

Presentation for
Women in Homeland Security

**Understanding SBA's New Women-Owned
Small Business Program**



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The Federal Government's Commitment to Small Businesses



Federal government is largest purchaser of goods and service. Federal agencies are supposed to make at least 23% of their purchases from small firms

- 3% - Historically Underutilized Business Zone Small Businesses (HUBZone)
- 3% - Service-Disabled Veteran-Owned Small Businesses (SDVOSB)
- 5% - Small Disadvantaged Businesses
- 5% - Women-Owned Small Businesses (WOSB)

DHS – FY10 Small Business Goals

Prime Contracting	
Small Businesses	33.5%
SDB	5%
WOSB	5%
HUBZone SB	3%
SDVOSB	3%

Subcontracting	
Small Businesses	40%
SDB	5%
WOSB	5%
HUBZone SB	3%
SDVOSB	3%

Is the Government Meeting Its Goals?



Category	Goal	2009 %	2009 \$	2008 %	2008 \$
Small Businesses	23%	21.89%	\$96.8b	21.50%	\$93.2b
WOSB	5%	3.68%	\$16.3b	3.40%	\$14.7b
Small Disadvantaged	5%	7.57%	\$33.5b	6.76%	\$29.3b
SDVOSB	3%	1.98%	\$8.8b	1.49%	\$6.4b
HUBZone	3%	2.81%	\$12.4b	2.34%	\$10.1b

How Does the Government Use Its Purchasing Power to Achieve its Socioeconomic Goals?



☐ Full and open competition

- Award to large business, with requirements relating to subcontracts to small business
- Award to small business

☐ Restricted competition

- Award to small business
 - Small Business
 - HUBZone Small Business
 - 8(a) (socially and economically disadvantaged small business)
 - SDVO Small Business
 - Women-Owned Small Businesses

SBA Women-Owned Small Business Program – Historical Perspective



- 1994** Federal Acquisition Streamlining Act established WOSB 5% goal
- 2000** Equity in Contracting Act – established WOSB program and directed SBA study on industries in which WOSBs are underrepresented
- 2004** US Women's Chamber of Commerce sues SBA for failing to implement federal law
- 2005** US District Court finds SBA sabotaged implementation on the program
- 2008** SBA issues first proposed WOSB rule, allowing for WOSB set-asides in four industries, provided the agency self-certifies that it previously discriminated against women
- 2008** Omnibus Appropriations Act stops further action of first proposed rule
- 2009** SBA issues new proposed rule (March 4) and final rule (October 7)
- 2010** Rule will become effective after FAR council action

WOSB – The Basics





- ❑ Agencies may set aside certain procurements for WOSBs
 - In 83 designated industries
 - If contract value is under the ceiling (\$5m, \$3m)
- ❑ Contracting officer must have a reasonable expectation that two or more WOSBs/EDWOSBs will submit an offer
- ❑ Contracting officer must believe the contract can be awarded at a fair and reasonable price
- ❑ Anticipated award price may not exceed
 - \$5m – manufacturing contracts
 - \$3m – all other contracts

WOSB Basics (continued)



SBA distinguishes between industries in which women are underrepresented and industries in which women are substantially underrepresented

- **UNDERREPRESENTED**  set aside for EDWOSBs
- **SUBSTANTIALLY UNDERREPRESENTED**  set aside for WOSBs

Industries in Which Women Are UNDERREPRESENTED

1. 2213-Water, Sewage and Other systems;
2. 2361-Residential Building Construction;
3. 2371-Utility System Construction;
4. 2381-Foundation, Structure, and Building Exterior Contractors;
5. 2382-Building Equipment Contractors;
6. 2383-Building Finishing Contractors;
7. 2389-Other Specialty Trade Contractors;
8. 3149-Other Textile Product Mills;
9. 3159-Apparel Accessories and Other Apparel Manufacturing;
10. 3219-Other Wood Product Manufacturing;
11. 3222-Converted Paper Product Manufacturing;
12. 3321- Forging and Stamping;
13. 3323-Architectural and Structural Metals Manufacturing;
14. 3324-Boiler, Tank, and Shipping Container Manufacturing;
15. 3333-Commercial and Service Industry Machinery Manufacturing;
16. 3342-Communications Equipment Manufacturing;
17. 3345-Navigational, Measuring, Electromedical, and Control Instruments Manufacturing;
18. 3346-Manufacturing and Reproducing Magnetic and Optical Media;
19. 3353-Electrical Equipment Manufacturing;
20. 3359-Other Electrical Equipment and Component Manufacturing;
21. 3369-Other Transportation Equipment Manufacturing;
22. 4842-Specialized Freight Trucking;
23. 4881-Support Activities for Air Transportation;
24. 4884-Support Activities for Road Transportation;
25. 4885-Freight Transportation Arrangement;
26. 5121-Motion Picture and Video Industries;
27. 5311-Lessors of Real Estate;
28. 5413-Architectural, Engineering, and Related Services;
29. 5414-Specialized Design Services;
30. 5415-Computer Systems Design and Related Services;
31. 5416-Management, Scientific, and Technical Consulting Services;
32. 5419-Other Professional, Scientific, and Technical Services;
33. 5611-Office Administrative Services;
34. 5612-Facilities Support Services;
35. 5614-Business Support Services;
36. 5616-Investigation and Security Services;
37. 5617-Services to Buildings and Dwellings;
38. 6116-Other Schools and Instruction;
39. 6214-Outpatient Care Centers;
40. 6219-Other Ambulatory Health Care Services;
41. 7115-Independent Artists, Writers, and Performers;
42. 7223-Special Food Services;
43. 8111-Automotive Repair and Maintenance;
44. 8113-Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance; and
45. 8114-Personal and Household Goods Repair and Maintenance.

Industries in Which Women Are **SUBSTANTIALLY UNDERREPRESENTED**

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|--|--|---|
| 1. 2372-Land Subdivision; | 14. 5112-Software Publishers; | 28. 5621-Waste Collection; |
| 2. 3152-Cut and Sew Apparel Manufacturing; | 15. 5171-Wired Telecommunications Carriers; | 29. 5622-Waste Treatment and Disposal; |
| 3. 3231-Printing and Related Support Activities; | 16. 5172-Wireless Telecommunications Carriers (except Satellite); | 30. 6114-Business Schools and Computer and Management Training; |
| 4. 3259-Other Chemical Product and Preparation Manufacturing; | 17. 5179-Other Telecommunications; | 31. 6115-Technical and Trade Schools; |
| 5. 3328-Coating, Engraving, Heat Treating, and Allied Activities; | 18. 5182-Data Processing, Hosting, and Related Services; | 32. 6117-Educational Support Services; |
| 6. 3329-Other Fabricated Metal Product Manufacturing; | 19. 5191-Other Information Services; | 33. 6242-Community Food and Housing, and Emergency and Other Relief Services; |
| 7. 3371-Household and Institutional Furniture and Kitchen Cabinet Manufacturing; | 20. 5312-Offices of Real Estate Agents and Brokers; | 34. 6243-Vocational Rehabilitation Services; |
| 8. 3372-Office Furniture (including Fixtures) Manufacturing; | 21. 5324-Commercial and Industrial Machinery and Equipment Rental and Leasing; | 35. 7211-Traveler Accommodation; |
| 9. 3391-Medical Equipment and Supplies Manufacturing; | 22. 5411-Legal Services; | 36. 8112-Electronic and Precision Equipment Repair and Maintenance; |
| 10. 4841-General Freight Trucking; | 23. 5412-Accounting, Tax Preparation, Bookkeeping, and Payroll Services; | 37. 8129-Other Personal Services; and |
| 11. 4889-Other Support Activities for Transportation; | 24. 5417-Scientific Research and Development Services; | 38. 8139-Business, Professional, Labor, Political, and Similar Organizations. |
| 12. 4931-Warehousing and Storage; | 25. 5418-Advertising, Public Relations, and Related Services; | |
| 13. 5111-Newspaper, Periodical, Book, and Directory Publishers; | 26. 5615-Travel Arrangement and Reservation Services; | |
| | 27. 5619-Other Support Services; | |

Who qualifies as a WOSB?



A WOSB is

- ❑ a small business (as defined by the NAICS code of the procurement; and
- ❑ Is not less than 51% unconditionally and directly owned and controlled by one of more women who are U.S. citizens
 - The woman must hold the highest officer position in the company
 - The woman must manage the day-to-day operations of the business, and devote full-time to the business during normal working hours.
 - The woman must make the long term decisions for the business.
 - The woman must be able to provide documents demonstrating she meets these requirements.

How does an entity qualify as an EDWOSB?



- ❑ Meet all the WOSB requirements, plus requirements for economic disadvantage
- ❑ Presumed economically disadvantaged if
 - Personal net worth < \$750,000
 - Adjusted Gross Yearly Income < \$350,000 (averaged over three years) AND
 - Fair Market Value of all assets (including primary residence and value of the business concern) < \$6m

Economic Disadvantage Factor - Personal net worth < \$750,000



In calculating personal net worth, exclude:

- Ownership interest in the WOSB
 - Equity interest in primary personal residence
 - Any income received from the WOSB that is an S corporation, LLC or partnership if you can provide documents showing that the income was reinvested in the WOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business.
 - Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable until retirement age without a significant penalty if you can provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.
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- Cannot count losses from the S corporation, LLC or partnership, however, as a personal liability because they are losses to the EDWOSB only, not losses to the individual.
 - Assets transferred by woman within two years of the WOSB's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. Exception for transfers for education, medical expenses, essential support, or in recognition of special occasion (birthday, anniversary, retirement)

Economic Disadvantage Factor - Adjusted Gross Yearly Income < \$350,000



Adjusted Gross Yearly Income

- Average over three years
- Includes bonuses and the value of company stock given in lieu of cash.
- Excludes any income received by your WOSB that is an S corporation, LLC, or partnership if you can provide document demonstrating that the income was reinvested in the EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern.
- Cannot count losses from the S corporation, LLC or partnership, to reduce personal income since these are losses to the WOSB only, not losses to the individual.
- If average income exceeds \$350,000, may still be eligible if can show
 - Income level was unusual and not likely to occur in the future
 - Losses commensurate with and directly related to the earnings were suffered, or
 - Other evidence that the income is not indicative of lack of economic disadvantage.

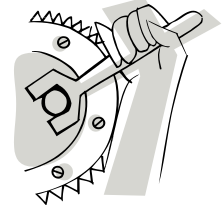
Economic Disadvantage Factor – Fair market value of assets



Fair market value of assets

- Includes primary residence
- Includes the value of the WOSB
- May exclude IRA or other official retirement account if
 - Account is unavailable until retirement age without a significant penalty, and
 - Provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

WOSB Contract Performance Requirements



WOSB must perform

- ☐ For service contracts, at least 50% of the cost of the contract for personnel with its own employees.
- ☐ For supply contracts, at least 50% of the cost of manufacturing the supplies or products (not including the cost of materials).
- ☐ For general construction contracts, at least 15% of the cost of the contract with its own employees (not including cost of materials).
- ☐ For specialty construction contracts, at least 25% of the cost of the contract with its own employees (not including cost of materials).

Exception: a business that does not manufacture the supplies or products being procured may still be eligible, so long as the WOSB:

- ☐ has less than 500 employees,
- ☐ Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied, AND
- ☐ Supplies the end item of a small business manufacturer or processor made in the United States

WOSB – Joint Ventures



Joint ventures with another small business are permitted if

- Combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract (unless there is an exception to the affiliation rule set forth in 13 C.F.R. § 121.103(h)(3))
- The WOSB participant must be designated on CCR and ORCA as an EDWOSB or WOSB; **AND**
- The parties to the joint venture must enter into a written joint venture agreement that contains the provisions:
 - Setting forth the purpose of the joint venture;
 - Designating an EDWOSB or WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;
 - Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the EDWOSB or WOSB;
 - Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB or WOSB contract; and
 - Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB or WOSB contract performed by the joint venture.

Certification

- Entities may self-certify as WOSB or EDWOSB, if they also provide adequate documentation supporting the self-certification
 - Copies of birth certificates, Naturalization papers, or unexpired passports
 - Copy of the joint venture agreement, if applicable;
 - **For limited liability companies:**
 - Articles of organization/Certificate of organization/Articles of formation and any amendments; and
 - Operating agreement, and any amendments;
 - **For corporations:**
 - Articles of incorporation and any amendments;
 - By-laws and any amendments;
 - All issued stock certificates, including the front and back copies, signed in accord with the by-laws;
 - Stock ledger; and
 - Voting agreements, if any;
 - **For partnerships:**
 - the partnership agreement and any amendments;
 - The assumed/fictitious name (doing business as) certificate(s); and
 - WOSBs - A copy of the WOSB Program Certification
 - EDWOSBs, - SBA Form 413, Personal Financial Statement and a copy of the EDWOSB Program Certification
- Alternatively, SBA will accept certifications from
 - A Federal agency
 - A State government
 - A recognized third-party certifier



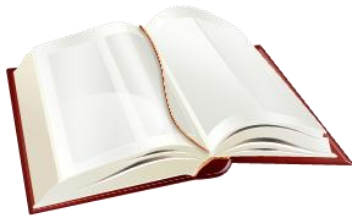
Penalties for Misrepresentation

Penalties for misrepresentation or provision of false information

- The SBA or another Federal agency may propose to suspend and debar.
- Federal government may also seek administrative and civil remedies prescribed by the False Claims Act and under the Program Fraud Civil Remedies Act
- Federal government may also seek administrative and criminal remedies

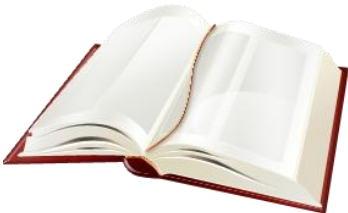


Resources



Federal Register, October 7, 2010,
Notice of Final Rule

<http://edocket.access.gpo.gov/2010/pdf/2010-25179.pdf>



SBA, Small Entity Compliance Guide
to the WOSB Program

http://www.sba.gov/idc/groups/public/documents/sba_program_office/women_owned_small_busine_guide.pdf

Questions?



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