

September 24, 2008  
U.S. Women's Chamber of Commerce

**RE: SBA's Proposed Rule: Women-Owned Small Business Federal Contract Assistance Procedures (72 Fed. Reg. 73285 (Dec. 27, 2007))**

- **Background:**
  - Pursuant to the Equity in Contracting for Women Act of 2000, 15 U.S.C. § 637(m) ("the Act"), the SBA is required to establish procedures to verify eligibility to participate in the women-owned small business procurement program.
  - SBA has withdrawn 2 proposed rules; the first in 2001 and the second in late 2007.
  - SBA published the third proposed rule in December 2007. The comment period ended in March 2008, and the rule was sent to OIRA for final review in August 2008.
  
- **USWCC's comments on SBA's proposed rule:**
  - **The methodology selected by SBA is too limited and is inconsistent with the National Academy of Sciences (NAS) recommendations.**
    - The proposed rule identifies only four industries "in which WOSBs are underrepresented or substantially underrepresented in government-wide Federal procurement":
      1. Coating, engraving, Heat Treating, and Allied Activities
      2. Household and Institutional Furniture and Kitchen Cabinet Manufacturing
      3. National Security and International Affairs [This industry sector does not even have small business size standards attributed, which means that businesses in this industry sector would not be eligible for the Women's Procurement Program.]
      4. Other Motor Vehicle Dealers
  - The proposed rule appears to have ignored the SBA's own consultants' recommendations regarding underrepresentation. For example:
    - The NAS (in its study of the methodology for the mandatory underrepresentation study) "recommend[ed] that [SBA] identify industry groups for which more than one disparity measure finds underrepresentation using a disparity ratio of 0.80 or less." (NAS Study, Executive Summary at p. ES-4).
    - SBA's proposed rule bases its identification of four underrepresented industries on the use of a single one of the several disparity measures contained in the Rand Corporation underrepresentation study. (Rand

September 24, 2008

**U.S. Women's Chamber of Commerce**

Study, at p. 5., 22-25) The use of this one measure results in a designation of less than 3 percent of industries as underrepresented by WOSBs in government contracting. (SBA Proposed Rule, 72 Fed. Reg. at 73287-8).

- The agency appears to have rejected the NAS recommendation that “it would be useful to examine underrepresentation in terms of contract awards, or actions . . . “ in addition to dollar amounts awarded. (NAS Study at p. 4-4). SBA instead chose the disparity measure based solely on contract dollars. (SBA Proposed Rule, 72 Fed. Reg. at 73287).
- **The proposed rule takes a restrictively narrow view of “ready, willing, and able” to include only firms registered in the Central Contractor Registration (CCR).**
  - The NAS stated that “it could be argued that the CCR is too limited a list and that other ready, willing, and able firms exist that, for one or another reason, are not registered on the CCR. Ideally, one would be able to estimate availability shares and calculate disparity ratios with broader and narrower definitions of the total population.” (NAS Study at p. 46)
- **The proposed program is unnecessarily tailored to comply with strict scrutiny standards.**
  - The propose rule exceeds the scope of the agency’s statutory mandate and requires that each agency make a finding of past discrimination before any contracts may be awarded under the Women’s Procurement Program. (72 Fed. Reg. at 73288)
- **USWCC’s Recommendations:**
  - For the reasons set forth above, USWCC recommends that SBA withdraw the proposed rule.
  - The USWCC recommends that SBA draft a rule that conforms to the clearly expressed will of Congress, the constitutional requirements for gender-based programs, and the guidance provided by the NAS and Rand Corporation reports.