

**Caitlin Jenkins**

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**From:** Caitlin Jenkins [caitlin@womenpresidentsorg.com]  
**Sent:** Thursday, January 17, 2008 5:46 PM  
**To:** 'stanner@provpubs.com'  
**Subject:** RE: Story about Women's Procurement Program

## Program to Help Women-Owned Businesses Draws Criticism

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The Small Business Administration (SBA) recently unveiled its proposed rules for helping more women-owned small businesses gain access to federal contracts. But professional women's organizations and women-owned government contractors are less than pleased, many of them voicing criticism of the rules at a hearing yesterday.

At issue is the implementation of the Women's Procurement Program, authorized by Congress in 2000, which set out to level the playing field for women-owned businesses (WOBs) seeking federal contracts. SBA was tasked with devising guidelines to help agencies meet the mandate eight years ago, but is drawing fire for rules that many sources say actually discourage agencies from awarding more contracts to WOBs.

The Women's Procurement Program seeks to award at least 5% of contracting dollars to WOBs, but that figure was just 3.4% in fiscal year 2006. However, roughly one-quarter of the small businesses registered in the federal contractor database are WOBs.

Critics not only want to know why there is such a discrepancy - why only 3.4% of contracting dollars go to WOBs, even though they make up about 25% of the contractors - but also why the SBA's proposed rule for helping WOBs is, in their opinion, inadequate at best.

"I think there is a legacy within the SBA that is adversarial to women business owners prospering," says Barbara Kasoff, president and CEO of Women Impacting Public Policy, based in Washington, D.C. "On the face of it - the original law was only for 5%, which to me is ludicrous."

SBA representatives initially declined a telephone interview, but through documents, email exchanges and follow-up calls insist that the new rule for the Women's Procurement Program is the best the agency can provide, in light of Constitutional law.

### **SBA Guidelines in a Nutshell**

SBA released its guidelines for federal agencies with respect to "set-asides," or industries that a RAND Corporation study deemed underrepresented by women, on Dec. 27. Out of 313 total industries, only four were named: National Security and International Affairs; Coating, Engraving, Heat Treating, and Allied Activities; Household and Institutional Furniture and Kitchen Cabinet Manufacturing; and Other Motor Vehicle Dealer.

Within those four industries, WOBs applying for federal contracts would have to prove that the agency has a history of actively discriminating against women. Failing that, they would be given no priority.

Critics say three out of the four industries, excluding National Security and International Affairs, are so insignificant as to be laughable. They also say the barrier to proving under-representation is impossibly high, to the point that the guidelines actually dissuade WOBs from pursuing help from the procurement program.

SBA, on the other hand, stands behind RAND's research and says the U.S. Constitution and established case law do not allow an assumption of gender-based discrimination.

## **Bridge or Barrier?**

To Marsha Firestone, president of New York-based Women Presidents' Organization, the designation of only four industries out of 313 is a slap in the face.

"It just makes no sense to me that there is a disparity among only four types of businesses," Firestone says. "In terms of logic and common sense; if women own one-fourth of the businesses, why are only four industries underserved?"

When asked how the agency arrived at only four industries, senior SBA spokesman Sean Rushton emailed a press release addressing the issue, saying the RAND study considered 28 different methodologies and chose one.

"The result of this rigorous process was that four underrepresented industries were identified," reads the press release, without giving [many] more details.

Kasoff says the SBA could not have chosen four industries that would have provided "the least amount of opportunities to WOBs," blaming the agency for rendering the procurement program useless.

"The SBA chose the most restrictive action, which allows the least number of industries to qualify for status," Kasoff says.

The process of proving past discrimination is even more troublesome, say many critics, though the SBA claims legal precedent.

In an emailed response to the legal question, Rushton says many critics have misconstrued the standards used to determine under-representation. SBA's guidelines apply the "intermediate scrutiny" standard, which the courts have ruled apply in gender-based programs, he says. This particular standard requires proof of discrimination, not simply based on association with a protected class, such as race.

"This rule was drafted to comply with this standard, the black-and-white text of the proposed rule makes this clear, and all of the public comments and testimony from the SBA refer only to this standard," Rushton says, via email.

The requirement that WOBs must show prior discrimination against women by a given agency is not in accordance with the law, according to Lisalyn Jacobs, vice president of Legal Momentum, based in Washington, D.C. Jacobs served as the Chief of Staff of the Civil Rights division in the Justice Department under President Clinton.

"The Court has found that societal discrimination is enough," Jacobs says, disputing the legal argument supporting the SBA's claims. "The fact of the matter is that no agency is going to find that they have been discriminatory, because that would open the floodgates of litigation."

## **Searching for Causes of Gender Disparity**

So why does such a tiny sliver of the federal contracting pie go to small businesses fronted by women?

Most sources agree that several different factors are at play: The grips of the "old boy" network, the fact that agencies tend to work with companies they have worked with in the past, an installed base of legacy contractors with security clearances and other necessary attributes, and plain old gender discrimination.

"There are a lot of barriers to entry to federal contracting which don't always have to do with bias," says federal contractor Ceil McCloy, president and CEO of Integrated Science Solutions Inc., based in Walnut Creek.

In addition to the reasons listed above, McCloy also mentions that the set-asides already in place for small businesses are relatively new. So increasing the number of small businesses, not to mention WOBs, will take some time.

Far from excusing the disparity of federal dollars going to WOBs, though, McCloy says this high barrier to entry is precisely the reason a more effective procurement program needs to be enacted. She says the recent SBA guidelines, which she believes are way too restrictive, are simply an extension of the current presidential administration.

"I can't say for sure whether there is active discrimination, but the Bush administration has not exactly pushed this as a high priority," McCloy says.

Others echo her sentiments.

"This is an administration that is openly hostile to affirmative action efforts. They have effectively erected a barrier so high that no one will really be able to scale it," Jacobs says.

Jacobs, as a former business owner herself, acknowledges the reality that people tend to work with those they have worked with in the past. But like McCloy, she believes that is precisely the reason why the Women's Procurement Program needs to be more aggressive.

Additionally, WOBs often are perceived as tiny, mom-and-pop shops, Firestone says, which may deter otherwise interested agencies from working with them. The majority of her own organization's members are manufacturers, she says, dispelling this myth.

## **So Now What?**

Whether or not the SBA's new guidelines, which are subject to a 60-day comment period, are beneficial to WOBs is up for debate. But since no one disputes that such a small percentage of contracting dollars actually go to women-owned contracting companies, it is clear that WOBs must work harder for every penny.

McCloy founded her company in 1999 and has successfully landed federal contracts since then. She says the best advice she can give WOBs seeking federal contracts, as with any newcomer, is to start out as subcontractor, or "sub." In that capacity, she says, WOBs are able to build a track record of past success, which is necessary for any contractor.

Also, she suggests investigating the different federal agencies one might be interested in working with. Even a simple visit can speak volumes about the agency's culture, whether or not it is open to WOBs or new contractors in general, she says.

"Are they overly hostile? You can also look at the award history - if \$8 billion out of \$10 billion goes to the same vendors, it could mean they're not interested in looking around. That's not the way it's supposed to be in the federal government; you're supposed to have a level playing field," McCloy says.

Also, she says, it helps to look around the agency to see how diverse the staff is.

Another suggestion for not only WOBs, but also other newcomers to contracting, is to apply for contracts with the General Services Administration, which buys large amounts of general goods for multiple agencies. Then, she says, it is much easier to get one's foot in the door.

"Instead of bidding, say, 15 or 20 little contracts, you can bid this one contract and then shop around to other agencies," McCloy says. "These contracts say you have met the requirements for that particular product, then you can tell other agencies that you have been approved."

Whether or not the new SBA guidelines will result in more dollars in the coffers of WOBs remains to be seen, but the outrage directed at the agency may prompt a reworking of the rules.

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