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# SBA's Women-Owned Small Business Contracting Program

## Program Background

The Small Business Administration's (SBA's) Women-Owned Small Business (WOSB) Federal Contracting Program is designed to provide greater access to federal contracts for WOSBs, including a subset that are considered economically disadvantaged (EDWOSBs). Federal agencies have a statutory goal of awarding 5% of federal contracting dollars to WOSBs, which is codified at 15 U.S.C. §644(g)(1)(A). The percentage of contracts awarded to WOSBs has increased since the creation of the WOSB contracting program, but the government has typically fallen short of reaching the 5% WOSB procurement goal. The goal has been met twice since it was authorized in 1994.

Congress proposed a contract set-aside for WOSBs (including EDWOSBs) in the Equity in Contracting for Women Act of 2000 (H.R. 4897). This language was incorporated into the Small Business Reauthorization Act of 2000, which was included in P.L. 106-554, the Consolidated Appropriations Act, 2001. Congress authorized sole-source contracts for WOSBs (including EDWOSBs) in the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (FY2015 NDAA; P.L. 113-291). Set-asides limit contract competition to WOSBs and sole-source awards are made to a WOSB without competition. WOSBs are eligible for set-asides and sole-source opportunities in certain industries where they are "substantially underrepresented," while EDWOSBs are eligible for such opportunities in all industries in which WOSBs are either "underrepresented" or "substantially" so. Certain requirements for and limitations on both of these preferences are defined in statute.

### Definition of Economically Disadvantaged Women-Owned Small Business

In order to qualify as an EDWOSB, one or more economically disadvantaged women must unconditionally and directly own at least 51% of the firm. These criteria are fully defined at 13 C.F.R. §127.203. Each individual whose ownership interest will be used to qualify for EDWOSB designation must submit documentation demonstrating that their financial condition meets the following economic thresholds:

- Personal Net Worth must be less than \$850,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.
- Income must be \$400,000 or less in adjusted gross income averaged over the three years preceding the certification.
- Total Assets must be \$6.5 million or less for the fair market value of all personal assets, including primary residence and the value of the business concern.

## Industry-Specific Eligibility Requirements

At the direction of Congress, the SBA identifies WOSB program-eligible industries by determining how underrepresented WOSBs are among federal contractors in each industry. The SBA determines industry underrepresentation to different degrees: "underrepresented" or "substantially underrepresented," and (re)examines industries every five years. The list of identified industries determines which WOSBs may receive set-aside and sole-source contracts from federal agencies. Both "underrepresented" and "substantially underrepresented" refer to a disparity between federal utilization of WOSBs in contracting and their availability for contracts. The SBA assesses the disparity using North American Industry Classification System (NAICS) industry codes to define different industries.

## History of Selecting Eligible Industries

The SBA has faced challenges in identifying a methodology to determine the industries in which WOSBs are underrepresented in federal contracting. SBA completed a draft of a legislatively mandated study of underrepresented industries in 2001, and decided to contract with the National Academy of Science (NAS) to review the study. NAS completed its analysis and issued a report in 2005, concluding that the study was "problematic," and recommending a new study. The SBA commissioned a new study by the Kaufman-RAND Institute for Entrepreneurship Public Policy, which was published in 2007. Following this study, the SBA elected to define underrepresentation using disparity ratios, where a ratio equal to 1.0 suggested that WOSBs were fully represented in a given industry, while a ratio less than that suggested some level of underrepresentation in federal contracting.

The SBA published a final rule on October 7, 2010, that identified program-eligible NAICS codes, designating industries with disparity ratios between 0.5 and 0.8 as underrepresented, and industries with ratios less than 0.5 as substantially underrepresented. Industries were selected by analyzing the dollars earned by WOSB contractors and the number of WOSB contractors.

As shown below, the disparity ratios used in the SBA's analysis were (1) the WOSB share of federal prime contract dollars divided by the WOSB share of total business receipts within a given NAICS code, and (2) the share of contracts awarded to WOSBs in a particular NAICS code divided by the total number of WOSBs within that NAICS code:

$$\frac{\% \text{ Prime Contract Awards to Industry WOSBs (dollars)}}{\% \text{ Total Industry Receipts to WOSBs (dollars)}}$$

and

$$\frac{\% \text{ Contract Awards to Industry WOSBs (number of contracts)}}{\text{Total Number of Industry WOSBs}}$$

### Recent Updates to Eligible Industries

The SBA most recently updated its list of eligible industries on March 18, 2022. The updated industry list implements provisions of the FY2015 NDAA, in which Congress required the SBA to conduct a new study of WOSB representation across industries by 2016, update it every five years, and submit a report of the results of each new study to Congress.

The SBA contracted with an independent research firm to make the most recent industry updates. The study examined the representation of WOSBs in government procurement during the previous three fiscal years (FY2016-FY2019). According to its announcement in the *Federal Register*, the SBA used the same “disparity ratio thresholds ... for finding WOSBs to be substantially underrepresented and underrepresented” that were developed by the Kaufman-RAND study.

Through the update, the SBA increased the number of eligible industries by 71%. EDWOSBs became eligible for contracting preferences in 74% of NAICS industries and WOSBs in 63% of them. Because the eligible industries list expanded, the potential number of small women-owned businesses eligible for the program grew as a result of the update.

### Program Scrutiny and Judicial Review

The creation of the WOSB program’s set-aside and sole-source preferences followed a Supreme Court case that highlighted the legal vulnerability of contracting preferences. The ruling in *Adarand Constructors, Inc. v. Peña* (1995) found that all racial classifications, whether imposed by federal, state, or local authorities, are subject to “strict scrutiny.” The WOSB program’s industry-specific eligibility and precise methodology for determining eligible industries reflects a program design that maintains a narrow scope. The House report accompanying the Equity in Contracting for Women Act of 2000, H.Rept. 106-879, mentions the need for “the program established in this Act to conform with *Adarand Constructors v. Peña*.”

### WOSB Award Requirements and Limits

Aside from industry-based eligibility limits, federal agencies may only restrict competition for contracts to WOSBs through a set-aside if there is a reasonable expectation that at least two WOSBs will submit offers that meet reasonable price requirements.

Agencies may award sole-source contracts to WOSBs and EDWOSBs in eligible industries if (1) the contracting officer does not have a reasonable expectation that offers would be received by two or more eligible WOSBs and EDWOSBs; (2) the award can be made at a fair and reasonable price; and (3) the anticipated total value of the contract, including any options, does not exceed \$4.5

million (\$7 million for manufacturing contracts). The Federal Acquisition Regulatory Council has the responsibility of adjusting this maximum contract value on October 1 of each year that is evenly divisible by five. The next adjustment will take place on October 1, 2025.

### Certification Requirements

Among other provisions, the FY2015 NDAA removed the ability of WOSBs to self-certify their eligibility for the program, and required the SBA to implement its own certification process. To be eligible for contracting preferences, WOSBs and EDWOSBs must apply for certification using SBA’s online platform at [WOSB.Certify.sba.gov](https://WOSB.Certify.sba.gov). According to the SBA, it makes a firm certification decision within 90 calendar days after receipt of a complete package, “whenever practicable” (13 C.F.R. §127.304(a)).

As of May 30, 2023, certified WOSB and EDWOSB firms are required to undergo an examination every three years to maintain their certification (13 C.F.R. §127.400(a)). Previously, WOSB program participants annually attested to their eligibility to continue participating in the program. The rule change removed this requirement.

Prior to this change, WOSBs could self-certify or obtain certification from certain third parties. With the change, WOSBs may continue to use third-party certifiers (subject to SBA regulations). There are four organizations approved by SBA to provide third-party certification:

1. El Paso Hispanic Chamber of Commerce;
2. National Women Business Owners Corporation;
3. U.S. Women’s Chamber of Commerce; and
4. Women’s Business Enterprise National Council.

Firms certified through these organizations must still provide documentation to the SBA through the agency’s new certification platform before they can receive contracting preferences.

### Congressional Issues

Congress may be interested in the performance of federal agencies in making WOSB awards because the government has not met the statutory 5% WOSB contracting goal most fiscal years. Congress also may be interested in how federal agencies have used the WOSB program compared to other contracting programs, and whether program changes, such as industry updates or certification requirements, have an impact on program use.

Congress has undertaken program oversight to ensure that WOSB awards are made only to certified eligible firms. Concerns about program fraud risks led to the end of WOSB self-certification in 2020. Congress may be interested in how the certification requirements created by the FY2015 NDAA have affected both program accessibility and program fraud.

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