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# **The Women-Owned Small Business Contract Program: Legislative and Program History**

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# The Women-Owned Small Business Contract Program: Legislative and Program History

The Small Business Administration's (SBA's) Women-Owned Small Business (WOSB) Federal Contract program is designed to provide greater access to federal contracting opportunities for WOSBs and economically disadvantaged WOSBs (EDWOSBs). By doing so, the program aims to help federal agencies achieve their statutory goal of awarding 5% of their federal contracting dollars to WOSBs.

Under this program, federal contracting officers may set aside contracts (or orders) for WOSBs (including EDWOSBs) in industries in which the SBA determines that WOSBs are substantially underrepresented in federal procurement. Contracting officers may also set aside federal contracts for EDWOSBs exclusively in industries in which the SBA determines that WOSBs are underrepresented.

The distinctions between WOSBs and EDWOSBs, as well as the definitions of the degrees to which WOSBs are underrepresented, substantially underrepresented, or not underrepresented across industries, were designed to shield the WOSB program from legal challenges related to the heightened level of legal scrutiny applied to contracting preferences after the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* (1995). The prospect of legal challenges remains relevant today.

While industry-specific eligibility criteria were designed to protect the WOSB program from legal challenges, the details and complexity of these criteria contributed to program implementation delays and may pose a barrier to both agency and firm participation in the program. The federal government has met the 5% procurement goal for WOSBs twice (in FY2015 and FY2019) since the goal was authorized in 1994. Most of the federal contracts awarded to WOSBs are awarded in full and open competition or through a general small business preference; relatively few federal contracts are awarded through WOSB program preferences such as contract set-asides.

The SBA designed a WOSB certification process as required by P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015. In 2020, the SBA announced a new certification process and ended businesses' ability to self-certify as WOSBs. This change may prevent fraud as well as assist contracting officers in identifying eligible WOSBs, which could increase agency use of the program. However, it could also hinder program participation by eligible firms because firms must now complete a certification process.

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## Introduction

The Small Business Administration's (SBA's) Women-Owned Small Business (WOSB) contract program is one of several programs authorized to provide greater opportunities for small businesses to win federal contracts. Congress's interest in promoting small business contracting with federal agencies dates back to World War II, when there were concerns that small businesses were being threatened by war-induced shortages of materials and had difficulty obtaining defense contracts or financial assistance.<sup>1</sup>

In 1953, Congress passed the Small Business Act (P.L. 83-163), authorizing the SBA. The Small Business Act specifies that it is Congress's declared policy to promote the interests of small businesses as a means to "preserve free competitive enterprise"<sup>2</sup> and indicated that one way to accomplish this was to award a "fair proportion" of federal contracts and subcontracts to small businesses.<sup>3</sup> Since then, Congress has imposed requirements on the federal procurement process to help small businesses participate in federal contracts. This has been accomplished primarily through annual small business procurement goals and various contracting preferences for small businesses—including contract set-asides and sole-source awards for WOSBs.<sup>4</sup> Following WOSB advocacy efforts, Congress enacted the Federal Acquisition Streamlining Act of 1994 (FASA; P.L. 103-355), requiring the federal government to award at least 5% of prime contract and 5% of subcontract<sup>5</sup> dollars to WOSBs each fiscal year.<sup>6</sup> Agencies were later granted the authority to set aside contracts for and make sole-source awards to qualified WOSBs in order to reach the annual procurement goal.<sup>7</sup>

The WOSB program allows federal contracting officers to

- set aside acquisitions exceeding the micro-purchase threshold (currently \$10,000) for bidding by WOSBs in industries in which WOSBs are *substantially* underrepresented and

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<sup>1</sup> U.S. Congress, Senate Select Committee on Small Business, *Small Business Administration*, committee print, 83<sup>rd</sup> Cong., 1<sup>st</sup> sess., August 10, 1953 (Washington, DC: GPO, 1953), p. iii. Also, see U.S. Congress, House Committee on Banking and Currency, *Small Business Act of 1953*, report to accompany H.R. 5141, 83<sup>rd</sup> Cong., 1<sup>st</sup> sess., May 28, 1953, H.Rept. 83-494 (Washington, DC: GPO, 1953). For further information related to small business contracting, see CRS Report R45576, *An Overview of Small Business Contracting*, by R. Corinne Blackford.

<sup>2</sup> 15 U.S.C. §631(a); and Title II of P.L. 83-163 (as amended), the Small Business Act of 1953.

<sup>3</sup> U.S. Congress, House Committee on Small Business, *Small Business Contracting Program Improvements Act*, report to accompany H.R. 3867, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 22, 2007, H.Rept. 110-400 (Washington, DC: GPO, 2007), p. 4.

<sup>4</sup> The term *set-aside* commonly refers to a contract competition in which only small businesses, or specific types of small businesses, may compete. Set-asides can be total or partial, depending on whether the entire procurement, or just a severable segment of it, is restricted. *Sole-source* awards are noncompetitive procurements that are made after soliciting and negotiating with only one source.

<sup>5</sup> A *prime contract* is a contract between the federal government and a business, whereas a *subcontract* is a contract between a prime contractor and another business.

<sup>6</sup> Federal Acquisition Streamlining Act of 1994 (FASA; P.L. 103-355). There are currently five government-wide small business procurement goals, created by different laws amending the Small Business Act: 23% for all small businesses, 5% for small disadvantaged businesses, 5% for women-owned small businesses (WOSBs), 3% for small businesses located in a Historically Underutilized Business Zone (HUBZone), and 5% for small businesses owned and controlled by a service-disabled veteran. For more information on small business contracting goals, see CRS Insight IN12018, *Federal Small Business Contracting Goals*, by R. Corinne Blackford.

<sup>7</sup> H.R. 5654, the Small Business Reauthorization Act of 2000, incorporated by reference in P.L. 106-554, the Consolidated Appropriations Act, 2001.

- set aside contracts for bidding by economically disadvantaged WOSBs (EDWOSBs) in industries in which WOSBs are underrepresented.

This report reviews the origins and evolutions of the WOSB program. While the program was formally authorized by the Small Business Reauthorization Act of 2000 (H.R. 5654) and incorporated by reference in the Consolidated Appropriations Act, 2001 (P.L. 106-554),<sup>8</sup> the program's foundations were laid by stakeholder advocacy and executive action in the 1970s. After congressional authorization, the program faced implementation delays, which were closely followed by legislated program modifications. The federal government has met the 5% procurement goal for WOSBs twice—in FY2015 and FY2019—since the WOSB procurement goal was established in 1994 and implemented in FY1996.

WOSB federal contract award data suggest that federal procurement officers are using the WOSB program more often than in the past, but the amount of dollars awarded using WOSB preferences accounts for a relatively small portion of contracts awarded to WOSBs. Most of the contracts awarded to WOSBs are awarded in full and open competition with other firms or with another small business preference, such as an 8(a) Business Development or Historically Underutilized Business Zone (HUBZone) program preference. Relatively few federal contracts are awarded through the WOSB program.

## **The WOSB Program's Origins and Evolution**

Since 1978, federal agency heads have been required to establish contracting goals, in consultation with the SBA, that “realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals” to participate in procurement. Each agency is required, at the conclusion of every fiscal year, to report its progress in meeting prime contract and subcontract award goals to the SBA. These reports are submitted to Congress and are made available to the public on the General Services Administration's (GSA's) website. Initially, WOSB goals were not included in these requirements.<sup>9</sup>

On May 18, 1979, President Carter issued Executive Order 12138, which established a national policy to promote women-owned business enterprises.<sup>10</sup> Among other provisions, the executive order required federal agencies “to take appropriate affirmative action in support of women's business enterprise,” including promoting procurement opportunities and providing financial assistance and business-related management and training assistance.<sup>11</sup>

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<sup>8</sup> Legislative language authorizing the WOSB program was initially in H.R. 4897, the Equity in Contracting for Women Act of 2000.

<sup>9</sup> P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958, and 15 U.S.C. §644(g)(2). Also see P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013; Small Business Administration (SBA), “Small Business Procurement Scorecard Overview,” at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>; and General Services Administration (GSA), “Small Business Goaling Reports,” at <https://sam.gov/reports/awards/static>.

<sup>10</sup> Executive Order (E.O.) 12138, “Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise,” May 18, 1979, at <https://www.archives.gov/federal-register/codification/executive-order/12138.html> (hereinafter cited as E.O. 12138, 1979).

<sup>11</sup> E.O. 12138, 1979. President Clinton issued a memorandum on October 13, 1994, reaffirming the executive branch's commitment to providing small, small disadvantaged, and WOSBs the maximum practicable opportunity to participate in federal contracting. President Clinton also issued E.O. 13157, “Increasing Opportunities for Women-Owned Small Businesses,” on May 23, 2000, to reaffirm the executive branch's commitment to meet or exceed the 5% procurement (continued...)

Under authority provided by Executive Order 12138, the SBA added WOSB procurement goals to the list of small business contracting goals it negotiated with federal agencies. At that time, WOSBs received about 0.2% of all federal contracts.<sup>12</sup> By 1988, this percentage had grown, but to only 1% of all federal contracts.<sup>13</sup>

WOSB advocates argued that additional action was needed to help WOSBs win federal contracts because women-owned businesses were subject to “age-old prejudice, discrimination, and exploitation,” the “promotion of women’s business enterprise is simply not a high priority” for federal agencies, and federal “agency efforts in support of women’s business enterprise have been weak and have produced little, if any measurable results.”<sup>14</sup> Advocacy efforts led to P.L. 100-533, the Women’s Business Ownership Act of 1988.

P.L. 100-533 provided the SBA with statutory authorization to establish WOSB annual procurement goals with federal agencies.<sup>15</sup> While the law did not create a WOSB contracting goal, advocates argued that women received “a mere 1.3% of federal contracting dollars ... in FY1990” despite owning approximately one-third of the nation’s businesses at that time.<sup>16</sup> Advocacy efforts led to the enactment of FASA (P.L. 103-355), which established the annual, government-wide WOSB procurement goals of 5% of prime award and 5% of subcontract award dollars.<sup>17</sup>

Members of Congress indicated in FASA’s conference agreement that they did “not intend to create a new set aside or program of restricted competition for a specific designated group, but rather to establish a target that will result in greater opportunities for women to compete for federal contracts.”<sup>18</sup> They added that “given the slow progress to date in reaching the current award levels, the conferees recognize that this goal may take some time to be reached.”<sup>19</sup>

## **WOSB Set-Aside Authority**

FASA conferees’ prediction that it may take time to reach the 5% goal was confirmed. The amount and percentage of federal contracts awarded to WOSBs increased slowly following the

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goal for WOSBs. See Executive Office of the President, “Continued Commitment to Small, Small Disadvantaged, and Small Women-Owned Businesses in Federal Procurement,” 59 *Federal Register* 52397, October 17, 1994; and E.O. 13157, “Increasing Opportunities for Women-Owned Small Businesses,” 65 *Federal Register* 34035-34037, May 25, 2000.

<sup>12</sup> U.S. Government Accountability Office (GAO), *Federal Procurement: Trends and Challenges in Contracting with Women-Owned Small Businesses*, GAO-01-346, February 16, 2001, p. 8, at <https://www.gao.gov/products/GAO-01-346> (hereinafter GAO-01-346, *Federal Procurement: Trends and Challenges in Contracting with WOSBs*).

<sup>13</sup> GAO-01-346, *Federal Procurement: Trends and Challenges in Contracting with WOSBs*.

<sup>14</sup> U.S. Congress, House Committee on Small Business, *Women’s Business Ownership Act of 1988*, report to accompany H.R. 5050, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 22, 1988, H.Rept. 100-955 (Washington, DC: GPO, 1988), pp. 6-9 (hereinafter U.S. Congress, House Committee on Small Business, *Women’s Business Ownership Act of 1988*).

<sup>15</sup> The act also extended the goaling requirement to subcontract award dollars and added WOSBs to the list of small business concerns to be identified in small business subcontracting plans (at that time, small business subcontracting plans were required for prime contracts exceeding \$500,000, or \$1 million for the construction of any public facility). U.S. Congress, House Committee on Small Business, *Women’s Business Ownership Act of 1988*, p. 8.

<sup>16</sup> Rep. John J. LaFalce, “Remarks Related to the Women’s Business Procurement Assistance Act of 1993,” extension of remarks in the House, *Congressional Record*, vol. 139, part 81 (June 9, 1993), p. E1439.

<sup>17</sup> The 5% goals were implemented by regulations effective in FY1996. GAO-01-346, *Federal Procurement: Trends and Challenges in Contracting with WOSBs*, p. 8.

<sup>18</sup> U.S. Congress, Committee of Conference, *Federal Acquisition Streamlining Act of 1994*, conference report to accompany S. 1587, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., August 21, 1994, H.Rept. 103-712 (Washington, DC: GPO, 1994), p. 224 (hereinafter cited as Committee of Conference, *Federal Acquisition Streamlining Act of 1994*).

<sup>19</sup> Committee of Conference, *Federal Acquisition Streamlining Act of 1994*, p. 224.



establishment of the 5% goal. Frustrated by the relatively slow progress, WOSB advocates began to lobby for additional actions, including agency authority to set aside contracts for WOSBs.<sup>20</sup> Advocates noted that other small businesses benefited from contracting preferences such as set-asides. For example, at that time, small disadvantaged businesses (SDBs)<sup>21</sup> as well as participants in the SBA's 8(a) Business Development program were eligible for both set-asides and sole-source awards, and HUBZone small businesses were (and still are) eligible for contract set-asides, sole-source awards, and a price evaluation adjustment.<sup>22</sup>

As a first step toward the enactment of WOSB set-aside authority, P.L. 106-165, the Women's Business Centers Sustainability Act of 1999, required the Government Accountability Office (GAO) to review the federal government's efforts to meet the 5% goal for WOSBs and to identify any measures that could improve the federal government's performance in increasing WOSB contracting opportunities. GAO issued its report on February 16, 2001, noting that

[a]mong the government contracting officials with whom we spoke, there was general agreement on several suggestions for improving the environment for contracting with WOSBs and increasing federal contracting with WOSBs. They suggested creating a contract program targeting WOSBs, focusing and coordinating federal agencies' WOSB outreach activities, promoting contracting with WOSBs through agency incentive and recognition programs, including WOSBs in agency mentor-protégé programs, providing more information to WOSBs about participation in teaming arrangements, and providing expanded contract financing.<sup>23</sup>

By the time the GAO report was published, legislation had been enacted (P.L. 106-554) to authorize WOSB set-asides. Federal contracting officers may set aside contracts for WOSBs (including EDWOSBs) exclusively in industries in which WOSBs are *substantially* underrepresented and may set aside contracts for EDWOSBs exclusively in industries in which WOSBs are underrepresented.<sup>24</sup>

The Consolidated Appropriations Act, 2001 (P.L. 106-554) also specified that federal contracting officers could not set aside contracts for WOSBs or EDWOSBs unless the anticipated award price of the contract (including options) would not exceed \$5 million for manufacturing contracts and \$3 million for all other contracts. In 2011, the set-aside award caps were increased to \$6.5 million for manufacturing contracts and \$4 million for all other contracts to account for inflation.<sup>25</sup> In 2013, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, removed the set-aside award value caps.<sup>26</sup>

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<sup>20</sup> A set-aside refers to a contract competition in which only some businesses (in this case, WOSBs) may compete for the award.

<sup>21</sup> SDBs are businesses owned and controlled by socially and economically disadvantaged individuals. The 1978 amendments to the Small Business Act (P.L. 95-507) established a basic definition of socially disadvantaged individuals.

<sup>22</sup> Between 1987 and 1995, SDBs were eligible to receive a 10% price evaluation preference in competitive Department of Defense (DOD) acquisitions and could compete for contracts set aside for SDBs for certain DOD acquisitions where agency officials believed there was a reasonable expectation that offers would be received from at least two responsible SDBs. See GAO, *Small Business: Status of Small Disadvantaged Business Certifications*, GAO-01-273, January 19, 2001, pp. 3-6, at <https://www.gao.gov/new.items/d01273.pdf>, and SBA, "Small Disadvantaged Business Program," 73 *Federal Register* 57490, October 3, 2008.

<sup>23</sup> GAO-01-346, *Federal Procurement: Trends and Challenges in Contracting with WOSBs*, p. 31.

<sup>24</sup> Metrics used to designate industries are discussed in the "The 10-Year Program Implementation Delay" section.

<sup>25</sup> DOD, GSA, National Aeronautics and Space Administration, "Federal Acquisition Regulation; Women-Owned Small Business (WOSB) Program," 76 *Federal Register* 18305, April 1, 2011, and SBA, "Women-Owned Small Business Federal Contract Program," 77 *Federal Register* 1857, January 12, 2012.

<sup>26</sup> SBA, "Women-Owned Small Business Federal Contract Program," 78 *Federal Register* 26504-26506, May 7, 2013.

## WOSB Sole-Source Award Authority

The authority to make sole-source awards to WOSB was not enacted until 2014. The Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA 2015; P.L. 113-291) provided federal agencies with authority to award sole-source<sup>27</sup> contracts to WOSBs (including EDWOSBs) if

- the contract is assigned a North American Industry Classification System (NAICS) code<sup>28</sup> in which the SBA has determined that WOSBs are substantially underrepresented in federal procurement;
- the contracting officer does not have a reasonable expectation that offers would be received from two or more WOSBs (including EDWOSBs);<sup>29</sup> and
- the anticipated total value of the contract, including any options, does not exceed \$7 million for manufacturing contracts and \$4.5 million for other federal contracts.<sup>30</sup>

NDAA 2015 also gave federal agencies authority to award sole-source contracts exclusively to EDWOSBs if

- the contract is assigned a NAICS code in which the SBA has determined that WOSB concerns are underrepresented in federal procurement;
- the contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and
- the anticipated total value of the contract, including any options, does not exceed \$7 million for manufacturing contracts and \$4.5 million for other federal contracts.<sup>31</sup>

Expansion of the WOSB program to include sole-source awards along with WOSB set-asides was meant to help federal agencies award at least 5% of federal contracting dollars to WOSBs. The

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<sup>27</sup> Sole-source contracts are noncompetitive procurements that are made after soliciting and negotiating with only one source.

<sup>28</sup> North American Industry Classification System (NAICS) industry codes are used by federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. More information is available at <https://www.census.gov/naics/>. Per 48 C.F.R. §19.102(b), contracting officers “determine the appropriate NAICS code by classifying the product or service being acquired in the one industry that best describes the principal purpose of the supply or service being acquired.”

<sup>29</sup> Per Federal Acquisition Regulation (FAR) §19.1505(g), a contracting officer “may [still] make an award [as a sole-source award], if only one acceptable offer is received from a qualified EDWOSB concern or WOSB concern eligible under the WOSB Program.” The WOSB sole-source awardee must identify with an acceptable NAICS industry code, be certified, and “be a responsible contractor,” and the award must be made “at a fair and reasonable price” (see FAR §19.1506).

<sup>30</sup> Federal Acquisition Regulation (FAR) §19.1506(c); P.L. 116-283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, adjusted the sole-source contract value caps to their current levels of \$4.5 or \$7 million.

The Federal Acquisition Regulatory Council has the responsibility of adjusting each acquisition-related dollar threshold (including those for the 8(a), HUBZone, service-disabled veteran-owned, and WOSB contracting programs) on October 1 of each year that is evenly divisible by five. As a result, these thresholds may differ from those in statute. The next adjustment for inflation will take place on October 1, 2025. See 13 C.F.R. §124.506(a) and 41 U.S.C. §1908(c)(2).

<sup>31</sup> FAR §§19.1506(a) and (c); P.L. 116-283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, adjusted the sole-source contract value caps to their current levels of \$4.5 or \$7 million.



SBA published a final rule implementing the WOSB program expansion on September 14, 2015 (effective October 14, 2015).<sup>32</sup>

## **The 10-Year Program Implementation Delay**

After the WOSB program was authorized, the SBA took nearly 10 years to issue a final rule for the program and put the program into effect four months after that.<sup>33</sup> The SBA attributed the delay primarily to its difficulty in identifying an appropriate methodology to determine “the industries in which WOSBs are underrepresented with respect to federal procurement contracting.”<sup>34</sup>

The SBA completed a draft of the legislatively mandated study of NAICS industrial codes in which WOSBs are underrepresented (and, by inference, substantially underrepresented) in September 2001, using internal resources.<sup>35</sup> The SBA then submitted proposed regulations to implement the WOSB program to the Office of Management and Budget (OMB).<sup>36</sup> However, the SBA withdrew the regulations on April 24, 2002, before the review was complete “because the SBA Administrator had concerns about the content and constitutionality of its draft industry study and believed that it needed to contract with the National Academy of Science[s] (NAS) to review the draft industry study and recommend any changes the NAS believed were necessary.”<sup>37</sup> The SBA awarded a contract to NAS in late 2003 to conduct the study.

NAS completed its analysis and issued a report on the SBA’s study on March 11, 2005. The report indicated that the SBA asked NAS to conduct the review “because of the history of legal challenges to race- and gender-conscious contracting programs at the federal and local levels.”<sup>38</sup>

NAS concluded that the SBA’s study was “problematic in several respects, including that the documentation of data sources and estimation methods is inadequate for evaluation purposes.”

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<sup>32</sup> SBA, “Women-Owned Small Business Federal Contract Program,” 80 *Federal Register* 55019, September 14, 2015.

<sup>33</sup> The program was authorized in December of 2000. The SBA issued the final rule on October 7, 2010, and put the program into effect on February 4, 2011. SBA, “Women-Owned Small Business Federal Contract Program,” 75 *Federal Register* 62258, October 7, 2010.

<sup>34</sup> For a discussion of the various methodological approaches considered, see SBA, “Women-Owned Small Business Federal Contract Program,” 75 *Federal Register* 62259-62292, October 7, 2010.

<sup>35</sup> *Ibid.*

<sup>36</sup> OMB is required by law to review all draft regulations before publication within 90 days of their submission to OMB. SBA, “Women-Owned Small Business Federal Contract Program,” 75 *Federal Register* 62259, October 7, 2010.

The North American Industry Classification System (NAICS, pronounced Nakes) was developed under the direction and guidance of the Office of Management and Budget (OMB) as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. ... NAICS is a 2- through 6-digit hierarchical classification system, offering five levels of detail. Each digit in the code is part of a series of progressively narrower categories, and the more digits in the code signify greater classification detail. The first two digits designate the economic sector, the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit designates the NAICS industry, and the sixth digit designates the national industry.

See U.S. Census Bureau, “North American Industry Classification System,” at <https://www.census.gov/naics/>.

<sup>37</sup> SBA, “Semiannual Regulatory Agenda,” 67 *Federal Register* 34004, May 13, 2002, and *U.S. Women’s Chamber of Commerce v. U.S. Small Business Administration*, November 30, 2005, at <https://casetext.com/case/us-womens-chamber-of-commerce-v-us-small-business-admin>.

<sup>38</sup> National Research Council, National Academy of Sciences (NAS), *Analyzing Information on Women-Owned Small Businesses in Federal Contracting*, Steering Committee for the Workshop on Women-Owned Small Businesses in Federal Contracting, Committee on National Statistics, Division of Behavioral and Social Sciences and Education (Washington, DC: National Academies Press, 2005), p. 1, at <https://www.nap.edu/catalog/11245/analyzing-information-on-women-owned-small-businesses-in-federal-contracting> (hereinafter cited as NAS WOSB report, 2005).

NAS made several recommendations for a new study, including that the SBA use more current data, different industry classifications, and consistent monetary and numeric utilization measures to provide more complete documentation of data and methods.<sup>39</sup> The SBA later characterized NAS's analysis as indicating that the SBA study was "fatally flawed."<sup>40</sup> In response to that finding, the SBA issued a solicitation in October 2005 seeking a private contractor to perform a revised study. In February 2006, a contract was awarded to the Kaufman-RAND Institute for Entrepreneurship Public Policy (RAND). The RAND study was published in April 2007.<sup>41</sup>

The RAND report noted that underrepresentation is typically referred to as a *disparity ratio*, a measure comparing contracting of WOSBs in a particular NAICS code to their availability for such contracts. A disparity of 1.0 suggests that firms of a particular type are awarded contracts in the same proportion as their representation in that industry (there is no disparity). A disparity ratio less than 1.0 suggests that the firms are underrepresented in federal contracting in that NAICS code. A ratio greater than 1.0 suggests that the firms are overrepresented.<sup>42</sup>

RAND identified 28 different approaches to determine underrepresentation and substantial underrepresentation of WOSBs in federal procurement, each of which yielded a different result. After examining each approach's benefits and deficiencies, the SBA determined that underrepresentation existed in industries with a disparity ratio<sup>43</sup> between 0.5 and 0.8, and that substantial underrepresentation existed in industries with a disparity ratio between 0.0 and 0.5.<sup>44</sup>

The SBA identified 83 four-digit NAICS industry groups in its final rule implementing the WOSB program (October 7, 2010; effective February 4, 2011):

- 45 four-digit NAICS industry groups in which WOSBs were underrepresented, which became eligible for EDWOSB set-asides, and

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<sup>39</sup> NAS WOSB report, 2005, pp. 3-8, 80-87.

The NAS report indicated that the SBA's

preliminary disparity ratio estimates were developed for industry categories (defined by 2-digit Standard Industrial Classification or SIC codes) by dividing the *utilization* share for each industry by the *availability* share. Utilization was defined as the share accruing to women-owned small businesses of the total dollar amount of contract actions for federal prime contracts over \$25,000 in fiscal year 1999 for the particular industry. Availability was defined as the share of women-owned businesses with paid employees among all businesses with paid employees in the particular industry from the 1997 Survey of Women-Owned Business Enterprises.

NAS WOSB report, 2005, p. 2.

<sup>40</sup> SBA, "Women-Owned Small Business Federal Contract Assistance Procedures," 72 *Federal Register* 73287, December 27, 2007.

<sup>41</sup> SBA, "Women-Owned Small Business Federal Contract Assistance Procedures," 72 *Federal Register* 73287, December 27, 2007. Also, see Elaine Reardon et al., *The Utilization of Women-Owned Small Businesses in Federal Contracting*, April 17, 2007, at [https://www.rand.org/pubs/technical\\_reports/TR442.html](https://www.rand.org/pubs/technical_reports/TR442.html).

<sup>42</sup> SBA, "Women-Owned Small Business Federal Contract Program," 75 *Federal Register* 62259, October 7, 2010.

<sup>43</sup> The SBA relied on the following ratios during its analysis, including one based on industry revenue (receipts) earned by WOSBs and one based on the number of women-owned firms:

$$\frac{\% \text{ Prime Contract Awards to Industry WOSBs (dollars)}}{\% \text{ Total Industry Receipts to WOSBs (dollars)}}$$

$$\frac{\% \text{ Contract Awards to Industry WOSBs (number of contracts)}}{\text{Total Number of Industry WOSBs}}$$

<sup>44</sup> SBA, "Women-Owned Small Business Federal Contract Assistance Procedures," 72 *Federal Register* 73287-73289, December 27, 2007.

- 38 four-digit NAICS industry groups in which WOSBs were substantially underrepresented, which became eligible for WOSB (including EDWOSB) set-asides).<sup>45</sup>

## **Mandated Updates to Eligible Industries**

After the identification of eligible industries allowed the program to go into effect in 2011, Congress passed legislation in 2014 that required the SBA to update the list of underrepresented and substantially underrepresented NAICS codes by January 2, 2016, and then conduct a new study and update the NAICS codes every five years thereafter.<sup>46</sup> The SBA asked the Department of Commerce's Office of the Chief Economist (OCE) for assistance in conducting a new study.

The OCE examined the odds of women-owned businesses winning a federal prime contract relative to otherwise similar firms in FY2013 and FY2014 by industry group, controlling for the firm's size and age, legal form of organization, level of government security clearance, past federal prime contracting performance ratings, and membership in various categories of firms having federal government-wide procurement goals. OCE found that women-owned businesses were less likely to win federal contracts in 254 of the 304 industry groups in the study, and women-owned businesses in 109 of the 304 industry groups had statistically significantly lower odds of winning federal contracts than otherwise similar businesses not owned by women, at the 95% confidence level.<sup>47</sup>

On the basis of the OCE study, the SBA increased the number of underrepresented and substantially underrepresented four-digit NAICS codes from 83 to 113, effective March 3, 2016.<sup>48</sup>

Because OMB updates the NAICS every five years, WOSB program eligibility may be affected not just by SBA industry studies but by changes to the NAICS codes themselves. In response to OMB's release of NAICS 2017, which replaced NAICS 2012, the SBA reduced the number of underrepresented and substantially underrepresented four-digit NAICS codes from 113 to 112, effective October 1, 2017.<sup>49</sup>

In FY2020, the SBA contracted with an independent research firm to reassess the underrepresentation of WOSBs.<sup>50</sup> The firm used a methodology based on disparity ratios, similar

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<sup>45</sup> SBA, "Women-Owned Small Business Federal Contract Program," 75 *Federal Register* 62259-62262, October 7, 2010.

<sup>46</sup> The Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291).

<sup>47</sup> David N. Beede and Robert N. Rubinovitz, "Utilization of Women-Owned Businesses in Federal Prime Contracting," U.S. Department of Commerce, Office of the Chief Economist, Economics and Statistics Administration, December 31, 2015, at [https://www.aptac-us.org/media/Department-of-Commerce-WOSB\\_Study\\_Report\\_Final\\_w-appendices-05JAN2016.pdf](https://www.aptac-us.org/media/Department-of-Commerce-WOSB_Study_Report_Final_w-appendices-05JAN2016.pdf), and SBA, "Women-Owned Small Business Federal Contract Program; Identification of Eligible Industries," 81 *Federal Register* 11341, March 3, 2016.

<sup>48</sup> WOSBs were declared underrepresented in 21 industry groups and substantially underrepresented in 92 industry groups. SBA, "Women-Owned Small Business Federal Contract Program; Identification of Eligible Industries," 81 *Federal Register* 11340-11343, March 3, 2016.

<sup>49</sup> The reduction took place because NAICS 2017 merged 2 four-digit NAICS industry groups that affected the WOSB program. After the merger, the number of four-digit NAICS industry groups in which WOSBs are substantially underrepresented (WOSB and EDWOSB set-asides) fell from 92 to 91. SBA, "Women-Owned Small Business Federal Contract Program NAICS Code Updates," 82 *Federal Register* 47278-47287, October 11, 2017.

<sup>50</sup> The report was prepared by Optimal Solutions Group, LLC, available at <https://www.sba.gov/sites/default/files/2022-03/WOSB%20NAICS%20Analysis%20-%20FINAL%20VERSION%20%283%29%20%281%29%20%281%29%20%283%29%28R%29%20%282%29.pdf>.

to that developed by RAND that was issued in 2007. On the basis of this study, the SBA announced that, as of March 18, 2022,

- WOSBs are substantially underrepresented in 646 six-digit<sup>51</sup> NAICS industry codes (out of 1,023), meaning that federal contracting officers may award set-aside and sole-source contracts to WOSBs (including EDWOSBs) in these 646 industries, and
- WOSBs are underrepresented in 113 six-digit NAICS industry codes (out of 1,023), meaning that federal contracting officers may award set-aside and sole-source contracts exclusively to EDWOSBs in these 113 industries.<sup>52</sup>

The SBA indicated that through the update, it increased the number of eligible industries by 71%. EDWOSBs became eligible for contracting preferences in 74% of NAICS industries and WOSBs in 63% of them.<sup>53</sup> Because the list of eligible industries expanded, the potential number of small women-owned businesses eligible for the program grew.

## Evolution of WOSB Program Eligibility

The Consolidated Appropriations Act, 2001 (P.L. 106-554) specified WOSB program eligibility requirements. In addition, the SBA had to develop criteria to define an EDWOSB because the act did not define economic disadvantage.

To participate in the program, the act specified that WOSBs must

- be a small business (as defined by the SBA);
- be at least 51% unconditionally and directly owned and controlled by one or more women who are U.S. citizens;<sup>54</sup>
- have women managing day-to-day operations and making long-term decisions; and
- be certified by a federal agency, a state government, the SBA, or a national certifying entity approved by the SBA or self-certify their eligibility to the federal contracting officer with adequate documentation according to standards established by the SBA.

EDWOSBs must meet all WOSB program requirements and be economically disadvantaged, which, as presently defined by the SBA,<sup>55</sup> means that they must be

- owned and controlled by one or more women, each with a personal net worth less than \$850,000, excluding ownership interest in the concern and equity interest in a primary personal residence;
- owned and controlled by one or more women, each with \$400,000 or less in adjusted gross income averaged over the previous three years; and

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<sup>51</sup> The most granular code level is six digits long and refers to the most specific industry description (e.g., “Baked Goods Retailers” or “Industrial Valve Manufacturing”). The shortest code level is two digits and provides the most general industry description (e.g., “Retail Trade” or “Manufacturing”).

<sup>52</sup> SBA, “Women-Owned Small Business Federal Contract Program; Identification of Eligible Industries,” 87 *Federal Register* 15468-15481, March 18, 2022.

<sup>53</sup> SBA, “Women-Owned Small Business Federal Contract Program; Identification of Eligible Industries,” 87 *Federal Register* 15470, March 18, 2022.

<sup>54</sup> The statute specifies that ownership is to be determined without regard to community property laws.

<sup>55</sup> EDWOSB criteria are defined at 13 C.F.R. §127.203.

- owned and controlled by one or more women, each with \$6.5 million or less in all assets, excluding assets invested in a qualified IRA or other official retirement account.

The SBA defined *economic disadvantage* using its experience with the 8(a) program<sup>56</sup> as a guide (i.e., reviewing the owner's income, personal net worth, and the fair market value of her total assets).<sup>57</sup>

## Elimination of Self-Certification

P.L. 113-291, the NDAA 2015, enacted on December 19, 2014, prohibited small businesses from self-certifying WOSB program eligibility as they previously had done.<sup>58</sup> WOSBs and EDWOSBs had to be either self-certified or third-party certified to participate in the WOSB program until the SBA certification system was established.<sup>59</sup> NDAA 2015 eliminated self-certifications as a means to ensure that the program's contracts are awarded only to intended, eligible program recipients.<sup>60</sup>

The SBA announced in the *Federal Register* that it would implement its own certification process for the WOSB program and remove the ability of small businesses to self-certify their eligibility for the WOSB program on October 15, 2020.<sup>61</sup>

Under current program requirements, WOSBs and EDWOSBs must apply for certification in order to be eligible for contracting preferences. Firms may either use the SBA's online certification platform, WOSB.Certify.sba.gov, or apply through one of the four certifying organizations known as *third-party certifiers*.<sup>62</sup> According to the SBA, it makes a firm

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<sup>56</sup> For more information on this program for disadvantaged business owners, see CRS In Focus IF12458, *The SBA's 8(a) Business Development Program*, by R. Corinne Blackford. While all 8(a) program participant firms qualify as SDBs, not all SDBs are in the 8(a) program.

<sup>57</sup> SBA, "The Women-Owned Small Business Federal Contract Assistance Program," 71 *Federal Register* 34551, June 15, 2006, and SBA, "Women-Owned Small Business Federal Contract Program," 75 *Federal Register* 62265, October 7, 2010.

<sup>58</sup> Self-certification involved businesses registering and attesting to being a WOSB in the System for Award Management at SAM.gov and submitting documents regarding their status to an online repository maintained by the SBA (EDWOSBs were required to provide a personal financial statement for each woman claiming economic disadvantage).

<sup>59</sup> The SBA approved four organizations to provide third-party certification in 2011 (typically involving a fee): El Paso Hispanic Chamber of Commerce, National Women Business Owners Corporation, U.S. Women's Chamber of Commerce, and Women's Business Enterprise National Council. Third-party certification by these organizations continues to be an option.

<sup>60</sup> A study published by GAO in 2014 found that the SBA "cannot offer reasonable assurance that only eligible businesses participate in the program" (GAO, *Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed*, GAO-15-54, October 2014, p. 26, at <https://www.gao.gov/assets/d1554.pdf>; hereinafter GAO-15-54, *WOSB Program: Certifier Oversight and Eligibility Controls*). A GAO report published in 2019 stated that "the rate of ineligible businesses has remained significant," with about 40% of a sample of WOSBs in FY2017 found to be ineligible for the program (GAO, *Women-Owned Small Business Program: Actions Needed to Address Ongoing Oversight Issues*, GAO-19-168, March 2019, p. 20, at <https://www.gao.gov/assets/gao-19-168.pdf>; hereinafter GAO-19-168, *WOSB: Ongoing Oversight Issues*). In 2015, the SBA's Office of the Inspector General (OIG) found that "15 of the 34 [WOSB] set-aside awards [analyzed between 2013 and 2014] were made without meeting the WOSB program's requirements," and these awards totaled approximately \$7.1 million (SBA, OIG, "Improvements Needed in SBA's Management of the Women-Owned Small Business Federal Contracting Program," report no. 15-10, May 14, 2015, p. 4).

<sup>61</sup> SBA, "Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification," 85 *Federal Register* 27650, May 11, 2020.

<sup>62</sup> Third-party certification was available to firms prior to the elimination of self-certification and remains an option; firms certified through these organizations must still provide documentation to the SBA through the agency's new (continued...)



certification decision within 90 calendar days after receipt of a complete package, “whenever practicable.”<sup>63</sup>

As of May 30, 2023, certified WOSB and EDWOSB firms are required to undergo an examination every three years to maintain their certification.<sup>64</sup> WOSBs that do not certify their status remain eligible for contract awards outside of the WOSB program (without contracting preferences), and agencies are permitted to count those awards toward their WOSB procurement goal.<sup>65</sup>

## WOSB Program Development and Revision Timeline

The chronology of the WOSB program provided in **Table 1** summarizes the legislative and executive actions taken to create and modify the program.

**Table 1. Chronology of the Women-Owned Small Business (WOSB) Program**

Year	Action
1979	President Carter issued Executive Order 12138, establishing a national policy to promote women-owned business enterprises.
1988	The Women’s Business Ownership Act of 1988 (P.L. 100-533) provided the Small Business Administration (SBA) with statutory authorization to establish WOSB annual procurement goals with federal agencies.
1994	The Federal Acquisition Streamlining Act of 1994 (P.L. 103-355) established the annual, government-wide WOSB procurement goals of 5% of prime award and 5% of subcontract award dollars. Implementing regulations became effective in FY1996.
2000	The Small Business Reauthorization Act of 2000 (H.R. 5654), incorporated by reference in the Consolidated Appropriations Act, 2001 (P.L. 106-554), authorized WOSB set-asides.
2001	The SBA completed a draft of the legislatively mandated study of North American Industry Classification System (NAICS) industrial codes in which WOSBs are underrepresented, using internal resources.  The SBA withdrew proposed regulations related to industries identified as eligible for the WOSB program, which had been submitted to the Office of Management and Budget (OMB) for review.
2003	The SBA contracted with the National Academy of Sciences (NAS) to review the draft industry study and recommend changes.
2005	NAS completed its analysis and issued a report on the SBA’s study, concluding that the study was “problematic” and making recommendations for a new study.  The SBA issued a solicitation seeking a private contractor to perform a revised study.

certification platform before they can receive contracting preferences. The certifiers are El Paso Hispanic Chamber of Commerce, National Women Business Owners Corporation, U.S. Women’s Chamber of Commerce, and Women’s Business Enterprise National Council.

<sup>63</sup> 13 C.F.R. §127.304(a). The phrase “whenever practicable” is not defined.

<sup>64</sup> 13 C.F.R. §127.400(a). Previously, WOSB program participants annually attested to their eligibility to continue participating in the program.

<sup>65</sup> SBA, “Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification,” 85 *Federal Register* 27650, May 11, 2020; 13 C.F.R. §127.200(c)(2).



2006	The SBA awarded a contract to the Kaufman-RAND Institute for Entrepreneurship Public Policy (RAND).
2007	The RAND industry underrepresentation study was published.
2010	The SBA identified 83 four-digit NAICS industry groups in its final rule implementing the WOSB program, effective February 2011.
2013	The National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239) removed WOSB set-aside award value caps.
2014	The Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA 2015; P.L. 113-291) authorized sole-source contract awards for WOSBs. Implementing regulations became effective in October 2015. NDAA 2015 eliminated WOSB self-certification.
2016	The SBA increased the number of WOSB program-eligible NAICS codes after asking the Department of Commerce’s Office of the Chief Economist (OCE) to conduct a study on WOSB utilization in federal prime contracting.
2017	OMB released NAICS 2017, which replaced NAICS 2012 and changed the number of WOSB program-eligible NAICS codes.
2020	The SBA contracted with an independent research firm to reassess the underrepresentation of WOSBs. The SBA announced implementation of its WOSB certification process.
2022	The SBA increased the number of WOSB program-eligible industries based on the study reassessing WOSB underrepresentation in industries.
2023	Annual WOSB eligibility attestation requirements were replaced by a requirement to undergo an examination every three years to maintain WOSB certification.

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## A Targeted Approach to Avoid Legal Challenges

Congressional efforts to promote WOSB set-asides were complicated by Supreme Court decisions regarding contracting preferences for minority contractors. In one case, *City of Richmond v. J.A. Croson Co.* (1989), the Court found unconstitutional a municipal ordinance that required the city’s prime contractors to award at least 30% of the value of each contract to minority subcontractors. In a later case, *Adarand Constructors, Inc. v. Peña* (1995), the Court found that all racial classifications, whether imposed by federal, state, or local authorities, are subject to “strict scrutiny.” Strict scrutiny is a standard of judicial review that requires the government to prove it has a compelling interest for its actions and that it has “narrowly tailored” them to the problem at hand.<sup>66</sup> Following the *Adarand* decision, the federal government reexamined how it implemented certain procurement preference programs.<sup>67</sup>

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<sup>66</sup> This standard of judicial review is a rigorous test that will be applied to decide whether a law, regulation, or government action violates constitutional equal protection principles. For more information, see CRS In Focus IF12391, *Equal Protection: Strict Scrutiny of Racial Classifications*, by April J. Anderson.

<sup>67</sup> For example, prior to the *Adarand* decision, between 1987 and 1995, SDBs were eligible to receive a 10% price evaluation preference in competitive DOD acquisitions. They could also compete for contracts set aside for SDBs for certain DOD acquisitions where agency officials believed there was a reasonable expectation that offers would be received from at least two responsible SDBs. FASA extended the authority to implement these benefits to all federal agencies, but in 1995, in light of *Adarand*, regulations to implement FASA’s provision to expand SDB program preferences to other federal agencies were delayed. Statutory authority for SDB price evaluation adjustments expired on December 9, 2004, for most federal procuring agencies, and at the end of 2009 for DOD, the National Aeronautics and Space Administration, and the Coast Guard. GAO, *Small Business: Status of Small Disadvantaged Business* (continued...)

When developing the WOSB set-aside program, its designers were aware that the program could be subject to a heightened standard of judicial review given the Supreme Court's rulings. In the House report accompanying H.R. 4897, the Equity in Contracting for Women Act of 2000 (incorporated into H.R. 5654, the Small Business Reauthorization Act of 2000), some WOSB advocates argued that a set-aside program was needed because of the lack of progress in meeting the 5% procurement goal for WOSBs and that the program offered a narrowly tailored solution because it limited WOSB set-asides to industries in which WOSBs are underrepresented in obtaining federal contracts.<sup>68</sup>

## Program Outcomes

The federal government has had difficulty meeting its WOSB procurement goals. The 5% prime contracting goal was achieved in two fiscal years (FY2015 and FY2019) since its creation, although the subcontracting goal has been met in each of the last five fiscal years (see **Table 2**).<sup>69</sup> In contrast, the government has typically met prime contracting goals for small businesses in general, for SDBs, and for service-disabled veteran-owned small businesses. **Table 2** shows the shares of prime and subcontract dollars awarded to WOSBs for the past five fiscal years.

**Table 2. Women-Owned Small Business (WOSB) Procurement Goals and Percentage of Contract Dollars Awarded to WOSBs**  
FY2019 to FY2023

Federal Goal	Percentage of Dollars Awarded FY2023	Percentage of Dollars Awarded FY2022	Percentage of Dollars Awarded FY2021	Percentage of Dollars Awarded FY2020	Percentage of Dollars Awarded FY2019
5% Prime Award Dollars	4.91%	4.57%	4.63%	4.85%	5.19%
5% Subcontract Award Dollars	5.65%	5.14%	5.24%	5.62%	5.25%

**Source:** Small Business Administration (SBA), "Government-wide Small Business Procurement Scorecard [FY2019-FY2023]," at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>.

**Notes:** The SBA excludes certain contracts when procurement data are unavailable or because the work cannot realistically be performed by small businesses. According to the SBA's FY2024 Goaling Guidelines, excluded contracts include acquisitions on behalf of foreign governments, contracts awarded to mandatory sources (which include Federal Prison Industries contracts and those with nonprofit agencies employing persons who are blind or have other significant disabilities), contracts funded with non-appropriated, agency-generated funds, Tricare

*Certifications*, GAO-01-273, January 19, 2001, pp. 3-6, at <https://www.gao.gov/new.items/d01273.pdf>, and SBA, "Small Disadvantaged Business Program," 73 *Federal Register* 57490, October 3, 2008.

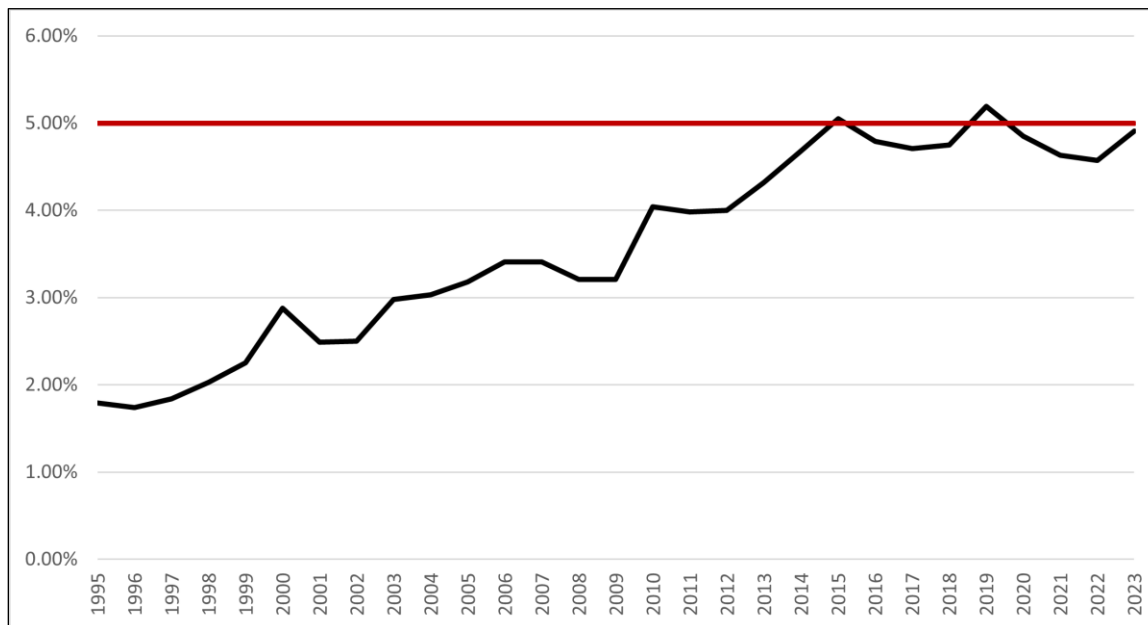
<sup>68</sup> U.S. Congress, House Committee on Small Business, *Equity in Contracting For Women Act of 2000*, report to accompany H.R. 4897, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 21, 2000, H.Rept. 106-879 (Washington, DC: GPO, 2000), pp. 2-3. The report stated that WOSB goals "will not be achieved without the use of some mandatory tool which enables contracting officers to identify WOSBs and establish competition among those businesses for the provision of goods and services."

<sup>69</sup> Subcontracting opportunities may be more readily available or accessible to WOSBs, particularly if a firm's past performance as a contractor is a factor in an agency's selection of a contractor. Agencies may consider non-cost factors such as past performance, technical expertise, or management experience when awarding contracts when they use "negotiated contracting." To obtain the best value for the government, agencies may determine which non-price or non-cost evaluation factors to use. For more information on the procurement process, see CRS Report RS22536, *Overview of the Federal Procurement Process and Resources*, by Dominick A. Fiorentino.

health care program contracts, and Department of Veterans Affairs Community Care Network contracts. Purchases valued at less than \$10,000 are also excluded because they are not tracked in the Federal Procurement Data System. The value of contracts with these exclusions is referred to as the “small business eligible” value.

**Figure 1** shows the share of prime contract dollars awarded to WOSBs since FY1995, the year prior to the implementation of the WOSB procurement goals. The figure shows a gradual increase in the share of WOSB award dollars over time, from less than 2% to nearer the 5% goal.

**Figure 1. Percentage of Contract Dollars Awarded to WOSBs**  
FY1995 to FY2023



**Sources:** SBA, “Government-wide Small Business Procurement Scorecard [FY2019-FY2023],” at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>; U.S. General Services Administration (GSA), “Data Bank: Small Business Goaling Report [FY2005-FY2018]” at <https://sam.gov/reports/awards/static>; U.S. Congress, House Committee on Small Business, Subcommittee on Regulatory Reform and Oversight, *SBA’s Procurement Assistance Programs*, hearing, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 30, 2006, serial no. 109-45 (Washington, DC: GPO, 2006), p. 31 [FY2001-FY2004]; U.S. Congress, House Committee on Small Business, Subcommittee on Contracting and Technology, *Subcommittee Hearing on Federal Government Efforts in Contracting with Women-Owned Businesses*, hearing, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., March 21, 2007, serial no. 110-9 (Washington, DC: GPO, 2007), pp. 4, 46 [FY2000]; White House, *The State of Small Business: A Report of the President [1996-2000]*.

**Notes:** Percentages reflect the WOSB share of “small business eligible” contracts. The red line indicates the award goal.

Although contracting preferences such as set-asides provide a tool for agencies seeking to award contracts to qualified WOSBs, awards made through WOSB-specific preferences constitute a relatively small share of WOSB awards. **Table 3** shows that larger shares of WOSB awards were made through a general small business preference or in open, unrestricted competition. Some contracts awarded to WOSBs may also be made through a different kind of contracting preference (e.g., an SDB preference or a service-disabled veteran-owned small business preference), though data limitations prevent presentation of that information in the table. In previous years, GAO found that “[s]et-asides under the WOSB program to date have had a

minimal effect on overall contracting obligations to WOSBs and attainment of WOSB contracting goals.”<sup>70</sup>

**Table 3. Percentage of Dollars Awarded to WOSBs by Type of Contracting Preference**  
FY2018 to FY2022

Type of Preference	FY2022	FY2021	FY2020	FY2019	FY2018
WOSB Set-Aside	3.07%	3.08%	2.46%	2.27%	2.54%
WOSB Sole-Source Award	0.06%	0.02%	0.03%	0.02%	0.05%
Small Business Preference <sup>a</sup>	20.72%	20.20%	17.53%	16.52%	18.47%
Full and Open Competition (no preference)	63.86%	64.75%	19.95%	17.51%	13.63%

**Source:** GSA, “Federal Procurement Data System Report,” FY2018-FY2022, at <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/small-business-reports>.

**Notes:** Percentages do not sum to 100 because WOSB awards may have been made through other preferences (e.g., a preference for small disadvantaged businesses). Table data underlying calculations may not match Small Business Procurement Scorecard WOSB award data. The Federal Procurement Data System report from the GSA reflects data on all prime contract awards made each year per Section 15(h)(3)(A)(ii) of the Small Business Act, without the contract exclusions or double-counting unique to the SBA Scorecard. Percentages reflect shares of all contracts rather than of “small business eligible” contracts only.

a. “Small Business Preference” refers to contracts made with a small business preference unrelated to WOSB status (i.e., competitions restricted to small businesses in general).

Larger agencies typically fund more contracts and award more dollars to WOSBs than other agencies do. The Department of Defense, Department of Health and Human Services, and Department of Homeland Security were the top three WOSB prime contract award agencies in terms of dollars awarded in FY2023. They were not the top agencies in terms of the percentage of prime contract dollars awarded to WOSBs. The Department of Agriculture awarded both a relatively large amount of dollars and a relatively high percentage of contract dollars to WOSBs. **Table 4** shows the 10 agencies that awarded the most prime contract dollars to WOSBs in FY2023.

**Table 4. Dollars and Percentage of Dollars Awarded to WOSBs, by Agency**  
FY2023

Agency	Percentage of Dollars Awarded	Dollars Awarded
Department of Defense	3.86%	\$14,091,815,631.88
Department of Health and Human Services	6.68%	\$2,777,778,521.50
Department of Homeland Security	7.25%	\$1,885,511,229.58
Department of Agriculture	11.84%	\$1,371,403,166.13
Department of Veterans Affairs	1.59%	\$992,691,397.88

<sup>70</sup> GAO-15-54, *WOSB Program: Certifier Oversight and Eligibility Controls*, p. 18

Agency	Percentage of Dollars Awarded	Dollars Awarded
Department of the Treasury	9.40%	\$956,666,178.30
Department of Justice	8.99%	\$864,478,901.40
National Aeronautics and Space Administration	3.98%	\$823,232,634.48
Department of Commerce	12.91%	\$733,998,225.89
Department of Transportation	7.89%	\$704,395,929.33

**Source:** GSA, “Data Bank: Small Business Goaling Report for Fiscal Year 2023” at <https://sam.gov/reports/awards/static>.

**Notes:** The table lists the top 10 agencies that awarded the most prime contract dollars to WOSBs in FY2023. “Percentage of Dollars Awarded” refers to the percentage of agency prime contracting dollars awarded to WOSBs. Small Business Goaling Report data are comparable to SBA Procurement Scorecard data in that they reflect the WOSB share of “small business eligible” contracts rather than all contracts.

According to GAO, the same agencies have collectively awarded the most contracts to WOSBs for several years. GAO found that from the third quarter of FY2011 through the third quarter of FY2018, six federal agencies accounted for nearly 83% of the contract amount awarded under the WOSB program: Department of Defense (48.6%), Department of Homeland Security (12.4%), Department of Commerce (8.0%), Department of Agriculture (6.3%), Department of Health and Human Services (4.0%), and GSA (4.0%). All other federal agencies accounted for 16.8%.<sup>71</sup>

To gain insight into WOSB program use across agencies and barriers faced by contracting officers when making WOSB contract awards, Congress may be interested in qualitative assessments of contracting officer understanding and comfort with the WOSB program. Congress may also be interested in assessments of program outcomes beyond goal attainment and program utilization, such as the number of WOSB entrants into the federal market and the extent to which WOSBs become successful contractors and subcontractors.

## Concluding Observations

The WOSB program is one of several contracting programs that Congress has approved to provide greater opportunities for small businesses to win federal contracts. Its legislative history is relatively complicated when compared to most other contracting programs, primarily due to the industry-based eligibility criteria and the distinction between WOSBs and EDWOSBs. These program features, and the SBA’s difficulty in defining them, led to program implementation delays and may also help explain the government’s ongoing struggle to reach the statutory WOSB procurement goal for prime contract awards.

While industry-specific eligibility criteria were designed to protect the WOSB program from legal challenges, the details and complexity of these criteria, and the mandated updates to them, may discourage both agency and firm participation in the program. The implementation of the SBA WOSB certification process could assist contracting officers in identifying eligible WOSBs and thus increase agency program utilization—WOSBs may have historically received a small proportion of prime contracting dollars through WOSB preferences because agencies were concerned about granting preferences to ineligible, albeit self-certified, firms. However, certification requirements could also hinder eligible firms from seeking certification, which

<sup>71</sup> GAO-19-168, *WOSB: Ongoing Oversight Issues*, p. 29.

would reduce firms' program utilization; agencies may then continue to make WOSB awards at levels beneath the WOSB procurement goal.

Some WOSB advocates have suggested that the WOSB program should be amended to (1) eliminate the distinction and disparate treatment of WOSBs and EDWOSBs and/or (2) allow set-asides and sole-source awards to WOSBs (including EDWOSBs) in all NAICS industry codes regardless of WOSB representation, as is the case for other small business preference programs.<sup>72</sup> Both legislative options could lead to an increase in the amount of contracts awarded to WOSBs. In the first instance, WOSBs in both underrepresented and substantially underrepresented NAICS codes would be eligible for set-asides and sole-source awards, instead of just those in substantially underrepresented NAICS codes. In the latter instance, WOSBs and EDWOSBs would be eligible for set-asides and sole-source awards in all NAICS codes. However, either program change could raise the prospect of legal challenges.

While Congress may be interested in how agencies can make progress toward WOSB procurement goals, it may also consider whether the WOSB goal and program still reflect the aims of the government as a buyer. The government is not currently pursuing a WOSB goal that corresponds to the share of women-owned firms, which is higher than 5%.<sup>73</sup> It is also not pursuing a goal related to WOSB underrepresentation among contractors. Congress may be interested in authoritative studies on policies oriented toward, for example, increasing WOSB market share in industries in which WOSBs are underrepresented or in which WOSBs face discrimination by buyers, including federal agencies. Some scholars have concluded that "in terms of broad policy intent and intended outcomes not much has changed since 1988."<sup>74</sup>

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<sup>72</sup> For example, see Rachel N. Herrington, "Five Years In: A Review of the Women-Owned Small Business Federal Contract Program," *Public Contract Law Journal*, vol. 45, no. 2 (Winter 2016), pp. 359-382, at <https://www.jstor.org/stable/26419510>; see also SBA, "FY 2025 Legislative Proposals," *FY 2025 Congressional Budget Justification* (pp. 14-15).

<sup>73</sup> According to Census Bureau data, women owned 12.4 million businesses out of 32.9 million businesses (about 38%) in 2020. U.S. Census Bureau, "Census Bureau Releases Nonemployer Business Data by Demographic Characteristics of Owners," press release, February 28, 2024, at <https://www.census.gov/newsroom/press-releases/2024/nonemployer-business-data.html>.

<sup>74</sup> S. Pandey and A. S. Amezcua, "Women's Business Ownership and Women's Entrepreneurship," *Small Business Economics*, vol. 54 (November 23, 2018), p. 1123. Women's business ownership increased significantly from 1972 to 1987, from less than 5% to approximately 30% (p. 1139). The WOSB goal may reflect the circumstances that spurred advocacy on behalf of WOSBs in the 1970s and 1980s, rather than current conditions in which WOSBs are a large share of firms overall but a small share of federal contractors.



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