



Senate Committee on Small Business and Entrepreneurship Testimony
Testimony by Mr. Bill Miera
May 22, 2007

Chairman Kerry, Ranking Member Snowe and members of the committee, thank you for the opportunity to speak before you today on the importance of preserving and strengthening small and disadvantaged businesses.

My name is Bill Miera and I own a technology company in New Mexico. I serve on the board of the United States Hispanic Chamber of Commerce where I chair the Federal Procurement Committee. I also serve on the board of the New Mexico 8(a) and Minority Business Association, the largest 8(a) organization in the nation, where I chair the High Tech Committee.

In addition, I serve on the board of the Professional Aerospace Contractors Association as their small business representative. I also serve on the board of the Greater Albuquerque Chamber of Commerce, and I was on the board of the Rio Grande Minority Purchasing Council among others.

Seventeen years ago I started Fiore Industries – a graduate 8(a) company- specializing in high technology products and services for the federal government. While we have enjoyed success over the years we are probably about 1/3 the size we would be if not for several obstacles.

One major obstacle we faced was contract bundling. We previously won two consecutive contracts as a prime with the Air Force Research Laboratory for Directed Energy Systems development and based on our performance the contract grew to \$2.5 million per year. Unfortunately, high-level decision makers within the agency decided to bundle our contract.

In order for us to continue on the project, we were forced to team with another prime (a large business) and we had to be the subcontractor. Our team won the contract but the

new large prime eliminated our contract by adding a surcharge of nearly 40 percent on our work.

This is one of the problems with bundling. Primes bring you in but never intend to give you the work. In this case, all they really wanted was to eliminate my company as a competitor with few repercussions.

Half our work was contracted out to other contractors (who were non-competitors to the prime) and about half was taken in-house by the prime. The contract cost taxpayers \$450,000 a year in increased expenses in order to save approximately \$50,000 in administrative costs. This is a false economy that also fails to account for decreases in performance by the prime due to the only competitor being eliminated and decreases in innovation (most patents come from small business not large).

Another obstacle we encountered was a reduction in support from our local SBA office. We received outstanding help and support from the SBA when we started. Nevertheless, budget cuts and personnel transfers to Washington have decimated the number of staff at the local office resulting in a drastic reduction of support the local office provides to the small business community.

This is not limited to New Mexico alone. A fellow Hispanic business owner and board member at the USHCC, Mr. Massey Villareal, was told by his local Business Opportunity Specialist in Texas after he received his 8(a) certification that, "after you receive your certification don't call me because I am too busy to help you." This is not the type of encouragement that SDBs expect from the SBA.

Currently my company needs infrastructure upgrades. I hesitate approaching the SBA for help in the form of loan guarantees because the local office does not have sufficient staff. While the current office has dedicated workers they do not have sufficient resources to accomplish their mission.

For these reasons, I believe it is critical that SBA funding be adequately restored and sufficient personnel be reassigned to the field offices. To a new entrepreneur that hasn't learned the "system" there is absolutely nothing like a real person to talk to in a local SBA office.

Another obstacle for SDBs is the failure of federal agencies to meet their small business contracting goals. Additionally, new 8 (a) and small business categories only redistribute dollars from one deserving group of small businesses to another. This has resulted in much fewer 8(a) contracts available for competition.

On the positive side, Fiore is an example of why the 8(a) program is so critical. 8 years ago we won a \$12 million dollar competitive 8(a) contract with the Department of Energy. Our performance gave us the qualification to bid on similar contracts with the National Laboratories.

More importantly, it gave us the resources to create our own laboratory. This allowed us to win a full and open competition with the Department of Justice to develop a new technology for stopping vehicles in high speed chases using smart pulse shaped microwaves. Absent our new laboratory we would not have won the contract nor developed this unique technology.

Beyond my personal anecdotes, I believe this hearing is an auspicious time to raise a range of issues relating to the future of the Federal government's Minority Business programs and the future of the SBA, the flagship agency that is charged with promoting the growth and development of small and minority businesses. There can be no doubt that the SBA and its programs are just as important to small businesses as they were when the SBA was created in 1953. Unfortunately, many challenges still remain.

Federal Minority Business Programs such as the 8(a) prime contracting program and the SDB subcontracting program have been in existence for over 30 years. Before these programs were first initiated, there were no MBE programs. There were no MBE goals. There were no measurable accomplishments. The Federal government, and the Federal government's prime contractors, had dismal track records of doing business with minority firms.

Today, over thirty years later, the landscape has changed dramatically. The programs initiated over 30 years ago are succeeding. Every Federal agency and every Federal contractor has a minority business program in place today. There are goals and objectives for the use of MBEs. There are measurable accomplishments that are reported on a regular basis. The last year the 8(a) program saw legislative attention was in 1988.

While everything is far from perfect, those of you in Congress who craft these programs can take great pride and satisfaction that progress is being made. It is a testament to our great nation that programs of this nature can be created to foster fair and equitable treatment of the Nation's minorities.

At this juncture, in the context of the Adarand Supreme Court Decision, and in the context of the enormous budgetary and personnel cutbacks that SBA has undergone over the past several years, it is appropriate to take a new look at these programs and the underpinnings for them and ask ourselves what is their future.

As I mentioned before, my company is in New Mexico and I do business with the Department of Defense laboratories and with several other Federal agencies and military installations. I can categorically tell you that, were it not for the MBE programs that we are discussing today, my company would not have experienced the success we have achieved in recent years. The SBA helped me in the early days of my company. The SDB program had given me access to opportunities for subcontracting with many Federal prime contractors.

As I also mentioned at the outset, I am a member of the New Mexico 8(a) and Minority Business Association. The association is one of the most active associations of its kind in

the country. Through the association, we have fought many battles that have given our companies better access to contract opportunities with Federal agencies and Federal prime contractors.

One of the reasons why Hispanic business organizations formed was to address the discrimination that still exists today in federal procurement. We have come together because many subtle and sometimes inadvertent acts of discrimination still today prevent small and minority firms full access to the world of federal procurement.

There are certain programs, like the 8(a) and the SDB programs, that clearly fall within the framework contemplated in the Adarand Supreme Court decision. These are narrowly tailored programs that seek to address the historic patterns of discrimination. Let us keep in mind that the Supreme Court did not reject race-based preferences altogether. The Court held that they could be used in limited ways if they were narrowly constructed.

Our collective sense is that although these procurement preference programs will not be needed forever, they are certainly needed for the foreseeable future. In that regard, we agree with Justice Sandra Day O'Connor that the evidence of discrimination continues to support the use of these programs. While our laws may be intended to be blind on race and color, the simple fact is that people are the ones that execute those laws, and people are not color blind.

These programs can be dismantled when we are certain that the gains we have experienced over the past 30 years will not collapse if the programs are suspended. At the present time, I can assure you that there would be significant back-sliding if these programs were dismantled prematurely.

This is amply demonstrated by the back-sliding in state and local programs that occurred when MBE programs were suspended as a result of the Adarand Supreme Court case and other related cases. There are numerous examples of this back-sliding that we believe can be provided to the committee by the Minority Business Enterprise Legal Defense and Education Fund.

One of the first issues needing the attention of this Committee is the fact that there has been substantial back-sliding in Federal contracting with MBE and 8(a) firms in recent years.

As you can see by the attached charts, there has been a substantial percentage reduction in Federal contracting with MBEs over the past several fiscal years - this includes 8(a) firms that are part of the MBE universe. During this period, contracting with MBEs dropped from 28% of Federal small business contracting to 21%. During that same period, the percentage small business goals of the Federal government remained static.

As newer programs have been added, the Federal goal of 23% has remained unchanged. If we add up all the procurement goals for the various socio-economic programs (SDVBs,

HUBZone, 8(a), WOB, etc.), it adds up to almost the entire 23% goal. Traditional small businesses are almost totally displaced by the various socio-economic programs. That is the primary reason why we so wholeheartedly endorse the proposal for increasing the Federal small business goal to 30%.

Furthermore, in its efforts to achieve savings in government spending and efficiencies of operation, in recent years, there have been significant budgetary cutbacks at the SBA. Those budgetary cutbacks have predictably resulted in substantial personnel reductions. We can clearly see that these budgetary and personnel cutbacks have hurt the program operations of the agency in numerous ways.

Little or No BOS Support - To begin with, the companies in the 8(a) portfolio, for example, no longer get the individualized attention that they need for success in the program. The Business Opportunity Specialists have been assigned other duties and no longer concentrate on providing business development support to 8(a) firms.

No Loan Support at the Local Level - In a similar manner, many personnel in the loan programs were sent to the Central SBA office (or assigned other duties). They are no longer available for consultation at the local level with small businesses that need support in financing their businesses. This was one of SBA's key functions and now it is gone. This has resulted in the SBA loan programs being farther removed from the user community. Thus, companies like mine, for example, have no one at SBA to consult with for loans for facilities development. Therefore, SBA is in danger of becoming irrelevant at the local level.

Reductions in PCRs - The Procurement Center Representatives are one of the most essential positions at the SBA. The reason is that they are the first line of defense for the small business community at the many military and civilian buying activities across the country. With substantial reductions in PCRs in recent years, we no longer have their effective advocacy in the Federal procuring officers around the nation as procurement decisions are being made that affect small and minority businesses. One of the results is many more bundled contracts because there is no PCRs present to defend the interests of small businesses.

Reverse the Personnel Cuts - The bottom line is that many of the SBA personnel cuts that were made in recent years need to be reversed. We need to have personnel at the local SBA offices that can work with local businesses in using the SBA loans programs. We need to have local BOS' whose role it is to assist us with the development of our 8(a) companies. We need an increase in PCRs so that the interests of small and minority businesses are taken into consideration as procurement decisions are being made at hundreds of buying activities around the country.

Loan Programs - I would like to address the SBA's loan programs. When SBA underwent a restructuring a couple of years ago, all of the SBA's employees with lending knowledge were centralized. This has for the most part taken smaller lenders, particularly in rural areas, out of the program. There is no one at SBA in the local offices

to walk these banks through the SBA lending process. Because of this, and the fact that the loans have become more expensive for borrowers to make, the vast majority of loans are made by national banks – putting SBA loans out of reach for thousands of small businesses throughout the country.

Now, I would like to come back to an item I discussed earlier in my testimony but remains the most serious threat to small and minority business participation in Federal procurement – contract bundling. With the significant Federal procurement reforms that have taken place over the past decade, small contracts that could be performed - or that had historically been performed - by small businesses have been routinely swept up into large bundled contracts, out of the reach of small businesses. Because these bundled contracts remain in place for many years, these contracts remain beyond the reach of small businesses for long periods of time.

It is generally known that small business contract actions in the past few years has dropped as a result of the bundling that has taken place across all Federal agencies. The trend in Federal procurement over that past decade has been toward larger and larger contracts. A plethora of multi-year contract vehicles have sprung into use at the Federal agencies. These multi-year contracts are so large that small businesses cannot bid on them.

The recent efforts by the present Administration to control bundling, while well intentioned, have not worked. I am not aware of a single large contract that has been unbundled as a result of the Administration's anti-bundling policies.

Something definitive needs to be done to control bundling before all Federal business ends in the laps of large corporations. Federal agencies, for example, must be required to provide more justification for their bundling decisions. Too often, their bundling decisions are made for reasons of administrative convenience, with no justification in terms of cost savings or enhanced efficiencies.

In addition, it has been amply demonstrated in recent years that SBA is virtually powerless to impact the bundling decisions of the Federal agencies. For SBA to ask the agency that made the bundling decision to reverse its bundling decision is simply unrealistic. It doesn't work.

There needs to be a third party involved in those bundling decision. The most logical third party is the Office of Federal Procurement Policy at OMB. This is not a new proposal. It is simply a more realistic mechanism for dealing with bundling decisions by the Federal agencies that my not have been thought through carefully enough and result in devastating consequences for small businesses.

While all Federal contractors face the bundling issue across the Federal procurement landscape, 8(a) contractors are faced with a serious bundling problem within the 8(a) program itself. The unlimited sole-source authority given to the billion-dollar ANCs has created a huge bundling mechanism right in the middle of the 8(a) program.

ANCS, which are large, multi-billion-dollar corporations, are routinely awarded large sole-source 8(a) contracts that bundle up many requirements that could be performed (or were previously performed) by local small and minority businesses. In New Mexico, for example, many large contracts from the DOE laboratories and military installations have been bundled and awarded to ANCS, thereby depriving many local 8(a) firms to opportunity to perform these requirements.

This process reached a peak when DOE decided to bundle \$300,000,000 in requirements from three DOE laboratories into a single sole-source 8(a) contract award to an ANC. The 8(a) community in New Mexico was very upset when it found out about this prospective bundled ANC 8(a) contract. The adverse political fall-out of this proposed DOE bundled ANC 8(a) procurement resulted in the suspension of this procurement action.

The unlimited sole-source authority of the ANCS is seriously distorting to the 8(a) program. Either the ANCS need their own separate program, or their sole-source authority needs to be brought down to the level of all other 8(a) program participants so that there is a level playing field in the 8(a) program. Having multi-billion dollar ANC corporations in the 8(a) program is similar to having several Lockheed Martins in the 8(a) program.

As you know, the Price Evaluation Adjustment (PEA) is an important tool that gives SDBs a slight price advantage in open competitions for Federal prime contracts. Unfortunately, an amendment sponsored by Senator Santorum required DOE to suspend the use of the PEA when DOE met its annual 5% SDB goal.

While this makes sense in a general way, there are many DOE installations and buying activities that, individually, don't meet the 5% SDB goal. In addition, many DOE installations are meeting their SDB goals by awarding low-tech contracts for janitorial services, landscaping, contracting services, and the like.

Therefore, we recommend the DOE be required to use the PEA for purposes of meeting the 5% SDB goal at all DOE installations and buying activities. And, we recommend that DOE also be required to use the PEA to facilitate the participation of SDBs in more technical areas of contracting, such as telecommunications, electronics, precision manufacturing, Information Technology, and the like. The SDB price adjustment meets the constitutionality test as it is narrowly construed and historical discrimination has not as of yet been repaired.

The importance of PEA was recently acknowledged by the House of Representatives by including report language in the Defense Authorization Act for FY08 that encouraged the agency to expand use of this important tool in SDB contracting.

However, the 8(a) program remains as the single most important tool in bringing SDBs into Federal prime contracting. The 8(a) program has not been modernized in two

decades and it has not been updated to incorporate the faster ways that agencies are buying goods and services. It is time to overhaul and improve the 8(a) program. Below are some of the areas that need attention.

Net Worth for Program Entry - The net worth issue needs to be addressed. The net worth ceiling of \$250,000 for entry into the 8(a) program is too low. This artificially low net worth ceiling lets only the weakest SDBs into the 8(a) program. This has the effect of limiting entry only to the weakest firms into the 8(a) program.

This policy was too restrictive when it was first adopted 20 years ago. After 20 years, it is even more restrictive in that it has not kept up with COL increases. The personal net worth limitation for entry into the 8(a) program needs to be lifted substantially. We support \$750,000 as the net worth limitation for entry into the 8(a) program. In addition, since the capital requirements vary so dramatically from industry to industry, we recommend that SBA conduct a study and establish net worth thresholds for all major industries (in no case less than \$750,000).

Net Worth for Continued Participation - The net worth restriction of \$750,000 during 8(a) and SDB programs tenure is wrong-headed policy. The underlying purpose of net worth criteria is to determine economic disadvantage for purposes of qualifying for entry into the 8(a) and SDB programs. Economic disadvantage should not be a continuing criterion for program participation. On the contrary, the net worth of the program participants should grow as much as possible so that they can develop strong banking relationships to help them finance their businesses. For several years in the life of a business, the owner and the business are financially joined – meaning that the access to capital that the business is able to obtain is based on the financial strength of the owner, represented by his or her net worth. This is particularly limiting for companies in capital intensive industries. We are also operating on standards that are indeed out of date. In 1988, the average price for a gallon of gas was 91 cents – now it is more than three dollars. The price of an average home was \$91,000, today it is \$251,700. A typical truck for a contractor is a Ford F150. In 1988 it was \$13,000 and today it runs \$30,000. Therefore, there should be no net worth restrictions during program tenure.

Sole-Source Ceilings - The 8(a) sole-source ceilings of \$3.5 and \$5.5 million for services and manufacturing respectively is seriously out of date. Over the past 20 years, the nature of Federal contracting has completely changed. The size of contracts has increased dramatically. The use of multi-year contracting vehicles by the Federal agencies has become the norm. IT has replaced manufacturing as the most significant area of Federal prime contracting. It is time for substantial upward adjustments to the 8(a) sole-source ceilings.

Ideally, the sole source ceilings should be based on the nature of each industry. The sole-source ceiling for small janitorial contracts, for example, would logically be substantially less than the sole-source ceiling for large systems integration contracts. The ceiling for the IT industry, for example, should be quite high, perhaps as high as \$100 million. The reason is that IT systems integration contracts are routinely very large.

Therefore, we recommend that SBA be charged with developing sole-source ceilings by major industries. Until such time as SBA is able to establish such ceilings, we recommend that the sole-source ceiling be \$25 million for high-tech, manufacturing, IT, telecommunications, facilities and base management, and environmental remediation.

In 1994, Congress enacted the Federal Acquisition Streamlining Act (FASA) and the Federal Acquisition Reform Act (FARA). FASA and FARA changed the way that the government buys, giving agencies significant flexibility to acquire goods and services in a much more expedited manner. Because no corresponding changes were made to the 8(a) program, it now seems to be a slower process – particularly for competitively awarded 8(a) contracts.

As the Committee looks at reauthorizing the SBA's programs this year, the U.S. Hispanic Chamber of Commerce urges you to modernize the 8(a) program and make the SBA's loan programs more affordable to small firms. We encourage you to include in any Senate-passed legislation the provisions contained in H.R. 4474, the "Minority-Owned Venture Empowerment Act" otherwise known as the MOVE Act and introduced by Congressman John Barrow last year in the House. This legislation makes substantial, comprehensive, and long overdue changes to the 8(a) program.

Thank you Senator Kerry for the opportunity to present these views to you and to the members of the Committee. I am happy to answer any questions you may have about my testimony.

CHART #1

Large Business vs. Small Business Share of Total Federal Contracting Dollars

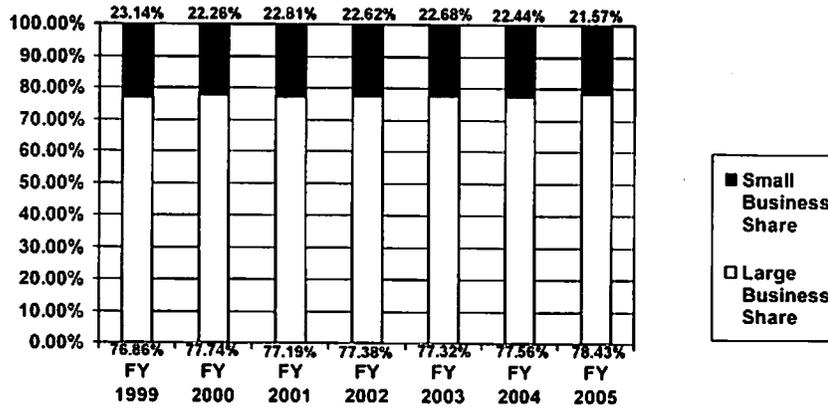
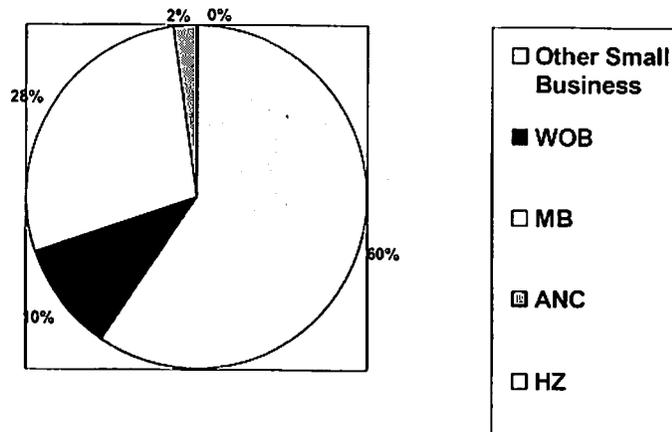


CHART #2

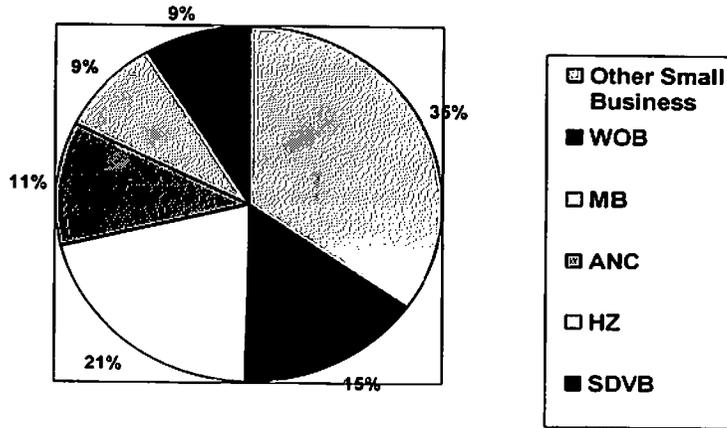
Small Business Goal Programs as a Percentage of the Total Small Business Procurement Pie (FY 2000)



Note: Small Business share of total federal procurement: 22.26%

CHART #3

Small Business Goal Programs
as a Percentage
of the Total Small Business Procurement Pie (FY 2005)



Note: Small Business share of total federal procurement: 21.57%

Source: Federal Procurement Data System