

**United States Small Business Administration  
Office of Hearings and Appeals**

IN THE MATTER OF:

SonCoast Procurement, LLC,

Appellant,

Defense Logistics Agency  
Solicitation No. SPE8EN-22-T-3007

SBA No. WOSB-117

Decided: November 30, 2022

APPEARANCES

Todd Hirsch, CEO, SonCoast Procurement, LLC

Kate DePriest, Esq., Agency Representative, Washington, District of Columbia for U.S. Small Business Administration

DECISION

I. Introduction and Jurisdiction

This appeal arises from a determination by the U.S. Small Business Administration (SBA) Deputy Director of Government Contracting (DD/GC) that SonCoast Procurement, LLC (Appellant) did not meet the Women-Owned Small Business (WOSB) concern eligibility criteria at the time it submitted its offer on the subject solicitation. Appellant requests the SBA Office of Hearings and Appeals (OHA) reverse the DD/GC's determination. For the reasons discussed *infra*, the Appeal is DENIED, and DD/GC's determination is AFFIRMED.

OHA decides WOSB appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 127 and 134. Appellant filed its appeal within 10 business days after receiving the eligibility determination, so the appeal is timely. 13 C.F.R. § 134.703.

Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On August 11, 2022, Defense Logistics Agency (DLA) Troop Support issued a Request for Quotations for Solicitation No. SPE8EN-22-T-3007 for Disk Drive Units. The Contracting Officer (CO) set the procurement aside entirely for WOSBs and designated North American

Industry Classification System (NAICS) code 334112, Computer Storage Device Manufacturing, with a corresponding 1,250 employee size standard, as the appropriate code. (Protest File (PF), Ex. 1, at 2.) On September 13, 2022, DLA awarded the contract to Appellant. (PF, Ex. 2.) On the same day, Pioneer Industries (Pioneer) received notice of the award to Appellant. (PF, Ex. 4, at 1.) On September 15, 2022, Pioneer protested the award to Appellant, because a Dun & Bradstreet listing identified Appellant as partnership with only one male owner, Todd Hirsh. (PF, Ex. 3.)

On September 27, 2022, DLA referred the Protest to SBA. (PF, Ex. 4.) On September 29, 2022, SBA notified Appellant of the same Protest, directing to respond by October 6, 2022. (PF, Ex. 5, at 1-3.)

### B. Response to Protest

On October 4, 2022, Appellant responded to the Protest. (PF, Ex. 6.) Appellant stated that it was founded in 2014 as a self-certified WOSB. Since then, it has received several awards of contracts that were WOSB set asides. One of those contracts is still in performance, as it has been renewed for multiple option years. However, Appellant stated explicitly:

We have not gone through with actual SBA certification as we are no longer a Women-Owned Small Business, based on changes in our business structure that were in the works last year and that took effect earlier this year.

Nevertheless, Appellant maintained that it is still eligible as a WOSB, based upon a statement from SBA's website. The statement read:

If you had contracts through the WOSB Federal Contracting Program when the changes went into effect, you will remain certified through the duration of existing contracts. . .

Appellant maintains that even though its structure changed at the beginning of the year, it is still considered a WOSB until the existing contract, awarded to it when it was a WOSB, expires.

### C. Eligibility Determination

On October 20, 2022, the DD/GC determined Appellant was not an eligible WOSB for the instant Solicitation. The DD/GC found Appellant does not satisfy the eligibility requirements for a Women-Owned Small Business (WOSB) concern set forth in 13 C.F.R. Part 127 *et. seq.* (PF, Ex. 9.)

The DD/GC found that the regulation provides for two instances where a concern may submit an offer on a specific WOSB set-aside. The concern must either be a certified WOSB under 13 C.F.R. § 127.300 or represent that that it has submitted a complete application for WOSB certification to SBA or a third-party certifier and has not received a negative determination regarding that application. (*Id.*, at 4, citing 13 C.F.R. § 127.504(a).) The DD/GC

noted that Appellant admits it is no longer woman owned business. This renders it ineligible for SBA's certification program. The DD/GC noted Appellant's argument that it remains eligible because it has one remaining WOSB contract in performance. However, the DD/GC indicated the instant procurement is a new one-time buy, not an option year on an existing contract. The DD/GC further noted Appellant had not been certified, nor had it a pending application for certification. Therefore, Appellant had no basis for eligibility for this procurement. (*Id.*)

#### D. Appeal

On October 21, 2022, Appellant filed a timely appeal with OHA, asserting it did not agree with DD/GC's conclusion and disputing DD/GC's findings. Appellant states that it self-certified as a WOSB in 2014, with Heather D. Hirsh, Mr. Hirsh's wife, as President. When SBA changed the requirements for inclusion in the WOSB program to exclude self-certification in 2020, Appellant concluded it would lose its status because the structure of the company was on course for a change, and it had no intention of becoming officially certified. However, Appellant points again to the statement on SBA's website quoted in its Response to the Protest, which Appellant interprets to mean that for the duration of any WOSB contract it holds, it remains certified as a WOSB. Appellant argues SBA has ruled against its own statement. (Appeal, at 1.)

#### E. SBA's Response

On November 15, 2022, SBA responded to the appeal, requesting the DD/GC's determination be affirmed. (SBA Response, at 1.) SBA asserts the Small Business Act and SBA regulations define a WOSB as a concern 51% owned and controlled by one or more women. (*Id.*, citing 15 U.S.C. § 637(m) and 13 C.F.R. Part 127.)

SBA regulations define which firms can compete for WOSB set-aside and sole source contract awards. A concern must be a certified WOSB program participant in accordance with SBA regulations to be eligible for a WOSB set-aside or sole source award. (*Id.*, citing 13 C.F.R. § 127.200(c).) In order for a concern to submit an offer on a WOSB set-aside, it must qualify as a small business concern under the size standard for the contract's assigned NAICS code, and either be a certified WOSB under 13 C.F.R. § 127.300 or represent that it has submitted a completed application for WOSB certification to SBA or a third-party certifier and has not received a negative determination. (*Id.*, citing 13 C.F.R. § 127.504(a).)

SBA notes that Appellant has admitted it is not a WOSB. SBA quotes from Appellant's own Protest Response, where it admits it is not a WOSB and has not sought certification as a WOSB. The Appeal also states that Appellant had no intention of becoming officially certified as a WOSB because it had figured it would lose that status. Appellant is not a certified WOSB program participant and is therefore not eligible for award. (*Id.*, at 4.)

SBA argues that Appellant had erroneously transcribed language from SBA's website, when the text reads:

As of October 15, 2020, the previous self-certification option on the [certify.sba.gov](https://certify.sba.gov) platform is no longer available. If firms currently

have active contracts through the WOSB Federal Contract Program, they will remain certified through the duration of the existing contracts (this applies to currently self-certified or TPC-certified).

(Agency Response, at 5, quoting PF, Ex. 11 (emphasis supplied).)

SBA maintains Appellant's quotation drops the word "active", and argues that an active contract is, by definition, one that already exists, it refers to extant or ongoing procurements. The procurement at issue is a new, one-time buy, and it did not exist as of October 15, 2020. While Appellant argues that because it had an extant contract on October 15, 2020 and has continued to perform on the contract, it was eligible to perform on all WOSB set aside and sole source contracts, including the instant procurement, the language on the website does not reflect Appellant's understanding. The date of October 15, 2020 and modifiers "active" and "existing" explicitly distinguish procurements contemplated at the time the website language was updated from new procurements, such as the one at issue here. (*Id.*, at 6.)

Even if the language of the website supported Appellant's view, SBA's regulations do not. A successful offeror must be a small business 51% owned and controlled by one or more women who are U.S. citizens and is either certified or has completed an application for certification. (*Id.*, citing 13 C.F.R. §§ 127.200(b) and (c); 127.504(a).) The SBA Administrator is granted the power to make regulations by the Small Business Act. (*Id.*, citing 15 U.S.C. § 634(b)(6).) The regulations control here, and Appellant cannot meet their standards.

### III. Discussion

#### A. Standard of Review

The standard of review for WOSB appeals is whether the D/GC's determination was based on clear error of fact or law. 13 C.F.R. § 134.708; *see Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2006) (discussing the clear error standard applicable to size appeals and WOSB appeals). OHA will disturb the D/GC's determination only if the judge has a definite and firm conviction that the D/GC erred in making a key finding of law or fact.

#### B. Discussion

The eligibility requirements for a concern which seeks to qualify as a WOSB are found at 13 C.F.R. § 127.200(b). First, the business must be a small business as defined by the regulations at 13 C.F.R. Part 121, and the concern must be "[n]ot less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens." 13 C.F.R. § 127.200(b)(1)-(2). To be awarded a WOSB set-aside or sole source contract, a concern must be certified as a WOSB pursuant to 13 C.F.R. § 127.300. 13 C.F.R. § 127.200(c)(1). An applicant for certification must be eligible as of the date it submits its application and up until the time the D/GC issues a decision on the application. 13 C.F.R. § 127.304(d). For a concern to submit an offer on a specific WOSB set-aside requirement, the concern must qualify as a small business under the applicable NAICS code and be either a certified WOSB pursuant to 13 C.F.R. §

127.300 or represent that it has submitted a complete application for WOSB certification to SBA or a third-party certifier and has not received a negative determination. 13 C.F.R. § 127.504(a).

Here, there is no question that Appellant does not meet the regulatory qualifications, as Appellant freely concedes to this. Sections II.B, II.D, *supra*. The regulation is clear, a concern seeking a WOSB set aside contract must be eligible to be a WOSB and be either certified or have a certification application pending. 13 C.F.R. § 127.504(a). Appellant candidly admits it currently does not meet the standards for certification as a WOSB. Further, Appellant has no pending application for certification. Appellant rather attempts to argue that some language on the SBA's website authorizes it to submit an offer because it continues to perform on an existing WOSB contract it was awarded previously. However, Appellant's argument is meritless. It is the regulations that must control over any language on the website, and Appellant simply does not meet the regulatory standard.

Further, Appellant's argument fails on its own terms. The website language it relies upon refers to "active" contracts. This clearly means current contracts. Appellant attempts to apply the language to future contracts. This is not supported by the SBA statement above. Furthermore, the current language on the website is even clearer:

Firms that were self-certified when changes went into effect on October 15, 2020, remain self-certified for the duration of existing contracts.

The purpose of the statement was to assure holders of existing WOSB contracts that they would continue to hold and perform these contracts as they had been self-certified at the time of award. It does not give these firms any eligibility for future contracts.

Appellant's argument would mean that any firm which held a WOSB certification and is performing a WOSB contract would be considered eligible for any new contracts, whether currently eligible or not, potentially constructing a chain of WOSB contracts with link based upon each new WOSB contract. This would be an absurd result, which the regulations do not support or grant.

I find that Appellant's argument fails to establish clear error on the part of the DD/GC, and that the DD/GC properly determined that Appellant is not an eligible WOSB and not eligible for the subject Solicitation.

#### IV. Conclusion

For the above reasons, DD/GC's determination is AFFIRMED, and the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.227(b)(5).

CHRISTOPHER HOLLEMAN  
Administrative Judge