



News Release

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Q&A ON WOMEN-OWNED SMALL BUSINESS CONTRACTING PROCEDURES

Q. Why did it take so long to implement these procedures given that Congress passed the law authorizing them in 2000?

A. Supreme Court decisions require legislative findings to justify a gender-based preferences program such as the Women-Owned Small Business (WOSB) Contracting Procedures. In general, set-asides and other preference programs are subject to a high degree of Constitutional scrutiny and require careful study and thorough justification. For this set-aside, Congress delegated the complex and controversial responsibility to SBA—we believe a first for a federal agency.

Understanding this hurdle, SBA did attempt timely implementation. The agency completed its initial study in 2001, but during the review process substantial questions were raised, which necessitated an independent review by the National Academy of Sciences. Following the conclusion of this review, SBA contracted with the RAND Corporation, which specializes in government studies, to perform a new analysis, which provides the basis of the proposed rule.

Q. Why are there only four industries?

A. The RAND study began by identifying a multitude of ways to measure underrepresentation—in fact, 28 possible approaches were examined. Using a process of elimination that took into account the recommendations made by RAND, the National Academy of Sciences and the relative merits of each approach, the final methodology was adopted. The result of this rigorous process was that four underrepresented industries were identified.

Q. Which four industries?

A. In the end, the RAND study identified four industries within the NAICS four-digit classification where WOSBs were underrepresented or substantially underrepresented:

- National Security and International Affairs;
- Coating, Engraving, Heat Treating, and Allied Activities;
- Household and Institutional Furniture and Kitchen Cabinet Manufacturing; and,
- Other Motor Vehicle Dealer.

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Q. Why did SBA conclude that the proper measure was dollar value of contracts awarded versus the number the contracts awarded?

A. Federal goals target 5 percent of federal contracting dollars go to WOSBs. The rule—in substance and process—should be consistent with these goals. Congress appropriates federal funding in dollars, the federal budget is divided in dollars, all government contracts are awarded in dollars, and the accounting and auditing processes focus on how these dollars are spent. Dollar amounts can easily be compared across agencies, programs and NAICS codes. Tracking dollar amounts also avoids problems that arise from the contracting nuances of the individual agencies.

Most importantly, Congress, through the Small Business Act, has given direction only in dollars. Section 15(g)(1) is the section in the Act that provides direction on counting small business goals. All of those goals are aimed at achieving a dollar amount (total value) relative to all dollars expended in federal procurement.

Consistent with statutory guidance, SBA measured under-representation using dollars.

Q. Why does the rule implicate Constitutional issues?

A. If the government confers a substantive benefit on a racial group or a gender that it does not offer to others, there has to be a sufficient justification for doing so. The Supreme Court has said that sufficient justification under the Constitution is to remediate past discrimination suffered by these groups. SBA has worked closely with the Department of Justice to consider the Constitutional ramifications.

Q. Given the rule's limited scope, what are you going to do to boost women's share of federal contracting dollars?

A. This proposed rule provides a constitutionally-acceptable means to address the identified underrepresentation. This is progress.

In larger terms, SBA is diligently working to increase the number of WOSBs participating in Federal contracting, and these procedures are one part of a larger effort. Currently, resources for WOSBs include Small Business Development Centers (SBDC), Women's Business Centers (WBC), SCORE, Procurement Technical Access Centers (PTAC), and the Office of Small Disadvantaged Business Utilization (OSBDU) centers. PTACs are under the purview of the Department of Defense, while all agencies have OSBDUs. Within the Office of Small Disadvantaged Business Utilization at the major procuring agencies, there are often women's business advocates.

Furthermore, SBA district offices nationwide continually work to increase women-owned small businesses in federal government contracting through matchmaking events, training and closer collaboration with federal, state and local contracting officials, resource partners and the private sector.

In addition, SBA has implemented significant new initiatives to increase small business access to government contracts, which will be advantageous to WOSBs. In the summer of 2007, a semi-annual Scorecard was instituted to report on federal procuring agencies' progress toward small business contracting goals, including the 5 percent goal for women-owned small businesses.

Over the last several years, WOSBs have been winning an increasingly greater share of federal procurement dollars. Contracts to WOSBs accounted for \$11.6 billion in FY 2006 and 3.4 percent of federal procurement, an increase of \$1.4 billion or 0.2 percent from FY 2005.

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