



# News Release

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### **Myth vs. Fact: SBA and the Women's Set Aside Program**

**Myth:** SBA's proposed women-owned small business (WOSB) set-aside rule raises the bar on women's access to federal contracts.

**Fact:** The rule would not reduce federal contracting opportunities to WOSBs. SBA proposes increasing the categories where set-asides may occur from the current level of zero to four. Further, federal contracts to WOSBs have risen every year of the current Administration, in both dollars and percentage of the whole.

WOSBs will have the same right to compete for federal contracts that they have always had *and* will have increased opportunities to qualify in the categories in which it has been determined they are underrepresented. The proposed rule opens avenues for them to increase their share of federal procurement dollars and help the government reach its goals of awarding five percent of contracts to WOSBs.

**Myth:** SBA chose a narrow method to determine WOSB under representation in federal contracting.

**Fact:** SBA acted appropriately to develop a WOSB contracting program based on a comprehensive study that adheres to the U.S. Constitution.

To ensure the program was statistically valid, SBA contracted with the RAND Corporation to perform an analysis of under representation of WOSBs in federal procurement. This study, following guidance provided by the National Academy of Sciences, identified a number of ways to determine under representation in all 140 contracting categories in which it had sufficient analysis. SBA adopted the methodology based on contracting dollars to WOSBs for a number of reasons:

- Federal goals target five percent of federal contracting dollars go to WOSBs;
- Congress, through the Small Business Act, has given direction on counting small business goals only in dollars (Section 15(g)(1));
- At the end of the day, the dollar amount that a small business receives from government contracts is more significant than the number of contracts it receives. For instance, a small business could receive five contracts worth \$50,000 each for a total of \$250,000. Another small business could receive one contract worth \$1 million. Clearly, the dollar amount is more desirable to a business than the number of contracts.

**Myth:** Under the proposed rule, each federal agency must also find evidence that it discriminated against women-owned businesses in the four industries in which under-representation was determined before it can set aside any contracts. In doing so, SBA applied a strict level of scrutiny to the implementation of a WOSB contracting program.

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**Fact:** For a gender-based, federal contracting set-aside to be constitutional, it must pass muster under the equal protection language of the Fifth Amendment to the U.S. Constitution.

The U.S. Department of Justice advised SBA that legal precedents require government preference programs to satisfy varying levels of scrutiny. For preferences that do not depend on a recipient's race or gender, such as veterans' preferences, the government must only show that there is a "rational basis" for the program.

For preferences based on race, the government must meet a higher standard – "strict," meaning the preference must be "narrowly tailored to serve a compelling government interest."

For preferences based on gender, the government must satisfy "intermediate" or "heightened" scrutiny, which is more rigorous than the "rational-basis" standard but not as stringent as strict scrutiny.

According to the U.S. Department of Justice, mere findings of disparity or under representation are generally not sufficient to establish the constitutionality of a gender-based preference program. Courts are more likely to strike down such programs if the government cannot show genuine and non-hypothetical evidence of discrimination in the economic sphere in which the program will operate.

**Myth: The 8(a) program is a set-aside program. Why is it held to a different standard than the proposed women's regulation?**

**Fact:** The 8(a) program is a business development program and it is not restricted to minorities. The program helps individuals develop their business and provides them with access to government contracting opportunities as one of many business development tools, allowing them to become solid competitors in the marketplace. If a small business can prove that they are socially and economically disadvantaged, they will be admitted regardless of race.

The WOSB set-aside is a contracting program. Section 8(m), which Congress passed and which created the set-aside, is explicitly restricted to industries where WOSBs are underrepresented. Congress mandated that SBA determine under representation, which was accomplished through the RAND study. The 8(m) standard – under representation and substantial under representation – was set by Congress and enacted through statute, and SBA must adhere to the law in establishing a women's set-aside program.

**Myth: The new rule is a flawed implementation of Public Law 106-554 which was passed in 2000 to give federal contracting officers the ability to restrict competition to WOSBs in order to achieve that five percent of all prime contracts go to women-owned businesses whose industries are underrepresented.**

**Fact:** The proposed rule is consistent with Public Law 106-554. Congress directed SBA to determine which industries are characterized by under representation or substantial under representation of WOSBs in federal prime contracts.

SBA contracted with the RAND Corporation to perform this analysis. In the categories identified as underrepresented there is an opportunity for set-asides. It does not limit WOSBs but in fact provides an additional tool to reach five percent. The proposed rule opens avenues for them to increase their share of federal procurement dollars and help the government reach its goal of awarding five percent of contracts to WOSBs.

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**Myth: Women are 52 percent of the population and own 28 percent of American businesses, yet in 2006 – the last year for which we have data – they received only 3.4 percent of federal contract dollars. Clearly, this is a sign of under-representation.**

**Fact:** It is true that women own more than one-fourth of U.S. businesses, but this includes ALL women-owned businesses – small, medium and large. Comparing the number of all women women-owned businesses with the dollar value of contracts only to women-owned small businesses is not a statistically valid comparison.

Furthermore, RAND’s analysis showed that WOSBs who are ready, willing and able to compete for government contracts actually do well in obtaining them. In fact, under the Bush Administration, contracts to WOSBs have significantly increased. Prime contract dollars increased from \$4.6 billion in 2000 to \$11.6 billion in 2006. In 2006, WOSBs received a \$1.5 billion increase in contracts from the previous year, their largest one-year increase ever.

**Myth: This Administration is not advancing opportunities for WOSBs to compete for federal contracts.**

**Fact:** The Administration strongly supports the advancement of WOSBs, and plans to increase efforts to assist WOSBs this year. One of the best ways in which to increase contracting dollars to WOSBs is to increase the number of WOSBs registered in the Central Contracting Registration (CCR) system. As noted above, once WOSBs are in the CCR, they are successful in obtaining contracts. Currently, the CCR contains just 63,000 WOSBs, or 0.8 percent of the 7.7 million estimated businesses that are owned 51 percent or more by women.

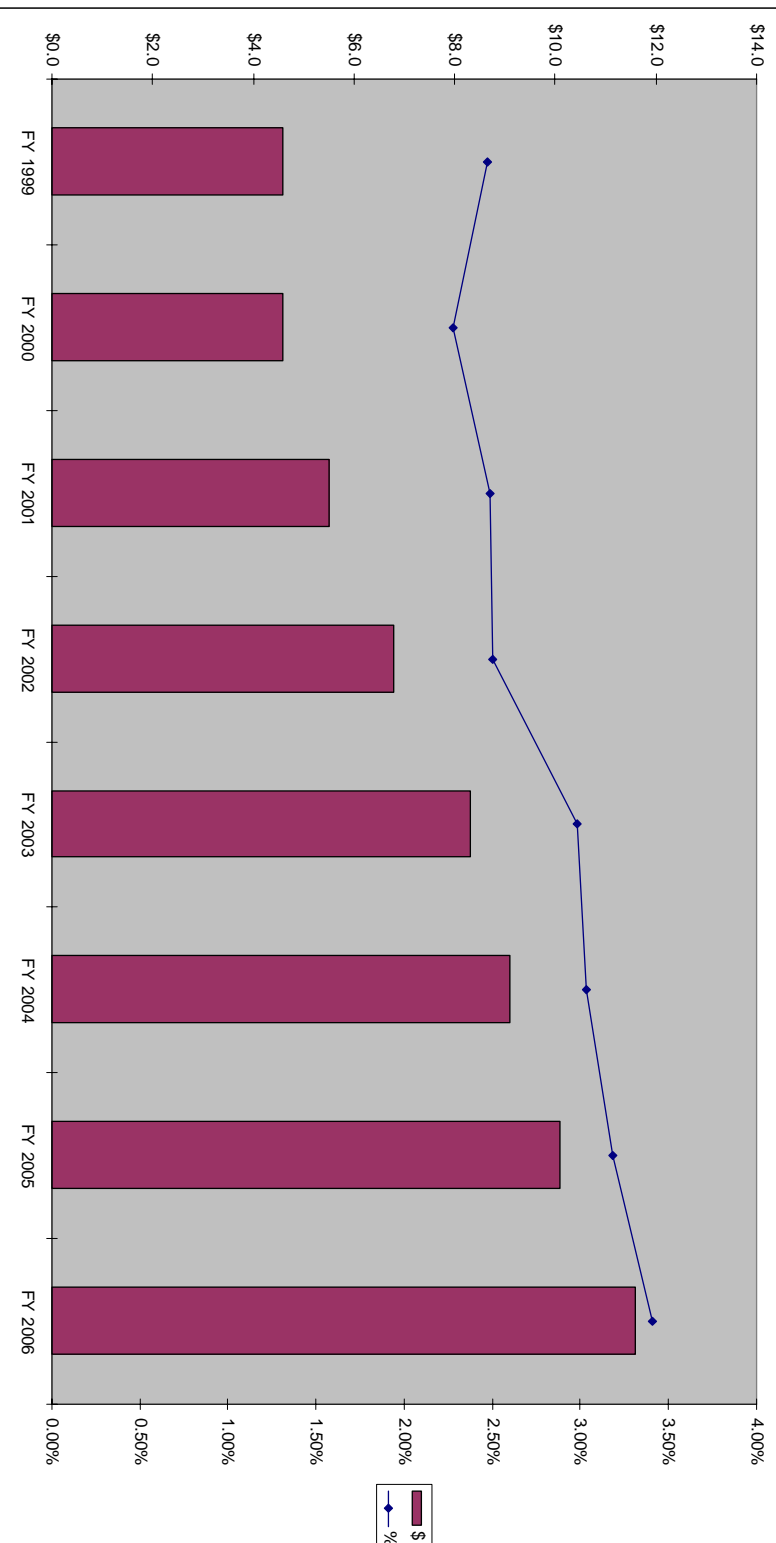
SBA is working hard to help WOSBs identify contracting opportunities and assist them with the registration process. In addition to the existing resources the agency has to help WOSBs secure contracts, the agency plans this year to:

- Increase training to field staff to counsel WOSBs interested in pursuing federal contracts and set goals for district offices on procurement activities. District offices will conduct or actively participate in at least one event with the goal of increasing the registration of women entrepreneurs in the CCR;
- Finalize and publicize an online course on government procurement;
- Reintroduce a newsletter geared toward women entrepreneurs that will include success stories and special features;
- Re-launch a web portal on sba.gov to include links to the CCR, instructions on obtaining a DUNS number, and links to existing resources.

Finally, SBA last year launched the first-ever procurement Scorecard, which tracks the progress of federal agencies in meeting their small business contracting goals, bringing more transparency and accountability to the process.

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## Women-Owned Small Business Procurement



Between FYs 1999 and 2006, women-owned small business' share of federal procurement dollars increased from \$4.6 to \$11.6 billion. This is a 152 percent increase over the period.

On a percentage basis, women-owned small business' share of federal procurement increased from 2.47 to 3.41 percent.