

WOMAN MUST HAVE NECESSARY MANAGERIAL EXPERIENCE AND EXPERTISE TO QUALIFY AS WOMAN-OWNED SMALL BUSINESS

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The Office of Hearings and Appeals (“OHA”) of the Small Business Administration (“SBA”) has clearly indicated that a Woman-Owned concern must meet the criteria in the Women-Owned Small Business (“WOSB”) regulations in order to qualify for procurements set aside for WOSBs. *C&E Indus. Svc., Inc.*, SBA No. WOSB-112 (April 8, 2019). C&E involved a complete WOSB set-aside of a contract for rebuilding four parking lots at the White Sands Missile Range in New Mexico. C&E’s status was protested, and the Director of Government Contracting determined that the firm did not meet the WOSB eligibility criteria at 15 U.S.C.; § 637(m) and 13 CFR §127 *et seq* because the women owners lacked the “management and technical expertise” to run the firm, and the firm was managed by the husbands of the purported owners.

In order to qualify as a WOSB, a woman or woman must:

- Control the management and daily business of the company. 13 CFR § 127.202(a). This means that it must conduct both long-term decision making and day-to-day management and administration of the company.
- Hold the highest officer position in the concern and possess managerial experience necessary to run the concern. 13 CFR § 127.202(b). The woman manager need not have the technical expertise or licenses required to control the concern, so long as she can demonstrate that she has managerial and supervisory control over those who possess the requires licenses or expertise.
- If a man possesses the required license and has an equity interest, he may be found to control the concern under 13 CFR § 127.202(b).
- Men may be involved in management of the concern, or be a stockholder, but may not exercise actual control or have power to control the concern based on 13 CFR § 127.202(g).
- Also, the firm must be “small” under SBA size regulations.

OHA found that a woman held the highest position in C&E as required by 13 CFR § 127.202(b). However, she lacked the managerial experience and technical expertise needed to run C&E. OHA noted that in order to determine managerial or technical experience and competency to control a company, it looks to four factors: (1) characteristics of the company; (2) individual’s education and employment history, including supervisory experience; (3) the role of the individual in the company; and (4) the extend of the individual’s involvement in the operations of the company.

OHA applied these factors, and noted that although the two women managers of C&E performed administrative and financial tasks, there was no indication that either of the two women participated in the long-term decision-making and day-to-day management. Those were done by a man. The business license for C&E was held by a man, and neither woman had supervisory control over that man. OHA concluded that the women shareholders in C&E lacked the necessary managerial experience and expertise to run the concern, and did not qualify as a WOSB.

The takeaway. A WOSB must be owned and controlled by one or more women, and the owners must possess not only the ownership, but the necessary managerial experience and expertise to run the WOSB.

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