



May 3, 2010

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

**Re: Women-Owned Small Business Federal Contract Program;
Proposed Rule
Fed. Reg. Volume 75, Number 42 (March 4, 2010)
RIN 3245-AG06
13 CFR Parts 121, 127, and 134
SBA-2010-0001-0001, Filed 03-04-10**

Dear Mr. Loddo,

Women Impacting Public Policy (WIPP) and its partner organizations are responding to the Small Business Administration's (SBA) proposed rule, Women-Owned Small Business Federal Contract Program (75 FR 10030). WIPP is a bi-partisan public policy organization that represents over half a million women and minorities in business including 49 organizations that partner with it.

For eleven years, women business owners have anxiously awaited the creation of a women's federal contracting program. This delay has caused billions of dollars in lost contract opportunities for women-owned businesses. In the proposed rule, the SBA cites a statistic well known to women business owners - in 2002 there were 6.5 million women-owned firms in the United States, yet they only received 2.9% of all federal contract awards in FY2002, and in FY2008 they received only 3.4% of all federal contract awards. The federal government has never met its contracting goal of 5% with respect to women-owned businesses, and we believe that the women's procurement program as proposed will finally provide a mechanism by which contracting officers can increase contracting opportunities for women. We are greatly encouraged that the SBA has revisited this issue and has made significant improvements since its last attempt at creating this program. We urge the SBA to enact this program without delay.

I). We are extremely pleased that the SBA has identified eighty-three industries that will be eligible under the proposed women's procurement program, but urge expeditious review of the 2002 data.

WIPP is pleased that the SBA has revisited this issue. We are relieved to see that the SBA has changed its approach when identifying industries eligible to participate in the women's procurement program. In the previous attempt at creating this program, the SBA chose the most restrictive approach identified in the RAND study to determine "underrepresentation" of women-owned small businesses. This led to a proposed program that identified only four (4) industries that were eligible

for contracting assistance. WIPP vigorously objected to this program, and implored the SBA to revise their approach on this issue. By choosing the more expansive approach, the number of industries eligible for the program grew from four (4) to eighty-three (83). We believe the change in approach shows that the SBA is committed to creating a meaningful women's procurement program.. While we do not want to jeopardize the program in any way, we encourage the SBA to be flexible when considering industries that are not deemed “underrepresented.” If there is additional data to show that an industry is “underrepresented,” the SBA should consider such data.

II). The data that was used to identify industries where women-owned small businesses are “underrepresented” is outdated. There should be a flexible mechanism in place that periodically re-examines industries to determine “underrepresentation.”

Despite the age of the data, WIPP believes that the scientific methodologies employed by the RAND study identify industries where women are “underrepresented.” However, we urge the SBA to take notice that the data set that was used to make those calculations is five (5) to nine (9) years old. For example, the number of women business owners registered in the Central Contractor Registration (CCR) in 2007 was 55,000. Today, the number of registered women-owned businesses exceeds 80,000. In addition, the business environment for federal procurement has undergone dramatic changes since 2007, as is especially evident in light of the current economic downturn.

WIPP suggests that a mechanism should be put in place to periodically update its data set and consequently trigger a review of industries included in the program. It seems to us that the government should be able to assemble this data, given that government contracts are now listed in USAspending.gov. In addition, small business offices located in the federal agencies (OSDBUs) already collect data on the small business contract awards in their respective agencies. Since extensive data is available electronically on federal contracting, we urge the SBA to take full advantage of the government’s ability to collect contracting data.

WIPP supports the use of the CCR data set over the Small Business Office (SBO) data set. The CCR data set is more comprehensive and complete. Additionally, WIPP believes that using both the “dollars approach” and the “numbers approach” better identifies industries where women are “underrepresented.” We also believe that industries identified as “underrepresented” in one approach, and not in the other approach, should nonetheless be counted as “underrepresented.” Additional rules for such situations are unnecessary.

For industries where it appears that women are not “underrepresented,” we believe that the SBA should be flexible when re-examining the extent of “underrepresentation” of women-owned small businesses. WIPP is concerned about “fronts” being used in the calculation, therefore making a category seem “overrepresented” by women-owners, when they in fact are not. To prevent “fronts” from being used in the calculations, we encourage the SBA to dedicate additional resources towards the enforcement of this rule through practices used in enforcement of other socio-economic programs, such as site visits. This will ensure that the results of any future calculation are accurate and, therefore, enhance the integrity of the program.

III). WIPP strongly supports the SBA’s decision to eliminate the requirement that the agency must make an additional finding of discrimination.

This was an overly restrictive standard that placed an unnecessary burden on businesses who wanted to participate in the women’s procurement program. WIPP believes that not only was this overly restrictive, but it was also designed to thwart implementation of the program. We are pleased to see that the SBA has eliminated this requirement.

IV). WIPP believes that the threshold guidelines for calculating “economic disadvantage” are outdated, and need to be re-examined. WIPP does not support examining the spouse’s income and access to capital when considering economic disadvantage when the spouse is not involved with the business.

Raising the limits for net worth, assets, and income threshold is essential to ensuring the success of the businesses participating in the program. Since these standards have not been adjusted since 1989, an adjustment is long overdue. WIPP believes that the geographic location of an owner should also be taken into consideration when determining “economic disadvantage.”

WIPP is dismayed at the continuing practice of assessing a spouse's income and access to capital when considering the economic status of a women-business owner, even when the spouse is not directly involved in the business. We believe that the notion that women business owners are dependent upon their spouse's income and their involvement in the business is outdated and insulting. WIPP believes a spouse’s financial information should be submitted only when the spouse is an officer or employee of the company or is lending funds to the company.

WIPP supports the exclusion of community property unless it is in both spouses' names. The property should be attributed at 50% value unless there is evidence that the portion is greater or smaller. WIPP also supports the exclusion of income from an “S” corporation that is reinvested in a firm or is used to pay taxes arising from the normal course of operations. This ensures that “S” and “C” corporations are treated equally. The requirement that the owner is required to clearly demonstrate that the taxes were paid and/or reinvested within twelve months of the distribution of income is reasonable, and will not unduly burden the business owner.

V). WIPP supports flexibility in “economic disadvantage” determinations.

WIPP supports the ability of businesses to rebut the presumption of a lack of economic disadvantage if a woman business owner can show that the income was unusual and is unlikely to occur again. Business owners should not be disqualified from participating in the women’s procurement program due to economic windfalls that are unexpected and uncontrollable. WIPP also supports a waiver for the requirement of economic disadvantage if the industry is “substantially underrepresented.”

We support the proposed exemption of retirement funds as a calculation of net worth. 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 "underrepresented" segment of the program. The proposed test for retirement funds, that funds

cannot be currently withdrawn from the account without incurring significant penalties, does protect against opportunity for abuse. We believe that it will not be unduly burdensome for businesses to provide information about terms and conditions of the account.

Carefully examining asset transfers to immediate family members within two years of the transfer adequately protects against participation from businesses that are not “economically disadvantaged.” These transfers merit extra attention and justification, especially if it renders the woman business owner as “economically disadvantaged” after such transfers. Transfers that are made to immediate family members for support, such as medical expenses or education, or in recognition for a special occasion, are valid transfers, and should not be attributed to the calculations for economic disadvantage of the woman business owner.

VI). WIPP supports the 51% ownership and active management requirement that the business be owned and controlled by women.

Women business owners should have unconditional and direct ownership, unencumbered by any kind of conditions or agreements. A pledge or encumbrance of stock, which frequently occur in the business realm, should not affect the unconditional nature of the woman's ownership. The SBA should pay close attention to these instances if the terms of the pledge or encumbrance do not follow normal commercial practices.

WIPP supports the requirement that the business must be 51% or more owned by one or more women. WIPP also supports allowing the ownership requirement to be satisfied if the ownership is through a living trust that is revocable, and the woman is the grantor, trustee, and sole beneficiary. We believe that for corporations, unexercised stock options of the women should be disregarded, while unexercised options held by all others will be treated as exercised. We also support excluding businesses that are owned by other business entities, regardless of whether the entity satisfies the 51% or more ownership requirement.

WIPP also supports the requirements showing that the one or more women are making the long term decisions, in addition to the day-to-day management and administration of business operations. We support the requirement that women cannot engage in outside employment that prevents them from devoting sufficient time and attention to the daily affairs of the business. We also support requiring the majority of voting directors through actual numbers or weighted voting. WIPP appreciates the fact that women owners do not need the technical expertise or possess the required license in order for the business to be owned and controlled by women. All that should be required is that the woman/women have the managerial skills necessary to run the business.

VII). WIPP supports the suggested methods of certification.

WIPP supports the two methods of certification proposed in the rule - self-certification and 3rd party certification. We would strongly oppose the creation of a new SBA certification, such as the one employed by the 8(a) program. We also disagree with the SBA's characterization that the costs associated with compliance and verification regarding small business status certification and protest of small business status will be minimal. We strongly encourage additional SBA resources dedicated to enforcement of eligibility. Unfortunately, other socio-economic programs have been plagued with misrepresentation of ownership.

We agree that the contracting officer should be permitted to accept a business certification showing woman owned status if the business supplies all of the necessary documents, no protest has been filed, and there is no credible information questioning the business' eligibility.

We support the creation of a document repository that saves businesses the cost and time of recertifying their status with every procurement. We believe that it would be too onerous to provide all documentation to the contracting officer at the time of the each procurement award. If a repository is not established by the time the program is in place, it should be permissible to submit documents directly to contracting officers prior to each award.

With respect to showing economic disadvantage, we believe an 8(a) certification should be accepted by the SBA as proof of economic disadvantage.

VIII). WIPP supports the eligibility examination and status protest as a means of preventing fraud and abuse in the women's procurement program.

While we support vigorous enforcement, we are also cognizant of the fact that misuse of this mechanism could be a tool to limit women-owned businesses from competing. The process should mirror the other small business programs to promote consistency among the various programs. The eligibility examination and status protest should only be used if the contracting officer has credible information calling into question the business' eligibility, or if the business fails to provide documents to verify its eligibility. Interested parties should be able to submit a protest to a successful offeror on a contract if the interested party has credible information calling into question the offeror's eligibility. We strongly disagree with the requirement that a spouse must submit a copy of their tax return, even if they are not involved in the business.

We also disagree with the ability of the contracting officer to continue a contract even if a business has been found to be ineligible. If a business is found to be ineligible, the contracting officer should terminate that contract at the soonest opportune time.

IX). WIPP supports the creation of joint venture.

Given the ever-increasing size of government contracts and the considerable disadvantage small companies' face in federal contracting, WIPP believes that the SBA is correct to include joint ventures in the women's procurement program. WIPP believes that the SBA should evaluate joint ventures to ensure that the percentage of work and the distribution of profits are fair. We do not believe that it is possible to assign a fixed percentage to the joint ventures, such as the suggested 51%. Given the variation of sizes and types of projects, we suggest the SBA adopt a flexible approach in regard to its approval of joint ventures.

Summary

We applaud the SBA's proposed rule and believe it will serve as a powerful mechanism to increase federal contracts to women-owned businesses. Women-owned businesses are a powerful economic force, contributing \$2.86 trillion dollars to the U.S. economy, and employing 16 % of U.S. workforce. This program, when implemented, will result in spurring growth in this important economic sector.

Sincerely,



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