

AUDIT REPORT

SBA'S WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACTING PROGRAM





EXECUTIVE SUMMARY

SBA'S WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACTING PROGRAM

Report No.
18-18

June 20,
2018

What OIG Reviewed

The Small Business Administration's (SBA) Women-Owned Small Business Federal Contracting Program (Program) provides greater access to Federal contracting opportunities for firms that are women-owned small businesses (WOSBs) and economically disadvantaged women-owned small businesses (EDWOSBs) that meet Program requirements. Congress provided more access to the Program by amending the National Defense Authorization Act (NDAA) for 2015 to authorize the use of sole-source contracts for Program set-aside contracts, but it also required that firms be certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator. Effective in October 2015, SBA issued its final regulations allowing contracting officers to award Program contracts on a sole-source basis; however, it did not implement a certification process.

Our objectives were to determine (1) whether contracts awarded on a sole-source basis complied with requirements of the Program and (2) whether firms that received set-aside contracts on a sole-source basis conformed to the self-certification requirements.

To answer our objectives, we judgmentally selected 56 contracts totaling \$55.7 million that were awarded on a sole-source basis between January 1, 2016, and April 30, 2017. Our sample represented 81 percent of the Program's contracts awarded on a sole-source basis for this time period. We interviewed SBA program personnel and reviewed applicable regulations. In addition, we obtained documentation that firms submitted to support their assertion of being a WOSB or EDWOSB.

What OIG Found

Federal agencies' contracting officers and firms did not comply with Federal regulations for 50 of the 56 Program sole-source contracts, valued at \$52.2 million. As a result, there was no assurance that these contracts were awarded to firms that were eligible to receive sole-source awards under the Program.

OIG Recommendations

We recommended that SBA establish and implement a certification process as required, and we provided five additional recommendations to improve SBA's oversight of the Program.

Agency Response

We considered management comments on the draft report when preparing the final report. Based on management comments, we modified Recommendation 4. We requested a written response on the modified recommendation by July 20, 2018. SBA management's planned actions did not resolve five of the six recommendations. SBA agreed to conduct eligibility reviews for the firms we identified as lacking necessary documentation. While SBA agreed to initiate debarment proceedings if warranted, and implement a WOSB certification process as required by the NDAA, its proposed dates to complete the corrective actions were not reasonable. Additionally, we did not reach resolution on the recommendations to conduct quarterly reviews of Federal Procurement Data System-Next Generation (FPDS-NG) data for Program set-aside contracts or to strengthen controls in FPDS-NG pertaining to the NAICS codes applicable to the Program.

SBA, as part of its oversight role, must ensure that it takes all necessary measures to ensure the integrity of the Program. This includes conducting more frequent eligibility reviews, addressing incomplete data and errors, and coordinating with the Office of Federal Procurement Policy and the General Services Administration to strengthen controls in FPDS-NG.



**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

Final Report Transmittal
Report Number: 18-18

DATE: June 20, 2018

TO: Linda E. McMahon
Administrator

FROM: Hannibal "Mike" Ware
Inspector General

A handwritten signature in black ink, appearing to read "Mike Ware".

SUBJECT: SBA's Women-Owned Small Business Federal Contracting Program

This report presents the results of our audit of the Small Business Administration's (SBA's) Women-Owned Small Business Federal Contracting Program. We conducted this audit in accordance with generally accepted government auditing standards.

SBA agreed to address three out of six recommendations identified in the report; however, five recommendations are pending resolution. We considered management comments on the draft report when preparing the final report. Based on management comments, we modified Recommendation 4. We request that you provide your written response to Recommendation 4 by July 20, 2018. In your response, state whether you agree or disagree with the recommendation and, consistent with OMB Circular A-50, Revised, your response should include the corrective action(s) taken or planned for the recommendation and the target date for completion. If you disagree that the recommendation can be implemented, please explain the reasons for the disagreement and propose alternative actions that you believe would better address the issues presented in this report.

We appreciate the courtesies and cooperation extended to us during this audit. If you have any questions, please contact me at (202) 205-6586 or Andrea Deadwyler, Assistant Inspector General for Audits, at (202) 205-6616.

cc: Pradeep S. Belur, Chief of Staff, Office of the Administrator
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Introduction

The Small Business Administration (SBA) has a number of programs that provide benefits and assistance to help small and disadvantaged businesses grow and develop. One of these SBA programs is the Women-Owned Small Business Federal Contracting Program (Program). The intent of the Program is to increase Federal contracting opportunities for women-owned small businesses (WOSBs) and economically disadvantaged women-owned small businesses (EDWOSBs) through restricted competition to only WOSBs and EDWOSBs.

The Small Business Act (the Act) establishes the requirement for the Federal Government to set annual goals for awards made to small businesses. The Act establishes the WOSB goal as 5.0 percent of prime and subcontract awards. In fiscal year (FY) 2016, the Federal Government reported awarding approximately \$19.7 billion, or 4.8 percent, of Federal contracting dollars to WOSBs, including those in the Program.¹ According to SBA management, Program awards for FY 2016 totaled \$408.8 million—approximately 2.0 percent of the achieved goaling dollars for WOSB.

The Small Business Reauthorization Act of 2000 authorized contracting officers to set aside awards and restrict competition to eligible WOSBs and EDWOSBs in certain industries in which the Administrator determines women-owned firms are underrepresented. SBA uses industry studies to determine which industries and areas of work—represented by North American Industry Classification System (NAICS) codes—WOSBs and EDWOSBs are underrepresented in, and it maintains a list of these NAICS codes. Currently, SBA has identified 365 NAICS codes where WOSB firms are substantially underrepresented and 80 NAICS where EDWOSB firms are underrepresented.

National Defense Authorization Act for FY 2015 Made Major Changes to the Program

The National Defense Authorization Act (NDAA) for FY 2015 provided further incentive for contracting officers to use the Program by adding the authority to award sole-source contracts to participating firms.² The NDAA for FY 2015 also required that firms be certified by a Federal agency, a State government, SBA's Administrator, or a national certifying entity approved by the Administrator.³

SBA opted to implement the sole-source authority provision first—separate from a certification program. Effective in October 2015, SBA issued its final regulations allowing contracting officers to award Program contracts on a sole-source basis.⁴ However, as of April 2018, SBA has not issued regulations pertaining to a certification process for the Program. According to an SBA official, they are finalizing the proposed certification regulation for submission through its internal clearance process. They estimated that it will take at least another year to actually implement a certification process. Meanwhile, firms continue to self-certify their eligibility for the Program.

¹ On May 22, 2018, SBA released the FY 2017 small business procurement scorecard that shows the Federal Government awarded approximately \$20.8 billion, or 4.7 percent, of Federal contracting dollars to WOSBs, including those in the Program.

² Sole-source authority applies to awards up to \$6.5 million for manufacturing and \$4 million for all other types of awards.

³ SBA is modernizing its application and certification process for Federal contracting programs. Certify.SBA.gov, when completed, should provide a unified certification process across multiple SBA contracting programs, including the Program.

⁴ 80 Fed. Reg. 55019 (September 14, 2015) Pages 55019-55022.

Program Set-Aside Award Process

The Program increases Federal contracting opportunities for WOSBs and EDWOSBs through set-aside awards, which restrict certain contracts to only WOSBs and EDWOSBs. Firms seeking to qualify as a WOSB must be at least 51 percent unconditionally and directly owned and controlled by a woman (or women) who is a U.S. citizen. In addition to meeting WOSB requirements, firms seeking EDWOSB consideration also must qualify as economically disadvantaged, which generally means that the firm's ability to compete in the free marketplace is lower than competitors due to diminished capital and credit opportunities.⁵ Firms, Federal agencies' contracting officers, and SBA all contribute to maintain the integrity of the Program, as currently implemented:

- firms must either upload their supporting eligibility documents into Certify.SBA.gov or use an SBA-approved, third-party certifier to review their documentation,⁶
- contracting officers must select an appropriate NAICS code that SBA has identified as being eligible for the Program and access firms' documents in Certify.SBA.gov to ensure all supporting eligibility documents are present,⁷ and
- SBA is responsible for determining which NAICS codes are substantially underrepresented for the Program and performing eligibility examinations on a sample of firms that receive Program set-aside awards.

Appendix II provides a more detailed explanation of the specific responsibilities for each party.

Prior Work

In 2015, we conducted an evaluation of the Program and found that Federal agencies' contracting officers and firms were not adhering to the requirements of the Program. Specifically, we determined that contracting officers awarded set-aside contracts for work that was not eligible to be set aside for the Program and to firms that did not have sufficient documentation uploaded in the repository prior to awarding a contract. The audit report included five recommendations to improve SBA's oversight of the Program, including providing training and outreach to contracting officers and firms in the Program and performing eligibility examinations of the firms OIG identified as potentially ineligible for the Program. SBA implemented all five recommendations.⁸

In 2015, the Government Accountability Office (GAO) found that SBA did not have adequate procedures to oversee third-party certifiers or reasonable assurance that only eligible businesses were obtaining WOSB set-aside awards. GAO recommended that SBA establish measures to ensure that the Agency is properly assessing third-party certifiers' performance. GAO also recommended that SBA develop standard operating procedures for conducting firm eligibility examinations, begin analyzing examination results, and implement "ongoing reviews of a sample of all business that have represented their eligibility to participate in the program."⁹

⁵ 13 CFR 127.203 provides the dollar thresholds defining economic disadvantage.

⁶ The documents required vary depending on the type of business category, such as partnerships, corporations, sole proprietorships, and whether the firm uses a third-party certifier to verify its eligibility.

⁷ SBA replaced the Program repository with Certify.SBA.gov in March 2016.

⁸ Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program (OIG Report 15-10, May 14, 2015).

⁹ Women-Owned Small Business Program, Certifier Oversight, and Additional Eligibility Controls are Needed (GAO-15-54, October 2014).

Objectives

Our objectives were to determine (1) whether contracts awarded on a sole-source basis complied with requirements of the Program and (2) whether firms that received set-aside contracts on a sole-source basis conformed to the self-certification requirements.

Finding: \$52.2 Million Awarded to Potentially Ineligible Firms Based on Documentation in Certify.SBA.Gov

Federal agencies' contracting officers did not comply with the Program requirements for 50 of the 56 set-aside contracts awarded on a sole-source basis. Furthermore, the firms that received those contracts did not comply with the Program's self-certification requirements. These contracts accounted for Program sole-source awards, valued at approximately \$52.2 million. These conditions could have been precluded had SBA implemented a certification program at the same time as it implemented the sole-source authority provisions. As a result, there is no assurance that Program set-aside contracts awarded on a sole-source basis were awarded to eligible WOSB or EDWOSB firms.

Federal Agencies' Contracting Officers and Participating Firms Did Not Comply With Program Requirements

Contracting officers at various Federal agencies made sole-source awards without having the necessary documentation to determine eligibility for 50 of the 56 Program contracts we reviewed. Examples of missing documentation included WOSB and EDWOSB self-certifications, articles of incorporation, birth certificates, and financial information. Without this documentation, it was not possible to ascertain that a firm was owned and controlled by a woman who is a U.S. citizen. Specifically, contracting officers awarded 18 contracts, valued at \$11.7 million, on a sole-source basis, to firms that had no documentation in Certify.SBA.gov, and 32 contracts, valued at \$40.5 million, to firms that uploaded incomplete documentation. Compounding these issues, within these 56 contracts, we found instances where contracting officers had awarded a contract using a NAICS code that SBA had not identified as being substantially underrepresented by women-owned businesses. Additionally, contracting officers awarded two contracts to Program firms for NAICS codes that were identified by SBA, but the firms had not identified themselves as being eligible small businesses for those codes.¹⁰

Awarding contracts to potentially ineligible firms eliminates contracting opportunities for eligible businesses. Additionally, awarding contracts using NAICS codes not designated by SBA as eligible for the Program improperly expands it to industries where SBA has not found underrepresentation for women-owned businesses. Further, the results associated with the Federal Government's goals for contracting with WOSBs may be overstated, and the public and Congress may not know the extent to which the Program has addressed underrepresentation.

At our request, SBA contacted the contracting officers who awarded the contracts to firms that had not uploaded any documentation in Certify.SBA.gov, and as of April 2018, seven contracting officers responded. Among the seven contracting officers, five stated that they had incorrectly coded contracts as Program sole-source contracts in the Federal Procurement Data System-Next Generation (FPDS-NG), one stated she obtained the documentation directly from the firm, and one stated he was not aware of the requirement to verify documents in Certify.SBA.gov. As a result, Federal agencies may have inappropriately received credit toward their FY 2017 WOSB contracting goals.

¹⁰ Contracting officers awarded 6 of the 56 contracts to Program firms that had submitted the required documentation in Certify.SBA.gov. However, one of the six firms did not identify itself as a small business for the selected contract NAICS code.

Under the current process, both the Program firms and contracting officers are responsible for ensuring that this Program operates correctly. However, neither the firms nor contracting officers adhered to the minimal requirements of the Program. Although firms only needed to upload documentation supporting their assertion as a WOSB or EDWOSB to Certify.SBA.gov, they did not provide all of the required information for the contracts we reviewed. Moreover, the contracting officers, who serve as the last control that the Government has in place prior to awarding a Program contract, did not exercise due diligence for 50 of the 56 contracts in our sample. Therefore, they awarded approximately \$52.2 million in Program sole-source contracts to firms that may have been ineligible.

SBA Needs to Implement the Program Certification Requirements Mandated in the NDAA for FY 2015

The NDAA for FY 2015 authorized contracting officers to use the Program by adding the authority to award contracts on a sole-source basis to participating firms. However, it also required SBA to develop a certification process. Effective in October 2015, SBA issued its final regulations authorizing Federal contracting officers to award contracts on a sole-source basis without implementing a certification process. This decision was inconsistent with SBA's statutory authorization, and we expressed our concern to SBA officials during the proposed sole-source rulemaking process that allowing sole-source contracting authority without implementing the simultaneous required certification exposed the Program to potential abuse.

The weaknesses we noted in this report are similar in nature to those we previously reported in 2015.¹¹ In our 2015 report, we recommended that SBA should increase training and outreach to both firms and to contracting officers regarding their responsibilities when using the Program. Although SBA agreed with the recommendations and provided more training and outreach, our findings indicate the problems persist. SBA can prevent Federal agencies' contracting officers from awarding contracts to ineligible firms by implementing a certification process that includes reviewing, analyzing, and making an affirmative decision that applicants are eligible to participate in the Program. SBA also can strengthen controls in FPDS-NG to preclude Federal agencies' contracting officers from using ineligible NAICS codes for Program contracts. The Program should be more in line with existing SBA certification programs, in that SBA or some other entity authorized by SBA's Administrator will approve firms into the Program after a review process, and before any contracts are awarded to the firms.

SBA estimates that it will take at least another year before it implements a Program certification process; therefore, firms continue to self-certify, exposing the Program to unnecessary risks of fraud and abuse. Until SBA implements a Program certification process, it should expand its oversight role to prevent Federal agencies' contracting officers from awarding Program contracts to ineligible firms.

Recommendations

We recommend that the SBA Administrator ensure that the Associate Administrator for Government Contracting and Business Development:

¹¹ Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program (OIG Report 15-10, May 14, 2015).

1. Conduct eligibility reviews for the firms we identified in this report that lacked the required documentation in Certify.SBA.gov and require those firms to remove their designation in the System for Award Management.
2. Initiate debarment proceedings, if warranted based on the results of eligibility reviews in Recommendation 1.
3. Implement a Women-Owned Small Business Federal Contracting Program certification process as required by the National Defense Authorization Act for FY 2015.
4. Conduct quarterly reviews of firms with newly obtained WOSB or EDWOSB status, to ensure that they have the required documentation in Certify.SBA.gov, until SBA implements a Women-Owned Small Business Federal Contracting Program certification process.
5. Conduct quarterly reviews of Federal Procurement Data System-Next Generation data for Program set-aside contracts to ensure Federal agencies' contracting officers used the appropriate North American Industry Classification System codes and take the necessary action(s) with identified exceptions.
6. In coordination with the Office of Federal Procurement Policy and the General Services Administration, strengthen controls in the Federal Procurement Data System-Next Generation to prevent Federal agencies' contracting officers from using ineligible North American Industry Classification System codes.

Analysis of Agency Response

SBA management provided formal comments that are included in their entirety in Appendix IV. The Office of Government Contracting and Business Development (GCBD) planned actions do not resolve five recommendations. SBA management agreed with Recommendation 1. While management agreed with Recommendations 2 and 3, their proposed dates to complete the corrective actions were not reasonable.¹² The Office of Management and Budget (OMB) guidance requires agencies to "assign a high priority to the resolution of audit recommendations and to take corrective action."¹³ The dates proposed by GCBD do not correlate with the seriousness of the issues identified in this report. The Agency's proposed delayed action continues to undermine the integrity of the Program. SBA management also provided comments on the audit findings that we considered in preparing our final report.

Summary of Actions Necessary to Close the Recommendations

The following provides the status of the recommendations and the necessary actions to close them.

1. **Resolved.** GCBD management concurred with our recommendation, stating that they will conduct eligibility examinations of the firms that OIG identified as lacking sufficient documentation in Certify.SBA.gov. GCBD plans to complete final action on this recommendation by September 30, 2019. This recommendation can be closed once SBA provides evidence that it completed the eligibility examinations of the 50 firms that OIG

¹² SBA provided target dates for final action to implement our recommendations on SBA Form 1824, Recommendation Action Sheet.

¹³ OMB Circular A-50, Audit Follow-up, dated September 29, 1982.

identified as lacking sufficient documentation in Certify.SBA.gov and makes a determination regarding the monetary impact.¹⁴

2. **Unresolved.** GCBD management concurred with our recommendation, indicating that they will initiate debarment proceedings, when warranted, based on eligibility examinations, and noting that they already refer ineligible firms to OIG. GCBD plans to complete final action on this recommendation by September 30, 2020. While the proposed action addressed the recommendation, the proposed date for completion of the corrective action was unreasonable. GCBD should initiate regulatory action, to include debarment proceedings, when warranted, concurrently with each eligibility examination. Taking 2 years to remove companies that should not be in the program contributes to undermining the integrity of the Program. This recommendation can be closed once GCBD demonstrates that it has taken warranted regulatory action in response to its eligibility reviews in Recommendation 1. In accordance with our audit follow-up policy, if GCBD and OIG do not reach agreement on this recommendation within 60 days after the date of this final report, OIG will notify the audit follow-up official of the disputed issue.
3. **Unresolved.** GCBD management concurred with our recommendation, stating that it already has developed a proposed rule to implement the certification requirement. GCBD plans to complete final action on this recommendation by January 1, 2020. While the proposed action addressed the recommendation, the proposed date for completion of the corrective action was unreasonable. In its April 4, 2018, Business Technology Investment Council presentation, GCBD informed stakeholders that Certify.SBA.gov functionality would be implemented by June 20, 2019. Accordingly, GCBD should be able to complete this final action by the same date. This recommendation can be closed once SBA implements a certification process for the Program. In accordance with our audit follow-up policy, if GCBD and OIG do not reach agreement on this recommendation within 60 days after the date of this final report, OIG will notify the audit follow-up official of the disputed issue.
4. **Unresolved.** GCBD management did not concur with our initial recommendation to increase eligibility reviews from an annual basis to a quarterly basis of firms that were awarded Program contracts. Management stressed that its current approach to examining Program eligibility is efficient and that additional examinations would create more burden on program analysts who perform this function.

OIG understands the Agency's constraints in administering the Program, and it was not our intent to increase the burden on program analysts. The purpose of this recommendation was to accomplish the goal of strengthening the integrity of the Program as an interim measure to completion of Recommendation 3. Therefore, we modified this recommendation to read, "Conduct quarterly reviews of firms with newly obtained WOSB or EDWOSB status, to ensure that they have the required documentation in Certify.SBA.gov, until SBA implements a Women-Owned Small Business Federal Contracting Program certification process." With this action, the Program will be able to proactively assess whether new firms submitted the required documentation. We request a written response on the modified recommendation by July 20, 2018.

¹⁴ SBA noted in its response that of the 50 contracts we questioned, the number of contracts without documentation was 17 instead of 18. GCBD believes that the discrepancy stems from OIG's double-counting one contract made by the Department of Justice. We maintain that the correct number of contracts was in fact 18, as our scope covered January 2016–April 2017. This allowed for some firms to receive two contract awards: one for FY 2016 and the other for FY 2017.

5. **Unresolved.** GCBD management did not concur with our recommendation and questioned SBA's ability to provide oversight of resources governed by other Federal agencies.

While SBA has not been tasked with the responsibility and oversight of other agencies' resources, ensuring the integrity of the Program is SBA's responsibility. Consequently, it is ultimately responsible for addressing repetitive errors made by Federal agencies' contracting officers in the computer system of record. SBA did not propose corrective actions to address the intent of this recommendation. The purpose of this recommendation is to accomplish the goal of improving the integrity of the data in FPDS-NG and ensuring that contracting officers use the appropriate NAICS codes. The Agency's proposed corrective action should include a plan to correct inaccurate codes when they are identified. In accordance with our audit follow-up policy, if GCBD and OIG do not reach agreement on this recommendation within 60 days after the date of this final report, OIG will notify the audit follow-up official of the disputed issue.

6. **Unresolved.** GCBD management did not concur with our recommendation and stressed that the recommended action is too late in the procurement process to meaningfully address the use of inappropriate NAICS codes.

As the Agency responsible for overseeing the Program, SBA should take all necessary measures to ensure the integrity of the Program. As such, GCBD should coordinate with the Office of Federal Procurement Policy and the General Services Administration to strengthen controls in FPDS-NG to ensure that contracting officers only use eligible NAICS codes for the Program. SBA stated that the main issue is that the solicitations contain the improper NAICS codes, not FPDS-NG. However, SBA could examine the possibility of using data validation techniques for NAICS code cells, thereby limiting the codes that contracting officers can enter in FPDS-NG for WOSB and EDWOSB set-aside contracts. While this action would occur at the end of the procurement process, if mistakes have been made in previous actions, this measure can provide a needed assurance that ineligible NAICS codes are not being used. In accordance with our audit follow-up policy, if GCBD and OIG do not reach agreement on this recommendation within 60 days after the date of this final report, OIG will notify the audit follow-up official of the disputed issue.

Response to Agency's Comments on the Audit Findings

The following provides our response to the Agency's comments detailed in Appendix IV.

1. Interpretation of the NDAA of 2015.

SBA contended that the NDAA does not require the Agency to establish a certification program concurrently with sole-source authority. However, OIG maintains its position, as previously reported, that the statutory authority for contracting officers to award sole-source contracts through the WOSB program conditioned the awards on firms receiving certification from a Federal, State, or approved outside party. The statute identified this certification requirement for WOSB and EDWOSB firms in the same sentence that granted contracting officers sole-source authority. For example, 15 U.S.C. § 637(m)(7) and (8) read (emphasis added):

(7) A contracting officer may **award a sole source contract** under this subsection to any small business concern **owned and controlled by women** described in paragraph (2)(A) **and certified** under paragraph (2)(E) if—
(8).... A contracting officer may **award a sole source contract** under this subsection to any small business concern **owned and controlled by women certified** under paragraph (2)(E).

OIG firmly contends that the enabling legislation limited eligibility for sole-source contracts to certified entities.

2. The audit findings unnecessarily rely on unverified and/or refuted data.

SBA stressed that we should not have relied on sole-source classifications in FPDS-NG, specifically stating that 5 out of 7 of the 50 contracts we questioned were mistakenly identified as awards under the WOSB program. The FPDS-NG data that we used to conduct this audit was the same data SBA relies on to formulate the Small Business Goaling Report, which is submitted to Congress and other stakeholders. If SBA is admitting that the data it uses is inaccurate, SBA should immediately communicate this inaccuracy to Congress to ensure that all stakeholders understand SBA's use of inaccurate data when assessing the Federal Government's achievement of small business procurement goals. As SBA mentioned, FPDS-NG can be prone to human error and obligation mischaracterization, as evidenced by the responses from the contracting officers. These reasons support our recommendations addressing data reliability.

3. The audit does not give sufficient consideration to the unique practical challenges to implementing the WOSB program.

SBA explained that the WOSB program has unique and complex problems, such as NAICS code limitations and document review requirements for participants and contracting officers. Throughout its response, SBA also highlighted providing extensive training to firms and contracting officers but still attributed firms' failure to submit required documentation and contracting officers' mistakes to lack of knowledge and misclassifications. The audit team conducted a thorough review of the Program, including assessing internal controls and gaining a comprehensive knowledge of the Program's challenges. We appreciate the complexities of the Program; however, if SBA has not established internal controls to ensure the accuracy of data provided by businesses and contracting officers participating in the Program, there is no way to ensure Program eligibility and thus, no way to ensure Program integrity. We believe the recommended actions need to be addressed for the Program to run efficiently and effectively and ensure that only eligible WOSBs realize Program benefits.

Appendix I: Objectives, Scope, and Methodology

This report presents the results of our audit of SBA's Women-Owned Small Business Federal Contracting Program (Program). Our objectives were to determine (1) whether contracts awarded on a sole-source basis complied with requirements of the Program and (2) whether firms that received set-aside contracts on a sole-source basis conformed to the self-certification requirements.

To answer our objectives, we reviewed the Small Business Act, United States Code Title 15, Section (637)(m), the Code of Federal Regulations Title 13, the Federal Acquisitions Regulation subpart 19.15, the Federal Register Volume 80, and the NDAAs for FYs 2013 and 2015. Additionally, we reviewed the Program website and the Program NAICS code lists. Further, we met with SBA officials to discuss Program and reviewed documentation in Certify.SBA.gov.

We selected and reviewed a judgmental sample of 56 contracts awarded on a sole-source basis by querying FPDS-NG for WOSB and EDWOSB original awards between January 1, 2016, and April 30, 2017. We identified 507 WOSB and EDWOSB set-aside awards that met our parameters and selected all the awards equal to or over \$250,000 for our sample. This resulted in a sample of 42 WOSB awards totaling approximately \$43.7 million and 14 EDWOSB awards totaling approximately \$12.0 million, which covered approximately 81 percent of the Program contracts awarded on a sole-source basis for this time period.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Use of Computer-Processed Data

We relied on data from FPDS-NG to select our judgmental sample of contracts awarded on a sole-source basis to WOSB and EDWOSB firms. Federal agencies are required to submit most contract action data directly to FPDS-NG.¹⁵ This was the best source of information on Federal contracting, so for the purposes of our review, we deemed it sufficient. Additionally, we also used System for Award Management (SAM) and the Certify.SBA.gov.¹⁶ Throughout our work, we looked for errors in data that called into question the validity of information contained in SAM, or Certify.SBA.gov. As a result, we believe the information was reliable for the purposes of answering our objectives.

Review of Internal Controls

OMB A-123 provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal controls. According to OMB, agencies are responsible for establishing and maintaining internal controls to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations.¹⁷ SBA's internal control

¹⁵ 48 CFR Part 4.603 (b).

¹⁶ SAM is a Federal database that consolidated various Federal procurement systems.

¹⁷ OMB Circular A-123, Management's Responsibility for Internal Control (July 15, 2016).

systems standard operating procedure provides guidance on implementing and maintaining effective internal control systems, as required by OMB Circular A-123.¹⁸

We found weaknesses in SBA's oversight of Program. Specifically, we found that SBA did not meet certification requirements for the Program as mandated by the NDAA for 2015. Absent a certification process, Federal contracting officers are more likely to award Program contracts to ineligible firms. We made a recommendation in this report to address this deficiency.

¹⁸ SOP 00 02, Internal Control Systems (January 1986).

Appendix II: Firms, Federal Agencies' Contracting Officers, and SBA Responsibilities

Firm Responsibilities

Currently, in order to receive a Program set-aside award, a firm must either upload its supporting eligibility documents into Certify.SBA.gov or be certified by an SBA-approved, third-party certifying entity.¹⁹ Examples of required documents include, but are not limited to, the following:

- citizenship documentation
- signed copy of the women-owned small business certification
- corporate by-laws, if applicable
- front and back copies of all issued stock certificates, if applicable

When a firm uses an approved third-party certifier, the certifier reviews the firm's eligibility documents and ensures that the firm meets eligibility requirements. In such cases, the firm is required to upload the self-certifications and the third-party eligibility certificates to Certify.SBA.gov. In addition, all firms must access SAM to provide certification statements that assert that (1) the firms meet the Program requirements, (2) they have provided all the required documents to Certify.SBA.gov, and (3) no changes have occurred that would affect the firms' eligibility for the Program.

Agency Contracting Officers' Responsibilities

When using the Program for set-aside awards, contracting officers must select an appropriate NAICS code that SBA has identified as being eligible for the Program.²⁰ In addition, once a WOSB or EDWOSB firm has submitted documentation into Certify.SBA.gov, the contracting officer at the requesting agency will review the submitted offers, select a firm, and contact that firm to request access to the firm's documents in Certify.SBA.gov. The contracting officer then accesses Certify.SBA.gov to ensure all supporting eligibility documents are present—but they are not required to verify whether the documentation supports the firm's eligibility for the Program. If all documentation is present, the contracting officer awards the contract. If it is not, the contracting officer files a protest, which SBA reviews. Furthermore, the contracting officer can only award a Program set-aside contract if the NAICS code associated with the contract was previously identified by SBA as being eligible for the Program. In addition, the contracting officer must verify in SAM that the firm identified itself as small for the NAICS code assigned to the contract.²¹

SBA Responsibilities

SBA is responsible for determining which NAICS codes are substantially underrepresented for WOSBs and underrepresented for EDWOSBs. SBA approves third-party certifiers who review a firm's eligibility documentation and determine whether the firm is eligible for the Program. Additionally, SBA performs eligibility examinations on a sample of firms that receive Program set-aside awards, or firms that have received protests from agency contracting officers. In these reviews, SBA does not certify the firms, but instead verifies that the documentation uploaded to Certify.SBA.gov supports Program eligibility.

¹⁹ SBA replaced the Program repository with Certify.SBA.gov in March 2016.

²⁰ 13 CFR Part 127.501.

²¹ 13 CFR Part 127.504(a)(1) and 13 CFR Part 127.503(g).

Appendix III: Questioned Costs

Table 1. OIG Schedule of Questioned Costs for the WOSB Program²²

Description	Amount	Explanation
Unsupported Costs	\$52,229,145	Firms in the WOSB program submitted incomplete documentation to establish eligibility for the program.
Total Questioned Costs	\$52,229,145	

Source: Generated by OIG based on OIG's analysis of recipient financial information.

²² Questioned Costs are expenditures that are not supported by adequate documentation at the time of the audit or otherwise do not comply with legal, regulatory, or contractual requirements.

SBA

ASSOCIATE ADMINISTRATOR,
OFFICE OF GOVERNMENT CONTRACTING
AND BUSINESS DEVELOPMENT

RESPONSE TO AUDIT REPORT



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

May 14, 2018

MEMORANDUM

TO: Hannibal “Mike” Ware, Acting Inspector General
Office of Inspector General

FROM: Robb Wong, Associate Administrator
Office of Government Contracting and Business Development

SUBJECT: Response to Draft Audit Report on the Women-Owned Small Business Federal Contract Program

The Office of Government Contracting and Business Development (GCBD) is submitting this memorandum in response to the findings and recommendations identified in the subject draft report.

I. Overview

GCBD appreciates the SBA’S OIG review of sole source awards made under the Women-Owned Small Business (WOSB) Federal Contract Program. This latest WOSB audit produced findings that echoed the findings in the previous audits conducted by SBA’s OIG and the GAO. To implement the recommendations from those previous OIG and GAO audits, GCBD has, for example, provided extensive training to contracting officers and WOSBs. In particular, in Fiscal Year 2017 alone, GCBD trained over 2,000 WOSBs and 940 contracting officers on the WOSB Program. GCBD has also established the policies and procedures to perform eligibility examinations of the firms that received contract awards under the WOSB Program. GCBD has completed the eligibility examination of those firms that OIG identified as lacking documents in its report.

Additionally, GCBD has continued to conduct eligibility examinations of the firms that received set-aside contracts under the WOSB Program. More importantly, GCBD is in process of establishing the infrastructure to implement the certification requirement under the WOSB Program. Carrying out all the recommendations made in the latest report means that GCBD will be required to divert its resources in a manner that could hinder the progress being made as a result of the previous audits without resulting in equally beneficial improvements of the WOSB Program.

II. Response to Recommendations

1. Conduct eligibility reviews for the firms we identified in this report that lacked the required documentation in Certify.SBA.gov and require those firms to remove their designation in the System for Award Management.

Response: GCBD agrees with this recommendation and will conduct the eligibility examinations of the firms that OIG identified as lacking sufficient documentation in Certify.SBA.gov. GCBD notes, however, that it will be logistically challenging to complete these examinations during the current fiscal year. The

WOSB Program Office has fully committed staff resources to evaluating the eligibility of the firms that have received set-aside contract awards under the WOSB Program in Fiscal Year 2017. The report has not provided significant justification for not reviewing the firms that have already been selected for review. While GCBD thinks it is important to review the firms identified in this report, it is also still important to review the firms that received awards in FY 2017. GCBD will prioritize the examination of the firms identified in the OIG report in Fiscal Year 2019.

2. Initiate debarment proceedings, if warranted based on the results of eligibility reviews in Recommendation 1.

Response: GCBD does agree to this recommendation. However, it should be noted that the WOSB Program Office has been conducting the eligibility examination of WOSBs that have benefited from the WOSB Program since 2012. Six years of performing eligibility examinations have shown that most firms that lack documents in the WOSB Program Repository fail to do so because they do not fully understand the WOSB Program requirements, not because they lack present responsibility. There is scant evidence that a majority of the firms that lack documents in Certify.SBA.gov are making false representations or are otherwise not presently responsible. If there is such evidence, GCBD already refers those firms to the OIG.

3. Implement a Women-Owned Small Business Federal Contracting Program certification process as required by the National Defense Authorization Act for FY 2015.

Response: GCBD agrees with this recommendation. It has already developed a proposed rule to implement the certification requirement. The proposed rule is undergoing internal clearance.

4. Increase eligibility reviews from an annual basis to a quarterly basis of firms that were awarded Program contracts to ensure they have the required documentation in Certify.SBA.gov, until SBA implements a Women-Owned Small Business Federal Contracting Program certification process.

Response: GCBD does not agree with this recommendation. Currently, the WOSB Program Office analyzes award data from FPDS and selects for eligibility examinations those firms that received set-aside awards under the WOSB Program during the previous fiscal year. In Fiscal Year 2017 the program office performed one hundred and twenty three examinations. Each Program Analyst is assigned a number of eligibility examination cases to work at the beginning of the fiscal year and conducts examinations throughout the year. An eligibility examination may take more than one month as the regulations require SBA to give firms 5 business days to prepare for an eligibility examination and an additional 15 business days to respond to SBA's determination of proposed ineligibility. Program Analysts often provide hands-on assistance and counseling to the firms that do not understand the regulatory requirement that they provide their eligibility documents through Certify.SBA.gov. SBA also decides status protests in order to evaluate the eligibility of WOSB and EDWOSBs awarded set-aside or sole source contracts. For these reasons, SBA believes that it is more efficient to continue its current approach to select the awardees from the previous fiscal year and perform those examinations throughout the current fiscal year, while continuing to decide protest on contract actions in the current fiscal year.

5. Conduct quarterly reviews of Federal Procurement Data System-Next Generation data for Program set-aside contracts to ensure Federal agencies' contracting officers used the appropriate North American Industry Classification System codes and take the necessary action(s) with identified exceptions.

Response: GCBD does not agree with this recommendation. SBA has not been tasked with the responsibility and oversight of other Agency's contracting officers, or another Agency's computer system. If there are issues with the actions of employees of another agency, those issues should be

handled by those Agencies. The recommendation mentions “necessary actions” that SBA should take, but there are no actions that SBA can take with regard to another executive Agency’s contracting officer.

6. In coordination with the Office of Federal Procurement Policy and the General Services Administration, strengthen controls in the Federal Procurement Data System-Next Generation to prevent Federal agencies’ contracting officers from using ineligible North American Industry Classification System codes.

Response: GCBD does not agree with this recommendation. This recommendation is vague and would not likely help the program. Reporting contract actions in FPDS is usually close to the last step in the procurement process. The issue is that the solicitation contains the improper NAICS code, not FPDS. Trying to fix the use of improper NAICS code usage at the reporting stage of the process is unlikely to fix the problem identified in the report. Attempting to fix this issue at the end of the process is likely to create more not less confusion and even more reluctance on the part of contracting officers to use the program. SBA would like to focus on making sure that the correct NAICS are chosen at the beginning of the process, not on making things incredibly complicated at the end of the process.

III. Audit Findings

SBA’s focus is on improving the WOSB program and agreed with practical recommendations deemed to support that objective. For further clarification, SBA will briefly comment on some of the audit data and findings underlying the recommendations.

a. Interpretation of the NDAA of 2015.

The agency has informed SBA’s OIG that it disagrees with the view that the National Defense Authorization Act (NDAA) of 2015 expressly or implicitly required SBA to establish a certification program concurrently with the sole source authority set forth in the NDAA. Without reproducing those arguments here, SBA notes its conclusions:

- i. The NDAA of 2015 established sole source authority without the need for SBA action (that is why SBA published a direct final rule to set forth the framework).
- ii. A certification program requires planning and deliberation and could not be issued as a direct final rule.
- iii. It was neither legally justifiable nor practical to prohibit sole source authority while SBA followed the time-consuming path of establishing a new certification process.

b. The audit findings unnecessarily rely on unverified and/or refuted data.

A stated objective of the audit was to “determine whether contracts awarded on a sole-source basis complied with requirements of the program.” The report notes that contracting officers awarded sole source contracts to 50 firms although these firms lacked sufficient documentation. Of these 50, 17²³ firms did not have any documents in Certify.SBA.gov (Certify). Upon request from OIG, GCBD contacted the contracting agencies and requested a justification for making those awards. GCBD received responses from seven (7) contracting agencies. Of these seven, five stated that the awards were not awarded under the WOSB Program and corrected data entries in FPDS. GCBD informed OIG of its findings.

²³ OIG notes that contracting officers awarded 18 contracts to firms that had no documentation in Certify.SBA.gov. The number of contracts that GCBD received was 17. GCBD believes that the discrepancy stems from OIG’s double-counting one contract made by the Department of Justice.

While not emphasized in the report itself, SBA's OIG has informed the GCBD, that in fact, SBA's OIG relied exclusively on FPDS data for its conclusion. SBA's OIG has not verified that the actions recorded in FPDS are actual contract award actions, or actual sole source awards rather than orders placed off pre-existing contract vehicles or miscoded contract modifications. As SBA's OIG is well aware, FPDS-NG does not report and record only contract "awards." As noted by the Government Accountability Office in a recent audit of the DATA Act oversight, "The Information displayed on USASpending.gov is derived from several sources. Procurement data are imported from FPDS-NG, which collects information on contract **actions**." GAO-17-496 at p. 7 **emphasis** added. GAO further added, "In our past work, we found that FPDS-NG often contains inaccurate or incomplete data as agencies do not always input or document required information." Id. When reviewing FPDS-NG data in regard to a previous audit of SBA's 8(a) Business Development Program GAO provided a critique of the FPDS-NG, and guidance on how it modified its data collection methodology to mitigate the weaknesses in the FPDS-NG collection. "During the course of our review, we identified a few data limitations with FPDS-NG, such as misclassified 8(a) firms and incorrect obligations. To mitigate these limitations, we interviewed knowledgeable individuals about the contracts in question and corrected errors we identified." GAO-16-113 at p. 5.

There are known deficiencies in the FPDS-NG database. With regard to this report there is the issue that the FPDS-NG database records contract "actions" not contract awards, and it can be prone to human error especially with regard to the recording of socio-economic status issues, and obligation mischaracterization (such as coding an action as a set-aside when it was not). To compound these general issues, SBA provided SBA's OIG with specific information that called into question the reliability of its data set. As noted above, SBA received information from seven contracting officers. Five of the seven contracting officers stated they had misclassified the contract as a sole source – meaning that these five contract actions are not sole source contract awards. In addition, one contracting officer stated that awardee submitted its documents. SBA's OIG was not aware that this satisfied the requirements of the program.²⁴

In summary, at least 85% of the contract information that GCBD received from contracting officers apparently contradicts statements made in this report. When presented with this apparent error rate, and asked why the data set was not corrected to remove the incorrectly coded contract actions, and the compliant contract action from the data set, the Agency was told that SBA OIG cannot rely on an email from a contracting officer. The Agency was not made aware of this methodological stricture during the audit, and therefore never requested additional information or supporting documents from the contracting officer. SBA was surprised to still see these contract actions included in the reports data set.

SBA OIG not only had the same general information that the data set could be non-reliable in ways that could affect the report, but also had specific information that called into question the quality of its data. SBA OIG had reason to believe that this data could be used to inform legislation, policy, or a program that could have a substantial effect; used to inform important decisions by individuals or organizations with an interest in the subject; and may well be the basis for numbers that are likely to be widely quoted. GCBD thinks more consideration should have been given to the quality of the data relied on, and thinks it is unnecessary and possibly misleading to draw conclusions and make minor, major, short term, or long term policy decisions based on unverified and apparently inaccurate data.

- c. The audit does not give sufficient consideration to the unique practical challenges to implementing the WOSB program.

²⁴ The relevant provision states – "Documents provided to contracting officer. All of the documents set forth in paragraphs (d) and (e) of this section must be provided to the contracting officer to verify eligibility at the time of initial offer..." 13 C.F.R § 127.300(c). SBA created the repository as a means to make this statutorily required disclosure to contracting officers less burdensome for both contracting officers and program participants.

GCBD also believes that the report has undervalued and failed to give significant weight to structural issues unique to the WOSB program. The WOSB Program has unique and complex problems that SBA's other contracting programs do not have.

First, it is the only contracting program limited by NAICS codes.

Second, it is the only program that by statute burdened program participants and contract officers with document review requirements. This particular requirement has confounded both small businesses and contracting officers. Most firms did not understand that they were required to provide documentation to contracting officers. Nor are contracting officers aware that they are responsible for collecting such documentation. GCBD believes that it is partly due to these complexities that contracting officers have been reluctant to utilize the WOSB Program to meet their agency's acquisition needs. For their part, WOSBs find it confusing and frustrating that they are required to demonstrate their status to contracting officers. As a result, the WOSB Program has had a limited success in increasing contracting dollars awarded to WOSBs. All of these structural issues are present in the report but are given little to no weight in the evaluation of the program or in the recommendations.

Based on the numbers in the report, for FY 2016 about \$19.7 billion in contracting dollars were awarded to WOSB firms. Of that \$19.7 billion approximately \$19.3 billion were not awarded through SBA's WOSB program. The report shows that 98% of the WOSB contracting dollars are awarded outside of SBA's program. There is little to no evidence that this program is full of rampant waste and abuse that should lead to a conclusion that the bulk of the program's resources should be used for oversight purposes, rather than training and outreach.