

Testimony Before

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On Race- and Sex-Based Contracting Preferences

Statement by

Judge Glock

Director of Research and Senior Fellow

Manhattan Institute

Chairman Grothman, Ranking Member Krishnamoorthi and distinguished members of the subcommittee. Thank you for the opportunity to discuss the important topic of race- and sex-based preferences in government contracting.

My name is Judge Glock and I am the director of research at the Manhattan Institute, a nonpartisan think tank based in New York City. The views I express today are my own and do not represent those of my employer.

Although it does not receive the attention of other so-called Diversity, Equity, and Inclusion programs, the federal government's programs to award contracts to businesses based on their owners' race and sex are the most expensive by an order of magnitude. Last year the federal government spent over \$750 billion on contracts involving everything from army tanks to office

software.¹ When added to well over a trillion dollars in state and local government contracting spending, much of which is supported by the federal funds, about 10 percent of the entire American economy goes through government procurement or contracts.² Yet federal laws and rules for years have demanded that significant proportions of contracts at all levels of government go to businesses based not upon offered price or quality, but on the race and sex of their owners.

We now know that these minority-contracting programs cost taxpayers tens of billions of dollars a year, degrade our infrastructure and national defense, encourage corruption, and do nothing to help the truly disadvantaged. These preferences have been created or encouraged through congressional laws, executive regulations, and judicial rulings stretching back over decades. Thus Congress, the President, and the courts all have a roll in removing them. Only by returning contracting to a focus on price and quality can the American people be assured that they are getting the deals they deserve.

Scope of Minority Contracting

Although the government made some efforts to award contracts based on race starting in the 1960s, in 1978 Congress created the 8(a) program specifically to give preferences in contracting to “small disadvantaged businesses,” or SDBs, for which businesses owned by racial minorities were presumed to qualify.³ Congress has set a goal that “not less than 5 percent” of its contracts go to SDBs. The Biden administration, however, set a long-term goal that 15 percent of all contracts should go to SDBs.⁴ In Fiscal Year 2023, the last year for which we have complete data, 12 percent of available contracts went to SDBs, of which the largest portion by far came from the Department

¹ “A Snapshot of Government-Wide Contracting for FY 2023,” Government Accountability Office, June 25, 2024, <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2023-interactive-dashboard>

² The most recent available numbers for funds spent on procurement at all levels of government is from 2016, where the Volcker Alliance estimated it at almost \$2 trillion, which was just over 10 percent of Gross Domestic Product in that period. “Doing the People’s Business: Key Competencies for Effective Public Procurement,” Volcker Alliance, 2016 https://www.volckeralliance.org/sites/default/files/attachments/Doing%20the%20Peoples%20Business_The%20Volcker%20Alliance.pdf

³ John D. Skrentny, *The Minority Rights Revolution* (Cambridge, MA: Harvard University Press, 2002), 163; R. Corinne Blackford, “SBA’s 8(a) Business Development Program: Legislative and Program History,” Congressional Research Service R44844, <https://www.congress.gov/crs-product/R44844>.

⁴ R. Corinne Blackford, Executive Actions and Federal Contracting with Small Disadvantaged Businesses,” *Congressional Research Service* IN12514, February 25, 2025, <https://www.congress.gov/crs-product/IN12514>

of Defense.⁵ Another 5 percent of contracts went to women-owned businesses, for which Congress also has a long-set goal of “not less than 5 percent” of contract spending as well.⁶

There is a separate minority contracting program for transportation and infrastructure projects. Starting in 1977, the federal government has required that not less than 10 percent of certain transportation and infrastructure programs funded with federal dollars go to contracts or subcontracts for what became known as “Disadvantaged Business Enterprises,” or DBEs, for which racial minorities and women are presumed to qualify.⁷ There is a separate DBE program just for airport concessions such as restaurants.⁸ The DBE program influences a large amount of the transportation and other infrastructure funded in part by the federal government but built by state and local governments.

The reach of minority contracting preferences is larger than the formal goals because the federal government has encouraged such contracts by other methods. The government has used competition for discretionary grants to promote DBE goals even if they are not in statute, such as when the Department of Energy demanded that applicants for the Battery Materials Processing Grant program promote disadvantaged businesses.⁹ The Biden administration required applicants for CHIPS Act subsidies to create a “Supplier Diversity Plan” to target minority-owned and other supposedly disadvantaged businesses.¹⁰ Due in part to pressure from the Biden administration, many state and local governments signed the “Equity in Infrastructure Project” pledge, which committed them to award more contracts to minority-owned businesses.¹¹ Many state and local

⁵ “Small Business Procurement Scorecard: Scorecard details, Government-Wide Performance 2023,” Small Business Administration, <https://www.sba.gov/federal-contracting/contracting-data/small-business-procurement-scorecard/scorecard-details?agency=GW&year=2023>

⁶ 15 U.S.C. 644; “Small Business Procurement Scorecard: Scorecard details, Government-Wide Performance 2023,” Small Business Administration, <https://www.sba.gov/federal-contracting/contracting-data/small-business-procurement-scorecard/scorecard-details?agency=GW&year=2023>

⁷ John D. Skrentny, *The Minority Rights Revolution* (Cambridge, MA: Harvard University Press, 2002), 162; R. Corinne, Blackford, “The U.S. DOT Disadvantaged Business Enterprise Program,” *Congressional Research Service* IF12055, April 24, 2023, <https://www.congress.gov/crs-product/IF12055>.

⁸ Airport And Airway Safety and Capacity Expansion Act of 1987, PL 100-223, <https://www.congress.gov/bill/100th-congress/house-bill/2310/text>

⁹ “Battery Materials Processing Grants,” *Office of Manufacturing and Energy Supply Chains*, U.S. Department of Energy, <https://www.energy.gov/mesc/battery-materials-processing-grants>

¹⁰ Mark Muro, Josephia Parilla, and Martha Ross, “What state and local leaders need to know about Biden’s semiconductor subsidies,” *Brookings Institution – Commentary*, March 2, 2023. <https://www.brookings.edu/articles/what-state-and-local-leaders-need-to-know-about-bidens-semiconductor-subsidies/>

¹¹ “The Pledge: Equity in Infrastructure Project,” <https://equityininfrastructure.org/pledge>; “Fact Sheet: Biden-Harris Advances Equity and Economic Opportunity Through Federal Procurement and State and Local

agencies, including those funded in large part by federal taxpayers, such as New York's Metropolitan Transportation Authority, now require 30 percent or more of contracts go to so-called disadvantaged businesses.¹²

Given the scale of federal, state, and local contracting, the impact of these programs is hard to overstate. Since total procurement spending at all levels of government totals well-over \$2 trillion a year, these mandates likely influence hundreds of billions of dollars worth of contracts, and at least tens of billions of dollars of contracts at the federal level. Pervasive preferences dependent on race and sex thus have a significant impact on all government activities, especially defense and infrastructure, as well as our national economy.

Evidence for Cost of Minority-Contracting Programs

The costs of these programs to taxpayers and the general public should no longer be in dispute. The direct costs are clear, in that in order to meet the mandated disadvantaged business goals, the government either uses sole-source awards to give contracts directly to SDBs or to DBEs, without any competition, or uses set-aside programs, whereby only disadvantaged businesses can compete. The clear intent of these programs is to restrict competition and to award contracts to businesses that otherwise could not compete on price and quality.

There is solid academic evidence that minority-contracting programs are costly. One of the better pieces of research, from Justin Marion in 2009, looked at what happened in California after the state banned consideration of race and sex in contracting under Proposition 209. Marion found that the costs of state-funded contracts fell 5.6% relative to federally-funded projects, due to the changes in subcontracting practices and less use of higher costs of firms in minority areas.¹³ A

Infrastructure Contracting," Biden White House, July 26, 2022, <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/07/26/fact-sheet-biden-harris-administration-advances-equity-and-economic-opportunity-through-federal-procurement-and-state-and-local-infrastructure-contracting/>

¹² Governor Kathy Hochul, "Governor Hochul Announces MTA Signs 'Equity in Infrastructure Project' Pledge to Support Historically Underutilized Businesses," March 7, 2024. <https://www.governor.ny.gov/news/governor-hochul-announces-mta-signs-equity-infrastructure-project-pledge-support-historically>

¹³ Justin Marion, "How Costly Is Affirmative Action? Government Contracting and California's Proposition 209," *The Review of Economics and Statistics* 91, no. 3 (2009): 503-522. <https://direct.mit.edu/rest/article-abstract/91/3/503/57781/How-Costly-Is-Affirmative-Action-Government?redirectedFrom=fulltext>

working paper from last year found that disadvantaged business set-asides increased cost overruns by 31% and delays by 9%.¹⁴ A 2023 paper from the National Bureau of Economic Research found that for every ten percentage points in higher DBE contract requirements, costs for highway projects went up 25 percent per mile. Although the paper cautioned that this was only a correlation, not a causation, it did recognize that DBE contracting is likely related to other programs that tend to increase costs.¹⁵

Based on my own research on federal contracting, I found other indications that minority-contracting is increasing the costs to taxpayers. For instance, there is a general tendency across the federal government to make awards in September in order to fit the contract within the appropriations provided for that fiscal year. This has been characterized as the “use it or lose it” tendency by federal contracting officers.¹⁶ A recent academic paper showed that due to the rush to award contracts in this period, contracts awarded near the end of the fiscal year had significantly worse outcomes than others.¹⁷ In my own analysis of contracts for the years 2007 to 2023, I found the total amount of contract awards in September was on average 2.26 times the other 11 months. Yet the proportion of minority-owned firms with awards in September is much higher: 3.74 times the average of the other 11 months. The tendency to make such awards in September is especially prominent for any sort of award that includes 8(a) set asides, which have 4.76 times the average contracting of other months.¹⁸ The tendency to use minority preferences at the end of the year, due either to the desire to hit fiscal year goals for such contracts or the desire to use such preferences to avoid competition and speed completion, likely means these contracts suffer more of the problems associated with late fiscal year contracts than the rest of the federal government.

¹⁴ Matilde Cappelletti and Leonardo Giuffrida, “Targeted Bidders in Government Tenders,” CESifo Working Paper No. 11142, May 2024, https://www.ifo.de/DocDL/cesifo1_wp11142.pdf

¹⁵ Zachary Liscow, Will Nober, and Cailin Slattery, “Procurement and Infrastructure Costs,” National Bureau of Economic Research Working Paper 31705, September 2023, https://www.nber.org/system/files/working_papers/w31705/w31705.pdf

¹⁶ Jason J. Fichtner and Joe Albanese, “Year-End Federal Spending and Government Waste: Reforming ‘Use It or Lose It’ Rules,” Mercatus Research, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3232845

¹⁷ Jeffrey B. Liebman and Neale Mahoney, “Do Expiring Budgets Lead to Wasteful Year-End Spending? Evidence from Federal Procurement,” *American Economic Review* 107, no. 11 (Nov. 2017): 3510-49, <https://www.aeaweb.org/articles?id=10.1257/aer.20131296>

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3232845

¹⁸ Author’s analysis of USASpendig.gov

Corruption in Minority Contracting

Given that tens of billions of dollars are at stake based not on contract price or quality but merely the race or sex of business owners, it should not be surprising that many otherwise non-qualifying businesses seek to take advantage of existing preferences. The evidence for pervasive corruption in these programs is clear and demonstrates that much of their putative benefits do not go to their intended beneficiaries.

The statistics back up the contention that corruption is pervasive among race and sex-based contracting programs. A Department of Transportation Inspector General analysis from 2016 found that over a third of its active fraud cases involved DBE fraud and that over the previous five years these fraud cases resulted in \$245 million in financial recoveries and 425 months of incarceration.¹⁹ A Small Business Administration Inspector General report found that 20 of the 25 8(a) firms they reviewed, which included 15 of the largest 8(a) contractors, should have not been in program.²⁰

Stories of minority-contracting fraud are common. Just last month, the U.S. Supreme Court decided a fraud case involving two companies that used a fake “pass through” firm to meet DBE targets, with the pass-through firm taking a significant fee and performing no work, which is a common tactic in minority contracting today.²¹ Just this month the Department of Justice secured four guilty pleas involving bribery of a USAID official to secure over \$550 million in contracts. As the DOJ said, the company Apprio was a “certified small business under the SBA 8(a) contracting program” which meant it “could access lucrative federal contracting opportunities through set-asides and sole-source contracts exclusively available to eligible contractors without a competitive bid process.” It bribed the USAID contracting officer to receive these contracts with cash, laptops, thousands of dollars of NBA tickets, downpayments on two mortgages and jobs for relatives. After Apprio “graduated” from the 8(a) program, it found another supposedly

¹⁹ Michelle McVicker, “The Real Cost of DBE Fraud,” Department of Transportation Inspector General, March 2, 2016, <https://www.transportation.gov/sites/dot.gov/files/docs/S3TheRealCostofDBEFraud.pdf>

²⁰ Small Business Administration Office of Inspector General, “Improvements Needed in SBA’s Oversight of 8(a) Continuing Eligibility Process,” Audit Report, Report NO. 18-22, September 7, 2018, <https://www.oversight.gov/sites/default/files/documents/reports/2018-09/SBA-OIG-Report%252018-22.pdf>

²¹ Kousisis et al. v. United States, 605 U.S. ___, May 22, 2025, https://www.supremecourt.gov/opinions/24pdf/23-909_f2q3.pdf

disadvantaged contractor to become the prime contractor with USAID and began acting as a subcontractor.²²

An even more egregious case involved Margarita Howard and her company HX5, which as an 8(a) firm received hundreds of millions of dollars from NASA and other agencies. Although Howard was considered “socially and economically disadvantaged” as part of the 8(a) program, according to the filed complaint she was living in a 14,000 square foot waterfront mansion that had been featured on HGTV’s show “Extreme Homes.” She also had another house, four condos, and a boat worth hundreds of thousands of dollars. In 2023 she was convicted of fraud for lying to the government about her eligibility for the program.²³

Since I started writing and investigating this issue some years ago, I have been inundated with stories from business owners who describe the corruption in these programs. Although of course reluctant to speak out publicly, they would discuss with me how they knew of or even personally paid for otherwise unnecessary deals to meet required government contracting goals, or how individuals set up wives or friends as fronts for companies to qualify as minority-owned.

Even without corruption, it is important to note that minority contracting helps only a tiny number of individuals. The government’s 8(a) program has about 4,000 participants, who together receive tens of billions of dollars of contracts a year.²⁴ Despite claims that the program is reserved for particularly disadvantaged individuals, extremely wealthy individuals have access to it. To be considered as both “socially and economically disadvantaged,” a business owner can make up to \$400,000 in income a year and have up to \$850,000 in net wealth, a calculation which excludes not only the value of the business, but the value of the owner’s home or retirement accounts, the two

²² “USAID Official and Three Corporate Executives Plead Guilty to Decade-Long Bribery Scheme Involving Over \$550 Million in Contracts,” Department of Justice Press Release, June 12, 2025, <https://www.justice.gov/opa/pr/usaaid-official-and-three-corporate-executives-plead-guilty-decade-long-bribery-scheme>

²³ “Florida Contractors and Owner to Pay More than \$7.7 Million to Resolve False Claims Act Allegations Relating to Procurement of Small Business Contracts,” Department of Justice Press Release, June 29, 2023, <https://www.justice.gov/archives/opa/pr/florida-contractors-and-owner-pay-more-77-million-resolve-false-claims-act-allegations>; US ex. rel Vantage Systems, v. HX5, HX 5 Sierra, LLC, Margaritta Howard, Complaint and Jury Demand, February 18, 2020, <https://www.murphypllc.com/docs/Vantage%20Systems%20complaint.pdf>

²⁴ “Small Business Administration: Recent Changes to the 8(a) Program’s Financial Thresholds Need Evaluation,” Government Accountability Office, GAO-22-104512, August 2022, <https://www.gao.gov/assets/730/722296.pdf>

sources of the vast majority of most Americans' wealth.²⁵ Some individuals in the program come from parents who themselves started wildly successful companies, but who, as long as most of their inheritance goes into housing or retirement savings, can still claim to be “disadvantaged.”²⁶

There are tens of millions of struggling people in need of help in this country. A tiny number of successful business people, with up to almost million dollars in spare cash lying around, making hundreds of thousands of dollars a year, should not get to claim the mantle of “disadvantage” while their companies are being footed by taxpayers making much less.

Conclusion

There have been some welcome developments in the field of minority contracting. Since the *Students for Fair Admissions vs. Harvard* Supreme Court case of 2023, there have been increased constitutional attacks on race-based programs. The Department of Transportation recently refused to defend the DBE program against legal claims that it is unconstitutional and has currently accepted a settlement to end it, which is under review in the courts.²⁷ The *Ultima v. USDA* decision, by a federal district court, ended the presumption that racial minorities were “socially disadvantaged” for the 8(a) program.²⁸ The SBA under Kelly Loeffler has announced that the new goal of the SDB 8(a) program is just five percent of contracts, rather than the Biden administration's long-term 15 percent goal, meaning the administration is again following the law as written in this field.²⁹

²⁵ “SBA Issues Rule Adjusting Monetary Size Standards for Inflation,” Small Business Administration, Memo, November 21, 2022, [https://www.sba.gov/article/2022/11/21/sba-issues-rule-adjusting-monetary-size-standards-inflation#:~:text=Adjusts%2520for%2520inflation%2520the%2520economic,4\)\):%2520\\$6%252C000%252C000%2520to%2520\\$6%252C500%252C000](https://www.sba.gov/article/2022/11/21/sba-issues-rule-adjusting-monetary-size-standards-inflation#:~:text=Adjusts%2520for%2520inflation%2520the%2520economic,4)):%2520$6%252C000%252C000%2520to%2520$6%252C500%252C000)

²⁶ Donte Kirby, “How new SBA rules change the core narrative of what it means to be 8(a) certified,” Washington Business Journal, October 5, 2023, <https://www.bizjournals.com/washington/news/2023/10/05/sba-lawsuit-social-disadvantaged-narrative.html>

²⁷ Julian Mark, “Trump administration moves to upend \$37B affirmative action program,” *Washington Post*, May 28, 2025, <https://www.washingtonpost.com/business/2025/05/28/affirmative-action-dei-trump-contracting/>

²⁸ *Ultima Servs. Corp. v. US Dept. of Agric.*, 2:20-CV-00041-DCLC-CRW, July 19, 2023, <https://law.justia.com/cases/federal/district-courts/tennessee/tnedce/2:2020cv00041/93612/86/>

²⁹ “SBA Administrator Loeffler Issues Memo on Day One Priorities,” Small Business Administration, News Release 25-32, February 24, 2025, <https://www.sba.gov/article/2025/02/24/sba-administrator-loeffler-issues-memo-day-one-priorities>

Unfortunately, much of these contracting programs will continue without further action from the courts and Congress. The DBE program mixes preferences for racial minority-owned businesses with those for women-owned businesses, and so far preferences for women have not come under the same kind of constitutional scrutiny that those for certain races have. And although the SBA has reduced the SDB goals to 5%, that goal would still impact tens of billions of dollars in federal contracts a year. Agencies are continuing to award massive defense and other contracts based on the 8(a) system.³⁰

Although the *Ultima* decision would seem to have ended the connection between race and the 8(a) program, soon after the decision the SBA requested current and potential 8(a) businesses to write what are called Social Disadvantage Narratives to receive admittance to the program. The SBA hired extra examiners to read and evaluate these essays. It now recommends applicants for the 8(a) program describe how their race, ethnic origin, sexual orientation or other “identities/characteristics” have caused them to suffer discrimination and made them disadvantaged and eligible for the program. The SBA claims that mere “social patterns or pressures” can be used as evidence for discrimination.³¹ It seems the federal government is now awarding large defense contracts based on essays about putative social slights, which would strike most Americans as absurd.

American taxpayers deserve the best deal possible, which means that the core of contracting by the federal government should always be price and quality. Preferences for already successful businesses based on their owners’ race or sex are unconstitutional, expensive, and detrimental to the core functions of government. Minority-contracting programs should be removed from all levels of government as quickly as possible.

³⁰ See, e.g., “Agile C5ISC Operation & Modernization Pipeline for Application Support Services (COMPASS) Acquisition Planning Forecast System, Forecast Record Number: F2022058977 <https://apfs-cloud.dhs.gov/record/58977/public-print/>

³¹ Judge Glock, “A Federal Agency is Awarding Contracts Based on ‘Discrimination Essays,’” *City Journal*, May 1, 2025, <https://www.city-journal.org/article/small-business-administration-federal-contracts-race-discrimination-essays>; “SBA program upended in wake of Supreme Court affirmative action ruling,” *Washington Post*, September 7, 2023, <https://www.washingtonpost.com/business/2023/09/07/sba-8a-program-ruling-affirmative-action/>.