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FULL COMMITTEE HEARING TO CONSIDER LEGISLATION UPDATING AND IMPROVING THE SBA'S CONTRACTING PROGRAMS

COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF
REPRESENTATIVES

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FULL COMMITTEE HEARING TO CONSIDER LEGISLATION UPDATING AND IMPROVING IMPROVING THE SBA'S CONTRACTING PROGRAMS

Thursday, October 4, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building, Hon. Nydia Velázquez[Chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Shuler, Cuellar, Braley, Clarke, Ellsworth, Sestak, Hirono, Chabot, Bartlett, Akin, and Davis.

OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ

ChairwomanVELÁZQUEZ. Good morning. I'm pleased to call this hearing to order.

Today's hearing will review legislation to strengthen small firms' ability to secure federal contracts. Action to update and modernize this initiative is long overdue.

In Fiscal Year 2006 the federal government purchased a record $410 billion in goods and services. Unfortunately, the reality is that little was purchased from small businesses. Government buyers continue to turn to just three percent of the nation's companies, large corporations, for nearly 80 percent of their work. This makes little sense when it is small businesses that provide the best value of the taxpayer's dollar.

In an effort to rectify this imbalance, the SBA's contracting programs were developed to give newer, less established businesses an entry point into the federal marketplace. However, a number of these initiatives have not been modernized for decades, and as a result, small firms are falling behind.

The purpose of today's hearing is to examine legislation that will start to turn this around. There are four critical programs that we intend to address: 8(a), HUBZones, the Women's Procurement Program, and the Service Disabled Veterans Contracting Initiative.

Each of these efforts play a vital role in helping various segments of the small business community to break into the federal marketplace, and it is clear that as they stand today, these programs are failing to accomplish this intended mission.

It is my goal to insure that this legislation accomplishes two primary purposes. First, these programs must operate in a way that maximizes taxpayers' value.

Second, each initiative must be implemented in a manner that increased the efficiency of the federal procurement marketplace. To insure that taxpayers' interests are protected, the proposed legislation takes several important steps.

Given recent occurrences of fraud, this bill prohibits the award of a contract if the business owner lacks integrity. It also requires that there are both prime and subcontracting goals for each SBA contracting program, as well as annual reporting on employment and income for all participants.

Together these changes will enhance the quality of participants and weed out any bad actors in SBA contracting programs. In an effort to maximize the efficiency of each of these initiatives, the bill standardizes several key elements. The most important area this is accomplished is with regard to the soul source limitation, the level at which contracts can be awarded without competition.

Above these, companies will be required to compete for contracts. This will provide much needed clarity to the agencies employing these programs.

Another major issue is the need to modernize these programs. Right now there is concern that many of the companies that have graduated from the 8(a) company are actually receiving work. In order to reverse this, we have required the SBA to get back into the contracting process.

The proposal also updates the net worth limitation so that companies can continue to grow stronger while maintaining their 8(a) status.

At long last the Women's Procurement Program will be implemented. We propose that the SBA has 90 more days to finish the studies and studies of studies until such time as the SBA finishes agencies will be able to determine what industries are under represented.

Further, we suggest that the SBA should use a broader definition of under representation so that programs are not so narrow as to only help an estimated 500 businesses.

During our September 19th hearing, the SBA concurred that the HUBZone program is flawed and subject to widespread fraud. We have proposed a number of actions to mitigate this problem, including on site verification of businesses, limitation on offices outside of HUBZones, and insuring that the benefits of contracts awarded through the program go to low income areas.

We have also heard the concerns of the veterans community and are proposing to require the SBA to implement its responsibility under Executive Order 13360. Little action has been taken to date and these businesses deserve more.

We have also suggested that companies that falsely represent to be owned by service disabled veterans are subject to civil penalties. This is not different than what is in current law for every other business that misrepresents itself.

With this legislation I am confident that we are taking an important and long overdue step to modernize the SBA contracting programs. These initiatives all have record levels of participation, and

these business owners deserve more than what they are just getting.

I look forward to continuing my collaboration with the Ranking Member, Mr. Chabot, and I now yield to him for his remarks.

OPENING STATEMENT OF MR. CHABOT

Mr.CHABOT. Thank you, Madam Chair.

And good morning and thank you all for being here as we examine the craft of the Small Business Contracting Improvements Act of 2007. This legislation that we are going to be discussing today modifies government contracting programs authorized by the Small Business Act.

I would like to thank Chairwoman Velázquez for holding this hearing and each of the witnesses, including Steven Preston who is the head of the Small Business Administration, and all of the witnesses for taking the time to provide important testimony to this Committee.

As early as World War II, Congress recognized that a strong economy and industry base requires a robust small business economy. More than 60 years ago Congress created the Smaller War Plants Corporation to purchase goods and services from small businesses acting as subcontractors.

At the end of the Korean conflict, the Small Business Administration was created to provide assistance to small businesses. One aspect of that policy and the one we are examining today is the requirement that small businesses be awarded a fair proportion of contracts for the purchase of goods and services by the federal government.

Despite the extra assistance from the SBA, small businesses owned by socially and economically disadvantaged individuals, women, service disabled veterans, and those located in historically under utilized business zones do not receive their fair proportion of contracts to sell goods and services to the federal government.

If federal contracting is to benefit the entire small business sector, agencies must do better in dealing with these targeted small business groups. The legislation before us today will rectify some of the problems associated with the operation of these programs. However, I believe that some aspects of this legislation need modification to avoid undue regulatory burdens on small businesses.

Furthermore, there are some parts of the legislation that simply need clarification to remove ambiguities that could make implementation difficult.

Finally, I look forward to hearing from the witnesses on other suggestions that could better integrate these targeted programs into the overall federal procurement process.

Again, I thank the Chairwoman for holding this important hearing and look forward to working with her as the final piece of the Small Business Act reauthorization moves through the legislative process.

And I yield back.

ChairwomanVELÁZQUEZ. Thank you, Mr. Chabot.

And I would like to recognize now Mr. Braley, Chair of the Subcommittee on Contracting and Technology, for an opening statement.

OPENING STATEMENT OF MR. BRALEY

Mr.BRALEY. Thank you, Madam Chairwoman.

As Chairman of the Small Business Subcommittee on Contracting and Technology, I have a special interest in the issues we will be discussing today. In our first Subcommittee hearing, we heard witnesses representing women-owned businesses describe how the federal government was failing to keep its commitment to them. They talked not only about the five percent goal for women-owned businesses not being met, but also how the Women's Procurement Program, which was enacted in 2000, has yet to be implemented by the SBA. This is a disgrace.

I also want to talk about the HUBZone Program. Established in 1997, this program promotes community development for low income or high unemployment areas. In Iowa's First Congressional District there are 21 HUBZone areas.

One thing I like about the legislation we're discussing today is that it prohibits the use of HUBZone preference for construction contracts that are further than 150 miles away from the recipient's HUBZone. I want to be sure that the work being done in these zones is truly contributing to the local economy.

By law, federal organizations are required to support small businesses. However, over the past five years, total government contracting has increased by 60 percent, while small business contracts have decreased by 55 percent. This suggests that the SBA's procurement initiatives are not bringing work from the large business' share to the small business share, but rather are forcing small businesses to compete for an increasingly smaller piece of the pie.

It is essential that small businesses have access to the over $400 billion per year federal marketplace. The Small Business Contracting Improvements Act nicely complements H.R. 1873, the Small Business Fairness in Contracting Act, a bill I introduced in April that passed later in the House on May 10th by an overwhelming bipartisan vote of 409 to 13.

My bill will give small businesses more opportunities to compete for federal contracts, raise the small business federal contracting goal from 23 percent to 30 percent. This means that all of the programs we discussed today will have greater opportunities to compete for federal contracts.

As we have heard, small businesses are the driving force for job creation in this country, and we must insure that these businesses not only remain healthy, but they have the support they need to grow. This Committee needs to work together to make sure that small businesses are not shut out of the federal marketplace.

Unfortunately, my State of Iowa ranks 48th in terms of government contracting dollars awarded to small businesses. Small businesses are the backbone of the communities within my district in Iowa, as they are in most congressional districts. Allowing them a fair opportunity to bid on federal contracts can bring economic vitality to these towns and cities.

I am pleased that we will continue our discussion on this important subject and send a clear message to small business owners that they will finally receive a fair opportunity to compete for and win federal contracts.

I want to thank our witnesses for taking time from their busy schedules to join us today.

ChairwomanVELÁZQUEZ. We are going to start with our first panel. I want to welcome—is there any other member who wishes to make an opening statement? Sorry.

So we are going to start with our first panel, and I want to welcome the Administrator of SBA, Mr. Steven Preston. He has held this position since July of 2006, and I welcome him again back into this Committee.

Thank you very much.

STATEMENT BY THE HONORABLE STEVEN C. PRESTON, ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION

Mr.PRESTON. Thank you, Chairwoman Velázquez, Ranking Member Chabot, members of the Committee.

We at the SBA are committed to creating an environment where under served and economically disadvantaged groups will flourish and enter the federal marketplace with fair access to federal contracts. We have taken many actions to advance that objective, and I will briefly outline a few of them here today.

First of all, as you all know, we have changed rules on certification to make sure that small businesses are, indeed, the ones getting small business contracts, the first ever rule change in that area.

Secondly, with the joint request of me and the White House Office of Federal Procurement Policy, federal agencies spent months reviewing 11 million contract actions from the past two years to cleanse the database of miscoded contracts. Those were incorrectly reported as small business contracts. Almost five billion of misrepresented contracts have been cleaned out of the database for 2005 alone. We need to feel confident that the data we're using is correct so that we can prevent those from happening in the future.

In addition, we are holding federal agencies accountable for hitting their goals. In fact, just a couple of months ago, we released the first ever small business procurement score card. We rated agencies red, yellow or green on goal achievement and progress. The score card will help agencies measure their achievement in small business contracting and increased transparency and accountability while working with federal agencies to achieve mandates.

I am very proud of the progress we have made in those areas, but we are not stopping here. We continue to pursue further opportunities that may be less visible to the Committee internally at the SBA. We have increased training for our field staff to enable them to improve outreach and improve support for small business clients and refocused our PCRs on their primary responsibility, identifying small business opportunities at the federal agencies.

In fact, almost 1,500 SBA employees in various functions have received a full week of training in the past several months with an approximately 90 percent strong approval rating on the part of employees in terms of the quality of the training. This is very important to pushing the mission of the agency forward and our ability to serve well.

Within the HUBZone program, we are taking steps to insure that those participating in that program are following the rules. We are committed to reviewing five percent of all certifications through a full scale program of examinations. We are either implementing or have already implemented all of the recommendations from the Inspector General's 2006 report.

SBA has acted to reduce misrepresentation and miscoding of HUBZone awards. In the past contracting authorities failed to verify HUBZone status of the awardees for HUBZone contracts. To resolve this, we currently have a regulation pending before the FAR Council that will require firms to test to the HUBZone status not only at the time of bid, but also at the time of award.

This regulation will help resolve both miscoding and the certification issue. At the same time, the federal procurement database is being reconfigured to block any entry for HUBZone firms that do not have the required certification.

In addition, SBA is working with our agency colleagues to educate contracting officials on the simple steps that they need to take to verify HUBZone status.

In the 8(a) Business Development Program, we have taken a number of steps to improve the processes, to eliminate the backlogs of processing 8(a) and STB certifications, to increase the flow of firms into the program quickly and easily, as well as to approve oversight of the program.

The agency has revised its partnership agreements which delegate 8(a) contract execution function from the SBA to various federal procuring agencies to clarify their roles and their responsibilities for monitoring contract compliance of and performance by 8(a) firms.

Agencies will now be held accountable for meeting all SBA regulations as well as FAR regulations. Our goal is to broaden the access to 8(a) contracts to more program participants and insure that firms and agencies are using the program properly.

Now I would like to comment briefly on the legislative proposals from the brief outline that we received. SBA would be opposed to the elimination of that delegation of authority as proposed. Agencies, we believe, need a streamlined process for making 8(a) awards. Since the delegation of authority was created in 1998, the program has grown nearly 40 percent. Without this authority, SBA and the agencies will be required to return to the laborious process of passing letters of intent back and forth.

Out of concerns about significant delay, SBA would suggest amending the process rather than eliminating it, and as I mentioned before, SBA has already redrafted the agreement with the agencies.

Regarding the net worth standard, SBA has not found that the current 250,000 level is a barrier to entry in the program. The program participation stands at an all time high. Applications are coming in steadily. While studies have shown that index for inflation since the time it was instituted, the standard would be approximately 550,000, we do have concerns over a blanket $750,000 minimum.

I must also point out that our Inspector General has repeatedly expressed concerns over the nature of economic disadvantage and our existing definition.

SBA is concerned over the proposal to require on-site evaluations before a firm's second contract in the HUBZone program. We do foresee significant cost and logistical challenges in implementing that program effectively. The FAR regulation SBA has pending will improve accuracy significantly, and that will require attestation of HUBZone status at the time of an award of any contract.

However, consistent with the Committee's concern, SBA is committed to pursuing greater enforcement and assessment of penalties against firms that violate the program rules. We're equally concerned about the other provision in this title restricting the award of HUBZone construction contracts outside of a 150 mile radius from the HUBZone's primary location.

Depending on the state or the location of the HUBZone, this would effectively eliminate any HUBZone firms from competing for work at all. For example, a HUBZone construction firm on a Native American reservation would potentially be unable to bid on contracts in the nearest city.

We have no objection to the provisions included in the veterans portion of the proposal. False certification affects all firms, and obviously SBA does not object to the codification of the terms of President Bush' executive order. So we're committed to implementing that order.

And then finally, we do have concerns about the proposal for increase in the sole source award authority to ten million. This provision has the potential to create a significant pool of large sole source contracts that would be outside the reach of most small businesses. If the Committee's concern is to reduce this disparity in the 8(a) program, we would not suggest this approach because creating that authority we think is only likely to increase the gap between small and large 8(a) firms.

So that completes my testimony, and I would be happy to answer any questions at this time.

[The prepared statement of Mr. Preston may be found in the Appendix on page 47.]

ChairwomanVELÁZQUEZ. Thank you, Mr. Preston.

Mr. Preston, SBA is opposed to conducting background investigation on companies participating in SBA contracting programs. Yet according to your testimony, because of the unique relationship between SBA and 8(a) companies, they must have this reviewed. That's what you stated in your testimony.

So if they lack character, they will not be approved. The SBA does not do this with the HUBZone applicants. A company associated with the recent bribery scandal, Shirlington Limousine, has an owner with a long list of convictions, 62 pages. He had plead guilty or been convicted for crimes such as robbery, attempted auto theft, bail jumping, receiving stolen goods, drug possession and contempt of court.

How did this company, who would not be approved into the 8(a) program with this record get approved into the HUBZone Program?

Mr.PRESTON. As you know, in most of these other programs the contracting officers at the agencies have the primary responsibility for understanding the firm that they are dealing with and their capability to provide services.

We manage the 8(a) program. It is a very different program. It is a business development program. We have these people for nine years potentially, ten under your rules. It is our responsibility to oversee those companies, and we provide very extensive support of them.

And so I think the 8(a) program is different than these contracting designations in the other subgroups.

ChairwomanVELÁZQUEZ. Mr. Administrator, help me understand this. When you talk about the unique relationship between the 8(a) and the agency, I thought that the agency delegated that authority in 1993.

Mr.PRESTON. We are delegating contracting authority to them.

ChairwomanVELÁZQUEZ. Yes.

Mr.PRESTON. We continue to run the 8(a) program. We continue to do their annual certifications. We continue to provide business development services. We continue to work actively with those firms in helping them find federal contracts, both through our business development specialists and our PCRs.

And, by the way, the agency spends over $30 million administering this program to support these people.

ChairwomanVELÁZQUEZ. If you continue to provide all that you claim you are providing, the agency is providing for the 8(a) programs, then how could you explain that in 2006 the universe of 8(a) companies were 12,262 enrolled in the 8(a) program, yet 93 percent of those companies did not get anything and only seven percent got work?

I believe that your agency has taken, you have taken yourself out and no longer work with those companies to make sure that they get the federal contracts.

Mr.PRESTON. Well, ma'am, I think that data may be extrapolated from a very small sample, and we are pulling that data together to look at the full picture. We do not believe that the number is that small.

And what I would tell you is we are taking many actions. It is very important for us, you know, to allow these people to get a fair showing in the federal contracting picture.

ChairwomanVELÁZQUEZ. I hear you, but I want for you to hear me. This is your report. These are your numbers. In 1999, there were 6,409 8(a) company. Only 31 percent got work. In 2006, things are getting worse. Only seven percent got work. So something is not working there.

Mr.PRESTON. I think you need to read the footnotes in that report and understand what it says and the standard sample that it was taken from. We are going down the road of getting full data on this, but it's a heavily manual process, and we would be happy to provide that to the Committee when we get it.

ChairwomanVELÁZQUEZ. Let me ask you: would you oppose the provision that will require background checks for all the companies, including the HUBZone?

Mr.PRESTON. I do not have a comment on that right now. I apologize. I did not know that there was a provision that—

ChairwomanVELÁZQUEZ. SBA does not have a position regarding a provision that will help without criminals?

Mr.PRESTON. For us to provide background checks on every one of those firms that want to get a qualification for any one of our programs would be a very significant undertaking, and I feel the need to look into it more before I give you a comment.

I think I need to understand more broadly what it means to the contracting picture. Our understanding of what you all are proposing did not include that from my understanding.

ChairwomanVELÁZQUEZ. Well, we are talking about background check now required to all the companies and on-site reviews of those companies in the HUBZone program. You have two Inspector Generals reports, one that was conducted in 2003 that identified definitively fraud in the HUBZone program, and then another one in 2006 where the inspector general concluded that virtually no improvement, except that there are more companies in the program, but no improvement in dealing with the issue of fraud. You've got a problem. It has got to be fixed.

And if the agency is not doing it, the Committee will do it.

Mr.PRESTON. Well, I think we have taken a number of actions since then, and I think it is also important to understand when you look at that data that when we do examinations on HUBZone firms and when we ask them to recertify, there are many reasons why they do not recertify and most of them have nothing to do with fraud.

Many of these firms do not exist any longer when we go for the recertifications. Many of them aren't getting federal contracts through set-asides. So they choose not to recertify.

In addition, we have taken many actions, some of which I described in my testimony, that we think significantly tighten up the process around HUBZone, and I should also mention that we have met with our IG, and we are in concurrence and acting on every single one of those recommendations.

ChairwomanVELÁZQUEZ. Yes, and I heard for the first time today in your testimony that you talk about a regulation, and this is in reference to your concern on the on-site examination. And you said that could be duplicative of pending regulations.

This is the first time that I heard that you are working on regulations, if the implementation of those regulations will take as long as the regulations to implement the Women's Procurement Program, seven years.

Mr. Administrator, the 8(a) program requires an owner to have a personal net worth of less than 250,000 to enter and cannot exceed 750,000. The Deputy Administrator indicated that the SBA was going to propose legislation to raise this threshold. Because this concern has not been addressed for nearly 30 years, the Committee intends to act.

Do you believe, and just give me an answer, yes or no, that the current net worth limitation is out of date?

Mr.PRESTON. The current net worth limitation has not been updated for many years, and if it is your intent to provide a higher threshold, then I suppose it is.

ChairwomanVELÁZQUEZ. Does the SBA believe that kicking companies out of the 8(a) program because they have exceeded an arbitrary net worth limitation is fair?

Mr.PRESTON. Ma'am, I think that we need to look at what your objectives in the program are and set a net worth limitation based on that. My understanding of the language is that it is designed to represent economic disadvantaged, and I think we have to understand what we think economic disadvantage is.

That is different than just keeping people out of the program. There is a construct there statutorily that we need to kind of work through.

ChairwomanVELÁZQUEZ. But also we should be not penalizing companies for doing much better and growing their companies.

Mr.PRESTON. We are not.

ChairwomanVELÁZQUEZ. And with today's economy, I just want to ask you. In today's economy is $750,000, isn't that just too low?

Mr.PRESTON. Ma'am, well, first of all, the $750,000 is net worth excluding equity in the home and excluding equity in the business. So the net worth level is in most cases going to be dramatically higher.

Secondly, I think the way the statute reads is we are looking at personal economic disadvantage, but it is applying it to a business program. So as a business person sitting here, you know, I think we have got a little bit of a mismatch, frankly.

So if you are asking me what describes personal economic disadvantage, I would tell you that most of those people are going to be in the top ten percent net worth in our country.

If you are asking me what puts somebody in a competitive position, as in overall business against other businesses in that area, I think it is an entirely different analysis. But my understanding is that is not what the statute leads us to.

ChairwomanVELÁZQUEZ. Why is that your understanding?

Mr.PRESTON. I believe that is what it says, individual economic disadvantage.

ChairwomanVELÁZQUEZ. Does the SBA concur that an owner of a construction company, given that it is a very capital intensive company, needs a higher net worth than the owner of a janitorial service company?

Mr.PRESTON. We are not talking about the net worth of the company. Your proposal is the net worth of the individual in addition to the net worth of the company. So I think those are two different discussions.

ChairwomanVELÁZQUEZ. We are talking here and my question to you is the owner of a construction company. We are talking about the individual net worth. I am not talking about the construction company itself.

Mr.PRESTON. I think if you are asking about the competitiveness of the construction company owned by an individual, you need to look at the capitalization of that company when you are considering its ability to compete effectively.

And that is my initial comment, is I think we are sort of talking about apples and oranges.

ChairwomanVELÁZQUEZ. No, those are not apples and oranges, Mr. Preston.

Mr.PRESTON. Ma'am, if I have a construction company that has got five million in net worth or 20 million in net worth and the individual has 100,000 in his bank account or an individual that has got a million in his bank account but no net worth in the construction business, you know, I think those are two different analyses. And that is why I am perplexed by the question.

ChairwomanVELÁZQUEZ. Doesn't he have to personally guarantee the bonds? Doesn't he have to personally guarantee the loans?

Mr.PRESTON. In many cases, but you are asking me about competitiveness.

ChairwomanVELÁZQUEZ. Let's go now and talk about a program that we have been talking since I do not know; I just cannot recall, but this is a question that I hate to ask and I know that you hate to answer, but here we go again, Mr. Preston.

The regulations to implement the Women's Procurement Program have been in OMB under a 90-day review since March 21st, more than six months. In your testimony before this Committee on February 8th, I asked when the program will be up and running. You told me that you hoped to be through the regulatory process this last summer.

And your Deputy Administrator was here on September 19th again, and I asked the same question, and I have heard every excuse in the book as to why this program is not up and running.

So tell me why this Committee should not take action at this time to get this program implemented?

Mr.PRESTON. Well, I agree that it is taking a long time, and it is taking too long, and it is taking longer than certainly we expected it would. And so I share your frustration, and I understand it.

I will tell you that in spite of these delays, we have had many people in our agency heavily dedicated to try to get this thing across the line, and we committed to work hard to get the RAND study done. That happened. We promised you or we told you we hoped to make it public when it came out. We made it public right away. We put preliminary rules in the interagency process in April, and we have been working on it very hard since then.

Yesterday we resubmitted a proposed rule to the interagency process, which incorporates everything. Our understanding is based on the issues that have to be addressed, our understanding is that under the Administrative Procedures Act we need to go to proposed rule, and so it's back in the interagency process.

And we will continue to do everything we possibly can to support the 24 agencies that need to review it and the other departments in the federal government to help them through the process.

ChairwomanVELÁZQUEZ. Will that mean that the 90 days—

Mr.PRESTON. That means that—

ChairwomanVELÁZQUEZ. —clock will start again?

Mr.PRESTON. —the 90 days clock starts ticking again, and then it will be available for public comment.

ChairwomanVELÁZQUEZ. You are lucky I am not the previous Chairman. Mr. Manzullo used to threaten witnesses here, including the CMS Administrator, to bring their toothbrush and toothpaste until things got done. Maybe we need to start adopting that.

Let me ask you a final question now. In November of 2005, the U.S. District Court for the District of Columbia found that SBA had unreasonably delayed implementation of this program. The court found that, and I quote, "the defendants have sabotaged, whether intention or not, the implementation of a procurement program which will have and will likely benefit women-owned businesses."

Given that two years ago the court determined that SBA had unreasonably delayed and there is still no program, I ask you again: why should Congress not act?

Mr.PRESTON. Well, I am not telling you not to act, ma'am, and I understand you have—

ChairwomanVELÁZQUEZ. We will.

Mr.PRESTON. —provisions in your bill.

ChairwomanVELÁZQUEZ. We will.

Thank you, Mr. Preston.

And now I recognize Mr. Chabot.

Mr.CHABOT. Thank you, Madam Chair.

Mr. Preston, welcome back to this Committee once again this year.

Mr.PRESTON. Back home.

Mr.CHABOT. I know. I know you have been here a number of times this year yet, and we appreciate your cooperation in being here.

ChairwomanVELÁZQUEZ. I think that he enjoys it.

Mr.CHABOT. I think he thoroughly enjoys it, Madam Chair.

[Laughter.]

Mr.CHABOT. Well, Madam Chair mentioned about bringing toothbrushes and toothpaste and things. I would just remind the Administrator that Proctor & Gable, P&G, is headquartered in my district in Cincinnati. One of their brands is Crest, of course.

Mr.PRESTON. But they are not a small business.

Mr.CHABOT. They are not a small business, but we like them nonetheless.

Just a couple of things. Going back to the Shirlington Limousine issue, isn't the issue in that matter a failure of the contracting officer to find that firm was not responsible? They were not a responsible bidder under the federal acquisition rules?

Mr.PRESTON. That is exactly right. That responsibility lies with the contracting officer.

Mr.CHABOT. Okay. Thank you.

And would you please explain the detailed procedures that the SBA uses in reviewing HUBZone applications?

Mr.PRESTON. Well, in reviewing a HUBZone application, in reviewing a new purchase, okay, so that if a HUBZone company wants to purchase or—I am sorry—to sell goods or services to the federal government, first of all, they have to be entered in the contracting registry, the central contracting registry.

Then they need to submit information with respect to their payroll, their location, various other information that shows that they qualify for HUBZone status, if there are NAIC codes, various other things.

Then the FAR requires that before they actually bid on a contract, they have to attest once again to their eligibility. The new

rule we are proposing requires them then to attest one more time to their eligibility before they actually get an award, and then now based on upgrades to the system, a contracting officer, if he or she puts that data into the federal contracting system as a HUBZone firm and it is not registered as a HUBZone firm, it will not take it anymore. So there is a block in the system to validate that.

If there is an award, the agency, the SBA, and other firms bidding on the contract have the ability to protest any awards if there is concern that they do not comply with the requirements.

Mr.CHABOT. Thank you.

Let me shift gears a little bit here. Would you discuss briefly the constitutional considerations that are required when implementing a gender based contracting program?

Mr.PRESTON. Well, I am neither a lawyer nor a constitutional scholar. So it is hard for me to get into a whole lot of detail there, but I do know that based on the Adarand decision a number of years ago, any gender or race based programs do receive a relatively high level of scrutiny to determine their eligibility for it under the Constitution.

But I unfortunately cannot provide for you the criteria for the specific considerations that are undertaken in that process.

Mr.CHABOT. But there are constitutional issues because of previous Supreme Court cases that one has to take into consideration—

Mr.PRESTON. Exactly, yes.

Mr.CHABOT. —when putting together one of these programs. So you cannot necessarily just do what you want to do. You have to really comply with existing case law or it will be thrown out.

Mr.PRESTON. That is true.

Mr.CHABOT. Or law suits, et cetera.

Mr.PRESTON. That is true.

Mr.CHABOT. Next, what steps is the SBA taking to insure participation by the targeted groups in federal government procurement?

Mr.PRESTON. Oh, well, I think we have made a lot of progress on that just in the last number of months. I mentioned a lot of the overview, kind of the oversight issues, the pre-certification, cleaning up the data, and the score card. You know, the score card we are actually already beginning to see a response by a number of federal agencies coming to see us to say, you know, we are not happy with the rating we got. What can we do to improve it.

In addition, specifically for categories that they are not hitting, for example, if an agency isn't hitting HUBZone or SDB, we are working with those agencies giving them electronic tools, giving them other support specifically to help them hit those numbers.

We have rolled out a new electronic tool that helps agencies input their location, the NAIC code, and the preference group, and they can get a list of companies that qualify that has just been in place for a few months that is a whole new tool that is out there.

Once again, we have retrained our entire field network to do more outreach to the individuals, to the small businesses, and refocused our PCRs to focus entirely on working with those federal agencies to hit those numbers, and so you know, it is oversight. It is technology, and it is really kind of arms and legs and better training for our people.

Mr.CHABOT. Thank you.

Do you know what the track record is or the failure rate or the success rate of those firms once they leave the 8(a) program? Is that something that your agency could provide for us?

Mr.PRESTON. I do not. I do not know the failure rates. We may have that statistic. I just do not know.

Mr.CHABOT. I see you staff members nodding that we can get that provided.

Mr.PRESTON. They do.

Mr.CHABOT. So I would like to get that at some point, as detailed as possible.

Mr.PRESTON. Okay.

Mr.CHABOT. So that we can consider that as well.

And finally, just one more question. Has anyone ever examined, to your knowledge, the cost benefit ratio of these programs? In other words, is the government getting sufficient return in terms of job growth, that type of thing, given the resources expended to operate all of these programs?

Mr.PRESTON. I don't know that the review has ever taken place. I know in many of our programs we will look at jobs created. I know we do that for our lending programs.

I am looking back at my staff to see if historically—that is right. HUBs only have jobs created, right? Yes.

We have jobs created for HUBZone, but more broadly, I do not think we have actually done a hard cost benefit analysis.

Mr.CHABOT. Would you have your staff check and see if there are any studies out there that we may have access to? I am not suggesting that we spend more money for studies like that at this time, but I would be interested to see if anybody, perhaps some colleges or something—

ChairwomanVELÁZQUEZ. Would the gentleman yield?

Mr.CHABOT. Yes, I would be happy to yield.

ChairwomanVELÁZQUEZ. Maybe the Inspector General report has some of the data since they concluded that after three years the HUBZone companies are ineligible. So in terms of job creation we question how many.

Mr.CHABOT. So if we could get that, thank you very much.

Reclaim my time.

Mr.PRESTON. Thank you.

Mr.CHABOT. And then yielding it back. Thank you.

ChairwomanVELÁZQUEZ. Mr. Braley.

Mr.BRALEY. Thank you, Madam Chairwoman.

Mr. Preston, my first encounter with you was when you testified in front of us in February, and I will have to be very candid and tell you why I was impressed with your testimony. You seemed to have a level of commitment to resolving some of the longstanding problems of your agency that from my contact with other committee members was sorely missing in your predecessor.

But when you tell this Committee that you share our frustration wit the lack of progress on the Women's Procurement Program, I do not believe you. When we had the Women's Chamber of Commerce here for the first Subcommittee hearing of Contract and Technology, this entire room was packed with frustrated women

who own their own businesses who have been waiting far too long for progress on this program.

And when you told us that the regulatory process for the women's procurement program would be completed by the end of the summer, I think most of us assumed that the traditional end of summer is the autumnal equinox, which occurred on September 23rd, at 5:51 a.m., Eastern daylight time.

So the fact that you are here today telling us that the Administrative Procedure Act is going to cause further delays, which is part of the regulatory process you knew about when you made that representation to us, I just do not find your explanation plausible. And I would like you to explain to us what you as the Administrator of the Small Business Administration are going to do between now and the next 90-day period to insure that this program receives the resources, the attention from the top down to make it happen.

Because, quite frankly, the fact that this rule was released one day before your testimony here I find remarkable.

Mr.PRESTON. Well, I would be remiss to imply that my one year of work on this rule would be similar to seven years of frustration among the affected parties. So I share your frustration. I would not imply that it is to the same extent because obviously many of these years preceded my participation in it.

I think if you spoke with my policy staff, they would tell you that there is nothing higher on their agenda, that they have pushed harder on or have been more engaged with or been pushed on harder by me than this rule.

I have spent a tremendous amount of time with my counterparts around the federal government on this issue personally, and I will continue to do that, and I will continue to do that over the next three months.

It is a complicated set of issues, and—

Mr.BRALEY. It has been a complicated set of issues for seven long years.

Mr.PRESTON. It has been, and we have had a number of missteps, and we have had the RAND study since April, and that now has put in motion a whole other set of activities.

The other thing I do have to remind you of is I never said it would be done by the end of the summer. I said I hoped it would be, and I specifically said in my testimony I cannot give you a hard time line on that.

So I just want to make sure to state before this body that it was never a hard commitment on my part. I committed to do everything I could to move the process forward. I have done that, and I will continue to do that.

Mr.BRALEY. One of the other things that we talked about at your first appearance here this year were the PCR increases that were being contemplated by the agency. Do you remember that?

Mr.PRESTON. Yes.

Mr.BRALEY. And when Deputy Administrator Carranza appeared before us last week, she brought some very nice, fancy charts showing where those PCRS were going to be placed. Did you ever see those charts?

Mr.PRESTON. I haven't seen the charts, but I have seen the list of where those are located.

Mr.BRALEY. Okay, and when I talked to you during that hearing in February, I specifically asked you based upon the fact that I come from a state that ranks 48 in terms of federal contracting dollars, whether you were going to commit to devoting a PCR to my state and other states who do not have access to the benefit of that type of program.

Are you aware of whether one of those PCRs is being placed in Iowa?

Mr.PRESTON. Sir, Iowa has no major federal contacting activities, and the way it works is the PCRs are physically located where the agencies are. Iowa does have four procurement technical assistants, which specifically are experts that work with small businesses to get those contracts. Iowa also has dedicated personnel in our Iowa district office, which are business development specialists, that work specifically with small businesses to help them in the contracting picture.

But the PCRs do not work with small businesses. They are housed at the federal agencies with major buying activities, and my understanding is there are no major buying activities located in Iowa. So our focus has been reaching out to the small businesses there because that is what is going to provide the most support to them.

Mr.BRALEY. Well, my time has expired, but we will continue to revisit that topic.

ChairwomanVELÁZQUEZ. Mr. Bartlett.

Mr.BARTLETT. Thank you very much.

Welcome, again, sir. I live about 50 miles from here and I have to get up early to get down here for an eight or nine o'clock meeting, and so when I leave the farm at 6:20 in the morning, I have to be able to put my clothing on quickly. And so in each of my suits are the essentials. I carry a Constitution in one of my pockets and I carry pens and paper and so forth.

And the pen I pulled out to write my notes with this morning says, "HUBZone contracting, it is good for America." That just happens to be the pen that is in this suit. There are different pens in different suits.

Mr.PRESTON. Confidential.

Mr.BARTLETT. HUBZone is, indeed, good for America, and I notice that it is sort of under attack now by this Committee. The first HUBZone contract in the whole United States was in my district. I have a number of HUBZone contractors in my district. I have a whole county which is a HUBZone, and HUBZone businesses have started there which is employing people at three and four times the mean salary, the average salary in that district.

All of the other programs of which I am very supportive help people. The HUBZone program helps not only people. It helps whole areas because we really are upgrading these areas when these HUBZones move in.

I know that there are some problems in certifying that they are, in fact, HUBZones. There are two ways that we could make sure that nobody is cheating. One way is to do what some are suggesting, to have you certify all of these companies and do recertifications. Since there are very many of those, that would be enormously expensive, would it not?

Mr.PRESTON. It would be very expensive.

Mr.BARTLETT. We would have to increase your staff.

Let me ask you. What is wrong with pure surveillance? The people who are most interested that nobody cheats is the other guy who submitted a proposal and did not get it because the cheater got it.

Shouldn't we encourage them to report that and what is wrong with that as a way of monitoring this?

Mr.PRESTON. I do not think that there is anything wrong with that. In fact, we get hundreds of cases a year filed through that mechanism.

Mr.BARTLETT. Would that not be the cheapest, most effective way to make sure that only legitimate firms get these contracts?

Mr.PRESTON. It is a very efficient way to do it because you have people that are familiar with the other firms, familiar with the contract specifically, and it then results in our specifically following up on a concern.

ChairwomanVELÁZQUEZ. Would the gentleman yield?

Mr.BARTLETT. I would be happy to.

ChairwomanVELÁZQUEZ. Two things. The program is not under attack. Fraud is under attack.

Two things. In terms of protest and self-policing, that could be done. The problem is we have for 10,000 companies only 20 or 25 projects to this date.

Yield back. Thank you.

Mr.BARTLETT. Thank you.

But we ought to encourage them to protest. Protesting should not be a stigma. You know, if there is something wrong, why we should encourage them to protest.

I came here as one of maybe—I do not know—maybe 35 or so people in the Congress who belong to NFIB before I came here. I was, among other things, in a former life a small business person. I have a lot of small businesses in my district, and I have a lot of protests in my district. So I am very familiar with those. They come to our office, and we try to mediate a number of those things.

Is this one of our newest programs?

Mr.PRESTON. It is one of the newer programs. It is about ten years old. So it is not brand new.

Mr.BARTLETT. Are there not growing pains with most of these new programs?

Mr.PRESTON. There are growing pains with new programs, and I think we have a long way to go to improve the effectiveness of this program, and I think a lot of it is in our sights.

Mr.BARTLETT. Well, I am glad to hear the Chairwoman state that HUBZones are not under attack; that what is under attack is fraud and, of course, there is nobody who is more interested in making sure there is no fraud in the HUBZone programs and the legitimate contractor's net program, right?

Mr.PRESTON. That is right, and I think it is important to understand that when you look at the statistics of firms that have not recertified or not completed the work on examinations, many of these firms are no longer in business, specifically the ones during the IG review.

One of the biggest concerns I have is when you look at the firms that are coded as HUBZone, somewhat around ten percent of them, of the contract value, was gotten through set-asides. Most of them either came in through a different program or they were small businesses who won it in a small business competition.

So the federal agencies actually are not using the program as actively to bring in HUBZone firms specifically, and as a result, when we go out there to do a recertification or do an examination, a lot of these firms do not even bother sending us the paper work because they are not seeing the benefit from that aspects of the program.

So I think we actually have to get out there and encourage usage of the program more because I think that is what is going to make it viable.

Mr.BARTLETT. Thank you very much. They have been very effective in my district.

Mr.PRESTON. That is good to hear. Thank you.

Mr.BARTLETT. And most of the government agencies are falling far, far short of the goal, and we appreciate your attention to this.

Thank you very much.

ChairwomanVELÁZQUEZ. Time has expired.

Mr. Shuler.

Mr.SHULER. Madam Chair, thank you for holding this hearing today.

You know, if you instate this toothbrush/toothpaste policy, you know, I think we create some real revenues through a reality TV show. I think we have all seen Big Brother 1 through 8 now. So I think there may be some really good merits to creating some revenues.

I do have one question though in all seriousness. A little over a year, have been as the Administrator. How much longer is it going to take for you to truly feel like you have been here long enough to not saying make a difference, but truly get some of the problems and issues, and I am not asking you to step on the toes of your predecessor, but to truly be able to implement some of the processes that really need to be implemented?

Because seven years is a long time, and I think we would all agree that is unacceptable. And obviously you see a tremendous amount of emotions that is play a part in this.

I commend the Chairwoman because she has certainly made this Committee what it should be, and I know it is putting excess work on your entire staff partly because of what people did not do before.

Mr.PRESTON. Well, to answer—

Mr.SHULER. How long is it going to take? I mean I have only been here nine months. Okay? So it is still a learning process as we go along, just as I am sure you are learning through this process.

How long is it going to take for you to truly feel like you are going to get your feet up underneath you to be able to truly manage this the way you want it to see, and that we as a Committee do not have to every time you show up here feel like things are going really bad?

Because right now from all looks of it, it is really bad.

Mr.PRESTON. Yes. Well, I would tell you that we have made incredible progress in this agency, and unfortunately for better or worse when we were up here in front of the Committee, we are generally addressing problems.

But I will tell you, and I think you all understand it, we have made remarkable progress in the disaster operation of this agency which affects your district obviously. We are in a dramatically better position to serve disaster victims in this country.

When I go down to the Gulf of Mexico, people hug us. People in that area are constantly telling us what a remarkable transformation we have made. We are hearing it from legislators from both sides of the aisle, from citizens.

I was down there doing a television interview. I had the cameraman and the producer come up to me. I had no idea they were even borrowers. I was down there for the second anniversary. In our 8(a) program we are making tremendous progress.

Eight (a) firms when they were coming into our program a year ago had backlogs, very long backlogs to get into the program. We worked through most of those backlogs. We are now giving every one of them somebody on the phone to help them. We have simplified the process. We are giving them tools to help them get through it more quickly. That is happening.

We have rolled up any number of new lending products to bring in more small businesses, and behind the scenes if you look at the operations of this agency, we have dramatically improved our efficiencies, the quality of our processes, our focus on the customer.

And the other thing, and I should not be talking about this ahead of time, but 15 months ago we were the agency in the federal government that had the lowest morale of any federal agency. We are going to be sending out a new survey in about 15 days, and we will be sharing the results with you, and I cannot hide anywhere. Okay? Because that was finished the day before I came in, the last survey. We are asking the exact same questions, and we will provide that to this Committee, and then we will get to see how we have done with the employees.

So I would tell you I think we have done a tremendous amount, and I do not want any of that progress to in any way be diminished by the work we still have to do.

Mr.SHULER. And there is a lot of work to do and continue your hard work because I know that this Committee will keep you accountable for the hard work and to truly get to the point that we can feel that it is not every time that you come to this hearing that it is always the bad news because we have a Chairwoman that truly cares.

Mr.PRESTON. Well, I truly think most of the issues that we are addressing are issues that the Chairwoman discussed with me before I came into the job, and really I think we are addressing the issues that are most important to this Committee.

We do not always agree on how to get there, but I really believe we are.

Mr.SHULER. Very good.

Chairwoman, I yield back.

ChairwomanVELÁZQUEZ. Thank you.

Ms. Clarke.

Ms.CLARKE. Thank you very much, Madam Chair, Ranking Member Chabot.

Mr. Preston, in, I guess, response to Congressman Braley's question I feel certainly his frustration as well. I was under the impression that earlier this year you had talked about a deadline of September 30th as well.

Maybe I was under the wrong impression, but somehow that came across as a benchmark or a goal. What you have done today is made it a fluid situation. Now I hear that the program's regulations are still being reviewed by 24 federal agencies and you do not know when contracts will be set aside for women-owned businesses in the federal procurement process.

At this stage, I believe that, you know, there is a real blockage there, and so the question I have is do you believe that the SBA and by extension the federal government is discriminating against women-owned businesses.

Mr.PRESTON. No, ma'am. I think if you look at what has happened in the last year or so, we completed the RAND study. We made it public. We submitted—

Ms.CLARKE. Can I just ask? You mentioned the RAND study. So is everyone sort of just holding in place until studies are done? What type of work is happening within the agency, within the people who you employ that it is contingent upon the RAND study?

This is seven years, seven years. Let me just say this. Black's Law Dictionary defines discrimination as differential treatment, especially failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

Here we have an administration that for seven years has not implemented any part of the program. Women-owned businesses are under represented as many as 87 percent of all industries in the federal marketplace. That has cost women- owned businesses about six billion in contracts.

If that were any other part of our society, I think we would be hearing so much more of an outcry. We have made a commitment to women-owned businesses seven years ago, seven years ago, and the sense of urgency has turned into a fluid, well, we will have RAND study. I mean, where is the urgency for getting this done and how do you feel comfortable coming back to this Committee time after time with excuse after excuse, you know, and not come with anything tangible that says the commitment is there? The commitment is there.

You are not representing a commitment to this, and I think that has to be the most frustrating part. So I want you to really think about the definition of discrimination and think about whether, in fact, you know, your intent does not match your act.

Mr.PRESTON. Well, ma'am, I take great exception with any implication that I am showing any discrimination in this process. So let me just tell you right now that if that is what you are implying, I am offended by your comment, and I would have to protest it strongly.

I would also tell you that women's procurement—

Ms.CLARKE. Let me say that I am offended and the women of America are offended—

Mr.PRESTON. I do not know how you can imply—

Ms.CLARKE. —that seven years—listen.

Mr.CHABOT. Madam Chair. Madam Chair.

Ms.CLARKE. If the shoe fits—

Mr.CHABOT. Point of order. Madam Chair—

Ms.CLARKE. If the shoe fits, you need to wear it.

Mr.CHABOT. —point of order.

ChairwomanVELÁZQUEZ. Would the gentlewoman suspend.

Mr.PRESTON. Totally, totally unacceptable on your part to imply that.

Mr.CHABOT. Madam Chair, isn't it the policy of this Committee that the witnesses be permitted to answer the questions?

ChairwomanVELÁZQUEZ. That is correct.

Mr.PRESTON. Okay. Six years before I came in here I would say you may not have seen a whole lot of tangible activity. Study had to be done before any under represented industries could be designated. The study was done. The study was made public. We submitted a rule for interagency clearance. Unfortunately, we have to resubmit based on various issues. We have resubmitted today. That is going into clearance again. Those are all action points.

Also, in the last year we saw women's procurement go up a billion and a half. That is 15 percent increase from '05 to '06. We continue. We are now in the process with federal agencies because the women's goal is not being hit specifically identify women-owned businesses as a category that they need to improve on. We are actually in the process of negotiating memoranda of understanding specifically around women-owned businesses and other categories that have not been met.

In addition, we have rolled out a tool that helps other agencies find women-owned businesses that meet their qualifications. So we have taken action.

Now, I spent 24 years in the private sector. Far be it from me to opine on why after a year in the government it takes a while to get stuff done. I could wax eloquent on that for many hours and we would all have to bring our toothbrushes.

ChairwomanVELÁZQUEZ. Would the gentle lady yield for a second?

Yes. Mr. Preston, if the SBA's regulations are implemented, what would be the process to get them into the Federal Acquisition Regulations?

Mr.PRESTON. The process from here on out is we are in the interagency process. When that is completed, it will go out for public comment. Everybody will have an opportunity to look at what the rule says, to comment on it. My understanding is, you know, and I would prefer to bring in my legal experts on this, it is approximately a three-month process, and after that we would then take those comments and implement them in the Federal Acquisition Registry.

ChairwomanVELÁZQUEZ. Okay. Now I recognize Ms. Hirono.

Ms.HIRONO. No questions.

ChairwomanVELÁZQUEZ. Okay. Let me ask you a question about the HUBZone program. You expressed in the testimony and you stated that the HUBZone construction contract limitation provision, you were concerned about it, and I just want to ask you if a company is performing work more than 150 miles away, the odds

are that it is hiring employees and renting equipment elsewhere. This does not benefit the company's HUBZone, the reason they got approved into the program in the first place.

So explain to me how a contract far away benefits the HUBZone of a company who got into the program because of their location in a particular zone?

Mr.PRESTON. I think it is a very fair concern. I think our concern around that has primarily to do with companies in rural areas that cover a large range of activity.

I was in North Dakota last week, which I should mention to you is launching what we think may be an alternative to Low Dock. You and I can talk about that later, but many of those companies travel far, and specifically I mentioned in my testimony companies located on Indian reservations. So it is primarily for companies in areas where we think they travel a long way.

In addition, those companies may send people to those job sites far away. So those people may still be located in those HUBZone areas.

ChairwomanVELÁZQUEZ. I hear you, and I just would like to ask you that you and us work together on this issue about the rural communities, because I think it is a valid point.

Mr.PRESTON. Yes.

ChairwomanVELÁZQUEZ. But I could not accept the fact that if we have a HUBZone company located in Southeast here in D.C. that could get a construction contractor 150 miles away, meaning Virginia Beach. It is going to benefit the people there, not the low income community that it was targeted to benefit, and that is the problem that we have.

Winter Park in Florida or in Utah, it is not supposed to be that way.

Mr.PRESTON. Well, they still would need to have 35 percent of their employees from HUBZones, and the one thing I would say is even if they are performing work in an area further away, it does allow them to hire people from HUBZones close to that job site.

ChairwomanVELÁZQUEZ. Well, and you mentioned the hiring and the job creation of that company, HUBZone company, for that community, but is that the business? The only requirement as far as employment of people from HUBZones far away from the company's home zone is that the business attempt to maintain employment of 35 percent of the company's employees from HUBZones.

So given this, can you provide some insight as to how we can be assured that HUBZone companies performing contracts a long way from their home zone will hire HUBZone residents?

Mr.PRESTON. Well, I know before the award is accepted, they have to test, not yet, but in our proposed rule, they would have to test that they met their HUBZone requirements. I unfortunately cannot comment on that, and recognizing a loophole here, I think it is something we need to understand.

ChairwomanVELÁZQUEZ. Because you know that is one of the points raised by the Inspector General.

Mr.PRESTON. Right.

ChairwomanVELÁZQUEZ. Mr. Chabot.

Mr.CHABOT. Thank you, Madam Chair.

Just one final point. Administrator Preston, you have been asked a lot of questions this morning. Are there any clarifications, anything you want to expound upon that you think that might make any of your testimony more clear, anything that you do not think came out right that you would like to comment on?

Mr.PRESTON. You know, I think much of what we are working on is to make this agency more effective in reaching out to small businesses, and specifically this group of small businesses that we talked to today. You know, our effectiveness is heavily influenced by how we are training our people, the kind of outreach we are doing, the support we are giving to the other agencies, the way we are holding them accountable, and I just want to reinforce that we have made, I believe, a lot of progress on a number of fronts. We will continue to do that.

And I would also like to commit to all of you here any time you want us to come over and meet with you informally to go through any of the initiatives, to show how we are doing, we would welcome those opportunities.

Mr.CHABOT. Thank you. Thank you very much.

I yield back, Madam Chair.

ChairwomanVELÁZQUEZ. Thank you, Mr. Preston, and the Administrator is excused. But before you leave, I want to thank you. I know this is not easy, and especially I know that you have been before this Committee too many times, but it is important, and the message is clear, you know. Before oversight was not conducted by this Committee, and I intend to make the agency better for the business community, and I am not going to abdicate the responsibility of this Committee to hold hearings so that we can make sure that people are accountable and that we are all doing what is right on behalf of taxpayers, but most importantly, the small business community that we represent and that we are committed to serve.

Mr.PRESTON. Thank you.

ChairwomanVELÁZQUEZ. With that, you are excused.

So the Committee is going to be in recess, and we are going to go to vote, and then immediately after the votes we will resume.

[Recess.]

ChairwomanVELÁZQUEZ. The Committee hearing resumes.

And we are going to start with the second panel. The next witness is Ms. Angela Styles. Ms. Styles, now in private practice with Crowell & Moring, was the Administrator for the Office of Federal Procurement Policy within the Office of Management and Budget from 2001 to 2003.

Welcome. You have five minutes to make your presentation.

STATEMENT OF ANGELA STYLES, PARTNER, CROWELL & MORING

Ms.STYLES. Chairwoman Velázquez an d Congressman Chabot, it is an honor to be here today. I also have three very special guests with me here today. I have my daughter and my son and our au pair from Brazil, my daughter Ellie Styles, my son Rett Styles, and Jennifer Madina del Mada, who is from Brazil on the State Department program.

ChairwomanVELÁZQUEZ. Welcome.

Ms.STYLES. Thank you very much.

I have been a passionate defender of small business both inside and outside the government, and it really does give me great pleasure to be here today. I only wish that I had a more positive story to tell you.

Our patchwork system for small business contracting just is not working, and it is not working for anybody, our country small businesses, our federal contracting officers, our federal agencies, or the U.S. taxpayer. We have created such a complex amalgamation of laws, regulations, and policies that even the best of lawyers are really struggling to figure out the maze right now.

Now exactly then can we expect small businesses with limited resources or contracting officers at the GS-12 and GS-13 legal to understand this hodgepodge system? There is a reason that fraud, abuse, and even simple errors are on the increase. Very few people understand the system. There are not resources at SBA to understand the questions, and those who do understand it can manipulate it to their benefit.

In essence, we have half of the contracting officers spending double the money in a constantly changing and complex regulatory environment with little training on small business issues.

On the small business side, the complexity of the programs is a significant barrier to entry. Many small businesses give up trying to understand the regulatory complexities or make significant errors in application with little help from SBA. Those inclined to commit fraud or to abuse the system have a complex and changing structure within which to hide their misdeeds. It is not a wonder that the system is experiencing problems.

And while many of the legislative changes you are considering today are perfectly targeted at solving real problems, there will be unintended consequences of adding a new layer of complexity that our over burdened federal contracting work force will have difficulty implementing and small businesses will have difficulty understanding.

Frequent changes to these programs also make it difficult to identify and ferret out fraud and abuse in the system, but let me give you a few real world examples that I have found in the practice of law very recently.

Last week I got a call from an old client of mine. She is an 8(a) firm, and she had just bid on nine different contracts that had been sent to her from one contract specialist. The RFPs, the requests for proposal, had been sent from the contract specialist's home E-mail. Almost simultaneous with those RFPs the contract specialist sent requests for this 8(a) company to buy Hawaiian candles and to host a Hawaiian candle party for her as well.

Lo and behold, when my 8(a) client ignored and properly ignored the Hawaiian candle request, seven contracts in a row were awarded to a Hawaiian company. Each award to the Hawaiian company was cents lower than my 8(a) client's offer, and it was not until she complained about the abuse that she was actually awarded one of those nine contracts.

I can also tell you that I get a number of calls from large businesses because they have been contacted by one person, 8(a) companies, that have a deal to supply a federal agency with a particular product. The 8(a), this one individual, acts as a pass-

through for the large business. The 8(a) does nothing but act as a pass- through. The large business gets a sale. The agencies meet their small business numbers, and the only loser there is really the taxpayer.

But what is driving this problem? It is legal but I think abusive. There is a lot of pressure on the agencies to meet their small business goals and they find ways to do it, some of which I think we would all consider to be improper and abusive.

And I do not think the goal of the 8(a) program is to enrich one individual by passing through a product without adding value, but that is the reality of the small business contracting world for small businesses, one that seems, I think, almost accepting of the abuse.

So what can we do to solve these problems? I do not have a magic wand, but I do think you can simplify the process. You can reduce the barriers' entry, eliminate the vast opportunities for error and fraud, and eliminate the ridiculous numbers of representations and certifications our small businesses must make every day.

The best place to start is what I reference as a single automated point of entry, a place where a small business could go, enter the data about their company, and find out whether they are actually small and what programs for which they are eligible to certify that the information they have supplied is accurate and complete and seek approvals of their joint ventures and mentor-protege agreements.

Without monumental effort, SBA should be able to take this data, verify the information submitted, and give it to contracting officers electronically through the central contractor registration. It sounds simple, and frankly, it is and should be simple. It takes out multiple layers of process and room for error and abuse on the small business side and the federal contracting side.

I think the barriers' entry should be low. The statutes and regulations should be clear and easy to understand, and the information regarding these programs should be accurate.

That concludes my prepared remarks, but I am very happy to answer any questions you may have.

[The prepared statement of Ms. Styles may be found in the Appendix on page 51.]

ChairwomanVELÁZQUEZ. Thank you.

My understanding is you will have to leave?

Ms.STYLES. Well, we have a plane to catch. I can stay until about 1:15.

ChairwomanVELÁZQUEZ. Our next witness is Mr. Joseph Sharpe. He is the Director of the Economic Commission for the American Legion. The American Legion was established in 1919 and has three million members in nearly 15,000 posts worldwide.

Welcome, sir.

STATEMENT OF JOSEPH SHARPE, JR., DEPUTY DIRECTOR OF ECONOMICS, THE AMERICAN LEGION

Mr.SHARPE. Thank you.

Madam Chairwoman and members of the Committee, thank you for this opportunity to present the American Legion's view on the

role that legislation could play in increasing procurement opportunity.

ChairwomanVELÁZQUEZ. Excuse me, Mr. Sharpe. Can you bring the microphone closer to you? Thanks.

Mr.SHARPE. Currently, the American Legion seeks and supports legislation to require a five percent goal with set-aside and sole source authority for federal procurements and contracts for business owned and operated by Service disabled veterans and businesses owned and controlled by veterans. This includes those small businesses owned by Reserve component members who have been or may be called to active duty or may be affected by base closings and reductions of our military forces.

The American Legion has encouraged Congress to require reasonable set-asides of federal procurements and contracts for businesses owned and operated by veterans. the American Legion supported legislation in the past that sought to add Service connected disabled veterans to the list of specific small business categories receiving three percent set-asides.

Public Law 106-50, the Veterans' Entrepreneurship and Small Business Development Act of 1999, included veteran-owned, small businesses within federal contracting and subcontracting goals for small business owners and when thing goes for the participation of small businesses and federal procurement contracts.

Agency compliance with Public Law 106-50 has been minimal, with only two agencies self-reporting that they have met their goals, and that is the VA and SBA. In 2004, President Bush issued Executive Order 13360 to strengthen opportunities in federal contracting for Service disabled, veteran-owned businesses.

Some of our recommendations have been, one, to create an interagency task force. The American Legion supports the creation of an interagency task force made up of the Administrator of SBA and one additional representative of SBA; also representatives of the VA, DOD, DOL, GSA, and OMB, and four representatives of veteran service organizations that should be appointed by the President.

The task force should be charged with developing proposals regarding (a) increased capital access; (b) increasing access to federal contracting/subcontracting; (c) increasing the integrity of certification of status as a small business concern of a Service disabled veteran, or small businesses controlled by veterans; (d) reducing paper work and administrative burdens on veterans in assessing business assistance; and finally, making improvements relating to support veteran business development.

The task force must send an annual report to the Senate and House Small Business Committees and Veteran Affairs Committees.

Another recommendation is to incorporate Executive Order 13360 into SBA regulations and standard operating procedures. The American Legion agrees with the recommendations given from the SBA Advisory Committee on Veteran Business Affairs, FY 2006 report, and it states the SBA needs to reemphasize implementation of Executive Order 13360 and establish it as a federal procurement priority across an entire federal sector. Federal agencies need to be

held accountable by the SBA for their implementing that executive order and the progress toward the three percent goal.

The SBA needs to establish a means to monitor agencies' progress and where appropriate establish a vehicle to report or otherwise identify those that are not in compliance and pursue ongoing follow-up.

Also, to achieve the SDVOB procurement goal contained in the executive order, the SBA must identify all agencies affected by the executive order under the directive of Congress. Then the SBA should assist those agencies to develop a demonstrated, measured, strategic plan and establish realistic reporting criteria.

Once the information is received, SBA should disseminate that data to all agencies, veteran service organizations, and post its findings on the SBA web site as a bellwether of program progress.

We would also like to make some changes to the sole source contracting methods to provide parity among special emphasis procurement programs.

The SBA should take immediate appropriate steps to promulgate regulations to revise 13 CFR 125. The proposed revision would eliminate existing restrictions on the award of sole source contracts to SDVOBSes, such as the Rule of Two. The change would mirror 13 CFR 124, Part C, which applies to 8(a) program participants and states.

In order to be eligible to receive a sole source 8(a) contract a firm must be a current participant on the date of the award. Accordingly, adopting this language would eliminate all restrictions on sole source awards to small disabled veteran- owned businesses.

ChairwomanVELÁZQUEZ. Your time is up, but I will give you an extra 45 seconds to summarize whatever is left. If not, during the question and answer time, you will be able to make any other points that you might not be able to make now.

Mr.SHARPE. In conclusion—

ChairwomanVELÁZQUEZ. Yes.

Mr.SHARPE. —the American Legion appreciates this Committee's attempt to restructure many of the important small business programs within the SBA which will result in a tremendous benefit for veterans.

Currently the veterans community is the only community that represents every social, cultural, small business group within SBA. There are presently 10,451 registered Service disabled veteran-owned small businesses, of which 3,300 are minority and 1,300 are women.

The American Legion is looking for a program that works for all small businesses and which would make an immediate demonstrative impact on federal procurement.

Madam Chairman, this concludes my statement.

[The prepared statement of Mr. Sharpe may be found in the Appendix on page 58.]

ChairwomanVELÁZQUEZ. Thank you, Mr. Sharpe.

Our next witness is Ms. Margot Dorfman. Ms. Dorfman is the CEO of the U.S. Women's Chamber of Commerce based in Washington, D.C. The USWCC represents 500,000 women-owned companies throughout the country.

And you will have five minutes to make your presentation. Welcome.

STATEMENT OF MARGOT DORFMAN, CEO, U.S. WOMEN'S CHAMBER OF COMMERCE

Ms.DORFMAN. Chairman Velázquez, Ranking Member Chabot, and members of the House Small Business Committee, I am honored to be here today speaking on behalf of the millions of small business owners across America to discuss updating and improving the SBA's small business contracting programs.

And while our constituents are women, they are also included in HUBZones, 8(a)s, and Service disabled veterans. In a recent hearing before this Committee, Ranking Member Chabot asked me what principal changes I would make in order to remedy some of the failings of the SBA.

Well, my view is that many of the challenges we see come from a failure of leadership and commitment of the SBA. It is also clear that there are several areas in which Congress can help the process of improvement through legislative action.

As these programs are facilitated by the SBA and assessed by this Committee, it is critically important that the Committee observe three things: the quality and commitment of the implementation by the SBA; the quality of expected outcomes; and the consequences of the unexpected outcomes.

In looking at women-owned small business programs, the Small Business Administration has shown a lack of commitment to the women's program that this very Committee has designed. It has been nearly seven years, and it sounds like it will be more than seven years since this legislation has become law, and we are still waiting for the regulations to be published, the list of under represented industries to be published, and the FAR updated so that agency leaders may effectively leverage this program.

In the interim, the SBA has stated many times that their web site Women's Office and matchmaking sessions are more than enough to serve women small business owners. Unfortunately, the statistics do not support this assertion.

Women own one-third of all businesses in the United States and more than 50 percent of all small businesses, but we still only secure 3.4 percent of all contracting dollars. I call upon this committee today to take action. The SBA has tried every way possible to avoid compliance with this law. Simply writing letters to the SBA does not help. Calling SBA leaders into this hearing has not helped. So now I strongly urge you to establish very clear legislation that compels the SBA to implement this program.

The method of collecting and assessing the data was made clear by the NAS. The RAND study collected the data and reported the women-owned small businesses are under represented in federal contracting in over 87 percent of all industries.

Again, I ask you to compel the SBA to implement this seven year old law.

For the 8(a) program, we are not seeing broad based activity in the 8(a) program. A lot of emphasis is placed in signing business up as 8(a) contractors, but now we need the SBA to work diligently

with these businesses and with agency leaders to achieve the real 8(a) goals.

We need to increase the net worth provisions and the time businesses may stay in the 8(a) program so that they can reach the level of size and strength and survive after they graduate the 8(a) program.

Our HUBZone program, of prime concern with the HUBZone program has been the validity of HUBZone contractors and the inappropriate leveraging of the HUBZone designation when performing work clearly well outside of the HUBZone. We need to tighten up the process for being designated as HUBZone.

Additionally, there are several small business contracting issues that I believe should be addressed. Transparency, I strongly encourage you to require that the SBA provide a much deeper reporting that shows the true representative of diversity of contracts going to small businesses. We need to measure the total number of small businesses receiving contracts by agency and small business program and the disbursement of these contracts by size and location.

The size standards. I encourage you to require annual reporting on employment and revenue for all SBA small business contracting programs. We need to assure that the firms taking par in small business programs are small.

The goals. I encourage you to push goaling more deeply by requiring the establishment of prime contract and subcontracting goals for each SBA program within each agency.

Accountability. We need to hold agencies accountable at the top level, starting with the Secretaries and including the program managers.

Integrity of contractors. Given the large amount of fraud we have seen in small business programs and federal contracting in general, I encourage you to require a background of integrity to take part in any SBA small business program.

And finally, effective implementation of small business contracting programs. I hear time and time again from agencies, small business, and contracting personnel that the small business contracting programs are challenging and time consuming. Consequently, the small business contracting programs are not utilized to their fullest extent.

I encourage you to consider this when drafting legislation.

I thank you for the opportunity to make these views heard before this Committee, and I applaud your diligence on behalf of small business and hope you will act now to improve the SBA small business contracting programs.

[The prepared statement of Ms. Dorfman may be found in the Appendix on page 64.]

ChairwomanVELÁZQUEZ. Thank you, Ms. Dorfman.

Our next witness, Mr. Todd McCracken. Mr. McCracken is the President of the National Small Business Association.

Established in 1937, NSBA is the oldest small business organization in SBA's advocacy, such as more than 150,000 companies around the nation.

Welcome, sir.

STATEMENT OF TODD McCRACKEN, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION

Mr.MCCRACKEN. Thank you very much.

We appreciate the chance to be here, and with your consent I will submit my written record as the statement and just try to summarize in the interest of time.

Federal procurement is an enormous challenge and issue of importance to the small business community nationally as you know and as you have identified, but small business participation is also crucial to a healthy federal procurement process, from that point of view as well.

Small businesses provide high quality goods and services to federal contracting agencies and infuse the federal procurement system with much needed competition.

In turn, the federal government invests in the most dynamic and innovative sector of the U.S. economy. Although small businesses comprise 99.7 percent of all employers, firms in the U.S. employ over half of all private sector employees, and you know all the rest. They only receive a small fraction of federal contracting dollars and a tiny sliver of federal research and development investment.

In 2006, small companies received just 19 percent of federal contracting expenditures, according to data compiled by Eagle Eye Publishers, and according to the SBA, the percentage of federal contracting dollars going to small businesses in 2006 was just 22.8 percent, and that is clearly insufficient.

We are pleased that this Committee and now the House of Representatives has passed H.R. 1873, which takes many steps, we think, to expand the size of contracting opportunities for small companies, and we think that is a crucial goal because as we often see in hearings like this, what we see are competing programs in the small business community, competing with one another for federal dollars, and we think that is rather unfortunate because we need to find ways to increase the opportunities for all small companies, not simply figure out who should be first in line among the small business community.

While those rules we think have to be clear and they have to be fair, we are hopeful that we can expand opportunities for all small companies and not just some at the expense of others.

So we hope that you will keep that in mind as you move forward as well.

Specifically, one of the issues I think that you have tried to address in this hearing and, I think, legislation that you are thinking about is the issues of fraud. So I would like to talk about that a little bit more as well.

Large businesses too often are the real recipients and executors of federal contracts ostensibly awarded to small companies. I think Ms. Styles alluded to some of that earlier and one particular instance, but there are many others as well. Up to a third of the SBA's list of top 100 small business contractors in 2005 were actually large businesses, according to Eagle Eye, again.

Additionally, more than 20 percent of the respondents to our own internal survey reported losing out on a federal procurement opportunity that instead went to a large firm that had been identified as a small business.

So allowing large companies to masquerade as small for the purposes of obtaining federal protections intended for the nation's small businesses is an affront to the will of Congress, a breach of the trust of the American people and to the infringement of the principles of fair play and competition.

We welcome efforts to combat fraud in SBA's small business contracting programs, including actions such as on-site verifications and geographical limitations and civil penalties for firms found to have falsely represented themselves as service disabled veteran-owned.

In addition to combating it, NSB urges enforcement against companies committing fraud. Since 1988, the Small Business Act has provided for felony convictions up to ten years, criminal fines of $500,000, mandatory three- year debarments, and forfeitures for companies determined by the SBA to have misrepresented their small business status. Prosecution under these provisions has been lacking, however and the SBA rarely rules on whether companies have misrepresented their small business status. This should change and SBA urges prompt prosecution for companies found to have fraudulently claimed small business status, and SBA also can use increased authority for the SBA to disbar large contractors that fraudulently identify themselves as small businesses.

Despite being the world's largest buyer of goods and services, the federal government of the United States remains something of an unknown commodity to America's small businesses, and that gets at points that have been made by earlier speakers as well.

Specifically, Ms. Styles talked about the complexity of the system, and that continues to be an enormous barrier preventing a lot of small businesses from even considering getting into federal procurement, and that is something I think we should address as well.

There are lots of correlations between federal procurement system and the tax system. We talk a lot about the tax gap and how people are cheating and the core crux issue there is the overwhelming complexity of the tax system.

People make a lot innocent mistakes, and people who are out to do wrong find it very easy to do that and hide it. And I would submit to you that the procurement system is reflective of that as well, and we think about ways that we can simplify and make things a lot clearer.

Thank you very much.

[The prepared statement of Mr. McCracken may be found in the Appendix on page 68.]

ChairwomanVELÁZQUEZ. Thank you.

Our next witness, Mr. Steven Denlinger. Mr. Denlinger is in personnel of the Latin American Management Association and is testifying today on behalf of the U.S. Hispanic Chamber of Commerce.

The Chamber represents 2.5 million Hispanic-owned companies, small business companies.

Welcome, sir.

STATEMENT OF STEVEN DENLINGER, PROCUREMENT POLICY CONSULTANT, U.S. HISPANIC CHAMBER OF COMMERCE

Mr.DENLINGER. Thank you, Madam Chairman and Representative Chabot.

It is an honor to testify before you today in representing the United States Hispanic Chamber of Commerce and LAMA. We are here in full support of the Small Business Contracting Program Improvements Act of 2007. We submit our full statement for the record.

I would like to talk briefly about four points, two of which are not addressed by the legislation.

First, delegation. A decade or so ago SBA delegated contract oversight to the federal agencies because of the tremendous logjam in getting paperwork processed by the SBA. It was just frustrating the contracting officers throughout the federal government.

We welcomed that at the time. I personally have spent a tremendous amount of time trying to solve these kinds of problems in advocacy for our members. So I am personally familiar with it.

At the same time, I do agree that it is time to revisit this issue because SBA has essentially abandoned its business development function with respect to the contracting process, and more and more 8(a) contracts are falling into the hands of fewer and fewer companies.

While we do that, we need to keep in mind two very important things. One is the massive SBA staff reductions will make it even more difficult for SBA to engage in business development as compared to ten years ago.

Secondly, acquisition reform has made it far more easy for federal agencies to contract with firms across the board through existing contracting vehicles, and anything that makes the 8(a) program a slower contracting process is going to make the 8(a) program less attractive and less competitive in the present federal marketplace.

So the question is: what do we want SBA to do with respect to business development, and what can SBA do with existing staff?

I want to talk a little bit about PEA. We recommend that PEA be applicable to all federal agencies. PEA is one of those tools that is not very well understood and that has been ineffectively utilized. We recommend that the federal agencies, including DOD, be specifically required to use PEA in two instances: instances wherein individual federal buying activities are not meeting the contracting goals assigned to them by federal statute or by the SBA.

And when I say individual procuring activities, there is somewhere between 1,000 and 2,000 individual procuring activities across the country.

And secondly, in instances wherein the federal buying activities have poor track records of contracting with minority businesses in technical areas, such as IT, precision manufacturing, telecommunications based maintenance, environmental remediation, and so forth.

SDB set-asides. They were suspended during the Clinton administration while the administration was assessing the impact of the Adarand Supreme Court decision on federal government procurement preference programs. The SDB set- aside program, of course, has now been reinstated after all these years.

We believe that as implemented in the past, it meets the strict scrutiny requirements of the Adarand decision, and therefore, the SDB set-aside program should be reinstated.

Lastly, I want to touch on the issue of the impact of Alaska Native corporations on the 8(a) program. This is a contentious issue. I realize that, and I just want to share a few thoughts with you. You will find in the attachment to this testimony a summary that we presented last week before another committee of the Congress.

Basically what we are looking at is the series of special privileges that have crept into the 8(a) program through a number of amendments over the years that have now rendered this program out of control. ANCs are not small, impoverished tribal businesses struggling to survive in remote villages in Alaska. ANCs are billion dollar corporate conglomerates that have thousands of employees, hundreds of subsidiaries and affiliates and hundreds of offices scattered across the United States, in some cases across the world.

There really are two 8(a) programs, the special rarified privileged world of the 8(a) ANCs and then the rest of the portfolio. The disparities between the ANC program and the regular 8(a) program are sometimes quite dumbfounding.

For example, to participate in the 8(a) program, the net worth of a normal applicant may not exceed 250,000. Yet a billion dollar ANC can participate in the 8(a) program virtually automatically. There are many more examples.

In addition, a normal 8(a) company can receive sole source contracts up to and only up to 3.5 million. Yet an ANC can receive sole source contract awards of any size, and there are many sole source awards to ANCs of 100 million, 250 million, 500 million and a billion.

The notion that a billion dollar corporation with 1,000 employees and dozens of corporate offices across the country can be an 8(a) participant and receive billion dollar sole source contracts totally discredits, in our opinion, the original purposes of the 8(a) program.

Congresswomen Velázquez, several years ago, you characterized bundling as the number one public enemy of small business, and we agreed with that, and I have used that statement on many occasions.

What we have allowed to happen is a bundling mechanism that sits right smack in the middle of the 8(a) program. The 8(a) program was not designed as a subcontracting program for 8(a) companies to be supplicants to ANCs for subcontracts. The 8(a) program was designed as a program that would give small disadvantaged businesses across the board participating in the portfolio access to the privilege of participating in federal prime contracting.

That concludes my testimony, Madam Chairman. Thank you so much.

[The prepared statement of Mr. Denlinger may be found in the Appendix on page 73.]

ChairwomanVELÁZQUEZ. Thank you.

Mr. Denlinger, I would like to address my first question to you. In 2006, and you were here, I believe, when the Administrator was testifying, only seven percent of companies participating in the 8(a)

got work as a result of their being in the program. Ninety-three percent of companies got nothing.

In 1999, one-third of the companies got work. In your view did the SBA delegation of its authority to enter into contracts to other agencies contribute to this problem?

Mr.DENLINGER. Oh, absolutely. No question about it. Yes, that is the oversight that SBA needs.

ChairwomanVELÁZQUEZ. If we required the SBA to get back into the contracting process, do you think this problem would start to be corrected?

Mr.DENLINGER. Yes, but we have to address the under staffing issues. That is critical.

ChairwomanVELÁZQUEZ. Yes, that is one of the issues that we have been dealing with in terms of the budget submission and the Administrator coming before this Committee and saying that the budget is sufficient when we saw what happened in Katrina. The response of the federal government, particularly SBA with their disaster relief program. We saw what it means to have a budget that is totally inefficient.

Mr.DENLINGER. May I just say that the main thing I think SBA needs to do is to make sure that companies coming into the portfolio, into the program have an opportunity to secure the smaller contracts that the federal agencies tend to award to other more experienced firms.

ChairwomanVELÁZQUEZ. Mr. Denlinger, I am sure you heard my exchange with Administrator Preston regarding the need to raise the 8(a) personal net worth limitation. The SBA is opposed to raising this limitation to 750,000 at program entry. What kind of effect does the 8(a) program's personal net worth limitation have on the growth of the small, minority-owned company?

Mr.DENLINGER. Our opinion has always been that the $250,000 net worth level encouraged only the weaker companies to come into the portfolio, and so we have long advocated, as you know, an increase in the personal net worth for entry into the 8(a) program.

Let me say also keep in mind the purpose of the net worth ceiling is to establish an eligibility, an economic eligibility, disadvantaged eligibility for the program. We do not think that should be applied during the program. So we think that the net worth ceiling should be eliminated for participation.

We want companies to become as strong as they can. Owners have to rely on their own personal bank ability, their own personal net worth in order to finance the growth and development of their companies.

ChairwomanVELÁZQUEZ. So how do you respond to the concern that a large percentage of the population has a net worth below these limitations?

Mr.DENLINGER. That is a good question. I think if we look at it in the context of a business development program, it makes all the sense in the world. We have got to understand that people have to have good, strong net worths in order to succeed and in order to be bankable.

ChairwomanVELÁZQUEZ. Thank you.

Mr. Sharpe, in the legislation the Committee is considering we have included a provision to require the SBA to carry out its obli-

gation under Executive Order 13360. In your view, when the SBA complies with these requirements, will this increase the likelihood that Service-disabled veterans will be more successful in winning contracts?

Mr.SHARPE. Yes, I do, and that has been a big issue with SBA. We want to see them more proactive. We want to see them more active as far as monitoring agencies and clients, and I think by doing that, all veterans will be better off.

ChairwomanVELÁZQUEZ. Thank you.

Ms. Dorfman, should the Committee intervene now to insure that the Women's Procurement Program is implemented?

Ms.DORFMAN. I would say yes because after today, hearing that it is going to be delayed at least three more months and knowing what that entails after the fact, we need some sort of assistance. The Administrator mentioned that, gee, women-owned firms got a million dollars this past year in contracts and isn't that wonderful, but the reality is if you multiply out what we have lost over the last seven years, that is $42 billion, and subtract one billion dollars, then you have got $41 billion that we have lost and that number will continue to grow.

ChairwomanVELÁZQUEZ. Is it the concern of the U.S. Women's Chamber of Commerce that there is the possibility that the SBA will not implement the Women's Procurement Program at all, or if it does, that it will not be done properly?

Ms.DORFMAN. Absolutely. We have seen stonewalling from the beginning. It has been seven years. We have watched the deadlines self-imposed come and go, and I do not suspect that the behavior will change. We absolutely need some sort of assistance to get this done.

ChairwomanVELÁZQUEZ. What will be the effect if the administration fails in implementing the Women's Procurement Program? What effect will that have?

Ms.DORFMAN. Women-owned firms will continue to lose the billion dollars of revenues annually. That impacts not just their business but their families, their communities because they hire even men who have families.

So this is not a woman's issue. This is a community issue, and it is the country's issue because, again, the whole growth of the economy is dependent on small business growth.

Women-owned firms represent one-third of all businesses in the United States. It just makes sense to assist them in accessing federal contracts.

ChairwomanVELÁZQUEZ. And this is not a handout.

Ms.DORFMAN. It is absolutely not a handout.

ChairwomanVELÁZQUEZ. Mr. McCracken, does it seem reasonable to you for the Committee to want to insure that companies who participate in SBA's procurement programs conduct themselves with integrity and are of good character?

Mr.MCCRACKEN. It certainly sounds reasonable, yes. The question, of course, are the definitions of integrity and good character and who makes that determination, but assuming that can be done in a reasonable way, it is not an unreasonable expectation I do not think.

ChairwomanVELÁZQUEZ. In your estimation, how important is it that the Committee act decisively when we learn that small business contracting programs are being misused and benefits are actually going to ineligible companies?

Mr.MCCRACKEN. I think it is pretty crucial because it does contribute, I think, to the overall culture that can pervade the procurement system, and you do wind up with a lot of gamesmanship because there begins to be a feeling, I think, among too many people that this is how the game is played and that you figure out how to use the system rather than how to provide the best service and the best quality contracting at the right time.

That would be a very unfortunate consequence and, I think, not in the long-term interest of the small business community or the federal government. So we think it is pretty important that when you design programs, that they be designed clearly so that they are not easy to abuse and that they are clearly targeted, and that if you have to fix some of that going back, it needs to be fixed.

But I am also very sympathetic to the argument that we cannot keep constantly changing these programs either because that creates a great deal of confusion.

ChairwomanVELÁZQUEZ. I am sorry, but you cannot?

Mr.MCCRACKEN. Keep changing the programs year after year either because that creates a great deal of complexity and confusion that I think leads to the same kinds of abuses you are trying to address.

ChairwomanVELÁZQUEZ. The fact of the matter is that some of these programs have not been modernized for the last decade.

Mr.MCCRACKEN. Right.

ChairwomanVELÁZQUEZ. Ms. Styles, in your testimony, you have suggested severe and tangible penalties for fraud. The problem with this is before you can get to the penalties, you have to catch someone. The SBA's Inspector General has reported that 80 percent of HUBZone companies are not eligible three years after they have been approved.

What is your proposal for how we catch these people?

Ms.STYLES. Well, I think there are two issues. One, there are seven people at the SBA that work on the HUBZone program. I am not sure how much you can do with thousands of companies and seven people. You need to allocate resources to it or you are not going to find them.

And second, when you find them, send them to jail. Refer them over to the Department of Justice and make examples of these people. If there are not examples, you are going to have people out there that see that there are seven people in the program and then they can continue to commit fraud.

ChairwomanVELÁZQUEZ. Well, again, we go back to the budget issue and the problem that we have is that every time the Administrator comes before this Committee to testify on the budget submission and we on this side point to the fact that it is insufficient and that for the least five, six years it has been cut by 42 percent, they always say that they can do more with less.

Ms.STYLES. Well, I would add that if you take people out of the 8(a) program and put them in the HUBZone, then you will start having problems in that program. I mean, it is not a matter of

being able to adjust their resources. It is a matter of the Office of Management and Budget realizing that they need to commit the money, I think.

ChairwomanVELÁZQUEZ. And for the record, Ms. Styles, I know that you are here testifying on your own, but do you represent the HUBZone Council?

Ms.STYLES. Not currently. They were a client at my old firm, but they are not a client at my current firm.

ChairwomanVELÁZQUEZ. Thank you.

Mr. Chabot.

Mr.CHABOT. Thank you.

Ms. Styles, I will begin with you first. Before I do that, I want to compliment you on your children, how good they have been, how quiet, and of course, this testimony has probably been riveting for them.

[Laughter.]

Ms.STYLES. In spite of the Three Musketeer bars that your staff gave them.

Mr.CHABOT. But it is quite amazing how good they have been. So my compliments to you.

Ms.STYLES. Thank you.

Mr.CHABOT. Give them some treats and all that kind of stuff, take them to a show, do all kinds of good stuff. They have been real good.

Your example about the Hawaiian example that you mentioned, could you tell us a little more about that and what was going on there and how widespread you think that type of thing might be in the system?

Ms.STYLES. Well, I come upon examples like that rather frequently, I hate to say. This one was just a stunning and stark one, and my client asked me not to reveal her name, but that I was perfectly happy to use the examples because it was really stunning.

I mean, you know, you have got this contract specialist at home sending out RFPs and then trying to benefit herself through a candle company at the same time, and a small business, you know. I mean, this woman knows me personally. She is a friend and has been a client for a long time. So she has me to come to say, "What can I do about this? How can I handle that?"

Well, there are a lot of small businesses out there that will buy the candles because it will help them get, you know, the business or have no idea what to do in a situation like that, and there are a lot. I mean, it is not just the small businesses that may be having problems. It is the contracting officers. There are not very many of them. They do not have a lot of oversight, and things like this can happen with some frequency.

Mr.CHABOT. Thank you very much.

And unless the Chairwoman has any additional questions, I know you have a flight to catch.

Ms.STYLES. Thank you very much.

Mr.CHABOT. So if you have to go at some point, you are welcome.

Ms.STYLES. I appreciate it. Thank you very much for having me.

Mr.CHABOT. Madam Chair, did you have anything else you wanted to ask this specific witness?

ChairwomanVELÁZQUEZ. No, not to her.

Ms.STYLES. Thank you.

Mr.CHABOT. Thank you very much for your testimony.

ChairwomanVELÁZQUEZ. Thank you.

Mr.CHABOT. We appreciate it.

Mr. Sharpe, if I could go to you next, how would you increase the integrity of certifications of eligibility for Service-disabled veterans?

Mr.SHARPE. Well, I would require those agencies whose job it is to do that to actually do it. You know, again, we talk about SBA and their lack of resources. We should have the resources available so that those agencies that are required to fulfill the law that has been already put out there do it, and that is all it takes for them to follow the law.

Mr.CHABOT. Thank you.

Ms. Dorfman, what further actions is the Women's Chamber of Commerce taking or planning to take or will take perhaps in the future to enforce the judgment of the Federal District Court in its lawsuit against the SBA?

Ms.DORFMAN. Right now what we wanted to do is get through this hearing and see what was happening here. The statement, thinking maybe today would be the day it was going to be implemented, oh, well. At any rate, so at this point we will have to get back with our attorneys and talk about what the next steps are.

Mr.CHABOT. So at this point you are not really sure and would not even want to speculate as to what that might be, I assume.

Ms.DORFMAN. No.

Mr.CHABOT. I am assuming you wouldn't want to speculate as to what type of things you might consider?

Ms.DORFMAN. Not at this time, no, but we will be talking with our attorneys based on today's outcome and see what choices are to move forward.

Mr.CHABOT. Thank you.

Mr. McCracken, you talked about fraud and, you know, large businesses masquerading as small business and that sort of thing and how prosecutions are lacking. How widespread do you believe that this fraud is, for example, the Hawaiian case that we had there? And would you like to expound upon that?

Mr.MCCRACKEN. I can try. And, again, my information unfortunately in terms of how widespread it is at various levels is somewhat anecdotal, but my impression is that certainly in larger doses than we would like, and with any kind of whether it is outright fraud or what you would think of as just abuse, you know, not using the program in the way it was intended or that most of us would think that it would be used, I think it is more common than I think that a lot of us would like to think. Id o not know that I would single out a particular program per se for that because I think there are lots of different things going on at different times.

But I think my biggest concern is not those individual cases. It is the culture that it can lead to if left unchecked long term and that we could actually have, you know, a political backlash against some of the programs that should be and could be and often are extremely helpful to small companies.

So we do have to make sure that they are as straight up as they can be and that they are being implemented in the way that we

all expect that they are implemented. So enforcement, I think, is a big part of that.

At the same time, I think a lot of transparency and simplification, as I mentioned before, is a big part of the solution to that as well. I think when you were talking with the Administrator you talked about the example of how do you catch some of this stuff and should we rely on other contractors who see it happening and say, well, this guy is not really on the up and up here. Should they be reporting that?

And I think one of the reasons that may not work in all cases is because the other contractors themselves may assume there is some loophole this guy used to get into the program that they do not understand, and there may not, in fact, actually be. So they will not report those cases because the system is so complicated that a lot of those things people will just shrug their shoulders and say, "Well, what can I do?"

And I think if we had a clear, transparent, relatively simple system, we could—

Mr.CHABOT. My time is running short. I just wanted to get one more question and then I am going to get to you, Mr. Denlinger, in just a minute.

You also referred to the complexity of the tax code as being one of the principal problems, and I agree very much with you. Could you take maybe 30 seconds to 60 seconds to tell me what the problem is there?

Mr.MCCRACKEN. Oh, well, I do not know that I can do it in 30 to 60 seconds, but essentially we think that the code is enormously complex. We have this tax gap issue that we have been talking about a great deal over the last year or so, and we think too frequently the solutions are, well, let's ramp up enforcement and do a bunch of other things. So we are going to impose a lot of burdens on people who are actually complying with the law.

And we are willing to look at simplifying the tax code because that is really at the root of things because it allows people to get away with things and hide things and find loopholes that I do not think any of us intended to be there.

And so I could talk ad nauseam about our idea solution to those problems and what kind of tax system we ought to have, but it is not the one we have now. That is for sure.

Mr.CHABOT. Okay. Thank you.

And finally, Mr. Denlinger, it is my understanding that a few firms dominate the 8(a) procurement arena. Would the SBA awarding subcontracts provide greater opportunity to a more diverse cross-section of 8(a) firms?

Mr.DENLINGER. Would the SBA awarding subcontracts? I did not understand that part of your question.

Mr.CHABOT. Yes, because of the SBA going back and being the prime subcontractor.

Mr.DENLINGER. Oh, I think that would be a disaster. That tripartite agreement where SBA was the prime contractor of the federal agencies and 8(a) companies were the subs, that is a disaster. That is just a formula for chaos. It just cannot work. Please do not take us back there.

Mr.CHABOT. Okay. All right. Thank you very much.

[Laughter.]

Mr.CHABOT. I yield back.

ChairwomanVELÁZQUEZ. Mr. Denlinger, in your testimony you commented on the importance of on-site reviews or verification to insure the eligibility of companies for the HUBZone program. You compare it to what is currently done for 8(a). Can you expand on this?

Ms.DORFMAN. Well, as all of us know, the certification process for 8(a) is very rigorous, very thorough, and our sense is why not apply that standard across the board. What we are giving companies in these various programs is a tremendous advantage in the federal marketplace that ordinary citizens do not have. That demands a lot of respect, and I think that everybody should be subject to the same type of scrutiny.

To me it is a no brainer. Let's have background checks for everybody. Let's do on-site surveys for everybody.

ChairwomanVELÁZQUEZ. Thank you.

I want to thank you all for being here and as you can see, it shows the fact that we have not really reauthorized the SBA, the Small Business Administration; that a lot of these programs have not been modernized; and that we will continue to work with the Ranking Member, Mr. Chabot, to make sure that our legislation accomplishes what we really intend to do in terms of responding to the concerns and the problems that we are seeing with all of those programs.

And my intention is to try to move this legislation through the Committee within this month, in October.

With that, again, thank you all for being here. Members have five legislative days to submit additional materials and statements for the record.

Thank you again. This hearing is adjourned.

[Whereupon, at 1:20 p.m., the Committee hearing was adjourned.]

Opening Statement
of the
Honorable Nydia M. Velazquez, Chairwoman
House Committee on Small Business
Full Committee Legislative Hearing on SBA's Contracting Programs
October 4, 2007

I am pleased to call this hearing to order.

Today's hearing will review legislation to strengthen small firm's ability to secure federal contracts. Action to update and modernize these initiatives is long overdue. In fiscal year 2006, the federal government purchased a record $410 billion in goods and services. Unfortunately, the reality is that little was purchased from small businesses. Government buyers continue to turn to just 3 percent of the nation's companies – large corporations – for nearly 80 percent of their work.

This makes little sense when it is small businesses that provide the best value for the taxpayer's dollar. In an effort to rectify this imbalance, SBA's contracting programs were developed to give newer, less established businesses an entry point into the federal market. However a number of these initiatives have not been modernized for decades, and as result, small firms are falling behind.

The purpose of today's hearing is to examine legislation that will start to turn this around. There are four critical programs that we intend to address: 8(a), HUBZones, the women's procurement program, and the service-disabled veterans contracting initiative. Each of these efforts play a vital role in helping various segments of the small business community to break into the federal marketplace. And it is clear that as they stand today, these programs are failing to accomplish this intended mission.

It is my goal to ensure that this legislation accomplishes two primary purposes: First, these programs must operate in a way that maximizes taxpayer's value. Second, each initiative must be implemented in a manner that increases the efficiency of the federal procurement marketplace.

To ensure that taxpayer's interests are protected, the proposed legislation takes several important steps. Given recent occurrences of fraud, this bill prohibits the award of a contract if the business owner lacks integrity. It also requires that there are both prime and subcontracting goals for each SBA contracting program, as well as annual reporting on employment and income for all participants. Together, these changes will enhance the quality of participants, and weed out any bad actors, in SBA's contracting programs.

In an effort to maximize the efficiency of each of these initiatives, the bill standardizes several key elements. The most important area this is accomplished is with regard to the sole source limitation – the level at which contracts can be awarded without competition. Above this, companies will be required to compete for contracts. This will provide much-needed clarity to the agencies employing these programs.

Another major issue is the need to modernize these programs. Right now, there is concern that many of the companies that have graduated from the 8(a) company are not actually receiving work. In order to reverse this, we've required the SBA to get back into the contracting process. The proposal also updates the net worth limitation, so that companies can continue to grow stronger while maintaining their 8(a) status.

At long last, the Women's Procurement Program will be implemented. We propose that the SBA has 90 more days to finish its studies – and studies of studies. Until such time as the SBA finishes, agencies will be able to determine what industries are under-represented. Further, we suggest that the SBA should use a broader definition of under-representation so that the program is not so narrow as to only help an estimated 500 businesses.

During our September 19th hearing, the SBA concurred that the HUBZone program is flawed and subject to widespread fraud. We've proposed a number of actions to mitigate this problem including on-site verification of businesses, limitation on offices outside of HUBZones, and ensuring that the benefits of contracts awarded through the program go to low-income areas.

We have also heard the concerns of the veterans' community, and are proposing to require the SBA to implement its responsibilities under Executive Order 13360. Little action has been taken to date, and these businesses deserve more. We've also suggested that companies that falsely represent to be owned by service-disabled veterans are subject to civil penalties. This is no different than what is in current law for every other business that misrepresents itself.

With this legislation, I am confident that we're taking an important and long overdue step to modernize the SBA's contracting programs. These initiatives all have record levels of participation, and these business owners deserve more than they're getting. I look forward to continuing my collaboration with the Ranking Member Mr. Chabot, and I now yield to him for his remarks.

Opening Statement

Hearing Name	A Hearing to Consider Legislation Updating and Improving the SBA's Contracting Programs
Committee	Full Committee
Date	10/4/2007

Opening Statement of Ranking Member Chabot

"Good morning and thank you all for being here as we examine the committee print of Small Business Contracting Improvements Act of 2007. The legislation that we will be discussing today modifies government contracting programs authorized by the Small Business Act. I would like to thank Chairwoman Velazquez for holding this hearing and each of the witnesses for taking the time to provide this committee with testimony.

"As early as World War II, Congress recognized that a strong economy and industrial base requires a robust small business economy. More than 60 years ago, Congress created the Smaller War Plants Corporation to purchase goods and services from small businesses acting as subcontractors. At the end of the Korean conflict, the Small Business Administration was created to provide assistance to small businesses.

"One aspect of that policy, and the one we are examining today, is the requirement that small businesses be awarded a fair proportion of contracts for the purchase of goods and services by the federal government.

"Despite the extra assistance from the SBA, small businesses owned by socially and economically disadvantaged individuals, women, service-disabled veterans, and those located in historically underutilized business zones, do not receive their fair proportion of contracts to sell goods and services to the federal government.

"If federal contracting is to benefit the entire small business sector, agencies must do better in their dealings with these targeted small business groups. The legislation before us today certainly will rectify some of the problems associated with the operation of these programs. However, I believe that some aspects of this legislation need modification to avoid undue regulatory burdens on small businesses. Furthermore, there are some parts of the legislation that simply need clarification to remove ambiguities that could make implementation difficult. Finally, I look forward to hearing from the witnesses on other suggestions that could better integrate these targeted programs into the overall federal procurement process.

"Again, I thank the Chairwoman for holding this important hearing, look forward

to working with her as this final piece of the Small Business Act reauthorization moves through the legislative machinery."

October 4, 2007

Rep. Bruce Braley

Opening Statement: Hearing on "Legislation to Update and Improve the SBA's Contracting Programs"

Thank you Madame Chairwoman.

As Chairman of the Small Business Subcommittee on Contracting and Technology, I have a special interest in the issues we will be discussing today. In our first subcommittee hearing, we heard witnesses representing women-owned businesses describe how the federal government was failing to keep its commitment to them. They talked not only about how the 5% goal for women-owned businesses was not being met, but also about how the *Women's Procurement Program,* which was enacted in 2000, has yet to be implemented by the SBA. This is a disgrace.

I also want to talk about the HUBZone program. Established in 1997, this program promotes community development for low income or high unemployment areas. In Iowa's 1st Congressional District there are 21 HUBZone areas. One thing I like about the legislation we are discussing today is that it prohibits the use of a HUBZone preference for construction contracts that are further than 150 miles away from the recipient's HUBZone. I want to be sure that the work being done in these zones is truly contributing to the local economy.

By law, federal organizations are required to support small businesses. However, over the past 5 years, total government contracting has increased by 60% while small business contracts have decreased by 55%. This suggests that the SBA's procurement initiatives are not bringing work from the large business share to the small business share, but rather are forcing small businesses to compete for an increasingly smaller piece of the pie.

It is essential that small businesses have access to the over $400 billion per year federal marketplace. *The Small Business Contracting Improvements Act* nicely complements H.R. 1873, *the Small Business Fairness in Contracting Act,* a bill I introduced in April that later passed the House on May 10th by an overwhelming bipartisan vote of 409-13. My bill will give small businesses more opportunities to compete for federal contracts, raising the small business federal contracting goal from 23% to 30%. This means that <u>all</u> of the programs we discuss today will have greater opportunities to compete for federal contracts.

Small businesses are the driving force for job creation in this country, and we must ensure that these businesses not only remain healthy, but also have the support they need to grow. This Committee needs to work together to make sure small businesses are not shut out of the federal market place.

Unfortunately, Iowa ranks 48th in terms of government contracting dollars awarded to small businesses. Small businesses are the backbone of the communities within my district in Iowa, as they are in most Congressional districts. Allowing them a fair opportunity to bid on federal contracts can bring economic vitality to these towns.

I'm pleased that we will continue our discussion on this important subject, and send a clear message to small business owners that they will finally receive a fair opportunity to compete for and win federal contracts.

I want to thank our witnesses for taking time from their busy schedules to join us here today.

Testimony of
Honorable Steven C. Preston
Administrator
U.S. Small Business Administration

Hearing on
Government Contracting Legislative Proposals

Committee on Small Business
US House of Representatives

October 4, 2007

Chairwoman Velazquez, Ranking Member Chabot and Members of the Committee, thank you for the opportunity to testify before you regarding SBA's government contracting and business development programs and the committee's legislative proposals.

In the past year SBA has made significant strides in working to improve small business access to federal contracting opportunities. We have worked to provide better data to accurately measure agency progress, and created a new Scorecard that clearly and transparently measures agency progress towards small business goals. We have not achieved all goals and SBA plans to use the scorecard as an integral part of our effort to make the small business programs under our authority work in a more coordinated fashion throughout the federal government.

While significant improvement has been made over the last year to create greater transparency within the federal procurement process, we continue to pursue further internal improvements to assist our customers. We have increased training for SBA field staff to enable them to improve outreach to our small business clients and refocused our PCRs on their primary responsibilities – identifying small business opportunities. We have also hired additional PCRs to increase our coverage. These improvements are just the beginning and we look forward to continued progress in our government contracting programs as we reengineer and improve our processes.

Committee Legislative Proposals

I would now like to discuss the proposals from the brief outline we were provided and discuss the Administration's positions.

8(a) program –

SBA would be opposed to the elimination of the delegation of authority. Agencies need this authority to streamline the process for making 8(a) awards. Otherwise, SBA and the agencies will be required to return to the laborious process of passing letters of intent back and forth. SBA would suggest amending the process rather than eliminating it. As I mentioned before, SBA has already redrafted the agreement with the agencies and is now requiring PCR review of 8(a) business mix to increase opportunity for all program participants. A limit on the use of contracting authority with any one 8(a) firm combined with a requirement for market research will produce a simplified process and more even distribution of contract opportunities.

Regarding the net worth standard SBA has not found that the current $250,000 level is a barrier to entry to the program. Program participation currently stands at 9,667 firms, an all time high, and applications are steady. While studies have shown that, indexed for inflation since the time it was instituted, the standard would be $550,000 SBA has concerns over a blanket $750,000 minimum. There may be merit to increased standards in some industry groups. However, we believe the blanket is too high.

Finally, the SBA has some concerns regarding the committee's intent in changing the current phase structure of the 8(a) program. Currently the program has a 4 year development stage and a five year transition stage. If the program participation is expanded to ten year the SBA believes legislation should not shorten the transition stage but rather have them equal at five years each.

HUBZone program -

SBA is concerned over the proposal to require on-site exams before a firm's second contract. We foresee significant cost and logistical challenges in implementing the proposal effectively. The on-site examination is also redundant of the FAR regulation SBA has pending. That will require attestation of HUBZone status at the time of award on any contract. However, consistent with the committee's concerns SBA could pursue greater enforcement and assessment of penalties against firms that violate HUBZone program rules.

SBA is equally concerned about the other provisions in this title. If a HUBZone firm is not allowed to have offices outside a HUBZone then SBA believes the need for on-site examinations is eliminated. However, SBA has a further concern with this proposal. If a HUBZone firm may not have an office outside a HUBZone then this would ban offices at jobsites located outside a HUBZone, a standard business practice in the service and construction industries. That would be a significant burden to HUBZone contractors.

Finally, SBA is opposed to a change restricting the award of HUBZone construction contracts outside a 150 mile radius from the firm's HUBZone. Depending on the state or location of the HUBZone this would effectively eliminate many HUBZone firms from competing for work at all. For example, a HUBZone construction firm based on a Native American reservation would be unable to bid on a contract in the nearest city, which could be well over 150 miles away.

Veterans –

SBA has no objection to the provisions included in this part of the outline provided. False certification should affect all firms. Nor does SBA object to the codification of the terms of the Executive Order. SBA is committed to implementing that order.

General Provisions –

SBA does not support requiring background checks on all SBA program participants. SBA is responsible for certifying program eligibility. Under the Federal Acquisition Regulations, the contracting agencies are responsible for verifying contractor integrity. The only situation where that is different is 8(a). In the 8(a) program SBA and the 8(a) firms have a unique prime contractor/subcontractor relationship which shifts that responsibility.

SBA also has significant concerns about the proposal for increasing sole source award authority to $10 million. This provision has the potential to create a significant pool of large sole source contracts that would be outside the reach of most small businesses. If the committee's concern is to reduce the disparity in the 8(a) program, SBA would not suggest this approach. Creating such authority is only likely to increase the gap between large and small 8(a) firms.

SBA must also object to granting "interested party" status to any small business. Any firm, regardless of interest, could then protest an award and significantly multiply potential protests. SBA believes this would drive contracting officers to avoid SBA procurements. It is appropriate that firms involved in the bidding process have interested party status, but there is no benefit to allowing HUBZone firms to protest small business set-asides, or 8(a) firms to protest Service-disabled Veteran awards.

The Administration also wishes to express concern over the proposal to require prime and subcontracting goals for all SBA programs. While this will create a goal for the 8(a) program it will, of course cause overlap with the existing goal for Socially and Economically Disadvantaged Businesses (SDBs).

SBA also has concerns about the suggested annual reporting requirement. This is useful information, but SBA would like to know the scope of the reporting regime required and whether the proposals would cover all small business set-asides.

Chairwoman Velazquez, that completes my testimony and I will answer any questions you might have.

STATEMENT OF ANGELA B. STYLES

PARTNER, CROWELL & MORING LLP

BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 4, 2007

Chairwoman Velazquez, Congressman Chabot and Members of the Committee, I appreciate the opportunity to appear before you today to discuss the issues facing this Committee as you draft legislation to increase federal procurement opportunities for small businesses. I commend the Committee for examining these difficult issues. As the former Administrator for Federal Procurement Policy in the Office of Management and Budget, with direct responsibility for developing procurement policies to promote the achievement of small business goals, I aggressively fought to ensure that America's small businesses had maximum access to federal procurement opportunities. From a Presidential initiative on contract bundling to comprehensive changes to anti-competitive practices by Federal Prison Industries, I worked for three very long years to patch up what I can only describe as leaky levee system created over many years for small business concerns with very diverse interests and varying levels of experience and knowledge.

During my federal service, I worked with a passion for small business and I had small victories of which I am very proud. I will, however, never forget my first month in office at OMB when I asked my small business expert, Michael Gerich, to spend a few hours discussing my statutory responsibilities to small businesses and explaining the current state of the small business procurement programs. He brought the biggest, most complex chart I ever recall seeing to explain the federal small business procurement programs. While I had been working in federal procurement for many years, it was still difficult to fully grasp the nuances and complexities of these varied programs. Mr. Gerich spent countless hours educating me on the complexities of the statutes, regulations and policies governing small business procurement. Over time, I realized that I wasn't the only one having trouble fully understanding and implementing the complex system. We were expecting an acquisition workforce without a legal education, that was overburdened by drastic staffing cuts from the 1990s and a doubling of federal contracting dollars, to understand and attempt to execute a complex and often illogical system.

Now in private practice as a government contracts partner at the law firm of Crowell & Moring LLP in D.C., I have come to strongly believe that the system is too complex for either federal contracting officers or small businesses to understand.[1] I am particularly concerned that the more complex this system becomes, the greater the opportunity for fraud, abuse and simple error. We can't deny that fraud and abuse in the system has been on the increase. The stories are on the front page of our nation's papers everyday. And they rock the public's faith in the integrity of the entire contracting system.

In an ideal world, I would wipe the slate clean and start from scratch with a new structure for federal small business contracting programs. I would examine our goals for each program and question what statutes and regulations would need to be in place to meet those goals. Importantly, I would emphasize uniformity and consistency in the application of these programs among different federal agencies. I would keep the requirements for entry and the priorities among competing interests simple, clear, and easily verifiable. Finally, the penalties for fraud would need to be severe and tangible. While political reality makes the clean slate impossible, a close examination of the trends in the federal contracting system hold some clear indications of how our system can be improved to the benefit of small business.

Trends Affecting Small Business Contracting Programs:

- Federal contracting workforce cut approximately in half from 1994 – 2007.
- Smaller contracting workforce forced federal agencies to use fewer contracts, leading to the consolidation and bundling of requirements.
- Federal contracting dollars double from 2001 to 2007 from approximately $200 billion to $400 billion/year.
- In spite of large increases in federal dollars going to small businesses, Congress increases pressure to meet small business percentage goals.
- Small business programs are difficult to understand and subject to frequent statutory, regulatory and policy changes.
- Contracting Officers receive little, if any, training on small business programs.

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[1] I appear before your Committee today in my personal capacity and the views I express are my own.

- Implementation of small business programs has been inconsistent at different federal agencies, with varying interpretations of regulations and law, particular with regard to mentor-protégé programs.

- The Small Business Administration's ("SBA") budget has not increased to meet new demand, seriously affecting morale.

In essence, we have half the contracting officers, spending double the money in a constantly changing and complex regulatory environment with little training on small business issues. On the small business side, the complexity of the programs is a significant barrier to entry. Many small businesses give up trying to understand the regulatory complexities or make significant errors in application with little help from the SBA. Those inclined to commit fraud or abuse the system have a complex and changing structure to hide their misdeeds. It is not a wonder that the system is experiencing problems.

Recommendations for Improvements:

- **Create a Single Automated Point of Entry for Small Businesses**

The barriers to entry into the federal marketplace are significant. The simple task of understanding whether you are small and the programs for which you are qualified can take weeks of research when you don't know the regulations or where to look. I get dozens of calls a year from companies asking whether they are small and what programs they are qualified to utilize. These businesses have spent days or weeks sifting through regulations before they find me. I am sure there are thousands that give up before they call someone like me. For those companies that navigate the small business maze, many of them make significant unintentional errors in the application process. Of particular note, I have seen a high and increasing error rate in understanding the affiliation rules.

Once a company determines what kind of small business they are, the company is forced to complete endless representations and certifications regarding their size and status. A single company performing a single contract, currently certifies or makes representations regarding their size and program status as many as five times: (1) submission of data to the SBA for certain programs; (2) completion of the Online Certifications and Representations ("ORCA"); (3) registration with the Central Contractor Registration (CCR.gov); (4) responding to a specific Request for Proposals ("RFP"); and (5) receipt of a task order under a contract. The duplicative representations could not be more inefficient.

For small businesses that step into the more complex world of joint ventures and mentor protégé agreements, a Single Automated Point of Entry could normalize and speed up the SBA approval process. One of the most significant problems

facing 8(a) joint ventures is the failure by the SBA to approve the mentor protégé agreement and the joint venture in time to bid on the federal contracting opportunity.

Congress needs to tear down the barriers to entry, eliminate the vast opportunities for error and fraud, do away with the duplicative certifications, and automate the mentor-protégé/joint venture process. Small businesses should have a Single Automated Point of Entry for (1) determining whether they are small and the programs for which they are eligible; (2) certifying that the information they have supplied is accurate and complete; and (3) seeking approvals of joint ventures and mentor-protégé agreements. Small businesses should be able to complete the required forms on-line and know quickly whether they are qualified for most programs. Such on-line systems exist for the HUBZone and 8(a) programs which have robust on-line applications. Unfortunately, to get to these on-line systems, small businesses have to collect a great deal of information to determine whether the effort of completing an on-line application is worth their limited resources. Finally, businesses should be required to certify that all information is accurate and complete and must be required to periodically update that information. The certification should be tied to all subsequent contract actions with clear attachment of False Claims Act liability to inaccurate information submitted by the contractor that leads to the award of a federal contract.

Connecting the HUBZone and 8(a) systems, adding functionality for programs that do not currently require SBA certification, eliminating duplicative certifications, and automating mentor-protégé and joint venture agreements through a Single Automated Point of Entry would tear down a significant barrier for entry into the federal marketplace, reduce the opportunities for error and fraud, and eliminate vastly inefficient processes. I urge this Committee to give serious consideration to the creation of a Single Automated Point of Entry through the SBA.

- **Create Process for Verifying Information Submitted through Single Automated Point of Entry**

Federal agencies, Congress, and the public need assurance that the information submitted through the Single Automated Point of Entry is accurate and complete. For some programs, like the 8(a) program, SBA already undertakes an extensive review of a company upon initial application and entry. For other programs the Single Automated Point of Entry would facilitate the creation of proper audit and sampling by the SBA to ensure accuracy and completeness. The depth and level of verification could be mandated for all programs, be it through data mining or on-site verification. Congress could also mandate periodic updates to information, as well as periodic verification of accuracy. However, the standards for verification should apply equally across all small business procurement programs.

- **Directly Populate Central Contractor Registration with Information from Single Automated Point of Entry**

While there is not currently a single automated point of entry for small businesses, the SBA has made Herculean efforts to modify and populate the Central Contractor Registration ("CCR") with fields that cannot be altered by contractors indicating whether a contractor is an SBA Certified 8(a), an SBA Certified HUBZone, or an SBA Certified Small Disadvantaged Business. While these SBA populated fields are important improvements, they are not enough for contracting officers. The contracting officers need assurance that other small business fields are accurate.

All CCR small business fields should be automated, populating directly from the Single Automated Point of Entry (after verification by SBA). The CCR fields should be updated daily. The CCR fields indicating type of business should not be subject to change by small businesses. A small businesses' only point of interaction for determining whether they are small, determining the programs for which they are qualified, and making small business certifications should be through the Single Automated Point of Entry, not in multiple locations where great room for error and abuse exist.

- **Create an Automated System to Prioritize Small Business Program Decisions for Contracting Officers**

Under the current laws and regulatory structure, it is almost impossible for a contracting officer to know when a procurement should be (1) set-aside for small business; (2) competed among small business; (4) partially competed among small business; (4) competed among HUBZone firms; (5) competed among Service Disabled Veteran Owned firms; (6) sole-sourced to an 8(a); (7) sole-sourced to an Alaskan Native 8(a); (8) sole-sourced to an Indian tribe 8(a); (9) competed among 8(a)'s; (10) competed among Veteran Owned or Service Disabled Veteran Owned firms; or (11) subject to a different permutation of competition or sole-source requirements.

This decision process has to be simplified and automated for the contracting officer. With out a clear decision path, contracting officers will make legitimate mistakes, abuse is more easily interjected in the process, and our limited resources will continue to be utilized litigating these issues. For every procurement action, a contracting officer needs an easy and reliable mechanism to determine the appropriate and proper legal actions relating to small business programs.

Specific Legislative Proposals

While many of the legislative changes you are considering today are perfectly targeted at solving real problems in the system, there will be unintended consequences of adding a new layer of complexity that our overburdened federal contracting workforce will have difficulty implementing and small businesses will have difficulty understanding. Frequent changes to these programs also make it difficult to identify and ferret out fraud and abuse in the system. In addition, these small business programs are in a delicate balance, competing with each other for limited federal dollars. When certain programs are favored or placed with additional regulatory burdens, federal work and dollars are shifted from one deserving small business to another small business. The added friction among constituencies makes it difficult for small businesses to work together.

On initial review, several draft provisions appear to favor the 8(a) program and place harsher requirements on HUBZone and Service Disabled Veteran Owned companies.[2] While the 8(a) program is expanded in terms of years and net worth criteria, the HUBZone program will face unprecedented on-site verification requirements and restrictions on place of performance. No other small business program is subject to a mandatory on-site verification or restrictions on place of performance. It is unclear why such a heavy burden will be placed on the HUBZone program alone. In addition, the HUBZone program will be prohibited from performing construction work more than 150 miles away from the awardee's HUBZone. Such a severe limitation will dramatically limit, if not eliminate, the number of HUBZone companies that can perform particular construction contracts. The rationale for this provision is difficult to understand. Contracting officers are already vested with the authority to limit competition to contractors within a particularly locality. Should a contracting officer believe on a case-by-case basis that competition should be limited to local firms, they currently have the authority to enforce such a limitation. In sharp contrast, the proposed limitation takes away a contracting officer's flexibility and severely limits their ability to find the right firm for the right construction job. The proposed changes to the HUBZone program will interfere with the original intent —to create good paying jobs in the areas of America that have high unemployment or low wages. I strongly encourage the Committee to not build new roadblocks for a program that delivers jobs for tens of thousands of Americans each year.

The final area of apparent disparity is the increase in sole source thresholds to $10 million. Such an increase disproportionately favors 8(a) companies because sole-source awards can be made to an 8(a) company without a determination that

[2] The HUBZone Contractors National Council has been a client in past years.

there is only one 8(a) that can satisfy the requirement. For HUBZone firms and Service Disabled Veteran Owned firms, the contracting officer must make a determination that only one HUBZone firm or one Service Disabled Veteran Owned firm is capable of satisfying the requirements.

I commend the Committee for adding civil penalties for false representation of status by Service Disabled Veteran Owned firms. As recommended by the SBA Inspector General, this will treat Service Disabled Veteran Owned firms like other small businesses in terms of potential civil penalties for false representation of status.

Finally, the proposed prohibition on award of a contract to company if an owner "lacks integrity" will be difficult to fairly and objectively implement and may be duplicative of the current system. For contracts exceeding the simplified acquisition threshold (generally contracts in excess of $100,000), contractors are currently required to certify the responsibility of company owners. Namely, contractors must certify that company owners have not "within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them" or be "presently indicted or otherwise criminally or civilly charged" for "commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property . . . ." If the Committee wants to expand the definition of responsibility to include other offenses, they should be added in the context of the current system for certification and responsibility.

Conclusion

Again, it is an honor to be invited to testify here today. Our contracting system is designed to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives." 48 C.F.R.§ 1.102 (a). The most vital of those public policies objectives is a commitment to the inclusion of small businesses in the federal contracting process. The barriers to entry should be low, the statutes and regulations should be clear and easy to understand, and the information regarding these programs should be accurate. Everyone benefits when small business are allowed to compete. Our agencies find new solutions to meet mission critical needs, competition keeps costs low for the taxpayer, and our nation's small businesses keep unemployment low.

This concludes my prepared remarks. I am happy to answer any questions you may have.

STATEMENT OF
JOSEPH C. SHARPE JR., DEPUTY DIRECTOR
ECONOMIC COMMISSION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE ROLE THAT LEGISLATION COULD PLAY IN INCREASING PROCUREMENT OPPORTUNITIES FOR SMALL BUSINESSES

OCTOBER 4, 2007

Madam Chairwoman and Members of the Committee:

Thank you for this opportunity to present The American Legion's view on the role that legislation could play in increasing procurement opportunities for small businesses in relation to veterans.

Veteran-Owned And Service-Connected Disabled Veteran-Owned Businesses

The American Legion views small businesses as the backbone of the American economy. It is the driving force behind America's past economic growth and will continue to be the major factor as we move further into the 21st Century. Currently, more than nine out of every ten businesses are small firms, which produce almost one-half of the Gross National Product. Veterans' benefits have always included assistance in creating and operating veteran-owned small businesses.

The impact of deployment on self-employed Reservists is severe with a reported 40 percent of all veteran-owned businesses suffering financial losses and in some cases bankruptcies. Many small businesses have discovered they are unable to operate, and suffer some form of financial loss when key employees are activated. The Congressional
Budget Office, in a report titled, *"The Effects of Reserve Call-Ups on Civilian Employers,"* stated that it "expects that as many as 30,000 small businesses and 55,000 self-employed individuals may be more severely affected if their Reservist employees or owners are activated."

Additionally, the Office of Veterans' Business Development within the Small Business Administration (SBA) remains crippled and ineffective due to a token funding of $750,000 for non-credit programs per year. The SBA once again requested the same dollar amount for FY 2008. This amount, which is less than the Office Supply budget for the SBA, is expected to support an entire nation of veterans who are entrepreneurs. The American Legion feels that this pittance is an insult to American veterans who are business owners, that it undermines the spirit and intent of Public Law 106-50, and it continues to be a source of embarrassment for this country.

The SBA has requested $4.7 million for the entire budget of the Office of Veterans' Business Development in FY 2008. The SBA's Office of Veterans' Business Development plans to increase its efforts to educate and provide programs and services to veterans and active duty personnel in three major areas: access to capital, management and technical assistance, and procurement assistance programs through SBA, other government agencies, and the private sector. They plan on accomplishing this veterans' initiative through existing loan programs, the service-connected disabled veteran-owned business government contracting program, a redesigned website populated with a broad range of programs and services available to veterans, the development of training and mentoring programs for veterans by veterans, and funding district offices to grow veteran-owned business capacity.

The American Legion strongly supports increased funding of the Small Business Administration's Office of Veterans' Business Development to provide enhanced outreach and community-based assistance to veterans and self-employed members of the Reserves and National Guard.

Additionally, The American Legion supports allowing the Office of Veterans' Business Development to enter into contracts, grants, and cooperative agreements to further its outreach goals. The Office of Veterans' Business Development must be authorized to develop a nation-wide, community-based service delivery system specifically for veterans and members of Reserve components of the United States military.

The American Legion recommends that funding for the SBA Office of Veterans' Business Development non-credit programs be increased from $750,000 to $2 million.

The National Veterans Business Development Corporation

Congress enacted The Veterans Entrepreneurship (TVC) and Small Business Development Act of 1999 (Public Law 106-50) to assist veterans and service-connected disabled veteran-owned businesses by creating the National Veterans' Business Development Corporation. Presently, the objectives of Public Law 106-50, as originally envisioned, are not being met due to the scope of the mission, staffing and funding requirements.

The American Legion believes that with limited funding and staffing, TVC should not try to replicate preexisting services such as those provided by the Small Business Development Centers (SBDC).

The American Legion recommends that the resource-training centers for which TVC is currently providing funding be given to the jurisdiction of the SBA Veterans' Development Office.

The SBA's Veterans' Development Office is presently funding five such centers around the country and should be given the additional three. In addition, the SBA office should take on the responsibility of partnering with military and the Department of Veterans Affairs (VA) hospitals, the Department of Defense's (DoD's) Transitional Assistance Programs, State Department of Veterans Affairs Offices, Procurement Technical Assistance Centers, Military Family Support

Centers, and veterans' service organizations. This partnership will provide employment and entrepreneurship programs along with the addition of funding and necessary senior staff to oversee the implementation and development of such a program. TVC would operate more effectively acting as a liaison with existing associations of small business owners and, by working with SBA programs, ensure the involvement of private and successful military alumni from the business community to help support SBA's successful integration, and reintegration, of veterans and Reserve component members, who are entrepreneurs, into the private and public American marketplace.

The American Legion supports restructuring the National Veterans' Business Development Corporation. By changing the current chief executive officer position to a congressionally appointed director from the Senior Executive Service, Congress would have greater oversight of expenditures and an enhanced ability to monitor performance. Finally, it will restrict the role of the Board of Directors to fundraising, marketing and branding. The American Legion believes this change would serve to increase small business opportunities for veterans.

The American Legion reiterates that the Small Business Administration's Office of Veterans' Business Development should be the lead agency to ensure veterans returning from Iraq and Afghanistan are provided with Entrepreneurial Development Assistance. Comprehensive training should be handled by the SBA and augmented by TVC's on-line training. Resource Training Centers should include DoD and VA faculties.

Currently, many military families are suffering financial hardship while their loved ones are recuperating in military hospitals around the country. Many spouses leave their jobs to be with that disabled servicemember which results in financial ruin. Business development training is one key to a seamless transition for servicemembers. If business development training was offered to military members while still at a treatment facility, a small home-based business is feasible.

Legislation and Veterans Federal Procurement Opportunity

The American Legion seeks and supports legislation to require a 5 percent goal, with set-aside and sole source authority, for Federal procurements and contracts for business owned and operated by service-disabled veterans and businesses owned and controlled by veterans. This includes those small businesses owned by Reserve component members who have been or may be called to active duty, or may be affected by base closings and reductions in our military forces.

The American Legion has encouraged Congress to require reasonable "set-asides" of Federal procurements and contracts for businesses owned and operated by veterans. The American Legion supported legislation in the past that sought to add service-connected disabled veterans to the list of specified small business categories receiving 3 percent set-asides. Public Law 106-50, "The Veteran Entrepreneurship and Small Business Development Act of 1999," included veteran-owned small businesses within Federal contracting and subcontracting goals for small business owners and within goals for the participation of small businesses in Federal procurement contracts.

Agency compliance with Public Law 106-50 has been minimal with only two agencies self-reporting that they have met their goals (VA and SBA). In 2004, President Bush issued Executive Order 13360 to strengthen opportunities in Federal contracting for service-disabled veteran-owned businesses.

The following list shows selected agencies that have failed to meet the 3 percent goal for Fiscal Year (FY) 2006 for service-disabled veteran-owned businesses that has been established since 1999 and enhanced by the Executive Order in 2004.

1. The Executive Office of the President
2. Defense
3. Agriculture
4. Homeland Security
5. Transportation
6. Justice
7. Labor
8. Nuclear Regulatory Commission
9. Treasury
10. Interior
11. Education
12. Environmental Protection Agency
13. GSA
14. Health and Human Services
15. NASA
16. Energy
17. National Science Foundation
18. OPM
19. Social Security Administration
20. USAID
21. Commerce
22. HUD
23. FEMA

Once again, these are some of the agencies that did NOT meet the 3 percent goal for FY 2006. Service Disabled Veteran-Owned Businesses (SDVOBs) had the potential to be awarded approximately $7-8 billion for FY 2006 and about the same for FY 2007; yet, they have only been awarded approximately $3 billion. The scorecards can be viewed at: http://www.sba.gov/aboutsba/sbaprograms/goals/index.html. The actual dollar amount and percentage of all Federal agencies can be viewed at: http:/www.sba.gov/idc/groups/public/documents/sba homepages/sbgr fy 2006.html.

Certified Veteran- and Service-Disabled Veteran-Owned Businesses

The American Legion applauds the Veterans Information Portal operated by the VA's Office of Small and Disadvantaged Business Utilization. The Vendor Information Pages (VIP) is a

veteran-owned business database that lists businesses that are 51 percent or more owned by veterans or service-connected disabled veterans. These businesses are certified as veterans, if they are disabled and if they are 51 percent majority owners of their businesses.

VIP is used to promote and market Veteran-Owned Small Businesses (VOBs) and SDVOBs. This database is the number one source for Federal agencies looking for SDVOBs to comply with Executive Order 13360. The VIP database averages over 4,500 visits per month accounting for over 4,100 vendor searches by Federal agencies, prime contractors and private citizens. This database is also the sole source for all inquires for market research requested through the Center for Veterans Enterprise (CVE) and VA.

The VIP is a tremendous tool that contracting officers can refer to in order to guarantee that they are negotiating with certified VOBs and SDVOBs - http://www.vip.vetbiz.gov.

1. Create an Interagency Task Force

The American Legion supports the creation of an Interagency Task Force made up of the Administrator of the SBA (Chair), one additional representative of SBA, representatives of the VA, DoD, DOL, GSA, OMB, and four representatives of Veterans' Service Organizations that should be appointed by the President. The Task Force should be charged with developing proposals regarding: (a) increased capital access; (b) increasing access to Federal contracting and subcontracting, (c) increasing the integrity of certifications of status as a small business concerns, service-disabled veterans, or small businesses controlled by veterans, (d) reducing paperwork and administrative burdens on veterans in assessing business assistance; and (e) making improvements relating to supporting veterans business development. The Task Force must send an annual report to the Senate and House Small Business Committees and Veterans' Affairs Committees.

2. Incorporate Executive Order 13360 into SBA Regulations and Standard Operating Procedures

The American Legion agrees with the recommendations given from the "SBA Advisory Committee on Veterans Business Affairs" FY 2006 SBA report:

- "The SBA needs to reemphasize implementation of Executive Order 13360 and establish it as a Federal procurement priority across the entire Federal sector. Federal agencies need to be held accountable, by the SBA, for their implementing Executive Order 13360 and their progress toward the 3 percent goal. The SBA needs to establish a means to monitor agencies progress and, where appropriate, establish a vehicle to report or otherwise identify those that are not in compliance, and pursue ongoing follow-up."

- "To achieve the SDVOB procurement goal contained in Executive Order 13360, the SBA must identify all agencies affected by the Executive Order under the directive of Congress. Then the SBA should assist these agencies to develop a demonstrable, measured strategic plan and establish realistic reporting criteria. Once the information is received, SBA

should disseminate this data to all agencies, Veterans' Service Organizations and post its findings on the SBA website as a bellwether of program progress."

3. Change to Sole Source Contracting Methods

To provide parity among special emphasis procurement programs, the SBA should take immediate, appropriate steps to promulgate regulations to revise 13 CFR 125.20. The proposed revision would eliminate existing restrictions on the award of sole source contracts to SDVOBs such as the "Rule of Two." The change should mirror 13 CFR 124.508, part c, which applies to 8(a) Program participants and states, "...In order to be eligible to receive a sole source 8(a) contract, a firm must be a current participant on the date of the award...." Accordingly, adopting this language would eliminate all restrictions on sole source awards to SDVOBs.

4. Develop a User Friendly Veteran Procurement Database

The American Legion also supports the concept that the Federal government and DoD utilize its available technology to create, fund and support a veterans' procurement-spending database within DoD that is designed to capture past spending and project future spending goals in a format that allows contracting officers and program managers to evaluate and allocate procurements to meet the needs of the government while at the same time meet their SDVOB goals. This database would provide veteran-owned and service-disabled veteran-owned businesses an equal footing with all other small business special interest groups as regards Federal procurement opportunities.

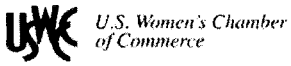
5. Recommendations

The restructure of all small business programs within the SBA would be a tremendous benefit for veterans. Currently, the veterans' community is the only community that represents every socio-cultural small business group within SBA. There are presently 10,451 registered service-disabled veteran-owned small businesses, of which 3,330 are minority, and 1,329 are women. The American Legion is looking for a program that works for all small businesses and which would make an immediate, demonstrative impact on Federal procurement.

CONCLUSION

The mission of The American Legion's National Economics Commission is to take actions that affect the economic well being of veterans, including issues relating to veterans' employment, home loans, vocational rehabilitation, homelessness and small business. The American Legion reiterates the Small Business Administration's Office of Veterans' Business Development should be the lead agency to ensure that veterans returning from Iraq and Afghanistan are provided with Entrepreneurial Development Assistance.

We look forward to continue working with the committee to enhance entrepreneurship among America's veterans. The American Legion appreciates the opportunity to present this statement for the record.



Testimony
of
Margot Dorfman

Before the House Small Business Committee
On the Updating and Improving the SBA's Contracting Programs
October 4, 2007

Chairman Velazquez, Ranking Member Chabot, and members of the House Small Business Committee, my name is Margot Dorfman. I am the CEO of the U.S. Women's Chamber of Commerce (USWCC).

I am honored to be here today speaking on behalf of small business owners to discuss updating and improving the SBA's Contracting Programs. In a recent hearing before this committee, Ranking Member Chabot asked me what principle changes I would make in order to remedy some of the failings of the SBA. While my view is that many of the challenges we see come from a failure of leadership to engage in productively fulfilling the many SBA contracting programs, it is also clear that there are several areas in which Congress can help the process of improvement through legislative action.

Over many years, programs have been implemented with the purpose of assuring broad based fair access to federal contracting for all small businesses and to energize certain underserved communities. As these programs are facilitated it is critically important that this committee observe three things: the quality and commitment of the implementation by the SBA; the quality of the expected outcomes; and the affects of the unexpected outcomes. I hope, through this hearing process, you may gain insights in all three areas.

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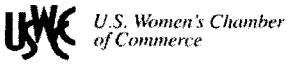

Women-Owned Small Business Program

The SBA has shown a total lack of commitment to the women's program. It has been nearly seven years since the women's set-aside legislation became law. And we are still waiting for the regulations to be published, the list of underrepresented industries to be published, and the FAR updated so that agency leaders may effectively leverage this program. In the interim the SBA has stated many times that their website, women's office and one-on-one sessions are more than enough to serve women small business owners.

Unfortunately, the statistics do not support this assertion. Women own one third of all businesses in the United States and more than fifty-percent of all small businesses. And, we are still only securing 3.4% of all federal contracting dollars. Additionally, using the method recommended by the National Academy of Sciences, the recent study by the Rand Corporation reports that women businesses are underrepresented in over eighty-six percent of all industries.

I call upon this committee to take action today. You need to act. Simply writing letters to the SBA won't help. Calling SBA leaders into hearings won't help. We strongly urge you to establish very clear legislation that compels the SBA to implement this program. The method of collecting and reviewing the data was made clear by the NAS. The Rand study collected and reported the data. Now, I ask you to compel the SBA to implement this program through clear legislation.

8(a) Program

We are not seeing broad based activity in the 8(a) program. A lot of emphasis is placed in signing businesses up as 8(a) contractors. Now we need the SBA to work diligently with these businesses and with agency leaders to achieve broad usage of 8(a) firms. 8(a) is intended as a foot in to federal contracting with strong

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assistance to advance. To fulfill the promise of this program, we need to assure that there is strong activity by the SBA with these contractors and that a wide range of 8(a) contractors are part of the federal marketplace. Building a big list does nothing. We need to see real activity.

Additionally, we need to expand the net worth provisions increased and the time businesses may stay in the 8(a) program so that they can reach a level of size and strength and survive as the move out of 8(a).

HUBZone Program

A prime concern within the HUBZone program has been the validity of HUBZone contractors and the inappropriate leveraging of HUBZone companies doing work clearly well outside of the HUBZone. The purpose of this program was to energize underserved geographical regions – to give business leaders a way to compete fairly for government contracts and bring revenues back to their region. We strongly suggest that you tighten up the process for being designated as a HUBZone firm and the region of work in which these firms may leverage their HUBZone status. This will sustain the integrity of the HUBZone program.

General Small Business Contracting Program Issues

There are several general small business contracting issues that should be addressed:

Transparency. I strongly encourage you to require the SBA to publish much deeper reports showing the diversity of contracts going to small businesses. We especially need to measure the total number of small businesses receiving

contracts by agency, and the disbursement of these contracts by size and location.

Size Standards. I encourage you to require annual reporting on employment and revenue for all SBA contracting programs. We need to assure that firms taking part in small business programs are small businesses.

Goals. I encourage you to push goaling more deeply into each agency by requiring the establishment of prime contract and subcontracting goals for each SBA program within each agency.

Integrity of Contractors. And, given the large amount of fraud we have seen in small business programs – and federal contracting in general, I encourage you to require a background of integrity to take part in any of the SBA small business programs.

Thank you for the opportunity to make these views heard before this committee. I applaud your diligence on behalf of small business and hope you will act now to improve the SBA small business contracting programs.

1200 G Street NW, Suite 800, Washington, D.C. 20005
888-41-USWCC toll free | 206-495-0819 fax

TESTIMONY OF
TODD MCCRACKEN
PRESIDENT
NATIONAL SMALL BUSINESS ASSOCIATION
AT A HEARING TO CONSIDER LEGISLATION UPDATING AND IMPROVING THE SBA'S CONTRACTING PROGRAMS
BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 4, 2007

Chairwoman Velázquez, Ranking Member Chabot, and members of the committee, my name is Todd McCracken, and I am the president of the National Small Business Association (NSBA) , the oldest small-business advocacy organization in the United States. On behalf of NSBA, I would like to thank you for the opportunity to share my thoughts on federal small-business procurement and the need for legislation aimed at updating and improving the contracting programs of the Small Business Administration (SBA). I also would like to commend the Chairwoman, the Ranking Member, and the other members of the Committee for their sustained effort to work in a collegial and bipartisan fashion on a range of issues important to the small-business community.

Federal procurement is not just of singular importance to many small businesses—small-business participation is crucial to a healthy and competitive federal procurement process. Small businesses provide high-quality goods and services to federal-contracting agencies and infuse the federal procurement system with much-needed competition. In turn, the federal government invests in the most-dynamic and innovative sector of the U.S. economy. America's small businesses annually have generated 60 to 80 percent of the country's net new jobs over the last decade. Small businesses also "produce 13 to 14 times more patents per employee than their larger counterparts, and... these patents are more likely to be cited in other patenting applications," according to a recent Small Business Administration Office of Advocacy working paper.

This unrivaled success has been achieved with less than adequate governmental support, however. Although small businesses comprise 99.7 percent of all employer firms in the U.S.,

employ half of all private sector employees, and are responsible for more than 50 percent of the country's private, non-farm gross domestic product, they only receive a fraction of federal contracting dollars and a tiny sliver of federal research and development investment. In FY 2006, for instance, small companies received 19 percent of federal contracting expenditures, according to data compiled by the respected research firm Eagle Eye Publishers. According to the SBA, the percentage of federal contracting dollars going to small businesses in FY 2006 was 22.8 percent—but even this is grossly insufficient. Even more disheartening is the paltry 4.3 percent of the federal research and development investment reserved for small business—despite the fact that small businesses employ more scientists and engineers than large companies (32 percent vs. 27 percent) and generate five times more patents per research and development dollar than large companies.

Small Business Contracting Goal

The *Small Business Reauthorization Act of 1997* established a government-wide goal of 23 percent of prime, federal contracts to be awarded to small firms. The small-business members of NSBA believe that this number—which the federal government continues to fail to achieve—is inadequate. Accordingly, NSBA was extremely pleased to see that *H.R. 1873, the Small Fairness in Contracting Act*—which was introduced by Representative Braley, Chairwoman Velazquez, and Ranking Member Chabot, unanimously passed by this committee, and overwhelmingly approved by the full House of Representatives—reflects this recognition and proposes raising the government's small-business procurement goal to 30 percent of all federal contacts. NSBA also supports the bill's stipulation that each federal agency will have an annual small-business procurement goal not lower than the government-wide goal.

Furthermore, NSBA was pleased that *H.R. 1873*'s increased small-business contracting goal would be benchmarked in relation to a more accurate and inclusive federal procurement tally, specifically one that finally incorporates contracts carried out abroad. The inexplicable exclusion of various kinds of contracts, such as those carried out overseas, has distorted the reality of federal small-business procurement for too long. The continued omission of certain types of contracts from the government's small-business procurement calculations too frequently has resulted in escalating exclusions and creative bookkeeping rather than increased small-business contracting or even accurate data collection.

The small-business owners of NSBA believe that increasing the federal government's small-business contracting goal should be the aim of all small-business owners and groups. In the long run, a myopic focus on increasing the set-aside of one preference group—usually at the expense of another—will not benefit America's overall small-business community. In the past, such tactics have all too often resulted in the cannibalization of contracts of one small-business concern by another, rather than an increased share of the federal procurement pie for all small businesses. It is time for the small-business community to work together to achieve the broad goal of increasing the overall percentage of federal contracting dollars reserved for small business. There is truth in the saying that a rising tide lifts all boats.

Reliable and Accurate Data

A dearth of reliable and accurate small-business federal procurement data continues to undermine efforts to increase small-business participation in federal contracting. Time and again, it has been demonstrated that a large number of contracts ostensibly awarded to small businesses actually have been awarded to and carried out by large firms. A FY 2005 Office of Advocacy-sponsored study found that 44 of the top 1,000 small business contractors in FY 2002 were not, in fact, small businesses—and the small-business coded contracts they received totaled $2 billion. The aforementioned exclusion of various kinds of contracts, such as those carried out abroad, also dilutes the accuracy of federal procurement data.

NSBA continues to support efforts to improve the accuracy and reliability of federal procurement data. While work remains to be done, NSBA has been pleased by the efforts of the SBA to work with federal agencies to identify and correct miscoding and anomalies in the federal contracting database. Disappointed but not surprised by the results of the SBA's first-ever Small Business Procurement Scorecard (Scorecard), NSBA is pleased that reality has been reintroduced to the system and looks forward to working with the SBA and the other federal agencies as they seek to meet their small-business contracting goals.

NSBA supports the new SBA regulation regarding small-business size-standard recertification following mergers, acquisitions, novation requests, and prior to any option being exercised. Agencies must not receive credit for small-business contracting when none actually has occurred, and contracts purportedly awarded to small businesses actually should be carried out by them. It is equally vital that these firms not

be penalized for their growth. NSBA opposes any effort to change the terms and conditions of contracts awarded to actual small businesses that grew beyond their small-business status during the duration of their contract. Small-business growth should not be penalized, especially if the growth is transitory and related only to the duration of a contract. Small businesses also must not be further saddled with onerous regulatory requirements, as they already disproportionably bear the burden of federal regulations and paperwork.

Elimination of Fraud

Large businesses are far too frequently the real recipients and executors of federal contracts ostensibly awarded to small businesses. Up to a third of the SBA's list of top 100 small business contractors in 2005 were actually large businesses, according to a report from Eagle Eye Publishers. Additionally, more than 20 percent of the respondents to an NSBA survey reported losing out on a federal procurement opportunity that instead went to a large firm identified as a small business. Allowing large companies to masquerade as small for the purposes of obtaining the federal protections intended for the nation's small businesses is an affront to the will of Congress, a breach of the trust of the American people, and an infringement of the principles of fair play and competition. NSBA welcomes efforts to combat fraud in SBA's small-business contracting programs—including actions such as on-site verifications and geographical limitations and civil penalties for firms found to have falsely represented themselves as service-disabled, veteran-owned.

In addition to combating it, NSBA urges enforcement against companies committing fraud. Since 1988, the *Small Business Act* has provided for felony convictions up to 10 years, criminal fines of $500,000, mandatory 3-year debarments, and forfeitures for companies determined by the SBA to have misrepresented their small-business status. Prosecutions under these provisions have been lacking, however, and the SBA rarely rules on whether companies have misrepresented their small-business status. This should change. NSBA urges prompt prosecution for companies found to have fraudulently claimed small-business status. NSBA also continues to advocate for increased authority for the SBA to disbar large contractors that fraudulently identified themselves as small businesses.

Alaskan Native Corporations

One cause of concern that unites most corners of the small-business community is the ever increasing amount of federal small-business contracting dollars going to Alaskan Native Corporations (ANCs) through the 8(a) program. According a GAO report issued last year, the federal government obligated $1.1 billion in 8(a) contracts to ANC firms in FY 2004—up from $265 million in FY 2000. Furthermore, $876 million of the FY 2004 8(a) obligations were sole source contracts— up from $180 million in FY 2000. The small-business owners of NSBA do not begrudge the ANCs this money, nor do they quibble with the intent of Congress to address the historical disadvantages of Alaskan Natives. The small-business owners of NSBA simply contend that, at a minimum, the limitless, sole-source contracts for which ANCs alone are eligible should not count towards agencies' small-business procurement goals.

Conclusion

Despite being the world's largest buyer of goods and services, the federal government of the United States remains something of an unknown commodity to America's small businesses. Although they comprise 99.7 percent of all U.S. employer firms and employ half of all private sector workers, only 22.8 percent—less than a quarter!—of federal contracts went to small businesses in FY 2006, by the government's own calculations. Although they lead the nation in innovation and net new job creation, 17 federal agencies failed to meet their overall small-business procurement goals and at least two of their socio-economic goals in FY 2006, by the government's own account. From these numbers alone, it is obvious that the SBA's contracting programs are in need of improvement. NSBA thanks the Committee for attempting to provide some measure of remedy to this situation with the *Small Business Contracting Program Improvements Act of 2007.*

SBCPI

Small Business Contracting Program Improvements Act of 2007

Joint USHCC/LAMA Testimony
In support of SBCPI

House Small Business Committee Hearing
Thursday, October 4th, 2007

Presented by Stephen Denlinger
President of LAMA

In behalf of USHCC
The United States Hispanic Chamber of Commerce
Michael L. Barrera
President

and LAMA
The Latin American Management Association

Contact:

David Ferreira
Director of Government Relations
USHCC
2175 K Street NW Suite 100
Washington, DC 20037
202- 842-1212

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Introduction

Chairwoman Velazquez and members of the House Committee on Small Business, it is an honor to testify before you today representing the United States Hispanic Chamber of Commerce (USHCC) and the Latin American Management Association (LAMA).

USHCC represents the entire spectrum of the nation's 2.5 million Hispanic businesses, while LAMA represents Hispanic firms that are Federal contractors. As you know, LAMA and USHCC work closely together on Federal procurement issues that affect the Hispanic business community.

Overall Support

USHCC and LAMA are here today in support of the Small Business Contracting Program Improvements Act of 2007. This important legislation makes substantial improvements in several SBA procurement programs.

8(a) Modernization

We are particularly pleased to testify in support of the provisions of the Bill that modernize the 8(a) program. These are provisions that we have sought for many years and will substantially improve the 8(a) program.

Delegation of Authority - A decade or so ago, the SBA entered into an arrangement with the Federal agencies permitting them to contract directly with 8(a) firms without SBA involvement. That seemed logical at the time because of contracting officers' chronic complaints that it was taking too long to enter into contracts with 8(a) firms. The delays were caused by paperwork going back and forth between the contracting agencies and the SBA for the various approvals required by SBA.

In order to improve efficiency, SBA pulled out of the contracting process by delegating the contracting authority to the agencies. This was referred to as the "delegation of 8(a) authority." Unfortunately, that also meant that SBA had less direct control over the business development purposes of the 8(a) program. The unintended consequence has been an uneven distribution of 8(a) contracts, and a concentration of 8(a) awards in the hands of far too few 8(a) firms.

At this point, we believe it is appropriate for the SBA to revise its approach with respect to the delegated contracting authority. We believe that SBA needs to interact with the Federal agencies in the contracting process so that it can perform its business development functions, and so that 8(a) contracts can be allocated more equitably.

Let us be cognizant, however, of the problems that led to the delegation of authority. The main problem was that it was common for SBA to delay 8(a) contract awards by failing to process documents and sign contracts in a timely manner. This problem was vary real at the time, and was precisely what led to the delegation of the 8(a) authority to the agencies.

With the massive cutbacks in SBA personnel over the past few years, the delays in the processing of paperwork would be far worse today. In addition, in the wake of the acquisition reform that has taken place in the Federal marketplace over the past decade, agencies can now contract with firms very quickly and easily under a variety of pre-established "contract vehicles." Anything that slows down the 8(a) contracting process would put the 8(a) program at a great disadvantage in the present Federal marketplace.

Prior to the referenced delegation of authority, SBA was a party to all 8(a) contracts. These were actually three-way contracts. SBA served as the prime contractor to the Federal agencies, and the 8(a) firms served as subcontractors to the SBA. We do not recommend this cumbersome approach for the future. We recommend that a way be found for SBA to have oversight over 8(a) contracting at the agencies without SBA having to process contracts and related documents which would inevitably delay contract awards.

Perhaps the Committee could require that each Federal agency provide SBA with a plan as to which 8(a) contractors it intends to use for given contracts so that SBA can see, in advance, if there is an inequitable allocation of contracts unduly favoring a few firms. This would give the SBA the time and information it needs in order to work with the agencies to spread the 8(a) contracts around more equitably. No matter how the delegated authority is revised, however, let us keep in mind that SBA must have adequate staff resources to do this job.

Net Worth Limits - USHCC's position is that the net worth limit 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. The net worth ceiling for entry into the 8(a) program should be on the order of $750,000.

In addition, the net worth ceiling is for establishing the economic disadvantage of the applicant for purposes of qualifying for entry into the 8(a) program. Net worth ceilings should not be used as a condition for participation during the 8(a) 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 of their companies. Therefore, there should be no limit on the personal net worth of the business owner while a firm is participating in the 8(a) program. USHCC believes these same net worth principles should be applied to the SDB subcontracting program.

General Provisions of SBCPI

Program Integrity - The Federal procurement preference programs bestow upon participants considerable benefits not available to ordinary small businesses. Therefore, the integrity of these programs must be maintained. To that end, SBA must have the authority to prevent companies that lack integrity from securing Federal contracts under the procurement preference programs.

Sole-Source Ceilings - The sole-source ceilings for the SBA procurement programs needs to be raised to a level commensurate with the realities of the present Federal marketplace. The sole-source ceilings for the 8(a) program were established two decades ago at $3 million for service contracts and $5 million for manufacturing contracts.

Over the past decade, acquisition reform has totally transformed the Federal marketplace. That marketplace is now characterized by a variety of pre-established contracting vehicles through which Federal agencies routinely award huge contracts often spanning many years. The immense size of the contracts that are now awarded in the Federal marketplace was not even contemplated at the time the 8(a) sole-source ceilings were established two decades ago.

To meet the realities of the current Federal marketplace, the sole-source ceiling needs to be raised to at least $10 million across the board. We also recommend that SBA be charged with assessing what the appropriate ceilings for sole-source contracting should be in specific industries that are characterized by extremely large contract awards, such as: IT systems integration, environmental remediation, telecommunications, base maintenance, etc.

Because of the size of the contracts routinely awarded in these industries, small businesses cannot bid as prime contractors. In order to give small businesses a chance to participate as primes, the sole-source ceilings for these industries may need to be substantially increased.

Women's Procurement Program

We again salute the Committee's efforts to bring women-owned businesses into the Federal contracting arena where they are substantially under-represented. We support this provision of SBCPI.

HUB Zone Program

The HUB Zone program is losing credibility as a result of a self-certification process wherein a significant percentage of firms do not meet the program eligibility criteria within a short period after they self-certified. For example, a report of the SBA Inspector General's office in May of 2006 indicated that:

- Over 56% of HUB Zone firms were decertified (or proposed for decertification) during routine annual eligibility examinations in 2004 and 2005;

- Over 80% of HUB Zone firms were decertified (or proposed for decertification) as a result of the three-year recertification process.

Self-certification is clearly a problem. To correct this problem, the Committee should consider requiring SBA to institute on-site verification of the eligibility of HUB Zone applicants similar to the 8(a) application process. USHCC is studying the HUB Zone program to become better informed on its operations.

Service Disabled Veterans

Like the 8(a) program and the HUB Zone program, the Service Disabled Veterans' program bestows upon its participants considerable benefits not available to ordinary small businesses. Therefore, the integrity of the program must be ensured by establishing civil penalties for false representation, such as the penalties in the 8(a) program.

In addition, for the SDV program to succeed, SBA must: 1) Work closely with the Federal agencies on how to successfully contract with SDV businesses; 2) Provide SDV businesses with information on Federal contracting in a timely manner; and 3) make technical assistance available to SDV firms on Federal contracting law and contracting procedures.

PEA and SDB

There are two notable areas that are not addressed by the present Bill. They are:

- Resumption of the Price Evaluation Adjustment (PEA)
- Resumption of the Small Disadvantaged Businesses Set-asides (SDB)

PEA - The PEA authority has expired for all Federal agencies. The PEA authority needs to be reinstated. We recommend that all Federal agencies, including DOD, be required by law to use the PEA in two specific instances:

1. In instances wherein individual Federal buying activities are not meeting the contracting goals assigned to them by Federal statute (or by SBA);

2. In instances wherein individual Federal buying activities have poor track records of contracting with minority businesses in technical areas such as IT, precision manufacturing, telecommunications, base maintenance, environmental remediation, etc.

SDB Set-asides - The SDB set-aside authority was suspended when the Clinton Administration was assessing the impact of the Adarand Supreme Court decision on the Federal government's procurement preference programs. Despite the fact that Adarand did not prohibit the use of race-conscious initiatives, the SDB set-aside program has not been reinstated after all these years. USHCC believes that the SDB set-aside program, as implemented in the past, meets the strict scrutiny requirements of the Adarand decision.

The SDB set-aside authority is simply another tool that procurement officials can use to address the lack of participation by SDBs in certain areas of contracting. Furthermore, the other procurement preference programs (Service Disabled Veterans, the women's procurement program, etc.) have a similar set-aside authority. Therefore, the SDB set-aside program should be reinstated.

Alaskan Native Corporations

We would like to take a moment to address the adverse impact that ANCs are having on the regular 8(a) program. For your reference, we are attaching a statement on the ANC issue that USHCC included in its testimony before the House Government Affairs Subcommittee of Government Management, Organization and Procurement on September 26th.

The statement speaks for itself. Suffice it to say that the special ANC privileges that have crept into the 8(a) program through a series of amendments over the years are out of control.

ANCs are not small, impoverished tribal businesses struggling to survive in remote villages in Alaska. ANCs are billion dollar corporate conglomerates that have thousands of employees, hundreds of subsidiaries and affiliates, and hundreds of offices scattered across the United States and, in some cases, across the world. In fact, a number of them have substantial offices or are headquartered in the Washington DC area.

The disparities between the ANC 8(a) program and the regular 8(a) program are sometimes dumbfounding. For example, to participate in the 8(a) program, the net worth of a normal applicant may not exceed $250,000, yet a billion-dollar ANC can participate in the 8(a) program virtually automatically. In addition, a normal 8(a) company can receive a services sole-source contract only up to $3.5 million, yet an ANC can receive a sole-source contract of <u>any</u> size. There are many sole-source 8(a) awards to ANCs of $100 million, $250 million, $500 million and $1 billion.

The notion that a billion-dollar corporation, with a thousand employees, and dozens of corporate offices across the country, can be an 8(a) participant and receive billion-dollar sole-source contracts totally discredits the original purposes of the 8(a) program. Let us hope that the $10 million sole-source ceiling proposed by the Committee in the present Bill will eliminate this grossly exaggerated ANC privilege, and that a level playing field between the ANCs and the rest of the 8(a) portfolio can be restored.

Conclusion

That concludes my testimony Madam Chairwoman. Thank you once again for the opportunity to testify today. I will be pleased to answer any questions that the Committee members may have.

USHCC Statement on ANCs

HOUSE GOVERNMENT AFFAIRS SUBCOMMITTEE
GOVERNMENT MANAGEMENT, ORGANIZATION AND PROCUREMENMT
SEPTEMBER 26, 2007, 2:00PM
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The USHCC included the following statement on ANCs in its overall testimony on September 26th before the House Government Affairs Subcommittee on Government Management, Organization and procurement.

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In recent years, the participation of Alaskan Native Corporations (ANCs) in the SBA 8(a) Program has become troubling. What we thought 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.

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 area out of control. 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.

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