, need to be provided. A more streamlined procedure should be established for recertification. Again, we recommend the procedures adopted by DOT and many of its recipient agencies.

10. Should SBA and third-party certifiers utilize the same processes for certifying concerns as EDWOSBs and WOSBs?

Answer: Certainly, the very same criteria.

11. How long should the ED/WOSB certification process take?

Answer: Initial response should be within 60 days of initial submittal and final certification within 60 days of any additional documents submitted. The total process should not take more than 180 days.

How would this compare with the current amount of time required for self-certification?

Answer: It is the same timeline. Typically, WCOE has found that certification is completed in not longer than 60-120 days where programs are appropriately resourced.

12. Should firms that SBA finds ineligible during the application process have the right to a request for reconsideration or an appeal of that decision? If an appeal, should it be to SBA's Office of Hearings and Appeals (OHA)? Currently, firms denied certification for the 8(a) BD program may appeal to OHA.

Answer: An appeal process could be granted. In addition, an applicant should be able to reapply after one year after being rejected.

13. How long should a certification be valid? Currently the System for Award Management (SAM) requires users to update and verify their information annually. Should firms certified by SBA as EDWOSBs or WOSBs be required to update their certifications annually?

Answer: Certification should be valid for 3 to 5 years. Updating/recertification should be an abbreviated process not taking more than 60 days (assuming all documentation is submitted i.e. updated tax returns and any change in ownership and control documented).

14. Should firms need to be recertified annually?

Answer: No, but firms should be required to submit any material changes to the business that would impact eligibility to participate in the program, such as ownership or day-to-day control.

If not annually, how long should WOSB or EDWOSB certification last?

Answer: Certification should be valid for 3 to 5 years.

How should a firm be re-certified as a WOSB or EDWOSB once the time period for certification expires: should it have to re-apply anew, or should it be able to submit only those items to SBA for review that have changed since its initial certification?

Answer: Abbreviated updated information should be acceptable.

Should there be an online process that facilitates application or re-certification?

Answer: Yes, but strictly for the recertification process only.

If no changes have occurred, should the firm be able to submit an affidavit or declaration to that effect and be automatically re-certified?

Answer: Yes.

WCOE looks forward to working with SBA in assuring fair access to federal contracts for women-owned firms. We would be happy to meet with SBA officials and to assist in any data gathering process as SBA monitors or changes the certification process. In addition, we would be happy to offer WCOE as a resource for any analysis and improvement of the WOSB program. If you have any questions regarding WCOE's input on the proposed rule, please feel free to contact me. You are also welcome to contact WCOE's Washington Representative, Dana Thompson, at dthompsonwcoe@outlook.com.

Sincerely,

Sheila Ohrenberg
WCOE National President
President Sorella Group, Inc
14844 W 107th St
Lenexa, KS 66215
sheila@sorellagroup.com

WCOE

www.wcoeusa.org

1032 15th St, NW, Suite 300

Washington, DC 20005

info@wcoeusa.org

202.276.0646