FEDERAL CONTRACTING: REMOVING HURDLES FOR MINORITY-OWNED SMALL BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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FEDERAL CONTRACTING: REMOVING HURDLES FOR MINORITY-OWNED SMALL BUSINESSES

WEDNESDAY, SEPTEMBER 26, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:45 p.m., in room 2154, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the subcommittee) presiding.

Present: Representatives Towns and Bilbray.

Also present: Representative Clay.

Staff present: Michael McCarthy, staff director; Velvet Johnson, counsel; Cecelia Morton, clerk; Emile Monette, minority professional staff member; and Benjamin Chance, minority clerk.

Mr. TOWNS. Let me begin by apologizing for our lateness. Of course, we had votes on the floor, and that was the problem. We thank you for your patience.

The hearing will come to order. We are here to consider an issue that is important to the future growth and development of our Nation: How do we dismantle the barriers that restrict minority-owned small businesses from actively participating in the Federal marketplace?

Vast spending on Federal procurement makes Government contracts a potentially important source of revenue for all businesses, whether large, small or owned by socially and economically disadvantaged individuals. Federal spending on contracting has hit a record level, and the Federal Government is now spending nearly 40 cents of every discretionary dollar on contracts with private companies.

Although procurement provides the Federal Government with a potentially powerful tool for promoting opportunities and counteracting discrimination, there continues to be disparities in the allocation of Government contracts to minority firms.

I have heard from a number of my constituents and from minority businesses all over the Nation about their difficulty getting contracts from the Government. Their claims are supported by research. According to a study performed by the Urban Institute, minority-owned businesses received only 57 cents of each dollar they would be expected to receive based on their availability to carry Government contracts.

These disparities are why we need Federal contracting programs like 8(a) and the Small Disadvantaged Business Program. These programs help minority and disadvantaged firms access Federal contracts and are needed to help bridge the gap for small minority firms attempting to break into the Federal marketplace.

Minority-owned firms often turn to Federal contracting to offset some of the limitations imposed by the private market. However, barriers embedded in the contracting process itself can impede minority firms from winning Government contracts. One of the main issues arising today is that there is not a penalty for agencies' failure to meet their minority-owned business contracting goals.

Another challenge is the inaccurate reporting of contracting data. Often, Federal agencies mis-code thousands of contracts to big companies as small business awards in an attempt to meet their contracting goals. These errors result in the diversion of billions of dollars in lost contracting opportunities to small businesses, particularly minority-owned firms.

We have been talking about these issues now for a long, long time. It is time to do something about them. It is my hope that we can work together to come up with a better strategy to expand the participation of minority businesses in public contracting.

[The prepared statement of Hon. Edolphus Towns follows:]

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FEDERAL CONTRACTING: REMOVING HURDLES FOR MINORITY-OWNED BUSINESSES

September 26, 2007,
2:00 p.m. 2154 Rayburn

OPENING STATEMENT

The hearing will come to order. We are here to consider an issue that is important to the future growth and development of our nation: How do we dismantle the barriers that restrict minority-owned small businesses from actively participating in the federal marketplace?

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Federal spending on contracting has hit a record level, and the federal government is now spending nearly 40 cents of every discretionary dollar on contracts with private companies.

Although procurement provides the federal government with a potentially powerful tool for promoting minority opportunities and counteracting discrimination, there continues to be disparity in the allocation of government contracts to minority firms. I have heard from a number of my constituents and from minority business owners nationwide about their difficulty getting contracts from the government. Their claims are supported by research. According to a study performed by the Urban Institute, minority-owned businesses received only 57 cents of each dollar they would be expected to receive based on their availability to carry out government contracts.

These disparities are why we need federal contracting programs like 8(a) and the Small Disadvantaged Business Program. These programs help minority and disadvantaged firms access federal contracts and are needed to help bridge the gap for small minority firms attempting to break into the federal marketplace.

Minority-owned firms often turn to federal contracting to offset some of the limitations imposed by the private market. However, barriers embedded in the contracting process itself can impede minority firms from winning government contracts. One of the main issues arising today is that there is not a penalty for an agency's failure to meet their minority-owned business contracting goals. Another challenge is the inaccurate reporting of contracting data. Often, federal agencies miscode thousands of contracts to big companies as small business awards in an attempt to meet their contracting goals. These errors result in the diversion of billions of dollars in lost contracting opportunity to small businesses, particularly minority-owned firms.

We've been talking about these issues for long enough. It's time to do something about them. It is my hope that we can work together to come up with a better strategy to expand the participation of minority businesses in public contracting.

Mr. TOWNS. I now will pause and recognize the ranking member from California, Congressman Bilbray, for his opening statement.

Mr. BILBRAY. Thank you, Mr. Chairman. Mr. Chairman, I think your opening statement pretty well summarizes very appropriately.

I would just like to remind us all that Government procurement and receiving a contract is not just a thing of dollars and cents. There is a lot of standing in it, and history has proven that it can make a difference. I think we sometimes forget that if it wasn't for receiving a Federal contract, we wouldn't know of names like Eli Whitney, Samuel Colt or the DuPont Family, and the list can go on and on.

I will appreciate those who have come here to testify, to try to work out and improve the situation, and I appreciate the chairman for having the hearing.

I yield back, Mr. Chairman.

Mr. TOWNS. Thank you very much, Congressman Bilbray.

I ask unanimous consent that the gentleman from Missouri, Mr. Clay, participate in today's hearing. My friend, Mr. Clay, is Chair of the Census Subcommittee and, of course, a member of the full committee.

Congressman Clay.

Mr. CLAY. Thank you, Mr. Chairman. Let me thank you for inviting me to participate in today's hearing and for your leadership on this important issue.

A recent report found that annual Federal procurement spending was over $400 billion in 2006. While taxpayer dollars continue being spent on contracting, minority-owned businesses are being left behind. For many minority-owned firms, the Federal procurement process is a series of large obstacles. In addition to lacking the financial capital to succeed, many do not have the experience to navigate the contracting maze.

As chairman of the Information Policy, Census, and National Archives Subcommittee, I have heard this message loud and clear from minority-owned businesses, and the Census Bureau is expected to spend at least $11.6 billion on the 2010 decennial census. My subcommittee has held four hearings and has examined the Bureau's contracting plans, especially as they related to minority-owned businesses.

I appreciate the Bureau's assurance that minority contractors will receive fair consideration in their procurement process, and it is my hope that today's testimony will help Congress gather the facts needed to devise statutory measures that will level the playing field for all minority businesses.

Mr. Chairman, I again thank you for holding this hearing, and I yield back.

Mr. TOWNS. Thank you very much, Congressman Clay.

At this time, I would like to ask the panelists to stand. We swear in all of our witnesses.

[Witnesses sworn.]

Mr. TOWNS. Let the record reflect that the witnesses answered in the affirmative. You may be seated.

Let me move forward with introduction of the panelists.

Calvin Jenkins is the Deputy Associate Administrator of Government Contracting and Business Development with the U.S. Small

Business Administration where he is responsible for 8(a) and small business contracting programs.

Then we have Anthony Martoccia, who is the Director at the Department of Defense, Office of Small Business Programs and, of course, has served in a number of procurement management positions at the Small Business Administration and the Department of Defense, NASA and the Department of Transportation. Welcome.

We also have Bill Shear who is the Director of Financial Markets and Community Investment at the U.S. Government Accountability Office. He has directed substantial bodies of work addressing the Small Business Administration and community and economic development programs. Welcome.

Preston Jay Waite is Deputy Director of the Census Bureau. He is the Chief Operating Officer overseeing day to day operations and preparation for the 2010 census.

Let me say to you, gentlemen, your entire statement will be placed in the record. So if you could summarize in 5 minutes which will allow the committee an opportunity to raise some questions with you, I think we will be able to cover a lot more.

Why don't we begin with you, Mr. Jenkins, and just come right down the line?

STATEMENTS OF CALVIN JENKINS, DEPUTY ASSOCIATE ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION; ANTHONY MARTOCCIA, DIRECTOR, OFFICE OF SMALL BUSINESS PROGRAMS, U.S. DEPARTMENT OF DEFENSE; WILLIAM B. SHEAR, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; AND PRESTON JAY WAITE, DEPUTY DIRECTOR, U.S. CENSUS BUREAU

STATEMENT OF CALVIN JENKINS

Mr. JENKINS. Chairman Towns and Ranking Member Bilbray and members of the committee, thank you for inviting me here today to discuss the role the Small Business Administration plays in the Federal marketplace.

I am Calvin Jenkins, the Deputy Associate Administrator for Government Contracts and Business Development. I will begin with a quick overview of SBA's 8(a) business development program.

The 8(a) program began during the 1960's to assist eligible small disadvantaged business concerns to compete in the American economy through business development. All applicants must demonstrate social and economic disadvantage. In addition, all U.S. citizens who can demonstrate social and economic disadvantage as well as comply with other eligibility requirements are welcome to apply for participation in the 8(a) program.

Today, there are approximately 9,000 certified firms in the 8(a) program with contract dollars of $12.4 billion in fiscal year 2006. This is an increase of $6.1 billion in contract dollars since 2001.

Additionally, in 2006, contract dollars overall to small disadvantaged businesses including 8(a) was $22.9 billion which represents 6.76 percent of contracting dollars, well above the 5 percent goal.

In 1988, a significant change was made to the 8(a) program when Congress enacted legislation that allows firms owned by Indian tribes including Alaskan Native Corporations and Native Hawaiian Organizations to participate in the 8(a) program. Subsequent to that change, Congress authorized firms owned by community development corporations to also participate in the 8(a) program.

Generally, 8(a) firms can receive sole-source contracts up to $5.5 million for manufacturing and $3.5 million for all other services. By statute, 8(a) firms owned and controlled by Indian tribes including ANCs, may receive sole-source 8(a) contracts above these thresholds.

The difference between ANC-owned 8(a) firms and non-ANC-owned in the 8(a) programs stems from the assumption that organization-owned firms, including ANCs, will utilize the program to provide economic development to their respective communities. All other 8(a) participant firms utilize the program to receive individual business development assistance as was initially the intent of Congress.

As the law is currently written, the 8(a) program is designed to provide business development support to disadvantaged individuals while also providing regional and community economic development to organization-owned firms including Indian tribes and Alaskan Native Corporations.

In April 2006, GAO published a report entitled Increased Use of Alaska Native Corporations Special 8(a) Provisions Call for Tailored Oversight, addressing some of the differences I have just mentioned.

The report noted that Federal contract dollars obligated to firms owned by ANCs grew from $265 million in fiscal year 2001 to $1.1 billion in fiscal year 2004. That report found that ANCs are increasingly utilizing the special advantages Congress has provided. The report also found that contracting officers often need more guidance on how to effectively use to ensure taxpayer dollars are spent wisely and SBA could make improvements in its overall oversight of the program.

Significant increases in Federal contracting dollars have gone to other groups during the same period. In fiscal year 2004, women-owned small business grew from $5.5 billion to $9.1 billion. Service-disabled veteran-owned firms grew from $554 million to $1.2 billion.

HUBZone firms grew from $1.6 billion to $4.8 billion, and overall small businesses grew $50.1 billion to $69.2 billion. Today, that number is over $77 billion.

The Federal Government has worked hard to achieve its goal of 23 percent of its prime contract dollars to businesses that qualify as small businesses. In fiscal year 2004, 8(a) firms were awarded $8.4 billion of the SDB achievement of $18.5 billion.

Finally, I would like to talk about oversight. The SBA takes its oversight responsibilities very seriously. Prior to release of the GAO report, the agency had taken a number of steps to improve the oversight of the 8(a) program including taking into consideration special provisions afforded to 8(a) concerns owned and controlled by ANCs, Native Hawaiian-owned Organizations and Indian tribes.

SBA has also increased training to field staff responsible for working the 8(a) program. In addition, the agency is exploring possible regulatory changes that will strengthen the program and increase SBA's oversight capabilities.

As we further our efforts to assist under-served markets, we continue to be concerned and cognizant of making sure we do not set as rivals one program against the other as they share the same common goal. To this regard, SBA's 2008 budget includes a request of $500,000 to examine how best to serve 8(a) firms, HUBZones, small disadvantaged businesses as well as women-owned and service-disabled veteran-owned businesses while not restricting the success of one program.

We recognize the agency can improve on the current progress in management as well as effectiveness in these important programs and will use the resources to determine how to best serve these communities. These resources will be used to analyze, among other things, training, the use of technology in order to determine how best to serve the businesses that use these products.

SBA recognizes the need for improving our Government contracting programs and taking the lead, moving forward, along with the Office of Management and Budget's Office of Federal Procurement Policy to carry out a number of initiatives including working with agencies to ensure that small business contracting numbers reporting is accurate. A great example of the progress being made in this area is SBA current publication of the first of its biannual Small Business Procurement scorecard.

Mr. TOWNS. Mr. Jenkins, can you summarize?

Mr. JENKINS. OK. The scorecard is a method of ensuring that the Federal agencies provide the maximum possible opportunity for small business in the Federal marketplace.

SBA is committed to continue to implement the laws governing the 8(a) program. We would also like to ensure that through our oversight and administration of the program, all 8(a) participants receive the appropriate assistance.

I will be more than happy to answer any questions the committee may have.

[The prepared statement of Mr. Jenkins follows:]

Statement of
Calvin Jenkins
Deputy Associate Administrator,
Office of Government Contracting and Business Development
U.S. Small Business Administration

Before the
House Committee on Oversight and Government Reform,
Subcommittee on Government Management, Organization and Procurement

September 26, 2007

Chairman Towns, Ranking Member Bilbray, and members of the Committees, thank you for inviting me here today to discuss the role the Small Business Administration plays in supporting the small business community within the federal market place. I am Calvin Jenkins, the Deputy Associate Administrator for the Office of Government Contracting and Business Development at the SBA.

I will begin with a quick overview of SBA's 8(a) Business Development Program. The 8(a) program began during the 1960s to assist eligible small disadvantaged business concerns to compete in the American economy through business development. The Small Business Act authorizes SBA to develop business ownership among groups that own and control little productive capital. Individual applicants must demonstrate social and economic disadvantage. Although some groups are presumed to be socially disadvantaged, they, as well as all other applicants, must also demonstrate economic disadvantage. In addition, all U.S. citizens who can demonstrate social and economic disadvantage as well as compliance with the other eligibility requirements are welcome to apply for participation in the 8(a) program. Today, there are approximately 9,000 certified firms in the 8(a) program, with contracting dollars of $12.4 billion in FY 2006; this is an increase of $6.1 billion since 2001. Additionally, in 2006 contracting dollars overall to Small Disadvantaged Businesses, including 8(a) was $22.9 billion.

In 1988 a significant change was made to the 8(a) program when Congress enacted legislation that allowed firms owned by Indian Tribes, including Alaskan Native Corporations and Native Hawaiian Organizations, to participate in the 8(a) program. Subsequent to that change, Congress authorized firms owned by Community Development Corporations to participate in the 8(a) program.

Generally, 8(a) firms can receive sole-source contracts for up to $5 million for manufacturing or $3 million for all other contracts. By statute, 8(a) firms owned and controlled by Indian tribes, including ANCs, may receive sole source 8(a) contracts above the competitive threshold amounts. Another way tribally-owned and ANC-owned firms differ from non-ANC 8(a) firms: there is no limit on the number of firms an ANC 8(a) participant may own as long as each business is in a different primary industry. By the express terms of the Alaska Native Claims Settlement Act, a firm that is at least 51

percent owned and controlled by an ANC is deemed to be owned and controlled by socially and economically disadvantaged individuals.

The difference between ANC-owned 8(a) firms and non ANC-owned firms in the 8(a) program stem from the assumption that organization-owned firms, including ANC's, will utilize the program to provide economic development to their respective communities. All other 8(a) participant firms utilize the program to receive individual business development, as was the initial intent of Congress. As the law is currently written, the 8(a) program is designed to provide business development support to disadvantaged individuals while also providing regional and community economic development to organization owned firms, including Indian tribes and ANCs.

In April 2006 GAO published a report entitled "Increased Use of Alaska Native Corporations' Special 8(a) Provisions Call for Tailored Oversight" addresses some of the differences I just mentioned. The report notes that Federal contract dollars obligated to firms owned by ANCs grew from $265 million in FY 2001 to $1.1 billion in FY 2004. The report found that ANCs are increasingly utilizing the special advantages Congress has provided them. The report also found that contracting officers often need more guidance on how to effectively use the program to ensure taxpayer dollars are spent wisely, and SBA could make improvements to its oversight of the program.

Also, significant increases in Federal contract dollars went to other groups during the same period of time. In FY 2004 women-owned small businesses grew from $5.5 billion to $9.1 billion, service-disabled veteran-small businesses grew from $554 million to $1.2 billion, HUBZone firms grew from $1.6 billion to $4.8 billion, and overall small business grew from $50.1 billion to $69.2 billion. The Federal Government has worked hard to achieve its goal of 23 percent of its prime contracting dollars to businesses that qualified as small businesses, including ANC's. Though there is a small disadvantaged business goal which includes the 8(a) program, there is no separate goal for 8(a). However, in FY 2004, 8(a) firms were awarded $8.4 billion of the SDB achievement of $18.5 billion.

Finally, I'd like to talk about oversight. The SBA takes its oversight responsibility over Federal procurement programs very seriously. Prior to the release of the GAO Report, the Agency had taken a number of steps to improve the oversight of the 8(a) program, including taking into consideration special provisions afforded to 8(a) concerns owned and controlled by ANC's, NHO's, and Indian tribes. For instance, the Agency has revised its Partnership Agreements, which delegate SBA's 8(a) contract execution function from SBA to various Federal procuring agencies, to clarify their roles and responsibilities for monitoring contract compliance of and performance by 8(a) firms. SBA has also increased training to field staff responsible for working on 8(a) issues. In addition, the Agency is exploring possible regulatory changes that will strengthen the program and increase SBA's oversight capabilities.

As we further our efforts to assist underserved markets, we continue to be concerned and cognizant of making sure we do not set as rivals one program against

another as they share the same end goal. To this regard, SBA's FY 2008 Budget includes a request for $500,000 to examine how best to serve the 8(a), HUBZone, and Small Disadvantaged Business Communities, as well as women-owned and service-disabled veteran-owned small businesses, while not restricting the success of any one program. We recognize the Agency can improve on the current progress in the management as well as the effectiveness of these important programs and will use these resources to determine how to best serve these communities. These resources will be used to analyze, among other things, training and the use of technology in order to determine how to best service the businesses that use these products.

SBA recognizes the need for improving our government contracting programs and is taking the lead moving forward, along with the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), to carry out a number of initiatives, including working with agencies to ensure their small business contracting number reporting is accurate. The integrity of the data reported to Congress and the public is crucial to instill confidence in the Federal contracting system.

A great example of the progress being made in this area is SBA's recent publication of the first of a biannual Small Business Procurement Scorecard. The scorecard is a method of ensuring that federal agencies provide the maximum possible opportunity for small businesses in the federal marketplace, especially those businesses categorized as socially and economically disadvantaged, consistent with statutory contracting goals. It reflects "current" performance, and more importantly "progress" Federal agencies are making in improving such performance. The new scorecard uses the same approach as the President's Management Agenda to ensure that agencies have clear goals and action plans, and are regularly assessed on their performance, and data integrity is a key element of it. Additionally, the Scorecard is an important tool to both increase procurement opportunities for small businesses while more accurately measuring each individual Agency's results. This scorecard, along with the advances made in FPDS-NG, are significant steps in adding transparency and greater accuracy to the federal procurement process.

To better serve small businesses who do business with the government, SBA is redefining roles and responsibilities so that Procurement Center Representatives (PCRs) can devote more time to finding opportunities for small businesses with procuring agencies, while the district offices, SBA, and non-SBA resource partners focus more time providing training and counseling to getting small businesses positioned to compete for Federal contracts. Currently, there are 53 PCRs serving small businesses throughout the federal market place. We have already begun to implement a plan to increase the number of PCRs to 66 by the end of FY 2008. Furthermore, a succession plan has been created to account for the future retirements of these PCRs. We are very focused on backfilling any positions that become vacant in a timely fashion as we realize the importance these individuals play.

SBA is committed to continue implementing the laws governing the 8(a) program as Congress intended them, while ensuring taxpayer dollars are spent wisely. We would

also like to ensure that through our oversight and administration of the program, all 8(a) participants receive the appropriate assistance.

Thank you for allowing me to share SBA's views with you today and I am happy to answer your questions.

Mr. TOWNS. Thank you very much.
Mr. Martoccia.

STATEMENT OF ANTHONY MARTOCCIA

Mr. MARTOCCIA. Thank you. Chairman Towns, Ranking Member Bilbray and committee members, good afternoon.

My name is Tony Martoccia, Director of the Department of Defense Office of Small Business Programs in the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. Thank you for inviting me to speak to you today concerning minority-owned small business contracting within the Department.

Small minority-owned firms are vital to the job growth and the economic strength of this Nation. They also play an integral role in DOD's defense mission. This is why I am very proud of the fact that every fiscal year since fiscal year 2000 the Department has met or exceeded the 5 percent Government-wide statutory goal for small disadvantaged businesses. Preliminary analysis for 2007 data indicate that DOD will once again achieve this goal.

My testimony today considers a number of these potential barriers. I have also highlighted some of the ongoing initiatives within the Department that will make it even more effective in reaching out to minority-owned small businesses.

Contract consolidation and bundling is a barrier that we see for small businesses. Contract consolidation occurs when requirements previously performed by either large or small businesses under two or more separate, smaller contracts are combined into one contract, and contracting bundling occurs when requirements that were previously performed by small businesses are consolidated into a single procurement, resulting in an acquisition that is unsuitable for an award to a small business.

Any acquisition strategy that uses bundling or consolidation must undergo a rigorous justification and approval process.

Subcontracting: By the way, strictly speaking, subcontracting is not a barrier for minority-owned businesses. I mention it because it is important that DOD prime contractors are made aware of their responsibilities under the DOD small business programs. It is the responsibility of the Department of Defense contracting officers to ensure that prime contractors achieve their subcontracting goals.

Competition: Competition saves taxpayers money, improves contractor performance, curbs fraud and abuse, and promotes accountability for results. Within DOD, competition is the preferred method for acquiring goods and services. The Department's preference for competition extends to small disadvantaged business and 8(a) procurements and in procurements involving ANC firms.

Non-competitive acquisition strategies are the exception to the norm and the rationale for not using competitive techniques must be fully justified.

Alaska Native Corporations: The Government Accountability Office noted that oversight in this area was vulnerable under ANC contracts. DOD has discussed GAO's findings in our small business training conference this year, and the military departments have also increased their training efforts with respect to oversight of ANC requirements.

Now I would like to talk about some of our ongoing initiatives to increase opportunities for small disadvantaged business and minority contractors within the DOD acquisition structure.

Minority Contractor Enhancement Program: The DOD Small Business Office has been provided funds by Congress in 2007 to develop a Minority Contractor Enhancement Program. The funds will be used to award a contract to a minority-owned 8(a) firm for the development and support of a DOD minority enhancement program. The contractor will provide assistance to small minority-owned businesses including 8(a) participants in order to help them become successful DOD contractors.

The DOD innovative Small Business Innovative Research Program and the Small Business Technology Transfer Program: Historically, about 10 percent of both Phase I contract awards for technology feasibility and Phase II contracts for technology prototyping and demonstration have gone to minority-owned firms.

We continue to focus on training for acquisition work force as well as DOD small business community practice where we provide training online. We are looking at small business size standards to provide more opportunities for minority-owned businesses.

Finally, being Director of the DOD Office of Small Business Programs means I am also a member of the senior management staff. This gives me an opportunity to meet with my fellow senior managers on a weekly basis and share DOD's small agenda with them. Through these interactions, I have obtained their leadership commitment to promote small business programs within their organizations.

I appreciate the committee's continued interest in oversight of DOD's small business programs and look forward to answering any questions you might have. This concludes my testimony.

[The prepared statement of Mr. Martoccia follows:]

Testimony of

Mr. Anthony R. Martoccia

Director, Office of Small Business Programs
Office of the Under Secretary of Defense
Acquisition, Technology and Logistics
U.S. Department of Defense

Hearing before the
U.S. House Committee on Oversight and Government Reform
Subcommittee on Government Management, Organization, and Procurement

On

Federal Contracting: Removing Hurdles for Minority-Owned Small Businesses

September 26, 2007
Washington, D.C.

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Statement of
Mr. Anthony R. Martoccia
Director, DoD Office of Small Business Programs,
United States Department of Defense
Before the
U.S. House Committee on Oversight and Government Reform
Subcommittee on Government Management, Organization, and Procurement
September 26, 2007
Washington, D.C.

Chairman Towns, Ranking Member Bilbray and Members of the House Subcommittee on Government Management, Organization, and Procurement:

Good afternoon. I am Anthony Martoccia, Director of the Department of Defense (DoD) Office of Small Business Programs (OSBP), in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L). Thank you for inviting me to appear before you to discuss minority-owned small business contracting within the Defense Department. I welcome the opportunity to participate in this hearing because this is a topic that is very important to the Department.

DoD recognizes that small minority-owned businesses are of vital importance to the job growth and the economic strength of the country. The small disadvantaged business (SDB) community plays an important role in the Department's overall mission to deter our enemies and protect the security of the United States. I am very proud to report to you that every year since fiscal year (FY) 2000 through FY 2006, the Department has met or exceeded the 5 percent Government-wide statutory goal for small disadvantaged business. Preliminary analysis of FY 2007 data indicates that DoD will again achieve this goal.

Today I will focus on the Department's continuing success with this important segment of the small business community. I will also discuss the initiatives DoD has taken to make us even more effective in reaching out to minority-owned small business firms.

Mitigating Potential Barriers

The Federal Government is required to provide all small businesses, including SDBs the maximum practicable opportunity to participate in its procurements. This guiding principle, in combination with progressive legislation and a healthy economy has created an optimal environment for minority entrepreneurs. Due to

the unique requirements, terms, and conditions imposed on Federal procurement however, the ability of DoD and the other agencies to achieve the statutory SDB goals may be inhibited. The following discussion considers a number of these potential barriers, and how they are addressed within the Department:

Contract Consolidation and Strategic Sourcing - In the mid-1990s, Congress passed several statutes requiring the Government to buy products and services more efficiently. DoD acquisition professionals became adept at leveraging the immense buying power of the Defense Department to enable prudent stewardship of public funds. The consolidation of several requirements into a single contract to save money and gain other benefits became one such strategy. Consolidation occurs when requirements previously performed by either large business or small business under two or more separate, smaller contracts are combined into one contract or order. Benefits of such consolidated actions must be documented, justified, and approved prior to such action being taken.

Since October 2005, the Office of Management and Budget has required Federal agencies to use strategic sourcing as a means to streamline the procurement process. Strategic sourcing uses an agency's spend analysis to make informed business decisions about acquiring commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total lifecycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each Federal dollar spent.

Although consolidation and strategic sourcing reduces the number of available contract opportunities, both consolidated and strategic sourcing actions are awarded to small businesses and may even be awarded under one of the special small business set-aside or sole source authorities.

One such example is the U. S. Department of Navy Clerical Support Services contracts awarded October 13, 2006. This consolidated solicitation limited competition to 8(a) small disadvantaged businesses, Historically Underutilized Business Zone (HUBZone) small business concerns, and service-disabled veteran-owned small business (SDVOSB) firms. Over 100 proposals were received and evaluated, and nine contracts were awarded. Contracts were awarded to one SDVOSB firm, one SDVOSB that is also a HUBZone concern, one SDVOSB that is also a woman-owned small business, one HUBZone small business that is also a veteran owned small business, one 8(a) SDB that is also a veteran owned small business, three 8(a) SDB's that are also woman owned small businesses, and one 8(a) SDB.

Contract Bundling - Contract bundling occurs when requirements that previously

were, or could have been, performed by small business are consolidated into a single procurement, resulting in an acquisition that is unsuitable for award to small business. The bundled action may be unsuitable for award to a small business due to its dollar value, geographic dispersion, technical diversity, size or specialized nature, or any combination thereof.

Bundled actions not only reduce the number of available contract opportunities but displace small business as well. Due to the negative effect it has on small business, DoD discourages the practice of contract bundling. Any acquisition strategy that contemplates bundling must undergo an extremely rigorous justification and approval process prior to the action being taken. The Federal Acquisition Regulation requires contracting officers and/or DoD acquisition teams to consult with the Small Business Administration (SBA) Procurement Center Representative (PCR) as soon as feasible once it has been determined that a bundled contract will result from the solicitation. Early consultation with the SBA PCR helps to focus the contracting officer's/DoD acquisition team's market research, aid in the development of a more effective acquisition strategy, and minimize any adverse impact on incumbent small business. Bundling may only be used when the Department has determined it will derive a measurable and substantial benefit can this type of acquisition strategy.

The Department requires analysis of alternatives including methods for mitigating the impact on small business, even if the bundling or consolidation can be justified by its anticipated benefits. If small business prime contracting opportunities are not available, DoD acquisition professionals are obliged to develop strategies that set aggressive small business subcontracting goals, including methods for ensuring that the goals are achieved.

Subcontracting – It is the responsibility of both DoD contracting officers and small business specialists to ensure prime contractors put forth their best efforts to achieve subcontracting goals. In particular, DoD procurement regulations require contracting officers to challenge any SDB subcontracting goals that are less than 5 percent. A small disadvantaged business goals of less than 5 percent must be approved one level above the contracting officer.

Military Departments and Other Departmental Agencies (ODAs) use various techniques to encourage prime contractors to subcontract and team with small business concerns. Contractual incentives that reward prime contractors for exceptional subcontract performance is one technique. Another effective approach is to use prime contractors' proposed subcontract performance as a source – selection factor.

Since monitoring subcontracting achievements can be very complex and time-

consuming, many Military Departments and ODAs delegate this responsibility to the Defense Contract Management Agency (DCMA). Such delegations may involve the administration of individual subcontracts and/or the prime contractor's entire subcontracting program. DCMA has developed extensive guidelines to evaluate prime contractors' individual subcontracting plans and overall compliance with their small business program. DCMA also negotiates individual, divisional, and corporate-wide subcontracting goals with major defense contractors and, when delegated, the goals for an individual subcontracting plan.

DCMA conducts annual small business program compliance reviews to assess the effectiveness of a prime contractor's overall small business subcontracting program. These reviews are conducted for major DoD prime contractors, i.e., those contractors that have been awarded $100 million or more during the past fiscal year. The reviews focus on the prime contractor's deficiencies in small business subcontracting performance based upon completed subcontracting plan reports. In accordance with the Memorandum of Understanding (MOU) between DCMA and the Small Business Administration (SBA), the SBA shall be notified of an anticipated compliance review. DCMA must perform all small business program compliance reviews in accordance with the MOU.

By September 30, 2007, DCMA will have completed 94 compliance reviews. The review findings will give the Department a better understanding of the difficulties minority-owned business encounter as subcontractors under DoD contracts.

If a contractor fails to make a good faith effort to achieve its subcontracting goals, contracting officials note this information in the contractor's official past performance record. Past performance information is maintained in the Government-wide Past Performance Information Retrieval System (PPIRS). PPIRS is used by DoD contracting officers to make required contractor responsibility assessments. DoD contracting officers must evaluate the extent to which small business, SDB, HUBZone, SVOSB, SDVOSB, and women-owned small businesses are proposed for participation contract performance in all negotiated procurements that are required to have a subcontracting plan.

Competition – The Administrator, Office of Federal Procurement Policy's memorandum of May 31, 2007 underscores the importance of competition as a means to save taxpayer money, improve contractor performance, curb fraud and promote accountability for results. Within DoD, competition is the preferred method for acquiring goods and services. The importance of competition and the need to dedicate even greater emphasis towards its promotion was recently addressed in the Director, Defense Procurement and Acquisition Policy's memorandum of July 26, 2007. The Department's preference for competition extends to SDB and 8(a) procurements and in procurements involving 8(a) Alaska

Native Corporation (ANC) firms. Noncompetitive acquisition strategies are the exception to the norm and the rationale for not using competitive techniques must be justified.

Accountability

One of the concerns that carried over from the Federal downsizing period of the 1990's is the effect it may have had on Government accountability. With regard to DoD's Small Business Program, there is a process in place to ensure the Department is accountable for its small business performance. The DoD Small Business Program Strategic Management System (SMS) is used to administer the DoD Small Business Program, to drive continuous improvement, and to promote consistent reporting to the Office of the Secretary of Defense (OSD) by all DoD components, including the Military Departments and ODAs.

In accordance with the DoD SMS, each Military Department must submit two Small Business Program reports each year including a mid-year and a year-end (annual) report. The annual report serves to document the Component's Defense Small Business Program results for the ending fiscal year, describes progress in implementing its small business initiatives, and identifies any new initiatives to improve the Component's Small Business Program. These individual reports are consolidated into the DoD Small Business Report that is reviewed by the Secretary of Defense and used in DoD's Annual Report to Congress, and used to establish appropriate DoD-wide goals for future fiscal years.

In addition, the SBA's Small Business Procurement Scorecard has brought an added degree of transparency to the Federal Government's small business contracting performance. The Scorecard rates Federal agencies' progress in providing small business opportunities and is part of a larger movement in new procurement regulations toward accurately tracking small business contracting.

Contracting with 8(a) Alaska Native Corporation Firms

The Department adheres to statutory and regulatory requirements when contracting with 8(a) Alaska Native Corporation (ANC) firms to ensure that the interests of the taxpayers are safeguarded. (The term "8(a) ANCs" refers to small businesses owned and controlled by ANCs.) Section 8(a) of the Small Business Act, as amended by Public Law 85-536, the SBA's 8(a) Business Development Program (the 8(a) Program) and the Alaska Native Claims Settlement Act and Title 13 of the Code of Federal Regulations provide the framework for the Department's 8(a) ANC acquisition policy. Under Title 13 of the Code of Federal Regulation, 124. 506(b) the SBA may award a sole source 8(a) contract to an 8(a) Program Participant owned or controlled by an Indian tribe or an ANC where the

anticipated value of the procurement exceeds the applicable competitive threshold if the SBA has not accepted the requirement into the 8(a) Program as a competitive procurement.

The Department is monitoring the dollars obligated under 8(a) ANC contracts. In FY 2005, approximately 17.3 percent of the 8(a) dollars obligated by the Defense Department were in support of 8(a) ANC contract actions. By FY 2006 this percentage had dropped to 15.8 percent. The DoD Office of Small Business Programs (OSBP) will continue to closely monitor 8(a) ANC award data.

The Government Accountability Office (GAO) Report # GAO-06-399 "Contract Management – Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight" noted that oversight was an area of vulnerability under 8(a) Alaska Native Corporation (ANC) contracts. DoD addressed the GAO's findings in its FY 2007 Small Business Training conference. The Military Departments have also stepped up their training efforts within their respective organizations.

On February 28, 2007, a new 8(a) Partnership Agreement between the SBA and the DoD was signed. The 8(a) Partnership Agreement between the SBA and the DoD allows for much more expeditious award of 8(a) contracts. Under the Partnership Agreement, the SBA delegates to the USD AT&L its authority to enter into 8(a) prime contracts and to award performance of those contracts to eligible 8(a) firms. In keeping with the findings noted in GAO-06-399, the new Agreement provides greater clarification of the responsibilities of the SBA and DoD, and emphasizes the need to include and adhere to monitoring and oversight provisions for all DoD 8(a) contract actions directly awarded to the 8(a) Participants via SBA's delegation of authority.

Ongoing Initiatives To Improve DoD's SDB Performance

The Department of Defense has implemented numerous initiatives aimed at improving its small/small disadvantaged business performance:

Minority Contract Enhancement Program – The DoD OSBP has been provided funds by Congress to develop a Minority Contract Enhancement Program. The funds will be used to award a contract to a minority-owned 8(a) firm for the development and support of a DoD Minority Contract Enhancement Program (MCEP). Once the program has been implemented by the Defense Department, the contractor will then provide specialized and professional assistance to small, minority-owned businesses, including 8(a) Participants, to help these firms become successful DoD suppliers. The assistance provided will be in addition to, and not duplicative of, the services already provided by Government agencies to

small businesses. The DoD MCEP will also include measurable goals and metrics to assess the success of the program.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs – SBIR and STTR have long provided excellent opportunities for minority-owned small businesses to participate in technology research and development for the Department of Defense. Historically, about 10 percent of both Phase I contract awards for technology feasibility and Phase II contracts for technology prototyping and demonstration have gone to minority-owned firms. In FY 2006, 296 Phase I and Phase II contracts were awarded to minority-owned firms, with a total value of over $101 million.

The DoD Mentor-Protégé Program (MPP) – The DoD MPP was initiated in late 1990 by Public Law, and was formulated to incentivize large Defense prime contractors to work with small disadvantaged businesses to enhance their capabilities and their competitiveness within the defense supplier base. Since then, women-owned small businesses and service disabled veteran-owned and HUBZone small business concerns have also been extended eligibility under amended legislation.

Of the 803 small businesses that have participated in the DoD MPP since its inception, fully 522 or 65 percent of the small businesses helped as protégés qualified as SDBs. These protégés, about 150 active agreements each year, are located in virtually every state in the union. More significantly, SDB protégés have accounted for an average of 12 percent of all SDB prime contract awards made by the Department for the last four years, over $1.5 billion in prime contract awards annually. Equally significant is the fact that the average prime contract award for SDB protégés in the program was over $5 million, nearly three times that of a normal non-protégé SDB concern. In the last three years DoD MPP has made an effort to instill a more technology based manufacturing focus to the DoD MPP to better address the evolving needs of the warfighter. This has included an emphasis on such joint programs as Robotics, where three of the ten protégés are SDBs.

Training the Acquisition Workforce – The Department has placed increased emphasis on educating the acquisition workforce in key areas of small business contracting, especially in the area of bundling and consolidation. DoD has established a small business training program as a joint initiative between DoD OSBP and the Defense Acquisition University (DAU). As part of this project, in FY 2006, a member of the DoD OSBP staff presented a live Webcast on contract bundling and consolidation that is available for viewing online. (The Air Force small business office has also developed an online bundling course that is available on their Web site.) Subsequent to DoD OSBP's initial Webcast this

office featured a presentation on subcontracts and in the near future we will Webcast a segment on the DoD's SBIR/STTR programs. In addition to these on-line presentations, DoD OSBP staff has provided train-the-trainer sessions at many conferences throughout the past two years.

DoD Small Business Community of Practice – Recently, DoD OSBP and DAU collaborated with representatives from the Army, Navy, and the Air Force to develop a Small Business Community of Practice to provide an easy to use, online source of small business program information for the acquisition workforce. The intent of DoD's Small Business Community of Practice is to provide a "one stop" location to easily access best practices and lessons from acquisition professionals throughout DoD. The site was unveiled in March of 2007 and may be accessed at https://acc.dau.mil/smallbusiness.

Small Business Size Standards – Department is concerned that a number of size standards in critical Defense industries have not kept pace with the U.S. economy. We believe an upward adjustment of the small business size standards in these industries will improve small business's ability to take on an even greater role in DoD procurement. Earlier this year DoD OSBP met with representatives from the SBA and the Office of Federal Procurement Policy, Office of Management and Budget to discuss this issue at length. All parties agreed that a comprehensive review of the size standards is needed.

Commitment to Achievement of SDB Goals by Senior DoD Management

As the Director of DoD OSBP, I am a member of the USD AT&L staff. This affords the Director the opportunity to meet with senior level management staff at weekly AT&L staff meetings and share DOD OSBP's small business agenda with them. Through these interactions I have obtained leadership commitment to promote small business programs within their organizations. DoD small business programs are an integral part of the USD AT&L Strategic Goals Implementation Plan.

At the Component level, the Small Business Program Directors at the Army, Navy, Air Force, and Defense Contracts Management Agency have each implemented small business strategic plans for their respective departments and agencies. While Small Business Programs are not specifically mentioned in the Defense Logistics Agency's strategic plan, it is included as part of the agency's existing goals requiring compliance with the integrity of the procurement process.

Conclusion

Today I have given a brief overview of a number of DoD issues and initiatives that

effect minority-owned small businesses. I wish to thank our minority-owned business firms, including our 8(a) firms for their outstanding support of our men and women in uniform.

I appreciate the Committee's continued interest and oversight of DoD's Small Business Program and look forward to your questions and to any comments you may have that will guide us toward working more effectively with small business. This concludes my testimony.

Thank you.

Mr. TOWNS. Thank you very much.
Mr. Shear.

STATEMENT OF WILLIAM B. SHEAR

Mr. SHEAR. Mr. Chairman, Representative Bilbray and members of the committee, I am pleased to be here this afternoon to discuss our previous and ongoing work related to contracting opportunities for small businesses.

I will discuss, first, results from our March 2007 report describing the extent to which small businesses participated in contracting opportunities related to Hurricane Katrina and the lack of required information on official procurement data systems and subcontracting plans; second, information from two previous GAO reports regarding the small business advocacy responsibilities of SBA and the Offices of Small and Disadvantaged Business Utilization [OSDBUs] that operate in Federal agencies that award contracts; and third, our ongoing work at your request, Mr. Chairman, on SBA's efforts to advocate for small disadvantaged businesses and the role of the OSDBUs in that process.

In summary, small businesses received a total of 28 percent of the $11 billion that were directly awarded in response to Hurricane Katrina between August 2005 and June 2006. DHS awarded the highest amount to small businesses, and the General Services Administration awarded the highest percentage of its Katrina-related contracting dollars directly to small businesses.

Small businesses in Alabama, Mississippi and Louisiana received 66 percent of the $1.9 billion awarded to businesses in these States.

With respect to small business subcontracting opportunities, required information was not consistently available in official procurement data systems for these agencies. For example, the systems had no information on whether DHS or GSA required small business subcontracting plans for 70 percent or more of the contracting funds. In addition, the agencies often did not provide reasons for their determinations that plans were not required even though Federal rules require such documentation and such information should have been readily available.

Because of the incomplete information about subcontracting, we were not able to determine the extent to which agencies complied with contracting rules and gave small business the maximum opportunities to win subcontracts. By requiring subcontracting plans, agencies commit price contractors to engage in good faith efforts to meet their small business subcontracting goals. In doing so, the agencies help ensure that small businesses have all of the practical opportunities to participate in Federal contracts as they are supposed to have.

Therefore, we made recommendations to the agencies, one of which focused on needed guidance to more transparently disclose the extent to which subcontracting opportunities are available to small businesses. The agencies generally agreed with our recommendations and described various steps they are taking to implement them. To date, the General Services Administration is the one agency that has completed implementation of our recommendations.

Now I will briefly discuss our prior work on the OSDBUs. These offices, in partnership with SBA, are tasked with functions to expand contracting opportunities for various categories of small businesses including small disadvantaged and 8(a) businesses.

The Small Business Act requires that the OSDBU Director for each agency, with the exception of the Department of Defense, be responsible to and report only to agency heads or their deputies. In 2003, we reported that 11 or 24 agencies reviewed did not comply with this provision. As of our most recent followup with these agencies, nine are not in compliance. Because the OSDBU directors at these agencies do not have a direct reporting relationship with their agencies' heads or deputies, the reporting relationships potentially limit their role as effective advocates for small and disadvantaged businesses.

Finally, I will mention our current evaluation at your request. This evaluation includes an assessment of the actions SBA and OSDBUs take to advocate that small disadvantaged business receive opportunities to participate in Federal contracts.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

[The prepared statement of Mr. Shear follows:]

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Government Management, Organization, and Procurement; Committee on Oversight and Government Reform; House of Representatives

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SMALL BUSINESS CONTRACTING

Observations from Reviews of Contracting and Advocacy Activities of Federal Agencies

Statement of William B. Shear, Director
Financial Markets and Community Investment

GAO-07-1255T

September 26, 2007

GAO
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Highlights

Highlights of GAO-07-1255T, a testimony before the Subcommittee on Government Management, Organization, and Procurement; Committee on Oversight and Government Reform; House of Representatives

SMALL BUSINESS CONTRACTING

Observations from Reviews of Contracting and Advocacy Activities of Federal Agencies

Why GAO Did This Study

The federal government's long-standing policy has been to use its buying power to maximize procurement opportunities for various types of small businesses.

GAO initiated work and completed a report in March 2007 under the Comptroller General's authority describing the extent to which small businesses participated in contracting opportunities related to Hurricane Katrina. This testimony discusses (1) results from the March 2007 GAO report, including the amounts that small and local businesses received directly from federal agencies from contracts related to Hurricane Katrina and the lack of required information in official procurement data systems on subcontracting plans, (2) information from two previous GAO reports regarding the small business advocacy responsibilities of SBA and federal agencies that award contracts, and (3) GAO work on SBA's efforts to advocate for small disadvantaged businesses, and similar efforts by entities within selected agencies.

In conducting the studies discussed in this testimony, GAO analyzed agency contract data, reviewed federal acquisition regulations, and interviewed agency procurement officials; we also sent a questionnaire to agency officials regarding OSDBU reporting relationships; reviewed organizational charts and other pertinent information; analyzed relevant laws, legislative history, and court cases; and, updated information on agency actions on our recommendations.

To view the full product, including the scope and methodology, click on GAO-07-1255T. For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

What GAO Found

Small businesses received 28 percent of the $11 billion in contracts that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects. Information on whether DHS and GSA required subcontracting plans was generally not available in the federal government's official procurement database for 70 percent or more of the contracting dollars each agency awarded for activities related to Hurricane Katrina. This database should have contained information on whether or not the agencies required subcontracting plans in these instances. The lack of transparency surrounding much of the agencies' subcontracting data may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses. GAO recommended in its March 2007 report that DHS, GSA, and DOD take steps designed to ensure compliance with federal contracting regulations and more transparently disclose the extent to which subcontracting opportunities are available to small businesses. These agencies generally agreed with GAO's recommendations. GSA has implemented them while DOD and DHS indicate they are in the process of doing so.

SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors for federal contracts and set goals for and encourage the use of small businesses as subcontractors to large businesses receiving federal contracts. Similarly, within each federal agency there is an Office of Small and Disadvantaged Business Utilization (OSDBU) that plays an advocacy role by overseeing the agency's duties related to contracts and subcontracts with small and disadvantaged businesses. The Small Business Act requires that the OSDBU director be responsible to and report only to agency heads or their deputies. In 2003, GAO reported that 11 of 24 agencies reviewed did not comply with this provision. While most of the agencies disagreed with our conclusion, none of the legal arguments that they raised changed GAO's recommendations. Because the OSDBU directors at these agencies do not have a direct reporting relationship with their agencies' heads or deputies, the reporting relationships potentially limit their role as effective advocates for small and disadvantaged businesses.

GAO is presently evaluating SBA's and agency OSDBUs' advocacy efforts. This evaluation includes an assessment of the actions SBA takes to advocate that small disadvantaged businesses receive opportunities to participate as subcontractors under federal prime contracts and encourage that prime contracting goals for these businesses are met. Also, the evaluation addresses selected OSDBUs' actions to advocate for certain small business firms.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our previous and ongoing work related to contracting opportunities for small businesses. The federal government's long-standing policy has been to use its buying power—the billions of dollars it spends through contracting each year—to maximize procurement opportunities for various types of small businesses. The Small Business Act creates responsibilities for both the Small Business Administration (SBA) and the federal agencies that award contracts to provide various types of small businesses with opportunities to receive federal contracts and subcontracts. Furthermore, the act sets goals for participation by specific types of small businesses, including small disadvantaged businesses. Given the importance of assessing the extent to which various types of small businesses participate in federal contracts and subcontracts, even in times of presidentially-declared disasters, as well as the important roles of both the SBA and federal agencies concerning small business participation, this is a timely hearing at which to consider our relevant previous and ongoing work.

My statement today is based primarily on a report we issued in March 2007, which discussed the amounts that small businesses received through prime contracts and subcontracts related to Hurricane Katrina; two earlier reports we issued on federal agencies' responsibilities for advocating for small and disadvantaged businesses; and work now underway at the request of this subcommittee dealing with SBA's efforts to advocate that federal agencies and contractors provide the maximum practicable opportunity for small disadvantaged businesses to participate in federal contracts.[1] Specifically, I will discuss (1) the amounts that small and local businesses received directly from federal agencies through contracts related to Hurricane Katrina and the lack of required information in official procurement data systems on subcontracting plans, (2) the small business advocacy responsibilities of SBA and federal agencies that award contracts and (3) work we are beginning at your request on SBA's and selected agencies' Offices of Small and Disadvantaged Business Utilization (OSDBU) efforts to advocate for small disadvantaged businesses.

[1]GAO, *Hurricane Katrina: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses*, GAO-07-205 (Washington, D.C., March 1, 2007); GAO, *Small Disadvantaged Businesses: Most Agency Advocates View Their Roles Similarly*, GAO-04-451, (Washington, D.C., March 22, 2004); GAO, *Small and Disadvantaged Businesses: Some Agencies' Advocates Do Not Report to the Required Management Level*, GAO-03-863, (Washington, D.C., Sept. 4, 2003.)

In assessing contracts related to Hurricane Katrina, we analyzed data on contracts awarded or used by the Departments of Homeland Security (DHS) and Defense (DOD) (including the U.S. Army Corps of Engineers), and the General Services Administration (GSA) for Katrina-related projects overall and specifically for projects in Alabama, Louisiana, and Mississippi from August 1, 2005, through June 30, 2006.[2] These agencies were responsible for over 85 percent of the federal funds awarded via contracting when we began our data analysis. We also identified contracts that were used for activities related to Hurricane Katrina and that required subcontracting plans, reviewed federal acquisition regulations, and interviewed agency procurement officials. We conducted our work under the Comptroller General's authority to initiate evaluations between March 2006 and February 2007 in accordance with generally accepted government auditing standards. To describe the small business advocacy responsibilities of SBA and federal agencies, we summarized our previous work on small disadvantaged businesses and updated information on agency responses to our recommendations. In this previous work, we sent a questionnaire to agency officials regarding OSDBU reporting relationships, reviewed organizational charts and other pertinent information, and analyzed relevant laws, legislative history, and court cases. Our final objective highlights ongoing work assessing the efforts of SBA and selected OSDBUs in advocating for small disadvantaged businesses.

In summary:

- Small businesses received 28 percent of the $11 billion that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects. DHS awarded the highest dollar amount to small businesses (about $1.6 billion), and GSA awarded the highest percentage of its Katrina-related contracting dollars to small businesses (72 percent of about $658 million). Information on whether DHS and GSA required subcontracting plans was generally not available in the federal government's official procurement database for 70 percent or more of the contracting dollars each agency awarded for activities related to Hurricane Katrina. This database should have contained information on

[2]We reported on the U.S. Army Corps of Engineers (Corps) and the rest of DOD separately because, of the four supplemental appropriations measures for Department of Defense activities relating to Hurricane Katrina relief (Pub. L. Nos. 109-61, 109-62, 109-148, and 109-234), the latter three specifically directed certain funds to the Corps for its disaster relief activities.

whether the agencies required subcontracting plans in these instances. The lack of transparency surrounding much of the agencies' subcontracting data may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

- SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors, and that prime contractors give small businesses opportunities to participate as subcontractors in federal contracts awarded to large businesses. To meet its responsibilities, SBA negotiates annual procurement goals with each agency and reviews certain proposed contracts to encourage them to offer the maximum practicable opportunity for small businesses to participate. Similarly, each federal agency has an Office of Small and Disadvantaged Business Utilization (OSDBU) that plays an advocacy role by overseeing the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. To advocate effectively for small and disadvantaged businesses, the Small Business Act requires that the OSDBU directors be responsible to and report only to agency heads (or their deputies) so that the directors have immediate access to their agency's top decision-makers. However, in 2003, we reported that 11 of the 24 agencies we reviewed did not comply with this provision and as of our most recent follow-up work, 9 agencies were out of compliance. Because the OSDBU directors at these agencies do not have a direct reporting relationship with their agencies' head or deputy, the reporting relationships potentially limit their role as an advocate for small and disadvantaged businesses.

- In response to a request from the Chairman of this subcommittee about the extent to which 8(a) firms are obtaining federal contracts, we initiated an evaluation of SBA's efforts to advocate for such businesses. This evaluation includes an assessment of the actions SBA takes to encourage agencies to meet their prime contracting goals for small disadvantaged businesses; the extent to which such goals have been met; and SBA's efforts to advocate that small disadvantaged businesses have the maximum practicable opportunity to participate as subcontractors for prime federal contracts. In our evaluation, we also will assess actions by selected agency OSDBUs in serving as advocates for 8(a) firms.

Background

Federal agencies' contracts with private businesses, whether made in the normal course of agency operations or specifically related to a natural

disaster declaration, are used to meet certain goals to increase participation by various types of small businesses. The Small Business Act, as amended, defines a small business generally as one that is "independently owned and operated and that is not dominant in its field of operation."[3] In addition, a business must meet the size standards published by SBA to be considered "small." The act sets a governmentwide goal for small business participation of not less than 23 percent of the total value of all prime contract awards—contracts that are awarded directly by an agency—for each fiscal year.[4] The Small Business Act sets annual prime contract dollar goals for participation by specific types of small businesses: small disadvantaged businesses (5 percent); women-owned or service-disabled, veteran-owned, (5 and 3 percent, respectively); and businesses located in historically underutilized business zones (HUBZones, 3 percent).[5]

In August 2007, SBA issued its fiscal year 2006 Goaling Report. The Goaling Report includes data on the extent to which federal agencies met their goals for awarding contracts to various types of small businesses. According to this report, federal agencies awarded 22.8 percent of their prime contracting dollars to small businesses, just short of the 23 percent statutory goal. In addition, while federal agencies collectively exceeded the goals for awarding prime contracting dollars to small disadvantaged businesses, they did not meet the goals for awarding prime contracting dollars to women-owned, HUBZone, or service-disabled veteran-owned businesses. Of the agencies we reviewed in our March 2007 report, all exceeded their agency-specific goals for awarding prime contracting dollars to small disadvantaged businesses, a subset of which are Section 8(a) firms. Generally, in order to be certified under SBA's 8(a) program, a firm must satisfy SBA's applicable size standards, be owned and controlled by one or more socially and economically disadvantaged individuals who

[3]Public Law 85-536, as amended, 15 U.S.C. § 632(a).

[4]15 U.S.C. § 644(g).

[5]HUBZones are economically distressed metropolitan or nonmetropolitan areas—that is, areas with low-income levels or high unemployment rates—and qualified Hubzone small businesses must employ some staff who live in those zones. See 15 U.S.C. § 632. A small disadvantaged business is a business that is owned and controlled by socially and economically disadvantaged individuals, or certain economically disadvantaged groups, such as Indian Tribes. These owners must have at least a 51 percent stake in the business. See 15 U.S.C. § 637(a).

are citizens of the United States, and demonstrate potential for success.[6] Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans are presumptively socially disadvantaged for purposes of eligibility.[7] The personal net worth of an individual claiming economic disadvantage must be less than $250,000 at the time of initial eligibility and less than $750,000 thereafter.

The general rules governing procurement are set out in federal procurement statutes and in the Federal Acquisition Regulation (FAR). Among other things, these rules require that any business receiving a prime contract for more than the simplified acquisition threshold[8] must agree to give small business the "maximum practicable opportunity" to participate in the contract.[9] Additionally, for contracts (or modifications to contracts) that (1) are individually expected to exceed $550,000 ($1 million for construction contracts) and (2) have subcontracting possibilities, the prime contractor generally must have in place a subcontracting plan.[10] This plan must identify the types of work the prime contractor believes it is likely to award as subcontracts as well as the percentage of

[6]Unless otherwise noted, ownership means having a stake of 51 percent or more in the business.

[7]13 C.F.R. §§124.103 and 124.104 (2006). Business owners who are not members of presumptive socially disadvantaged groups may petition the SBA to be classified as disadvantaged. To do so, business owners must provide narrative and supporting documentation that demonstrates social disadvantage. That evidence must include the following elements: (1) possession of at least one objective distinguishing feature that has contributed to the business owners' social disadvantage — such as race, ethnic origin, gender, physical handicap, or long-term residence in an environment that is isolated from mainstream America; (2) personal experience of a substantial and chronic social disadvantage within American society; and (3) the negative impact of this disadvantage on the business owners' entry into or advancement in the business world.

[8]FAR section 201.1 defines "simplified acquisition threshold" to mean $100,000, except when the acquisition of supplies or services is used to support a contingency operation or facilitate defense against nuclear, biological, chemical, or radiological attack. In those instances, the term means $250,000 for contracts to be awarded and performed inside the United States and $1 million for contracts to be awarded and performed outside the United States.

[9]FAR §§ 19.702, 2.101, see, *e.g.*, 15 U.S.C. § 644(g)(1)

[10]*Id.* The dollar threshold was changed to $550,000 on September 28, 2006. 71 *Fed. Reg.* (Sept. 28, 2006).

subcontracting dollars it expects to direct to the specific categories of small businesses for which the Small Business Act sets specific goals.[11]

When they award contracts, federal agencies collect and store procurement data in their own internal systems—typically called contract writing systems. The FAR requires federal agencies to report the information about procurements directly to the Federal Procurement Data System–Next Generation (FPDS-NG), GSA's governmentwide contracting database, which collects, processes, and disseminates official statistical data on all federal contracting activities of more than $3,000.[12]

Congress has enacted several laws designed to foster small business participation in federal procurement. One of these laws, Public Law 95-507, enacted in 1978, amended section 15 of the Small Business Act (15 U.S.C. § 644) to require that all federal agencies with procurement authority establish an Office of Small and Disadvantaged Business Utilization. This office is responsible for helping oversee the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses.

Finally, the Stafford Act sets forth requirements for the federal response to presidentially declared disasters. It requires federal agencies to give contracting preferences, to the extent feasible and practicable, to organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.[13]

[11]These and other aspects of the small business subcontracting plan requirement are set forth at FAR Part 19.7.

[12]The FPDS-NG reporting threshold in FAR 4.602(c) was raised from $2,500 to $3,000. 71 *Fed. Reg.* 57,364 (Sept. 28, 2006). U.S.C. § 644(g).

[13]42 U.S.C. § 5150. Our work did not assess agency compliance with Stafford Act requirements.

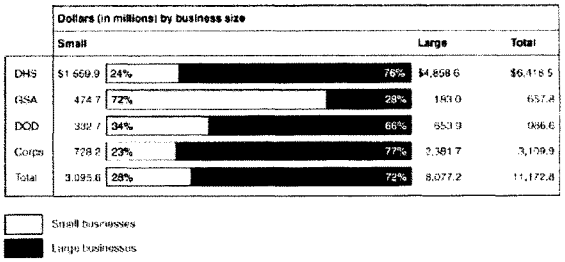
Agencies Awarded Varied Amounts of Contracting Dollars to Small Businesses, but Information on Subcontracting Plans Was Incomplete

Our March 2007 report identified the extent to which DHS, GSA, DOD, and the Corps awarded contracts directly to small businesses; the extent to which different types of small businesses received contracts; and the extent to which small businesses located in Alabama, Mississippi, and Louisiana received contracts for Katrina-related projects.[14] Our report also noted that information on small business subcontracting plans was not consistently available for the four agencies.

Small Businesses Received Varied Amounts of the Contracting Dollars That DHS, GSA, DOD, and the Corps Awarded

We found that small businesses received 28 percent of the $11 billion that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects, but the percentages varied among the four agencies (see fig. 1).[15] We assessed the agencies individually and found that DHS had awarded the highest dollar amount to small businesses—about $1.6 billion dollars—and that GSA had awarded the highest percentage of its dollars to small businesses—72 percent of about $658 million.

Figure 1: Amount and Percentage of Katrina-Related Contract Dollars Awarded to Businesses by DHS, GSA, DOD, and the Corps



Source: GAO analysis of FPDS-NG and 20-050 data on contracting actions awarded from August 1, 2005, to June 30, 2006.

[14]GAO-07-205.

[15]Each of the agencies we reviewed establishes annual goals for small business participation. Among the agencies, these goals ranged from 23 percent for DOD and DHS to 45 percent for GSA in fiscal years 2005 and 2006.

Note: Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

Among categories of small businesses, small disadvantaged businesses received 7 percent of the approximately $11 billion that the four agencies awarded to both large and small businesses. Other categories of small businesses, including women- and veteran-owned businesses and businesses located in HUBZones, received from 2 to 4 percent (see fig. 2). Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive.

Figure 2: Dollar Amount of Katrina-Related Prime Contracts Awarded to Businesses by Socioeconomic Group

	Total awarded to small and large businesses (dollars in millions)	Dollar amount (in millions) and percentage of total awarded to socioeconomic group							
		Veteran-owned			HubZone		Disadvantaged		Women-owned	
		All		Service-disabled[a]						
DHS	$6,418.5	2%	$127.9	$1.0	3%	$222.7	6%	$409.0	4%	$243.7
GSA	657.8	1%	9.0	.6	2%	14.0	6%	37.7	9%	58.1
DOD	986.6	1%	11.0	.8	4%	36.8	8%	76.9	5%	45.8
Corps	3,109.9	2%	61.8	.8	3%	106.2	7%	207.6	3%	84.7
Total	11,172.8	2%	209.7	3.2	3%	379.7	7%	731.3	4%	432.3

Source: GAO analysis of FPDS-NG and DD-350 data on contracting actions awarded from August 1, 2005, to June 30, 2006.

Note: Percentages cannot be totaled across columns because under SBA Guidelines, contracting dollars awarded directly to businesses can be counted in more than one category—for example, a small disadvantaged business owned by a woman can be counted as both disadvantaged and women-owned. Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

[a]The service-disabled category is a subset of the veteran-owned business category.

Small businesses in Alabama, Mississippi, and Louisiana received 66 percent of the $1.9 billion in Katrina-related contracting dollars awarded to local businesses by the four agencies we reviewed. Among the three states, the proportion of Katrina-related contracting dollars awarded to small businesses was largest in Mississippi (75 percent), followed by Alabama and Louisiana at 65 percent and 62 percent, respectively, of the dollars awarded (table 1). In general, these small local businesses received contracting dollars directly from the four agencies to provide trailers, administrative and service buildings, restoration activities, and other supportive services.

Table 1: Small Businesses Received the Majority of Contracting Dollars Awarded Directly to Local Businesses

Dollars in millions

	Alabama			Louisiana			Mississippi		
	All businesses	Small businesses		All businesses	Small businesses		All businesses	Small businesses	
Agency	Dollar amount	Dollar amount	Percent	Dollar amount	Dollar amount	Percent	Dollar amount	Dollar amount	Percent
DHS[a]	$160	$119	75%	$460	$345	75%	$138	$138	100%
GSA	77	72	92	48	26	54	210	194	92
DOD	10	10	98	7	6	89	45	9	20
Corps	84	16	19	609	320	53	114	42	36
Total	$331	$217	65%	$1,124	$697	62%	$508	$383	75%

Source: FPDS-NG and DD-350 data on contract actions awarded between August 1, 2005 and June 30, 2006.

Note: Dollars are rounded to the nearest million and percentages were calculated from unrounded numbers.

[a]DHS data are missing information on the contractor's state for 3.5 percent of its records. Where possible, GAO used available information on the contractor's city and place of performance to identify the state in which the contractor was located.

Information on Subcontracting Plan Requirements Was Missing or Incomplete

In two respects, key information on small business subcontracting plans was not consistently available in official procurement data systems for the four agencies. First, primarily with respect to DHS and GSA contract actions, the official procurement data system had no information at all on whether the agencies required subcontracting plans for 70 percent or more of their contracting funds. This database should have contained information on whether the agencies required subcontracting plans in these instances. For DOD and the Corps, their system lacked information on whether they required subcontracting plans for one percent of their contracting funds. Table 2 shows the total amounts each agency awarded to large businesses for contracts valued over $500,000 (column 2) and the extent to which no information was available in the official procurement data system on whether the agencies required subcontracting plans for those contracts (column 6).

Table 2: Subcontracting Plan Requirements by Dollar Amount Awarded

Dollars in millions

Agency	Total amount awarded to large businesses over $500,000[a]	Percent of total amount awarded and dollar amount requiring a subcontracting plan		Percent of total amount awarded and dollar amount with no subcontracting possibilities		Percent of total amount awarded and dollar amount reported as not requiring a subcontracting plan		Percent of total amount awarded and dollar amount with no information on subcontracting plan requirements	
DHS	$4,866.2	1%	$27.2	0%	$16.3	29%	$1,406.0	70%	$3,416.7
GSA	127.1	7	8.9	4	4.7	12	15.1	77	98.4
DOD	631.2	22	141.4	0		77	483.6	1	6.2
Corps	$2,468.7	76%	$1,880.1	0%		23%	$574.5	1%	$14.1

Source: GAO analysis of FPDS-NG and DD-350 data for contract actions awarded between August 1, 2005, and June 30, 2006.

Note: Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

[a]One million dollars for construction.

Second, the procurement data systems showed that the agencies had determined that subcontracting plans were not required for contracts representing 12 to 77 percent of the dollars they awarded to large businesses for Katrina-related projects. Agencies are required to document their reasons for these determinations. However, information on the four agencies' reasons for not requiring these plans, which should have been readily available, was incomplete.

Overall, procurement officials from the four agencies were able to explain some of the missing or incomplete information on subcontracting plans by, for example, identifying data entry errors or providing evidence of the agencies' reasons for not requiring the plans. For example, DHS officials determined that $545 million of the DHS contracting funds the procurement data system showed as not requiring a plan had been miscoded and should have been entered in the procurement system under a different category that listed the contracts as having "no subcontracting possibilities." In another instance, GSA officials did not require a subcontracting plan for a $26 million contract for ice because they believed that the urgency of the situation required buying and shipping the ice faster than normal procedures would allow. Nonetheless, at the time we issued our report contracting dollars remained for each agency with incomplete subcontracting plan information that agency officials had not been able to explain. These amounts ranged from $3.3 million for DOD (excluding the Corps) to $861 million for DHS.

In our report, we concluded there was little doubt that Hurricane Katrina posed challenges to the agencies, which had to award contracts quickly while still following government procurement rules, especially those regarding subcontracting plans. Certain choices, such as documenting compliance with these requirements at a later date (something GSA and DOD officials indicated was the case), might have been understandable. Nonetheless, more than a year after the hurricane, we reported that a substantial amount of information about the four agencies' subcontracting requirements remained incomplete. Conclusively demonstrating compliance with the rules about subcontracting plans is important for reasons beyond just documentation. First, in requiring these plans agencies commit prime contractors to specific goals for providing opportunities to small businesses. Second, the agencies have tools—incentives as well as sanctions—that they can use to ensure that the contractors engage in good faith efforts to meet their small business subcontracting goals. In doing so, the agencies ensure compliance with federal procurement regulations and help guarantee that small businesses have all of the practical opportunities to participate in federal contracts that they are supposed to have. Because so much key information about subcontracting plans was incomplete in federal procurement data systems and, at the conclusion of our review, remained unresolved, we cannot tell the extent to which the agencies are complying with the regulations. Furthermore, the lack of transparency surrounding much of the agencies' subcontracting data—missing information on plans when contracts appear to meet the criteria for having them—may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

To ensure compliance with federal contracting regulations and more transparently disclose the availability of subcontracting opportunities for small businesses, we recommended that the Secretaries of Homeland Security and Defense and the Administrator of General Services issue guidance reinforcing, among other things, the necessity for documenting in publicly available sources the agencies' contracting decisions, particularly in instances when the agencies decided not to require subcontracting plans. Moreover, we recommended that the agencies consider asking their respective Inspectors General to conduct a review to ensure that this guidance and related requirements were being followed.

The agencies generally agreed with our recommendations, and GSA has already implemented them. Specifically, in March 2007, GSA issued guidance to its contracting officers reminding them of the importance both

of the subcontracting plan requirements and of documenting key decisions affecting acquisitions, including any decisions impacting subcontracting plan requirements. In addition, GSA will include a review of compliance with subcontracting plan requirements in its annual internal procurement management reviews. DOD and DHS officials have stated that they are working on implementing these recommendations. For example, Corps officials indicated they are developing a new training module on the requirements regarding subcontracting plans and plan to deliver this to its contracting officers.

Some Agencies May Not Be Maximizing Their Advocacy Roles

SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors, and that prime contractors give small businesses opportunities to participate as subcontractors in federal contracts awarded to large businesses. To meet its responsibilities, SBA negotiates annual procurement goals with federal executive agencies to achieve the 23 percent governmentwide goal for contract dollars awarded directly by federal agencies. In addition, SBA is responsible for assigning Procurement Center Representatives (PCRs) to major contracting offices to implement small business policies and programs. Responsibilities of PCRs include reviewing proposed acquisitions and recommending various types of small business sources; recommending contracting methods to increase small business prime contracting opportunities; conducting reviews of the contracting office to ensure compliance with small business policies; and working to ensure that small business participation is maximized through subcontracting opportunities.

Each federal agency that has procurement authority is required to have an OSDBU. The OSDBU is responsible for helping to oversee the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. For example, the office must report annually on the extent to which small businesses are receiving their fair share of federal procurements, including contract opportunities under programs administered under the Small Business Act.[16] The Small Business Act requires that OSDBU directors be responsible to and report only to agency heads or their deputy. By providing immediate access to top decision-makers, Congress intended to enhance the directors' ability to advocate effectively for small and disadvantaged businesses. However, in

[16] 13 C.F.R. § 125.3(e).

2003 we reported that 11 of the 24 federal agencies we reviewed were not in compliance with this provision.[17] As of our most recent follow-up work, nine of the agencies reviewed were out of compliance (the Departments of Agriculture, Commerce, Education, Health and Human Services, Justice, State, the Interior, and the Treasury; and the Social Security Administration). The Environmental Protection Agency has complied, and the Federal Emergency Management Agency has been subsumed into the Department of Homeland Security, which has an OSDBU with a director reporting to the highest agency levels.

Most of the agencies that provided comments on this work disagreed with our conclusion that the reporting relationships did not comply with this provision of the Small Business Act.[18] However, none of the legal arguments that the agencies raised caused us to revise our conclusions or recommendations. For example, the Departments of Agriculture and Treasury had delegated OSDBU responsibilities to lower level officials and argued in their comments to us that because the Small Business Act does not explicitly prohibit such a delegation, their reporting relationships complied with this provision. However, we noted that the lack of an express prohibition on such a delegation does not necessarily mean that it is thereby permitted and cited case history supporting our belief that the delegation of authority may be withheld by implication, which we believe this section of the Small Business Act does. Because the OSDBU directors at agencies that do not comply with this provision of the Act do not have a direct reporting relationship with their agencies' head or deputy, the reporting relationships potentially limit their role as effective advocates for small and disadvantaged businesses.

Ongoing Work to Evaluate SBA and OSDBU Advocacy Efforts

At your request, we have ongoing work evaluating the efforts of SBA and, to some extent, OSDBUs within federal agencies, to advocate on behalf of small disadvantaged businesses and those in SBA's 8(a) business development program. As you are aware, both SBA and agencies' OSDBUs play important roles in advocating federal contracting opportunities for small disadvantaged businesses and 8(a) firms. SBA certifies the firms' eligibility for one or both designations and, as I noted earlier, has a governmentwide advocacy role for all types of small businesses, and OSDBUs advocate for contracting opportunities within each agency by, for

[17] GAO-03-863.

[18] Specifically, section 15(k)(3) of the Small Business Act.

example, reviewing proposed contracts and making recommendations to contracting officials about those they believe could be awarded to a small business, including disadvantaged businesses.

The Small Business Act authorizes SBA's 8(a) Business Development Program as one of the federal government's vehicles to help small disadvantaged businesses compete in and access the federal procurement market. To be eligible for the program, a firm must, among other things, meet SBA's applicable size standards for small businesses and be owned and controlled by one or more socially and economically disadvantaged individuals who are U.S. citizens who demonstrate the potential for success. Firms receiving 8(a) certification are eligible for contracts that federal agencies set aside for them. To qualify for SDB certification, a firm must be owned or controlled by one or more socially and economically disadvantaged individuals or a designated community development organization. Section 8(a) firms automatically qualify as SDBs, but other firms may apply for SDB-only certification.

Mr. Chairman, you recently wrote to us expressing concern about whether SBA was taking an appropriate, proactive approach to advocate that small disadvantaged businesses—those in SBA's 8(a) and SDB programs—have access to federal government contracts. As you know, procurement decisions—who gets each federal contract—ultimately rest with the agencies' contracting offices, not with their OSDBUs and not with SBA. Neither SBA nor the OSDBUs can force contracting officials to give a contract to a small business. However, as language in the Small Business Act suggests, they do have an important role to play in advocating that small businesses have the "maximum practicable opportunity" to participate. Consequently, our evaluation will focus on the advocacy role that SBA and OSDBUs play regarding these opportunities for small businesses. Specifically, it will include assessment of the actions SBA takes to encourage that prime contracting goals for small disadvantaged businesses are met; the extent to which such goals have been met; whether federal agencies are having difficulty awarding contracts to 8(a) firms; and SBA's efforts to advocate that small disadvantaged businesses have the maximum practicable opportunity to participate as subcontractors for prime federal contracts. In our evaluation, we also plan to assess actions by selected agency OSDBUs in serving as advocates for 8(a) firms.

Our evaluations of contracting in the aftermath of Hurricane Katrina and agency OSDBUs provide useful perspectives as we move forward in our examination of the important advocacy roles undertaken by SBA and the

OSDBUs. When we complete the design phase of this work, we will reach agreement with you on our reporting objectives and the anticipated issuance date. Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions at this time.

Contacts and Acknowledgments

For further information on this testimony, please contact William B. Shear at (202) 512-8678 or shearw@gao.gov. Individuals making key contributions to this testimony included Bill MacBlane, Assistant Director; Emily Chalmers; Nancy Eibeck; Julia Kennon; Tarek Mahmassani; Lisa Moore; Paul Thompson; Myra Watts-Butler; and Bill Woods.

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Mr. TOWNS. Thank you so much, Mr. Shear.

Mr. Waite.

STATEMENT OF PRESTON JAY WAITE

Mr. WAITE. Mr. Chairman, thank you for the opportunity to be here today to discuss removing hurdles from minority-owned small businesses.

As you know, we are required by law to track minority-owned small businesses under the category, Small Disadvantaged Business. The categories of Small Disadvantaged Business include small business owned by African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans and another category, very small, called Other.

The Census Bureau recognizes the importance of establishing strong goals that ensure the greatest number of subcontracts go to small or disadvantaged businesses. Since census 2000, in our contracting efforts, we have equaled or surpassed the small business goals established by the Department of Commerce. These goals themselves are actually greater than the statutory requirements.

In fact, I am pleased to report that over the past 3 years the Census Bureau's small business achievements have averaged 42 percent of the total of all contracts. In that time span, almost 20 percent of the dollars expended on all contracts were given to small disadvantaged businesses. This 20 percent represents approximately $130 million.

I think it would be helpful to look at three of our major 2010 contracts to highlight our commitment to small and small disadvantaged businesses.

The ultimate goal of the re-engineered 2010 census is an accurate and complete count of very person living in the United States. We have incorporated a range of strategies and approaches to achieve that goal including the use of automation in the form of handheld devices for each census taker.

Our automation efforts are centered on two major systems, the 2010 Decennial Response Integration System [DRIS] and the Field Data Collection Automation System [FDCA]. Both of these are large information technology contracts, totaling together over $1 billion.

The DRIS contract was awarded in 2005 to the Lockheed Martin Corp. It receives and protects the census responses whether they are collected by paper form, handheld computer or telephone.

With respect to small businesses, the DRIS request for proposal contained a mandatory requirement for a minimum of 30 percent of the total contract value to small businesses. Minus prime program management and hardware, this represents 43 percent of all the remaining work that is available for small businesses to provide value-added services on the contract.

The Lockheed Martin DRIS team submitted a plan that establishes, maintains and adheres to subcontracts of a minimum of 30 percent of the total contract price to small businesses, minority businesses, women-owned businesses, veteran-owned businesses and HUBZone businesses combined.

The Harris Corp., which holds the FDCA contract, will meet a mandatory requirement of a minimum of 20 percent of the total contract for small businesses.

These goals must be met by the end of the closeout of the contract in 2011. The majority of the small business opportunities for these programs will occur in the latter years of the decennial contracts, 2009 and 2010, where the scope is broader and more favorable for small business participation. This includes training development, onsite IT technicians, office deployment and deinstallation.

Another major contract, our communications contract, will be in the forefront of a multifaceted integration effort to increase the mail response rate, reduce the differential under-count and encourage cooperation during the non-response followup operations. As part of the overall strategy, we intend to incorporate the lessons and successes of census 2000 when we were able to improve the mail response rate for reduce the differential under-count.

Earlier this month, we announced the award of this contract to Draftfcb, a full servicing marketing communications agency that is part of the Interpublic Group of communications companies. Draftfcb's team includes partner agencies that specialize in reaching minority audiences. They are Global Hue for the Black and Hispanic audiences, IW Group for the Asian and Native Hawaiian and Pacific Islander audiences, G&G for the American Indian audiences and Allied Media for other emerging audiences.

As part of the Census Bureau's RFP process, we required each potential contractor to establish a small business subcontracting plan which is based on the established Department of Commerce fiscal year 2007 small business goals of 40 percent for small businesses and 17 percent for small disadvantaged businesses. As the winner, Draftfcb will be expected to maintain and adhere to that plan.

We will monitor all the contracts closely to ensure they fulfill establishing subcontracting goals. The Census Bureau is fully committed to fulfilling these obligations because they reflect opportunity for small business. We also support them because they are consistent with the goals of the 2010 census.

Each major contractor doing business with the Census Bureau establishes a small business outreach office to assist those seeking contracts. We also have such an office within the Census Bureau. This is central to our commitment to ensure that small businesses and small disadvantaged businesses have the information, guidance and support that they need. We work closely with these businesses in the application process, and we provide feedback to those who don't get the contracts.

Our commitment stems from our belief that counting every person living in the United States is not merely a Government activity. Our success depends on the participation and cooperation of every household, and this is enhanced by ensuring that our contracts reflect the Nation's rich diversity.

Mr. Chairman, I appreciate the opportunity to discuss these contracts and will be happy to answer questions.

[The prepared statement of Mr. Waite follows:]

PREPARED STATEMENT OF
PRESTON JAY WAITE
DEPUTY DIRECTOR
US CENSUS BUREAU

Federal Contracting: Removing Hurdles for Minority-Owned Small Businesses

Before the Subcommittee on Government Management, Organization, and Procurement
U.S. House of Representatives

26 September 2007

Mr. Chairman, thank you for the opportunity to be here today to discuss the U.S. Census Bureau's commitment to meeting its goals in awarding contracts to small businesses, and small disadvantaged businesses, which include minority-owned businesses.

The Census Bureau recognizes the importance of establishing strong goals that ensure the greatest number of subcontracts go to small or disadvantaged businesses. This is a fundamental component of our strategy to reach out to every community in America in our advertising contract. Since Census 2000, in all of our contracting efforts, we have equaled or surpassed the small business goals established by the Department of Commerce, which are greater than the statutory requirements. In fact, I am pleased to report that over the past three years (FY 04 – 06), the Census Bureau's small business achievements have averaged 42 percent of the total of all contracts. In that same time span, almost 20 percent of the dollars expended on all contracts were given to small disadvantaged businesses. This represents approximately $130 million.

Goals established in the 2010 Census communications contract will meet or exceed the Department's small and small, disadvantaged business goals. In addition, we included small business requirements for sub-contracting in our major technical contracts. That is unusual for contracts of this nature, and we are proud of the record we are establishing. By the time we have completed the 2010 Census we expect our record to surpass that of 2000. We are committed to working closely with qualified small disadvantaged businesses to help them compete as effectively as possible for a contract with the Census Bureau. This has been a commitment of ours for many years.

Today, I would like to review the Census Bureau's progress in meeting our goals with regard to the major decennial census contracts, which include the Decennial Response Integration System (DRIS), Field Data Collection Automation (FDCA), and the 2010 Communications Program. Each of these contracts contains requirements or goals for small businesses that the prime contractor must fulfill. The Census Bureau is committed to monitoring each program closely to ensure the requirements or goals are met, and the profits of our major contractors are based in part on their fulfillment of these goals.

DRIS and FDCA: Technical Contracts

The ultimate goal of the 2010 Census design is an accurate and complete count of every person living in America. We have incorporated a range of strategies and approaches to achieve that goal, including the use of automation, in the form of a handheld device for each census-taker, a key component for the 2010 Census. To successfully incorporate automation, we have enlisted private sector partners. Our efforts are centered on two major systems, the 2010 DRIS and the FDCA systems. Both of these are large information technology contracts, totaling together over $1 billion. With each of these contracts, the Census Bureau required contractors with demonstrated experience as prime systems integrators on projects that are similar in size, scope, and complexity to our requirements

The DRIS contract, which was awarded in 2005 to Lockheed Martin Corporation, is intended to ensure accurate and protected collection and storage of Americans' data whether by paper form, handheld computer, or telephone. With respect to small businesses, the DRIS Request For Proposal contained a mandatory requirement for a minimum of 30 percent of total contract value to small business. Minus prime program management and hardware, this represents 43 percent of all remaining work that is available for small businesses to provide value-added services on the contract.

The Lockheed Martin DRIS Team submitted a plan that establishes, maintains, and adheres to subcontracts of a minimum of 30 percent of the total contract price to small businesses, minority businesses, women-owned businesses, veteran-owned businesses, and HUBZone businesses (combined). This represents approximately $183 million set aside for small business. The goals must be met by the end or closeout of the contract in 2011.

Figure 1

DRIS: Lockheed Martin Small Business Participation (by percent)

Businesses	Proposed Participation	Participation to Date
Total Small Business	31.3 ($183 million)	35
Small Disadvantaged Business	11.5 ($70 million)	0
Woman-owned Small Business	10.4	11
HubZone Small Business	1.2	0
Veteran-owned Small Business	1.2	3
Service-disabled Veteran-owned Small Business	2.4	0

We also intend to use automation to eliminate the need for paper forms, maps, and address lists for the major field data collection operations. This effort is a significant change from the paper-based census field operations of every previous census. The FDCA contract was awarded last spring to the Harris Corporation. It provides automation resources to support field data collection operations, including an integrated IT infrastructure, as well as support for the handheld devices and other aspects of the field activities. This contract will also provide for the purchase of handheld devices and the operating system. This custom-designed device will be used to collect information from households, provide geographic support to the enumerators, and gather administrative and payroll information.

The FDCA Request for Proposal contained a mandatory requirement for a minimum of 20 percent of the total contract for small businesses. Harris proposed the following small business goals for all subcontracted work by the end of the contract and achieved thus to date:

Figure 2

FDCA: Harris Corporation Small Business Participation (by percent)

Businesses	Proposed Participation	Participation to Date
Total Small Business	21 ($130 million)	15
Small Disadvantaged Business	8 ($50 million)	2.1
Woman-owned Small Business	4	1.7
HubZone Small Business	1.5	1.2
Veteran-owned Small Business	1.5	1.6
Service-disabled Veteran-owned Small Business	1.5	0

As mentioned, the subcontracting requirements for the DRIS and FDCA contracts must be met by the time of contract closeout (2011). The Census Bureau will continue to monitor Lockheed Martin's and Harris' subcontracting activities in order to mitigate any shortcomings regarding small business participation.

Since the first year of the programs has been limited mainly to development and planning activities, subcontracting opportunities have generally been focused on products and services that were available mainly from the prime contractors or teammates. The majority of the small business opportunities for these programs will occur in the subsequent phases of the Decennial contracts, where the scope is broader and more favorable for small business participation (e.g., Training Development, On-Site IT Technicians, Office Deployment, De-Installation, etc.).

Harris and Lockheed have program and procurement personnel who are directly involved in the achievement of the Small Business Plan and goals. Their efforts include ongoing supplier focus teams who pre-qualify small business, and small disadvantaged business concerns who can effectively compete for sub-contracts. In addition, regular postings on Census and contractor websites include opportunities and points of contact for each of our major contracts. We and our contractors also actively participate in business conferences, including minority business conferences, and serve on supplier councils. And representatives from our major contracts attend supplier diversity fairs and trade shows, all of which are specifically focused on reaching small and small disadvantaged businesses.

Both contractors also are subject to an award fee determination process that includes an evaluation of their small business subcontracting activities. Should it become evident that either Harris or Lockheed is not actively working to meet the small business requirements in their role as Prime Systems Integrators (i.e., not complying with their Subcontract Participation Plans and/or the contract requirements), the Award Fee Determination Board could withhold up to 25% of the award fee for Lockheed, and up to 33% of the award fee for Harris. However, both companies have been diligent in working towards meeting these goals."

2010 Communications Program

The communications contract will be at the forefront of a multi-faceted, integrated effort to increase the mail response rate, reduce the differential undercount, and encourage cooperation during the non-response follow-up operations. As part of the overall strategy, we intend to incorporate the lessons and successes of Census 2000, when for the first time in history we improved the mail response rate and reduced the differential undercount. Earlier this month, we announced the award of this contract to Draftfcb, a full service marketing communications agency that is part of the Interpublic Group of communications companies. Draftfcb's team also includes partner agencies that specialize in reaching minority audiences. They are Global Hue (Black and Hispanic audiences), IW Group (Asian and Native Hawaiian and Pacific Islander audiences), G&G (American Indian audiences), and Allied Media (other emerging audiences).

As part of the Census Bureau's RFP process, we required each potential contractor to establish a Small Business Subcontracting Plan, which is based on the established Department of Commerce FY2007 small business goals (see Figure 3). As the winner, Draftfcb is expected to maintain and adhere to the plan.

Figure 3

Department of Commerce Small Business Goals for FY 2007 (as percent)

Businesses	Participation Goal
Total Small Business	40
Small Disadvantaged Business	17
Woman-owned Small Business	8
HubZone Small Business	3
Veteran-owned Small Business	3
Service-disabled Veteran-owned Small Business	3

The Census Bureau will monitor progress toward achieving the small business subcontracting goals through auditable semi-annual reports. In addition, the contractor's subcontracting record will be assessed to determine its profit/award fee.

Conclusion

The Census Bureau is fully committed to fulfilling the obligations established for these contracts, which are important to the agency, not only because they reflect opportunity for small businesses but because they are also consistent with the goals of the 2010 Census. We utilize both on-staff experts who can work with small businesses in assisting them in understanding technical requirements, to posting detailed information on our website. We even provide feedback to businesses that do not receive contracts, so they can understand where their proposals needed work. We believe these strategies are useful in helping the Census Bureau meet its objective to ensure that our contracts are both inclusive and representative.

Our commitment stems from our belief that counting every person living in America is not merely a government activity. It depends on the participation and cooperation of every household and this effort is enhanced by ensuring that our contracts are representative and reflect our nation's rich diversity.

Mr. Chairman, I appreciate this opportunity to discuss these contracts and our commitment, and I am happy to answer any questions.

Mr. TOWNS. Thank you very much.

Let me thank each of you for your testimony.

The bells, of course, as you know, in this instance it means that there is a recess. That is good news for us, yes, and for you too. That is true. That is right. No doubt about it. [Laughter.]

Mr. Jenkins, let me begin with you. The accelerated increase of contract awards and the special preferences awarded to ANCs, what does this do to disadvantaged groups and are they affected by this in any way?

Mr. JENKINS. Right now, we do not see any negative impact. What we believe we need to do is concentrate on the 77 percent of those procurements that the Government has a 23 percent goal. We believe there are adequate opportunities for all of the groups within the 77, and so what SBA has to do is do a better job in working with the other Federal agencies to ensure that the other goals are being met, not just the 23 percent but all the goals across the board.

Mr. TOWNS. Let me say that I am troubled by the fact that there are no penalties here, that if you meet your goal, fine, if you don't meet your goal, fine. What do you think needs to happen?

You can say we are trying, and then next year again you say we try. Then 10 years from now, you are still trying. I am concerned about that. So what do you think needs to be done to bring about success and to eliminate the word, try.

Mr. JENKINS. Well, I think SBA has taken a step forward in that area this fiscal year. We issued the first ever scorecard in which we rated all of the Federal agencies in terms of their status as well as their progress. What we want to do is identify those agencies that need to do additional work in meeting their goals, but at the same time we want them to see what the other agencies are doing in terms of meeting their goals and look at best practices.

But we believe the scorecard and realigning our procurement center representatives. In the past, our procurement center representatives spent too much time away from doing their primary mission, working at those agencies and assisting them to look at procurement opportunities. We refocused those PCRs and have given our district offices more training in Government contracting so that they can deal more with the small business customers, and our PCRs deal primarily with the Federal agencies, looking for more opportunities.

Mr. TOWNS. Do you want to say something about that, Mr. Shear?

Mr. SHEAR. Yes. This gets to the heart of some of the issues we are looking at as part of the request that you have sent to us, and I will just raise now certain information that is from others including the report we refer to, our previous report dealing with the ANCs, dealing with certain reports from the SBA IG, certain efforts we have had just based on calls into GAO as fog line where we look into certain programs.

Among our concerns here is that when SBA delegates authority to the OSDBUs through partnership agreements is to what degree is SBA not only giving authority to the OSDBUs but they lose sight of what might be happening at the individual agency level.

So we don't have findings on this yet, but I would say concerns have been raised from the body of work that basically allows us to get started on this, dealing with the ANCs, dealing with certain IG concerns as far as the capacity of SBA to really keep a handle on what types of practices are going on at the agencies and, in particular, in managing the 8(a) program where SBA has certain responsibilities. Even when they delegate those responsibilities, they have to know what the other agencies are doing with those delegations.

Mr. TOWNS. Thank you.

Mr. Martoccia, I know you have been in this business for a long, long time. What do you think needs to be done to fix it based on your experience?

Mr. MARTOCCIA. Well, holding people accountable for improving opportunities; we have a great staff at DOD, and we have a number of small business specialists that work with SBA to support the small business opportunities at the Department.

Working with the program managers, the small business specialists, the contracting officers to assure that if there are opportunities available, either breaking up bundled contracts, providing special opportunities for minority contractors, that they use those opportunities.

My experience is that once a program manager works with a small business, a minority contractor, they are very pleased. They add value. They provide a responsive performance is usually very good, and the price is reasonable. So it is a matter of getting the word out and holding people accountable throughout the departments.

Mr. TOWNS. Let me ask you this. Maybe I need to phrase it this way. Why are people complaining?

Mr. MARTOCCIA. Well, people are complaining because they feel that there are not enough opportunities given to small businesses when we are working with the decisionmakers to assure that there are opportunities for small business. It is difficult to do business with the Government. We have our PTCs, training centers, to help small businesses deal with the various procurement processes and procedures that small businesses have to work with.

Companies complain because when they get subcontracts that in actual terms they don't receive those subcontracts from the prime contractors. So we are working with prime contractors to assure that we monitor and that they monitor how much money is actually given and how many contracts are actually afforded to those small businesses during the term of the contract.

Mr. TOWNS. Yes, Mr. Waite.

Mr. WAITE. At the Census Bureau, we have made some attempts to try to enforce this process and not just try. Our contractors are required by contract to commit to a certain level of small business and small minority business. If they do not do that, their award fee, which is the total amount of their profit, is tied to that. So they don't get the award fee if they said they tried but were not successful in getting it.

We expect them to meet those goals and, if they don't, they don't get as much profit. We take it right out of their profit for the contract. Also, at the Bureau, we have all the senior managers over

the acquisition area and the contracting officers have written into their performance plans, not that they will try to meet those goals but they will meet them.

I think if you want accountability, you have to have some. I agree with you. You have to have some kind of penalty of some sort if you don't succeed. We found that we are able to get very large prime contractors to agree to these goals and to meet them.

Mr. TOWNS. Thank you.

I yield to the ranking member, Congressman Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

I think we need to admit up front that, by their nature, large bureaucracies tend to destroy small business, not build them. I don't care if it is one bureaucracy to the other. It is just hard for a large bureaucracy or a large administration at any time to respond and be sensitive to the little guy down the line.

It is not just in Government. Business is the same way. Big businesses interrelating with small businesses always have a problem being responsive.

I spent 32 years, Mr. Chairman, in politics, and I have seen small businesses being driven out of existence by big government, and then we wonder where they are when we need them. Oil companies are a good example. I don't even know if there is a small oil company left in America today.

But I think that the one thing that we need to understand here, Mr. Jenkins, is a lot of people may not know that DuPont was actually founded to produce gun powder for the U.S. Government in the Revolutionary War. Their Government contracts now are probably just minuscule compared to their private activities.

Is it the real goal of the 8(a) program to assist the small guy to not only be competitive in the Government contracting field but in the general bigger world of the private sector too?

Isn't the real goal here to basically help in that step and use this contracting system as a step toward becoming the DuPonts of the future?

Mr. JENKINS. Well, yes. The 8(a) program is a business development program, and I think there has been a lot of confusion whether or not it is a contracting program. It is a business development program. Contracts to 8(a) firms is just one of the many tools that we use to develop the businesses.

In years 5 through 9, we have what we call a competitive business mix requirement where we kind of wean firms off of the dependency of 8(a) sole-source contracts with the idea that at some point after graduation they are more competitive in the general market. So, yes, the idea is business development to help them exceed outside of the 8(a) program.

Mr. BILBRAY. I appreciate that.

Mr. Chairman, I would say it is a reflection of where the system needs to remember its successes and failures. The development of the four wheel drive for World War II, the Jeep, the big guys didn't want to be involved. The little guy actually developed the prototype, developed it out. Then when the little guy couldn't do the production, the big guy stepped in, but the little guy still ended up having a piece of the pie and wasn't buried in the game.

I think that is a future that we hopefully will have for a lot of other guys down the line too.

I yield back, Mr. Chairman. I appreciate the chance.

Mr. TOWNS. Thank you very much, Congressman Bilbray.

Congressman Clay from Missouri.

Mr. CLAY. Thank you, Mr. Chairman.

Let me start with Mr. Waite. Today, in the New York Times editorial page, there was a mention about the continuing resolution and the Census Bureau and how important it is to not fund the Census Bureau at 2007 levels but, in order to ramp up for the 2010 census, there needed to be an exception in this budget by OMB as well as the Commerce Secretary.

Please tell this committee what impact a CR will have on the operations of the 2010 census and has the Bureau communicated this information to the White House because I am sure it will affect your contract as far as the handheld contracts and all other matters. Would you give us a snapshot of what might happen?

Mr. WAITE. Yes, sir, I can. Thank you.

The decision to have a continuing resolution without an anomaly for the census is very disappointing. It will have a very substantial and significant impact on the quality and the success of the 2010 census.

I understand that the continuing resolution was passed today for 6 weeks. Six weeks delay in the spending, first, you have to realize that the spending for 2008 in the President's budget during those 6 weeks would have been about double what the CR is offering.

To delay for 6 weeks, it is certain almost that we will have to do some fairly serious replanning of our census plan. The most tested and proven census plan we have had up until now will be need to be changed. At a minimum, I think if the continuing resolution goes to full term and there is no budget, at a minimum, we will need to delay and downscope our dress rehearsal.

We will probably want to focus our attention on the dress rehearsal on the handheld computers and on the DRIS system because that is the heart of the processing system. They have to be tested before the census or we really have very serious trouble. But what it will mean is other things that we might have tested in the dress rehearsal will either not be tested at all or will be tested much less, and the risk of them working not perfectly will certainly have gone up.

If the CR goes beyond the existing one and we move on into December, we do not now have a plan. We have been thinking and trying to work on it, but it is clear that if we go that far into the year without any budget or without a budget comparable to what we need in this ramp-up that we will have very, very serious problems. Probably, we will lose the window that we have now to test the automation.

Mr. CLAY. Does that mean you will have to withdraw the contracts?

Mr. WAITE. Well, I am saying we don't know what we will have to do, but it is clear that if we can't test the machinery, we don't want to go into the census.

Mr. CLAY. Let me ask you about the Draftfcb.

Mr. WAITE. Yes.

Mr. CLAY. On September 9, 2007, the Bureau awarded a $200 million contract. In announcing the award, the Bureau stated: Draftfcb includes agencies with extensive experience in social marketing as well as in reaching racial and ethnic groups. The contract includes aggressive goals to ensure that small businesses are fully involved in the campaign.

What assurance does the Bureau have that the subcontractors have the expertise necessary to reach minority communities that have traditionally been under-counted?

Mr. WAITE. Well, our assurances, to some extent, are many of the subcontractors have had previous experience. We worked with them in 2000. They were very effective combined with a partnership program in, for the first time, reducing the differential undercount and increasing the overall response rate.

The main focus of that contract is to get people aware of the census, to get people to be willing to fill out the census and, for those that don't, to get them to be receptive to our non-response followup interviewers. That is why we wanted to make sure that the winning contract, actually all the bidders, had components that worked closely with minority communities.

As you know, Mr. Chairman, we have different communities are more difficult to count. It is critical to the Census Bureau that we count everyone. We have to be able to get our advertising and our communication into communities that might be more difficult to count so that we encourage them to come out and be counted. We want to count everyone.

Mr. CLAY. You are confident that Draftfcb will reach its 40 percent small business goals.

Mr. WAITE. Yes, I am.

Mr. CLAY. Thank you, Mr. Chairman.

Thank you, Mr. Waite.

Mr. TOWNS. Thank you. Thank you very much.

What is DOD doing to better enforce the subcontracting requirements that are already in law? What are you really doing?

Mr. MARTOCCIA. Well, one of the biggest initiatives we have is an electronic reporting subcontracting system which will mandate that the prime contractors report their small business actuals. They will negotiate the plans up front for every contract over $500,000, a plan as to how they are going to utilize small businesses, and they will be required to submit how they are actually doing on a monthly basis, so the contracting officer and the program manager and the small business specialist will know, will be able to monitor the efforts that the prime contractor is making to achieve their small business plan.

You could use incentives like they do at census to assure that their small business goals are being met.

So we are training our acquisition work force with that regard. We are going to have better monitoring. We are going to encourage some kind of incentive program, if possible, to assure that once these teams are set up at the outset that they are monitored and that they are achieved.

Mr. TOWNS. What percentage of the Department's 8(a) contracts go to ANCs? Would you know?

Mr. MARTOCCIA. We looked at that. I think it is around 20 percent, but that is preliminary data.

Mr. TOWNS. I guess the question is that does this interfere with your ability to monitor to make certain that you are meeting your goal otherwise in terms of contracts in general?

Mr. MARTOCCIA. Well, the ANCs are listed as 8(a) accomplishments and SDB accomplishments.

Mr. TOWNS. Right.

Mr. MARTOCCIA. So they do help meet the goal, and we want to assure that these big contracts, because they have unlimited sole-source authority, that there is a good reason as to why they are not competing in those requirements.

So for contracts awarded for over $5 or $10 million on a sole-source basis to anybody, including an ANC, it must be justified as to why we can't get a better deal for the taxpayer if we compete it.

Mr. TOWNS. Right. Now how about if an ANC wins a contract and then they partner with a large company, do you see a lot of that?

Mr. MARTOCCIA. Yes. Yes, we do because that satisfies the program manager who is interested, obviously, in the performance of the contracts. So if he has a responsible large contractor, that is going to assure that the prime ANC will deliver the product or service that they need. So they don't have any limitation on subcontracting, so they can hire these very large companies to provide a good portion of the work.

Mr. TOWNS. Now I am hearing several things coming from the table, that the system needs to be overhauled or needs to be repaired. It needs to be fixed, I am hearing. Then I am hearing that the system is somewhat sick.

Why don't I just go down the line and you tell me based on what you think needs to be done to make it run effectively and efficiently?

Just right down the line, I will start with you, Mr. Jenkins. I heard your statement and I know you seem to be very optimistic, but the statistics don't quite confirm your optimism.

So let's go right down the line in terms of responding to what do you think really needs to be done or even what Congress needs to do to make this work because I think you agree. It is not quite working. I think you agree on that. Of course, some have said that it is really, really broken.

Let's just go down the line and give us what you think needs to happen.

Mr. JENKINS. Sure.

Mr. TOWNS. We want to work with you.

Mr. JENKINS. Sure. I understand.

First of all, I think we, SBA has to do a better job, and we are attempting to do that in terms of our oversight responsibilities as well as the business development programs that we offer to 8(a) firms. We also will begin to do a better job in terms of working with the Federal agencies. As I mentioned earlier, one of the first steps was our scorecard.

Another step was getting clean data. We worked with the Office of Federal Procurement Policy and the Federal agencies to go back

and scrub the 2005 and 2006 procurement data that resulted in reducing the overall small business participation from $79 billion to $75 billion. It was a $4.6 reduction in the achievement. I think we have to continue to do that.

We also issued new regulations that went into effect June 30th of this year which require firms to be recertified on long term contracts. That means contracting officers, if the firm is no longer small, they can no longer count those as small businesses, and that will give some greater opportunity for contracting officers to seek out new and other firms, small business firms to participate.

So I think there are a number of things that we are doing. As I mentioned, we also have some regulations. We are looking specifically to the 8(a) program to make sure we have the necessary oversight resources in place.

Mr. MARTOCCIA. I think the one thing we can do better is to do better market searches to make sure that the decisionmakers that are doing at the buying activities understand what is available in the market with regard to small businesses and that they do sources sought and evaluate the capabilities better of those small companies that have the ingenuity and the resources to do a great job for DOD. So that is one area we need to work on.

We need to have some accountability in the subcontracting issues with the prime contractors. We need to have the program managers, the contracting officers accountable for how hard they are looking to small businesses to provide the work they need done at the different buying activities within DOD.

We need to do a better job of training within DOD and help train the small businesses through our procurement training centers and use SBA's business development centers to help companies that need to do business with the Government and want to do business with the Government.

So those are a few areas I think we can improve on.

Mr. SHEAR. Based on our work looking at the aftermath of Hurricane Katrina, what stands out, all value judgments, there are certain value judgments in terms of what the goals should be and how aggressively should be pursued.

But the Federal procurement data system does give a mechanism for agencies to report on subcontracting requirements and it gives a mechanism to try to enforce those, to enforce contractors to give accomplishment reports on those and to have certain sanctions that can be made available.

So from that work, I would say that there just even within the current technology, there has to be a better system of accountability for the agencies to followup on subcontracting plans and for the contractors to meet those plans and to submit the required accomplishment information.

Based on our work on the OSDBUs, I will use the expression, second class citizens. They are supposed to be looking out to be advocates for the small business community, in particular, minority businesses, and it just seems like they are not meeting the way we interpret the intent and the letter of the law in the Small Business Act for what level that they are supposed to report to.

In terms of our ongoing work, I will say certain things we are looking at closely where there are certain flags that are out there

from our work, that I will represent as opportunities for improvement.

Mr. Jenkins referred to the business development product and the use of technology.

There is a lot of business re-engineering efforts going on at SBA under the leadership of Administrator Preston, and we applaud many of them, whether it has to do with these programs or disaster loans or the many programs that we happened to look at. The questions that come up many times is the capacity of SBA in terms of expertise and just the number of people in the field offices out in the region who are really running these programs, who are really providing the oversight in the 8(a) program.

So we hope that the business re-engineering and the intent that is there to improve oversight of this program is kind of matched by the resources that are necessary to really effectively carry that out.

Mr. WAITE. Mr. Chairman, I think that one of the biggest things that we can do to make this program work better, in my opinion, is to make people accountable. We have some rules.

I am hearing today that, well, we have these goals, but sometimes people don't keep track of the goals. In what other kind of business would we say here is your goal for production, but if you don't bother to write down what you did, we are not going to be too serious about it?

I think, you need to have goals. They need to be tracked. People need to be held accountable for tracking them. At the Census Bureau, we hold our prime contractors accountable with money. We hold our senior managers accountable.

When you have people held accountable, they start, by themselves, looking for ways to help train small business so that they can do a better job, helping, giving them feedback if they are not necessarily competing at the right level or providing the right information because it becomes in the interest of the prime contractor.

In the case of the Census Bureau, in the interest of our acquisition senior managers, they need to find ways to meet those goals and then rather than drive them, they are going out themselves and trying to find out what happened. At census, we have a lot of goals and a lot of numbers. We are a numbers place, but I have found if I set a goal for performance and I don't pay attention to whether anybody actually measures it, the performance doesn't often follow.

Mr. TOWNS. Thank you very much.

Congressman Bilbray.

Mr. BILBRAY. Mr. Chairman, I just would like to echo the fact that the lack of accountability is a direct result of a problem we have in Government across the board. We had the hearing over in Veterans about the IT system. When management cannot be even disciplined, let alone terminated, there is not a business in America that could operate without being able to terminate immediately.

We try to function at that Government level, and I just think all of us have to understand that sensitizing of bureaucracy should be a goal of all of us, not because we are anti-public employee. I have been a public employee ever since the year I got out of high school.

The fact, though, is the public employee should have as much vested in success or failure as the public themselves.

I appreciate the chance, Mr. Chairman, and I yield back.

Mr. TOWNS. Congressman Clay.

Mr. CLAY. Thank you, Mr. Towns.

Mr. Shear, in your testimony, you stated that the lack of transparency in the subcontracting process may lead to unwarranted perceptions about the procurement system. During its investigation, did GAO find information that the lack of transparency in the process discourages small businesses, particularly minority contractors, from participating in the contracting process?

Mr. SHEAR. The answer is no, but it isn't because that we know that there is frustration. We are aware of concerns or frustration in a community with respect to subcontracting and some of the issues that the OSDBUs get involved with as far as making sure subcontractors get paid.

We are aware of those concerns, but our focus in our work on Katrina contracting is basically we were going out to see to what degree can you document how different businesses, including small businesses and different categories of small businesses, are participating in Federal contracts. At the prime contract level, there is data issues, but we could address that.

At the subcontract level, it gets to the accountability issue to a large degree. If you don't have data being put into the system as far as what those responsibilities are, that it is just going to be difficult to demonstrate and there is going to be lack of transparency as far as what that participation is. Just knowing the condition, as far as what is that participation, is very important to be able to assess. How effective are the efforts made by the various agencies in providing opportunities for small businesses, for small disadvantaged businesses, women-owned businesses, etc?

Mr. CLAY. Although those documentation issues could be addressed if you follow the example of the Census Bureau and write them into the contracts of the prime and the subs, correct?

Mr. SHEAR. Yes, it would be writing it into the contracts and having the mechanism through internal mechanisms the agencies have, the Federal procurement data system and then the system that the contractors use to report to make sure that you are holding them accountable for what they are responsible to do.

Mr. CLAY. So to hold them accountable would be through incentives. Through payment incentives, I suspect.

Mr. SHEAR. It can be through payment incentives are among the types of actions that contracting agencies can take when prime contractors do not perform, including not performing on commitments in subcontracting requirements.

Mr. CLAY. I see. Thank you, Mr. Shear.

Mr. Jenkins, you cited the Small Business Procurement scorecard as a tool that is used to measure a Federal agency that was to provide opportunities to small businesses in the Federal marketplace. Can you tell the subcommittee how the following agencies scored on the most recent scorecard? There are three of them: Department of Commerce, GSA and GPO.

Mr. JENKINS. I don't have those actually with me. I believe we can get that information to you.

We have actually listed all 24 of the CFO agencies and given two scores, one as the progress based on their achievement against the actual goal, the numeric goal. Then we required each of the agencies to submit a plan as to how they were going to improve, and then we rated that, those particular plans. So I can get that to the committee.

Mr. CLAY. OK. I would appreciate it if you could.

One last question for Mr. Martoccia. DCMA has completed 94 compliance reviews. What has the review revealed so far about the difficulties that minority-owned businesses encounter as subcontractors under DOD?

Mr. MARTOCCIA. Well, one of the issues is assuring that our large prime contractors provide those opportunities to the small and the minority small businesses. So looking at the statistics, there needs to be some work done with regard to assuring that the opportunities in the contracts improve over the course of the next year or two.

Mr. CLAY. Would it be helpful to follow the example of the census and write in specifics into prime contractors' and subcontractors' contracts.

Mr. MARTOCCIA. Well, we have a comprehensive subcontracting plan for our major subcontracts, but for the individual contracts that over $500,000, the contracting activity can negotiate whatever provision they would like to. If the customer considers meeting the small business goals important, the contractor is going to deliver. So it is a matter of communicating the expectations of the prime contractor with regard to the small business participation.

Mr. CLAY. But it also indicates that you need to have a stick too in order to enforce it.

Mr. MARTOCCIA. You can negotiate an incentive. Yes, you can do that.

Mr. CLAY. All right. Thank you.

Mr. Chairman, I yield back.

Mr. TOWNS. Thank you.

Let me just say that the SBA Inspector General reported that in fiscal year 2005, 50 percent of the dollars obligated against 8(a) contracts went to 1.7 percent of 8(a) firms and over 70 percent of the eligible firms received no contracts and no benefits at all.

When they go through this long certification process, they spend their money going through all of this, and then at the end there is nothing? That is a very frustrating thing. I think somewhere along the line, this has to be fixed.

This is a country where we can put a man and a woman on the moon, and we can't even fix a program to be able to give people contracts at the end after they go through the whole process, and that can be an expensive process for them. That costs money.

I really want you to think about this and let's see if we can't come up with a way. We are willing to participate in that process. I know you don't want us to get our noses under the tent—I understand that—Members of Congress. I know that.

I understand that, but I am going to say to you we are not going to go away. There are just too many people complaining about the fact that this is not working, and we need to fix it. We look to you to provide that leadership and to fix it, really, because there are

just too many people out there being hurt and being frustrated, and it just should not happen.

Any other further questions?

Let me thank all of you for your testimony. I think we agree on the fact there is a problem and that the problem must be fixed. Thank you so much for your testimony.

I call the second panel to come forward. As the first panel, we swear our witnesses in.

[Witnesses sworn.]

Mr. TOWNS. Let me just briefly introduce our witnesses.

Michael Barrera is president and CEO of the U.S. Hispanic Chamber of Commerce where he is responsible for increasing business opportunities for Hispanic entrepreneurs. He was formerly the National Ombudsman for the Small Business Administration. Welcome.

Damon Kinebrew is the Treasurer of the Association of Minority Enterprises of New York [AMENY], where he is dedicated to increasing public contracting opportunities for minority and women-owned businesses. It is good to have you.

Allegra McCullough is the former Associate Deputy Administrator for Government Contracting and Business Development at the Small Business Administration and is now a consultant on economic and business development. Welcome.

We have Mr. Anthony W. Robinson who has served as president of the Minority Business Enterprise Legal Defense and Education Fund for the past 23 years. Mr. Robinson has engaged in activities on behalf of minority business enterprises that have been comprehensive in nature including litigation, testimony before legislative bodies, legal guidance and technical assistance for local, State and Federal agencies.

Let me say that your entire statement will be placed in the record. If you just could summarize within 5 minutes which will allow us the opportunity to raise some questions with you, we would appreciate it.

There is a clock there. Just in case you might not be familiar with it, it starts out green and then it turns to yellow which is saying sum up. Then it turns red and that says shut up. [Laughter.]

Mr. Barrera, we will start with you and come down the line.

STATEMENTS OF MICHAEL L. BARRERA, PRESIDENT AND CEO, U.S. HISPANIC CHAMBER OF COMMERCE; DAMON KINEBREW, TREASURER, ASSOCIATION OF MINORITY ENTERPRISES OF NEW YORK; ALLEGRA F. MCCULLOUGH, FORMER SBA ASSOCIATE DEPUTY ADMINISTRATOR, GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT; AND ANTHONY W. ROBINSON, PRESIDENT, MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE AND EDUCATION FUND

STATEMENT OF MICHAEL L. BARRERA

Mr. BARRERA. Chairman Towns, Ranking Member Bilbray, members of the committee, distinguished panelists and staff, my name is Michael Barrera, and I am the president and CEO of the U.S. Hispanic Chamber of Commerce. I am proud to join you today to offer testimony on SBA's 8(a) business development program and

other contracting programs designed to assist small and disadvantaged business owners in accessing the Federal marketplace.

Only 18 percent of businesses in this country are owned by minorities. This number stands in sharp contrast to the 32 percent of the population that minorities represent.

Even more revealing is the vast disconnect between gross sales and receipts of minority and non-minority businesses. The average gross receipts of non-minority firms is $448,000. Minority companies earn $162,000 per firm.

Clearly, Government agencies must bring the minority business community into full participation in the national economic system. Unfortunately, the efforts to streamline the SBA in recent years through budget cuts and personnel reductions has caused SBA to be less effective than it could be in serving small businesses.

While there is no shortage of potential improvements to existing small and disadvantaged businesses, I will briefly describe three critical improvements that can be made. Please refer to my written testimony for more recommendations.

First, USHCC recommends that contract bundling be restructured so that Federal agencies only use it when absolutely necessary as in the case of national emergencies such as 9/11 and Katrina. Also the definition of bundling should be revised to ensure that small contracts that were previously performed by small businesses not become part of bundled contracts.

Bundled contracts by their very nature are too large for small businesses to compete for, therefore, stripping small and minority business of the opportunity to serve as prime. It is also well established that Federal agencies bundle contracts mostly for administrative convenience and not necessarily for cost savings. In fact, cost savings achieved through bundling have not been satisfactorily demonstrated by the Federal agencies.

Second, it is essential that significant improvements be made in how primes treat subcontractors on Federal contracts. Large Federal contractors often do not comply with the legal requirement to include small and minority businesses in their subcontracting programs.

Federal contractors often engage in bait and switch tactics. The prime secures a quote from a minority contractor and incorporates that price into its prime contract. Later, after winning the prime contract, the prime rebids the subcontract to give the work to other companies rather than the minority subcontractor included in the original bid. Clearly, these types of practices need to be eliminated.

Additionally, new approaches need to be utilized to induce prime contractors to utilize small and minority businesses in their subcontracting. The USHCC recommends a combination of negative and positive inducements as those described by the census.

For example, primes that fail to achieve their subcontracting goals should be penalized in their award fee. However, primes that do accomplish their goals could receive extra award fees. In any event, there needs to be far more oversight on this particular subject.

Last but not least, there is a need to reform Alaska Native Corporations [ANCs]. In recent years, the participation by ANCs in the SBA 8(a) program has become troubling.

ANCs were created in 1971 by Federal law as part of the Alaskan Native Claims Settlement Act. Contrary to popular belief, ANCs are not necessarily small, economically disadvantaged tribal businesses. Most ANCs are very large businesses with multiple divisions and subsidiaries, billions of dollars in revenues, thousands of employees and offices all over Alaska, the United States and, in some cases, all over the world.

Through special amendments to the original 8(a) legislation, ANCs have been given a host of special procurement privileges. Those special privileges led GAO to conclude that Federal agencies are favoring ANCs over other 8(a) minority and small businesses.

GAO also reports that Federal agencies favor ANCs because they can more readily meet their small business contracting goals through large ANC contracts. Just the numbers we saw today from 2001 to 2006, ANC contracts went from 4 percent of 8(a) contracts to 8 percent and their actual contracting dollars more than quadrupled.

The USHCC believes that these ANC special privileges go far beyond the intent of the program and have limited competition while undermining the SDB contracting goals developed by Congress. We believe that there should be a level playing field among all firms participating in the 8(a) program. To that end, we recommend that Congress make legislative changes to the 8(a) program so that ANCs are treated just like the rest of the firms participating in the 8(a) program.

Chairman Towns and members of the subcommittee, there is great need for improvement in our Nation's procurement regulations in order to improve access to small and minority firms. The USHCC stands ready to lend any assistance Congress may need toward implementation of these recommendations contained in this testimony.

Again, thank you for the opportunity to share our views with you today, and I look forward to any questions.

[The prepared statement of Mr. Barrera follows:]

UNITED STATES HISPANIC CHAMBER OF COMMERCE
TESTIMONY – PRESIDENT & CEO MICHAEL L. BARRERA
HOUSE GOVERNMENT AFFAIRS SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION AND PROCUREMENMT
SEPTEMBER 26, 2007, 2:00PM
2154 RAYBURN HOUSE OFFICE BUILDING

Chairman Towns, Ranking Member Bilbray, Members of the Subcommittee, distinguished panelists, and staff,

My name is Michael L. Barrera and I am the President & CEO of the United States Hispanic Chamber of Commerce. The USHCC is the largest advocate for America's 2 million Hispanic-owned businesses and represents over 200 chambers nationwide.

I am proud to join you today to offer testimony on the Small Business Administration's 8(a) business development program and other contracting programs designed to assist small and disadvantaged business owners in accessing the federal marketplace. Indeed, I was proud to serve an appointment of this administration as the SBA's Ombudsman as well as Acting Deputy Administrator for Government Contracting and Business Development and believe that the views of my organization are realistic and representative of the experiences of many minority business owners.

As we all know, the Small Business Administration (SBA) is one of the key Federal agencies assisting small and minority businesses in securing Federal government contracts and providing them access to capital for business development. Over the past several decades, the SBA has made great strides in fulfilling its commitment to small businesses around the country. This includes overseeing the Federal government's goal of 23% participation in purchases of goods and services from the small business community and procured by the Federal government. Unfortunately, a host of challenges remain with respect to small business development.

It is encouraging to see Members of Congress renewing their focus on small business issues, including looking into reforms critical to the future of the SBA. With pending legislation in both chambers, it is a positive sign that there is both recognition of the challenges confronted by small business and the recognition that there is room for improvement. Senator John Kerry, Chairman of the Senate Committee on Small Business and Entrepreneurship, recently held a hearing on Minority Entrepreneurship. This hearing brought to light some of the difficulties minority businesses face in the competitive contracting and global market.

Chairman Kerry's opening statement summed up the situation well: "The potential for small business growth and entrepreneurship has not been fully tapped, and there are barriers to entry that continue to exist." It is these barriers that must be addressed in order to have an effective reform of the SBA's programs.

The USHCC believes that one of the nation's greatest assets is our diversity. Yet, only 18% of businesses in this country are owned by minorities. This number stands in sharp contrast to the 32% of the population that minorities represent. Although Hispanics constitute 13.4% of the

population of this country, Hispanic-owned businesses represent only 7.0% of the nearly 22.5 million privately held businesses in the United States. Even more revealing is the vast disconnect between the gross sales and receipts of minority owned firms and those of the non-minority businesses. The nation's 22.5 million businesses grossed $8.78 trillion in revenues in 2002, an average of $391,000 per firm. Unfortunately, there is a large disparity between the average gross receipts of non-minority held firms - $448,000 per firm - and minority firms - $162,000 per firm. This clearly indicates that critically important agencies, such as the SBA, must bring the minority business community into full participation in the national economic system.

In 2007, Mr. Bill Miera, a board member of the U.S. Hispanic Chamber of Commerce, testified before the Senate Committee on Small Business and Entrepreneurship on problems that small and minority businesses are experiencing with the SBA and the 8(a) Federal contracting program.

In his testimony, Mr. Miera recounted his own experiences in the Federal contracting arena. In the course of its development, Mr. Miera's firm - Fiore Industries of Albuquerque, New Mexico - won two Federal Air Force contracts as prime contractor. He explained to the Committee that, in subsequent years, "High-level decision makers within the agency (the Air Force) decided to bundle our contract...and we were forced to work with the new prime contractor as a subcontractor. Then, we were entirely cut out of the picture by the prime contractor." Ultimately, it was this bundling decision by the Air Force that almost forced Mr. Miera's company out of business.

In recent years, when Mr. Miera attempted to secure the assistance of the local SBA office on various issues related to the development of his business, he was told that budget cuts, personnel downsizing, and transfers of field personnel to the SBA central office transfers made it impossible for SBA to render the requested technical assistance. Mr. Miera's story is the tip of the iceberg with the respect to problems of contract bundling and the lack of adequate SBA support. Mr. Miera's experience represents dozens of others just like him, who were also provided inadequate assistance by the SBA due to budget cuts and personnel downsizing.

Dr. Wainwright, Vice-President of NERA also testified before the Committee. Dr. Wainwright highlighted numerous issues concerning discrimination against minority-owned businesses. Based on his longitudinal studies, Dr. Wainwright demonstrated the continuing effects of discrimination on minority-owned firms in the national marketplace. Specifically, minority-owned firms were more likely to report that they did not apply for loans because they felt the loan would be denied. In fact, Dr. Wainwright pointed out that minority owned firms were far more likely to be denied loans than non-minority owned firms. In addition, those minority-owned firms who did receive loans were routinely charged higher interest rates.

Furthermore, according to Dr. Wainwright, the level of discrimination in applying for credit has remained constant in the past two decades. These points led Dr. Wainwright to conclude that: "discrimination in business transactions is indeed deeply rooted in the American economy."

The efforts to streamline the SBA in recent years, through budget cuts and personnel reductions, has caused SBA to be less effective that it could be in serving the country's small businesses. It is clear that the SBA's programs need to be scrutinized carefully by the Congress so as to make them more effective.

The SBA has many programs that are intended to promote small and minority businesses and enhance their ability to achieve success in the Federal procurement marketplace. Several SBA programs help minority businesses "start, grow, and succeed" as the SBA's slogan reads. Unfortunately, growth and success is not the case for many minority-owned businesses. By carefully examining SBA programs, Congress can pass legislation that would make SBA more effective in supporting the growth and development of small and minority businesses throughout the country. I will now address a few specific problem issues that persist in order to achieve these goals.

Contract Bundling

Over the past decade, as a result of procurement reform and due to budget cuts and personnel reductions, contract bundling has been pursued aggressively by the Federal agencies. Due to the fact that bundled contracts by their very nature are too large for small businesses to compete for, bundling strips small businesses of opportunity to serve as prime contractors. Contract bundling disproportionately affects small businesses by reducing their access to prime contracts in the Federal marketplace. The impact on small businesses is tremendous when a contract is bundled. It is estimated that for every 100 contracts aggregated into a bundled contract, 106 individual contracts are no longer available to small businesses.

At the present time, contract bundling is the preferred method of contracting by most Federal agencies. Rather then being viewed as the preferred method of contracting, Federal procurement policy needs to change so that contract bundling is reduced to an absolute minimum. It is well established that the Federal agencies bundle contracts mostly for administrative convenience and not for cost savings. In fact, cost savings achieved through bundling have not been satisfactorily demonstrated by the Federal agencies. Federal agencies must be instructed to use contract bundling only if absolutely necessary, as in the case of national emergencies, such as 9/11 and Katrina. As a matter of Federal procurement policy, bundling should be the contracting method of last resort, not the contracting method of first resort. The definition of bundling should be revised to ensure that small contracts that were previously performed by small businesses do not become part of bundled contracts.

Subcontracting

While contract bundling is causing sufficient harm to small and minority businesses, large Federal contractors often do not fully comply with P.L. 95-507, the law which requires Federal contractors to include small and minority businesses in their subcontracting programs. Tactics used by large Federal contractors to thwart the intent of P.L. 95-507 include "bait and switch" tactics. In the "bait and switch" approach, the prime secures a quote from a minority subcontractor and incorporates that price in its prime contract bid. Later, after winning the prime contract, the prime contractor re-bids the subcontract and gives the work to other companies rather than the minority subcontractor that submitted the bid that the prime used in submitting its bid. Clearly, these types of practices need to be eliminated.

In addition, new approaches need to be utilized to induce prime contractors to utilize small and minority businesses in their subcontracting. It is clear that additional incentives and disincentives are required other than assessing punitive damages on prime contractors that don't achieve their subcontracting goals. Despite punitive damages being on the books for over 20 years, USHCC knows of no single instance wherein this approach has been used. Therefore, it is totally useless. USHCC recommends a combination of negative and positive inducements. Prime contractors that do not achieve their subcontracting goals, for example, could be assessed a penalty in their award fee. Prime contractors that do accomplish their subcontracting goals, on the other hand, could receive extra award fee. In all instances, however, there needs to be far more oversight with respect to the extent to which prime contractors meet their subcontracting goals.

8(a) Net-Worth Ceilings

The net worth limit (currently $250,000) is a key determinate in establishing a firm's acceptance into the SBA 8(a) program. Presently, personal net worth of the owner of the applicant company cannot exceed $250,000 for entry into the 8(a) Program. In addition, net worth cannot exceed $750,000 during the 9-year 8(a) term. If the owner's net worth exceeds $250,000 upon application for the 8(a) program, the firm is denied acceptance into the program. If the net worth of an 8(a) company owner exceeds $750,000 during its term in the 8(a) program, the business is removed from program.

USHCC's position is that the net worth limitation of $250,000 for entry into the 8(a) program is far too low. This results in only the weakest firms being allowed into the 8(a) program. In addition, the purpose of net worth ceiling is for determining socio-economic disadvantage for purposes of entry into the 8(a) program. Net worth limits should not be used as a condition for participation during the program. The purpose of the 8(a) program is to build strong companies whose owners have strong net worths. That makes them bankable so that they can finance the growth and development of their companies. Therefore, there should be no limitations on personal net worth of the business owner while a firm is participating in the 8(a) program. USHCC believes the same net worth principles should apply to the SDB subcontracting program.

Sole-Source Ceilings

Firms participating in the 8(a) program are limited in the size of contracts they can receive on a sole-source basis. For the past two decades, the sole-source ceiling for service contracts has been $3 million and the ceiling for sole-source manufacturing contracts has been $5 million (the ceilings were recently raised by SBA to $3.5 and $5.5 million). In the present era of large, multi-year IT, environmental remediation and base maintenance contracts, these ceilings are wholly inadequate.

The sole-source ceilings established by SBA 20 years ago were arbitrary when originally set. They were not based on any industry analysis or any other such factors. In addition, the ceilings were set with no consideration for inflation, industry trends, or the changing procurement practices of the Federal government. In the intervening years, there has been massive procurement reform in the Federal government that has resulted in the use of large, multi-year

contracts that were never envisioned when the 8(a) sole-source ceilings were originally established by SBA.

The sole-source ceiling for all 8(a) contracts needs to be raised to $10 million. In addition, for contracts in areas typified by large, multiyear contracts (IT, environmental remediation and base maintenance), the ceiling needs to be far higher. SBA needs to be directed by Congress to establish far higher sole-source ceilings for the 8(a) program and to conduct a study so as to determine, industry-by-industry, what those sole-source ceilings should be.

USHCC would wholeheartedly support a legislative effort that establishes industry-specific sole-source ceilings. For example, IT systems integration contracts are very large and the 8(a) sole-source ceiling for such contracts should reflect the high dollar value of these contracts. Sole-source ceilings should also be higher in other industries that are characterized by large dollar, multi-year contracts, such as the high-tech manufacturing, telecommunications, facilities management, and environment remediation. USHCC supports a sole-source ceiling of $25 million for these industries.

Access to Capital

The number one problem reported by minority business owners is access to capital, whether that is access to SBA guaranteed loans, or discrimination by their local lending institutions. SBA's flagship loan programs are the 7(a) and 504 loan program. The 7(a) loans guaranteed by SBA are basically for operating capital. In 2006, the 7(a) program loaned $14.5 billion to small businesses. The 504 loans, on the other hand, are designed to help small enterprises acquire plant, basic equipment and machinery.

The SBA Microloan program serves a deserving and otherwise un-served or (or substantially under-served) sector of the economic community. That is extremely small businesses in start-up mode in economically disenfranchised parts of the country. For this segment of the economic community there are few other avenues for access to capital to start or grow their businesses. According to the Senate Small Business Committee, the Microloan program has made over 70,000 loans over the years, and that has impacted thousands of employees in low income areas of the country who would otherwise not have jobs. Last year (2006), 2,500 small businesses received $32.4 million in Microloans nationwide.

One-in-six employees in this country work for a micro enterprise. The micro-enterprise sector in the economy is far larger than many would believe. This is a vital segment of our economic community that needs to be served. The historic repayment rate of the Microloan program is on a par with the regular SBA loan programs, despite the fact that the Microloan program serves entrepreneurs that are the poorest credit risks. Therefore, it is wholly appropriate to expand the reach of the Microloan program.

Price Evaluation Adjustment

Price Evaluation Adjustment provides a 10 percent variance in the procurement submission of a SDB in order to promote SDB contracting. The authorization for use of PEA expired for all agencies except the Department of Defense (DOD). The use of the PEA at DOD was significantly weakened by a congressional amendment sponsored by Senator Santorum several

Congresses years ago. This language prohibited the use of the PEA at DOD as long as the department met its 5 percent SDB (Small Disadvantaged Business) contracting goal. Consequently, the PEA authority has not been used at DOD for several years because DOD meets the 5 percent requirement in its aggregate contracting.

The USHCC strongly supports a reauthorization of PEA across all agencies in order to enhance SDB contracting in the federal marketplace. We are further concerned that the Department of Defense (DOD) does not meet the 5 percent SDB goal in all industries, nor at all of its procuring activities. There are numerous industries, such as IT, telecommunications and electronics, wherein DOD is substantially underutilizing SDBs. The USHCC believes the PEA should be used in a targeted manner by DOD to ensure that SDBs are being sought out for participation in these areas and not just concentrated in specific lower technology fields (e.g., janitorial, landscaping, data entry, etc.).

In addition, whereas DOD is meeting the 5% SDB goal in the aggregate, there are numerous DOD buying activities and installations wherein the 5% goal is not being met. The USHCC believes that DOD should identify the specific installations and buying activities that are not meeting the 5% SDB goal and issue them appropriate directives for the use of the PEA to assist them in meeting the 5% goal. To those ends, the USHCC supports the use of the SBD PEA at DOD: 1) For specific industries wherein DOD has not met the 5 percent SDB contracting goal, and, 2) At specific DOD installations and buying activities that have not met the 5 percent SDB contracting goal.

Alaska Native Corporations

In recent years, the participation of Alaskan Native Corporations (ANCs) in the SBA 8(a) program has become troubling. What started out some 20 years ago as a program to create jobs in impoverished tribal communities in Alaska has turned into a sole-source contracting program of grossly exaggerated proportions that is out of control. More importantly, it leaves small businesses at an unfair disadvantage.

ANCs were created in 1971 by Federal law as part of the Alaskan Native Claims Settlement Act. Contrary to popular belief, ANCs are not small, economically disadvantaged tribal businesses. Most ANCs are very large businesses, with multiple divisions and subsidiaries, billions of dollars in revenues, thousands of employees, and offices all over Alaska, the United Sates and, in some cases, all over the world.

Through special amendments to the original 8(a) legislation, ANCs have been given a host of special procurement privileges. ANCs, for example, may secure 8(a) sole-source contracts of unlimited size. There are many 8(a) sole-source contract awards to ANCs of $100 million, $250 million, $500 million, $1 billion and even $2 billion. ANCs are receiving multiple billions of dollars in 8(a) sole-source contract awards per year.

There is no limit on how many 8(a) sole-source contracts ANCs can secure. There are no limits on the aggregate dollar value of ANC 8(a) sole-source contracts. Unlike all other 8(a) firms, individual ANCs can have multiple 8(a) companies under their dominion that are all entitled to

8(a) sole-source contracts of unlimited size. Small business size standards don't apply to ANCs (the way they apply to all other small businesses, including Tribally-owned 8(a) firms). Net worth limits that apply to all other 8(a) firms don't apply to ANCs.

Unlike all other 8(a) firms, ANCs don't have to secure any contracts competitively during their 8(a) tenure. In fact, 100% of their business can be 8(a) sole-source contracts. Unlike all other applicants to the 8(a) program, ANCs (and their 8(a) subsidiaries) do not have to prove economic disadvantage. Whereas, the economic disadvantage criteria for entry into the 8(a) program for non-ANCs is a net worth of no more than $250,000, an ANC with $1 billion in revenues can participate in the 8(a) program. Unlike other 8(a) firms, ANCs are able to remain in the 8(a) program indefinitely through the formation of succeeding generations of new 8(a) businesses.

GAO reports that Federal agencies are favoring ANCs over other 8(a) and small businesses because they can contract with ANCs quickly and easily. GAO also reports that Federal agencies favor ANCs because they can more readily meet their small business contracting goals through large ANC contracts.

We are informed by USHCC member companies that some Federal agencies are bundling work formerly performed (or that could be performed) by local small businesses into large, multi-year contracts for ANCs. It is our belief that these trends are having serious adverse consequences on local small businesses, 8(a) companies, and firms in other socio-economic programs (e.g., HUB Zone, SDVets, Woman-owned, etc.).

We believe that these ANC special privileges go far beyond the intent of the program and have limited competition while undermining the SDB contracting goals developed by Congress. USHCC's policy position is that there should be a level playing field among all firms participating in the 8(a) program. To that end, we recommend that Congress make legislative changes to the 8(a) program so that ANCs are treated just like all the rest of the firms participating in the 8(a) program.

Chairman Towns and members of the Subcommittee, there is a great need for improvement of our nation's procurement regulations in order to improve access to small and minority firms. The United States Hispanic Chamber of Commerce stands ready to lend any assistance you may need towards implementation of the recommendations contained in this testimony.

Again, thank you for the opportunity to share our views with you today and I look forward to any questions.

Mr. TOWNS. Thank you very much.

Mr. Kinebrew.

STATEMENT OF DAMON KINEBREW

Mr. KINEBREW. Mr. Chairman and fellow members of this distinguished committee, good afternoon.

I am Damon Kinebrew. I reside in Brooklyn, NY. I am here as the director of programs for the Association of Minority Enterprises of New York.

Mr. James Hayliger, II was unable to be here today. Therefore, I received the mission. It is an honor and a privilege to appear before you today to share some of my views and the views of the Association of Minority Enterprises of New York in the area of procurement.

The hurdles facing most small and minority enterprises are the lack of working capital, the lack of contracting opportunities and the lack of strong management skills.

Now let us examine the lack of working capital and offer some possible solutions.

By the way, I am keeping my eye on this clock, sir.

The small business should have some 60 to 90 days of liquid resources available to finance any major project for that period of time and a proper documentation and the methods of generating all change orders and the methods and time of payment. The effect of a default on a project and the aftermath of liquidated damages results in a negative impact on the small business resources.

For example, in 2003, a small contractor in the New York area received a contract to finish a project for about $5 million. It was one of the largest contracts they had ever been awarded, and the contract was running approximately 4 weeks behind schedule. It was a construction-related contract.

The GC suggested to this small business concern that they needed a change order to get back on schedule. They thought they were working well. They accepted terms and conditions verbally of the change order and got to work.

Well, the change order wound up being about $600,000 worth of work, and the small business concern attempted to collect their money for the change order. The prime contractor said, well, you have to prove that you spent this much money and all these conditions and agreed to pay $100,000 of the $600,000 change order worth of work.

Well, that wasn't forthcoming, the prime contractor suggested to the minority business, well, why don't you just take me into court?

Well, we can't afford to go into court and wait a year or 2 years to collect a half million dollars. That impacts greatly our cash-flow and our working capital on our jobs.

Therefore, this small business concern went from 42 employees down to 2. This happened within the last few months.

Now let's look at the contracting opportunity that are available to the small and minority business. Numerous projects and contracting awards are done on a sole-source basis. No solicitation would be given or issued for this type of an opportunity.

Here, again, this type excludes and is a deterrent to the small business enterprise and lacks the consideration. This process is wrong and should be denounced whenever and wherever detected.

There was another company who got a chance, who thought they saw an opportunity to bid on the AirTrain in the New York area when we were building the AirTrain. The company felt that it was a minority firm. They had the ability to build the AirTrain cars, store them and deploy when the Port of Authority in New York and New Jersey called for them to be deployed.

The firm was denied the opportunity and most certainly complained about the denial of the opportunity. When we complained to the officials of the State of New York, the government officials of the State of New York, their response was, well, didn't you bid on it? The minority firm's response was, no, we did not bid on it.

The minority was sort of reprimanded by the State officials of New York, who said, well, in order to win that kind of business, you have to bid on it.

Well, the response of the minority firm was that there was no solicitation. It was a sole-source contract to a firm from our neighboring country, out of Canada, who had no requirements. Mind you, the small business or the minority business concern was within 11 miles of the airport, who had the capability of doing the job but was denied the opportunity.

Now let's move on. The small business enterprise should seek opportunities to develop strong management skills for their companies to make sure that each staff member is provided with training time in their areas and responsibility of the senior management to ensure that the continuing education is available and the upgrades to sharpen their skills.

It is the view of most small business advocate organizations that the 8(a) program should be expanded to include larger numbers of small and minority businesses participating.

The phase-out of the 8(a) program should emphasize with some degree of regularity once or twice a month by the project administrator. In addition, graduation from 8(a) program should be maintained. However, early on in the life cycle of the program, the company should be informed that there will be a graduation, that the time will be running out.

Programs of the Small Business Administration, the MBDA type programs offer management services and technical assistance through contracts. This was some time ago, but it was quite effective.

Mr. TOWNS. Mr. Kinebrew, can you sum up?

Mr. KINEBREW. Yes, sir.

We will move rapidly to the summation. We think that if the country decides that they are going to make a full emphasis on minority business participation, they should enforce some of the recommendations they have heard here today.

My complete written testimony is here, and I am prepared to answer any of your questions that you may ask. Thank you very much.

[The prepared statement of Mr. Kinebrew follows:]

STATEMENTOF DAMON LEE KINEBREW

AT CONGRESSIONAL HEARING ON FEDERAL CONTRACTING
BEFORE THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT
SEPTEMBER 26, 2007

Good afternoon, I am Damon Lee Kinebrew, I reside in Brooklyn, NY; I am here as the Director of Programs for the Association of Minority Enterprises of New York. Mr. James Heyliger II was unable to be here today; therefore I received the mission.

It is an honor and a privilege to appear before you today and share my views and the views of AMENY in the area of small and minority business procurement.

The hurdles facing most small and minority business entrepreneurs are the lack of working capital, the lack of contracting opportunities and the lack of strong management skills.

Now let us examine the lack of working capital and offer possible solutions. The S/MBE should have 60 to 90 days of liquid resources available to finance the project for that period of time; the proper documentation and method of all change orders and the method and time of payment. The affect of a default on a project, and the aftermath of liquidated damages results in the negative impact on the small business resources. [**CASE STUDY** of working capital]

Contracting opportunities are not always available to the S/MBE. On numerous projects contracting awards are done on a sole source basis. No solicitation would ever be issued for this type of opportunity, here again this type of exclusion is detrimental to the small business entrepreneur who lacks those insider connections. This process is wrong and should be denounced whenever detected. [**CASE STUDY** of contracting opportunities]

The small business enterprise should seek every opportunity to develop strong management skills for their company. Make sure that each staff member is provided with training time in their job areas. Responsibility is that of senior management to ensure that training and continuing education and time is allotted for the member to upgrade and sharpen their skills.

It is the view of most small minority business advocate organizations that the 8a Program should be expanded to include participation of larger numbers of small and minority businesses. The phasing out of the 8a Program should be emphasized with some degree of regularity, i.e. once or twice a month and this should be done by the contract administrator. In addition, the graduation aspect of the 8a Program should be maintained and emphasized early on in the life cycle of the program.

The solution to most of the hurdles facing small and minority business entrepreneurs is the lack of an efficient MBDA program of the Small Business Administration. The MBDA program offered management services and technical assistance contracts based on business census statistics of the U.S. Department of Commerce and today, they need to reinstitute the practice of awarding contracts for MSTA services. There continues to be a need for sources of working capital and bonding. Both working capital and bonding assistance can be arranged through the MSTA providers; the return of the MESBIC program should also be reinstituted. [**CASE STUDY** of MSTA and MESBIC programs]

If the federal government fails to recognize the need to remove the hurdles facing small and minority business entrepreneurs in the area of procurement, the minority business community will continue to see less than 5%, collectively, of the contracts awarded by the public sector in this country.

I would like to thank the National Association of Minority Contractors, New York State Association of Minority Contractors and, the Association of Minority Enterprise of New York for providing information and anecdotal examples of the hurdles and proposed solutions to the procurement cycle of small and minority business.
THANK YOU.

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Mr. TOWNS. Let me add that your entire statement will be included in the record.

Ms. McCullough.

STATEMENT OF ALLEGRA MCCULLOUGH

Ms. MCCULLOUGH. Chairman Towns, Ranking Member Bilbray, thank you so much for providing me with an opportunity to speak to you today.

I will be as brief as possible. I am going to skip some of this for the sake of time.

In spite of the various contracting and business development programs offered by the Federal Government for the purpose of assisting small and minority businesses, much is required in order to truly attain the level of procurement awards that the Federal Government is capable of awarding.

Program language, outdated and inappropriate for the 21st century, that limits growth, sets difficult employment requirements and restructures the mission of a program by creating special groups within it cripple the ability of minority businesses to progressively compete.

These structural weaknesses, combined with the lack of enforcement of some policies such as subcontracting and secretarial appeals, increasing contract size, costly and lengthy protest processes, a lack of commitment on the part of some senior agency representatives to creating a diverse supplier base and inadequate guidance being provided to prepare minority businesses to compete worldwide, exacerbate the problem of equal access.

On the issue of increasing contract size, contracts are indeed getting larger and larger, requiring minority-owned businesses to create larger teams in order to compete. While detrimental to small businesses in general, it is particularly detrimental to minority businesses as creating teams and joint ventures can be costly.

Much of contract bundling and increased size of contracts, however, is a direct result of the dwindling senior procurement work force that is not being replaced in a timely manner. Expediency rules over the development of thoughtful strategic sourcing plans that could benefit more small businesses. Many procurement opportunities must be delayed for years because of a scarce, often ill-trained, procurement work force.

A scarcity in a procurement work force also means a high probability that inadequate market research will be conducted to discern the capabilities of minority vendors, lessening the chances of opportunities being set aside for them. There is also evidence of departments within agencies that refuse to believe that small businesses, particularly minority businesses, can perform certain capabilities and, of course, there is very little evidence to justify this.

On the 8(a) business development program, it is well over 30 years old and in desperate need of examination of language, restrictions and overall program oversight.

For instance, the statement of being able to demonstrate the ability to succeed before you even become part of the program, I am not aware of any other Federal program that requires individuals seeking its assistance to demonstrate that they can succeed before they are accepted in it. The language in itself is discriminatory par-

ticularly in the case of rural applicants whose communities may not provide access to business development, financial counseling or training.

On the issue of social and economic disadvantage, while participants in the 8(a) program are required to demonstrate the ability to succeed, they are also subjected very often to harsh scrutiny in demonstrating just how disadvantaged they really are by the Offices of General Counsel and Inspector General. The scrutiny usually questions what school they attended, how they paid for college or the value of the house in which the applicants' parent currently resides.

In the case of minority retirees, retirement funds, trust funds for grandchildren could automatically remove them from the social and economic disadvantaged status without regard for the many barriers the applicants faced to reach their current status. The historic level or type of discrimination is rarely weighed if the answers given to the above questions are not satisfactory to the Offices of General Counsel and Inspector General.

I find it interesting that the history of discrimination carries less weight in admission to the 8(a) program for some groups than it does for others. The 8(a) program was created to level the playing field in Federal procurement. However, the additional perks afforded Alaska Native Corporations and Native American tribes recreates an unlevel field of opportunity and skews the minority procurement award statistics.

It is not a question as to whether either group deserves to participate in the program. It is a matter of the fact that the 8(a) program was created to address and remedy discrimination in contracting, and this creates a new dimension of discrimination.

The question of oversight is there is need for more SBA procurement center representatives for the number of existing and growing portfolios, particularly in California and Washington, DC, districts.

I am running out of time here, but what I do want you to know is that these PCRs go through as many procurement opportunities as they possibly can to break them out to see what can be actually pulled out for small businesses. When they are not reaching agreement with the contract officers, they issue what is called a secretarial appeal which stops the procurement from going any further while mediation goes on between the PCR, and technically it is supposed to go on between the SBA Administrator and the agency head.

However, I can assure you that rarely, if ever, are those secretarial appeals even seen by the head of the agency, and they are not recorded, and they are not tracked anywhere.

On other program, the HUBZone program, which was created to create jobs, requires 33 percent of the base of those employees to come from those HUBZone areas. Because they are located in areas that typically have disadvantaged individuals who may or may not have, in most cases, do not have a good work ethic, if that employment number falls below that 33 percent and that particular company is holding a contract, that contract can technically be snatched without giving that company an opportunity to recruit in order to make up for that employment base.

[The prepared statement of Ms. McCullough follows:]

ALLEGRA F. MCCULLOUGH & ASSOCIATES, L.L.C.

450 Massachusetts Av, NW, Suite 914, Washington, DC 20001, 202-441-8757, e-mail: allegramccullough@allegramccullough.com

September 20, 2007

The Honorable Edolphus Towns
Chairman
Subcommittee on Government Management,
Organization and Management
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Towns:

As requested, I am responding to your request to participate in the Subcommittee hearing entitled " Federal Contracting: Removing Hurdles for Minority-Owned Small Businesses."

My testimony will be based on my current experiences as a business and economic development consultant throughout the United States and as the former Associate Deputy Associate Administrator for Government Contracting and Business Development (GCBD) at the U.S. Small Business Administration (SBA) from May 2004-October 2005 and as the former Region 3 Administrator at the SBA from October 2002 May 2004. I will also offer observations from a state point of view- in that most states observe the environment of the federal programs in developing policy and practices. I will offer this viewpoint as the former Director of the Virginia Department of Minority Business Enterprise.

We should keep in mind that the term "minority" is rarely used in the language of federal procurement policy, legislation or regulations. Federal statutory language defers to the term "disadvantaged" and any small business – may gain admission to certain business development and contracting programs based on proof of social and economic disadvantage. For the sake of this testimony requirement, I will refer to ethnic minority groups.

In spite of the various contracting and business development programs offered by the federal government for the purpose of assisting small and minority-owned businesses, much is required in order to truly attain the level of procurement awards that the federal government is capable of awarding. Program language, outdated and inappropriate for the 21st century, that limits growth, sets difficult employment requirements, and re-structures the mission of a program by creating special groups within it cripple the ability of minority businesses to progressively compete. These structural weaknesses, combined with the lack of enforcement of some policies, such as subcontracting and Secretarial Appeals, increasing contract size, costly and lengthy protest processes, a lack of commitment on the part of some senior agency representatives to creating a diverse supplier base, and inadequate guidance being provided to prepare minority businesses to compete worldwide, exacerbate the problem of equal access.

Increasing Contract Size

Contracts are indeed getting larger and larger, requiring minority owned businesses to create larger teams in order to compete. While detrimental to small businesses, in general, it is particularly detrimental to minority businesses, as creating teams and joint ventures can be costly. Much of contract bundling and the increased size of contracts, however, is a direct result of a dwindling, senior procurement workforce that is not being replaced in a timely manner by a new, well-trained one. Expediency rules over the development of thoughtful, strategic sourcing plans that could benefit more small businesses. Many procurement opportunities must be delayed by years because of a scarce, often ill-trained, procurement workforce. A scarcity in a procurement workforce also means a high probability that inadequate market research will be conducted to discern the capabilities of minority vendors - lessening the chances of opportunities being set-aside for them. There is also evidence of departments within agencies that refuse to believe that small businesses- particularly minority businesses - can perform certain capabilities. There is little if any evidence to justify this attitude.

8(a) Business Development Program

Administered by the SBA is a program that is over 30 years old and is in desperate need of examination of its language, restrictions, and overall program oversight. For instance, candidates are required to:

- ***Demonstrate "the ability to succeed***

No other federal developmental program, that I am aware of, requires individuals seeking its assistance to demonstrate that they can succeed before they are accepted in it. . The language, in itself, is discriminatory – particularly in the case of rural applicants whose communities may not provide access to business development, financial counseling or training.

- ***Social and Economic Disadvantage***

While participants in the 8(a) program are required to demonstrate the ability to succeed, they are also subjected to harsh scrutiny in demonstrating how disadvantaged they really are by the Offices of General Counsel and Inspector General. This scrutiny usually questions what school they attended, how they paid for college, or the value of the house in which the applicants' parents currently reside. In the case of minority retirees- retirement funds, trust funds for grandchildren could automatically remove them from the social and economic disadvantaged status without regard for the many barriers the applicants faced to reach their current status. The historic level or type of discrimination is rarely weighed if the answers given to the questions mentioned above are not satisfactory to the offices of General Counsel and Inspector General. I find it interesting that the history of discrimination carries less weight in the admission to the 8(a) program for some groups than it does for others.

The 8(a) program was created to level the playing field in federal procurement; however, the additional perks afforded Alaskan Native Corporations and Native American Tribes, re-creates an un-level field of opportunity and skews the minority procurement award statistics. It is not a question as to whether either group deserves to participate in the 8(a) program. Historical evidence of both groups being subjected to social and economic ills proves their eligibility;

however, allowing more growth advantages to them within this program than is afforded other groups is wrong. As the 8(a) program is currently structured, it defeats the overall intent of the program's mission – to redress and remedy discrimination in contracting – and creates a new dimension of discrimination. In fact, this new dimension of discrimination has created a wedge among 8(a) participants- creating an environment of "them" and "us", and threatens the existence of the program

- **Oversight**

There is a need for more SBA Business/Specialists/Procurement Center Representatives (PCR) for the number of existing and growing portfolios – particularly in the California and Washington, DC districts. Business development and contracting program participants are not receiving the adequate counseling/training by the SBA offices. In addition, the instruction and oversight necessary for the Mentor/Protégé Program suffers, as well. In spite of a slight increase in the number of PCRs over the last 2 ½ years, more are desperately needed. PCRs are one of SBA's hidden assets. People rarely see them, but they are the people behind the scenes whose mission is to review all procurement opportunities and to work with agency contract officers to determine the appropriate sourcing method, large, small, 8(a), Hub Zone, SDVOB, etc. The lack of PCRS means the lack of early intervention. The lack of early intervention also includes the lack of the ability to file Secretarial Appeals which would require additional analysis of sourcing decisions. As important as these appeals are, they are rarely, if ever, actually reviewed by agency heads and are not reviewed or recorded for public record, and never discussed on the senior level at the SBA.

In a number of cases, Small Business Specialists and program managers receive little direction or delayed instruction on the proper promulgation of regulations. For instance the Offices of General Counsel of both SBA and Department of Transportation (DOT) neglected to develop guidelines for the SBA and DOT field offices to promulgate ***Section 155 -Participation in Federally Funded Projects -of the Consolidated Appropriations Act of 2005*** (see attachment). Providing guidelines for the administration of this bill would have provided 8(a) participants with a streamlined mechanism for participating in federally funded state and local projects w/o having to recertify in each state in order to conduct business. The failure to provide these guidelines over a 2 ½ year period is a clear violation and acts as an enabler to a system in which burdensome federal regulations continue to create barriers and delays to obtaining procurement for 8(a) participants nationwide. I can say, with certainty that few SBA and DOT field offices are aware that the law exists.

- **Hub Zone Contracting Program**

This program requires that companies maintain a 33 % base of employees who reside in a HubZone and that the employee base must meet or exceed this percentage - especially at the time of a contract award. In that this program is designed to create jobs in economically depressed areas, using a populace that historically may not have a good work ethic often poses serious challenges to the business owners. The penalties are severe when the percentage of employees residing in Hub Zones drop. It can mean the loss of the certification and the loss of a contract without providing the owner with a trial period for recruiting and hiring new people. In numerous cases small enterprises go out of business entirely because of the difficulty in recruiting quickly within these communities.

I appreciate the analysis that this committee is conducting regarding barriers to minority business contracting. I feel that any improvement in the federal procurement policies and programs mentioned above will protect the overall integrity of federal contracting.

Thank You.

Allegra F McCullough

Allegra F. McCullough

Allegra F. McCullough & Associates, L.L.C. has received $15,000 as a sub contractor (Subject Matter Expert) over a 2-year period

Mr. TOWNS. We have to cut there, OK.

All right, Mr. Robinson.

STATEMENT OF ANTHONY W. ROBINSON

Mr. ROBINSON. Thank you very much. Mr. Chairman, Mr. Bilbray, Mr. Clay, thank you for this opportunity to speak with you all very briefly.

I too will submit my testimony that is in much greater length than what I want to address here, but I feel like Sunday morning, coming behind the line of good preachers, and I am last in line. Much of the other preachers before me have already taken much of what I wanted to say.

I specifically want to agree with Ms. McCullough, that the problem is a structural problem.

Public Law 95507 speaks to, as a goal, that the firms are to become competitively valuable, and that is why they made the 8(a) program a business development program. But over the years what they have done for many different reasons, those business development tools have been eliminated.

Thus, the tools that were envisioned when Public Law 95507 was passed by the Congress in 1980, much of that infrastructure no longer exists within SBA, and it essentially has become just a procurement program. And so, you have some real structure programs there.

In addition, and this is what my testimony will speak to, is the issue of discrimination that is still a problem in the Federal marketplace. One study called it deep and pervasive.

The Congress has an obligation, I believe, to begin to build the record on this issue of discrimination because, as you know, the Supreme Court has applied a new standard by which these programs will be tested as to their constitutionality. If the Congress has not laid the appropriate predicate to justify the need for those programs, it makes the programs vulnerable to attack.

Based on what we have already heard coming out of the U.S. Civil Rights Commission, you can see that the groundwork is being laid to attack the programs, and so I would urge the Congress to begin to look at this issue of discrimination in the Federal marketplace and begin to develop that record in that regard.

Again, the program, there are some structural issues here. If you talk, there has been discussion here about the ANC. Despite the representations of SBA, that is having an adverse impact on the other participants in the 8(a) program.

But you cannot examine or address the 8(a) program without also addressing the impact of the FARA and FASA that Congress passed in the mid-1990's to streamline the procurement process. What that set in motion was a process by which contracts will have to be bundled. When you remove personnel and you remove the process by which contracts are examined, then it leaves contracting officers with no other real option but to bundle the contracts and make the contracts larger.

You talk about small businesses availing themselves of that. It is impossible to do. And so, when we talk about the ANCs and you have to talk about and Ms. McCullough has already addressed the

issue of PCRs and the lack of enough PCRs in order to address the enormity of Federal procurement itself.

You have a couple of other barrier problems. Size standards, size standards are antiquated in today's industries. Personal net worth, you have caps particularly on minority firms as to their ability to compete in larger and larger contracts when they are artificially capped insofar as what their net worth can be.

You have spoken to the issue of subcontracting, again, another structural problem. We try to address the subcontracting plans, as I say, after the horse is out of the barn.

I would suggest that if we require subcontracting plans to be submitted at the time that they submit their proposals and, as Mr. Clay suggested, as a part of the contract, then we would be in a much better position to address the subcontracting problem than what we are now because now there is no real oversight on subcontracting plans. Nobody really is examining what is or is not happening with those subcontracting plans, and it leaves minority firms out there to be abused. That is, in fact, what is happening.

Finally, capital and access to capital, I would suggest to you that particularly access to equity capital and equity capital through the SBA can only really take place for minority firms when you have minority SSBICs that are out there that are in contact with these companies and can avail themselves of that equity capital. As of today, SBA is not certifying minority-owned SSBICs.

The SDB program is a problem. Procurement authority that Congress authorized expired almost 5 years ago, and has not been reauthorized.

Finally, 10 U.S.C. 2323, that sets a 5 percent goal on research and development dollars that should be going to historically black colleges and universities and minority institutions is not being enforced.

If these firms are going to participate in a technology-driven industry and we are not involved in the technology development and commercialization of that technology, then they will be marginal. They will continue to be marginalized even in the Federal budget.

Thank you.

[The prepared statement of Mr. Robinson follows:]

Testimony of Anthony W. Robinson, President
Minority Business Enterprise Legal Defense and Educational Fund

Before the United States House of Representatives
Subcommittee on Government Management, Organization, and
Procurement of the Committee on Oversight and Government Reform

Washington, DC
September 26, 2007

Good afternoon Mr. Chairman and members of the subcommittee. My name is Anthony W. Robinson and I'm president of the Minority Business Enterprise Legal Defense And Educational Fund, affectionately referred to as MBELDEF.

MBELDEF was founded and established in 1980 by former Maryland Congressman Parren J. Mitchell to act as a national advocate and legal representative for the minority business community. The organization has monitored barriers to minority business formation and development. We serve as a national advocate and legal representative for minority business enterprises (MBEs) by promoting policies affecting equitable and full participation of minority enterprises in the mainstream marketplace. MBELDEF works with businesses in every sector of the American economy and we work with businesses in every corner of the country. Our organization seeks to advocate on behalf of firm owners from all disadvantaged minority groups. We attempt to provide non-partisan opinions on matters affecting minority firms and small businesses in general.

I appreciate the committee providing this opportunity to come before you to represent the tens of thousands minority and small entrepreneurs who continue to rely on the federal marketplace as their primary source of opportunity.

GAINS AND SETBACKS

Since the federal government's first efforts to level the playing field on behalf of the minority business community in the 1970's there has been substantial progress. I should note that assisting minority businesses has always been a bi-partisan effort. In fact in the 1970's President Nixon was instrumental in promoting equal opportunity for minority businesses. Secretary of Labor Arthur Fletcher worked closely with Senator Ed Brookes and Congressman Mitchell to pass the earliest minority business legislation. Today, a variety of public agency and community initiatives are designed to foster fair contracting and build diversity among and between the suppliers of goods and services. It is important to note that Congressional efforts were targeted at addressing not only overt racial and ethnic discrimination, but the longstanding barriers in the marketplace that, when combined resulted in MBEs from losing contracting opportunities, regardless of how many qualified MBEs existed in the marketplace and their ability to perform the work. Congress aimed its sights on addressing the overwhelming evidence of disparity in the percentage of public contracts awarded to MBEs, an inequity which Mitchell felt was inherently a civil rights dilemma.

We now have a system where firms compete as prime or subcontractors as well as an active culture of solicitation for minority firms and obligations by prime contractors and public agencies to report their utilization. Minority firms have grown in numbers and quality. According to a recent study conducted by the Kaufman foundation, the growth among MBEs has been dramatic in actual number of employees and revenues. In fact, in some measure their growth has outpaced the growth among all firms.

However, historically and it remains a fact today, minority firms account for a disproportionately smaller share of overall business opportunities in many industry segments than do non-minority firms. According to the Milkin Institute, minority groups represent 26.1% of the population, but own only 11.6% of the nation's

businesses.[1] Minority businesses receive only 6% of total business gross receipts[2] and employ only 3% of the nation's civilian labor force.[3] Perhaps more startling is the fact that in "19 industries with the largest representation of minority subcontractors, only 3.5% of supply dollars are estimated to have gone to minority businesses."[4]

The Minority Business Development Agency, in its 2006 "State of Minority Business Enterprises" report stated that "MBEs have yet to reach parity in number of firms, gross receipts, and paid employees."[5] In summarizing the U.S. Census Bureau's 1997 Survey of Minority-Owned Business Enterprises (SMOBE) and the 2002 Survey of Business Owners (SBO).2, MBDA reported that:

> • In 2002, minorities represented 29 percent of people age 18 and older in the United States. As previously noted, MBEs represented almost 18 percent of firms that could be classified according to the race, ethnicity, or gender of ownership. They earned 8 percent of gross receipts and employed 9 percent of the people employed by these classifiable firms.
>
> • If parity had been reached, minority firms would have represented 29 percent of classifiable firms and generated comparable percentages in gross receipts and employment.
>
> • Although MBEs have not yet reached parity, the gap in the proportion of firms narrowed between 1997 and 2002. The growth rate in number of MBEs (35 percent), which is larger than the growth of the minority population (25 percent) between 1997 and 2002, has contributed, in part, to closing the parity gap in number of firms.
>
> • MBEs' gap in gross receipts and paid employees remained essentially level over the same period. While MBEs needed $1.6 trillion more (2.7 times more) gross receipts to reach parity with their population share in 1997, an additional $1.9 trillion (2.8 times more) was required in 2002.[6]

Curtailing Minority Contracting Programs Are Devastating

The plight of the minority entrepreneur is brought into stark relief when he is faced with having to survive in the marketplace without the various minority contracting programs mandated by federal state and local laws in jurisdictions across the nation. An analysis performed by the Urban Institute compared jurisdictions where race-conscious programs were in place with those without such programs. Disparity was markedly greater in jurisdictions where there were no goals program in place. (Do Minority-Owned Businesses Get a Fair Share of Government Contracts, Urban Institute, 1997). Moreover, it is clear that ending or curtailing minority contracting programs causes real and immediate harm. This was confirmed in another study conducted by the former chair of the Dartmouth College Department of Economics, Professor Blanchflower and esteemed economist and disparity study expert, Jon Wainwright.[7]

After the Supreme Court decision in Croson v. City Of Richmond (1989) and Adarand Constructors v. Pena (1995), many state and local governments eliminated programs designed to provide opportunities to MBEs.

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[1] Michael Harrington and Glenn Yago, "Mainstreaming Minority Business: Financing Domestic Emerging Markets," Milkin Institute, p.5. (1999) citing SBA Office of Advocacy, 1992 Economic Census.

[2] Minority Business Development Agency, "The New Realities for Minority Business", p. 3 (1999), quoting data provided at the 1997 NMSDC annual convention .

[3] Ibid. quoting "estimate derived from 1992 and 1997 statistics quoted by Office of Advocacy, U.S. Small Business Administration, from data provided by U.S. Department of Commerce, Bureau of the Census.

[4] Ibid, quoting the Center for Advanced Purchasing Studies (1997).

[5] Minority Business Development Agency, The State of Minority Business Enterprises, p. 3 (2006).

[6] Ibid., pp. 3-4.

[7] Blanchflower, D.G., & Wainwright, J., National Bureau of Economic Research (NBER) Working Paper, *An Analysis of the Impact of Affirmative Action Programs on Self-Employment in the Construction Industry*. Cambridge, MA: (2005, November).

Professor Blanchflower and Mr. Waingwright found that "Although Federal highway construction aid dollars increased from $14.7 billion in 1998 to $24.3 billion in 2002, and although *overall* disadvantaged business goals remained virtually constant during this time, the proportion of federal aid dollars actually awarded to such businesses declined almost 30% between 1998 and 2002." (Blanchflower and Wainwright, An Analysis of the Impact on Affirmative Action Programs in the Construction Industry, NBER, 2005).

A recent study in the state of California analyzing the impact of proposition 209, which outlawed affirmative action, observed, " during the nine years before passage of proposition 209, the percentage of awards to MBEs was 16.0 percent. However that percentage significantly fell by more than half, to 7.9 percent for the nine years after [it's] passage. Of particular interest was FY 2002. This year had the highest amount of money awarded by CALTRANS, yet it was the year that MBEs received the lowest proportion of awards. (Discrimination Research Center, "Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises", 2006).

REASONS FOR DISPARITIES

The reasons minority owned firms are not fully participating in the market are many, not least of which is discrimination. The Kaufman study cited several reasons after concluding, "the gap that exists has not in any way been caused by a lack of effort on the part of minority entrepreneurs." The first reason cited by the foundation was that "discriminatory conditions that previously existed were deep and pervasive and have not been fully reversed."

I would like to give you some examples of real business owners who have confronted discrimination. I will submit letters and e-mails providing details of these entrepreneurs' stories for the record, but in the interest of time I will provide only a short synopsis of the difficulties they have experienced. And Mr. Chairman, I would like to ask permission to submit a number of supporting documents to for the record.

- **Earl Peeks** is a young African-American entrepreneur. He is exactly the type of young businessman who should be leading the growth of minority businesses. Instead, Mr. Peeks is embroiled in a race discrimination suit against the Small Business Administration. According to Mr. Peeks, the SBA and the Small Business Investment Company have consistently discriminated against him (and others) on the basis of race. Indeed it has been alleged that 95% of SBIC's investment dollars went to white owned and managed firms between 2000 and 2004 as the result of an old boy network that is tolerated by SBA and SBIC. The SBA Inspector General identified several instances of bias and ill treatment of Mr. Peeks firm Diamond Ventures.

- **John McDonald** is an African-American expert in the world of institutional real estate acquisition. He had a contract with Domino's Pizza to acquire and build several stores. After being the only African-American to attend a Domino's convention where his work was actually featured, he received a call asking him to agree to unreasonable and unheard of amendments to his contract with Domino's. When he refused the Domino's representative told him "I don't like doing business with you people anyway" and threatened to ruin his business. In the end the ensuing litigation bankrupted Mr. McDonald. He took his case all the way to the Supreme Court where the Court ruled against Mr. McDonald saying that only his corporation, not Mr. McDonald personally, had the right to sue for race discrimination in this instance.

- **Maurice E. Coates, Jr.** An African- American mechanical contractor has experienced disparate treatment relative to the cost of materials from suppliers. Mr. Coates solicited a quote for HVAC equipment from his supplier which he submitted with his bid. The supplier, a majority company, mistakenly faxed to Mr. Coates a lower quote supplied to his majority competitor. When Mr. Coates called the supplier asking for the same price quote provided his competitor they replied," the reserved the right to provide better pricing to their better customers. With all else being equal relative to labor Mr. Coates can never be competitive if materials cost are not the same.

- **John Layman, JRL Enterprises, Inc.** A minority contractor that has experienced a common problem among minority businesses. It relates to corporations falsifying the dollar amounts reported to the federal government and others on the amount of work performed by MBE/DBE

firms. The prime contractor, Mr. Layman's customer, claimed that he had performed $3.3 million on a project that he had actually performed less than $900,000. Mr. Layman learned that this occurs often because most transit authorities do not verify figures related to work actually performed by MBE/DBE firms. The customer later retaliated by excluding his firm on a major contract that had initially included his firm on the original proposal.

- **Soo San Choi, Choi Enterprises, Inc.** An Asian-American nuclear chemist and most recently for the past twenty years a general contractor. Mr. Choi intended to use Fay Corp., a majority owned specialty contractor, as a subcontractor on a Army Corp of Engineer's project – Charleroi Locks and Dam in Western Pennsylvania. The majority company desired to use Mr. Choi as a straw man for the SBA 8(a) contract and becoming the de facto prime contractor. The minority firm complained to SBA and the Corp to no avail. Mr. Choi would receive $125,000 on a contract valued in excess of $12 million. Through various machinations and smaller majority owned smaller contractors which had worked with Fay in the past, the 5 foot 110 pound 82 year old Choi was coerced and threatened with financial ruin to complete the contract with Fay and his cohorts. Fay became the indemnifier on Choi's surety bond and attempted to include previously purchased materials to manipulate contract costs and assigned Fay employees to Choi's payroll. Mr. Choi has yet to recover financially and his physical health.

- **Charles Baker, President, MCB Lighting & Electrical, Inc. An 8(a)** and Service Disabled Veteran Firm has been acknowledged as a leader by Department of Defense in saving the tax payer money and a Federal Energy & Water Management Award. As the retired Chief of Facilities and ex-electrical Superintendent of Andrews Air Force Base responsible for all maintenance and electrical systems, he waited 2 years after he retired in accordance with rules of ethics. Mr. Baker went through the formal processes including the OSDBU Offices. He had a local squadron commander take him to the contracting commanders office to vouch for his work using alternate procurement methods because local contracting refused to give him a capability briefing for over 4 years despite multiple request.

The 8(A) Program

The Small Business Administration is specifically empowered to assist small and developing firms. Some of its guiding principles come directly from the Small Business Act, which Congress has left untouched for decades. These include the notion that business development programs are deemed essential to obtain social and economic equality for all and to improve our national economy. Tied to past discrimination, certain groups according to SBA have been, and continue to be disadvantaged.

SBA's assistance comprises three primary means – training / technical assistance, financial assistance, and contracting assistance. SBA's Small Business Development Centers (SBDCs) offer training and technical assistance to new business owners on establishing a business plan, managing finances, and obtaining funding. SBA's loan program represents the largest financial provider of U.S. businesses in the county. It serves as a guarantor for small businesses seeking loans from financial institutions. Lastly, the SBA's 8(a) program, (referencing that section in the Small Business Act), is the primary entry vehicle to government contracting for small and minority firms. 8(a) firms must have limited gross receipts and/or a finite number of employees for the firm's specific industry, and the owner must be deemed disadvantaged. Once "8(a) certified," a firm can receive sole-source contracts. Federal acquisition policies encourage Federal agencies to award a certain percentage of their contracts to what it terms small disadvantaged businesses, or SDBs. SBA has signed Memorandums of Understanding (MOUs) with 25 Federal agencies and agencies can contract directly with certified 8(a) firms.

In each Federal agency there is a designated "Office of Small Disadvantaged Business Utilization," that assists small firms obtain that agency's contracts. Like, SBA OSDBU offices also provide technical assistance and actively solicit the participation of small and minority firms.

MBELDEF HAS OBSERVED PROBLEMS THAT REMAIN IN PUBLIC CONTRACTING

1. Historically, minority business enterprises (MBEs) account for a smaller share of overall business opportunities in many industry segments than do non-minority firms. Minority groups represent 26.1% of the population, but own only 11.6% of the nation's businesses. Minority businesses comprise only 6% of total business gross receipts and employ only 3% of the nation's civilian labor force. In 19 industries with the largest representation of minority subcontractors, approximately 3.5 % of supply dollars have gone to minority businesses.[8]

2. In the U.S., MBEs—being for the most part small businesses—find it difficult to obtain working capital, credit, or project financing because of perceived or actual negative views of their creditworthiness or business expertise. Without sufficient funds, their actual capacity for projects is diminished. Many MBE owners turn to debt financing rather than capital financing for their business needs either because of lack of financial know-how of better funding vehicles, or for fear of losing control of their business should they take on partners or shareholders.[9] In addition, because MBEs lack access and reputation in the existing core of businesses, many miss out on key networking connections in the business community which would enable them to enhance their entry and exposure in mainstream markets. They also often lack sufficient staff to make these inroads or assist a business comprehend and comply with regulatory requirements.

3. Although federal government spending has increased (nearly 7 percent from 2001 to 2002), contracts to small businesses decreased by 14 percent.[10] Furthermore, a number of agencies group or "bundle" contracts together, making it difficult for MBEs and other disadvantaged businesses to serve as prime contractors on such large contracts. Bundling has frustrated Congress' goal of giving the maximum practicable opportunities for small businesses and MBEs.[11]

4. Government and private support structures for MBE development are limited and may not provide precisely what MBEs need. Existing U.S. programs seek to help MBEs build capacity through timely information sharing, technical assistance, education on the procurement process and business techniques, and building relationships within the business community. For example, the Small Business Administration's (SBA) small business development centers (SBDCs) provide communities with information, guidance, networking and connections with other businesses. SBA's business information centers (BICs) offer on-site counseling, education and training for new entrepreneurs. In some trades, an ombudsman serves as the primary person to provide assistance. He or she provides input on proposals, alert trade associations and business organizations of developments in the field and offering technical assistance grants and grants to community organizations. According to some, these support structures and the capacity building techniques utilized do not effectively enhance MBE development and progress. The very structure of government programs inhibits MBE and small business growth. Many programs set net worth limits on businesses or provide benefits for a set period of time. Once small business becomes successful and their assets increase, or they are in the program for an extended period, they are dropped from the program.

These criteria are not in touch with the real needs of businesses. For instance, some businesses in the industrial sector start out with high assets but have high business costs. Although the face they same burdens as businesses with less assets and are in the same relative stage of development, they may be excluded from capacity building programs.

5. Notwithstanding the tremendous contribution that small businesses add to the U.S. economy, the Federal Government as a buyer of goods and services has implemented policies that have

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[8] Center for Advanced Purchasing Studies

[9] U.S. Department of Commerce, Minority Business Development Agency, *The New Realities for Minority Business*, p.14.

[10] House Small Business Committee Democratic Staff Report, Scorecard IV – Federal Agencies: Closed to Small Businesses, June 25, 2003 p.1.

[11] This goal is enunciated in the Small Business Investment Act of 1958 and subsequent laws and regulations.

not only hindered the growth of the small business sector, it has established barriers to participation in the Federal Procurement Process that has almost destroyed whole sectors of small business participation – especially for minority owned small businesses. Laws such as the Federal Acquisition Streamlining Act and Federal Acquisition Reform Act passed under the previous administration set the stage for the beginning of the end to competition in the Federal Government. Federal Managers have used the philosophy of acquisition reform to consolidate and bundle work that has historically been performed by small businesses into huge multi-level contracts and awarded those contracts to large corporations in many cases using multiple-award contracts that avoid public competition. They then give "lip service" to opportunities for small business as subcontractors knowing that there is little accountability in the present Federal Government subcontracting program thereby giving large prime contractors little incentive for them to provide opportunities for small businesses.

5. The Administration has developed Anti-Contract Bundling initiatives. However, the GAO recently released a report that indicates that the impact of the Administration's strategy to mitigate the effects of contract bundling is uncertain. In order to clarify the perceptions that there might not be a "good-faith" effort by the Bush Administration to enforce your Executive Order, and in order for the small business community to appreciate and support your commitment to the Executive order that you approved, the small business community needs your personal leadership to correct the major deficiencies that have been caused by the reduction of the SBA Procurement Center Representatives (PCRs) due to cutbacks made in the SBA budget under your Administration. At one time in 1992, there was a peak level of 68 PCRs. At the present time the SBA claims that there are 72 PCRs; however in fact there are 38 full time PCRs and 18 SBA staffers who work part time doing the PCR function.

The PCRs are very important as they are the soldiers who carry out the Bush Administration's commitment to support the small businesses in the United States doing business with the Federal government because they are the individuals who can, when the rubber hits the road, implement your policy of the Executive Order on Anti-bundling assuring reasonable and fair market share for the small business community and the monitoring of sub-contracting programs that benefit the small business community.

It is also important to note that although SBA, in its June 15, 2004 press release promoted a total of $65.5 Billion in prime contract awards to small business in the Fiscal Year 2003, members of the small business community doing business with the Federal government find the accuracy of this information doubtful as a result of the May 7, 2003 House Committee on Small Business Hearing, "Reporting of Small Business Contract Awards" does not reflect current business size. In this Republican led congressional hearing it was found that there were many large business Federal contract awards being reported as small business awards. It is necessary, for Congress to inform the small business community what the government has done to correct the wrong reporting of direct contract awards to small businesses. It is important for the small business community to have full confidence that the accomplishments that the SBA is reporting is indeed not seriously suspect because the congressional hearings clearly demonstrate that the reports are not correct.

6. SBA's practices known as the non-manufacturing rule and class waiver regulations are outdated and being circumvented, thereby allowing large businesses to obtain contracts meant for small business owners. In the waiver system, small firms can apply to bid for contracts over a certain threshold when there are no small firms that can provide the product at the high amount. However, at times, the bids are later withdrawn and large firms obtain the contract. Small businesses must be able to offer the products of a large business regardless of whether there is a contract limit. Limiting small businesses to procurements under $25,000 prevents them from obtaining meaningful contracts . The SBA 'non-manufacturing rule,' in short, is being used to prevent small businesses

Also, large businesses make fraudulent representations to obtain NAICS code designations as well as their size in order to appear to be a small business. The problem lies in the ability of firms to self certify

as small under the CCR directory maintained by SBA. SBA in turn does little to investigate these claims, and when it does, it may be too late for the contract is already awarded.

An organization monitoring these issues and working with MBELDEF – Fairness in Procurement Alliance, has recently reported several instances of these cases to SBA's general counsel's office. The Office of Federal Procurement Policy has issued several memorandums to the procurement community, on such topics as vendor neutral specifications, contracting abuse, and fairness by end-users. This is a step in the right direction.

7. On September 17, 2007, MBELDEF requested an emergency hearing or investigation by Rep. Bennie Thompson, chair of the Committee on Homeland Security, Rep. Nydia Velazquez, chair of the House Committee on Small Business, and ranking members. We objected to the blatant disregard by SBA of the proper implementation of the HUBZone Act for a solicitation #HSHQDC-07-R-0009. SBA chose not to issue this solicitation as a HUBZone small business set-aside even thought the contract has been issued as such. In addition, the Department of Homeland Security seeks to ignore the proper legal interpretation and implementation of the HUBZone Act.

Federal agencies have an obligation under the law to increase contracting opportunity for HUBZone companies. Yet, MBELDEF is concerned that the reverse has become true – agencies have violated the legal procedures in solicitations, a situation that jeopardizes the position of the nearly 14,000 HUBZone companies across the country.

Chairman and members of the subcommittee, thank you for allowing me to present MBELDEF's concerns.

Mr. TOWNS. Thank you.

Let me thank all of you for your testimony.

Let me begin by asking, how can we hold agencies accountable for their failure to meet their goals? What can we do?

Ms. MCCULLOUGH. If I might address that, the best way to do that is to hit them where it hurts them. That is always in the wallet.

They have to go through a series of evaluations during the year. At the end of the year, supposedly if they have reached their goals, they get, they can receive some type of bonuses. I strongly suggest that some type of cap or elimination of a bonus be placed on those employees who do not reach those goals.

Mr. BARRERA. I think another thing that works, when I was the ombudsman, we had hearings across the County with those agencies that were not treating businesses right and regulatory enforcement actions. They don't like to be embarrassed either. Those offices don't like to be embarrassed. So, actually, maybe holding hearings in different spots.

We actually used to have Congressmen and Senators go to these hearings with, and that had a big effect. I still report to Congress every year on how Federal agencies do. We did a scorecard on them, on how Federal agencies did. So sometimes that also helps also.

Mr. KINEBREW. Mr. Chairman, I would suggest that the employees' evaluations, their meeting the goals should be reflected in their personal evaluation.

Mr. TOWNS. You are actually saying there should be penalties?

Ms. MCCULLOUGH. Absolutely.

Mr. ROBINSON. Absolutely, I would agree with that as well.

The only problem, there have been sanctions. We have had sanctions out here for a few years but, for example, I note the earlier panel talked about that they could withhold bonuses relative to subcontracting plans and things of that nature.

I am unaware, and I would bet you that there probably have not been five agencies or personnel in Government in which those sanctions have been imposed. So you have a real problem of compliance and enforcement, and so you do have penalties. You do have carrots and sticks out here, but we have no one willing to execute on them.

Mr. BARRERA. You can't just go after the employees. You have to go up to the primes. There are penalties for primes. From what we understand, there is not that punitive penalty. From what we understand, we don't know if it has actually been enforced. So you go to the primes.

It is actually a combination of three things—the agencies, the employees and the primes themselves—that should be held responsible.

Mr. TOWNS. Do you want to be specific on penalties?

Mr. BARRERA. We do know that there are penalties like, for instance, not paying what they should be paid if they don't meet their subcontract. I think the Census Bureau explained some of the things they are doing, and I think that is a good start. That seems like a good model to me, to hold them accountable.

What is the old saying? You can't get results unless you measure them. The numbers don't lie. Whether they are reached or not, the numbers don't lie.

Mr. TOWNS. I yield to the ranking member, Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

I have tell you it brings back memories when I was chairman of San Diego County and we had our struggle over the city of San Diego had its affirmative action program and we had ours. Someone once asked me why we weren't adopting San Diego's, and I said because I want it to stand up in a court of law. San Diego's got thrown out.

Mr. Robinson, my concern, and you really hit on it, is I would love to have that standard being a minimum and enforceable. As soon as we do that, though, we fall back on this issue of constitutionality and equal protection.

You brought up the issue that we need to really take the time to document the system's discrimination of the past or it is not going to hold up under the 14th amendment. You have to make sure that the institution itself has been indicted to be able to pass the constitutionality of the 14th amendment. Do you want to elaborate on that?

Mr. ROBINSON. Under the strict scrutiny standard that the Supreme Court has now imposed, in order to have remedial measures, you have to have established a predicate, and the court has held that discrimination represents an appropriate predicate. In my testimony, I have cited five examples, and I am prepared to give many more in order to establish that predicate so that this Congress can adequately address that issue in the way in which it structures or restructures these programs.

Mr. BILBRAY. Thank you.

I apologize. I wasn't here to hear your testimony.

In fact, I have been working most of my political life, working on a problem that we have had with border pollution in Mexico, and it happens to be that the one contractor who was willing to take on the problem happened to be a Latino contractor. Those of us along the border, we don't think about those things, but I just realized that the way he has been treated by the bureaucracy has just been appalling. I mean to the point where the San Diego Union did an editorial on that.

The difference we have with the different communities is different types of barriers, not all the same. Is there any recommendations you can give us?

I apologize. You probably have done it, but it will give me personally and the chairman personally as we get into this, that here in Washington we may have a perception of what the challenges are, but in the Latino community we definitely have different challenges. Is there any specific differences that you could articulate to me as one member?

Mr. BARRERA. I have been involved. When I was at the SBA, we had hearings all over the country. I have dealt with African American companies, Latino companies, all companies.

I think a lot of it is a couple things. One is that the bureaucracy is very, very difficult, and it is hard for anybody, whether you are Latino or non-Latino, to get through that bureaucracy. Actually,

the bureaucracy is not necessarily nice. There are nice bureaucracies and not so nice bureaucracies. In the Federal contracting rules, it is not that nice, but you are dealing with different bureaucracies. You are dealing with the Government bureaucracy. You are dealing with the prime bureaucracy.

Here in his example, I heard this a lot not just with Latino companies but a lot of companies. You get involved with a prime, and they dare you to take them on because they know you can't. I think that is one. There is that fear factor of taking on that Government procurement buying officer or taking on that prime. They may not get that contract. Again, you get labeled as a troublemaker, and that is the last thing that you want. So there needs to be some more protections for those companies that actually do complain, that actually do want to go after these things, not just for themselves but for small businesses nationwide.

Mr. BILBRAY. Thank you.

I yield back, Mr. Chairman.

Mr. TOWNS. Thank you very much.

Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Barrera, the Hispanic Chamber of Commerce recommended eliminating the net worth limitations for entry and continuation in the program. You strongly believe that net worth should not be used as the barometer for continuation in the program.

What measure does the Chamber believe would be a more reliable measure?

Mr. BARRERA. I think what we testified today. The program has not been really looked at in 30 years, and right now 250 is really a small number. That is a miniature business for the most part, and there are still a lot of businesses that can take advantage of that. But you need to make it higher, so larger businesses that are still small businesses.

A $500,000 business is still a small business for the most part. A million dollar business, again based on whatever type of industry you are in, can still be a real small business. So I think we need to raise those levels so more businesses have the opportunity to actually participated. Those small businesses have the capacity to participate is very, very important.

We would kind of like to eliminate that, but we are willing to talk to Congress about at least raising that limit because it hasn't been changed in a while and it needs to be addressed.

Mr. CLAY. Those levels vary across the board like cities and States may have a difference measurement.

Mr. BARRERA. Correct, and by industry also.

Mr. CLAY. I think some of them are 750,000. So it is all across the board then, isn't it?

Mr. BARRERA. Correct.

Mr. CLAY. Thank you for that.

Mr. Robinson, you mentioned the Croson and Adarand cases in your testimony. There is some misunderstanding about the legal parameters of these case and their impact on the Federal regulatory process. Some in Government believe the decisions go so far as to even prohibit agencies from setting goals for minority con-

tracting or keeping record on contracts awarded to minority-owned businesses.

In your professional opinion, what exactly are the parameters set by the two cases and do they prohibit Federal agencies such as the Census Bureau from compiling data about whether a minority-owned firm that has won a contract fair and square is African American-owned or Latino or Asian-owned?

Mr. ROBINSON. Mr. Clay, I would suggest that the decision, in fact, compels the collection of data.

The court, in very clear terms, said that in order to have race as a factor, you have to have justification for it, and it said very specifically that the identification of discrimination represents an appropriate predicate for the Congress to act, and that when you act, you must act. The court called it narrowly tailoring. You must narrowly tailor your remedy to the discrimination that you found.

Well, I suggest to you, sir, that the discrimination deals with issues of market and money specifically, procurement and capital and other places, access to technology. That is why I noted the 10 U.S.C. 2323 relative to research and development money.

When you identify that discrimination, then you tailor your remedy to fit the discrimination. That is what the court held.

Mr. CLAY. Has this Congress and previous Congresses compiled a record in order for us to be able to act on or is the record already in existence?

Mr. ROBINSON. Well, the last time this was under Mr. Clinton's mend it but don't end it. This was the mid-1990's right after the Adarand decision. At that time, the Justice Department collected the data that represented the appropriate predicate, but that has been almost 10 years ago now.

I was working with the Senate. A couple of months ago, it began developing the record on that side. I am suggesting and encouraging the House to also begin that process as well.

Mr. BARRERA. Excuse me, Mr. Chairman. I am going to have to catch a flight. I have to catch a flight here at 5. So I need to go, and I apologize. But any questions you have, we will be happy to answer them in writing to you.

Mr. TOWNS. Right. Do you have any questions for him just as he leaves?

Mr. CLAY. No. I yield back.

Mr. TOWNS. OK, fine.

Mr. BARRERA. Thank you so much for the opportunity.

Mr. TOWNS. Thank you. Have a safe flight.

Let me just ask this question. What are some of the challenges that the small business person encounters?

You mentioned some like capital. What are some of the other things? I am trying to figure out why we can't do better.

Mr. KINEBREW. Well, it depends on the part of the country that a lot of these small businesses exist. For example, in some parts of the country, bonding is really an impediment. Bonding and the entire bonding concept is used sometimes as a tool against small or minority businesses. I think we should review or the Congress should review or the SBA, someone should review the way bonding is established, and those agencies that can wave bonding or in-

crease the amount of the contract that is not subject to bonding. So bonding is one issue.

Another issue is, again as Mr. Robinson said, access to capital. The process by which one gets capital that we need, whether it is equity or debt, sometimes that process takes such a long time to get there.

I worked on a situation where a small business wanted $100,000 loan. It took them 14 months to get $100,000 loan. By the time they got it, they were out of business practically.

So we need to look at bonding, insurance and the availability of capital.

Mr. TOWNS. Any other comments?

Ms. MCCULLOUGH. Some of that has to do with the fact that many agencies do not conduct proper market research such that they will be able to really develop a supplier base that is diverse and whether or not they understand of the development of that diverse supplier base on those communities in which those companies actually reside. It could very well be part of the problem, but inadequate market research certainly does cause many, many problems because the capabilities of minority firms rarely come to the attention of those individuals who can make decisions.

Mr. TOWNS. Thank you very much.

Historically, Government purchasing programs have said the trends in minority business development, that recently these initiatives have been squeezed by budget deficits and cuts. More importantly, they have been the subject of legal cases examining racial preferences in procurement and contracting.

What has been the impact of these changes on State and local governments? Will you answer that for me?

Ms. MCCULLOUGH. One of the things that I would like to draw your attention to in my testimony is the fact that a law that you passed in 2005, which was the Section 155, participation in federally funded projects of the Consolidated Appropriations Act of 2005, that provided guidelines for the States and the localities receiving Federal funding. It mandated that they should not demand or require that minority-owned companies holding 8(a) certification to have to recertify in those localities.

The SBA Office of General Counsel and the DOT Office of General Counsel have refused to develop the guidelines for the offices, the field offices to actually enforce that, and so there are numerous States—I would probably say all but maybe one—that have no knowledge of this law at all because SBA has done nothing to promulgate that law so that their field offices enforce it.

Mr. ROBINSON. I am in total agreement with that. There is just a complete lack of oversight that takes place, and it impacts at the State and local levels of government. The impact of the decisions themselves has been monumental.

Before the decisions that Mr. Clay made reference to, Adarand and Croson, we had been able to document that there were some 260 odd State and local government programs. Within a year after that decision, less than 20 percent of those programs were still in existence. So it just completely wiped out State and local government programs.

Now State and local government programs have to go through what is called a disparity study in order to reauthorize those programs. Those can be expensive, and it can be very politically volatile for State and local governments to reauthorize the programs.

There is a role for the Congress to help State and local governments in the reauthorization of these programs, and that is something we can get into at some point as to how you can be of assistance.

But the impact of the decisions and the failure of the Federal bureaucracy, in this instance, the SBA, to not only deal with the certification issue but the personal net worth and the size standard issue, if those are addressed, could also be of assistance to State and local governments, many of whom mimic what takes place at the Federal level.

Mr. TOWNS. Thank you very, very much.

Mr. CLAY. I have two quick questions, one for Mr. Kinebrew. What steps do you believe the SBA should take to improve its oversight of the subcontracting process? Do you have any thoughts on that?

Mr. KINEBREW. Yes, sir. If I understand the question, I think the SBA should develop a stronger monitoring and enforcement process in order to comply with the directives that the Congress has at issue. Short of strong enforcement and oversight, they tend to say that here is not enough funds to do the kinds of things that need to be done and then minimize the number of people working on projects.

So I think stronger oversight and enforcement and to develop the staff, the size of the staff to accomplish those kinds of missions.

Mr. CLAY. Thank you. Thank you for that.

Ms. McCullough, of the many problems that minority businesses face in the procurement process, which do you believe are the most acute?

Ms. MCCULLOUGH. There are so many, but I would truly say this.

Mr. CLAY. Overwhelmed?

Ms. MCCULLOUGH. Yes, it is overwhelming, but I would certainly say the issue of the disparity in the way that the 8(a) program is aligned with non-ANCs and ANCs. In other words, because those number are so badly skewed in terms of I believe the 25 largest minority contracts in 2005–2006 went to ANCs. This whole issue of a disparity that has been built within the 8(a) program, that was created to level the playing field, has created a new form of discrimination and is pitting one community against the other.

Mr. CLAY. Thank you for that response.

Let me thank the chairman again for such a timely committee meeting during the kickoff of the 37th Annual ALC Weekend. This panel and the previous panel have certainly brought some issues to light that ought to be addressed by this Congress. Again, I thank you for inviting me today.

Mr. TOWNS. Thank you very much.

Let me thank all the witnesses, and let me thank all the Members that are attending. It is very clear that there are some problems and that we have to continue to work together to see what we can do to bring about a solution.

On that note, the committee is adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned.]

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