

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127, and 134

The Women-Owned Small Business Federal Contract Assistance Procedures

AGENCY: Small Business Administration.

ACTION: Proposed rule; Request for Comments.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on a data issue involving the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures authorized under Section 8(m) of the Small Business Act. Specifically, SBA is seeking comments on two data sets: the Central Contractor Registration (CCR) data set which was used in the RAND report and the proposed rule for the WOSB Federal Contract Assistance Procedures to determine the representation of WOSBs in Federal procurement in the various industries and a non-public Survey of Business Owners (SBO) data set from the Economic Census, which was not previously used in the RAND report or the proposed rule to determine the representation of WOSBs in Federal procurement in the various industries. This request for comments is intended to stimulate dialogue on available data sets and the comments will be evaluated to determine which data set will provide the soundest basis to identify industries in which WOSBs are underrepresented in Federal procurement.

DATES: The SBA must receive comments on or before (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for

submitting comments.

- Mail, Hand Delivery/Courier: Linda Korbol, Assistant Administrator for Women's Procurement, Office of Government Contracting, Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

All comments will be posted on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the comments to Linda Korbol and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published.

FOR FURTHER INFORMATION CONTACT: Linda Korbol, Assistant Administrator for Women's Procurement, Office of Government Contracting, (202) 205-7341.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2007, the U.S. Small Business Administration (SBA or Agency) issued a proposed rule, in the Federal Register (72 FR 73285), that would implement procedures to increase procurement opportunities for Women-Owned Small Businesses (WOSBs), as authorized under Section 8(m) of the Small Business Act (Act). Today, the SBA has published the Final Rule setting forth these procedures. According to the Final Rule, however, the SBA must designate the industries to be included in the WOSB Procedures by publishing a Notice in the Federal Register and posting a list of the designated industries on its Internet Web site. The SBA has determined that additional comment is needed in order to ensure that the most accurate available data is utilized to

determine underrepresentation by WOSBs in Federal procurement and designate the industries that will be included in the WOSB Procedures.

Section 8(m) of the Act (15 U.S.C. 637(m)) authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in certain industries. The Final Rule authorizes set asides for industries in which WOSBs are determined to be underrepresented or substantially underrepresented in Federal procurement when the procuring agency has determined that the set-aside would satisfy constitutional requirements. Section 8(m) of the Act required SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA with any information that SBA deems necessary to conduct the study. SBA initially completed the required study in September 2001. However, in March 2005, the National Academy of Sciences (NAS) issued an independent evaluation determining that SBA's original study was "fatally flawed." In response to the NAS's findings, SBA issued a solicitation in October 2005 seeking a contractor to perform a revised study in accordance with the NAS report. In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a revised study of the availability and utilization of WOSBs in prime contracts. The RAND report was published in April 2007 and is available to the public at http://www.rand.org/pubs/technical_reports/TR442/.

As the study explains, WOSB representation in the industries is generally described by a "disparity ratio," which is a measure comparing the utilization of WOSBs to their availability in Federal contracting. Utilization is measured by comparing the

presence of WOSBs in Federal contracting to an overall measure of Federal contracting. Availability is measured by comparing the presence of WOSBs among firms available for Federal contracting to an overall measure of available firms.

In the study, RAND computed disparity ratios in twenty-eight different ways (for further information about these approaches see 72 FR 73285, Dec. 27, 2007). All of these approaches used procurement data from the Federal Procurement Data System-Next Generation (FPDS/NG) to compute the utilization component of the disparity ratio. FPDS/NG, which is publicly available at www.fpds.gov, is a Federal government database that provides information about the overall Federal acquisition process and the contracts awarded by the many Federal agencies. FPDS/NG contains information on individual contract actions on prime contracts valued above a certain dollar amount. In the proposed rule, SBA determined the best measure of underrepresentation was using a disparity ratio that measures utilization by computing the contract dollars awarded to WOSBs relative to the total contracts dollars awarded.¹ That determination was the subject of comments on the proposed rule, and additional comment is not sought in this notice.

For the availability component of the disparity ratio, in twenty of the twenty-eight calculations, RAND utilized the Central Contractor Registration (CCR) database to

¹ The statutory procurement goal for small business concerns owned and controlled by women states that: "The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year." 15 U.S.C. § 644(a). Congress authorized the contracting assistance procedures in Section 8(m) as a result of the Federal Government's persistent deficiencies in achieving this goal. Thus, the disparity measure based on contract dollars is consistent with the five percent goal, which is also based on contract dollars.

measure availability (gross receipts for WOSBs relative to gross receipts for all firms) and to define a group of firms that are ready, willing, and able to compete for Federal contracts. CCR is the primary registrant database for the Federal government. Thus, both current and potential Federal government registrants are required to register in CCR, which can be found at www.ccr.gov, in order to be awarded contracts by the Federal agencies. Vendors reporting in CCR must provide information concerning its type of business, relevant North American Industry Classification System (NAICS) codes in which it does business, business address, annual employment, three year average annual business revenue and socio-economic status.

For the remaining eight of the twenty-eight calculations of the availability component of the disparity ratio, RAND utilized data from the publicly available 2002 Survey of Business Owners (SBO) from the five-year Economic Census. The public-use Economic Census data includes aggregate information about business owners' demographic characteristics, type of business, and gross receipts. In the proposed rule, the SBA rejected the disparity measures based on SBO data for three reasons: (1) publicly-available SBO data does not distinguish between WOSBs and women-owned businesses of all sizes, (2) SBO data is gathered every five years and is generally not available for two years after the survey, which impacts its timeliness, and (3) the publicly-available SBO cannot identify industry grouping in more detail than the two-digit NAICS level (the NAS recommended using the most detailed measure possible, specifying either 3- or 4-digit NAICS codes). Finally, the SBO data provide a broader perspective on availability. Because the SBO data set generally considers all firms in the economy, it may overestimate the amount of firms that are clearly "ready, willing, and

able” to perform Federal contracts. CCR and SBO were the only data sources identified in the NAS report and the RAND study with respect to the availability component of the disparity ratio.

As noted above, RAND measured utilization to availability to determine a disparity ratio, where utilization is the contract dollars awarded to WOSBs divided by the contract dollars awarded to all firms in a specific industry, and availability is the revenue of WOSBs divided by the revenue of all firms in that industry. Using the FY05 FPDS/NG data for the utilization component and the October 2006 CCR data for the availability component, RAND identified four industries where WOSBs are underrepresented or substantially underrepresented: NAICS codes 9281--National Security and International Affairs, 3328--Coating, Engraving, Heat Treating, and Allied Activities, 3371-- Household and Institutional Furniture and Kitchen Cabinet Manufacturing, and 4412--Other Motor Vehicle Dealers. These were the eligible industries identified in the proposed rule.

During its review of comments on the proposed rule, SBA reviewed again the CCR data utilized by RAND in its study. Specifically, SBA reviewed the CCR data. As noted above, vendors input information into CCR relating to the firm’s revenues and NAICS codes, which are a method for classifying business establishments. Vendors must supply at least one NAICS code for registration into CCR to be complete, but can supply more than one. Vendors do not input the business’ revenues for each NAICS code listed, or for each NAICS code in which it does business; rather, vendors input total revenues for the firm. Thus, CCR does not provide information concerning the revenue of a firm in each of the NAICS codes, or industries, it sets forth in its CCR registration.

When RAND computed the disparity ratio, however, the total revenues set forth by WOSBs in CCR were used to calculate the total receipts of WOSBs in each NAICS code listed in the CCR profile. Likewise, the revenues set forth by all firms in CCR were used to calculate the total revenue of all firms in each NAICS codes listed in CCR. For a firm reporting more than one NAICS code, the reported revenue was counted in full for each NAICS code reported by the firm in the CCR. This has resulted in firms' total revenue being counted for multiple NAICS codes, overstating the aggregate revenue figures. However, because the disparity ratio defined availability of WOSBs in Federal contracting by measuring the revenue of WOSBs divided by the revenue of all firms in that industry using this CCR data, and because both the WOSB and total revenue figures in a given industry may or may not be equally impacted by this limitation in the CCR data, SBA currently has no evidence whether or not the revenue overstatement affects the availability and disparity ratios in any specific industry.

Although the CCR dataset was publicly available along with the RAND report at http://www.rand.org/pubs/technical_reports/TR442/ during the public comment period on the proposed rule, this CCR dataset limitation was not specifically discussed in the RAND study and SBA did not receive public comments on this issue during the public comment period for the proposed rule.

After this issue was discovered, SBA contacted the Census Bureau to determine the availability of an alternative data set that did not include the revenue overstatements identified in CCR. The Census Bureau provided SBA with a non-public data set for the availability component of the disparity ratio. The data consists of non-public data from the 2002 Survey of Business Owners collected through the 5-year Economic Census for

firms with employees. Although this data set was not used in the RAND report results, it was mentioned in the RAND report as restricted data which would be available to the SBA at a more disaggregated NAICS code level than the public data. This non-public SBO data set does distinguish between WOSBs, as defined by the final rule, and women-owned businesses of all sizes. In addition, the data set is disaggregated to the 4-digit NAICS code level. However, the new SBO data is not without its own limitation. The Census Bureau collected the non-public SBO data on an establishment basis, such that each firm's location is a separate establishment for data collection purposes. Each establishment is assigned to a single 6-digit NAICS code and establishments with more than one NAICS code are classified into their principal NAICS code. Therefore, for establishments that reported revenue in multiple sectors, this could result in an overstatement of the revenue in some NAICS code industries and an understatement in others. SBA currently has no evidence whether or not the revenue overstatement or understatement affects the availability and disparity ratios in any specific industry. As noted earlier, these data also have the limitation that they are from 2002. However, changes to the underlying economy occur relatively gradually, so it is possible to conclude that this data provides an adequate picture of the ownership and relative sizes of firms over the next few years. Also, as noted earlier, the SBO data provide a very broad perspective on availability. SBA limited the analysis to firms with employees to improve the reliability of the estimate of firms that would be genuinely ready, willing and able to perform Federal contracts. However, the availability of both WOSBs and all firms in a sector to perform Federal contracts may still be overstated by these data.

Using the non-public SBO data for the availability component of the disparity ratio and the FY05 FPDS/NG data from RAND study results for the utilization component, thirty-one of the 140 NAICS codes analyzed in the RAND study were identified as underrepresented or substantially underrepresented: 2361 -- Residential Building Construction, 3149 -- Other Textile Product Mills, 3152 - Cut and Sew Apparel Manufacturing, 3231 -- Printing and Related Support Activities, 3259 -- Other Chemical Product and Preparation Manufacturing, 3323 -- Architectural and Structural Metals Manufacturing, 3324 -- Boiler, Tank and Shipping Container Manufacturing, 3328 -- Coating, Engraving, Heat Treating, and Allied Activities, 3369 -- Other Transportation Equipment Manufacturing, 3371 -- Household and Institutional Furniture and Kitchen Cabinet Manufacturing, 4412 -- Other Motor Vehicle Dealers, 4461 -- Health and Personal Care Stores; 4543 -- Direct Selling Establishments, 4841 -- General Freight Trucking, 4931 -- Warehousing and Storage, 5179 -- Other Telecommunications, 5312 -- Offices of Real Estate Agents and Brokers, 5413 -- Architectural, Engineering, and Related Services; 5414 -- Specialized Design Services, 5417 -- Scientific Research and Development Services, 5419 -- Other Professional, Scientific, and Technical Services, 5614 - Business Support Services, 5615 -- Travel Arrangement and Reservation Services, 5619 -- Other Support Services; 5622 - Waste Treatment and Disposal, 5629 -- Remediation and Other Waste Management Services, 6114 -- Business Schools and Computer and Management Training, 6115 -- Technical and Trade Schools, 6116 -- Other Schools and Instruction; 6214 - Outpatient Care Centers, 8112 -- Electronic and Precision Equipment Repair and Maintenance, 8129 -- Other Personal Services. The Census Bureau report and associated data are available at

www.sba.gov/tools/resourcelibrary/lawsandregulations/index.html. In order to protect firm confidentiality, revenues at the 4-digit NAICS level are disclosed only in ranges.

Request for Comments

In light of the foregoing, input from the public is required prior to using a data set to identify the eligible industries. In providing comments, please specify which of the following issues you are addressing (e.g., “Response to issue 1.”) Please be industry specific. Comments should be as precise as possible. SBA is specifically requesting comments addressing the following: (1) the impact, if any, the limitation in the CCR data has on the disparity ratio in specific industries; (2) the impact, if any, the limitation in the non-public SBO data has on the disparity ratio in specific industries; (3) other data that can be utilized to measure the availability of WOSBs (i.e., gross receipts for WOSBs relative to gross receipts for all firms) in the various NAICS codes at the 4-digit level; (4) the availability of this other data, advantages and disadvantages of the use of such data, and the reliability of such data (responses should be as specific as possible about the improvements other data sets could offer over the CCR or SBO data, judging by the standards laid out in the RAND report and NAS study); (5) reasons, for the purpose of calculating WOSB revenue and all firms’ revenue in a given industry, the limitation in the CCR data may outweigh the limitation in the non-public SBO data that is described in this Notice; and (6) whether, for the availability component of the disparity ratio, SBA should use the CCR data from the RAND report, the public SBO data from the RAND

report, the non-public SBO data described in this Notice, or some other specified data set.

(Authority: 15 U.S.C. § 637(m))

Dated: September 26, 2008

Calvin Jenkins,
Deputy Associate Administrator for Government Contracting and Business Development.

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