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SBA Releases Final Women-Owned Small Business Rule to Expand Access to Federal Contracting Opportunities

New program will be available in early 2011 for small, women-owned firms

WASHINGTON – With the publication today of a final rule in the Federal Register, the U.S. Small Business Administration will begin implementation of its women-owned small business (WOSB) contracting program. The agency expects the program to be available for WOSBs in early 2011.

The rule is part of the Obama Administration’s overall commitment to expanding opportunities for small businesses to compete for federal contracts, in particular those owned by women, socially and economically disadvantaged persons and veterans. This rule identifies 83 industries in which WOSBs are under-represented or substantially under-represented in the federal contract marketplace. In addition to opening up more opportunities for WOSBs, the rule is also another tool to help achieve the statutory goal that 5 percent of federal contracting dollars go to women-owned small businesses.

“Women-owned businesses are one of the fastest growing sectors of our nation’s economy, and even during the economic downturn of the last few years, have been one of the key job creation engines in communities across the country,” SBA Administrator Karen Mills said.

“Federal contracts provide critical opportunities for owners of small firms to take their business to the next level and create good-paying jobs,” Mills added. “Despite their growth and the fact that women lead some of the strongest and most innovative companies, women-owned firms continue to be under-represented in the federal contracting marketplace. This rule will be a platform for changing that by providing greater opportunities for women-owned small businesses to compete for and win federal contracts.”

With the publication today of the final rule, SBA, in conjunction with the Federal Acquisition Regulatory Council, will begin a 120-day implementation of the WOSB contracting program, including building the technology and program infrastructure to support the certification process and ongoing oversight. With implementation expected to take several months, the agency expects that federal agencies’ contracting officers will be able to start making contracts available to WOSBs under the program in early 2011.

The creation of a rule to increase federal contracting opportunities for WOSBs was authorized by Congress in 2000. Since that time, SBA took a number of steps to study and analyze the market, including looking at participation by women-owned small businesses across all industries. Various draft rules were made available for public comment in prior years, but shortly after taking office the Obama Administration drafted a new, comprehensive rule, based on the analysis of the prior studies and on all the questions and comments previously received. The proposed rule was published for public comment on March 2, 2010 for 60 days. SBA received over 1,000 comments during that time.

Some of the components of the Women-Owned Small Business rule include:

- To be eligible, a firm must be 51 percent owned and controlled by one or more women, and primarily managed by one or more women. The women must be U.S. citizens. The firm must be “small” in its primary industry in accordance with SBA’s size standards for that industry. In order for a WOSB to be deemed “economically disadvantaged,” its owners must demonstrate economic disadvantage in accordance with the requirements set forth in the final rule.
- Based upon the analysis in a study commissioned by the SBA from the Kauffman-RAND Foundation, the final rule identifies 83 industries (identified by “NAICS” codes) in which women-owned small businesses are under-represented or substantially under-represented in federal procurements.
 - The SBA has identified eligible industries based upon the combination of both the “share of contracting dollars” analysis, as well as the “share of number of contracts awarded” analysis used in the RAND study. This differs from an earlier proposed version of the rule which identified only four industries in which women-owned small businesses were under-represented. This earlier version proposed to identify eligible industries based solely on the “share of contracting dollars” analysis used in the RAND study.
- In accordance with the statute, the final rule authorizes a set-aside of federal contracts for WOSBs where the anticipated contract price does not exceed \$5 million in the case of manufacturing contracts and \$3 million in the case of other contracts. Contracts with values in excess of these limits are not subject to set-aside under this program.
- The final rule removes the requirement, set forth in a prior proposed version, that each federal agency certify that it had engaged in discrimination against women-owned small businesses in order for the program to apply to contracting by that agency.
- The proposed rule allows women-owned small businesses to self-certify as “WOSBs” or to be certified by third-party certifiers, including government entities and private certification groups.
 - The final rule requires WOSBs which self-certify to submit a robust certification verification, to complete the certifications at the federal Online Representation and Certification Application (“ORCA”) Web site, and also to submit a core set of eligibility-related documents to an online “document repository” to be maintained

by the SBA. Each agency's contracting officers will have full access to this repository.

- The SBA intends to engage in a significant number of program examinations to confirm eligibility of individual WOSBs.
- In the event of a contract protest or program review, the SBA has the authority to request substantial additional documentation from the WOSB to establish eligibility.
- SBA intends to pursue vigorously punitive action against ineligible firms which seek to take advantage of this program and in so doing to deny its benefits to the intended legitimate WOSBs.

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