



May 3, 2010

Mr. Dean Koppel  
Assistant Director  
Office of Policy and Research  
Office of Government Contracting  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

RE: Women-Owned Small Business Federal Contract Program;  
75 Fed. Reg. 10030, March 4, 2010

Dear Mr. Koppel:

The National Association of Women Business Owners (NAWBO) submits the following comments in response to the proposed final rule published on March 4, 2010 for the Women-Owned Small Business Federal Contract Program.

Founded in 1975, NAWBO is the largest and only dues-based association that represents the interest of women entrepreneurs in all industries. With 80 NAWBO chapters across the United States and more than 7000 members, NAWBO is the voice of women business entrepreneurs in America. As NAWBO celebrates its 35th anniversary, it is particularly proud of its tradition of impacting public policy and strengthening opportunities for women entrepreneurs as demonstrated by its leadership role in the passage of the groundbreaking Women's Entrepreneurship Act, also known as HR 5050, its role in the establishment of the Center for Women's Business Research and its ongoing efforts to promote programs and policies that propel women to greater spheres of influence and success. Member surveys show that Federal procurement opportunities continue to be a top issue for our members, and, accordingly, NAWBO will continue to advocate on behalf of our members in this area.

In 2000, Congress recognized that the federal government had not made meaningful progress toward meeting the goal, established in 1994, of awarding five percent of all federal contracts to women-owned small businesses (WOSBs). Congress determined that, either the government was not doing an adequate job of reaching out to women-owned businesses, or there remained active and discriminatory barriers preventing women-owned businesses from competing successfully for federal contracts. To remedy the continuing discrimination and to ensure that women-owned businesses could compete for their fair share of the federal government's business, Congress authorized a special set aside program for WOSBs: Public Law 106-554 (Section 8(m) of the Small Business Act, 15 U.S.C. Section 637(m)), also known as the Women's Equity in Contracting Act.

In 2007, as the program remained unimplemented by the SBA and women-owned businesses were losing approximately \$5 billion annually (the difference between the contracts awarded to women-owned businesses and the five percent goal), the SBA proposed a rule that, if enacted, would have all but excluded WOSBs from federal procurement. Unfortunately, the difference between the current performance (3.4%) and the goal (5%) has increased to approximately \$6.9 billion.

Additional contracts in the amount represented by this gap would not only significantly support the growth of women-owned businesses but also promote much-needed job creation. The Bureau of Labor Statistics projects that by 2018, approximately 5.5 million new jobs—one third of the total new jobs—will be created by WOSBs. New federal contracting opportunities will allow WOSBs to support this growth in employment.

*Given the potential of a well-thought out and implemented WOSB federal contracting program to grow both WOSBs AND the U.S. economy, NAWBO applauds the withdrawal of the proposed 2007 rule and is encouraged by the progress made over the last year resulting in the 2010 proposed rule that is the subject of these comments.*

The SBA's March 4, 2010 proposed rule ***is a significant improvement over the rule proposed in 2007 and one that NAWBO can support, albeit with some reservations and additional recommendations.***

### **Significant Improvements in Eligibility**

First and foremost, we strongly concur with the Agency's current interpretation of the RAND study of availability and utilization of women-owned businesses. In 2007, reading the study narrowly, the SBA identified only four NAICS codes in which the under-representation and underutilization of women-owned businesses was sufficient to warrant the restricted competition program. Today, 83 NAICS codes, the largest number proposed by the RAND study, have been recommended.<sup>1</sup> While NAWBO fully supports the expansion of industry category eligibility, we also recommend continued periodic assessment and updates to the disparity study to ensure that additional industries where women-owned businesses are underrepresented and underutilized are identified and adjustments made, as appropriate.

Likewise, we fully endorse the elimination of the requirement that each federal agency make findings that it had engaged in discrimination against women-owned businesses before it could participate in the set aside program. As noted in comments submitted in connection with the previous proposed rule, we believe such a requirement to have been unconstitutional, excessive, and aimed at gutting the program altogether.

NAWBO also applauds the use of both number of contracts awarded *and* dollar volume of contracts to determine under-representation in the new Proposed Rule.

### **Certification Provisions Require Additional Refinement**

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<sup>1</sup> While the number of NAICS codes was significantly expanded, a remaining eligibility hurdle may limit WOSB participation in the program. Of the 83 NAICS codes identified in the new proposed rule, WOSBs are identified as "substantially underrepresented" in 38 and "underrepresented" in 45. While all WOSBs in "substantially underrepresented" industries can participate in the program, WOSBs in "underrepresented" industries must prove that they are "economically disadvantaged" as defined by this program, notwithstanding that two other SBA programs define "economic disadvantage": the SBA 8(a) program and the USDOT DBE program.

Although NAWBO supports and is eager to see the rule implemented, we continue to have concerns related to certification mechanisms. Specifically, we continue to be concerned about the prospect of yet another layer of certification in order for women to participate in the program. Under the current proposed rule, even women-owned businesses certified under exacting standards pursuant to the 8(a) program or by a third party must submit additional eligibility documentation and annual reporting.

There should be no newly created certification process exclusively for this program for already certified businesses. Instead the SBA should recognize existing certifications held by women-owned businesses pursuant to legitimate federal, state, local and private certification programs (i.e., DOT's DBE program, SBA's 8(a) or DVBE program, and other legitimate agencies or private certification companies such as Women's Business Enterprise National Council and/or the California PUC Clearinghouse). Recognizing existing certifications would streamline the certification process and meet regulatory flexibility requirements while assuring the necessary level of accountability for women-owned businesses seeking to take advantage of restricted competition programs. The Administration's commitment to increasing the use of technology should include a process for verifying existing certifications.

While NAWBO is a proponent of streamlining and reciprocity, we oppose the self-certification provision in the proposed rule. A program free from fraud and abuse is essential to protect its overall integrity and to ensure that women business owners are the actual beneficiaries of the set aside. Instead, therefore, we urge adoption of the Government Accountability Office's three-pronged approach for combating documented fraud and abuse with regard to the HUBZone program: preventive controls, detection and monitoring, and investigations and prosecutions.<sup>2</sup> In short, the burden of program integrity cannot be placed significantly on the entities meant to benefit from the programs. Doing so will only discourage legitimately eligible WOSBs from participation.

### **Legislation Necessary to Increase Outdated Contract Threshold**

The WOSB program can only be utilized for contracts worth less than \$3 million for goods and services in general, or \$5 million for manufacturing contracts. This threshold creates an unreasonable and unjustified barrier to the profitability of women-owned businesses participating in government projects, and fails to recognize the capability and capacity of women-owned businesses. Moreover, the unrealistic thresholds may constitute the most significant deterrent to program participation—it's just not worth the time and resources for WOSBs in industries such as construction to bid on contracts valued at \$3 million or less. Further, and interestingly, the proposed rule now advocates the use of contract dollar volume (in addition to number of contracts) for determining underutilization of WOSBs in an industry (see above comments), yet the restriction on contract size keeps the contract volume artificially low. At a minimum, rather than a fixed threshold across all industries, the program should consider correlating thresholds to the industry revenue standards used for determining eligibility in other SBA programs; deducting the cost of materials for fulfilling the contract, especially in construction contracts where the cost of materials frequently exceeds 50% of the total contract price; and indexing contract thresholds to reflect increases in inflation and/or other factors that might drive contract amounts up. Accordingly, NAWBO strongly urges the SBA to seek legislation to increase the size of contracts eligible for the WOSB program.

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<sup>2</sup> GAO Report to the Chairwomen, Committee on Small Business, House of Representatives on HUBZONE Program: Fraud and Abuse Identified in Four Metropolitan Areas (March 2009).

Additionally, NAWBO supports the exclusion of retirement accounts from a WOSB's net worth when determining both personal net worth *and* eligibility based on economic disadvantage. Currently a WOSB is considered program eligible if the fair market value of all of its assets is \$3 million or less. The Proposed Rule recommends excluding retirement from the calculation of personal net worth, but not from total assets when determining economic disadvantage.

### **Implementation Guidance Is Important and Should be Added**

Implementation is critical to the success of any program seeking to counterbalance barriers and discrimination experienced by women entrepreneurs. The statute introduced in 2000 was ineffective in no small measure because it lacked sufficient implementation instructions and oversight. Rather than repeating this mistake, implementation procedures that will promote accountability on two fronts should be considered and included in the rule as appropriate.

First, it is widely recognized that contractors often associate with women-owned businesses during the bidding process to increase their competitiveness; however, after the contract is awarded, women-owned businesses are not utilized during the project as promised in the contract. As a result of the lack of oversight and accountability measures, women-owned businesses end up receiving a smaller portion of the work and pay than they anticipated, or may be replaced altogether. These practices undermine the program and can be prevented with sufficient oversight, monitoring, and sanctions, such as those recommended by the GAO in reference to the HUBZone program.

Second, contract officers involved in the procurement process would benefit from guidance on implementing the restricted competition program and clear accountability standards for actually meeting the five percent set aside contracting goal for women-owned businesses.

In closing, the National Association of Women Business Owners appreciates the opportunity to submit these comments and urges the SBA to take swift action to adopt the proposed rule including the modifications offered herein.

Sincerely,



Helen Han  
President & CEO



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Chair, Board of Directors



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