United States Government Accountability Office

Report to Congressional Requesters

March 2019

WOMEN-OWNED SMALL BUSINESS PROGRAM

Actions Needed to Address Ongoing Oversight Issues

Accessible Version

GAO-19-168

GAO Highlights

Highlights of GAO-19-168, a report to congressional requesters

March 2019

WOMEN-OWNED SMALL BUSINESS PROGRAM

Actions Needed to Address Ongoing Oversight Issues

Why GAO Did This Study

In 2000, Congress authorized the WOSB program, allowing contracting officers to set aside procurements to women-owned small businesses in industries in which they are substantially underrepresented. To be eligible to participate in the WOSB program, firms have the option to self-certify or be certified by a third-party certifier. However, the 2015 NDAA changed the WOSB program by (1) authorizing SBA to implement sole-source authority, (2) eliminating the option for firms to self-certify as being eligible for the program and (3) allowing SBA to implement a new certification process.

GAO was asked to review the WOSB program. This report discusses (1) the extent to which SBA has addressed the 2015 NDAA changes, (2) SBA's efforts to address previously identified deficiencies, and (3) use of the WOSB program. GAO reviewed relevant laws, regulations, and program documents; analyzed federal contracting data from April 2011 through June 2018; and interviewed SBA officials, officials from contracting agencies selected to obtain a range of experience with the WOSB program, and three of the four private third-party certifiers.

What GAO Recommends

GAO recommends that SBA develop a process for periodically reviewing the extent to which WOSB program set-asides are awarded for ineligible goods or services and use the results to address identified issues, such as through targeted outreach or training on the WOSB program. SBA agreed with the recommendation.

View GAO-19-168. For more information, contact William Shear at (202) 512-8678 or ShearW@gao.gov.

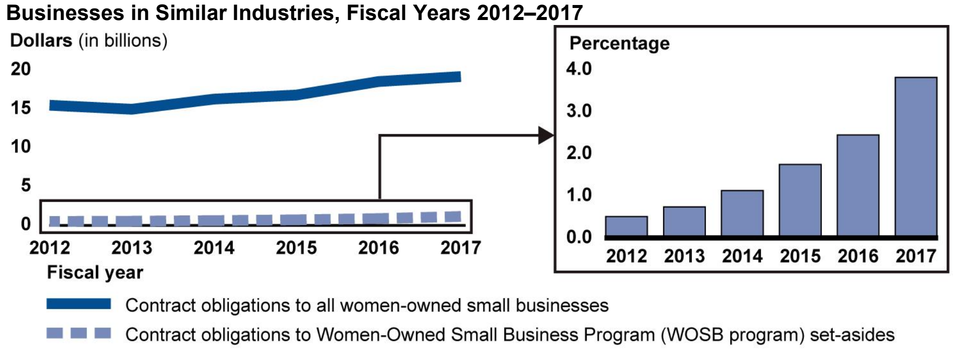
What GAO Found

The Small Business Administration (SBA) has implemented one of the three changes to the Women-Owned Small Business (WOSB) program authorized in the National Defense Authorization Act of 2015 (2015 NDAA). Specifically, in September 2015 SBA published a final rule to implement sole-source authority, effective October 2015. As of February 2019, SBA had not eliminated the option for program participants to self-certify that they are eligible to participate, as required by 2015 NDAA. SBA officials stated that this requirement would be addressed as part of the new certification process for the WOSB program, which they expect to implement by January 1, 2020.

SBA has not addressed WOSB program oversight deficiencies identified in GAO's 2014 review (GAO-15-54). For example, GAO previously recommended that SBA establish procedures to assess the performance of four third-party certifiers—private entities approved by SBA to certify the eligibility of WOSB firms. While SBA conducted a compliance review of the certifiers in 2016, it has no plans to regularly monitor them. By not improving its oversight of the WOSB program, SBA is limiting its ability to ensure third-party certifiers are following program requirements. In addition, the implementation of sole-source authority in light of these continued oversight deficiencies can increase program risk. Consequently, GAO maintains that its prior recommendations should be addressed. In addition, similar to previous findings from SBA's Office of Inspector General, GAO found that about 3.5 percent of contracts using a WOSB set-aside were awarded for ineligible goods or services from April 2011 through June 2018. SBA does not review contracting data that could identify this problem and inform SBA which agencies making awards may need targeted outreach or training. As a result, SBA cannot provide reasonable assurance that WOSB program requirements are being met and that the program is meeting its goals.

While federal contract obligations to all women-owned small businesses and WOSB program set-asides have increased since fiscal year 2012, WOSB program set-asides remain a small percentage (see figure).

Obligations for the Women-Owned Small Business Program and to All Women-Owned Small Businesses in Similar Industries, Fiscal Years 2012–2017



Source: GAO analysis of Federal Procurement Data System-Next Generation (FPDS-NG) data. | GAO-19-168

Note: Obligations to women-owned small businesses represent contract obligations to women-owned small businesses under WOSB-program-eligible North American Industry Classification System codes. FPDS-NG obligation amounts have been adjusted for inflation.

Contents

Abbreviations

8(a)	8(a) Business Development Program
2015 NDAA	National Defense Authorization Act of 2015
DHS	Department of Homeland Security
DOD	Department of Defense
EDWOSB	economically disadvantaged women-owned small business
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
HUBZone	Historically Underutilized Business Zone
NAICS	North American Industry Classification System
OIG	Office of Inspector General
SBA	Small Business Administration
SDVOSB	Service-Disabled Veteran-Owned Small Business Program
SOP	Standard Operating Procedures
WOSB	women-owned small business
WOSB program	Women-Owned Small Business Federal Contracting Program

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

March 14, 2019

The Honorable Nydia Velázquez
Chairwoman
The Honorable Steve Chabot
Ranking Member
Committee on Small Business
House of Representatives

The Honorable Alma Adams
House of Representatives

Women-owned businesses play an increasingly significant role in the U.S. economy. According to the most recent U.S. Census Survey of Business Owners, the number of women-owned businesses grew by almost 27 percent from 2007 through 2012.[1] However, the federal goal of awarding 5 percent of procurements government-wide to women-owned small businesses has only been met once since fiscal year 2013.[2] In 2000, Congress authorized the Women-Owned Small Business Federal Contracting Program (WOSB program) to, among other things, reserve contracts for qualified women-owned small businesses in industries

[1]In 2012, there were 9.9 million women-owned firms, an increase of more than 2 million (or 26.9 percent) since 2007, according to the U.S. Census Survey of Business Owners 2007 and 2012.

[2]For women-owned small businesses, the prime contracting goal for each federal agency is 5 percent of the agency's prime contracting dollars awarded. A prime contract is awarded directly to a contractor by the federal government. According to the Small Business Administration's 2017 Small Business Procurement scorecard, in fiscal years 2013 through 2017 the federal government's women-owned small business prime contracting goal of 5 percent was met only in fiscal year 2015. See Small Business Administration, "The Federal Government Achieves Small Business Contracting Goal for the Fifth Consecutive Year with Record-Breaking $105 Billion to Small Businesses," press release no. 18-39, May 22, 2018, https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/federal-government-achieves-small-business-contracting-goal-fifth-consecutive-year-record-breaking. Also see GAO, *Small Business Administration: Actions Needed to Improve Confidence in Small Business Procurement Scorecard*, GAO-18-672 (Washington, D.C.: Sept. 27, 2018).

where these businesses are substantially underrepresented.[3] On October 7, 2010, the Small Business Administration (SBA) issued a final rule to implement the WOSB program, and the program began operating in 2011.

SBA allows businesses to establish program eligibility through self-certification or certification by third-party certifiers.[4] In 2014, we reviewed the WOSB program and found a number of deficiencies in SBA's oversight of the four SBA-approved third-party certifiers and in SBA's eligibility examination processes.[5] In addition, in 2015 and 2018 the SBA Office of Inspector General (OIG) reviewed the WOSB program and also found several oversight deficiencies.[6]

[3] *See* Consolidated Appropriation Act, 2001, Pub. L. No. 106-554, §811, 114 Stat. 2763, 2763A708 (2000).The Small Business Act defines various socioeconomic categories of businesses, and the Small Business Administration administers contracting programs targeted to these groups. Small businesses are those that are independently owned and operated and are not dominant in their field of operations. 15 U.S.C. § 632(a). Women-owned small businesses must have at least 51 percent women ownership and must be controlled by one or more women who are U.S. citizens. The ownership must be direct and not subject to conditions, and the woman must manage the day-to-day operations of the business and make its long-term decisions. *See* 15 U.S.C. § 632(n); 13 C.F.R. § 127.102; 13 C.F.R. § 127.201; 13 C.F.R. § 127.202.

[4] WOSB program provisions were formally added to the Federal Acquisition Regulation on April 1, 2011. Program regulations allow third-party eligibility certification by SBA-approved private entities; by states through the Department of Transportation's Disadvantaged Business Enterprise program; or through SBA's 8(a) Business Development program. *See* 13 C.F.R. § 127.300(d)(1). According to SBA officials, the Disadvantaged Business Enterprise program is not used to certify eligible WOSB firms, and certifications through the 8(a) Business Development program represent a small percentage of all WOSB program certifications. SBA officials could not provide data on how many WOSB program firms are certified through self-certification or through the 8(a) Business Development program.

[5] GAO, *Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed*, GAO-15-54 (Washington, D.C.: Oct. 8, 2014). We made two recommendations to improve SBA's oversight of the WOSB program. As of February 2019, these recommendations remained open.

[6] SBA Office of Inspector General, *Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program,* SBA OIG Report 15-10 (Washington, D.C.: May 14, 2015). The report's objectives were to determine whether (1) WOSB program awards complied with the program's set-aside requirements and (2) firms that received WOSB set-aside awards conformed to the program's self-certification requirements. SBA Office of Inspector General, *SBA's Women-Owned Small Business Contracting Program*, SBA OIG Report 18-18 (Washington, D.C.: June 20, 2018). The report's objectives were to determine whether (1) contracts awarded on a sole-source basis complied with requirements of the WOSB program and (2) firms that received contracts on a sole-source basis conformed to the self-certification requirements.

In December 2014, the National Defense Authorization Act of 2015 (2015 NDAA) amended the WOSB program by, among other things, granting contracting officers the authority to award sole-source contracts to eligible women-owned small businesses (WOSB) and economically disadvantaged women-owned small businesses (EDWOSB).[7] The act also removed firms' ability to self-certify as eligible for the WOSB program and allowed SBA to certify the eligibility of program participants as an additional alternative to third-party certification.[8]

You requested that we evaluate SBA's WOSB program, including any actions SBA has taken in response to the 2015 NDAA and to previously identified deficiencies, as well as usage of the program. This report examines (1) the extent to which SBA has implemented changes to the WOSB program made by the 2015 NDAA; (2) the extent to which SBA has implemented changes to address previously identified oversight deficiencies; and (3) changes in WOSB program use since 2011 and stakeholder views on its use, including since the 2015 implementation of sole-source authority.

To address the first objective, we reviewed the 2015 NDAA, proposed regulations, and SBA documentation, and we interviewed SBA officials. To respond to the second and third objectives, we interviewed SBA officials, three of the WOSB program's four private third-party certifiers (referred to in the report as "third-party certifiers"), three selected federal agencies (and three agency components within two of the agencies), and a total of eight selected contracting offices within the six selected agencies or components.[9] Using data from the Federal Procurement Data System-Next Generation (FPDS-NG), we judgmentally selected the three federal agencies and three components (for a total of six selected agencies and components) because their WOSB dollar obligations (including competed and sole-source) were among the largest or because

[7]Throughout this report, we use the abbreviation "WOSB" to refer specifically to women-owned small businesses that have been certified as eligible for the WOSB program.

[8]The Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 825, 128 Stat. 3292, 3437 (2014).

[9]The four SBA-approved private third-party certifiers under the WOSB program are the El Paso Hispanic Chamber of Commerce, NWBOC (previously known as the National Women Business Owners Corporation), U.S. Women's Chamber of Commerce, and the Women's Business Enterprise National Council. We did not speak with NWBOC, as NWBOC officials did not make themselves available for an interview with us within the time period necessary for our review.

we had interviewed them for our prior work.[10] Specifically, we selected the following six agencies or agency components: the Department of Homeland Security (DHS) and, within DHS, the Coast Guard; the Department of Defense (DOD) and, within DOD, the U.S. Army and U.S. Navy; and the General Services Administration (GSA).[11] Within the components and GSA, we judgmentally selected eight contracting offices (two each from Coast Guard, U.S. Army, U.S. Navy, and GSA) based on whether they had a relatively large amount of obligations and had used multiple types of set-asides (competed or sole-source) to WOSBs or EDWOSBs.

To address the second objective, we reviewed SBA policies and procedures for the WOSB program and SBA oversight activities, such as SBA compliance reviews of the four third-party certifiers. We analyzed FPDS-NG data on obligations for WOSB program set-aside contracts and the goods and services for which they were awarded—represented by North American Industry Classification System (NAICS) codes—against NAICS codes approved for WOSB program eligibility to determine if these contracts were made in eligible industries. We compared SBA's activities against federal internal control standards, GAO's framework for managing fraud risk, and our prior recommendations to SBA.[12] We also reviewed relevant SBA OIG reports and interviewed SBA OIG officials.

To address the third objective, we analyzed FPDS-NG data from April 2011 through June 2018 (the most recent data available during the period of our analysis) and identified trends in total obligation amounts of competed and sole-source contracts awarded under the WOSB program (including both WOSB and EDWOSB contracts). To determine the relative usage of the WOSB program, we compared data on obligations

[10]FPDS-NG contains data for most federal contract actions that have an estimated value over the micropurchase threshold (which is currently $3,500). The federal government uses its data to create recurring and special reports to the President, the Congress, federal executive agencies, and the general public.

[11]We spoke with officials from DHS, DOD, and GSA for this review and for our 2014 review. We selected DHS and DOD because they had the largest WOSB program obligations. Although GSA's WOSB program obligations were not the largest after DHS and DOD, we selected GSA to have some continuity between the reviews and because it maintains FPDS-NG.

[12]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014); *A Framework for Managing Fraud Risks in Federal Programs,* GAO-15-593SP (Washington, D.C.: July 2015); and GAO-15-54.

for set-asides under the WOSB program with federal contract obligations for WOSB-program-eligible goods and services to all woman-owned small businesses. We assessed the reliability of FPDS-NG data by reviewing available documentation and prior GAO data reliability assessments and by electronically testing for missing data, outliers, and inconsistent coding.[13] We found the data to be reliable for the purposes of reporting on trends in the WOSB program and the usage of sole-source authority under the program. Appendix I provides more detail on our scope and methodology.

We conducted this performance audit from October 2017 to March 2019 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Federal agencies conduct a variety of procurements that are reserved for small business participation through small business set-asides. The set-asides can be for small businesses in general, or they can be specific to small businesses that meet additional eligibility requirements in the Service-Disabled Veteran-Owned Small Business (SDVOSB), Historically Underutilized Business Zone (HUBZone), 8(a) Business Development (8(a)), and WOSB programs.

The WOSB program enables federal contracting officers to identify and establish a sheltered market, or set-aside, for competition among WOSBs

[13]We pulled data from FPDS-NG on July 25, 2018, for analysis for our third objective, as well as for our analysis of NAICS codes for the second objective. FPDS-NG data are entered by agency contracting officers on a real-time basis and, thus, they change every day. FPDS-NG data undergo a certification process each January for the prior fiscal year. The data we included in our analysis from three quarters of fiscal year 2018 had not been certified at the time of our analysis. However, based on the data quality summary reports from prior years, we believe these data to be reliable for the purposes of our reporting objectives.

and EDWOSBs in certain industries.[14] To determine the industries eligible under the WOSB program, SBA is required to conduct a study to determine which NAICS codes are eligible under the program and to report on such studies every 5 years. WOSBs can receive set-asides in industries in which SBA has determined that women-owned small businesses are substantially underrepresented. EDWOSBs can receive set-asides in WOSB-eligible industries as well as in an additional set of industries in which SBA has determined that women-owned small businesses are underrepresented but not substantially so.[15] As of February 2019, there were a total of 113 four-digit NAICS codes (representing NAICS industry groups) eligible under the WOSB program—92 eligible NAICS codes for WOSBs and 21 for EDWOSBs.[16]

Additionally, businesses must be at least 51 percent owned and controlled by one or more women who are U.S. citizens to participate in the WOSB program. The owner must provide documents demonstrating

[14]Economically disadvantaged is a determination made if a woman can demonstrate that her ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities as compared with others in the same or similar business. In order to be economically disadvantaged, a woman must have a net worth of less than $750,000 (with certain regulatory exclusions). Generally, a woman with an adjusted gross income for the prior 3 years averaging $350,000 or more or with assets of $6 million or more is not deemed economically disadvantaged. Additionally, a spouse’s financial situation can be considered. *See* 13 C.F.R. § 127.203.

[15]WOSBs are not eligible to receive awards within industries solely designated for EDWOSBs.

[16]NAICS uses a six-digit coding system to identify particular industries and their placement in the hierarchical structure of the classification system. A four-digit code designates the sector, subsector, and industry group. Additional digits (the fifth and sixth) provide additional information on the NAICS industry and the national industry. WOSB program industry eligibility determinations were made at the four-digit NAICS industry group level. Specifically, two studies were conducted to assist SBA in determining eligible NAICS codes. SBA commissioned the RAND Corporation to conduct the first such study. Based on the results of the RAND study, SBA designated 45 four-digit WOSB NAICS codes and 38 EDWOSB NAICS codes, for a total of 83. See Kauffman-RAND Institute for Entrepreneurship Public Policy, *The Utilization of Women-Owned Small Businesses in Federal Contracting* (Santa Monica, Calif.: 2007). In December 2015, the Department of Commerce issued the next study, based on which SBA increased the total number of NAICS codes under the program to 113, with 92 WOSB codes and 21 EDWOSB codes (which became effective March 2016). See David N. Beede and Robert N. Rubinovitz, *Utilization of Women-Owned Small Businesses in Federal Prime Contracting*, a report prepared for the Small Business Administration (Washington, D.C.: Economics and Statistics Administration, Department of Commerce, Dec. 31, 2015). Other more technical changes were made to the WOSB program NAICS codes in 2012 and 2017 to align them with broader changes in NAICS codes.

that the business meets program requirements, including a document in which the owner attests to the business's status as a WOSB or EDWOSB. EDWOSBs are WOSBs that are controlled by one or more women who are citizens and who are economically disadvantaged in accordance with SBA regulations. According to SBA, as of early October 2018, there were 13,224 WOSBs and 4,488 EDWOSBs registered in SBA's online certification database.

SBA's Office of Government Contracting administers the WOSB program by promulgating regulations, conducting eligibility examinations of businesses that receive contracts under a WOSB or EDWOSB set-aside, deciding protests related to eligibility for a WOSB set-aside, conducting studies to determine eligible industries, and working with other federal agencies in assisting WOSBs and EDWOSBs. According to SBA officials, the Office of Government Contracting also works at the regional and local levels with SBA's Small Business Development Centers and district offices, and with other organizations (such as Procurement Technical Assistance Centers), to help WOSBs and EDWOSBs obtain contracts with federal agencies. The services SBA coordinates include training, counseling, mentoring, facilitating access to information about federal contracting opportunities, and business financing. According to SBA, as of October 2018, there were two full-time staff within the Office of Government Contracting whose primary responsibility was the WOSB program.

Initially, the program's statutory authority allowed WOSBs to be self-certified by the business owner or certified by an approved third-party national certifying entity as eligible for the program. Self-certification is free, but some third-party certification options require businesses to pay a fee. Each certification process requires businesses to provide signed representations attesting to their WOSB or EDWOSB eligibility. Businesses must provide documents supporting their status before submitting an offer to perform the requirements of a WOSB set-aside contract.[17] In August 2016, SBA launched certify.sba.gov, which is an online portal that allows firms to upload required documents and track their submission and also enables contracting officers to review firms' eligibility documentation.[18] According to the Federal Acquisition Regulation (FAR), contracting officers are required to verify that all required documentation is present in the online portal when selecting a business for an award. In addition, businesses must register and attest to being a WOSB in the System for Award Management, the primary database of vendors doing business with the federal government.[19]

In 2011, SBA approved four organizations to act as third-party certifiers:

- El Paso Hispanic Chamber of Commerce,
- NWBOC (previously known as the National Women Business Owners Corporation),
- U.S. Women's Chamber of Commerce, and
- Women's Business Enterprise National Council.

These organizations have been the WOSB program's third-party certifiers since 2011.[20] According to SBA data, the Women's Business Enterprise National Council was the most active third-party certifier in fiscal year 2017—performing 2,638 WOSB certification examinations. The U.S.

[17]According to WOSB program regulations at 13 C.F.R. § 127.300(e), documents required of self-certified WOSBs include copies of birth certificates, naturalization papers, or unexpired passports; joint venture agreement, if applicable; for a sole proprietorship, an assumed/fictitious name certificate; signed WOSB program certification (an attestation by the business of its program eligibility); if a limited liability company, articles of organization and operating agreement; if a corporation, articles of incorporation, bylaws, and any amendments, and all issued stock certificates, stock ledger, and voting agreements, if any; and if a partnership, partnership agreements and amendments. Self-certified EDWOSBs also must provide a personal financial statement for each woman claiming economic disadvantage (SBA Form 413) and a signed EDWOSB program certification.

[18]According to SBA, the agency plans to move other certifications, such as those of the 8(a) and HUBZone programs, into the new system and allow documents uploaded for one program to be reused for another.

[19]Federal acquisition regulations generally require prospective vendors to be registered in the System for Award Management—which is maintained by GSA—before the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement.

[20]To become an SBA-approved third-party certifier, interested organizations submitted an application to SBA that contained information on the organization's structure and staff, policies and procedures for certification, and attestations that they will adhere to program requirements.

Women's Chamber of Commerce, NWBOC, and El Paso Hispanic Chamber of Commerce—completed 644, 105, and 12 certifications, respectively.

As discussed previously, in 2014 we reviewed the WOSB program and found a number of deficiencies in SBA's oversight of the four SBA-approved third-party certifiers and in SBA's eligibility examination processes and we made related recommendations for SBA.[21] In addition, in 2015 and 2018 the SBA OIG reviewed the WOSB program and also found oversight deficiencies, including evidence of WOSB contracts set aside for ineligible firms. In both reports, the SBA OIG also made recommendations for SBA.[22] Further, in July 2015, we issued GAO's fraud risk framework, which provides a comprehensive set of key components and leading practices that serve as a guide for agency managers to use when developing efforts to combat fraud in a strategic, risk-based way.[23] In July 2016, the Office of Management and Budget issued guidelines requiring executive agencies to create controls to identify and respond to fraud risks. These guidelines also affirm that managers should adhere to the leading practices identified in GAO's fraud risk framework.[24]

[21] GAO-15-54. We made two recommendations to improve SBA's oversight of the WOSB program. As of February 2019, these recommendations remained open.

[22] SBA OIG Report 15-10 and SBA OIG Report 18-18. The SBA OIG's recommendations are discussed in further detail later in the report.

[23] GAO-15-593SP.

[24] Office of Management and Budget, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Circular No. A-123 (Washington, D.C.: July 15, 2016). The Fraud Reduction and Data Analytics Act of 2015 required the Office of Management and Budget to establish guidelines for federal agencies to create controls to identify and assess fraud risks and design and implement antifraud control activities. Pub.L. No. 114-186, § 3(a), 130 Stat. 546 (2016).

SBA Has Implemented One of the Three Changes Made by the 2015 NDAA

As of February 2019, SBA had implemented one of the three changes that the 2015 NDAA made to the WOSB program—sole-source authority. The two other changes—authorizing SBA to implement its own certification process for WOSBs and requiring SBA to eliminate the WOSB self-certification option—have not been implemented.[25] The 2015 NDAA did not require a specific time frame for SBA to update its regulations. SBA officials have stated that they will not eliminate self-certification until the new certification process for the WOSB program is in place, which they expect to be completed by January 1, 2020.

Sole-Source Authority Has Been Implemented

In September 2015, SBA published a final rule to implement sole-source authority for the WOSB program (effective October 2015).[26] Among other things, the rule authorized contracting officers to award a contract to a WOSB or EDWOSB without competition, provided that the contracting officer's market research cannot identify two or more WOSBs or EDWOSBs in eligible industries that can perform the requirements of the contract at a fair and reasonable price. In the final rule, SBA explained that it promulgated the sole-source rule before the WOSB certification requirements for two reasons. First, the sole-source rule could be accomplished by simply incorporating the statutory language into the regulations, whereas the WOSB certification requirements would instead require a prolonged rulemaking process. Second, SBA said that addressing all three regulatory changes at the same time would delay the implementation of sole-source authority. SBA described the sole-source mechanism as an additional tool for federal agencies to ensure that women-owned small businesses have an equal opportunity to participate

[25]The 2015 NDAA expanded the WOSB certification process to include the SBA Administrator, in addition to the previously approved methods of a federal agency, a state government, or a national certifying entity approved by SBA.

[26]*See* Women-Owned Small Business Federal Contract Program, 80 Fed. Reg. 55019 (Sept. 14, 2015). The value of a WOSB sole-source contract, including options, cannot exceed $6.5 million for manufacturing contracts and $4 million for all other contracts. A related interim rule updating the FAR was issued in December 2015 and was followed by a final rule in September 2016.

in federal contracting and to ensure consistency among SBA's socioeconomic small business procurement programs.

According to SBA, most of the 495 comments submitted about the sole-source rule supported the agency's decision to implement the authority quickly. However, the SBA OIG's June 2018 audit report cautioned that allowing sole-source contracting authority while firms can still self-certify exposes the WOSB program to unnecessary risk of fraud and abuse, and the report recommended that SBA implement a new certification process for the WOSB program per the 2015 NDAA.[27] In addition, our previous report identified risks of program participation by ineligible firms associated with deficiencies in SBA's oversight structure.[28] As we discuss in detail later, SBA has still not addressed these risks, which may be exacerbated by the implementation of sole-source authority without addressing the other changes made by the 2015 NDAA, including eliminating the self-certification option.

A New WOSB Program Certification Process Has Not Been Implemented

As of February 2019, SBA had not published a proposed rule for public comment to establish a new certification process for the WOSB program. Previously, in October 2017, an SBA official stated that SBA was about 1–2 months away from publishing a proposed rule. However, in June 2018, SBA officials stated that a cost analysis would be necessary before the draft could be sent to the Office of Management and Budget for review. Certain stages of the rulemaking process have mandated time periods, such as the required interagency review process for certain rules. In June 2017, we reported that SBA officials said that an increase in the number of statutorily mandated rules in recent years had contributed to delays in the agency's ability to promulgate rules in a more timely fashion.[29] As of February 2019, SBA had not provided documentation or time frames for issuing a proposed rule or completing the rulemaking process. However, in response to the SBA OIG

[27]SBA OIG Report 18-18.

[28]GAO-15-54.

[29]GAO, *Small Business Administration: Government Contracting and Business Development Processes and Rule-Making Activities*, GAO-17-573 (Washington, D.C.: June 30, 2017).

recommendation that SBA implement the new certification process, SBA stated that it would fulfill the recommendation (meaning implement a new certification process) by January 1, 2020.[30]

In December 2015, SBA published an advance notice of proposed rulemaking to solicit public comments to assist the agency with drafting a proposed rule to implement a new WOSB certification program.[31] In the notice, SBA stated that it intends to address the 2015 NDAA changes, including eliminating the self-certification option, through drafting regulations to implement a new certification process. Previously, in its September 2015 final rule implementing sole-source authority, SBA stated that there was no evidence that Congress intended that the existing WOSB program, including self-certification, be halted before establishing the infrastructure and new regulations for a new certification program. The advance notice requested comments on various topics, such as how well the current certification processes were working, which of the certification options were feasible and should be pursued, whether there should be a grace period for self-certified WOSB firms to complete the new certification process, and what documentation should be required.

Three third-party certifiers submitted comments in response to the advance notice of proposed rulemaking, and none supported the option of SBA acting as a WOSB certifier.[32] One third-party certifier commented that such an arrangement is a conflict of interest given that SBA is also responsible for oversight of the WOSB program, and two certifiers commented that SBA lacked the required resources. The three third-party certifiers also asserted in their comments that no other federal agency should be allowed to become an authorized WOSB certifier, with one commenting that federal agencies should instead focus on providing contracting opportunities for women-owned businesses. All three certifiers also proposed ways to improve the current system of third-party certification—for example, by strengthening oversight of certifiers or expanding their number. The three certifiers also suggested that SBA

[30]SBA OIG Report 18-18.

[31]Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification, 80 Fed. Reg. 78984 (Advance notice of proposed rulemaking, Dec. 18, 2015).

[32]Based on our review of the publically available comment letters, one of the four third-party certifiers did not comment on the advance notice of proposed rulemaking.

move to a process that better leverages existing programs with certification requirements similar to those of the WOSB program, such as the 8(a) program. In the advance notice, SBA asked for comments on alternative certification options, such as SBA acting as a certifier or limiting WOSB program certifications to the 8(a) program and otherwise relying on state or third-party certifiers.[33] Further, in June 2018, SBA officials told us that they were evaluating the potential costs of a new certification program as part of their development of the new certification rule.[34]

[33]WOSB program regulations currently allow WOSB certification through the 8(a) program; however, SBA officials said that this method of certification currently represents a small percentage of all WOSB program certifications.

[34]Executive Order 12866 and Office of Management and Budget Circular A-4 require that certain agencies—including SBA—generally assess the potential costs and benefits of actions, including proposed rules that are deemed to be a "significant regulatory action." A "significant regulatory action" is defined by the order as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy or a sector of the economy, among other things (generally referred to as "economically significant" regulations); (2) create a serious inconsistency or otherwise interfere with another agency's taken or planned actions; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in the executive order. Under Executive Order 12866, the cost-benefit analysis for "economically significant" regulatory actions should generally include, among other things, assessments of (1) benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets), (2) costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy and private markets), and (3) costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions). *See* Exec. Order No. 12866 § 6(a)(3)(C), 3 C.F.R. § 12866 (1994). It has not yet been determined if the new certification rule will be a "significant regulatory action."

SBA Has Not Fully Addressed Deficiencies in Oversight and Program Implementation

SBA Has Not Implemented Procedures to Regularly Monitor and Assess the Performance of Third-Party Certifiers

SBA has not fully addressed deficiencies in its oversight of third-party certifiers that we identified in our October 2014 report.[35] We reported that SBA did not have formal policies for reviewing the performance of its four approved third-party certifiers, including their compliance with their agreements with SBA. Further, we found that SBA had not developed formal policies and procedures for, among other things, reviewing the monthly reports that certifiers submit to SBA.[36] As a result, we recommended that SBA establish comprehensive procedures to monitor and assess the performance of the third-party certifiers in accordance with their agreements with SBA and program regulations. While SBA has taken some steps to address the recommendation, as of February 2019 it remained open.

In response to our October 2014 recommendation, in 2016 SBA conducted compliance reviews of the four SBA-approved third-party certifiers. According to SBA, the purpose of the compliance reviews was to ensure the certifiers' compliance with regulations, their signed third-party certifier certification form (or agreement) with SBA, and other program requirements. The compliance reviews included an assessment of the third-party certifiers' internal certification procedures and processes, an examination of a sample of applications from businesses that the certifiers deemed eligible and ineligible for certification, and an interview with management staff.

SBA officials said that SBA's review team did not identify significant deficiencies in any of the four certifiers' processes and found that all were generally complying with their agreements. However, one compliance review report described "grave concerns" that a third-party certifier had

[35] GAO-15-54.

[36] Per their written agreements, the third-party certifiers are required to submit monthly reports to SBA describing WOSB program performance information.

arbitrarily established eligibility requirements that did not align with WOSB program regulations and used them to decline firms' applications.[37] SBA noted in the report that if the third-party certifier failed to correct this practice SBA could terminate the agreement. As directed by SBA, the third-party certifier submitted a letter to SBA outlining actions it had taken to address this issue, among others.[38] The final compliance review reports for the other third-party certifiers also recommended areas for improvement, including providing staff with additional training on how to conduct eligibility examinations and reviewing certification files to ensure they contain complete documentation. In addition, two of the three compliance review reports with recommendations (including the compliance review report for the certifier discussed above) required the certifier to provide a written response within 30 days outlining plans to correct the areas. SBA officials said that they reviewed the written responses and determined that no further action was required.[39]

In January 2017, SBA's Office of Government Contracting updated its written Standard Operating Procedures (SOP) to include policies and procedures for the WOSB program, in part to address our October 2014 recommendation. The 2017 SOP discusses what a third-party-certifier compliance review entails, how often the reviews are to be conducted, and how findings are to be reported. The 2017 SOP notes that SBA may initiate a compliance review "at any time and as frequently as the agency determines is necessary." In September 2018, SBA officials told us that they were again updating the SOP, in part to address deficiencies we

[37]Specifically, SBA found that the third-party certifier denied firms solely on the grounds that the women owner was not the highest compensated officer, which SBA's report states was outside the parameters of eligibility for the WOSB program. According to the report, SBA provided guidance to the third-party certifier stating that it should not deny firms based on compensation issues alone and that the third-party certifier should take into account the totality of the circumstances, including whether decisions concerning compensation make business sense.

[38]In its response, the third-party certifier disagreed with several of SBA's compliance review findings, but with respect to the highest compensation issue agreed to be more detailed in documenting descriptions of the indicators included in its analysis. More specifically, the third-party certifier agreed to direct its examiners to take the following steps: (1) ensure that SBA guidance is considered; (2) request additional information from the applicant that explains the business reasons for the highest officer not receiving the highest compensation, and (3) explain, if a denial is made in part based on highest compensation, how this issue was considered in the examiner's broader assessment so it is clear to the applicant and SBA.

[39]We reviewed the response letters that SBA received from the two third-party certifiers and found that they appeared to address the identified areas for improvement.

identified in our prior work and during this review. However, as of February 2019, SBA had not provided an updated SOP.

In addition, in April 2018, SBA finalized a WOSB Program Desk Guide that, according to SBA, is designed to provide program staff with detailed guidance for conducting oversight procedures, including compliance reviews of third-party certifiers. For example, the Desk Guide discusses how staff should prepare for a compliance review of a third-party certifier, review certification documents, and prepare a final report. However, the Desk Guide does not describe specific activities designed to oversee third-party certifiers on an ongoing basis. In November 2017, SBA officials told us that they planned to conduct additional compliance reviews of the third-party certifiers. However, in June 2018, officials said there were no plans to conduct further compliance reviews until the final rule implementing the new certification process was completed. Further, SBA officials said that the 2016 certifier compliance reviews did not result in significant deficiencies. However, as noted previously, one of the compliance review reports described a potential violation of the third-party certifier's agreement with SBA.

Per written agreements with SBA, third-party certifiers are required to submit monthly reports that include

- the number of WOSB and EDWOSB applications received, approved, and denied;
- identifying information for each certified business, such as the business name;
- concerns about fraud, waste, and abuse; and
- a description of any changes to the procedures the organizations used to certify businesses as WOSBs or EDWOSBs.

In our October 2014 report, we noted that SBA had not followed up on issues raised in the monthly reports and had not developed written procedures for reviewing them.[40] At that time, SBA officials said that they were unaware of the issues identified in the certifiers' reports and that the agency was developing procedures for reviewing the monthly reports but could not estimate a completion date.

In our interviews for this report, SBA officials stated that SBA still does not use the third-party certifiers' monthly reports to regularly monitor the program. Specifically, SBA does not review the reports to identify any trends in certification deficiencies that could inform program oversight. Officials said the reports generally do not contain information that SBA considers helpful for overseeing the WOSB program, although staff sometimes use the reports to obtain firms' contact information. SBA officials also said that staff very rarely receive information about potentially fraudulent WOSB firms from the third-party certifiers—maybe three firms per year—and that this information is generally received via email and not as part of the monthly reports. SBA officials said that when they receive information about potentially fraudulent firms, WOSB program staff conduct an examination to determine the firm's eligibility and report the results back to the certifier. However, a third-party certifier told us it has regularly reported firms it suspected of submitting potentially fraudulent applications in its monthly reports and that SBA has not followed up with them. In addition, two third-party certifiers said that if SBA is not cross-checking the list of firms included in their monthly reports, a firm deemed ineligible by one certifier may submit an application to another certifier and obtain approval.

The three third-party certifiers we spoke with said that SBA generally had not communicated with them about their implementation of the program since the 2016 compliance reviews. However, SBA officials noted that three of the four third-party certifiers attended an SBA roundtable in

[40]GAO-15-54. For our 2014 report, we reviewed all of the third-party certifiers' monthly reports from August 2011 through May 2014, for a total of 135 reports. We found that not all reports contained consistent information. Some monthly reports were missing the owner names and contact information for businesses that had applied for certification. One certifier regularly identified potential fraud among businesses to which it had denied certification (about one or two instances per month for 16 of the 34 reporting months we reviewed). The reporting format and level of detail reported also varied among certifiers. Finally, we found issues involving two businesses that were denied certification by one third-party certifier and approved shortly after by another. At the time, SBA officials told us that they were unaware of these firms but that fraudulently entering into a set-aside contract was illegal and the businesses would be subject to prosecution. However, we concluded that if SBA does not follow up on these types of issues, it is unclear how businesses committing fraud in the program would be prosecuted.

March 2017 to discuss comments on the proposed rulemaking. In addition, SBA officials said that the third-party certifiers may contact them with questions about implementing the WOSB program, but SBA generally does not reach out to them.

Although SBA has taken steps to enhance its written policies and procedures for oversight of third-party certifiers, it does not have plans to conduct further compliance reviews of the certifiers and does not intend to review certifiers' monthly reports on a regular basis. SBA officials said that third-party certifier oversight procedures would be updated, if necessary, after certification options have been clarified in the final WOSB certification rule. However, ongoing oversight activities, such as regular compliance reviews, could help SBA better understand the steps certifiers have taken in response to previous compliance review findings and whether those steps have been effective. In addition, leading fraud risk management practices include identifying specific tools, methods, and sources for gathering information about fraud risks, including data on fraud schemes and trends from monitoring and detection activities, as well as involving relevant stakeholders in the risk assessment process.[41] Without procedures to regularly monitor and oversee third-party certifiers, SBA cannot provide reasonable assurance that certifiers are complying with program requirements and cannot improve its efforts to identify ineligible firms or potential fraud. Further, it is unclear when SBA's final rule will be implemented. As a result, we maintain that our previous recommendation should be addressed—that is, that the Administrator of SBA should establish and implement comprehensive procedures to monitor and assess the performance of certifiers in accordance with the requirements of the third-party certifier agreement and program regulations.

[41]GAO-15-593SP.

SBA Has Not Implemented Procedures to Improve Its Eligibility Examinations of WOSB Program Participants

SBA also has not fully addressed deficiencies found in our 2014 review related specifically to eligibility examinations.[42] We found that SBA lacked formalized guidance for its eligibility examination processes and that the examinations continued to identify high rates of potentially ineligible businesses. As a result, we recommended that SBA enhance its examination of businesses that register for the WOSB program to ensure that only eligible businesses obtain WOSB set-asides. Specifically, we suggested that SBA consider (1) completing the development of procedures to conduct annual eligibility examinations and implementing such procedures; (2) analyzing examination results and individual businesses found to be ineligible to better understand the cause of the high rate of ineligibility in annual reviews and determine what actions are needed to address the causes, and (3) implementing ongoing reviews of a sample of all businesses that have represented their eligibility to participate in the program.

SBA has taken some steps to implement our recommendation—such as by completing its 2017 SOP and its Desk Guide, both of which include written policies and procedures for WOSB program eligibility examinations. The 2017 SOP includes a brief description of what activities are entailed in the examinations, the staff responsible for conducting them, and how firms are selected. In addition, as noted previously, SBA officials told us in September 2018 that a forthcoming update to the SOP would address deficiencies we identified regarding WOSB eligibility examinations. However, as of February 2019, SBA had not provided an updated SOP. The Desk Guide contains more detailed information on eligibility examinations. It notes that a sample of firms is to be examined annually and it provides selection criteria, which can include whether the agency has received information challenging the firm's eligibility for the program. The Desk Guide also provides specific instructions on how to determine whether a firm meets the WOSB program's ownership, control, and financial requirements and what documentation should be consulted or requested.

[42]GAO-15-54. We reported that SBA conducts eligibility examinations for a sample of businesses with a current attestation in SBA's System for Award Management and that received a contract during SBA's examination year, regardless of the certification method.

SBA does not collect reliable information on the results of its annual eligibility examinations. According to SBA officials, SBA has conducted eligibility examinations of a sample of businesses that received WOSB program set-aside contracts each year since fiscal year 2012. However, SBA officials told us that the results of annual eligibility examinations—such as the number of businesses found eligible or ineligible—are generally not documented. As a result, we obtained conflicting data from SBA on the number of examinations completed and the percentage of businesses found to be ineligible in fiscal years 2012 through 2018. For example, based on previous information provided by SBA, we reported in October 2014 that in fiscal year 2012, 113 eligibility examinations were conducted and 42 percent of businesses were found to be ineligible for the WOSB program. However, during this review, we received information from SBA that 78 eligibility examinations were conducted and 37 percent of businesses were found ineligible in fiscal year 2012. We found similar disparities when we compared fiscal year 2016 data provided by SBA for this report with a performance memorandum summarizing that fiscal year's statistics.[43] Regardless of the disparity between the data sources, the rate of ineligible businesses has remained significant. For example, according to documentation SBA provided during this review, in fiscal year 2017, SBA found that about 40 percent of the businesses in its sample were not eligible.

In addition, SBA continues to have no mechanism for evaluating examination results in aggregate to inform the WOSB program. In 2014, we reported that SBA officials told us that most businesses that were deemed ineligible did not understand the documentation requirements for establishing eligibility. However, we also reported that SBA officials could not explain how they knew a lack of understanding was the cause of ineligibility among businesses and had not made efforts to confirm that this was the cause. In June 2018, SBA officials told us they did not analyze the annual examinations in aggregate for common eligibility issues because the examination results are unique to each WOSB firm. They noted that this was not necessary as WOSB program staff are familiar with common eligibility issues through the annual eligibility examinations. As we noted in 2014, by not analyzing aggregate

[43]In December 2016, SBA officials created an internal performance memorandum, from the Director of SBA's Office of Government Contracting, that summarized the results of fiscal year 2016 eligibility examinations. Officials said that no subsequent performance memorandums have been created because the Director position has been vacant since December 2017.

examination results, the agency is missing opportunities to obtain meaningful insights into the program, such as the reasons many businesses are deemed ineligible.

Also, SBA still conducts eligibility examinations only of firms that have already received a WOSB award. In 2014, we concluded that this sampling practice restricts SBA's ability to identify potentially ineligible businesses prior to a contract award. Similarly, during this review, SBA officials said that while some aspects of the sample characteristics have changed since 2012, the samples still generally consist only of firms that have been awarded a WOSB set-aside. In addition, officials said that the sample size of the eligibility examinations has varied over time and is largely based on the workload of WOSB program staff. Restricting the samples in this way limits SBA's ability to better understand the eligibility of businesses before they apply for and are awarded contracts, as well as its ability to detect and prevent potential fraud.[44]

SBA officials said that their other means of reducing participation by ineligible firms and mitigating potential fraud is through WOSB or EDWOSB status protests—that is, allegations that a business receiving an award does not meet program eligibility requirements.[45] A federal contractor can file a status protest against any firm receiving an award that represents itself as a WOSB in the System for Award Management for grounds that include failure to provide all required supporting documentation. The penalties for misrepresenting a firm's status, per regulation, include debarment or suspension. However, one third-party certifier expressed in its comments to the advance notice of proposed rulemaking on certification that status protests alone are not a viable option for protecting the integrity of the WOSB program. The certifier questioned how a firm could have sufficient information about a competitor firm to raise questions about its eligibility. According to SBA officials, 11 status protests were filed under the WOSB program in fiscal year 2018. Of these, four firms were deemed ineligible for the WOSB program, four were deemed eligible, and three status protests were dismissed. In fiscal year 2017, 9 status protests were filed; of these, three

[44]We made similar findings in our 2014 review of the WOSB program. See GAO-15-54.

[45]WOSB status protests may only be initiated in connection with WOSB or EDWOSB procurement. For sole-source procurements, SBA or the contracting officer may protest the proposed awardee's WOSB or EDWOSB status. For all other WOSB or EDWOSB procurements, an interested party (including contracting officers, SBA, and another firm submitting an offer) may make the protest. SBA adjudicates these protests.

firms were found ineligible, two were found eligible, and four status protests were dismissed.

We recognize that SBA has made some effort to address our previous recommendation by documenting procedures for conducting annual eligibility examinations of WOSB firms. However, leading fraud risk management practices state that federal program managers should design control activities that focus on fraud prevention over detection and response, to the extent possible.[46] Without maintaining reliable information on the results of eligibility examinations, developing procedures for analyzing results, and expanding the sample of businesses to be examined to include those that did not receive contracts, SBA limits the value of its eligibility examinations and its ability to reduce ineligibility among businesses registered to participate in the WOSB program. These deficiencies also limit SBA's ability to identify potential fraud risks and develop any additional control activities needed to address these risks. As a result, the program may continue to be exposed to the risk of ineligible businesses receiving set-aside contracts. In addition, in light of these continued oversight deficiencies, the implementation of sole-source authority without addressing the other changes made by the 2015 NDAA could increase program risk. For these reasons, we maintain that our previous recommendation that SBA enhance its WOSB eligibility examination procedures should be addressed.

SBA Has Not Addressed Previously Identified Issues with WOSB Set-Asides Awarded Under Ineligible Industry Codes

In 2015 and 2018, the SBA OIG reported instances in which WOSB set-asides were awarded using NAICS codes that were not eligible under the WOSB program, and our analysis indicates that this problem persists. In 2015, the SBA OIG reported on its analysis of a sample of 34 WOSB set-aside awards and found that 10 awards were set aside using an ineligible NAICS code.[47] The SBA OIG concluded that this may have been due to contracting officers' uncertainty about NAICS code requirements under

[46]GAO-15-593SP.

[47]In addition, four of these awards that were set aside using ineligible NAICS codes had no documentation in the WOSB program database. SBA OIG 15-10.

the program and recommended that SBA provide additional, updated training and outreach to federal agencies' contracting officers on the program's NAICS code requirements.[48] In response, SBA updated WOSB program training and outreach documents in March 2016 to include information about the program's NAICS code requirements.

In 2018, the SBA OIG issued another report evaluating the WOSB program, with a focus on the use of the program's sole-source contract authority. Here, the SBA OIG identified additional instances of contracting officers using inaccurate NAICS codes to set aside WOSB contracts.[49] Specifically, the SBA OIG reviewed a sample of 56 awards and found that 4 were awarded under ineligible NAICS codes. The report included two recommendations for SBA aimed at preventing and correcting improper NAICS code data in FPDS-NG: (1) conduct quarterly reviews of FPDS-NG data to ensure contracting officers used the appropriate NAICS codes and (2) in coordination with the Office of Federal Procurement Policy and GSA, strengthen controls in FPDS-NG to prevent contracting officers from using ineligible NAICS codes.[50]

SBA disagreed with both of these recommendations. In its response to the first recommendation, SBA stated that it is not responsible for the oversight of other agencies' contracting officers and therefore is not in a position to implement the corrective actions. With respect to the second recommendation, SBA stated that adding such controls to FPDS-NG would further complicate the WOSB program and increase contracting officers' reluctance to use it. SBA also stated its preference for focusing

[48]SBA OIG Report 15-10. The SBA OIG made five recommendations in total. The other recommendations directed SBA to provide additional training on WOSB program documentation requirements to WOSB program firms, potential WOSB program firms, and contracting officers; update two separate WOSB-specific forms; and conduct eligibility examinations of the firms that SBA OIG identified as potentially ineligible for the program.

[49]SBA OIG Report 18-18.

[50]SBA OIG Report 18-18. The SBA OIG made six recommendations in total. The other remaining recommendations addressed to SBA were to (1) conduct eligibility reviews for firms that the SBA OIG identified as lacking required documentation and require those firms to remove their designation in the System for Award Management; (2) initiate debarment proceedings, if necessary, against the firms that the SBA OIG found to be lacking the required documentation for WOSB eligibility; (3) implement a new WOSB certification process as stated in the 2015 NDAA; and (4) conduct quarterly reviews of firms with newly obtained WOSB or EDWOSB status to ensure they have submitted the required documentation, until SBA implements its new certification process.

its efforts on ensuring that contracting officers select the appropriate NAICS code at the beginning of the award process.

In our review, we also found several issues with WOSB program set-asides being awarded under ineligible NAICS codes. Our analysis of FPDS-NG data on all obligations to WOSB program set-asides from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018 found the following:

- 3.5 percent (or about $76 million) of WOSB program obligations were awarded under NAICS codes that were never eligible for the WOSB program;[51]
- 10.5 percent (or about $232 million) of WOSB program obligations made under an EDWOSB NAICS code went to women-owned businesses that were not eligible to receive awards in EDWOSB-eligible industries;[52] and
- 17 of the 47 federal agencies that obligated dollars to WOSB program set-asides during the period used inaccurate NAICS codes in at least 5 percent of their WOSB set-asides (representing about $25 million).

According to SBA officials we spoke with during this review, WOSB program set-asides may be awarded under ineligible NAICS codes because of human error when contracting officers are inputting data in FPDS-NG or because a small business contract was misclassified as a WOSB program set-aside. They characterized the extent of the issue as "small" relative to the size of the FPDS-NG database and said that such issues do not affect the program's purpose. Rather than review FPDS-NG data that are inputted after the contract is awarded, SBA officials said that

[51]As discussed previously, the WOSB program's eligible NAICS codes have changed since the program was implemented in 2011. In October 2016, SBA made substantive changes to the program's eligible industries. Two other changes occurred in October 2012 and October 2017 to align the WOSB program with broader changes made to NAICS. Based on our analysis of FPDS-NG data, we also found that, from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018, 0.9 percent (about $20.5 million) of WOSB program obligation dollars were awarded under NAICS codes that were initially ineligible but eventually became eligible. Often, there is a time lag between the effective date of NAICS codes and when they are entered in FPDS-NG. Therefore, we did not classify a contract as having an ineligible NAICS code if the code eventually became eligible under the WOSB program. See app. I for more information on our methodology.

[52]FPDS-NG data also showed that another 9.4 percent (or about $208 million) of WOSB obligations from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018 were coded using an EDWOSB NAICS code and awarded to an EDWOSB firm but were classified as a WOSB set-aside (rather than an EDWOSB set-aside).

they have discussed options for working with GSA to add controls defining eligible NAICS codes for WOSB program set-aside opportunities on FedBizOpps.gov—the website that contracting officers use to post announcements about available federal contracting opportunities.[53] Adding controls to this system, officials said, would help contracting officers realize as they are writing the contract requirements that they should not set aside contracts under the WOSB program without reviewing the proper NAICS codes. However, SBA officials said that the feasibility of this option was still being discussed and that the issue was not a high priority. For these reasons, according to officials, SBA's updated oversight procedures described in the 2017 SOP and the Desk Guide do not include a process for reviewing WOSB program set-aside data in FPDS-NG to determine whether they were awarded under the appropriate NAICS codes.

Further, as of November 2018, the WOSB program did not have targeted outreach or training that focused on specific agencies' use of NAICS codes. As noted previously, in March 2016, SBA updated its WOSB program training materials to address NAICS code requirements in response to a 2015 SBA OIG recommendation. In fiscal year 2018, SBA conducted three WOSB program training sessions for federal contracting officers, including (1) a virtual learning session, (2) a session conducted during WOSB Industry Day at the Department of Housing and Urban Development, and (3) a session conducted during a Department of Defense Small Business Training Conference. However, with the exception of the virtual learning session, these training sessions were requested by the agencies. SBA officials did not identify any targeted outreach or training provided to specific agencies to improve understanding of WOSB NAICS code requirements (or other issues related to the WOSB program).

Congress authorized SBA to develop a contract set-aside program specifically for WOSBs and EDWOSBs to address the underrepresentation of such businesses in specific industries. In addition, federal standards for internal control state that management should design control activities to achieve objectives and respond to risks and to establish and operate monitoring activities to monitor and evaluate the results.[54] Because SBA does not review whether contracts are being

[53]FedBizOpps.gov (www.fbo.gov) is the federal government's website used to post all federal procurement opportunities with a value over $25,000.

[54]GAO-14-704G.

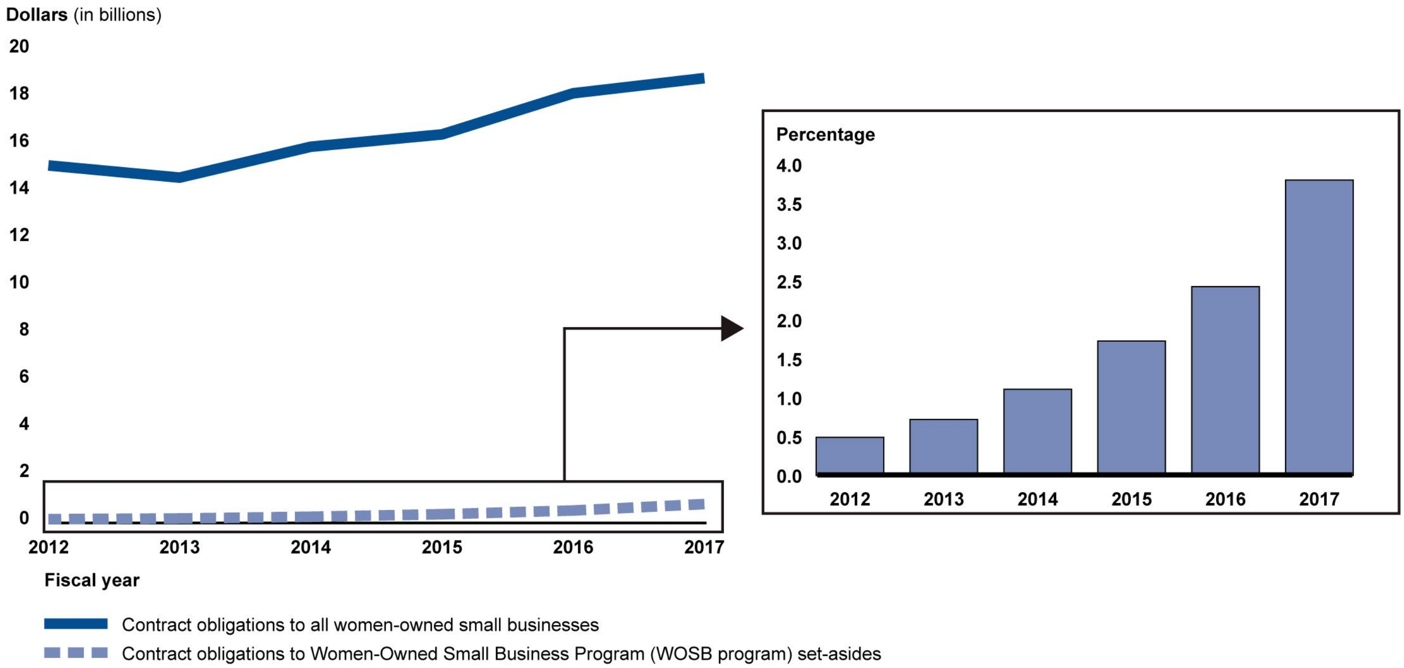
awarded under the appropriate NAICS codes, it cannot provide reasonable assurance that WOSB program requirements are being met or identify agencies that may require targeted outreach or additional training on eligible NAICS codes. As a result, WOSB contracts may continue to be awarded to groups other than those intended, which can undermine the goals of and confidence in the program.

Federal Contracts to WOSB Set-Asides Remain Relatively Small, and Stakeholders Discussed Various Aspects of Program Use

The Percentage of Obligations to Women-Owned Small Businesses under the WOSB Program Increased Slightly since 2012

Federal dollars obligated for contracts to all women-owned small businesses increased from $18.2 billion in fiscal year 2012 to $21.4 billion in fiscal year 2017. These figures include contracts for any type of good or service awarded under the WOSB program, under other federal programs, or through full and open competition. Contracts awarded to all women-owned small businesses within WOSB-program-eligible industries also increased during this period—from about $15 billion to $18.8 billion, as shown in figure 1. However, obligations under the WOSB program represented only a small share of this increase. In fiscal year 2012, WOSB program contract obligations were 0.5 percent of contract obligations to all women-owned small businesses for WOSB-program-eligible goods or services (about $73.5 million), and in fiscal year 2017 this percentage had grown to 3.8 percent (about $713.3 million) (see fig. 1).

Figure 1: Obligations for the Women-Owned Small Business Program and to All Women-Owned Small Businesses in Similar Industries, Fiscal Years 2012–2017



Source: GAO analysis of Federal Procurement Data System-Next Generation (FPDS-NG) data. | GAO-19-168

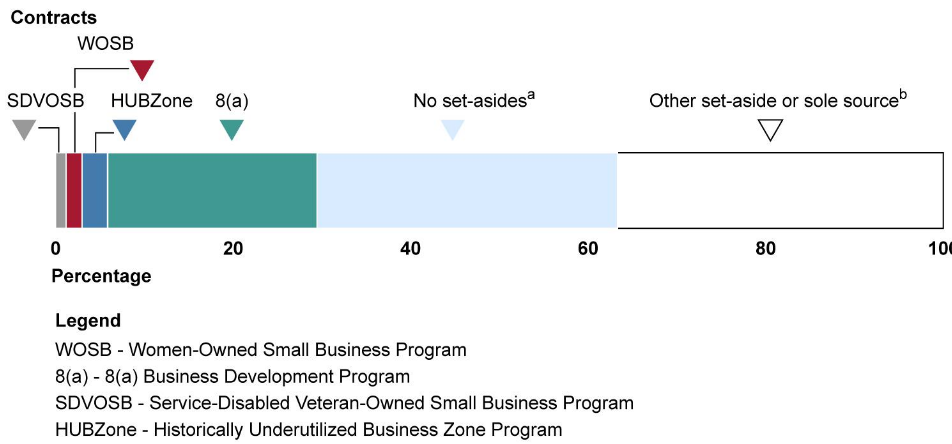
Note: These Federal Procurement Data System-Next Generation (FPDS-NG) data represent contract obligations to women-owned small businesses whose North American Industry Classification System (NAICS) codes were among those eligible for the WOSB program. FPDS-NG obligation amounts have been adjusted for inflation using the Fiscal Year Gross Domestic Product price index. All data exclude actions in FPDS-NG that are coded other than as a small business and actions under a non–WOSB program NAICS code. Fiscal year 2018 data are not included in the graphic because data for the full fiscal year were not available at the time of our analysis. In addition, fiscal year 2011 data are not included because the WOSB program was implemented in April 2011. For comparative purposes, we only include full fiscal years 2012 through 2017.

From fiscal years 2012 through 2017, 98 percent of total dollars obligated for contracts to all women-owned small businesses in WOSB-program-eligible industries were not awarded under the WOSB program. Instead, these contracts were awarded without a set-aside or under other, longer-established socioeconomic contracting programs, such as HUBZone, the SDVOSB, and 8(a).[55] For example, during this period, dollars obligated to contracts awarded to women-owned small businesses without a set-aside

[55]A women-owned small business can receive a contracting award under the 8(a), HUBZone, or SDVOSB programs, through a general small business set-aside, or without a set-aside.

represented about 34 percent of dollars obligated for contracts to all women-owned small businesses in these industries (see fig. 2).

Figure 2: Percentage of Contract Obligations to Women-Owned Small Businesses by Set-Aside Type in Similar Industries, Fiscal Years 2012–2017



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-19-168

Note: These Federal Procurement Data System-Next Generation (FPDS-NG) data on obligations to women-owned small businesses represent contract obligations to women-owned small businesses under WOSB-program-eligible North American Industry Classification System (NAICS) codes. All data exclude actions in FPDS-NG coded other than as a small business and actions under a non–WOSB program NAICS code.

[a]The “no set-asides” category includes dollar obligations for contracts awarded to women-owned small businesses through full and open competition.

[b]The “other set-aside or sole source” category predominantly consists of contracts awarded under a general small business set-aside.

As shown in table 1, six federal agencies—DOD, DHS, Department of Commerce, Department of Agriculture, Department of Health and Human Services, and GSA—collectively accounted for nearly 83 percent of the obligations awarded under the WOSB program from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018, with DOD accounting for about 49 percent of the total.

Table 1: Top Contracting Departments and Agencies under the WOSB Program, from Third Quarter of Fiscal Year 2011 through Third Quarter of Fiscal Year 2018

Agency	Total WOSB program set-aside obligations (in dollars)	Percentage of WOSB program obligations
Department of Defense	1,035,876,037	48.6
Department of Homeland Security	263,672,796	12.4
Department of Commerce	170,318,456	8.0
Department of Agriculture	134,363,401	6.3
Department of Health and Human Services	86,226,448	4.0
General Services Administration	84,220,466	4.0
All other agencies	358,079,002	16.8
Total	**$2,132,756,606**	**100%**

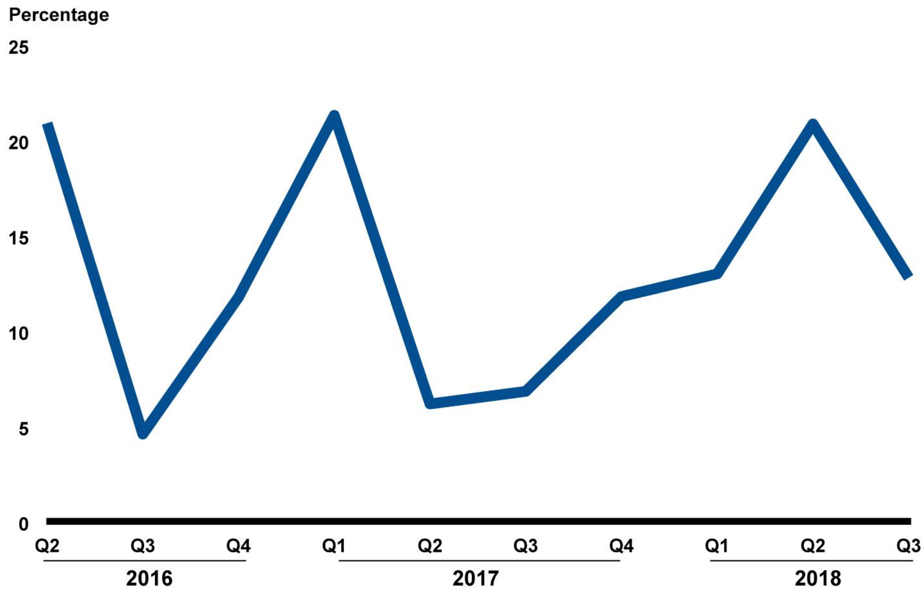
Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-19-168

Note: These Federal Procurement Data System-Next Generation (FPDS-NG) data on obligations to women-owned small businesses represent contract obligations to women-owned small businesses under North American Industry Classification System (NAICS) codes eligible under the Women-Owned Small Business Program (WOSB program). FPDS-NG obligation amounts have been adjusted for inflation using the Fiscal Year Gross Domestic Product price index. All data exclude actions in FPDS-NG coded other than as a small business and actions under a non–WOSB program NAICS code.

Contracting officers’ use of sole-source authority was relatively limited, representing about 12 percent of WOSB program obligations from January 2016 through June 2018. In fiscal year 2017—the only full fiscal year for which we have data on sole-source authority—about $77 million were obligated using sole-source authority.[56] The share of sole-source awards as a percentage of total WOSB program set-asides also varied considerably by quarter—from as low as 5 percent in the third quarter of 2016 to as high as 21 percent in the first quarter of 2017 (see fig. 3).

[56]In addition, total dollars obligated to WOSB program sole-source awards were approximately $44.2 million for the last three quarters of fiscal year 2016 and were about $48.7 million for the first three quarters of 2018.

Figure 3: Sole-Source Obligations as a Percentage of All WOSB Program Obligations, January 2016–June 2018



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-19-168

Note: The Small Business Administration implemented sole-source authority for the Women-Owned Small Business Program (WOSB program) effective October 2015. The Federal Procurement Data System-Next Generation (FPDS-NG) data dictionary states that data on WOSB sole-source awards and economically disadvantaged WOSB sole-source awards were added to the system on November 13, 2015. Therefore, our analysis begins with the first full quarter in which these data became available—the second quarter of fiscal year 2016. These FPDS-NG data on obligations to women-owned small businesses represent contract obligations to women-owned small businesses under WOSB-program-eligible North American Industry Classification System (NAICS) codes. All data exclude actions in FPDS-NG coded other than as a small business and actions under a non–WOSB program NAICS code. FPDS-NG obligation amounts have been adjusted for inflation using the Fiscal Year Gross Domestic Product price index.

Stakeholders Discussed Various Issues Related to WOSB Program Usage

We spoke with 14 stakeholder groups to obtain their views on usage of the WOSB program.[57] These groups consisted of staff within three federal agencies (DHS, DOD, and GSA), eight contracting offices within these agencies, and three third-party certifiers. Issues stakeholders discussed included the impact of sole-source authority and program-specific NAICS codes on program usage. Stakeholders also noted the potential effect of

[57]See app. I for more information on these groups.

other program requirements on contracting officers' willingness to use the program, and some suggested that SBA provide additional guidance and training to contracting officers.

Sole-source authority. Participants in 12 of the 14 stakeholder groups commented on the effect of sole-source authority on WOSB program usage.[58] Staff from 4 of the 12 stakeholder groups—including three contracting offices—said that sole-source authority generally had no effect on the use of the WOSB program. One of these stakeholders believed contracting officers seldom use the authority because they lack an understanding of how and when to use it; therefore, in this stakeholder's opinion, use of the WOSB program has not generally changed since the authority was implemented. However, staff from two contracting offices and one third-party certifier said that sole-source authority was a positive addition because, for example, it can significantly reduce the lead time before a contracting officer can offer a contract award to a firm. Staff from one of these two contracting offices stated that the award process can take between 60 to 90 days using sole-source authority, compared to 6 to 12 months using a competitive WOSB program set-aside. These staff also said that negotiating the terms of a sole-source contract is easier, from a contracting officer's perspective, because they can communicate directly with the firm. As discussed previously, SBA officials we interviewed said that adding sole-source authority to the WOSB program made the program more consistent with other existing socioeconomic set-aside programs, such as 8(a) and HUBZone.

The remaining five stakeholder groups that discussed the effects of WOSB sole-source authority described difficulties with implementing it. Specifically, representatives from DHS, DOD, and one third-party certifier said that executing sole-source authority under the WOSB program is difficult for contracting officers because rules for sole-source authority under WOSB are different from those under other SBA programs, such as 8(a) and HUBZone. For example, the FAR's requirement that contracting officers justify, in writing, why they do not expect other WOSBs or EDWOSBs to submit offers on a contract is stricter under the WOSB program than it is for the 8(a) program. Further, staff from one contracting office noted that justifications for WOSB set-asides must then be

[58]While we asked all 14 stakeholder groups to comment on the effect of sole-source authority on the WOSB program, 2 did not respond to the question.

published on a federal website. In contrast, contracting officers generally do not need to prepare and publish a justification under the 8(a) program.[59] According to staff from another contracting office, it may be difficult to find more than one firm qualified to do the work under some WOSB-eligible NAICS codes, but contracting officers would still have to conduct market research and explain why they do not expect additional offers in order to set the contract aside for a WOSB.

Program-specific NAICS codes. Participants in 13 of the 14 stakeholder groups we interviewed commented on the requirement that WOSB program set-asides be awarded within certain industries, represented by NAICS codes.[60] For example, two third-party certifiers we interviewed recommended that the NAICS codes be expanded or eliminated to provide greater opportunities for WOSBs to win contracts under the program. Another third-party certifier said that some of its members focus their businesses' marketing efforts on industries specific to the WOSB program to help them compete for such contracts.

Representatives from GSA and DHS made comments about limitations with respect to the WOSB program's NAICS code requirement. Staff we interviewed from three contracting offices made similar statements, adding that the NAICS codes limit opportunities to award a contract to a WOSB or EDWOSB because they are sufficient in some industry areas but not others. All five of these stakeholder groups suggested that NAICS codes be removed from the program's requirements to increase opportunities for WOSBs.

Conversely, staff from five other contracting offices we interviewed generally expressed positive views about the WOSB program's NAICS code requirements and stated that eligible codes line up well with the services for which they generally contract. Finally, SBA officials noted that there are no plans to reassess the NAICS codes until about 2020.

[59]Sole-source awards under the 8(a) program for contracts less than or equal to $22 million do not generally require a written justification and approval. *See* 48 C.F.R. § 6.302-5(c)(2)(iii). If a justification is prepared, it must be published on FedBizOpps.gov in accordance with the FAR. For more information on the justification and approval for sole-source awards in the 8(a) program, see GAO, *DOD Small Business Contracting: Use of Sole-Source 8(a) Contracts over $20 Million Continues to Decline*, GAO-16-557 (Washington, D.C.: June 8, 2016).

[60]We asked all 14 stakeholder groups to comment on the effect of the NAICS code requirements on the use of the program, and 1 did not have any comments.

However, SBA officials also stated that the NAICS code requirements complicate the WOSB program and add confusion for contracting officers who use program, as compared to other socioeconomic programs that do not have such requirements, such as HUBZone or 8(a).

Requirement to verify eligibility documentation. Staff from 7 of the 14 stakeholder groups we interviewed discussed the requirement for the contracting officer to review program eligibility documentation and how this requirement affects their decision to use the program.[61] For example, staff from one contracting office said that using the 8(a) or HUBZone programs is easier because 8(a) and HUBZone applicants are already certified by SBA; therefore, the additional step to verify documentation for eligibility is not needed. GSA officials noted that eliminating the need for contracting officers to take additional steps to review eligibility documentation for WOSB-program set-asides—in addition to checking the System for Award Management—could create more opportunities for WOSBs by reducing burden on contracting officers. However, staff from two contracting offices said it is not more difficult to award contracts under the WOSB program versus other socioeconomic programs.

WOSB program guidance. Staff from 13 of the14 stakeholder groups we interviewed discussed guidance available to contracting officers under the WOSB program.[62] Most generally said that the program requirements outlined in the FAR are fairly detailed and help contracting officers implement the program. According to SBA officials, SBA provides training on WOSB program requirements to contracting officers in federal agencies by request, through outreach events, and through an annual webinar. SBA officials also said that the training materials include all the regulatory issues that contracting officers must address.

[61]In our interviews with officials from GSA, DHS, DOD, and three third-party certifiers, all interviewees described their experience with the WOSB program as compared to other socioeconomic contracting programs. During interviews with the eight contracting offices, we specifically asked contracting office staff to discuss whether awarding contracts under the WOSB program was more or less difficult than other socioeconomic contracting programs. Of the 14 stakeholder groups, 7 groups discussed the impact of the WOSB program’s requirement for contracting officers to verify eligibility documentation on their decision to use the program, while the remaining 7 did not discuss the requirement in this context.

[62]We asked stakeholders about the extent of their interaction with SBA and any guidance provided by SBA to assist with their implementation of the WOSB program. One stakeholder group did not respond to the question directly.

However, representatives from two third-party certifiers described feedback received from their members about the need to provide additional training and guidance for contracting officers to better understand and implement the WOSB program. Staff from two contracting offices also expressed the need for SBA to provide additional training and guidance. Staff from one of these contracting offices said that the last time they received training on the WOSB program was in 2011, when the program was first implemented. Staff in the other contracting office added that the most recent version of a WOSB compliance guide they could locate online was at least 6 years old.[63] SBA officials estimated that the WOSB compliance guide was removed from their public website in March 2016 because it was difficult to keep the document current and officials did not want to risk publishing a guide that was out-of-date. SBA officials also said that there are no plans to issue an updated guide as the FAR is sufficient.

The stakeholder groups also identified positive aspects of the WOSB program. Specifically, staff from seven stakeholder groups believed that the program provided greater opportunities for women-owned small businesses to obtain contracts in industries in which they are underrepresented.[64] In addition, staff from three stakeholder groups mentioned that SBA-led initiatives, such as the Small Business Procurement Advisory Council and SBA's co-sponsorship of the ChallengeHER program, help improve collaboration between federal agencies and the small business community and overall government contracting opportunities for women-owned small businesses.[65]

---

[63]In October 2010, SBA published a notice in the Federal Register announcing the availability of the WOSB compliance guide. *See* Small Entity Compliance Guide: Women-Owned Small Business Program, 75 Fed. Reg. 66411 (Oct. 28, 2010). The guide was designed, in part, to provide a reference for contracting officers and a summary of the purpose and requirements of the WOSB program.

[64]We reported similar perspectives from stakeholders we interviewed in our October 2014 report; see GAO-15-54. During interviews for this review, we asked all 14 groups to comment on positive aspects of the WOSB program or best practices; 4 stakeholder groups did not respond to these questions directly.

[65]The Small Business Procurement Advisory Council consists of members from the other 23 Chief Financial Officers Act agencies. Among other things, the council helps educate the public and agencies on the WOSB program. The ChallengeHER program is an educational outreach program that provides women-owned small businesses with procurement education, best practices for working with the government, and resources to learn how to apply and obtain a federal contract under the WOSB program.

Conclusions

The WOSB program aims to enhance federal contracting opportunities for women-owned small businesses. However, weaknesses in SBA's management of the program continue to hinder its effectiveness. As of February 2019, SBA had not fully implemented comprehensive procedures to monitor the performance of the WOSB program's third-party certifiers and had not taken steps to provide reasonable assurance that only eligible businesses obtain WOSB set-aside contracts, as recommended in our 2014 report.[66] Without ongoing monitoring and reviews of third-party certifier reports, SBA cannot ensure that the certifiers are fulfilling the requirements of their agreements with SBA, and it is missing opportunities to gain information that could help improve the program's processes. Further, limitations in SBA's procedures for conducting, documenting, and analyzing eligibility examinations inhibit its ability to better understand the eligibility of businesses before they apply for and potentially receive contracts, which exposes the program to unnecessary risk of fraud. In addition, given that SBA does not expect to finish implementing the changes in the 2015 NDAA until January 1, 2020, these continued oversight deficiencies increase program risk. As a result, we maintain that our previous recommendations should be addressed.

In addition, SBA has not addressed deficiencies that the SBA OIG identified previously—and that we also identified during this review—related to WOSB set-asides being awarded under ineligible industry codes. Although SBA has updated its training and outreach materials for the WOSB program to address NAICS code requirements, it has not developed plans to review FPDS-NG data or provide targeted outreach or training to agencies that may be using ineligible codes. As a result, SBA is not aware of the extent to which individual agencies are following program requirements and which agencies may require targeted outreach or additional training. Reviewing FPDS-NG data would allow SBA to identify those agencies (and contracting offices within them) that could benefit from such training. Without taking these additional steps, SBA cannot provide reasonable assurance that WOSB program requirements are being met.

[66]GAO-15-54.

Recommendation for Executive Action

The SBA Administrator or her designee should (1) develop a process for periodically reviewing FPDS-NG data to determine the extent to which agencies are awarding WOSB program set-asides under ineligible NAICS codes and (2) take steps to address any issues identified, such as providing targeted outreach or training to agencies making awards under ineligible codes. (Recommendation 1)

Agency Comments

We provided a draft of this report to DHS, DOD, GSA, and SBA for review and comment. DHS, DOD, and GSA indicated that they did not have comments. SBA provided a written response, reproduced in appendix II, in which it agreed with our recommendation. SBA stated that it will implement a process to review WOSB program data extracted from FPDS-NG and certified by each agency. Specifically, through the government-wide Small Business Procurement Advisory Council, SBA plans to provide quarterly presentations to contracting agencies' staff that would include training and an analysis and review of the data. The response also reiterated that SBA has contacted GSA to implement a system change to FedBizOpps.gov that would prevent contracting officers from entering an invalid NAICS code for a WOSB program set-aside.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time we will send copies of this report to appropriate congressional committees and members, the Acting Secretary of DOD, the Secretary of DHS, the Administrator of GSA, the Administrator of SBA, and other interested parties. This report will also be available at no charge on our website at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8678 or shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

William B. Shear

William B. Shear
Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the extent to which the Small Business Administration (SBA) has implemented changes to the Women-Owned Small Business Program (WOSB program) made by the 2015 National Defense Authorization Act (2015 NDAA); (2) the extent to which SBA has implemented changes to address previously identified oversight deficiencies; and (3) changes in WOSB program use since 2011 and stakeholder views on its use, including since the 2015 implementation of sole-source authority.

To describe the extent to which SBA has implemented changes to the WOSB program made by the 2015 NDAA, we reviewed relevant legislation, including the 2015 NDAA; related proposed regulations; and SBA documentation. We reviewed comment letters on the advance notice of proposed rulemaking for the new WOSB program certification process from three of the four SBA-approved third-party certifiers: the El Paso Hispanic Chamber of Commerce, the U.S. Women's Chamber of Commerce, and the Women's Business Enterprise National Council.[1] To ensure the accuracy of our characterization of the comment letters, one staff member independently summarized the third-party certifiers' comments on the advance notice, and a second staff member then reviewed the results. We also interviewed SBA officials, including officials from SBA's Office of Government Contracting and Business Development.

To respond to the second and third objectives, we conducted interviews on SBA's implementation and oversight of the WOSB program and its use with SBA officials, three of the WOSB program's four third-party certifiers, three selected agencies (and three agency components within two of the agencies), and a total of eight selected contracting offices within six

[1] *See* Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification, 80 Fed. Reg. 78984 (Advance notice of proposed rulemaking, Dec. 18, 2015). Based on our review of the publically available comment letters, the fourth third-party certifier—NWBOC, formerly known as the National Women Business Owners Corporation—did not submit a comment letter.

selected agencies or components.[2] Using data from the Federal Procurement Data System-Next Generation (FPDS-NG), we judgmentally selected the three federal agencies and three components (for a total of six federal agencies and components) because their WOSB program dollar obligations (including competed and sole-source) were among the largest or because we had interviewed them for our prior work.[3] Specifically, we selected the following six agencies or agency components: the Department of Homeland Security (DHS) and, within DHS, the Coast Guard; the Department of Defense (DOD) and, within DOD, the U.S. Army and U.S. Navy; and the General Services Administration (GSA). Within the components and GSA, we judgmentally selected eight contracting offices (two each from Coast Guard, U.S. Army, U.S. Navy, and GSA) based on whether they had a relatively large amount of obligations and had used multiple types of WOSB program set-asides (competed or sole-source) to WOSBs or economically disadvantaged women-owned small businesses (EDWOSB).

To address our second objective, we reviewed the findings and recommendations in our October 2014 report and in audit reports issued by the SBA Office of Inspector General (OIG) in May 2015 and June 2018.[4] We also reviewed SBA documentation on the WOSB program, including SBA's 2017 Standard Operating Procedures and 2018 WOSB Program Desk Guide, results from 2016 compliance reviews of the four third-party certifiers, and SBA eligibility examinations from fiscal years 2012 through 2018. In addition, we analyzed FPDS-NG data on contract obligations to WOSB program set-asides from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018 to determine whether set-asides were made using eligible program-specific North

[2]We did not speak with NWBOC because NWBOC officials did not make themselves available for an interview with us within the time period necessary for our review.

[3]FPDS-NG contains data for most federal contract actions that have an estimated value over the micropurchase threshold (which is currently $3,500). The federal government uses its data to create recurring and special reports to the President, the Congress, federal executive agencies, and the general public.

[4]GAO, *Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed*, GAO-15-54 (Washington, D.C.: Oct. 8, 2014). SBA Office of Inspector General, *Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program,* SBA OIG Report 15-10, (Washington, D.C.: May 14, 2015) and *SBA's Women-Owned Small Business Federal Contracting Program*, SBA OIG Report 18-18 (Washington, D.C.: June 20, 2018).

American Industry Classification System (NAICS) codes.[5] To conduct this analysis, we compared contract obligations in FPDS-NG with the NAICS codes eligible under the WOSB program at the time of the award for the time frame under review. The WOSB program's eligible NAICS codes have changed three times since the program was implemented in 2011, but the eligible industries have changed once.[6] SBA commissioned the RAND Corporation to conduct the first study to assist SBA in determining eligible NAICS codes under the WOSB program. Based on the results of the RAND study, SBA identified 45 four-digit WOSB NAICS codes and 38 four-digit EDWOSB NAICS codes, for a total of 83 four-digit NAICS codes.[7] WOSB and EDWOSB NAICS codes are different and do not overlap. In December 2015, the Department of Commerce issued the next study, which increased the total NAICS codes under the program to 113 four-digit codes, with 92 WOSB NAICS codes and 21 EDWOSB NAICS codes (which became effective March 2016).[8] Often, there is a time lag between the effective date of NAICS codes and when they are entered in FPDS-NG. Therefore, we did not classify a contract as having an ineligible NAICS code if the code eventually became eligible under the WOSB program. We also excluded actions in FPDS-NG coded other than as a small business. These actions represented a small amount of contract obligations—approximately $125,000. We compared SBA

[5]SBA uses industry studies to determine in which industries and areas of work (represented by NAICS codes) WOSBs and EDWOSBs are underrepresented. We pulled data from FPDS-NG on July 25, 2018, for this analysis and for analysis for our third objective. FPDS-NG data are entered by agency contracting officers on a real-time basis and, thus, they change every day. FPDS-NG data undergo a certification process each January for the prior fiscal year. The data we included in our analysis from three quarters of fiscal year 2018 had not been certified at the time of our analysis. However, based on the data quality summary reports from prior years, we believe these data to be reliable for the purposes of our reporting objectives.

[6]SBA's Office of Government and Business Development updated the eligible six-digit NAICS codes for the WOSB program in October 2012 to reflect the NAICS 2012 revision and again in October 2017 to reflect the NAICS 2017 revision.

[7]NAICS uses a six-digit coding system to identify particular industries and their placement in the hierarchical structure of the classification system. A four-digit code designates the sector, subsector, and industry group. Additional digits (the fifth and sixth) provide additional information on the NAICS industry and the national industry. WOSB program industry eligibility determinations were made at the four-digit NAICS industry group level. See Kauffman-RAND Institute for Entrepreneurship Public Policy, *The Utilization of Women-Owned Small Businesses in Federal Contracting* (Santa Monica, Calif.: 2007).

[8]See David N. Beede and Robert N. Rubinovitz, *Utilization of Women-Owned Small Businesses in Federal Prime Contracting*, a report prepared for the Small Business Administration (Washington, D.C.: Economics and Statistics Administration, Department of Commerce, Dec. 31, 2015).

information on its oversight activities and responses to previously identified deficiencies, federal internal control standards, and GAO's fraud risk framework.[9]

We assessed the reliability of FPDS-NG data by considering their known strengths and weaknesses, based on our past work and through electronic testing for missing data, outliers, and inconsistent coding in the data elements we used for our analysis. We also reviewed FPDS-NG documentation, including the FPDS-NG data dictionary, FPDS-NG data validation rules, FPDS-NG user manual, prior GAO reliability assessments, and relevant SBA OIG audit reports. Based on these steps, we concluded that the data were sufficiently reliable for the purposes of reporting on trends in the WOSB program and the use of sole-source authority under the program.

To describe how participation in the WOSB program has changed since 2011, including since the 2015 implementation of sole-source authority, we analyzed FPDS-NG data from the third quarter of fiscal year 2011 through the third quarter of fiscal year 2018. We identified any trends in WOSB program participation using total obligation dollars set aside for competitive and sole-source contracts awarded to WOSBs and EDWOSBs under the program. We also compared data on obligations for set-asides under the WOSB program with federal contract obligations for WOSB-program-eligible goods and services to all women-owned small businesses, including those made under different set-aside programs or with no set-asides, to determine the relative usage of the WOSB program. In our analysis, we excluded from WOSB program set-aside data actions in FPDS-NG coded other than as a small business (representing approximately $125,000) or coded under ineligible NAICS codes that were never eligible under the WOSB program (representing approximately $76.3 million).

To describe stakeholder views on WOSB program use, we conducted semistructured interviews to gather responses from 14 stakeholder groups. These groups consisted of staff within three federal agencies (DHS, DOD, and GSA), eight contracting offices within these agencies, and three third-party certifiers (selection criteria described above). One person summarized the results of the interviews, and another person

[9]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014) and *A Framework for Managing Fraud Risks in Federal Programs,* GAO-15-593SP (Washington, D.C.: July 2015).

reviewed the summary of the interviews to ensure an accurate depiction of the comments. In addition, a third person then reviewed the summarized results.

We conducted this performance audit from October 2017 to March 2019 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the U.S. Small Business Administration

U.S. Small Business Administration

February 21, 2019

Mr. William B. Shear, Director
Financial Markets and Community Investment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Shear:

Thank you for providing the U.S. Small Business Administration (SBA) with a copy of the U.S. Government Accountability Office (GAO) draft report 19-168 titled "Women-Owned Small Business Program, Actions Needed to Address Ongoing Oversight Issues." SBA agrees with GAO's recommendation and is providing its proposed solution below.

In addition to responding to GAO's recommendation, SBA is also pleased to inform GAO that the proposed regulation establishing a WOSB/EDWOSB certification program has been submitted to the Office of Management and Budget (OMB) and is currently in the interagency review process.

Recommendation

The SBA Administrator or designee should (1) develop a process for periodically reviewing FPDS-NG data to determine the extent to which agencies are awarding WOSB program set-asides under ineligible NAICS codes and (2) take steps to address any issues identified, such as providing targeted outreach or training to agencies making awards under ineligible codes.

As noted in the report, it appears that federal buying activities are still awarding WOSB/EDWOSB set-asides using NAICS codes that are not eligible under the Program. In Fiscal Year 2017, the Government awarded $20.8 billion to WOSB/EDWOSB small business concerns, equating to 4.71% of applicable or applied Government spending. While use of SBA's set-aside procedures has been trending up year over year, contracts awarded through set-aside restricted competition accounted for less than .016% of the $20.8 billion awarded to WOSB/EDWOSB small business concerns.

SBA interprets GAO's recommendation as covering two distinct but interrelated topics, both of which effect the accuracy of the WOSB/EDWOSB program and accuracy of the Government's data. First, it is important for Government Agencies to accurately report data about contract awards. Second, it is important that proper set-aside procedures be followed. Unlike other socio-economic programs administered by SBA pursuant to the Small Business Act, the WOSB program has a restriction on which NAICS codes are available for restricted competition.

SBA does not believe periodic review of FPDS-NG data throughout the year is an appropriate or efficient way to respond to this recommendation. The data in FPDS-NG is dynamic, not static throughout the year. Meaning that it can and will change as revisions are made not just to various actions, but as mistakes and other errors are corrected. SBA believes a better way to review the data is during or after the federal procurement goaling process when SBA is no longer working with the dynamic data in FPDS-NG but the static extracts that are certified by each Agency. Ultimately, each Federal Agency is responsible for the accuracy of its own records, and the data it submits to FPDS-NG.

Therefore, as a possible solution, SBA has initiated contact with the General Services Administration (GSA) to request a direct change be made to FedBizOpps to ensure the proper selection of appropriate set-aside WOSB/EDWOSB program NAICS codes. SBA has requested that GSA implement a system change to FedBizOpps to automatically check the entered solicitation NAICS code against a pre-loaded SBA WOSB/EDWOSB NAICS list. If a NAICS is entered that is not on the SBA NAICS list, an error message would be displayed until either the WOSB/EDWOSB set-aside designation is removed or the NAICS code is corrected.

Additionally, SBA will work through each Agency's Office of Small and Disadvantaged Business Utilization (OSDBU) and through the Government wide Small Business Procurement Advisory Council (SBPAC) to engage the Agencies in the review and analysis of the data. As such, SBA is proposing to establish quarterly presentations, through the current SBPAC process, that will include training and review of data regarding WOSB/EDWOSB set-asides. SBA also will work through SBPAC and with Agency OSDBU to find solutions to data irregularities, such as the miscoding of actions, or mistakes in data entry, if they should arise during these reviews.

It is also important that contracting procedures be followed. SBA regulations and the Federal Acquisition Regulation (FAR) make clear that before contracting officers are allowed to utilize WOSB/EDWOSB set-aside procedures they need to ensure that the contract is being solicited in one of the approved NAICS codes. 13 C.F.R. § 127.500, and FAR 19.1505(a)(2). To better ensure that buying activities are following contracting procedures, SBA will utilize its current annual Procurement Center Representatives (PCR) Surveillance Review process to deliver additional and tailored training directly to the buying actives. SBA believes that all contracting officers should be following the clear procedures laid out in the FAR for awarding these contracts and believes that this process of using PCRs will efficiently provide SBA resources to the Agencies that are not meeting that standard.

Sincerely,

Robb N. Wong
Associate Administrator
Government Contracting and Business Development

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

William B. Shear, (202) 512-8678, or shearw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Allison Abrams (Assistant Director), Tiffani Humble (Analyst-in-Charge), Pamela Davidson, Jonathan Harmatz, Julia Kennon, Jennifer Schwartz, Rebecca Shea, Jena Sinkfield, Tyler Spunaugle, and Tatiana Winger made key contributions to this report.

Appendix IV: Accessible Data

Data Tables

Accessible Data for Obligations for the Women-Owned Small Business Program and to All Women-Owned Small Businesses in Similar Industries, Fiscal Years 2012–2017

Fiscal year	Contract obligations to women-owned small business program (WOSB program) set-asides	Contract obligations to all women-owned small businesses	Percentage
2012	0.0735225	15.0698	0.49
2013	0.10416	14.5533	0.72
2014	0.176832	15.863	1.11
2015	0.283082	16.3853	1.73
2016	0.440779	18.129	2.43
2017	0.713333	18.7716	3.8

Accessible Data for Figure 1: Obligations for the Women-Owned Small Business Program and to All Women-Owned Small Businesses in Similar Industries, Fiscal Years 2012–2017

Fiscal year	Contract obligations to women-owned small business program (WOSB program) set-asides	Contract obligations to all women-owned small businesses	Percentage
2012	0.0735225	15.0698	0.49
2013	0.10416	14.5533	0.72
2014	0.176832	15.863	1.11
2015	0.283082	16.3853	1.73
2016	0.440779	18.129	2.43
2017	0.713333	18.7716	3.8

Accessible Data for Figure 2: Percentage of Contract Obligations to Women-Owned Small Businesses by Set-Aside Type in Similar Industries, Fiscal Years 2012–2017

SDVOSB	Women-Owned Small Business	HubZone	8a	No set aside	other set aside or sole source
1.18	1.81	2.85	23.59	33.87	36.7

Accessible Data for Figure 3: Sole-Source Obligations as a Percentage of All WOSB Program Obligations, January 2016–June 2018

Year	Quarter	Percentage
2016	Q2	20.9
2016	Q3	4.6
2016	Q4	11.78
2017	Q1	21.31
2017	Q2	6.18
2017	Q3	6.84
2017	Q4	11.81
2018	Q1	13
2018	Q2	20.86
2018	Q3	12.8

Agency Comment Letter

Accessible Text for Appendix II Comments from the U.S. Small Business Administration

Page 1

February 21, 2019

Mr. William B. Shear, Director

Financial Markets and Community Investment

U.S. Government Accountability Office

Washington, D.C. 20548

Dear Mr. Shear:

Thank you for providing the U.S. Small Business Administration (SBA) with a copy of the U.S. Government Accountability Office (GAO) draft report 19-168 titled "Women-Owned Small Business Program, Actions Needed to Address Ongoing Oversight Issues." SBA agrees with GAO's recommendation and is providing its proposed solution below.

In addition to responding to GAO's recommendation, SBA is also pleased to inform GAO that the proposed regulation establishing a WOSB/EDWOSB certification program has been submitted to the Office of Management and Budget (0MB) and is currently in the interagency review process.

Recommendation

The SBA Administrator or designee should (I) develop a process for periodically reviewing FPDS-NG data to determine the extent to which agencies are awarding WOSB program set- asides under ineligible NAICS codes and (2) take steps to address any issues identified, such as providing targeted outreach or training to agencies making awards under ineligible codes.

As noted in the report, it appears that federal buying activities are still awarding WOSB/EDWOSB set-asides using NAICS codes that are not eligible under the Program. In Fiscal Year 2017, the Government awarded $20.8 billion to WOSB/EDWOSB small business concerns, equating to 4.71% of applicable or applied Government spending. While use of SBA' s set-aside procedures has been trending up year over year, contracts awarded through set-aside restricted competition accounted for less than .016% of the $20.8 billion awarded to WOSB/EDWOSB small business concerns.

<u>Page 2</u>

SBA interprets GAO's recommendation as covering two distinct but interrelated topics, both of which effect the accuracy of the WOSB/EDWOSB program and accuracy of the Government's data. First, it is important for Government Agencies to accurately report data about contract awards. Second, it is important that proper set-aside procedures be followed. Unlike other socio- economic programs administered by SBA pursuant to the Small Business Act, the WOSB program has a restriction on which NAICS codes are available for restricted competition.

SBA does not believe periodic review of FPDS-NG data throughout the year is an appropriate or efficient way to respond to this recommendation. The data in FPDS-NG is dynamic, not static throughout the year. Meaning that it can and will change as revisions are made not just to various actions, but as mistakes and other errors are corrected. SBA believes a better way to review the data is during or after the federal procurement goaling process when SBA is no longer working with the dynamic data in FPDS-NG but the static extracts that are certified by each Agency. Ultimately, each Federal Agency is responsible for the accuracy of its own records, and the data it submits to FPDS-NG.

Therefore, as a possible solution, SBA has initiated contact with the General Services Administration (GSA) to request a direct change be made to FedBizOpps to ensure the proper selection of appropriate set-aside WOSB/EDWOSB program NAICS codes. SBA has requested that GSA implement a system change to FedBizOpps to automatically check the entered solicitation NAICS code against a pre-loaded SBA WOSB/EDWOSBNAICS list. If a NAICS is entered that is not on the SBA NAICS list, an error message would be displayed until either the WOSB/EDWOSB set-aside designation is removed or the NAICS code is corrected.

Additionally, SBA will work through each Agency's Office of Small and Disadvantaged Business Utilization (OSDBU) and through the Government wide Small Business Procurement Advisory Council (SBPAC) to engage the Agencies in the review and analysis of the data. As such, SBA is proposing to establish quarterly presentations, through the current SBPAC process, that will include training and review of data regarding WOSB/EDWOSB set-asides. SBA also will work through SBPAC and with Agency OSDBU to find solutions to data irregularities, such as the miscoding of actions, or mistakes in data entry, if they should arise during these reviews.

Page 3

It is also important that contracting procedures be followed. SBA regulations and the Federal Acquisition Regulation (FAR) make clear that before contracting officers are allowed to utilize WOSB/EDWOSB set-aside procedures they need to ensure that the contract is being solicited in one of the approved NAICS codes. 13 C.F.R. § 12 7.500, and FAR

19.1505(a)(2). To better ensure that buying activities are following contracting procedures, SBA will utilize its current annual Procurement Center Representatives (PCR) Surveillance Review process to deliver additional and tailored training directly to the buying actives. SBA believes that all contracting officers should be following the clear procedures laid out in the FAR for awarding these contracts and believes that this process of using PCRs will efficiently provide SBA resources to the Agencies that are not meeting that standard.

Sincerely,

Robb N. Wong

Associate Administrator

Government Contracting and Business Development

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (https://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to https://www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube.
Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts.
Visit GAO on the web at https://www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: https://www.gao.gov/fraudnet/fraudnet.htm

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548