Women-owned small businesses get SBA boost

Proposal to allow agencies to set aside Fed contracts

B2BExpert

Casie Hollis

Although Congress first authorized a set-aside program for women-owned small businesses (WOSBs) on Dec. 21, 2000, the United States Small Business Administration (SBA) still is trying to enact regulations to put the law into practice.

On March 4, 2010, the SBA issued new proposed regulations that would permit agencies to set aside government contracts to be competed only among qualifying WOSBs in identified industries in which WOSBs are underrepresented. This is not the first time that the SBA has attempted to enact such regulations, although it is the first time under President Barack Obama's administration.

The federal government spends hundreds of billions of dollars annually to procure goods and services to fulfill its needs. Currently, the federal government has set an agencywide goal of awarding 5 percent of the total value of its contracts to WOSBs. To date, it has never achieved that goal.

How underrepresented are WOSBs? According to the figures cited by the proposed rule, although WOSBs constitute approximately 28.2 percent of businesses in this country, WOSBs were awarded only 2.9 percent and 3.39 percent of federal contract dollars in 2002 and 2008 respectively.

Thomas Krusemark, the SBA Procurement Center representative assigned to activities involving Wright-Patterson Air Force Base, believes that if adopted as final, these regulations will have a significant impact on contracting at WPAFB. Krusemark said that the Dayton region has a substantial number of women-owned businesses that would qualify for this set-aside, although the Air Force has never had a way to increase the opportunities available to them and in turn to increase WPAFB's ability to meet the 5 percent goal.

To be eligible to participate in the WOSB set-asides, a business concern must satisfy six criteria: (1) It is owned by an economically disadvantaged woman unless bidding in an industry in which WOSBs are substantially underrepresented in the particular industry, in which case economic disadvantage does not need to be demonstrated; (2) the agency must reasonably expect two or more WOSBs will submit offers; (3) the anticipated contract must not exceed $5 million for manufacturing contracts and $3 million for other contracts; (4) the agency must expect to be able to award the contract at a fair and reasonable price; (5) the WOSB must obtain certification from an approved agency, government, or other entity as a WOSB; and (6) the contract must be for goods or services in one of the eligible 83 industry codes under the North American Industry Classification System (NAICS).

Previous attempts to enact similar regulations have faced significant criticism, particularly with regard to the method by which the SBA would calculate the industries in which WOSBs are underrepresented. The initial study conducted to identify the appropriate industries, conducted by the SBA, was independently evaluated and found to be fundamentally flawed. As a result, in 2006, the SBA contracted with a third-party public policy group to conduct a new study. This new proposed rule relies on that study to identify 83 industry categories in which WOSBs are underrepresented.

The SBA identified 45 NAICS codes in which WOSBs are underrepresented and 38 more in which WOSBs are substantially underrepresented. Many of the industry codes relate to manufacturing and construction, but other industries include office administrative services, real estate services, waste collection, data processing and hosting, and legal services.

Hollis is an attorney in the government contracts practice group in the Dayton office of Taft Stettinius & Hollister. She can be reached at hollis@taftlaw.com or at (937) 228-2838.