

## New Government Contract Opportunities for Women-Owned Small Businesses

McGlinchey Government Contracts Alert

October 13, 2016

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Effective September 30, 2016, the Federal Acquisition Regulatory Council (FARC) finalized its Interim Rule amending the Federal Acquisition Regulation (FAR) implementing regulatory changes that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns (EDWOSB) or women-owned small business concerns (WOSB) eligible under the Small Business Administration's Women-Owned Small Business Program.

WOSBs are undoubtedly an important growth area in the U.S. economy. However, the federal government has consistently failed to achieve its minimum annual women-owned small business participation goal of five percent, resulting in women entrepreneurs continuing to struggle to gain access to the federal marketplace. In an attempt to remedy this, FARC, which consists of the U.S. Department of Defense, General Services Administration, and the National Aeronautics and Space Administration, published an Interim Rule in December 2015 (see 80 FR 81888) granting contracting officers authority to award sole source contracts in industry sectors that the SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. Those industry sectors generally include manufacturing, construction, and transportation, among others. Please see the [SBA's website](#) for a full list of applicable industry sectors.

The Interim Rule defines the eligibility requirements for participating in sole source acquisitions to be the same as those for participating in set-asides under the WOSB Program. It sets forth that an award under the WOSB Program may be pursued on a sole source basis when the contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price, but identifies one responsible EDWOSB or WOSB that can perform at a fair and reasonable price. Further, the dollar thresholds for sole source awards are equal to or less than \$6.5 million for manufacturing requirements and equal to or less than \$4 million for all other requirements, including all options.

After a period of public comment on the interim rule, during which only four comments were received (all in support of the Interim Rule), FARC made one minor grammatical modification to the Interim Rule and adopted it as final, effective immediately. (See FR Doc. 2016-23197.)

It is anticipated that this new rule will have a positive economic impact on EDWOSB and WOSB concerns. The Dynamic Small Business Supplemental Search lists approximately 41,500 firms as either WOSBs or EDWOSBs. According to the reasoning set forth in the Final Rule, an analysis of the Federal Procurement Data System from the implementation date of the WOSB Program through September 2015, revealed that there were approximately 17,353 women-owned small business concerns that received obligated funds from federal contract awards, task, or delivery orders, and modifications to existing contracts, in an industry where a WOSB or EDWOSB sole source is authorized, and where the contract is valued at or below the thresholds for sole source contracts to WOSBs or EDWOSBs. Of those 17,353 women-owned small business concerns, 328 EDWOSBs and 974 WOSBs were eligible to participate in the WOSB Program and could have received sole source awards.

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