

## **Talking Points**

### **Women Owned Small Business Final Rule**

Public Law 106-554, Section 811, amends Section 8 of the Small Business Act (15 U.S.C. 637) to include a directed procurement program for women-owned small businesses (WOSB). The law was passed on December 21, 2000 and the NPRM was published on June 15, 2006 under judicial order. The final rule is currently at OMB for review.

Under the current Section 8 set-aside programs, contracting officers have the authority to set aside federal procurement solicitations for firms in identified categories (e.g. Small Disadvantaged Businesses (SDB), Veteran-Owned/Service-Disabled Veteran-Owned Small Businesses (VOSB/SDVOSB), 8a businesses). The current rule would extend the set-aside categories to include WOSB firms. It would not mandate that any procurements actually be set aside for WOSB, but simply make the option available to the contracting officer at their discretion.

The USWCC has identified two main issues with the program regulations and implementation. Specifically:

*Certification of WOSB/EDWOSB status:* We recommend a “self-certification plus” structure, which would provide three progressively more detailed methods for certification based on specific nature of the firm and previous certifications:

- (1) Reciprocal: Authentication or evidence provided of an existing certification from other Federal or State certification programs.
- (2) Simple: Simple verification for those businesses that fall into an area that is more easily certifiable (e.g. 100% women-owned, with tax documents that match this claim). Businesses that meet the higher-level criteria would not trigger a more in-depth review described in (3) below.
- (3) Extra: More robust verification for those businesses that may need to exhibit evidence of their “ownership, control, and management.” A trigger would be set based on a high standard within the online system – e.g. percent owned, founder, change in ownership during the last two years, cash contribution, denial of previous certification request, etc.

The current certification program proposed under the NPRM is unduly burdensome, and SBA will not have the capacity to process all requests for certification in a timely manner. The problems with the current certification structure include:

- Limits are significantly stricter than recent parallel rulemaking on Veteran Owned Small Businesses
  - Third-party certification of WOSB vs. self-certification of VOSB
  - Limit on who holds licenses within business
  - Limit on external employment
- Burden estimates for PRA are significantly underestimated
  - Estimate of firms applying is too low:

- 76,000 WOSB currently registered in the Central Contractor Registry (CCR). SBA estimates:
      - Less than 22% of those firms will eventually apply for WOSB/EDWOSB certification
      - Only 2.5% (2000 businesses) of currently-registered WOSB will apply in any given year
  - Estimate of burden per respondent is too low (2.5 hours/respondent)
    - Burden estimate is given “after the tax and other business papers for documentation are assembled”
      - Burden estimate excludes “reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information”
      - Collection and delivery of any follow-up information, steps that are clearly required by SBA (see §127.302 (b)), are also excluded from the burden estimate
      - Estimate for filling out the form is low
    - The expected number of WOSB applications exceeds SBA’s resource capacity to process them in a timely manner
- The certification program lacks any layers of review or appeal, and the process does not adequately allow for full consideration of all firms
  - Requests for additional information during review process are delivered by post/mail and the response time frames are too short to allow for adequate responses
  - No provision for electronic delivery of requests for information or replies
- The NPRM does not require SBA to automatically accept other certification programs (such as DOT or State certifications)

*Interpretation and implementation of RAND study results:* The implementation of the rule depends upon the findings of a study by SBA of the industries in which WOSB are underrepresented in federal procurement awards. The summary data, compiled by RAND, were just released, though RAND was not asked to provide final conclusions about which industries should be considered under-represented or substantially under-represented. SBA has not disclosed the final list of industries that will be considered under-represented, and without these conclusions, it is impossible to judge the impact and effectiveness of the rule.

- The RAND study clearly demonstrates that under-representation of WOSB is evident in the vast majority of industries studied. Under-representation estimates are highly sensitive to the dataset and analysis used.
  - Industries found to be under-represented or substantially under-represented in at least one analysis under the RAND study should be included on the list of industries eligible for set-asides
- SBA must make the interpretation of the results public and allow for comment within the rulemaking process; and allow for protest of the findings in certain circumstances.