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VIA REGULATIONS.GOV PORTAL

Ms. Brenda Fernandez  
U.S. Small Business Administration  
Office of Policy, Planning and Liaison  
409 Third Street SW, 8<sup>th</sup> Floor  
Washington, DC 20416

Re: Comments on Proposed Rule Regarding the Women-Owned Small Business  
Federal Contract Program  
RIN: 3245-AG72  
Docket No. SBA-2015-0004

Dear Ms. Fernandez:

We are writing to submit comments regarding the U.S. Small Business Administration's ("SBA") proposed rule of May 1, 2015, regarding the implementation of provisions of the National Defense Authorization Act of 2015 which grant contracting officers the authority to award sole source contracts to Women-Owned Small Businesses (WOSB) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSB).

Our company represents small and medium-sized businesses that operate in the federal marketplace, including WOSB/EDWOSB. We are supportive of this rulemaking, including the SBA's efforts to implement the sole source provisions of the 2015 NDAA in a timely manner. Nonetheless, we do have some concerns and specific suggestions/comments, set forth in this letter, as to how the proposed rule can be improved and clarified.

Sole Source Authority

As a woman-owned small business as well as a firm that represents WOSB and EDWOSB, we support the proposed rule implementing provisions of the 2015 NDAA which allow for sole source contracting opportunities for such businesses. We feel that this rulemaking puts WOSB/EDWOSB on a level playing field with businesses in the other set-aside programs, which have been able to take advantage of sole source contracting opportunities for some time now.



### Study to Determine Underrepresentation

We appreciate and applaud the SBA's efforts to meet the earlier deadline of January 2, 2016 to determine the industries in which WOSB are underrepresented. In making this determination, the proposed rule states only that the determination will be made by a "study using reliable and relevant methodology." Given that the woman-owned small business program does limit participation to specific NAICS Codes and industries, we advocate for a broad and reasonable approach to determining underrepresentation. In addition, we urge the SBA, in its final rule, to provide more clarity and transparency in terms of the methodology that will be used to determine underrepresentation.

### Certification as a WOSB/EDWOSB

To be clear, we are supportive of the SBA's efforts to put forth this rule in a timely fashion, thus allowing WOSB/EDWOSB to take advantage of sole source contracting opportunities sooner rather than later. For one thing, we regularly represent WOSB/EDWOSB and it would be great to see them have access to and obtain sole source contracts immediately. Secondly, we ourselves are a WOSB and would also like to potentially take advantage of sole source contracting opportunities as soon as possible. However, we do have concerns with the fact that the proposed rule does not address the 2015 NDAA's elimination of the self-certification option. We would hate for sole source contracting opportunities to WOSB/EDWOSB to come at the risk of potentially invalid contracts and program abuse.

Some have suggested that one option would be for SBA to implement the sole source provisions of the 2015 NDAA and have only the current third party certification process as an option for certification. As an initial matter, we feel that this is unfair to WOSB/EDWOSB, as the other set-aside programs allow an applicant to go through the application/certification process on its own and that hiring a consultant or other to assist with the application/certification process is the applicant's choice. In addition, as noted in the GAO Report dated October 2014 titled "Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed" there are numerous issues with the third-party certification process. Allowing sole source contracts in the absence of a formal certification process and/or without addressing the issues with the current third party certification process as noted in the GAO Report would increase the risk of program abuse, as sole source contracting opportunities are incredibly appealing and many businesses will want to take advantage of the capability.

Further, we are concerned that should SBA issue a final rule on this subject without addressing the certification requirements, any sole source contracts issued to WOSB/EDWOSB may be jeopardized should there be litigation or other challenges to the final rule on this basis. Moreover, companies that self-certified as WOSB/EDWOSB and which received sole source contracts but who later were found not to meet all the eligibility requirements will have received contracts to which they were not entitled.



Thus, while we are supportive of getting a rule out to allow for sole source contracting opportunities for WOSB/EDWOSB sooner rather than later, we do feel that the certification aspect should be addressed. At the very least, we feel that the final rule should eliminate self-certification as an option. In addition, we would encourage the SBA to consider, in its final rule, implementing a process similar to the certification process utilized for HUBZone businesses. If that is not an option, then we would request that the SBA focus on strengthening the third-party certification process and addressing the issues identified in the GAO Report in order to reduce the likelihood of fraud and abuse while a more formal process can be developed.

#### Conclusion

Again, we commend the SBA for the thought and effort that went into drafting the proposed rule. As previously mentioned, we support many of the changes contemplated by the proposed rule, as we feel that the spirit and intent of the changes are favorable for small businesses, especially WOSB/EDWOSB. However, as outlined above, we do have concerns regarding the proposed rule in its current state. Thus, we would urge the SBA to consider the issues identified in these comments in developing the final rule. Thank you for your time and consideration.

Very Respectfully,

/s/

Shannon H. Edie, Esq.  
Daphne Tong-Pave  
Principals, Holomua Consulting Group, LLC