



Billing Code: 8026-03

SMALL BUSINESS ADMINISTRATION

Notice on Public Content; WOSB NAICS Study

AGENCY: U.S. Small Business Administration.

ACTION: 30-Day Notice and Request for
Comments.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2015 requires the Small Business Administration (SBA) to produce a study every five years regarding the participation of small business concerns owned and controlled by women. Public Law 113-291, 128 Stat. 3292 (Dec. 19, 2014). In accordance with this requirement, SBA is preparing to conduct the study. SBA is currently developing the process and methodology that will be used to conduct this study and is requesting public input and feedback.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Nikki Burley, Office of Government Contracting and Business Development, 409 3rd Street, SW, Washington, DC 20416; 202-921-3356, nikki.burley@sba.gov.

SUPPLEMENTARY INFORMATION:

A. Program Background

The Small Business Act, 15 U.S.C. 637(m), authorizes contracting officers to restrict competition for Federal awards to eligible Women-Owned Small Businesses (WOSBs) and/or Economically-Disadvantaged Women-Owned Small Businesses (EDWOSBs) in

certain circumstances. Specifically, a contracting officer may restrict competition, or “set aside” a competition for EDWOSBs if:

- There is a reasonable expectation that two or more EDWOSBs will submit offers in response to the solicitation;
- The contracting officer believes that award can be made at a fair and reasonable price; and
- The procurement is for goods or services with respect to an industry identified by the SBA’s Administrator as underrepresented.

A contracting officer may restrict competition, or “set aside” a competition for WOSBs, if:

- There is a reasonable expectation that two or more WOSBs will submit offers in response to the solicitation;
- The contracting officer believes that award can be made at a fair and reasonable price; and
- The procurement is for goods or services with respect to an industry identified by the SBA’s Administrator as substantially underrepresented.

In addition, contracting officers are allowed to sole source awards to WOSBs and EDWOSBs in cases where the estimated dollar value of the award is equal to or less than \$6.5 million for manufacturing acquisitions and equal to or less than \$4 million for service acquisitions. FAR Part 19.1506.

With respect to the identification of industries eligible for a set-aside or sole source award under the WOSB Program, the Small Business Act requires the SBA Administrator

to conduct a study to identify those industries in which small business concerns owned and controlled by women are underrepresented or substantially underrepresented with respect to Federal procurement contracting. 15 U.S.C. 637(m)(4).

B. Overview of RAND Study of “The Utilization of WOSB in Federal Contracting”

In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a study of the underrepresentation of WOSBs in Federal prime contracts by industry code. The resulting study (the RAND Report) was published in April 2007 and is available to the public at https://www.rand.org/pubs/technical_reports/TR442.html.

As the RAND Report explains more fully, RAND measured WOSB representation in each industry code through a “disparity ratio,” which is a measure comparing the utilization of WOSBs in Federal contracting in a particular code to their availability for such contracts. The disparity ratio itself is defined as utilization divided by availability. Utilization and availability are also measured as ratios. This disparity ratio provides an estimate of the extent to which WOSBs that are available for Federal contracts in specific industries are actually being utilized to perform such contracts.

RAND measured utilization and availability in two ways: in terms of dollars and numbers. When using dollars as the measure, RAND calculated utilization as the ratio of Federal contract dollars awarded to WOSBs in a given industry code to total Federal contract dollars awarded in that industry code. It calculated availability as the ratio of the gross receipts (revenues) of WOSBs in a particular industry code to the gross receipts (revenues) of all firms in that code. When using numbers as the measure, RAND calculated utilization as the ratio of the number of Federal contracts awarded to WOSBs in a particular

industry code to the number of Federal contracts awarded overall in that code, and availability as the ratio of the number of WOSBs in a particular industry code to the total number of firms in that code.

According to the RAND Report, if the disparity ratio in an industry code is equal to 1.0 when measuring in terms of dollars, that indicates that WOSBs have been awarded contract dollars in the same proportion as their economic representation in the industry; that is, they are awarded contracting dollars in proportion to their share of total business in that industry, and are therefore neither over- nor underrepresented. Similarly, if the disparity ratio in an industry code is equal to 1.0 when measuring in terms of numbers, this indicates that WOSBs are awarded contracts (of whatever dollar value) in the same proportion as their numerical representation in the industry. A ratio of less than 1.0 (lower utilization than availability) suggests some degree of underrepresentation with respect to that particular means of measuring disparity (dollars or numbers); a ratio of greater than 1.0 (greater utilization than availability) suggests some measure of overrepresentation with respect to a given metric. RAND classified an industry as “underrepresented” if its disparity ratio was between 0.5 and 0.8 using either the numbers or dollars approach, and “substantially underrepresented” if its ratio was less than 0.5. It is important to note that RAND states disparity ratios are not in and of themselves measures of discrimination, although they have been used in numerous court cases to infer discrimination. Nonetheless they are a starting point, a way to identify whether there are any differences in outcomes between different types of firms.

RAND calculated these ratios using a variety of different data sets. For the

utilization component of the disparity ratio, RAND used the data from the FY 2005 Federal Procurement Data System/ Next Generation (FPDS/NG) procurement database. This was the only data source identified by RAND with respect to the utilization component of the disparity ratio. However, RAND did adjust the FPDS to account for possible miscoding of business size. Specifically, RAND linked the FPDS data to 2004 Dun and Bradstreet (D&B) data using the Data Universal Numbering System (DUNS) to identify the parent companies of local establishments, and then used the DUNS to assess whether a firm was small. However, because the data file was also prone to error, RAND presented results both with and without the DUNS cross-reference.

For the availability component of the disparity ratio, RAND used two different databases: The 2002 Survey of Business Owners (SBO) from the five-year Economic Census, and the FY 2006 Central Contractor Registration (CCR) registration database. Using the SBO database, RAND presented results only at the two-digit industry code level, a comparatively generalized level of industry disaggregation. Using the CCR, in contrast, RAND presented results at the two-, three-, and four-digit industry code levels. RAND also presented full sample results and trimmed sample results (eliminating the top and bottom 0.5 percent of the data) for each disparity ratio. RAND did this in order to examine the sensitivity of the disparity ratio to extreme values, such as very large contracts or negative dollar amounts resulting from contract actions based on multi-year contracts or modifications to such contracts to earlier contracts.

Using these different data sources and various adjustments, the RAND Report identified twenty-eight different possible approaches to determining the degree of underrepresentation of WOSBs in Federal procurement contracting.

C. Overview of the Office Chief Economist Study of the U.S. Department of Commerce assisting SBA to conduct WOSB NAICS Study

In 2014, Congress amended the Small Business Act to require SBA to submit a report to Congress reflecting the results of a new study by January 2, 2016, and then continue to conduct a new study every five years. Public Law 113–291 825(c) (Dec. 19, 2014). In response to this statutory mandate, SBA asked the Office of the Chief Economist (OCE) of the U.S. Department of Commerce for assistance in conducting a new study on the WOSB Program, which would analyze data to help SBA determine those NAICS codes in which WOSBs are underrepresented and substantially underrepresented in Federal contracting. OCE looked at whether, holding constant various factors that might influence the award of a contract, the odds of winning Federal prime contracts by firms that were owned by women were greater or less than the odds of winning contracts by otherwise similar businesses.

In its analysis, OCE controlled for the size and age of the firm; its membership in various categories of firms for which the Federal government has government-wide prime contracting goals; its legal form of organization; its level of government security clearance; and its Federal prime contracting past performance ratings. OCE also looked at whether women-owned businesses typically have significantly different experiences in winning contracts depending on their industry. OCE performed this analysis at the four-digit NAICS industry group level. OCE included each firm in its sample in an industry analysis if the firm had registered as being able to perform work in that industry or if the firm had won a contract assigned to that industry. OCE found that women-owned businesses were less likely to win Federal contracts in 254 of the 304 industries included

in the study. In 109 out of the 304 industries, OCE found that women-owned businesses have statistically significant lower odds of winning Federal contracts than otherwise similar non-women-owned businesses at the 95% confidence level. SBA has determined that the finding by OCE of a statistically significant lower likelihood of winning contracts demonstrates that WOSBs are substantially underrepresented in these 109 NAICS codes. However, of these industries, 17 are in sectors 42 and 44– 45, which are not applicable to Federal contracts under SBA’s regulations. 13 CFR 121.201.

Since some industry groups cannot be used to classify Federal contracts, SBA has excluded them from the list of industries designated as substantially underrepresented. In addition, OCE found that in 145 out of the 304 industries, the odds of women-owned businesses winning contracts were lower than those of otherwise similar non-women-owned businesses, but there was not a statistically significant difference between the odds of winning for the two groups. Although there was not a finding of statistical significance for these industries, 21 of them were previously found by the RAND study to be industries in which WOSBs are underrepresented or substantially underrepresented. Thus, SBA was provided with information showing historical underrepresentation of women-owned businesses in these 21 industries, which was consistent with the OCE finding that women-owned businesses are less likely to win contracts. As a result, SBA found that it possessed sufficient data to determine that WOSBs are underrepresented in these 21 industries. SBA also believed that this decision fulfills the intent of the Small Business Act, which demonstrates the intent that the designations of eligible industries be based on at least five years of data. The full OCE study is available on SBA’s Web site at www.sba.gov/wosb.

D. Solicitation of Public Comments

As both the RAND and OCE studies indicate, there is no single solution to determine underrepresentation, with each study methodology choice having its own benefits and shortcomings. As discussed above, the previous studies made choices regarding certain measures. Through this request, SBA seeks input from stakeholders on the areas below.

1. For the past two studies SBA has looked at the value of contracts as part of determining the utilization ratio. One issue raised by this approach is that this may be reflecting very few contracts awards (meaning awards to a few companies) which may not be representative of the actual competitive balance in the industry. SBA is seeking input on whether a hybrid approach should be used accounting for both value of contracts and number of contracts in a given industry. SBA is also considering using higher level NAICS (meaning fewer digits) for low volume industries.

2. SBA is also seeking input on how best to define women-owned businesses that are ready, willing, and able. Past studies have used SAM registration as a measure for ready, willing, and able. However, it may be that there are women-owned firms that are ready, willing, and able to perform government contracts that are not registered in SAM. Another option would be to look at women-owned small businesses in the US generally rather than limiting it to sam.gov registered businesses. SBA would like public comment input if it should continue to use the ready, willing, and able that was used in the previous studies, use general women-owned businesses in the US, or is there another method that SBA should consider.

Another issue with the ready, willing, and able determination is the possible overestimate of the number of WOSBs in a given NAICS because of the ability of firms to self-select NAICS in sam.gov without regard for capability. It may be possible to perform a sensitivity analysis to try to identify if there is a problem with overestimates and to correct the analysis accordingly. SBA would like public input on whether this possible overestimate is a problem, and, if so, is SBA's proposed solution useful.

3. SBA is seeking comments on the appropriate thresholds for underrepresented versus substantially underrepresented. Currently, the threshold for underrepresented is < 1 and the threshold for substantially underrepresented is $< .5$. Another factor SBA would like the public to consider is what should the thresholds be if they are changed? In addition, SBA is also considering utilizing different thresholds for low-volume NAICS. Should it be the same for all industries?

4. The past two studies have each had issues with low-volume industries. This occurs when there are either low-dollar value or low volume of contracts in a given industry. The result is that minor changes in either category can have extreme effects on the outcome. SBA is considering the use of power analysis calculations to determine which industries have a sufficient number of firms to detect a small effect size for the difference between the use of WOSBs and that of other businesses. SBA is also considering determining the level of industry concentration using a Normalized Herfindahl Index. In addition, SBA may also consider measuring disparity metrics independently by fiscal year and using pooled data over multiple years. This could reduce the number of low-volume NAICS, but could be considered less reliable if there is significant variance in disparity metrics over time. SBA would like public input on

whether it should make changes to the treatment of low-volume NAICS and whether or not the proposed methods are a good way to taking into account low-volume NAICS.

Barbara Carson, Deputy Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2020-21678 Filed: 9/30/2020 8:45 am; Publication Date: 10/1/2020]