



NATIONAL ASSOCIATION OF WOMEN BUSINESS OWNERS

July 17, 2006

VIA EMAIL

Linda.Waters@sba.gov

Small Business Administration

Office of Federal Contract Assistance for Women Business Owners

409 3rd Street, SW

Washington DC 20416

ATTN: Linda Waters

**Re: Comments on Proposed Rule – The Women-Owned Small Business Federal Contract Assistance Program
RIN: 3245-AE65**

On behalf of National Association of Women Business Owners (NAWBO), I am submitting comments on the above-referenced matter. Founded in 1975, NAWBO is the largest and only dues-based association, that represents the interest of women entrepreneurs across all industries. With 80 NAWBO chapters across the United States and more than 8000 members, NAWBO is **the** voice of women business entrepreneurs in America.

NAWBO members want and need procurement opportunities with the Federal Government in order to build world-class businesses. Procurement continues to be one of NAWBO's top advocacy issues for our members, and it was the subject of a recent national Procurement Task Force Report which is enclosed. As indicated in the Report, NAWBO members and other qualified women-owned businesses have faced insurmountable obstacles in their pursuit of federal contracts. Many of our NAWBO members report that they no longer bother to bid on federal contracts because they find it is a waste of their time.

There is currently a \$5 billion dollar a year difference between the roughly 3% of federal contract dollars that women-owned businesses currently receive and the 5% goal established more than six years ago. While the long-delayed 8(m) program discussed in the regulations is a good first step, it certainly is not the only solution for correcting the disparity between the minimal 5% goal and measurable results (actual women-owned business contracts).

As discussed for fully in the enclosed NAWBO Procurement Task Force Report, the success of any new regulation or program designed to increase federal contracting opportunities for women-owned businesses requires the strong and visible commitment from the President and the Administrator of the Small Business Administration to obtain full commitment from all government agencies to taking all reasonable steps necessary to remedy the documented under-representation of women-owned businesses among federal contractors that this program is

designed to address. Success also demands annual auditing through the SBA's existing program and corrective measures for failure to achieve compliance.

While the determination of which industries are those in which women-owned small businesses are "underrepresented" or "substantially underrepresented" will be based on the findings of the soon to be completed disparity study, NAWBO members urge the SBA to develop rules that mandate federal agencies that continue to fall below the WOSB 5% goal (and other higher goals we expect will be established based on disparity study findings) to participate in the 8(m) set-aside program or provide other commitments or expanded opportunities for WOSB's to secure contracts with their agencies. Stringent success measurement criteria should be set and the program should be evaluated each year as to whether WOSB goals were met.

NAWBO members have carefully reviewed the SBA's proposed regulations to implement this Program as set forth in 71 Fed. Reg. 34550 (June 15, 2006) and provide the following comments.

Part 127 – Women Owned Small Business Federal Contract Assistance Program

The SBA has asked for specific feedback on the following four questions: (1) Whether the proposed collections of information are necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

We have addressed each in turn.

1) Whether The Proposed Collections Of Information Are Necessary For The Proper Performance Of SBA's Function:

Certification Requirements

NAWBO applauds the recognition of the SBA that self-certification is inadequate to ensure fair and full implementation of the 8(m) program. As the NAWBO Procurement Task Force Reported:

One reason to encourage women-owned businesses to seek certification is that it would help allay largely unjustified fears that some significant number of businesses self-certifying as women-owned are, in fact, "fronts for men." To the extent that this perception exists or that there are actually some number of women falsely certifying that they own and operate their businesses, it is important to ensure that objective third party certification is available to address this issue of integrity without imposing undue financial or other burdens on women-owned businesses.

To the extent that there are companies "owned" by women who are merely "fronts" for men seeking a perceived advantage from certification, these companies and the women who "front" them undermine the integrity of the many women who are genuinely managing the day-to-day operations of businesses they own and deserve the credit for the responsibilities they shoulder and the risks they take.

NAWBO does not agree, however, that the regulations as proposed minimize the burden of unnecessary paperwork or avoid duplication of certification requirements to the extent authorized and possible under P.L. 106-554.

One area in which this is most evident is in the implementation of §8(m)(2)(F) that authorizes the Administrator to accept certifications from other federal agencies, state government or national certifying agencies. As recommended in the NAWBO Procurement Task Force Report, NAWBO urges the Administrator to focus first on

certifying qualified certification programs that exist and fast track all women-owned businesses already certified under these existing programs.

Moreover, it is essential that the SBA maximize the authority it has under §8(m) (2) (F) to recognize certifications offered by other federal, state government or national certifying agencies in order to meet the spirit and letter of the federal paperwork reduction requirements.

The current draft of Section 127.303 of the regulations does not meet these objectives.. Accordingly, NAWBO recommends the following revised language for Section 127.303 governing acceptance of other certifications as authorized by P.L. 106-554:

(a) 8(a) BD and SDB certifications.

SBA will accept all current SBA certified 8(a) BD or SDB women-owned concerns in good standing as certified EDWOSBs for purposes of this part and will automatically designate such concerns on CCR as certified EDWOSBs.

SBA also will accept as certified EDWOSBs any WOSB that has graduated from the 8(a) BD program, provided SBA determined that the concern continued to be eligible for the 8(a) BD program as part of an annual review within the last 3 years and has no information indicating that the firm may not be eligible for certification as an EDWOSB.

(b) Certifications from other programs.

(1) SBA will accept all current, valid certifications as a disadvantaged business enterprise (DBE) from a certifying entity of a Department of Transportation grant recipient for concerns owned at least 51 percent by one or more women as certified EDWOSBs for purposes of this part, and SBA will automatically designate such concerns on CCR as certified EDWOSBs.

(2) SBA will accept all current, valid certifications of WOSBs by private national certifying agencies or state governments that the AA/GC or designee determines apply eligibility requirements equivalent to those set forth in Subpart B, Section 127.200, et. seq. SBA will maintain on its web site a list of all certifications from other programs that it will accept for purposes of this part and information on the procedures concerns must follow for SBA to adopt their certifications from such programs.

(3) Where the SBA determines that a certification program meets all of the eligibility requirements applicable to the determination of ownership and control, but does not meet the eligibility requirements for determination of economic disadvantage or small business size, the SBA will implement a streamlined process for certifying businesses certified by such programs as woman-owned, which process will require only such additional information as is necessary to determine the size of the business or economic disadvantaged status of the owners.

Any women-owned business that is already designated through the 8(a), SDB and USDOT certification programs as a "women-owned small business" or "economically disadvantaged small business" needs to be designated (within 30 days of the final filing of these regulations) in the CCR as registered and qualified automatically for the 8(m) program. The USDOT has a long history of certifying small and disadvantaged businesses. The USDOT program also requires a comprehensive review of the certification program and often an onsite inspection and interview to confirm the legitimacy of the women owned business entity. There should be no requirement for additional or duplicative certification if a woman-owned business is certified under that program.

Definition of Economic Disadvantage

While NAWBO agrees with a strict certification requirement of WOSB to ensure that certified businesses are truly woman owned, we question the definition of economically disadvantaged in Section 127.203: the language is unclear and seems to imply a two part test. The first part is a general requirement: "A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business."

This definition is broad and subject to much interpretation. The regulations do not set forth the criteria that would be used in making this finding. NAWBO members believe that such a broad definition could require women-owned businesses to submit onerous volumes of financial and other documents to the SBA to meet a definition that is subject to interpretation by the reviewer. Audited financial statements are extremely costly and should not be required.

There is no reason to create a new definition of "economic disadvantage" for the EDWOSB program when two programs already have such definitions that should be applied here: the SBA 8(a) program and the USDOT DBE program. At a minimum, those definitions should be incorporated into these regulations by reference so that women-owned businesses qualifying under the 8(m) program that are already certified as 8(a) or DBE are not required to meet a new and different standard.

In addition, NAWBO believes that the definition of economic disadvantage in the regulations fails to comply with Congressional intent. The 8(m) program is, in large part, fashioned after the 8(a) program. The 8(a) program presumes social and economic disadvantaged status upon certain class members. Here, Congress was clear in its intent that women-owned businesses in certain underrepresented fields (as determined by a disparity study) be presumed "as a class" to be economically disadvantaged. A woman-owned business in an underrepresented industry should not be required to "demonstrate" anything more to be considered an EDWOSB.

If the SBA determines that to offer a definition of economic disadvantage different from that in existing federal programs, NAWBO members recommend that any net worth standard applied (as in Section 127.203 (b)) be indexed for inflation.

NAWBO applauds the Administrator's proposal to waive the 51% ownership requirements and the requirement for a woman business owner prove economic disadvantage in those industries in which it is determined that women-owned small businesses are substantially underrepresented. Many US businesses are owned 50% by women. In industries where discrimination is particularly evident, i.e., women-owned businesses are found by the SBA's disparity study to be substantially underrepresented among federal contractors, NAWBO agrees that it is entirely appropriate to waive the ownership and economic disadvantage requirements at least until the disparity is fully resolved.

2) The Accuracy Of The SBA's Estimate Of Burdens Of The Collection Of Information

While the SBA discussed its estimate of time and burden on SBA resources, it did not discuss in the same detail the impact of this program upon the actual women-owned business. We have already discussed the need for the SBA to grant reciprocity to WOSB that are already certified through 8(a) SDB, and USDOT programs as well as measures for reducing duplication with other national certification programs that require a full and thorough review of the WOSB operations including a site visit.

For those WOSBs not already certified, the verification of information requested should include items that are readily available , e.g., incorporation papers, tax returns, resumes of key personnel, etc. The information requested should NOT require the women-owned business to hire CPAs or attorneys to complete the certification paperwork. Audited financial statements should not be required.

Additionally, the SBA needs to establish a firm timeline for review and approval of certification. While the SBA anticipates a 30-day turn around time, it is important that the certification process does not languish.

NAWBO does have some concern regarding SBA's estimate of WOSB's to be certified in a single year. SBA calculates that it can process 2000 applications a year by implementing its proposed program. Given that it has identified 75,000 WOSBs in the CCR that would potentially qualify for this certification, it would take decades to process the applications. Certainly acceptance of other certifications would expedite the application and reviewing process.

3) Means to Enhance Quality and Effectiveness of Collecting and Communicating Information and Reducing Burdens

NAWBO members support a certification process where a certification form and all requirements be provided in a downloadable format on-line and allow for the electronic submission of all documents.

To reduce the burden on women-owned business concerns, NAWBO supports maximum use of existing certification programs to qualify WOSBs and EDWOSBs rather than imposition of entirely new certification requirements.

Other Comments:

Contract Officer Information and Training

The 8(m) program needs to include clear directions for contracting officers regarding the implementation of this program to ensure the greatest opportunity for WOSBs. SBA needs to develop and offer on-line and in-person training for all federal contract officers.

Real World Review

It is critical to our membership that certification be complete to ensure only legitimate women business owners are included in the program. However, it is equally important that the review process be based on a practical, real world understanding of business organization and operation. Specifically, the last sentence of Section 127.202 reads: "However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern."

While it is evident to NAWBO that the intention is to ensure that women-owned businesses are, in fact, controlled by women, this provision, which likely will over time evolve into a blanket restriction, can interfere with a legitimate woman-owned business and disqualify it from the program. For example, in the construction industry, a woman owned business may need multiple licensees in various trades to perform different types of work. It is not unusual for a specialty license to be held by one of the company's employees who may have a small equity stake in the firm for a certain project.

A woman who legitimately owns a majority of the business and controls the day-to-day operations of that business should not be refused certification because a male employee with a small equity stake holds a specialty or professional license necessary for the business to have the capacity to serve its market needs. This in effect is penalizing the woman business owner for being a smart manager and strategist for her company.

Prohibition on Contract Pass Through

Several of our members expressed concern that there is nothing in the regulations to prevent a large, publicly traded company from getting the benefit of the WOSB set aside simply by buying a WOSB contractor. Accordingly we recommend that federal contract rules state that a restricted competition contract will automatically terminate if the WOSB contractor that won the award is sold to a large (non-WOSB) enterprise. Non-WOSBs should not be allowed to profit from set aside contracts for WOSBs.

Implications for Bundled Contracts

There is also a legitimate concern by women who own businesses in construction-related fields that the contracts provided under the 8(m) program will not result in the “unbundling” of larger contract projects to create work for a WOSB prime contractor, but instead will result in marginal or peripheral contracts (the type of smaller contracts already being subcontracted out).

Urgent Need for Implementation Without Further Delay

Finally, an expedited timeline needs to be established by the SBA for the implementation of this program. It has taken far too long for the SBA to implement this program and reflects badly on this Administration, which has repeatedly expressed its commitment to women owned business procurement opportunities and not followed through.

NAWBO hopes that these comments are helpful and productive. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol E. Kuc". The signature is fluid and cursive, with a large initial "C" and "K".

Carol E. Kuc
President