



January 28, 2010

Mr. Joseph Loddo
Associate Administrator
Office of Business Development
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

**Re: Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations
Fed. Reg. Volume 74, Number 235 (October 28, 2009)
RIN 3245-AF53
13 CFR Parts 121 and 124
SBA-2009-0019-0004, Filed 12-09-09; 8:45 AM**

Dear Mr. Loddo:

Women Impacting Public Policy (WIPP), a national bi-partisan public policy organization representing well over a half million women and minorities in business including 49 organizations that partner with us, is responding to the Small Business Administration's (SBA) proposed rule, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations (74 FR 55694)."

WIPP would like to put forth some principles rather than specifically respond to all of the technical aspects of the proposed regulations. For example, we do not feel we have a consensus responding to a number of issues because government contractors have varying experiences with respect to mentor-protégé relationships, joint ventures and income requirements. We believe that SBA, through public hearings and additional comments, will be well equipped to make decisions on how to better serve the participants in the 8(a) program.

Principle One. Participation in the 8(a) Program Should Be Open to All Women

Participation in the 8(a) program is prohibitive to women who are not minorities, due to the impossible standard set for applicants to prove socio-economic disadvantage by the SBA.

Although there have been endless findings of discrimination against women in the business world and in society in general, this program has such stringent requirements on proving socio and economic discrimination for women who are not minorities. It has reached a level of proof that borders on absurdity. Women are required to contact colleagues of 20 years ago and ask for verification of a discriminatory phrase or action. The burden of proof required by SBA's legal team and consequently those who certify the applications is unreasonable. Countless hours and financial resources are wasted by women owned businesses every year who apply to the program, only to be rejected even though they meet the economically disadvantaged test and have gone to great lengths to show social disadvantage. As we read the original law, the program is a business

development program not exclusive to minority businesses. If SBA does not believe women belong in the program, it should put in place a women's procurement program that would afford the same opportunities and competitive advantages, such as sole sourcing to women owned small companies.

Principle Two. Current Income Requirements are Outdated

Raising the net worth threshold is essential to ensuring the success of the program participants. Since this standard has not been adjusted since 1989, an adjustment is long overdue. Severely limiting net worth only ensures that companies who enter the program are likely to fail. Of particular interest to women business owners is the question of whether a spouse's income should be considered, even though the spouse is not directly involved in the business. We are dismayed that this continues to be an SBA practice. We believe the notion that women business owners are dependent on their spouses' income and their involvement in the business is outdated and an insult. WIPP believes a spouse's financial information should be submitted only where the spouse is an officer or employee of the company or is lending funds to the company.

We also support the proposed exemption of retirement funds as a calculation of net worth. WIPP supports this change, as retirement accounts are not commonly treated as assets prior to the age of retirement. In our opinion, the ability of the individual to save for retirement should not disqualify a participant from the program.

WIPP believes that a true measure of a business owner's economic disadvantage should be based upon consideration of the firm's geographic location, industry, and income, as well as the size of their competitors. While a straight line numerical figure is easier to understand, it may not be the most accurate indicator of economic status. If the proposed change is adopted, SBA should establish a practice of revisiting the numerical figure annually.

Principle Three – Rather Than Promulgating More Restrictive Regulations, SBA Should Strengthen Its Enforcement

While we certainly agree with SBA's stated goals of ensuring the 8(a) program is not subject to fraud, i.e. large companies masquerading as small companies, 8(a) companies acting as fronts or pass-throughs, and companies receiving 8(a) status that are not truly economically and socially disadvantaged, we believe that adding additional requirements on the 8(a) program will result in unduly restricting the program's ability to be successful. Instead, we believe better enforcement by the agency will achieve the objective of eliminating fraud and misuse of the program. Changes that try to regulate where the company's disadvantaged manager resides, and how many hours he/she spends at the corporate office is not in tune with today's workforce. Due to technology, the workforce today is no longer centrally based in the home office. Many small businesses choose to locate key staff at major buying centers rather than at the corporate offices. We believe the SBA is capable of determining the issue of control without implementing additional requirements on the 8(a) companies.

In that same vein, we believe that a lifetime ban on immediate family members' abilities to obtain 8(a) certification even after many years after the first 8(a) firm has graduated should not be an across the board rule. WIPP supports the proposed waiver process, done on a case-by-case basis. Since the District SBA Office works closely with the 8(a) company, it seems to us that it would be possible to identify an abuse of this rule at that level. With respect to enhanced

enforcement, we support giving the Office of Inspector General (OIG) the authority to ask for a formal size determination.

Principle Four. Expand Mentor-Protégé Programs

Mentor-Protégé programs are helpful to small business and should be expanded not limited. With only 3.4% of government contracts awarded to women owned businesses, we see no reason to limit these programs. In fact, we do not believe that mentor-protégé programs should be limited to the 8(a) program. It should be open to all small businesses. Additionally, WIPP encourages the SBA to review other agency mentor-protégé programs under §121.903 in a way that provides incentives for large businesses to form joint ventures with small businesses and for potential mentors to participate in agency mentor-protégé programs. We support the inclusion of non-profits as mentors, and the ability for small businesses to have up to three mentors.

WIPP does not believe that limiting a mentor-protégé agreement if the protégé is in the last year of its 8(a) program is a good idea. Our members tell us that the last two or three years of their 8(a) program are their most productive and business development is at its peak during those years.

We would note that our members have expressed frustration at the pace of approval of mentor-protégé relationships by SBA's District offices. Mentor-Protégé programs should be structured to give the maximum flexibility to the participating companies in an expeditious manner. WIPP members have expressed great frustration at the length of time SBA takes to approve an agreement. The current process of District approval, layered with Headquarters approval, makes the process cumbersome. It can result in the loss of an opportunity of a small business with an agency because the agency simply could not wait.

Principle Five. Encourage Joint Ventures

Given the ever-increasing size of government contracts and the considerable disadvantage small companies' face in federal contracting, WIPP believes the SBA should implement changes that encourage the formation of joint ventures. Since forming joint ventures require a considerable expenditure of resources, we believe the program should reward those companies who have made the effort to win larger contracts, therefore improving the ability of small businesses to compete in the federal marketplace. Limiting joint ventures to 8(a) companies seems to run counter to the goal of encouraging the formation of alliances with broader capabilities.

WIPP believes that SBA should evaluate joint ventures to ensure that the percentage of work and the distribution of profits are fairly distributed, but does not believe it is possible to assign a fixed percentage to the joint ventures, such as the 40% suggested. Given the variation of size and type of project, we suggest SBA adopt a flexible approach with regard to its approval of joint ventures.

Principle Six. In Order for 8(a) Firms to Grow, Industry Specific Regulations Must Be Flexible

The proposed rule would amend § 124.102(a) to require that a firm remain small for its primary NAICS code during its term of participation in the 8(a) BD program, and correspondingly would revise § 124.302 to permit the SBA to graduate a Participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years.

WIPP is opposed to this proposed change because it may result in SBA removing firms from the 8(a) program before the firms have received the full benefits of the program. WIPP does not agree that a firm that has grown to be other than small in its primary NAICS code can be regarded as fully achieving all of its goals and objectives. Many 8(a) small businesses need to develop competencies in more than one NAICS code area to be able to compete outside the 8(a) program. WIPP does not understand SBA's logic that it would be unfair to early graduate a firm where it has had one very successful program year but apparently would be fair to early graduate a firm where it has had two very successful program years. Revenue alone does not mean that an 8(a) firm has acquired all of the skills and know-how to be successful outside the 8(a) program.

In addition, WIPP supports the proposed change that would amend the definition of primary industry classification to recognize that a Participant may change its primary industry classification over time where it can demonstrate that the majority of its revenues during a two-year period have evolved from its former primary NAICS code to another. WIPP also supports raising the dollar threshold for 8(a) contracts from \$5 million to \$5.5 million for manufacturing contracts and from \$3 million to \$3.5 million for other contracts.

Conclusion

In conclusion, WIPP represents a wide spectrum of business owners in terms of revenues, ethnicity, and industry sectors. Our members are seeking changes to the 8(a) program which will result in a less cumbersome and more effective business development program. We believe this program, if properly structured, can be an effective tool to assist small businesses in winning government contracts. At the present time, the program does not include women who could benefit from this program because of the tough standards SBA has set with respect to proving socio and economic disadvantage. We urge SBA to review its 8(a) program, keeping in mind the fact that the federal government has never met its contracting goal for women owned businesses. We believe the SBA is dedicated to improving the contracting process for small businesses and our members stand ready to offer assistance.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Kasoff". The signature is written in a cursive, flowing style.

Barbara Kasoff, President and CEO
Women Impacting Public Policy