

July 17, 2006

By Electronic Mail

Linda Waters
Procurement Analyst
Office of Federal Contract Assistance for Women Business Owners

U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Electronic Address: <http://www.regulations.gov>

Re: RIN 3245-AE65 proposed rule. Women-Owned Small Business Federal Contract Assistance Program.

Dear Ms. Waters:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) is pleased to submit the following comments on the SBA's proposed rule to add a new part to implement the Women-Owned Small Business Federal Contract Assistance Program. The proposed rule would implement Section 811 of the Small Business Reauthorization Act of 2000 that authorizes contracting officers to restrict competition to eligible Women-Owned Small Businesses (WOSB) for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement.

Office of Advocacy

Advocacy was established pursuant to Public Law 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), [\(1\)](#) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), [\(2\)](#) gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272, [\(3\)](#) which requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a

substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

Background

As indicated above, the proposed rule would implement Section 811 of the Public Law 106-554, The Small Business Reauthorization Act of 2000, that requires the Administrator of SBA to implement the Women-Owned Small Business Federal Contract Assistance Program. Section 811 authorizes contracting officers to restrict competition to eligible women-owned small businesses for certain federal contracts.

The proposed rule would create a formal certification process for women-owned small businesses and the certification would be valid for a three-year period. The proposed rule would allow only certified women-owned small businesses to be eligible for the restricted competition. The proposed rule would also certify certain eligible women-owned small businesses as economically disadvantaged for the purpose of being able to receive contracts in the restricted competition program. The objective of the proposed rule is to provide contracting officers with another tool to assist the achievement of the statutory annual 5 percent women-owned small business goal.

Regulatory Flexibility Act Determination

SBA has stated that the proposed rule will "have a significant economic impact on a substantial number of small entities." Therefore, the agency has prepared and published for public comment an Initial Regulatory Flexibility Analysis (IRFA) in accordance with the RFA. Advocacy commends SBA for preparing the IRFA and recommends that the agency revise and update the analysis based on this and other public comments it receives, particularly with respect to the number of small businesses that will be affected, the projected costs of the proposed rule, and less costly alternatives that still meet the agency's statutory objectives.

Recommended Improvements to SBA's Analysis

Advocacy regularly interacts with small business representatives to discuss issues of concern. This rule was identified as one that will impact women-owned small businesses and the small business community across the entire federal acquisition sector.

The following comments are reflective of some of the issues that women-owned small business representatives have raised with the Office of Advocacy.

1. SBA has provided an IRFA with this regulation in compliance with the RFA. However, a study that will more thoroughly analyze how WOSBs fare in the federal

acquisition sector is ongoing. Therefore, Advocacy suggests that SBA revise the IRFA when the study is completed. [\(4\)](#)

2. The IRFA estimates the cost of compliance with this regulation to be about \$375.00 per applicant. SBA's cost of compliance estimate does not consider ongoing costs related to section 127.600 through 127.603 of SBA's regulations that involve a protest of the status of the WOSB or EDWOSB. Advocacy would suggest that SBA explore the costs of a protest challenge under 127.600 or, the costs of an examination by SBA under 127.440 and integrate these estimates in the economic analysis contained in the final rule.

Conclusion

Again, we appreciate the opportunity to comment on this proposed rule and would be happy to assist you in any way we can. Please feel free to contact me or Major Clark at (202) 205-7150 (or major.clark@sba.gov) if you have any questions or require additional information.

Sincerely,

/s/

Thomas M. Sullivan
Chief Counsel for Advocacy

/s/

Major L. Clark
Assistant Chief Counsel for Advocacy

CC: Steven G. Aitkin, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

ENDNOTES

1. 5 U.S.C. § 601 et seq.
2. Pub. L. 107-295, November 25, 2002, 116 Stat. 2064.
3. Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 Fed. Reg. 53461) (August 16, 2002).

4. Section 811 of Public Law 106-55 requires SBA to conduct a study to determine the industries in which WOSBs are underrepresented and substantially underrepresented in federal contracts. SBA has entered into a contract for this study.