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September 20, 2007

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

Dear Congressman Towns:

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

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

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

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 Program language, outdated and inappropriate for the 21st century, that limits growth, sets difficult employment requirements, and re-structures the mission of a program by creating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

Increasing Contract Size

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

8(a) Business Development Program

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

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

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

- ***Social and Economic Disadvantage***

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

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

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

▪ **Oversight**

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

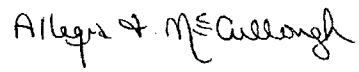
In a number of cases, Small Business Specialists and program managers receive little direction or delayed instruction on the proper promulgation of regulations. For instance the Offices of General Counsel of both SBA and Department of Transportation (DOT) neglected to develop guidelines for the SBA and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

▪ **Hub Zone Contracting Program**

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

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

Thank You.

A handwritten signature in black ink that reads "Allegra F. McCullough". The signature is written in a cursive style with a large, stylized initial "A".

Allegra F. McCullough

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