



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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OFFICE OF THE ADMINISTRATOR

November 14, 2007

The Honorable John Kerry
Chairman
Committee on Small Business and Entrepreneurship
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter regarding the U.S. Small Business Administration's (SBA) implementation of the Section 8(m) of the Small Business Act, Women-Owned Small Business (WOSB) Federal Contract Assistance.

As you point out in your letter, Congress authorized contract assistance procedures for WOSB in 2000 as part of the SBA Reauthorization Act (Public Law 106-554). This law requires SBA to identify industries in which WOSBs are underrepresented and substantially underrepresented in Federal contracting, a complex and difficult task. Within a year of enactment of the legislation, SBA completed a draft internal disparity study. However, after extensive review within the Agency, a decision was made to have the National Academy of Sciences (NAS) conduct an independent review of the draft. NAS completed its review in 2005, and recommended substantial changes to SBA's methodology that should be used to identify industries in which WOSBs are underrepresented. Therefore, in 2006, SBA contracted with the RAND Corporation, a preeminent contractor in social sciences, to perform a new analysis in accordance with NAS recommendations. RAND completed its analysis and issued a final report in April 2007.

Please note that independent of the required disparity study process, SBA moved forward with developing regulations to implement Section 8(m). Specifically, after receiving public comments, prepared a draft Final Rule to establish certification requirements, protest procedures and address other administrative issues. This draft regulation was then circulated through interagency review. SBA ultimately received public and interagency recommendations for adoption, which significantly modified the draft Final Rule and warrants further public comment and consideration. One of the recommendations was to include the results of the RAND study of industries eligible for participation in a set-aside program.

As such, we have submitted to OMB a new draft Proposed Rule that is comprehensive, implements the RAND study results and will provide the public an opportunity to review the eligible industries and provide their feedback.

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Because of the manner of the rulemaking process, I cannot give a precise timeline for implementation of the program. However, I stand by our commitment to implement the program with all deliberate haste. In addition, even if SBA had moved forward with a Final Rule on WOSB certification and protest procedures, and simultaneously proposed a rule to the RAND study results, any potential procedures could not be implemented until the RAND report rule had been finalized. Therefore, SBA's action of combining the RAND report with a re-proposed rule on WOSB certification and protest procedures not only obviates the need for separate rulemakings but significantly will not delay the implementation of the WOSB procedures. I hope you will agree that we have made substantial progress since the beginning of the year.

Under the Administrative Procedures Act, the standard process for a Proposed Rule allows a minimum of 90 days for review of the Rule by affected agencies. Following that review period, the Proposed Rule is published in the Federal Register and then there is a period of public comment. Of variable length yet to be determined, this time allows interested parties and the public as a whole, the opportunity to comment on the Proposed Rule and in this case, the proposed implementation of Section 8(m).

Following the public comment period, SBA will review the submitted comments and modify the Rule as appropriate to reflect that input. Coinciding with this review, SBA will submit any necessary case to the Federal Acquisition Regulatory Council to incorporate the same rules and procedures into the Federal Acquisition Regulation, which controls execution of contracting activity across the Federal Government. Finally, the affected agencies have a period of approximately 90 days to review the Final Rule and then published in the Federal Register.

An identical letter has been sent to Senator Snowe. Thank you for your continued interest in SBA's programs for small businesses. If you have any questions or comments, please contact me directly.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. C. Preston", with a long horizontal flourish extending to the right.

Steven C. Preston