

Women's small business program postponed again  
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The Bush administration has postponed changes to two key federal contracting rules, leaving them in the hands of the next president.

The Small Business Administration on Monday [announced](#) that it was reopening and extending the comment period an additional 60 days for the Women's Procurement Program.

Meanwhile, the U.S. District Court for Maryland on Jan. 9 delayed the implementation of a Bush administration rule that would have required federal contractors to use the Homeland Security Department's E-Verify system to check the immigration status of its employees.

After repeated delays and court challenges, SBA announced [last September](#) that it had revised its plan for the women's procurement program. The latest proposal included 31 industries in which women-owned small businesses reportedly are under-represented. The government currently lists 140 industry codes in which companies could be eligible for set-aside contracts with little to no competition.

The rule attracted fierce opposition on Capitol Hill and from business groups such as the U.S. Women's Chamber of Commerce.

SBA's decision to hold off on the program, however, may have more to do with a recent court ruling that questions the legality of certain contracting preference programs.

In November, the U.S. Court of Appeals for the Federal Circuit [struck down a legislative provision](#), first enacted in 1986 and renewed numerous times since, which sets a goal that 5 percent of federal defense contracting dollars each fiscal year must be awarded to certain entities, including small disadvantaged companies.

The ruling in *Rothe Development Corp. v. Department of Defense* applies only to small disadvantaged businesses that compete for Pentagon contracts. But [contracting experts](#) have suggested that the decision potentially could set a precedent for striking down other preference categories.

In announcing the postponement of the women's procurement program, SBA acting Administrator Sandy Baruah said the agency is reviewing, along with the Justice Department, "the relevance of the disparity study standard discussed" in the *Rothe* case.

Comments on the women's procurement program will be accepted through March 19.

The government also has put the brakes on the E-Verify rule change, which was scheduled to take effect on Jan. 15.

Last month, five business interest groups, including the U.S. Chamber of Commerce, [filed suit](#) to block a Bush administration executive order that would require federal contractors with projects exceeding \$100,000 -- and for subcontractors with projects exceeding \$3,000 -- to use E-Verify to authorize new employees.

The litigants argued that the government does not have legal authority to force companies to use the program. Administration officials countered that using E-Verify is the price that contractors pay for receiving federal contracts.

The [proposed rule](#) would apply to all future contract employees and existing employees working on new contracts. Under current federal law, E-Verify use is voluntary.

Citing the court challenge, DHS announced last week that it would postpone the rule change until Feb. 20.

"The administration cannot use an executive order to circumvent Congress' intent that E-Verify be used only on a voluntary basis," said Randy Johnson, vice president of labor, immigration and employee benefits at the U.S. Chamber of Commerce. "Although we hope to resolve the litigation in an expeditious manner, the postponement of the rule will help ensure that the court is not unduly rushed to weigh the serious legal questions in this case."

Chamber officials hoped that the delay would provide the new administration with an opportunity to reevaluate the policy.