UNITED STATES HISPANIC CHAMBER OF COMMERCE
TESTIMONY – PRESIDENT & CEO MICHAEL L. BARRERA
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Chairman Towns, Ranking Member Bilbray, Members of the Subcommittee, distinguished panelists, and staff,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contract Bundling

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

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

Subcontracting

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

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

8(a) Net-Worth Ceilings

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

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

Sole-Source Ceilings

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

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

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

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

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

Access to Capital

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

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

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

Price Evaluation Adjustment

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

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

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

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

Alaska Native Corporations

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

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

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

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

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

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

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

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

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

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

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