

**CONTRACTING PREFERENCES FOR ALASKA NATIVE
CORPORATIONS**

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING
OVERSIGHT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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CONTENTS

Opening statements:	Page
Senator McCaskill	1
Senator Collins	2
Senator Tester	4
Senator Akaka	9

WITNESSES

THURSDAY, JULY 16, 2009

Hon. Mark Begich, a U.S. Senator from the State of Alaska	5
Hon. Lisa Murkowski, a U.S. Senator from the State of Alaska	6
Debra Ritt, Assistant Inspector General, Auditing, Office of Inspector General, U.S. Small Business Administration	11
Joseph Jordan, Associate Administrator, Government Contracting and Business Development, U.S. Small Business Administration	13
Shay Assad, Acting Deputy Under Secretary of Defense, Acquisition and Technology, Director of Sefense Procurement, U.S. Department of Defense ..	14
Sarah L. Lukin, Executive Director, Native American Contractors Association	24
Jacqueline Johnson-Pata, Executive Director, National Congress of American Indians	26
Julie Kitka, President, Alaska Federation of Natives	28
Mark Lumer, Senior Vice President, Federal Programs, Cirrus Technology, Inc.	31
Christina Schneider, Chief Financial Officer, Purcell Construction Corporation	33

ALPHABETICAL LIST OF WITNESSES

Assad, Shay:	
Testimony	14
Prepared statement	62
Begich, Hon. Mark:	
Testimony	5
Johnson-Pata, Jacqueline:	
Testimony	26
Prepared statement with an attachment	93
Jordan, Joseph:	
Testimony	13
Prepared statement	58
Kitka, Julie:	
Testimony	28
Prepared statement	110
Lukin, Sarah L.:	
Testimony	24
Prepared statement	69
Lumer, Mark:	
Testimony	31
Prepared statement	122
Murkowski, Hon. Lisa:	
Testimony	6
Ritt, Debra:	
Testimony	11
Prepared statement with attachments	49

IV

	Page
Schneider, Christina:	
Testimony	33
Prepared statement	124

APPENDIX

Hon. Don Young, a U.S. Congressman from the State of Alaska, prepared statement	127
Letter from Sarah Palin, Governor of Alaska, and Sean Parnell, Lt. Governor of Alaska, dated July 23, 2009	131
Letter from Kirsten E. Gillibrand, a U.S. Representative from the State of New York, dated July 30, 2009	136
“New Information About Contracting Preferences for Alaska Native Corporations (Part I and II),” Majority Staff Analysis, prepared for Chairman Clare McCaskill	138
Report submitted by Ms. Kitka, “Status of Alaska Natives 2004”	161
Questions and responses submitted for the Record from:	
Ms. Ritt	181
Mr. Jordon	183
Mr. Assad	191
Ms. Lukin, with attachments	195
Ms. Johnson-Pata	213
Ms. Kitka	215
Mr. Lumer	219
Ms. Schneider	223

CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS

THURSDAY, JULY 16, 2009

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill, Tester, Akaka, and Collins.

Also Present: Senators Begich and Murkowski.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. The hearing will come to order. Today's hearing will examine the contracting preferences for Alaska Native Corporations. Federal contracting laws create a limited privilege for economically and socially disadvantaged small businesses. Under the Small Business Administration's 8(a) program, these businesses can receive no-bid contracts for up to \$3.5 million for services and \$0.5 million for manufacturing or goods.

In the 1980s and the 1990s, Congress created special preferences for the Alaska Native Corporations that allow them to participate in the 8(a) program in a way that is not identical to other small businesses. But Congress has said that Alaska Native Corporations do not have to prove that they are socially or economically disadvantaged. They do not have to be small businesses, and they can receive no-bid contracts worth billions of dollars.

No one begrudges giving small, disadvantaged businesses a chance to win Federal contracts. We have programs like 8(a), HUBZone, and the Service-Disabled Veteran-owned businesses because we want these small businesses to be able to get their foot in the door. But the Alaska Native Corporations have used their special preferences to bust the door down.

To get to the real facts at issue in this hearing, I requested detailed information from 19 Alaska regional and village corporations. The Subcommittee staff has prepared an analysis of this information and a separate analysis of publicly-available contracting information. And without objection, I will enter both analyses into the hearing record.¹

¹The information submitted by Senator McCaskill appears in the Appendix on page 138.

The Subcommittee staff's analysis shows that Alaska Native contract awards have skyrocketed since 2000. Alaska Native Corporations are now among the largest Federal contractors, with hundreds of millions in annual revenues and hundreds of subsidiaries and joint ventures. According to the information submitted by the 19 ANCs, none of them would be classified as small businesses under SBA regulations.

The Alaska Native Corporations may also be passing work through to their subcontractors. They employ relatively few of their shareholders and rely heavily on non-Native managers.

We will hear today from representatives of the Alaskan Native people and the Alaskan Native contractors, who will tell us that sole-source contracting is needed to provide important benefits to impoverished people. But we must take a hard look at the numbers. Only about \$615 a year in money, scholarships, and other benefits goes back to each member of the Alaskan Native community from this particular Federal contracting effort.

The American people are looking to Congress to cut back wasteful spending and make sure that every single Federal dollar is spent wisely. And there must be a strong bias in favor of competitive contracts that only compelling rationale should ever overcome, and then in very limited circumstances.

As we hold hearings in the Subcommittee on waste, fraud, and abuse in government contracts, we cannot give anyone a free pass. The Alaska Native Corporations have had, and I have seen firsthand over the last few weeks, a very vocal group of advocates. But our responsibility is to look out for the taxpayers, not these corporations and their profit margins, or any other Federal contractor, or any other special interests. From the taxpayer perspective, it is hard to see why the Alaska Native Corporations should be able to receive enormous contracts with no competition.

When this Subcommittee was formed, we made a commitment to the taxpayer. Our priority would be promoting efficiency, transparency, and accountability. Our goal is to make sure that every taxpayer dollar is spent wisely in the contracting arena. By taking a hard look at contracting loopholes like those for the Alaska Native Corporations, we can take the first step towards ensuring that our contracting system provides the best possible value for the taxpayer.

Eliminating waste, fraud, and abuse in government contracting is not a partisan issue. And on this Subcommittee, I am particularly grateful to have Senator Collins as a Ranking Member. Senator Collins has a long record of working in the contracting and procuring arena. She shares my commitment to promoting competition in contracting and ensuring the best value for the taxpayer.

I yield to Senator Collins for her statement.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Madam Chairman. I very much appreciate your kind comments and your hard work and leadership as the Chairman of this Subcommittee.

Today, as the Chairman has indicated, the Subcommittee examines the benefits afforded Alaska Native Corporations (ANCs), in

the Small Business Contracting program for socially and economically disadvantaged small businesses, known as the “8(a) program.”

The recent report of the SBA’s inspector general has raised several troubling issues concerning the ANC program, including whether other minority-owned small businesses are being treated fairly given the special benefits afforded ANCs. As we examine the ANC program, it is important that we recognize our commitment to the growth and prosperity of small businesses and to the well-being of our Native Americans, including Alaska Natives. In particular, we should consider how the 8(a) program has helped to support our Nation’s minority-owned small businesses by giving them the opportunity to participate in Federal contracts.

In 1978, Congress first established the current 8(a) program. Beginning with protections for Black Americans, Hispanic Americans, Native Americans, and other minorities, Congress has revised and expanded the program over time, including in 1986 when Indian tribes and ANCs were added.

Over the last half century, whether by Executive Order or by Legislative action, the government has acknowledged the value in encouraging the growth and expansion of small companies and promoting minority-owned small business participation in government contracting.

In passing the Alaska Native Claims Settlement Act in 1971, Congress recognized Alaska Natives’ aboriginal land claims to large portions of Alaska, and in return, permitted Alaska Natives to establish unique corporate structures, the ANCs, to manage their affairs. ANCs were established to be stewards of the land and to help Native Alaskans.

The ANCs, whether they are large regional entities or the smaller village corporations, help to provide leadership for developing the land’s natural resources, provide scholarships, and offer employment opportunities to the members of the Alaskan tribes and villages. ANCs are a way for many Natives to continue to live in Alaska.

Today, however, the SBA’s IG has produced some disturbing statistics that raise difficult questions regarding the scope of the protections afforded ANCs. These issues the Chairman has outlined in her opening statement, but let me just touch on some of them.

First, the IG noted that the total value of 8(a) ANC awards soared from \$265 million in Fiscal Year 2000 to \$3.9 billion in Fiscal Year 2008. Of additional concern, the IG found that 82 percent of these ANC contracts were awarded via sole-source procurements; that is, without competition.

Second, the IG’s report shows that the dollar value of the ANC’s share of all 8(a) program dollars grew from 13 percent in 2004 to 26 percent in 2008. Yet, ANCs account for only 2 percent of the 9,500 businesses that participate in the 8(a) program. Third, the report reveals that 11 of the 20 largest ANCs receive approximately 50 percent of all the 8(a) funds that are awarded to all ANCs.

These statistics show a growing domination by ANCs—particularly of a few large ANCs—of the 8(a) program market share at the potential expense and exclusion of other minority-owned contrac-

tors and perhaps to the detriment of taxpayers given the lack of a cap on the dollar amount of the non-competitive contracts.

While I do not question the fundamental proposition that ANCs provide critical services for an economically and socially disadvantaged group of Americans, we simply must consider whether the structure of the 8(a) program provides disproportionate benefits to one group.

Congress must carefully consider the following key questions. First, do the statutory advantages of the ANC program need to be reexamined within the context of a more competitive, fair, and transparent overall 8(a) program? Second, should the ANCs continue to receive an exemption from the cap on awards of sole-source contracts to 8(a) program participants? Third, should ANCs continue to be exempt from the limitation on subsidiaries applicable to other 8(a) participants, which permits their indefinite participation in the program?

I recall when I was the regional head of the Small Business Administration in New England that we would have graduation ceremonies for our 8(a) participants. If you can have an infinite number of subsidiaries, ad infinitum, that raises a real question about the purpose of the program.

I look forward to hearing the testimony of the witnesses today. And as the Chairman said, the final question we need to look at is what the impact on the value received by the American taxpayer is for the services provided under this program.

Thank you, Madam Chairman.

Senator McCASKILL. Thank you.

I do not want anyone to think that I am skipping over our Senators from Alaska, but I am going to—just for the record, we have done something a little unusual today in that we have invited the two Senators from Alaska to attend the hearing to make opening remarks and even have gone so far as to allow them to ask questions of the witnesses, even though they are not Members of this Subcommittee.

We are trying to bend over backwards to make sure that Alaska's representatives in the Senate have an ample opportunity to ask questions about this important topic to their State, and I am cognizant of their need to do that. So that is why they are here, and that is why they are on the dais. And we welcome both of them to the Subcommittee.

However, Senator Tester is a Member of the Subcommittee, and so he will be recognized for any opening comments he would like to make as a Member of the Subcommittee.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Chairman McCaskill. I appreciate that. Sorry I missed your opening remarks. I am going to be very brief because I want to hear the testimony and get an opportunity to ask some questions.

I think that we all want to get the maximum bang for the buck when it comes to taxpayer dollars and when it comes to contracting. I do not think there is any doubt about that. I think we also want to give benefit to people who are in severe economic con-

ditions when possible. And I think that is what this discussion will be interesting about for me.

I mean, I cannot speak to what goes on in Alaska as far as the unemployment rates. I can speak to the unemployment rate in Indian country in my State and the value of the 8(a) program itself in my State. When you have unemployment rates that rise well above 50 percent, in some cases 80 percent, as one person said, it would be nice to give those folks fishing poles so they can do a little fishing. And I think that is what that program is meant to do. Hopefully, that is the same way as it is in Alaska, and hopefully, we can get some of those questions answered as we move forth.

I appreciate the opportunity. Thank you, Madam Chairman.

Senator MCCASKILL. Thank you. And I would recognize—I believe Senator Begich was here first. We come in order of appearance here. So if you would take a couple of minutes, if you would like, to make a few comments and then we will recognize Senator Murkowski.

**TESTIMONY OF SENATOR MARK BEGICH, A U.S. SENATOR
FROM THE STATE OF ALASKA**

Senator BEGICH. Thank you very much, Chairman McCaskill.

Thank you, Ranking Member Collins for allowing Senator Murkowski and I to be here today to participate in the hearing.

The issues we explore today are vitally important for my constituents and especially for the Native people of Alaska who comprise 20 percent of our State's population. For me, the well-being of Alaskan Native people is personal for two reasons. First, my father's greatest legacy in his short tenure here in Alaska as a lone congressman was to write the Alaska Native Land Claims bill. This landmark act, which has dramatically improved the status of Alaskan Natives passed Congress in 1971, just a year before he died.

The second reason it is personal, is because I have personally witnessed the struggle against formidable odds and the enormous success of the Alaska Native people. I was born in Anchorage barely 3 years after Alaska became a State. At that time, Alaska Natives had developed a rich culture in some of the harshest conditions on the globe. By Western measures, their status was bleak.

Census data for the post-statehood era is incomplete. But the data that is available tells a story of great need. In 1970, only 18 percent of Alaska Natives had a high school diploma and less than 1 percent had a college degree. Half lived below the poverty line. Fifty percent of Alaska Natives lived without indoor plumbing, collecting their waste in what we call the "honey bucket." And nearly two-thirds lacked what we define today as a job. Most hunted, fished, and lived off the land and water.

Today, thanks to the Settlement Act and congressional action to permit Alaska Native Corporations to participate in the SBA's 8(a) program, the story of Alaskan Native people is one of unprecedented success. The numbers tell part of the story. Educational attainment has soared with about half of Alaskan Natives earning high school diplomas and nearly a third with at least some college. Less than 25 percent now live below the poverty line. Three-quarters live in homes with basic clean water and sewer facilities we all take for granted.

For those of us who believe in the free market system, as I do, the transition to the private sector is especially admirable. In 1970, about half of Alaskan Natives worked for the government. Today, that number is just 29 percent as more Natives work for their corporations and other Alaska companies.

What is more impressive to me is the success of Alaska Native Corporations. After struggling in their early years, all 12 of Alaska's in-state regional for-profit corporations are profitable, generating about \$4 billion in revenues for the Native shareholders.

ANCSA corporations are among the State's top employers, providing jobs for more than 30,000 people. And I submit that these companies are among the most socially conscious in the world. Their chief mission is to provide benefits to the Native people they were created to serve. They work hard and contribute enormously for education scholarship, cultural preservation, elder services, community development, and support the subsistence lifestyle that is such a vital part of the culture.

The participation of the ANCs through the 8(a) program is another great success story. These amendments to the Claims Act were 5 years in the making, thoroughly discussed within both the Native community and Congress before adoption. The SBA IG report that there are now about 203 ANCs that participate in the program.

Through their work across the Nation, they are generating billions of dollars in benefit to the ANC shareholders. This continues to raise the standard of living for thousands of Alaskan Native people who live in 200 villages and communities across my State. There are scores of compelling stories we could document if time permitted.

Madam Chairman, contrary to the spin generated off the various government reports, I believe Alaska Native participation in the 8(a) program overall has been one of the most successful programs this government has done. Certainly, there may be a few bruised apples that require attention. I agree with many of the IG recommendations that the SBA needs to clarify its procedures and fully staff its oversight mission.

Let us continue to be mindful of the continued needs among Alaskan Native people in my State and how ANCs working in part through their 8(a) subsidiaries are meeting those needs so that American taxpayers do not have to.

Again, I look forward to working with the Subcommittee, hearing the testimony, and being able to ask questions regarding the reports given.

Thank you, Madam Chairman.

Senator MCCASKILL. Thank you, Senator Begich. Senator Murkowski.

**TESTIMONY OF SENATOR LISA MURKOWSKI, A U.S. SENATOR
FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you, Madam Chairman, and thank you for the courtesy that you have extended Senator Begich and I to participate. And to Ranking Member Collins, I truly do appreciate this.

Today the Subcommittee takes testimony on the question of whether a law intended to provide Indian tribes, Native Hawaiians, and Alaska Native Corporations with the opportunity to establish viable business enterprises selling goods and services to the Federal Government, whether or not this has been a flawed concept. My views on this subject are informed certainly by the 6 years that I have served as a member of the Senate Committee on Indian Affairs, including a short stretch when I was vice chair of that committee.

I believe that the Indian 8(a) preferences are achieving important economic development objectives and are well worth preserving as a matter of Federal Indian policy. Our Nation has a special relationship with its first peoples, which has been recognized since the founding of this country, and that special relationship is expressed in our Constitution. It is also well established that our great Nation has a long history of imposing ill conceived policies on Indian tribes and Native peoples, and the Senate acknowledged as much when it attached Senator Brownback's apology resolution to the Indian Health Care Bill back in 2008.

As Senator Begich has noted, our Native people live in some of the poorest, most geographically and most economically isolated places in the country, some in conditions that resemble Third World countries. Our Native people struggle to maintain their traditional cultures in an era in which subsistence hunting, fishing and gathering simply do not generate sufficient resources to keep one's house warm in the winter.

As we begin this inquiry, we must keep firmly in our mind that the preferences that we are discussing today are an exercise of Federal Indian policy to mitigate the impact of past ill conceived policies and to help our Native people maintain their unique cultures and identities and survive in the modern world.

Although today's hearing is labeled an inquiry into Alaska Native Corporation contracting, let me make clear that there is no such thing as an Alaska Native Corporation preference in government contracting. There is a preference for Indian tribes, which includes Alaska Native corporations as well as Native Hawaiian organizations. The opportunity was structured in a way that would be meaningful to the challenges of economic development in Indian country and provide financial benefits that could be shared among large numbers of tribal members. All of that is at risk today. While the hearing is labeled Alaska Native Corporations, nobody in Indian country believes that the consequences will not fall equally on all beneficiaries of the Indian 8(a) preferences.

Now, there are some who say that this program really is not important to anyone other than Alaskan Natives. But we will hear much today about how some Alaska Native Corporations have done well, perhaps too well in pursuing these opportunities. But that does not mean that they are less important to other Native corporations or to Indian country as a whole.

The history of economic development in Indian country suggests that Native leaders frequently look at which kinds of businesses are working in Indian country and adopt the successful business models of others, all in their own time. This has certainly been the

case with Indian gaming, and all indications are that interest in government contracting among the tribes is rising.

The sad truth is that there are very few business models that have provided any modicum for success in tribes and ANCs. From my conversation with Indian leaders, there seems to be unanimity that the 8(a) business opportunity holds great promise for Indian economic development and it is an opportunity worth saving. I expect that you will hear the same from the Native leaders that are testifying today.

But this Senator does not believe that these contracting preferences undermine the integrity of all Federal contracting. While the dollar value of some individual contracts may be substantial, taken together, all of the contracting under this preference accounts something on the order of 1 percent of the total Federal contract pie. And I am deeply concerned by the suggestion that a victory for the Indians is a defeat for businesses enjoying preferences through other socioeconomic classifications. Surely, there must be a way to win for all.

Let me be clear about the stakes here. Congress enacted a law giving Indian-owned and controlled entities an opportunity to build Federal contracting businesses. Many rose to the challenges and have fully committed their tribes and their business enterprises to these opportunities. Some of these businesses are maturing, and others are just starting. Our Native leaders have entered into contracts, they have hired people, they have created systems and focused all of their energies on learning the business. And now that same Federal Government threatens to pull the rug out from under them.

I fear that we are moving down the road to breaking yet another promise to the Indians. If we are not careful, policy changes prompted by this Subcommittee's inquiry will go down in history as another of the ill conceived policies that we, in the Congress, are later forced to apologize for.

I do thank the Chairman for inviting me to participate. I look forward to the witnesses. And I ask, Madam Chairman, our Congressman, Don Young, Alaska's only House member, had requested an opportunity to appear before the Subcommittee. And I understand that his request could not be accommodated. He has submitted written testimony in hope that it would be included within the record.¹

Of course, since I am not a member of your Subcommittee, it is inappropriate for me to offer a unanimous consent request. But I would like to submit the Congressman's testimony and would hope that this request could be accommodated, and would also ask that the Committee or the Subcommittee hold the record open to accommodate a statement from the Governor of Alaska as well as any Alaska Native Corporations that may wish to submit their views, if that is appropriate.

Senator MCCASKILL. We certainly will take all of those statements, and as it relates to the congressman, certainly, and the gov-

¹The prepared statement of Mr. Young appears in the Appendix on page 127.

error, we will be happy to make a unanimous consent motion that their statements be included in the record.¹

We have had so many requests for statements to be included. For all other statements, we will receive them in the Subcommittee and review them, and then be happy to get back with the people who submit the statements as to whether or not they will be made part of the record.

Senator MURKOWSKI. But we can encourage them to submit them—

Senator MCCASKILL. Absolutely.

Senator MURKOWSKI [continuing]. To the Subcommittee.

Senator MCCASKILL. We will take all the information. We have received so many requests in the last 5 days, we want to make sure that we are not overwhelmed if somebody wanted to submit 600 pages. We have a very small staff.

Senator MURKOWSKI. I think everyone is anxious to tell their story.

Senator MCCASKILL. I understand, Senator. Thank you very much.

It is the custom of this Subcommittee that witnesses must be sworn in. Therefore, I would ask the first panel to rise, please.

Do you swear that your testimony that you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. RITT. I do.

Mr. JORDAN. I do.

Mr. ASSAD. I do.

Senator MCCASKILL. Thank you very much. Senator Akaka has joined us.

Senator, as a Member of the Subcommittee, would you like to make any opening comments?

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Madam Chairman, I thank you so much for your work on contracting, which is something that we really need to work on in this new period. And if you do not mind, Madam Chairman, I would like to make just my statement.

Senator MCCASKILL. Certainly.

Senator AKAKA. Chairman McCaskill, thank you for conducting the hearing. I appreciate the opportunity.

As Chairman of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I recognize the need and importance of ensuring appropriate oversight measures are in place for Federal contracts. Failure to have skilled contract officers in place at Federal agencies can negatively impact the process and risk the loss of billions of taxpayer dollars due to inefficiencies and, in some cases, fraud. That is why I am pleased by your efforts to review Federal contracting practices.

Today we are here to examine just one aspect of Federal contracting, Federal contracts with Alaska Native Corporations. In our review, it is appropriate that we acknowledge the Federal trust re-

¹The letters from Governor Palin and Representative Kirsten E. Gillibrand submitted for the Record appears in the Appendix on page 131 and 136 respectively.

relationship the United States has with Native Americans, including Alaska Natives. The U.S. Constitution under the Indian Commerce Clause, vests Congress with the ability to regulate commerce with Indian Tribes. Congress has utilized its well established authority to enact policies that address the unique circumstances and needs of Alaska Natives.

For the past 19 years, I have worked with Senator McCain, Senator Murkowski, Senator Dorgan, and others as part of the Senate Indian Affairs Committee to protect and advance this unique trust relationship with our Nation's first Americans. From experience, we know that successful Federal Indian policy enables American Indians and Alaska Natives to be a full partner with the Federal Government. We have seen more enduring and meaningful results when Native people are allowed to maintain their culture, commerce, and local political systems to adapt and address the impact of an America that has rapidly changed around them.

As we review the experience of ANCs in the Small Business Administration 8(a) program, we must be mindful that Congress deliberately established this corporation structure to empower Alaska Natives to develop sustainable economies that benefit their communities.

Under the Alaska Claims Settlement Act, Alaska Natives were required to establish corporate vehicles quite similar to tribal corporations with vital differences. To promote a more robust commerce, it provided control of a portion of their aboriginal lands at fee simple title, rather than the establishment of reservations, and required the engagement of commerce and enterprise to be separate for their tribal government.

Congress established the SBA 8(a) business development program to connect the growth of American business enterprise directly to the needs for goods and services of our Federal Government. It has shown success and great promise for the growth of women-owned, veteran-owned, and minority-owned firms and has changed the socioeconomic standing of thousands of Americans.

Recognizing the success achieved with individually-owned firms, in the 1980s, Congress established provisions within the 8(a) program to include the unique corporate vehicles of American Indian and Alaskan Native enterprises. And today, ANCs are responsible for providing more than just profits but are responsible for the welfare and long-term survival of their people and indigenous culture.

As proposals may come forward to address oversight issues relating to ANCs, I am hopeful we will proceed honorably in a manner that respects and strengthens the government-to-government relationship between the United States and Alaska Natives. The United States and Alaska Natives are partners, and development of any policy should be a collaborative effort.

Again, thank you, Chairman McCaskill for holding this hearing. I look forward to the hearing and the witnesses who will offer their expertise on this important matter. Thank you.

Senator McCASKILL. Thank you, Senator Akaka.

Our first panel has three witness. Our first witness is Debra Ritt, and she is the Assistant Inspector General for Auditing at the Office of Inspector General for the Small Business Administration, and we welcome your testimony.

Let me tell all the witnesses that we would like you to try to limit your statements to 5 minutes, but, please, we will put your entire statements in the record, so do not worry that we will not take all of the information. But if you can try to limit it to 5 minutes, we have five people on the second panel, and I have a feeling there will be a lot of questions. So if you could limit it to 5 minutes, that would be helpful. Thank you very much.

TESTIMONY OF DEBRA RITT,¹ ASSISTANT INSPECTOR GENERAL, AUDITING, OFFICE OF INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Ms. RITT. Thank you. Chairman McCaskill, Ranking Member Collins, and Members of the Subcommittee, we appreciate the opportunity to testify on our recent audit. As requested, my statement today will focus on procurement advantages enjoyed by ANC in the 8(a) program and the benefits derived from those advantages, the growth of ANC 8(a) activity and SBA's oversight of ANC participants.

ANC companies enjoy special procurement advantages beyond those afforded most other 8(a) businesses. The most significant is their exemption from statutory dollar limits on the amount of individual awards that may be sole sourced and the regulatory cap on sole source awards once \$100 million in total 8(a) contracts has been received. This has allowed some ANC companies to receive 8(a) sole source awards as large as a billion dollars and is the major reason for the explosive growth in ANC 8(a) activity.

Further, unlike other 8(a) businesses, ANC companies are considered small even if they are affiliated with other large businesses. Consequently, ANC companies that are large through affiliation with their parent companies are allowed to compete for 8(a) awards against other small disadvantaged businesses. While Federal law permits these large businesses to participate in a small business program, it is an anomaly that impacts the small disadvantaged business community.

Although ANC contracting advantages were intended to provide economic opportunities for impoverished Alaskan communities, ANC companies are not required to report to SBA how they use their 8(a) share of their profits. We have found that ANC profits are generally used to fund shareholder dividends, cultural programs, employment assistance, scholarships and numerous other services for their communities.

ANC companies have unquestionably prospered under the 8(a) program. In Fiscal Year 2007, the 12 regional corporations had combined revenues of \$5.8 billion and profits of \$484 million, much of which was generated from the 8(a) program. Moreover, from Fiscal Years 2000 to 2008, obligations to ANC-owned participants increased by 1,386 percent and more than tripled in recent years from \$1.1 billion in 2004 to \$3.9 billion in 2008. While some of the increase was due to the growth in Federal contracting as a whole in 2008, ANC companies received 26 percent of total 8(a) obligations even though they constituted just 2 percent of the companies performing 8(a) contracts.

¹The prepared statement of Ms. Ritt with attachments appears in the Appendix on page 49.

Also, 50 percent of the 8(a) dollars obligated to ANC companies in 2007 went to just 11 or 6 percent of the ANC participants. One company, which accounted for nearly 20 percent of these obligations, had only 750 shareholders or less than 1 percent of total ANC shareholders.

Finally, sole source contracts continue to be the major contracting mechanism for obligating 8(a) funds to ANC businesses. In 2007, the top 11 ANC companies received 82 percent of their 8(a) obligations through sole source awards. While such awards provide an expedient means of meeting Federal procurement goals, reports by IGs and GAO have shown that noncompetitive contracts have been misused and do not always provide the government with the best value.

Despite these concerns, SBA has not evaluated the impact of ANC growth on other 8(a) participants or tailored its oversight practices to account for ANC's unique status and growth in the program. SBA has also not fully addressed oversight weaknesses identified by prior GAO and IG audits. Specifically, SBA does not monitor whether ANC subsidiaries are obtaining their primary revenue from the same industry. The agency is developing a system to collect information on ANC companies, but this capability will not be developed until a later phase.

Also, SBA has had difficulty monitoring ownership changes involving ANC companies to ensure that they remain majority owned by ANCs. While SBA plans to increase the size of its Alaska district office to address this issue, the office currently only has three employees to oversee the 200-plus ANC companies in the program.

SBA does not determine whether ANC companies or their affiliates have a substantial unfair competitive advantage in determining size for 8(a) awards and has not clearly articulated in regulation how it will comply with existing law. Further, SBA cannot readily identify and is not monitoring partnerships between ANC companies and large businesses to ensure that such businesses are not exploiting ANCs for their 8(a) status.

Finally, SBA is not adequately reviewing financial information reported annually by ANC companies to identify unreported management agreements related to their 8(a) contracts.

In conclusion, while ANC participation in the 8(a) program has undeniably benefited Alaska Natives, ANC companies are receiving a disproportionate share of the 8(a) obligations. Also, the procurement advantages that they enjoy and their ability to access capital and credit through their parent companies may be working to disadvantage other 8(a) participants.

Consequently, Congress may wish to consider whether ANC companies should continue to be exempt from statutory limits on sole source awards and whether procurement goals should be revised to account for the significant growth in ANC 8(a) activity. It may also wish to consider further clarifying SBA's role in monitoring ANC 8(a) activity and requiring ANCs to report how they are using their 8(a) revenues.

Madam Chairman, this concludes my prepared statement, and I would be happy to take questions at this time.

Senator McCASKILL. Thank you.

Our next witness is Joseph Jordan. He is the Associate Administrator for Government Contracting and Business Development at the SBA.

Welcome, Mr. Jordan.

TESTIMONY OF JOSEPH JORDAN,¹ ASSOCIATE ADMINISTRATOR, GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Mr. JORDAN. Thank you very much. Chairman McCaskill, Ranking Member Collins, and Members of the Subcommittee, thank you for inviting the SBA to testify regarding the participation of Alaska Native Corporations in the 8(a) business development program. My name is Joe Jordan, and I am the Associate Administrator for the SBA's Office of Government Contracting and Business Development.

The 8(a) program, authorized by Section 8(a) of the Small Business Act, seeks to remedy discrimination by helping eligible small businesses compete in the American economy through business development. Participation in the 8(a) program is generally restricted to businesses owned and controlled by socially and economically disadvantaged individuals. Individual applicants must demonstrate both social and economic disadvantage.

Socially disadvantaged individuals have been subjected to racial or ethnic prejudice or cultural bias within American society. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired.

In addition to management and technical assistance, the government is able to award contracts to participating 8(a) firms without competition below certain dollar thresholds. The government can also limit competition for Federal contracts to only 8(a) certified firms.

Congress has enacted legislation that allows ANCs, Native Hawaiian organizations, community development corporations and tribally-owned firms to participate in the 8(a) business development program. The Alaskan Native Claims Settlement Act was enacted by Congress to settle claims to land and resources while also exploring an alternative to the reservation system. General goals included self determination and participation in a U.S. capitalist society.

In 1988 and 1992, ANSCA was amended to remedy evidence that Alaska Natives were not receiving all the intended benefits. So Congress designated ANCs, where Natives hold majority ownership, to be minority businesses and economically disadvantaged.

ANCs have twofold missions of being competitive businesses accountable to many thousands of shareholders as well as providing a mechanism for self sufficiency. Generally, they support cultural, societal and community activities on behalf of their people while providing economic benefit to shareholders and their families.

The 8(a) BD program's regulations anticipate that organizational-owned firms, including ANCs, use the 8(a) program to provide economic development to their communities even though all

¹The prepared statement of Mr. Jordan appears in the Appendix on page 58.

other 8(a) participants use the program only for individual business development assistance. ANC-owned 8(a) firms, tribally-owned companies and program participants owned by Native Hawaiian organizations are not subject to the same rules as other individually-owned companies participating in the program.

First, subsidiaries can participate in the 8(a) program without being considered affiliated with one another. This allows several subsidiaries to participate in the program at the same time and for each to be considered a small business. Second, these firms are able to receive a Federal contract in any amount without competition. In 2003, Congress authorized Native Hawaiian organizations to receive 8(a) contracts in any amount for Department of Defense procurements.

Last, these companies do not have a restriction on the participation by non-disadvantaged individuals. For traditional 8(a) firms, the individual claiming disadvantage must control the day-to-day operations of the company and traditionally must be the highest compensated. As it is currently operating, the 8(a) program is simultaneously providing business development opportunities to disadvantaged individuals and to firms owned by organizations, including ANCs.

It is also important to recognize that as a business development program, sole source contract awards continue to have an important role in 8(a). However, competition also plays an important part and has been used effectively in the 8(a) program.

The SBA has worked diligently to ensure that oversight of these programs is strong and that SBA programs are operating free of waste, fraud, and abuse. To this end, in the past 6 months the Administration has taken four main actions.

First, we sent a team to review the Alaska district office which handles the interface and caseload of ANCs. Second, we have begun the hiring process for two additional staff devoted to the 8(a) business development program in the Alaska district office. Third, we have funded initiatives to better track ANC participation in the 8(a) program. And fourth, we have submitted a package of regulatory changes to ensure more effective administration of the 8(a) program for all participants. These changes were driven by the SBA as well as concerns expressed in the GAO report from 2006.

Thank you for allowing me to share the SBA's view with you today, and I will be happy to answer any questions you may have.

Senator McCASKILL. Thank you, Mr. Jordan.

Our next witness is Shay Assad. He is the Acting Deputy Under Secretary of Defense for Acquisition and Technology at the U.S. Department of Defense.

Mr. Assad.

TESTIMONY OF SHAY ASSAD,¹ ACTING DEPUTY UNDER SECRETARY OF DEFENSE, ACQUISITION AND TECHNOLOGY, AND DIRECTOR OF DEFENSE PROCUREMENT, U.S. DEPARTMENT OF DEFENSE

Mr. ASSAD. Thank you, Madam Chairman McCaskill, Ranking Member Collins, and Members of the Subcommittee. My name is

¹The prepared statement of Mr. Assad appears in the Appendix on page 62.

Shay Assad. I am the director of Defense Procurement. I am also presently serving as the Acting Deputy Under Secretary of Defense for Acquisition and Technology. I want to thank you for the opportunity to appear in front of you today to participate in today's discussion.

As you know, the Small Business Administration manages the 8(a) program. ANC firms along with the tribally-owned firms participate in the 8(a) program, but like Indian tribes and Native Hawaiian organizations, they receive unique procurement advantages not available to individually-owned 8(a) firms. You have touched on several of these advantages already.

You asked me to address the adequacy of the Department of Defense's management and oversight of contracts with ANCs. Consistent with my recently expanded responsibilities following my appointment as the Acting Deputy Under Secretary and as part of a general review of contract oversight across the Department, I am currently attempting to determine the management and adequacy of our contracting oversight. I have asked my staff to work with the Defense Contract Audit Agency as well as the Defense Contract Management Agency to ascertain the extent to which ANCs receive the same audit and oversight as other DOD contracts.

Further, I have directed my Deputy Director for Strategic Sourcing to initiate a detailed review of all of the Department's awards to 8(a) ANC firms for Fiscal Years 2008 and 2009. Through this review, we will gain a detailed understanding of what we are buying and procuring from these firms, and in those instances where we are not competitively procuring, the rationale for that sole source approach. It will also give us an opportunity to further expand opportunities for ANC firms as we gain a better understanding of exactly what the capabilities and skills of those companies are collectively.

My purpose here today is not to challenge the assistance provided to 8(a) participants or specifically to ANC businesses. Again, I reiterate my support for the 8(a) program. My concern is with competition in this particular context and the benefits of that to the American taxpayer.

While we have authority to use sole source procedures with ANC contractors, we do, in fact, compete sometime. In 2008, it is approximately 35 to 40 percent of the time. That is well below our average for competition. We need to significantly improve that. On many occasions, I have stressed the importance of fair competition, which I believe is the cornerstone of our procurement system. It is important to obtain the best value for our warfighters and the best use of taxpayer dollars. GAO has repeatedly reported that some sole source procurements to ANCs have resulted in paying significantly more for services and products than were warranted.

I respect the need to provide economic opportunities for 8(a) ANCs. However, based on the Department's experience with the 8(a) program, I think there may be ways to promote additional competition in appropriate circumstances. The Department has used competition successfully to achieve best value in the 8(a) program, and I would welcome the opportunity to work with SBA in exploring appropriate options for the application of competition for ANCs.

Taxpayers would benefit. All procurement agencies would benefit, as their prices they pay for their requirements would be competitively determined. Small business would benefit as well because of greater opportunities. In short, the appropriate use of competition could provide economic opportunities for 8(a) ANCs and further help agencies to obtain best value for the government and for the taxpayers.

Finally, I would like to emphasize the important role that small business plays in the industrial base. Fostering an environment that is conducive to small business is critical in helping us maintain our competitive procurement system. A strong and vibrant small business program which includes ANCs is one that will allow its small businesses to not only provide goods and services that are essential to our national security but will also enable them to develop over time so that they can meet the future needs of our Nation's warfighters in a competitive marketplace. Our warfighters deserve no less, and our taxpayers demand that we do so.

Senator MCCASKILL. Thank you, Mr. Assad.

Mr. Jordan, let me start the questioning. We will do 5-minute rounds, and we will go to the Subcommittee Members first and then allow our guests from Alaska to question some, also.

I will be honest with you that your responses to the audit I found troubling and dismissive. I am a former auditor, and so I always go to the responses first because that is where you are going to determine if the audit is going to make a difference. And reading your responses, I was concerned that the audit was not going to make a difference.

Let me start by stating for the record that this is confusing. The 8(a) program is confusing, and you can get into the weeds because there are so many different requirements, rules, thresholds, and determinations. But I want to make very clear for the record one thing, and that is that there is a difference between Alaska Native Corporations and the rules for them and for any other Native corporation, Hawaiian and the lower 48.

Would you explain that to the Subcommittee, Mr. Jordan, what the difference is between the rules for an Alaska Native Corporation versus a lower 48 Native corporation or a Hawaiian corporation?

Mr. JORDAN. Yes, Madam Chairman, I will.

So ANCs and Indian tribes both have statutory exception to affiliation. Native Hawaiian organizations also enjoy the exception to affiliation privilege; however, that is regulatory. Indian tribes and ANCs both have sole source authorized above the thresholds. They both have exception to the \$100 million sole source cap, and they both have statutory authorization to own more than one company, 8(a) company, at a time as long as no two companies are in the same primary NAICS code.

Native Hawaiian organizations also enjoy the authority to own more than one company, but that is regulatory. They do not have the exception to the \$100 million cap. And for the sole source above the thresholds for Native Hawaiian organizations, that only applies to the Department of Defense.

The one area in which Alaska Native Corporations are different from Indian tribes is the presumption of economic disadvantage.

ANCs are presumed economically disadvantaged whereas tribes are not. However, to the best of my knowledge, there has not been a case where a tribe was rejected from the 8(a) program based on that.

Senator MCCASKILL. But don't you lose your status as economically disadvantaged once you get to a certain threshold, Mr. Jordan?

Mr. JORDAN. You do. Senator McCaskill, as you said, there are differences between ANC's tribes and Native Hawaiian organizations and the traditional 8(a) business development program participant.

Senator MCCASKILL. Including the Indian tribes.

Mr. JORDAN. Yes, but the larger difference is between ANC's tribes, Native Hawaiian organizations and community development corporations and the individual socially and economically disadvantaged business owner. And so when you are looking at the net income, net asset threshold over which you become no longer presumed economically disadvantaged, the process by which Indian tribes are evaluated is obviously more complex than the process for evaluating one individual small business owner.

Senator MCCASKILL. Well, but it is my understanding, Mr. Jordan, that the law carves out a permanent economic disadvantage status for ANCs.

Mr. JORDAN. You are correct.

Senator MCCASKILL. And it does not do that for Indian tribes.

Mr. JORDAN. You are correct, yes.

Senator MCCASKILL. OK. And that is a huge difference because if you get a \$100 million contract for 4 years running, then you are no longer economically disadvantaged under the rules of SBA, correct?

Mr. JORDAN. Correct.

Senator MCCASKILL. Unless you are a ANC and you are permanently economically disadvantaged regardless of how big the contract is.

Mr. JORDAN. That is not necessarily correct because it is not the size of—I will get back to you with the exact definition—but it is not the size of the contract that would necessarily—

Senator MCCASKILL. It is the revenues.

Mr. JORDAN. Well, yes, it is the net income and the total assets and the revenues. But it depends what flows to the individual business owner, the socially and economically disadvantaged business owner.

Senator MCCASKILL. Well, I am not talking about the socially—I am not talking about the business owner. I am talking about Indian tribes versus ANCs.

Am I correct, Ms. Ritt, with what I am saying, that there is a special status for the ANCs that provide permanent economic disadvantage regardless of how big they get, regardless of how large the corporation is, regardless of how many subsidiaries they have, and that is simply not true for Indian tribes?

Ms. RITT. You are absolutely correct.

Senator MCCASKILL. Let me also talk about the audit in this context. There is an exception that allows the ANCs to create subsidiaries and there have been almost 250 subsidiaries created in the

last 9 years and still count as a small business along truly small businesses like a start-up disadvantaged business. And it says the SBA has the ability to count those subsidiaries if it determines it creates an unfair competitive advantage.

In your audit, Ms. Ritt, you pointed out that both you and the GAO said that SBA is not really making that determination. They are making no effort to determine whether or not there is an unfair competitive advantage.

Ms. RITT. Right. There is a statutory requirement that they make those determinations when considering size and they are not doing that.

Senator MCCASKILL. And I want to make sure I get this correct. The SBA told GAO that the statute was confusing and you were not sure how to implement.

Is that accurate, Mr. Jordan?

Mr. JORDAN. I would have to look at our response. I was not with the agency at the time of the 2006 report.

Senator MCCASKILL. Well, do you think that language, "unfair competitive advantage," is confusing?

Mr. JORDAN. I do not believe that I am in a position to declare it confusing one way or not confusing another way right now.

But I do want to get back to you later on the tribes versus the ANCs.

So under the regulations, tribes have a one-time determination of whether that tribe is economically disadvantaged. So this happens with the first 8(a) firm from that tribe. For every other 8(a) firm owned by the tribe, they do not have to establish that economic disadvantage.

Senator MCCASKILL. The point is not establishing it, Mr. Jordan. The point is that they do not get to keep it forever. That is the point. The point is that Indian tribes, after they get to a certain size, no longer can participate on a sole source basis. That is simply not true for ANCs.

Mr. JORDAN. Well, it would not be the tribe so much as the tribally-owned company that is a 8(a) participant.

Senator MCCASKILL. Maybe I am not being clear. I thought that I was being very clear. There is a difference in the law as to how an Indian tribe is treated and an Alaska Native Corporation is treated as the determination of economic disadvantage is made. And one is permanent and one is not permanent; is that correct?

Mr. JORDAN. There is a difference in the law. That is correct. In terms of how that difference plays out over time, I would have to get back to you.

Senator MCCASKILL. OK. Thank you. Senator Collins.

Senator COLLINS. Thank you. Mr. Jordan, to follow up on this line of questions, it is my understanding that other 8(a) firms have to every single year prove that they are still economically disadvantaged; is that correct?

Mr. JORDAN. Yes, that is correct.

Senator COLLINS. But with an ANC, no matter how big or how successful it becomes, it is presumed to be economically disadvantaged; is that accurate?

Mr. JORDAN. That is accurate. Just like with the individual businesses being developed, there is no presumption of them giving a

community development or shareholder benefit, per se. So, again, I view them as separate contexts operating on the——

Senator COLLINS. I am just wanting to make sure we understand how the process works.

Mr. JORDAN. Yes, ma'am.

Senator COLLINS. Ms. Ritt, current law provides a 5 percent bonus if you subcontract with an ANC or an Indian organization or an Indian-owned economic enterprise. I was surprised to learn that this bonus applies even with an ANC that contracts with its own subsidiary.

Is that your understanding?

Ms. RITT. I am sorry, Senator Collins. I cannot answer that question.

Senator COLLINS. Mr. Jordan, can you answer that question? Can an ANC get a 5 percent bonus for contracting with its own subsidiary?

Mr. JORDAN. I do not know. I will have to get back with you.

Senator COLLINS. Mr. Assad, do you know?

Mr. ASSAD. I do not believe the law distinguishes amongst that and probably allows that to happen.

Senator COLLINS. It is my understanding that the law does allow that to happen.

Ms. Ritt, can you think of any rationale for giving a bonus to an ANC that subcontracts the work to its own subsidiary?

Ms. RITT. No, I cannot. And my staff just confirmed that what you said was true, that they can get a 5 percent bonus.

Senator COLLINS. Do you believe that incentive is needed to encourage ANCs to do business with the Federal Government or to help direct more work to ANCs?

Ms. RITT. No, I do not. I think the exemption from the sole source caps is a huge incentive by itself.

Senator COLLINS. Mr. Assad, do you think there should be an incentive where an ANC gets a 5 percent bonus if it contracts with one of its own subsidiaries?

Mr. ASSAD. No, I do not.

Senator COLLINS. Mr. Assad, you said in your opening comments that you were concerned about the lack of competition in the award of ANC contracts. A subsequent witness today is going to say that there is informal competition, that a contracting officer can informally call up other ANCs and see if they are interested and do an informal price competition.

Do you view that as being equal to the requirement for full and open competition under the Competition and Contracting Act?

Mr. ASSAD. No, I do not, Senator. I actually have some personal experience along these lines.

Senator COLLINS. Could you share that with us?

Mr. ASSAD. Yes, ma'am. When I was the director of contracting for the Marine Corps, we had a procurement come to me that, in fact, was determined on the basis of one of these informal determinations that a specific company should do the work. When that was presented to me, I just would not buy it because I had actually been contacted by a couple of other Alaska Native Corporations who said they could do the work. We went back to the SBA at that time and suggested that this should not be sole sourced to a par-

particular company but, in fact, should be competed amongst the ANCs.

Well, because the determination had already been made that this particular company was going to get the work, the SBA was reluctant to do that. So in order to deal with it, we actually canceled the procurement. We then reset the procurement. It was competed amongst three Alaska Native Corporations, and the best company won. And that is how I see things ought to be.

Senator COLLINS. Thank you. Mr. Jordan, I mentioned in my opening comments that I remember when I was the regional head for New England of SBA that we would have actual graduation ceremonies when an 8(a) firm had been in the program perhaps for the limit of 9 years or because it had been successful and become prosperous, was graduating from the 8(a) program.

Is 9 years the maximum limit for participation in the 8(a) program except for Native-owned corporations in Alaska, Native corporations?

Mr. JORDAN. Yes, 9 years is the limit, but I believe tribal entities and Alaska Native Corporations, these 8(a) certified subsidiaries that are in the 8(a) program, are also held to that 9-year limit. It is the parent company itself that is not.

Senator COLLINS. Correct.

But, Ms. Ritt, isn't there a provision in the law that allows the ANCs to keep adding subsidiaries so that the effect is that they can remain in the 8(a) program virtually forever rather than being subjected to the 9-year limit?

Ms. RITT. Yes, Senator Collins, that is correct. They are not restricted in the number of subsidiaries that they can enter into the 8(a) program. And as we have seen, as firms graduate, new ones get created. So it happens quite frequently.

Senator COLLINS. Thank you.

Senator McCASKILL. Thank you, Senator Collins.

We do not have any Subcommittee Members here. So, Mr. Begich, would you like to ask a few questions?

Senator BEGICH. Absolutely. Thank you very much.

Let me, Ms. Ritt, follow up on that. Do you, I am assuming you do, understand the difference between an 8(a) that is an individually-owned and an 8(a), an American Indian, Alaska Native and Hawaiian, which represents thousands of owners?

Ms. RITT. Yes, I do.

Senator BEGICH. Do you see any difference in the sense of what they should be able to do or not do?

Ms. RITT. I do understand that the Alaska Native companies have multiple shareholders—

Senator BEGICH. And American Indian.

Ms. RITT. And American Indians that benefit—

Senator BEGICH. And Hawaiian-owned.

Ms. RITT. Multiple individuals benefit from their participation whereas other 8(a) companies just have a few owners.

Senator BEGICH. Right. Do you see a difference there in the sense of how they generate contracts and value in the sense that an 8(a), that 9,000 or so that are individually-owned or a couple owners, are much different in that their profit motivation is obviously for their own personal wellbeing in the sense as individuals but the

Alaska Native Corporations, the Indian-owned, the American Indian-owned and the Hawaiian-owned, are for the betterment of their culture, their communities as well as profit to their shareholders?

Ms. RITT. Certainly, I do. But I also understand that the small businesses are the backbone of this economy and part of the recovery plan.

Senator BEGICH. I do not disagree. I have been in small business for 25 years. My wife owns four small businesses, so we have been in it; we understand it. But I thank you for that comment of your knowledge of it.

Let me ask you, in your report, did you compare the growth of the women-owned businesses, the HUBZone firms, the veteran-owned firms and their percentage of growth over time compared to?

Ms. RITT. The scope of this audit was limited to ANCs based on concerns raised by GAO in its report.

Senator BEGICH. But you used the phrase “explosive growth.” Let me give you one data point from testimony that was given on the House side in 2006.

When I look at the women-owned business in 1 year alone, they grew almost double. HUBZones grew over 200 and some percent. If you did it over the same period, which you did it over 9 years, in some cases, it would be as much as 1,600 percent. So I guess when you say explosive, you are——

Ms. RITT. What I meant was——

Senator BEGICH. How are we comparing it?

Ms. RITT [continuing]. The percentage of participation. When you have one group that is 2 percent of the participants getting contracts, getting 26 percent share of the 8(a) pie, to me, that is explosive. That is disproportionate.

Senator BEGICH. But if I compared the ownership of, in the sense of Alaska Native Corporations, that are owned by thousands—thousands—there are more owners for those for sure than even the 9,000 single owned or double owned, correct?

Ms. RITT. There are more owners. I would agree.

Senator BEGICH. So there is a different responsibility.

Let me ask you another question. In your report, you talked about a lot of gross revenues, and you talked about the value of the dividends, and yet you kind of had some question in that arena. I forgot the exact number, but I want to say it was \$1-point some billion dividend return for the \$11 billion or so that you reviewed. And their contract total was \$29 billion, if I remember this right, over the period of time that you did the analysis.

So the question is, why didn't you focus on the net revenues? Because that is what matters, is what flows to the owners. Because if you use the calculation that I am familiar with, they almost gave away 70 percent of their dividends to their shareholders. Why didn't you use that number instead?

Ms. RITT. Use their net revenues?

Senator BEGICH. Yes.

Ms. RITT. Because a lot of them do not make very large profits.

Senator BEGICH. Right.

Ms. RITT. They have very huge cost structures, as I am sure you know. Some of them have restructured after Chapter 11.

Senator BEGICH. Yes. And 8(a)s helped them move forward?

Ms. RITT. But there they are getting billions of dollars in contracts with hundreds of millions of dollars in profits, I guess, from various sources.

Senator BEGICH. Yes, but your analysis here kind of makes it sound like they have these huge contracts and they are making this huge amount of money. But really, it is about the net revenue just like the standard 8(a) is measured by.

So let me ask you an additional question in regards to that, and that is you had a lot of commentary in here on SBA reforms necessary. Actually, I think your last report highlighted that a lot, which I agree with, and I think every SBA member agrees with that. Besides staffing and overview and monitoring, what else does SBA need in order to do the job? Because it sounds like, for example, the example that I just heard from Mr. Assad, the process he used stopped a contract they did not feel was adequate. So what more?

Ms. RITT. Well, I do think that they need to collect data on ANC activity, and they need to be more engaged in overseeing joint ventures, mentor protege relationships, where there are opportunities for abuses.

Senator BEGICH. OK. My time is pretty much up here. But in your report, you talked about the GAO in regards to sole source and the potential of costs to the taxpayers.

How come you did not specify any specific issues where an ANC 8(a) corporation has cost the taxpayers more than it should?

Ms. RITT. Well, I think that there has been a lot of cases documented with other IG reports—

Senator BEGICH. Of ANC 8(a)s?

Ms. RITT. Yes, of ANC 8(a)s.

Senator BEGICH. But why didn't you restate that, then, if that was such, as I saw, an important piece of the equation? Because that is part of the debate of sole source, of what is the value. Because, like today, for example, I receive a nice newsletter from the Air Force talking about \$25 million they saved working with an ANC 8(a).

Ms. RITT. Right.

Senator BEGICH. So why didn't you use those examples?

Ms. RITT. Well, we felt that there was a sufficient body of work that other IGs had done that clearly demonstrated that sole source awards to ANCs had been abused.

Senator BEGICH. More recently?

Ms. RITT. Yes. There was a DOD IG report in 2007 regarding a contract for leased space, a \$100 million, 10-year contract, sole sourced to an ANC who was not small, did not qualify under the size standards, they did not go through GSA, and GSA appraisers determined that it cost \$2.7 million more a year for the life of that contract.

Senator BEGICH. Well, I will stop because I want to ask you about the process of that.

Senator MCCASKILL. Senator Murkowski.

Senator MURKOWSKI. Ms. Ritt, let's continue with you, if we may. Both in your oral statement and in your written testimony, you have suggested that the audit has confirmed—so this is not a sug-

gestion. The audit has confirmed the differences in the rules governing ANC participation has allowed ANCs who have access to the capital and credit of its parent to compete against truly small disadvantaged companies. So your suggestion in this language is very clear to me that somehow or other, the ANCs have broad access to credit and certainly to the capital markets. And I am just not clear how you support your conclusion.

You realize, of course, that ANC stock is not traded. It is not on the stock exchange. Its subsidiaries are not public companies. So I guess I am not sure what capital markets you are suggesting. And in terms of the capital markets that might be available to the ANCs themselves, the suggestion that they might have to pledge their land is wholly inappropriate.

Where do you believe that this comes from?

Ms. RITT. It is a very good question. We met with the parent companies of the 11 ANC 8(a) participants that were getting most of the money under the program who confirmed to us that they are heavily involved in managing those companies, that they have extended capital and credit to them and other services, management expertise, legal advice. They have a central treasury, many of them, where they sweep in all of the 8(a) contract revenue on a daily basis. They make the decisions on how that money is going to be spent. And that is where they are getting their access to capital and credit of the parent corporation and the bonding capability of the parent corporation.

Senator MURKOWSKI. Well, your suggestion, though, is somehow or other that they could go out to the capital markets and again—

Ms. RITT. No, that was not our suggestion at all. It was that they are truly large companies through affiliation with their parent corporations who have access to capital and credit.

Senator MURKOWSKI. You have looked at just 11 of the ANCs in this request in response to the Chairman of the Subcommittee here. Some of these that you have reviewed were early entrants into the 8(a) program. Others are relatively recent participants into the program, very different status, most clearly, very different status.

Is it reasonable to suggest that we would basically pull up the ladder at this point and either deny entry to futures or to cut off those that are relatively new entrants into the programs and exclude them from future opportunity?

Ms. RITT. No, our office is not advocating in any way that ANCs should not be allowed to participate in the 8(a) program. We are concerned as an IG with the unlimited sole source awards that do not provide the government the best value. There is opportunity in the 8(a) program to get large competed contracts, and ANCs can compete for those.

Senator MURKOWSKI. Mr. Jordan, because it has been suggested here, through the report and Ms. Ritt has stated again, that somehow or other we are not getting good value out of the 8(a) ANCs. Can you speak to that?

Mr. JORDAN. I can. First of all, it is also a bit of a misnomer to say there is no competition when it comes to 8(a) ANCs. In 2008, of the figures stated in terms of 8(a) contracts, over \$650 million

was through 8(a) competition. In terms of sole source authority not providing the best value, I do somewhat reject that on its premise. I believe that competition is good. I believe that promoting competition is good. I believe that general principle. The President has talked about competition, transparency, accountability.

However, in every contract, and this also applies to all sole source contracts, the contracting officer must certify that the government got fair and reasonable value and it must monitor performance of that contract and can terminate it if the contracting officer sees fit. So to say that the government did not get the best value because it was sole sourced is, or should be, inaccurate.

Senator MURKOWSKI. Well, I appreciate the clarification on that.

My time has expired, but I do have another series of questions if we are going to do a second round.

Senator MCCASKILL. I do not think that we are. I do not think that the Ranking Member and I have additional questions for this panel, so we are going to move on to the second panel.

Thank you all very much.

Mr. JORDAN. Thank you.

[Pause.]

Senator MCCASKILL. We will move on to our second panel, and our first witness on our second panel is Sarah Lukin. She is the Executive Director of the Native—oh, excuse me. I forgot to swear you in. I need you to stand, please.

Do you state that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. LUKIN. I do.

Ms. PATA. I do.

Ms. KITKA. I do.

Mr. LUMER. I do.

Ms. SCHNEIDER. I do.

Senator MCCASKILL. Thank you very much.

Ms. Lukin is the Executive Director of the Native American Contractors Association. Prior to joining the Native American Contractors Association, Ms. Lukin served as Vice President of External Relations for Afognak and their wholly-owned government contracting subsidiary, Alutiiq.

Thank you, Ms. Lukin, and we welcome your testimony.

**TESTIMONY OF SARAH L. LUKIN,¹ EXECUTIVE DIRECTOR,
NATIVE AMERICAN CONTRACTORS ASSOCIATION**

Ms. LUKIN. Quyanaa. Thank you. I am Alutiiq from the Native Village of Port Lions on Kodiak Island, a remote community of 250 people in the Gulf of Alaska. I just started as the Executive Director for the Native American Contractors Association (NACA).

I firmly believe the 8(a) program is critical to the future of our disadvantaged Native communities. It has made a dramatic difference in my quality of life, my family's, and my community. And I am here today to ensure other disadvantaged Native Americans and Alaska Natives have the same opportunities to improve their lives.

¹The prepared statement of Ms. Lukin appears in the Appendix on page 69.

So when I see, as I did recently, an official press release describing Tribal, Alaska Native, and Native Hawaiian participation in the 8(a) program as a “loophole,” it disturbs and disheartens me. That term ignores the reality of our severe socio-economic disadvantages. The fact that Native enterprises are owned by Native communities that are destitute and geographically isolated, decimated by centuries of failed Federal policies, yet are still responsible for the health and welfare of thousands of their people, their descendants and dependents, that is real.

When poverty in our Native communities exceeds all other race categories, and is twice the national average, that is real. The fact that Members of Congress have tried to keep the promises made by their predecessors in the Constitution, countless treaties, and land settlements when taking hundreds of millions of acres of Native lands, that is real. And it is real, too, that Native women have earned an education because of Native 8(a) benefits, and that our Native children can now speak their traditional language that was lost for generations, and that Native elders now receive benefits to offset their very limited income.

Here is a Federal program that the government actually got right for Native people. The program is making a difference and we can tell you that—one Alaska Native story by one Alaska Native story.

Like so many of our Native children, I was a statistic. I come from a broken family that faced substance abuse and poverty. I remember how ashamed I would feel when I had to buy groceries with food stamps and wear secondhand clothes. No one in my family had ever earned a college degree, but scholarships from my Native corporations enabled me to earn a bachelors and a masters degree, empowering me to overcome enormous odds and experience my own American dream. And I am one of many Alaska Natives that 8(a) has helped.

The Native 8(a) benefits protect our land, our language, our culture, our elders, our children, and our future. They help America keep its word. They build business capacity and work ethic, educating teachers, accountants, and IT specialists, hope and opportunity. The hand up is replacing the handout. We need more benefits for our people. And more Native employment, more work in our Native communities, and more Native executives. To cut the program that got us this far is absolutely wrong.

Native American peoples represent 4 percent of America, but Native enterprises still represent less than 1.3 percent of the Federal contracting pie. Native 8(a)s strive to increase business opportunities for all other small businesses and 8(a)s, and we offer real competition to the large contractors and real value to the taxpayer.

There have been difficulties. The SBA is under-staffed and underfunded. Its enforcement, assistance, guidance, and training have suffered. There are some very real problems. We strongly believe everyone must play by the rules, and those who do not should be held accountable. Fortunately, those rules and enforcement mechanisms already exist. Unfortunately, the SBA lacks the resources it needs for these important oversight tasks.

The problems with government contracting are universal. The search for solutions should be comprehensive, and not disproportional.

tionately focused on Native American 8(a)s. America needs the Federal procurement system to work, so do Native Americans. That is why the National Congress of American Indians, the National Center for American Indian Enterprise Development, and NACA have been very active for over 3 years in pushing, pulling, and prodding for the GAO recommendations, regulatory reforms, and more resources for the SBA.

We have worked so hard on these issues because Native 8(a) represents success, hope and self-determination for our Native communities. Now is not the time for Congress to go back on its commitment to Native people.

Quaynaasinaq. Thank you very much for allowing me to discuss a very important program in my life, my children's lives, and the lives of my people.

Senator MCCASKILL. Thank you, Ms. Lukin. Our next witness is Jacqueline Johnson-Pata. She is the Executive Director of the National Congress of American Indians. Mrs. Pata is also a Member of the Board of Directors of Sealaska Corporation, one of the ANCs. Welcome.

TESTIMONY OF JACQUELINE JOHNSON-PATA,¹ EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. PATA. Thank you. Gunalcheesh. Good afternoon. My name is Jacqueline Johnson-Pata, and I am the Executive Director of the National Congress of American Indians, the largest and oldest Native organization representing American Indians and Alaska Native tribal governments.

The U.S. Constitution and many statutes establish the unique American Indian and Alaska Native trust relationship with the Federal Government. Native peoples ceded over 500 million acres of land, and the United States entered into a trust relationship with the American Indians and the Alaska Natives. Congress was very specific when articulating the Federal Government's relationship with the Alaska Natives in the Alaska Natives Claims Settlement Act, and this law required Federal compensation to settle Native land claims. And Congress mandated that Native-controlled corporations be created. Furthermore, in the Settlement Act, Congress confirmed that Alaska Native Corporations are eligible for Federal procurement programs.

The Federal Government has enacted numerous policies aimed at reducing poverty and creating economic opportunity for tribes. Specifically, the 8(a) help tribal communities to overcome economic and social barriers and create new business opportunities for Native and surrounding rural communities that are far removed from major markets.

Intergenerational poverty remains a serious challenge. American Indians and Alaska Natives are amongst the most economically distressed populations in the United States with a poverty rate of 25.7 percent. This far exceeds the poverty rate for any other group as more than double the national average. Per capita income of In-

¹The prepared statement of Ms. Johnson-Pata with an attachment appears in the Appendix on page 93.

dians living on reservations is still less than half the national average, and unemployment is twice that of the national average.

Many tribal governments lack the ability to provide the basic infrastructure that most U.S. citizens take for granted such as water, sewage, roads, affordable housing, plumbing, electricity, and telephone service. These substandard economic and quality of life indicators have a social toll. Health disparities are prevalent and suicide rates, a symptom of lack of opportunity, are high. Over 60 percent more American Indians and Alaska Natives experience suicide than the national average. Alcoholism and diseases like tuberculosis are over 500 percent higher in American Indians and Alaska Natives.

Despite these great needs, tribal governments have fewer resources than State and local governments to fulfill their governmental responsibilities to their citizens, making economic development even more important. The longstanding Federal policy of self determination is hollow with adequate resources or economic development to carry it out.

The 8(a) program is an effective vehicle to realize Native self determination. Business, educational and leadership skills are being developed, and the results are impacting the economic and social conditions in Native and rural communities. For example, thousands of scholarships have been awarded to Native people. Hundreds of internships have given valuable work experience to our future workforce. Employment and, more importantly, career opportunities are available where none existed earlier.

Business skills learned through government contracting, like strategic planning and management, are taking root in our communities, and leaderships skills are being developed in councils and on boards. Leaders are now being empowered to make choices about how best to sustain their economic enterprise, their culture, and their future generations.

NCAI has taken seriously the recommendations from the GAO report and the prior SBA Inspector General reports. Since these reports were issued, we formed a joint working group with NACA, and with the National Center for American Indian Enterprise Development. And in 2007, we hosted a series of government-to-government consultations with the SBA administrator to discuss the GAO and the SBA IG report recommendations and to identify solutions to address these concerns.

Through this process, we developed comprehensive recommendations to improve the program oversight. Consistent with the 2006 GAO report, these recommendations we proposed were administrative rather than legislative. Our recommendations included developing effective data collection mechanisms, enhancing oversight through Web-based reporting, setting milestones for mentor protege and joint ventures, and increased transparency of ownership agreements. Additionally, we have urged that Congress increase funding to the SBA and charge the agency with reengineering the Native 8(a) program.

We feel it is important for this Subcommittee and for Congress to know that tools, such as 8(a) business development created to promote economic self sufficiency, are working in our Native communities. The criticism about the success of tribal and ANCs' con-

tracting is misplaced. More importantly, pitting a disadvantaged group against another only distracts from the many issues all small and disadvantaged contractors have in common.

The Federal procurement market is enormous and growing. There is plenty of room for tribal, ANC and other minority businesses to participate. We have proposed increasing SBA contracting goals and size standards, as well as increasing the thresholds for individually-owned 8(a) companies.

Limiting access to the Federal marketplace will have devastating effects on our Native and rural communities. With conditions in Native communities comparable to those of developing nations, we should all be working together to improve programs like 8(a) business development programs and create the opportunity that is needed in Indian country. Thank you.

Senator McCASKILL. Thank you, Ms. Pata.

Julie Kitka is here. She is the President of the Alaska Federation of Natives. She is also a Member of the Board of Directors of Chugach Alaska Native Corporation.

And I do want to say for the record that you owe thanks to your Senators for your testimony here today. Your request to testify came in after we finished the witness list, but because Senator Begich and Senator Murkowski came to the Subcommittee and made a specific request for you to testify, we made an exception to the normal rule that we do not allow more witnesses after the witness list has been finished. So I do not know if you want to say no thanks to them when this is over or thanks to them, but you are here at their behest and we welcome you and look forward to your testimony.

**TESTIMONY OF JULIE KITKA,¹ PRESIDENT, ALASKA
FEDERATION OF NATIVES**

Ms. KITKA. Well, thank you, Madam Chairman, Ranking Member, members of our delegation, and other Members of the Subcommittee and staff. I truly appreciate the opportunity to present testimony on behalf of the Alaska Federation of Natives regarding our Native corporations, their contracting opportunities, and their status under the Small Business Administration 8(a) program, and request that my written testimony be included into the record.

Before I actually get into some of the oral comments that I wanted to do, I wanted to place a couple things into the record to give you a background of when, for example, we are talking about scholarships that are going to our young people or this or that, it is not like scholarships like everybody just imagines that you just give out to kids.

I want to put one thing formally into the record and would like to provide the backup for that, is we are still not on a level playing field as far as education in Alaska. There is a class action lawsuit pending in the courts right now in Alaska asserting that there is a \$200 million a year shortfall deficit spending on the rural village schools, and this has been going on for decades. We have just had a class action lawsuit on law enforcement and the deficit spending

¹The prepared statement of Ms. Kitka appears in the Appendix on page 110.

and the lack of law enforcement opportunities to deal with alcohol and other things.

We are not yet at a level playing field. And so for example, the scholarships that come in from this 8(a) contracting to our young people are essential because we are trying to catch up generations of young people. And our corporations that are providing these scholarships, they are for all ages. It is for adults. It is for young people. It is for their descendants on that. But we are never going to catch up and get parity with everybody else in education if we lose these opportunities for these contracts.

So I just wanted to say for the record, the value of these scholarships means so much more to us because we have got these hurdles to overcome still and we are not getting the funding for our basic first grade through high school education that other people across the United States take for granted, or their State government works really closely with them and accomplishes.

We are still in the State under the Voting Rights Protection Act, the only other State along with Mississippi, that people have to look out to make sure our voting rights are protected. We were the last Americans to get the right to vote in 1924, and in 1971, the year our land claims was formed, they had to amend the State constitution to take out the requirement that you had to write and speak English in order for our elders, our Native people, could even vote in our State. We have still got a lot of catching up to do, and the circumstances we are dealing with as a people have to be understood by this Congress when you are making policies.

As I put in my written comments, we are honored to submit this testimony. I have worked with an incredible number of Native leaders in public policy, public officials for many years, trying to create these opportunities. And we have had great success. We have had many accomplishments.

I cite in my testimony a 30-year trend analysis that we commissioned from the University of Alaska in 2004 in which we looked at all the social, health and economic indicators of our whole populations over three decades. And the thumbnail sketch of that analysis is tremendous difference that this Congress, the State of Alaska, and the Native people have made in people's lives. People are living longer. Infant mortality is being decreased, health indicators.

Lots of progress is being made. So we do not have a hopeless situation, but we still have a thread of disparity in every single indicator, including poverty, including infant mortality, that needs targeted attention on that. And we still are not at a parity with other Alaskans, let alone with other Americans. And I really commend that report to you as you are taking a look at when we are talking about socially disadvantaged people on that, that report over 30 years will see the progress of work has been done, but it will point to you every single indicator where the disparity continues.

That is real. That is documented. It was not done for the purposes of justifying contracting but was done because our own leadership wants to pay attention to these indicators. And we also were aware that we are in the midst of a baby boom with a lot of growth in our population, and we knew that there would be tremendous needs in health and education to grow up this next generation of

young people. And I commend that report and would like to submit that for the record.¹

I want to go on record on behalf of AFN fully supporting the 8(a) program and assuring this Subcommittee that our people are getting solid benefits from that program. As I mentioned, the scholarships, the internship opportunities, AND the work opportunities are real.

Are there improvements that can be done? Of course there are improvements that can be done. But there are many other factors that need to be in place to help our Native population to grow our workforce in these contracting opportunities and in other sectors.

I also want to extend on behalf of our board of directors and our people up there an invitation to this Subcommittee, the Chairman, and your staff to come up to Alaska and meet our people and see firsthand some of the contracting that is going on, some of our corporations, our people, and our aspirations. And I might suggest a time frame in which you might do that.

On August 12, we have a very historic visit in our State by five members of the cabinet of President Obama—five cabinet secretaries are all going to be in Bethel, Alaska on August 12. Unprecedented in our history to have five cabinet officials, and they are also planning visits and sending staff out to the Wade Hampton district, which is among the top 10 poorest counties in the whole United States.

And we welcome the attention and the effort and the partnership that is being offered to address and raise up the living conditions for our people. And if there is an opportunity for this Subcommittee—if, Madam Chairman, you cannot make it, please send your staff up. I mean join us in this because we are going to have quite a bit of open discussion and dialogue. And we are going to be looking at solutions and things that can go forward. But it is very historic. We have never seen that before.

I know I am using quite a bit of time on that, but I want to try to get as much into the record. As I said, the basis for our Native corporations is our land claims settlement, and it is vitally important to the Native people of Alaska that our corporations are strong and healthy. They hold our settlement lands in them, our cultural lands, our historic and sacred lands. If they go down, the danger of losing our land and our future is very real.

So we are committed to do everything that we can to help our leadership that is trying to make these corporations work and are being very diligent and successful to create as many opportunities as possible.

I might want to cite one item. When I think about the IG report and the data and the period of time in which they collected data, I think that is kind of an incomplete time frame and it is probably nobody's fault. But after the time frame on that, I mean we have had the worst economic crisis in my lifetime in this country, and how people are faring and how government contracting is doing. I mean we have to take into account we are still in this crisis and it has not bottomed out.

¹The report titled "Status of Alaska Natives 2004," submitted by Ms. Kitka appears in the Appendix on page 161.

So I would just like to suggest that the collecting of information and the monitoring and the status needs to continue on. And we need to pay attention to how everybody is faring in this economic crisis and how people are positioning their companies to be able to contribute to this country. We are very much committed to do everything in our power for the economic recovery of this country because we are affected by that in Alaska as well as we know every American is, and we want to be partners in trying to contribute to that as well.

Senator MCCASKILL. Ms. Kitka, you are several minutes over your testimony. And I know you have come a long way. I do want to assure you that every word you want to go into the record will go into the record. But we want to make sure since we have five members of the panel that we have enough time for questions.

If there is anything else you want to close with in just a few seconds, you are welcome to do so.

Ms. KITKA. Well, in closing, I just want to reiterate our strong support of the 8(a) program and that it makes a difference, and we are pleased to provide additional information if the Subcommittee has questions for us or wants additional reports or information.

We are honored to be allowed to testify, and we are just very proud to be contributing to building the country. I have stated in the testimony that we feel the No. 1 benefit to the Native people from these contractings is the capacity building and the whole Nation building experience. And we think as we get past this economic crisis, that whole capacity that we have built in our corporations and that Nation building experiences can be put to use not only throughout the rest of the United States but in other parts of the world.

Senator MCCASKILL. Thank you so much. Thank you.

Our next witness is Mark Lumer. He is the Senior Vice President for Federal Programs at Cirrus Technology, a service disabled veteran-owned small business based in Alabama. Before joining Cirrus, Mr. Lumer was the principal assistant responsible for contracting for the U.S. Army Space and Missile Defense Command, a member of the Senior Executive Service in Army Acquisition Corps with Level 3 certifications in both contracting and program management. He is an expert and author in the field of government contracting and has received many awards. Between November 2003 and July 2004, Mr. Lumer served as the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement in Iraq.

Welcome, Mr. Lumer.

**TESTIMONY OF MARK LUMER,¹ SENIOR VICE PRESIDENT,
FEDERAL PROGRAMS, CIRRUS TECHNOLOGY, INC**

Mr. LUMER. Madam Chairman McCaskill, Ranking Member Collins, Members of the Subcommittee, and the Alaska delegation, I am Mark Lumer. I am here representing Cirrus Technology, a small business located in Huntsville, Alabama. Cirrus Technology is a HUBZone and service disabled veteran-owned small business and a recent graduate of the 8(a) program.

¹The prepared statement of Mr. Lumer appears in the Appendix on page 122.

Before I went into private industry, I did serve as a contracting official with the Department of the Army for almost 33 years. My last assignment was as the contracting executive for the Army Space and Missile Defense Command, a SES position and a post I was in for almost 13 years. Prior to that, I was on the Army staff at the Pentagon where I helped write the FAR and DFARS for 4 years. So in a sense, this is all my fault. Part 19 of the FAR, in fact, and part 219 of the DFARS were two areas of my personal responsibility.

I have been told I am the most decorated civilian contracting official in the history of the U.S. Army. However, there was a fire in St. Louis about 35 years ago and destroyed thousands of records, so that statement cannot be accurately verified. [Laughter.]

The first observation I do want to make is that as a contracting officer for 25 years, the unlimited sole source authority that ANCs have was a very useful tool to me in issuing contracts pursuant to the Competition and Contracting Act quickly. I authorized the use myself about six times in those 13 years at SMDC for hundreds of millions of dollars. I received exceptional performance from the ANCs. The prices proposed were audited, they were negotiated and ultimately determined to be fair and reasonable by the contracting officers. I am really not in favor of having that tool completely eliminated.

Serving now as a small business employee, which was an 8(a) and is currently a HUBZone and service disabled veteran-owned small business, I have to state it is incredibly difficult to compete with ANCs under the current rules. Cirrus has lost contracts that were bundled and awarded to ANCs. Cirrus has lost opportunities to compete where contracts were assigned to ANCs noncompetitively.

As a general rule, Cirrus Technology will not compete for any procurements if there is a history of ANC involvement or where there is a likelihood that an ANC will go after the opportunity directly. I cannot provide you with any concrete evidence, but anecdotally, I firmly believe that many small businesses will routinely bypass procurements where ANCs are involved because the chances of winning are so small even if they are allowed to compete in the first place.

It is my firm belief that the extraordinary growth in sole source awards to ANCs is a direct byproduct of the extreme shortage of government contracting officers and procurement contract specialists, a situation that, frankly, will only get worse with the addition of billions of dollars in stimulus money. I have seen and heard estimates that most government contracting offices are short-staffed by an average of 35 percent. I believe that figure to be low, personally.

Procurement officials are in the constant process of performing what I call contracting triage. They are looking to see what requirements can be legally awarded in the shortest amount of time using the least amount of resources. And that inevitably leads them to using ANCs because of the unique unlimited sole source authority that exists, the fact that they get small business credit for those awards, and the guarantee that there will be no protests sustained by the GAO. There are several areas where the playing field is currently uneven. We have talked about the sole source

thresholds for HUBZones, non-ANC 8(a)s; service disabled is three and a half and five and a half versus unlimited. The size standards for most small businesses are determined by employees, typically 500, 1,000, or 1,500 depending upon the NAICS code or sometimes by income as opposed to no employee limits for the ANCs. That can create an extreme disparity in the ability to compete.

ANCs may have multiple 8(a)s, as has been identified previously, while other firms are typically limited to one each. That ANC's unique authority gives them an extraordinary advantage to adjust overhead rates and general administrative costs, thereby giving them a cost advantage that other firms do not have. The inability of companies to protest a contracting officer's decision to award a procurement to an ANC, especially when there are bundling issues, that is a problem.

To obtain a HUBZone designation from the SBA, one requirement is that 35 percent of the employees in the company live in any designated HUBZone track, yet there are no minimum requirements for ANCs to employ tribal members or Alaskans. In fact, there is no requirement that they even have offices, in Alaska, though almost all of them do. Even the subcontracting arena, there is special incentives, the 5 percent bonus that was talked about. There are no incentives for subcontracts to HUBZones, women-owned, or service disabled veteran-owned small businesses.

Having said all that, I truly believe there are many legitimate reasons to provide procurement assistance to ANCs. I do not believe many companies would even object to allowing ANCs to have some type of procurement preference in competing for government contracts. However, the current situation is out of balance and it may be time to start to swing the pendulum back the other way.

I look forward to answering any questions the Subcommittee may have.

Senator McCASKILL. Thank you, Mr. Lumer.

Our next witness is Christina Schneider. She is the Chief Financial Officer for the Purcell Construction Corporation, a HUBZone contractor based in the State of New York. Welcome, and we look forward to your testimony.

TESTIMONY OF CHRISTINA SCHNEIDER,¹ CHIEF FINANCIAL OFFICER, PURCELL CONSTRUCTION CORPORATION

Ms. SCHNEIDER. Thank you. Good afternoon. My name is Christina Schneider, and I am the Chief Financial Officer of Purcell Construction Corp. I also serve as the Director on the New York State Associated General Contractors (AGC), a statewide trade organization of over 600 construction contractors. We are also a member of AGC of America with over 33,000 members nationwide. One of the founding principles of AGC is to promote fair and open competition within the marketplace.

I commend the Senators today for calling today's hearing and am honored to present testimony on this subject. Specifically, my remarks will focus on the effect that sole source awards to Alaska Native Corporations has had on Purcell Construction and other local general contractors.

¹The prepared statement of Ms. Schneider appears in the Appendix on page 124.

We are a second generation mid-size general contractor based in Watertown, New York. Watertown is a small community in rural, economically depressed northern New York where much of the economy is dependent upon Fort Drum, home of the Army's 10th Mountain Division. From 2002 to 2007, our company was one of two local contractors who held a term contract at Fort Drum. We completed over 96 different task orders under a contract valued at \$57.5 million. Both firms involved in this contract received multiple commendations for the work that we did, and by all accounts performance exceeded contract expectations.

In 2004, the government anticipated exceeding our contract value limits, so they began preparing for the solicitation of a follow-on contract, which we assumed would be through competitive bidding. We were shocked to learn that the government decided to award the contracts to two Alaska Native Corporations, Chugach and Alutiiq, on a sole source no-bid basis. Our firm and several other general contractors in northern New York were totally shut out from competing for this contract.

We were given various reasons for this decision, ranging from there not being enough time to procure this contract using traditional methods to the unbelievable argument that this sole source contract would lead to the most potential for involvement by local companies.

In addition to being excluded from bidding, we had no opportunity to protest the decision. Federal regulations dictate that only a competing bidder has legal standing to protest. With no competitors, there is no mechanism for us to protest. This was particularly frustrating because we believe Chugach was ineligible to receive sole source awards because of their multiple large affiliates operating in the same industry classification. We provided the SBA in Washington with documentation to support our claim but have no evidence that this information was ever considered.

Even though this particular sole source contract was awarded in 2004, local contractors are still suffering from the impact of its 10-year, \$400-million obligation. We have learned over the past month that most of the current construction projects being procured by the Fort Drum directorate of contracting, including the bulk of the stimulus funds allocated to Fort Drum, are going through these two ANC contracts. Local contractors are not competing for the stimulus funds.

While it is true that ANCs employ local labor and subcontractors, this contracting preference has eliminated opportunities for general contractors like us. Our firm is a prime contractor, and ANCs have replaced us in performing that function. It has negatively impacted our firm and others like us who no longer compete for this work.

As you know, the foundation of the small business legislation is to temporarily provide assistance to fledgling firms. There are also dollar volume thresholds that apply to the 8(a) program. And as we have heard today, ANCs are exempt from all of that.

If you refer to a website called Government Contracts Won, the two companies that were awarded the Fort Drum contracts, Alutiiq and Chugach, have amassed in excess of \$2.6 billion and \$3.8 billion in government contracts respectively over the past 9 years. According to the Inspector General's report issued last week, these

two ANCs represent a total of approximately 2,300 individuals. This equates to \$2.7 million in contract dollars per person. To us, these figures alone are staggering. But we also know that Alutiiq and Chugach are only two out of scores of ANCs being awarded Federal contracts.

In the construction industry, as with most businesses, when competition is removed, prices soar. The costs of this arrangement to the Federal Government is astronomical. Another side effect of these preferences is the impact on truly small businesses. We suspect many contracting officials use this as a way to meet their small business contracting goals. The award of a large contract to an ANC surely comes at an expense of legitimate small businesses.

We think the solution to this is straightforward. The unfair advantages enjoyed by the large Alaska Native Corporations must be closely examined. Their immunity to affiliation rules and size standards and the lack of dollar limits on sole source contracts should be eliminated. Tribal firms that legitimately meet the small business standards would still be entitled to all of the benefits offered by the 8(a) legislation.

Thank you for this opportunity to present our concerns.

Senator McCASKILL. Thank you, Ms. Schneider.

Let me start with going through some of the numbers with the representatives here from some of the ANCs. Let me go through the three corporations that you represent.

In 2008, Afognak had 728 shareholders, and you had \$763 million in contract revenue and you employed 6,400 people. Less than 1 percent of your employees were shareholders of your Alaska Native Corporation.

Ms. Kitka, your corporation, Chugach, your total revenue for 2008 was \$952 million; 62 percent of that revenue was from Federal contracting. The revenue from the contracts represented \$595 million. You had 6,587 employees; 2.2 percent of your employees were shareholders, 147 people.

Ms. Pata, the Sealaska Corporation, your total revenues for 2008 were \$126 million. Your revenue from contracts was only \$8.4 million. In fact, only 6 percent of the revenue of your corporation came from contracting. You had 1,069 employees, and the largest percentage of shareholders employed, you had a 136 shareholders employed or 12.7 percent.

If I add those together, we have less than—in revenues of hundreds and hundreds and hundreds of millions of dollars, in fact, well over billions of dollars. We have literally less than 300 people that live in Alaska that are employed or that are members of your corporations.

Ms. Kita, as you talk about capacity building, how is it capacity building if less than 1 percent of the employees of the company are members of the corporation?

Ms. KITKA. Well, first off, Madam Chairman and Members of the Subcommittee, I came here to testify in my role as President of the Alaska Federation of Natives, not in my role or spokesman for Chugach Alaska Corporation. I would be happy to convey any questions back to that corporation.

The Alaska Federation of Natives is a completely different entity than Chugach. It is an umbrella organization, and that is the role that I came here prepared to testify to try to give you—

Senator McCASKILL. OK. That is fair enough. Let me ask the other two—

Ms. KITKA. But I would be glad to get questions or information back.

Senator McCASKILL. That would be terrific.

I am trying to get at whether or not this is a capacity building, which traditionally is what the 8(a) program was designed to be. It was designed to allow small businesses to grow and get their foot in the door for Federal contracting, to build capacity. And then once the capacity is built, to graduate from the program and go into the world of competing. And, in fact, there are some Alaska Native Corporations that are, in fact, not really participating in the sole source. They are out there competing.

With such a low number of Alaskans—45,000 people are employed by ANCs and only 5 percent of them are members of the corporations; 95 percent of the employees have nothing to do with the corporations.

Ms. KITKA. Madam Chairman, on the capacity, since I put quite a bit in my written testimony about capacity and Nation building, I would be pleased to spend more time and focus a little bit more on the capacity building in a written response back to you.

Senator McCASKILL. That would be terrific.

Ms. KITKA. Because I absolutely know that the capacity building, in my judgment, based on my years of experience, that is one of the strongest benefits of this program statewide and—

Senator McCASKILL. OK. We would welcome that testimony.

Ms. PATA. Madam Chairman, I would actually like to answer this question. I am very proud of Sealaska Corporation and the work that we have done, particularly around shareholder hire. If you look at the numbers that you talked about, 12.7 is the shareholder hire rate, if you take out the U.S. employees versus our offshores out of the U.S. jurisdiction employees, which is about 455 of them are Mexican employees, we get to a 21.4 percent shareholder hire ratio.

But if you look at the way that we do our business, our business in Alaska and our corporate headquarters, we have 80 percent shareholder hire in our corporate headquarters, which I think is an outstanding ratio considering that in the 40 years that we have been in business, the first 20 years of business development for all the Alaska Native Corporations was very challenged with trying to develop folks—our shareholder base that had gone to school and had been able to get the education necessary and the skills in businesses outside.

One of the things that Sealaska does that I am so proud about is our scholarship program and our internship program. And you have the numbers in the materials that we submitted to you. But in our scholarship program, we do not just give our scholarship, we actually continue to track our scholarship. And so that as we are recruiting for any opportunities in the corporation, we recruit to that scholarship base. We also are very proud of our internship program. And you can also see in the materials that we submitted

to you that we give you a number of stories of how our Sealaska core management team really started from either the scholarship program or the internship program or both. The majority of our vice presidents and core management team is shareholders.

When we are looking at the capacity of the corporations—and I cannot speak for the other corporations because I only represent Sealaska Corporation as the board of directors. But I do know that we are looking for models and sharing models, not only amongst us in Alaska but in the lower 48 States, and that these models of how do we use scholarship programs, as the tribes are looking across the country to implement scholarship programs, are looking at best practices and what works.

I think some of the things Sealaska has done through experience, we have learned tracking makes a difference in being able to recruit back home to our own community that those have left our community and to get them back. And so I think one of the things about this government contracting program, 8(a) program, in this business development, and one of the recommendations that we made, is that we really look towards taking those best practices and using them to be able to implement better practices. And some of the things that Native American Contracting Association, NCAI, and NCAIED, have done in trainings with lower 48 tribes is really sharing some of those best practices.

Senator MCCASKILL. Ms. Lukin, did you want to address the less than 1 percent of your employees being shareholders?

Ms. LUKIN. Senator, I came here today to speak on behalf of the Native American Contractors Association. As such, I cannot speak to the direct operations or businesses relating to another organization. Certainly, I am sure that I can find the proper person to answer that particular question regarding Afognak Native Corporation. But I would like to speak in general terms about shareholder hire and employment of Alaska Native people.

As you know, I hope, that the goal of every Alaska Native Corporation is to hire as many qualified shareholders and their family members as possible. In fact, we have in place Public Law 93-638, which allows us to provide a preference for qualified shareholders, Alaska Natives, and American Indians.

In addition to that, we are really focused on mentoring, growing our Alaska Native students to be at a point where they can earn management level positions within our Alaska Native Corporations. Remember that we are really talking about first generation college graduates, such as myself, as a great example of somebody who came from a family that did not have a college education. So really, I am the first generation that is qualified to earn those management level positions.

I would also like to note that a lot or most of the Alaska Native Corporations have shareholder development departments focused specifically on helping to train, mentor, and grow our shareholders to earn those positions. They do everything from helping shareholders build life skills, to resume writing, and training. They help them with mock interviews and then help walk them through the hire process. So I wanted to just focus on that in general terms.

Senator MCCASKILL. Yes, and I am going to go ahead and give my colleagues from Alaska an opportunity to question now since I

am over my time. I have a number of questions that I want to ask, and so hopefully, this will not take too long.

Senator BEGICH.

Thank you very much, and this line of questioning, I am going to follow up on it, also, actually.

I think there is an ongoing misunderstanding how the corporations operate. Not only do you have the for-profit arms, you have the non-profit arms, which are a significant portion of the business that goes on, which has a huge percentage of Alaska hire, Alaska Native hire. But, also, they are providing the health care. They are providing the major part of the social network.

So tell me if this is a fair statement, that individuals that may work for a time being—or like, for example, I met four interns from NANA Corporation that were working for some of the subsidiaries here throughout the country and came by here a couple weeks ago. They may or may not stay in those corporations. They may go to one of the sister corporations, for example, the health care. They may be an administrator. They may be a practitioner.

Is that a fair statement? That if you take a very narrow look at 8(a)s by themselves, you can argue the percentage all kinds of ways because that is what numbers do. But if you look at the big picture, what ANCs were set up for, is that cross sharing not only for American Indian tribes but also for within the corporations within Alaska—and, really, the village corporations have kind of grown in the last few years versus the regionals.

Ms. KITKA. Well, Senator, I would like to address that. And it was kind of going to be my follow-up to the Chairman. And I will use my daughter as an example. My daughter is a graduate of the University of Alaska nurses program with honors last August. She was supported by scholarships from her native corporation. There is a critical nurse shortage in our State, in our villages and communities, and she graduated with honors, and now she is working for the Center for Disease Control on influenza things.

If you took a look at the growth of teachers in our village schools and in our hubs, in our communities, you will see the incredible growth of Native teachers. I bet if you looked at every single one of them, virtually 100 percent of those teachers would have been funded from their village or their regional corporation's scholarship programs.

As far as I know on any of the scholarship programs, nobody is just trying to only put money into law or business management. They are trying to create opportunities for our young people in whatever areas that they want to go to, and some gravitate towards working with the corporation and we really encourage them. But like I said, like my daughter, she is in the health field in a critical area of need, and there are so many Native teachers that are there as well.

Senator BEGICH. Thank you.

Ms. PATA. I would like to follow up on the rippling effect of what I see as today's investments. I know as a corporation we are taking—and in my testimony, I talk about the longer term. We, as Native peoples across this country, are always concerned with the seventh generation to come. And so as I look at that, these investments we see today have rippling effects. It is that student, that

person who got that first time scholarship, who went to college, and who then now maybe more in that family will go to college. It is how they invest in their communities.

But it is the way we do our business, too. It is our corporate business philosophy. The way that we stay connected to our non-profit values as far as cultural and community values that are very important in what we do. We have not only the tribal organizations, we have the non-profit associations that function. And we very much have the same people. So no matter what hat we are wearing, we are all the same Alaska Natives concerned about the subsistence and the other political issues that affect our communities. And so, we have to invest in those, too.

Senator BEGICH. Let me ask one other question—and I have got about a minute left here.

The analysis, which, again, I have a lot of questions—there is a committee report that came out late last night that I have had a chance very briefly to review. But when they talk about shareholders within the corporation, it is not uncommon to have other Native corporation shareholders that are not of the corporation that runs the corporation.

Is that a fair statement?

Ms. PATA. That is a fair statement. When the shareholders were divided, when—

Senator BEGICH. The regions.

Ms. PATA [continuing]. The regions were divided, they kind of drew lines around the map where you were living at the time.

Senator BEGICH. Right.

Ms. PATA. Not unlike some places in the lower 48 when we are dealing with those issues and so—

Senator BEGICH. So we have to be careful when we talk about the numbers of shareholders of your corporations working for the corporations. The real question is Alaska Native hire within the corporate structures that exist. And one of the biggest strengths you have is the issue of in-state and how much you have been doing there.

For example, one of the interns I met, it was the first time he was ever out of his village. And people have to have that perspective when they deal with what we are doing in Alaska, that it is a very unique situation where a young person may not have ever left the village and this is a new experience. But when you think of shareholders, I think of it from a broader perspective, and that is a fair statement, I think. Thank you.

Senator MCCASKILL. Thank you, Senator Begich. Senator Murkowski.

Senator MURKOWSKI. Thank you, Madam Chairman.

I think we all recognize that there is nothing in the Federal Government requirements when we are talking about government contracting here, that in order to get a contract here in Virginia, you have to be a Virginia-based company. And so, there seems to be some suggestion, both in the report that we have seen and from some of the testimony that we have heard today, that, well, the criticism is, is that we are not seeing enough local hire, enough shareholder hire. Also in the report, there was some criticism di-

rected that we are not seeing a substantial number of Alaska Natives that are part of the executive structure.

I will ask you, Ms. Lukin, you come from Port Lions. Now, tell me—and I am not asking you to wear your other hat here, but as a resident of Port Lions, what kind of economic development can we really see within a tiny community like this?

But, Ms. Pata, you come from southeast Alaska, where I was born down there. We were born in a national forest. This is land that is not available for development. We are working with Sealaska to try to allow for some of that. We have got the CEO of NANA Corporation, 60 percent of NANA's lands are locked up as Federal lands. And when we are talking about the ability to hire your people locally, the reality is, if you are going to have a government contract, more likely than not, it is going to be out of the State, and more likely than not, how easy is it to get an individual, a young person, whether they are from Port Lions or Angoon or from Kiana, to come here to Virginia?

Can you just speak to that? Because, Ms. Lukin, you have obviously got some very present experience as a young Alaska Native who has left the village and come out into this world.

Ms. LUKIN. Yes. Quyanaa. Thank you for the question.

My village, like so many in rural Alaska, is not connected to any other communities by road. It is only accessible by small plane or a seasonal ferry from the mainland or boats.

Senator MURKOWSKI. How much does it cost to get from your village to Anchorage?

Ms. LUKIN. If I were to fly from my village to Anchorage, it would be several hundred dollars. To take my family, it is over \$1,000 to leave the village. And we are probably less expensive than many in, say, the Bethel region or the Aleut region or other areas in the State.

There are no economic opportunities in my community. We had one single store, which I think would be comparable to what you might have here is like, what, a 7-Eleven? But it closed because it could not sustain itself in our village. We have minor commercial fishing, but the prices for fish have been drastically declining over the years. And we used to have timber development, but again, the prices for timber dramatically went down in the mid-1990s.

The likelihood that an Alaska Native Corporation is going to be pursuing contracts out of the State is very high because there are contract opportunities in the State of Alaska but there are only so many opportunities, and there are 200 Alaska Native Corporations.

How likely is it somebody will move? Very unlikely. I just moved myself, and it is hot here. But we are very connected to our culture and to our community, to our family and to our traditional ways of life. So to uproot your people and move them to somewhere outside of your community, it is very difficult to do.

Senator MURKOWSKI. But let me ask about that because what we are attempting to do through the use of the educational scholarships, primarily, is to provide for that level of educational opportunity so that there can be a level of exposure to how we can make business opportunities and translate them back to the village. Sometimes it is going to work; other times it is not going to work. But as you point out, we are really just in that first generation of

educating young Alaska Natives and now being successful in bringing them back home; is that correct?

Ms. LUKIN. Yes, that is correct. And I would also point out that through the scholarships and small business programs available to—and by the ANCs to their shareholders, there are some in my dad's age bracket who at the age of 53 decided to start his own small business, sports fishing charter business in our village. And he is still going strong today, used his dividends to help purchase a small boat and got scholarships to help him get the Coast Guard's trainings and the certifications that were necessary to operate his small business in our village. So there are opportunities like that that are growing in rural Alaska because of the 8(a) program.

Senator MURKOWSKI. Thank you.

Senator MCCASKILL. Thank you, Senator Murkowski.

Would the three of you have any problem with competing with other ANCs?

Ms. PATA. No, I think we actually do compete with other ANCs on various contracts.

Senator MCCASKILL. I mean, actually taking away the ability of you to get a sole source contract if, in fact, the other companies that you were going to compete against were all ANCs, so that it would actually be a competitive bidding process but all of the bidders would be ANCs.

Do you have any problem with that?

Ms. PATA. I am not here to speak about that at this point. Obviously, we would have to have a consultation on that issue. It just brings to light two issues for me. One is sole sourcing—the issues around sole source contracting and whether or not it is a good Federal value is not only an issue of 8(a) contracting, certainly not an ANC only issue or a tribal issue because tribal governments have the same ability to sole source as ANCs. And I think that the separation of those poses an issue for me.

I think, though, once again, we look towards recommendations for improving the program. We would be more than glad to sit down with you and your staff and the Subcommittee and have consultation with tribes across the country as well as the ANCs to come up with some recommendations that could address some of the concerns.

Senator MCCASKILL. Do not need to explain to me that we have a problem with noncompetitive contracts? How I found out about you guys was that I was looking in to all the noncompetitive contracts that were let in Iraq. And as I started pulling the thread, I started finding all of these noncompetitive contracts across our government.

This is by no means an effort to say that the ANCs are the only problem we have in the Federal Government as it relates to sole source contracting. We have lots of problems surrounding sole source contracting, especially at DOD and Homeland Security. And that is why the President issued an Executive Order in March directing his Executive Branch to prefer competitive bidding because we have gotten into this incredible explosive growth, not just in the ANC area, not just in the 8(a) program, but an explosive growth

in contracting across the board. And that is why this Subcommittee was created, is we need to look at all of the contracting issues.

If you might be willing to compete with other ANCs and if we put that out there on the table, what about accepting the exact same rules as the Indian tribes? Would you have any problem with having the same rules for contracting as it relates to a status of economically disadvantaged?

I also served on the Indian Affairs Committee briefly and I also have been informed and briefed—although not firsthand knowledge, because we do not have significant tribes in Missouri—of the incredible dysfunction of our government in terms of making sure that we have opportunity and economic opportunity for Indian tribes.

So I think all the things you have talked about in terms of scholarships and empowerment and all of those would equally apply to the Indian tribes.

Would you have any problem with accepting the exact same rules as the Indian tribes have?

Ms. PATA. I guess, once again, I would have to say that we obviously are not here to be decisionmakers for the body of people who sit behind us or that we represent here today without having those conversations.

I do want to clarify, though. I think there was some concern about the differences between tribes and ANCs. The differences between tribes and ANCs are really the issue of proving that you are disadvantaged. And tribes one time prove that they are socially disadvantaged, and then they are able to continue to operate multiple 8(a) contracts, very similar to ANCs.

The only other difference that is out there is in the management responsibility, and even at that, tribes are allowed to be able to put forward management plans to show that they can—that they would have a non-Native manager as long as they had a mentoring program in place.

As far as equitably being able to compete on sole source contracts and those elements, we are the same. So I am trying to discern from you exactly what are you—are those the only two issues that you were concerned about?

Senator MCCASKILL. Well, the main issue is that regardless of how large an ANC gets, it is still economically disadvantaged. It does not matter how big it is. Whereas with Indian tribes, at a certain point in time, they lose their status as economically disadvantaged if they get to a certain size.

Ms. PATA. No. I am trying not to disagree with you, but it is my understanding that tribes prove they are socially disadvantaged the first time, the one time.

Senator MCCASKILL. Socially and economically disadvantaged.

Ms. PATA. Disadvantaged the one time, and they graduate out of the program just like ANCs graduate out of the program. So ANCs subsidiaries are—ANCs 8(a) programs graduate out of the programs. Tribes graduate out of the program, too. That is also the same.

The difference, the tribes no longer, according to SBA regulations, have to prove themselves, continually prove themselves that they are socially and economically disadvantaged. They do that one

time, whereas the ANCs have been given by congressional support the recognition that they have already proved they are socially and economically disadvantaged because they are addressing a community of socially disadvantaged folks.

I think if you look at the history of the program, part of that was at the time when ANCs were being included, tribes were just getting this new gaming opportunity and many Members of Congress were not quite sure whether or not how that would be. And so that is why the ANCs have this congressional recognition but the tribes have to prove that they are still socially and economically disadvantaged. But they do not have to repeatedly have to prove it to themselves.

Senator MCCASKILL. I think we have got something on the table here.

Ms. PATA. Yes.

Senator MCCASKILL. If there is no difference, then I would hope that you would be willing to accept and support a change in the law that would make sure that you are on completely equal footing as it relates to socially disadvantaged and economically disadvantaged, because, certainly, some of your corporations are much larger than many Native American corporations.

I do not think any of you would argue about that, would you?

Ms. LUKIN. Ms. Chairman, as Ms. Pata indicated earlier, we are not in a position today through our organizations to negotiate on behalf of our people. We need to go through an extensive tribal consultation process to ensure that the government-to-government relationship between Native peoples and the United States is maintained and we have the opportunity to hear everyone's voice. So we would be happy to have that discussion.

Senator MCCASKILL. OK.

Ms. LUKIN. But we would like to go through the proper process.

Senator MCCASKILL. Oh, I understand. I just wanted to put it out there, that would seem to me—

Ms. LUKIN. And I would also clarify—

Senator MCCASKILL [continuing]. The starting point of just some discussions.

Ms. LUKIN. Absolutely. And the only other point I would clarify for Ms. Pata is it is proving economic disadvantage. In fact, tribes and Alaska Natives are automatically socially disadvantaged. Thank you.

Senator MCCASKILL. Right. It is the economic disadvantage where the difference is, not the socially disadvantaged.

Ms. LUKIN. Thank you.

Senator MCCASKILL. Mr. Lumer and Ms. Schneider, can you explain—especially you, Mr. Lumer, with your background in contracting—what would be in your mind a rationale for allowing a corporation a 5 percent bonus for subcontracting with one of their affiliates of taxpayer money?

Mr. LUMER. Madam Chairman, I was here for the earlier discussion. I frankly do not agree that is allowable.

Senator MCCASKILL. You do not?

Mr. LUMER. I do not.

Senator MCCASKILL. OK. Well, I believe we have people that are allowing it, so we need to get you back in government.

Mr. LUMER. That is another whole discussion, ma'am. [Laughter.]

Senator MCCASKILL. Well, that would—because it is our understanding, based on the information that we have gathered at the Subcommittee, that, in fact, a 5 percent bonus is being paid.

Mr. LUMER. I believe it is allowed by law, but I believe by regulatory process, it is not allowable.

Senator MCCASKILL. OK. Do you think there is any limit that would be appropriate, Ms. Lukin or Pata? I mean, would there be a point that if an Alaska Native Corporation was netting profits of \$10 billion a year, \$20 billion a year, would there ever be a point in time that you would be willing to say that you ought to have to compete with everyone else for contracts?

Ms. LUKIN. Again, Senator, actually there are a couple of points I would like to make here. One, I think it is important that we remember that Native participation in the 8(a) program honors the government's commitment to Native peoples.

In addition to that, I think that I would reiterate my earlier point on a tribal consultation process, and I would also—I forgot to mention earlier—encourage us to also remember other committees of joint jurisdiction on this, including the Indian Affairs and Small Business. So again, we would be happy to work with you in a positive, joint effort with our people.

Senator MCCASKILL. I am painfully aware that this is not my decision. I understand other committees have jurisdiction.

I do want to point out for the record that I think there has been a little bit of a blurring because the legislation that you proudly spoke of, Senator Begich, was passed in 1971. The first contracting preference came about in the 1980s. And, in fact, even in the 1990s, there was additional contract preferences put in. So the idea that this was envisioned back in 1971, that we would fast forward to 2008, I am not sure that necessarily follows because one came almost 30 years after the other.

Ms. PATA. And if you inferred that from my abbreviated oral statement, I apologize because what I was basically saying was that Congress enacted ANSCA and Congress also enacted the procurement preferences.

If you studied the ANSCA history, as probably all of us have, the first 20 years are pretty grueling for our corporations and very difficult as we dealt with the challenges of building capacity. And that is one of the reasons why in those years when we were looking at amendments to ANSCA that we were also looking for ways of really trying to make the corporation model work. It was a model that Congress invested in because they did not want to deal with the economic conditions that were present in the reservations during the 1970s when this was all being debated. So I think we have tried—this corporate model worked to the extent that it threw us into an environment that we had to understand corporations and shareholder value but still never left our cultural and our personal values.

Senator MCCASKILL. I also wanted to point out that there are subcontracting going on with major multinational corporations that are big players in government contracting, such as Wackenhut. I believe your former corporation, Ms. Lukin, had a major subcontract with Wackenhut. And Blackwater has been a subcon-

tractor. Korvis has been a subcontractor. So it is not uncommon for an Alaska Native Corporation to, in fact, subcontract with a company that is much larger than the ANC; is that correct?

Ms. LUKIN. Ms. Chairman, yes, Alaska Native Corporations, tribes and Native Hawaiian organizations, like all other Federal contractors, can enter into joint venture agreements and subcontract arrangements under the FAR and the SBA regulations.

Senator McCASKILL. OK. I am curious. I have had a penchant, a bug that is bugging me about line standing. And I found out today for the first time—I was conducting a hearing where there was line standing, and I am curious how many of the people in the audience hired someone to stand in line for them for this hearing, if you would raise your hands, if you are willing to.

Only one, two brave souls? OK. All right. I was just curious.

Senator BEGICH. Our Alaskan people understanding waiting and being patient. [Laughter.]

Senator McCASKILL. I have a feeling there might be more people in the room that did not want to raise their hands, but congratulations to the two of you who were willing to raise your hands.

I think we are going to conclude the hearing there, unless the two of you have something that you are anxious to ask. I am feeling a little uncomfortable since I am the only Member of the Subcommittee left here, and it does not quite seem fair, you guys. [Laughter.]

Senator MURKOWSKI. Madam Chairman, if I just may add my thanks. We have a large contingent of Alaskans that have come back for this hearing. I think it is fair to say that when you sent out your letter some 6 weeks ago, there was a great deal of angst about this hearing, the direction that you were taking with it, and a real concern that a program that has really yielded benefits for so many in Alaska, from the furthest point north to the smallest communities south, there was a concern about this.

But I have seen interviews, talked with some of the CEOs of our ANCs, talked with people who are back here representing their native corporations, and they feel very strongly that they have a story to tell. And I think I can speak—I will speak for them in saying they want that opportunity to present not only where they have come from but where they feel they are capable of going given some opportunities.

I do not think any of them are afraid to present the facts. They are willing to work certainly with you and this Subcommittee. And I hope that some of the suggestions—I know NCAI has been working on this since the hearing back in, what, it was 2006, and looking at proposals. I know that NAC has been looking and assessing. We want to make sure that it works not only for Alaska Natives but when they assume these government contracts, whether they be in Fort Drum, New York or wherever, and are able to employ thousands of people helping the economic recovery of this country, that it works on all sides.

So we want to work with you on this, but I do think that the message from Alaskans is we have a success story here, we are proud of it, and we are pleased to be able to speak to it. So thank you for giving this opportunity today.

Senator BEGICH. Madam Chairman, I just want to say thank you very much for the opportunity. Thank you for allowing both Senator Murkowski and I to be here and to outnumber you on the backend here. I appreciate that.

But it was, I think, especially toward the end here, a very positive opportunity to figure out what is the right thing to do for the long-term benefit of not only Alaskan Natives but American Indians and Hawaiians and all of us together. So thank you very much for the opportunity.

Senator MCCASKILL. Let me close with a couple of comments.

First, the record will stay open for 15 days for anyone who wants to submit information for the record. We will consider any information that is submitted for the record.

I also want to make sure that there is no misunderstanding about this. This has absolutely nothing to do with whether or not the Native people of Alaska have had struggles and challenges that are unique to the Native people of Alaska. And one of the reasons I was concerned about line standers is I know how many Alaskans traveled here and they deserve a seat at this hearing. And sometimes the folks that just are regular citizens get squeezed out at the door because of people who have been standing in line. That is why I was curious about it. And I am glad we had people standing during this hearing. And I hope none of them came all the way from Alaska because they did not have enough room because of line standers.

But more importantly, what I want to make sure everyone understands, that this is about whether or not we have created preferences in the law that are capable of being outgrown, and whether or not the preferences that we have created in the law are something that should be permanent, and whether or not the preferences we have created in the law are providing good value to taxpayers.

I hope Alaska Native Corporations soar, and I think they have the capability, many of them, in fact, the largest ones, to do very well without sole source contracting. In fact, many of them are. And a lot of the income for these corporations, based on our analysis, is not even from Federal contracting. In fact, the majority of the income from all the Alaska Native Corporations are not from Federal contracting. When we are going to say to the government you do not have to worry about whether or not you can get the same goods or services for cheaper, are we going to continue to have a compelling rationale to carve out this kind of exception for companies that have grown as big and as powerful in the contracting field as some of the ANCs have? And that is really what this is about.

I hope that the people of Alaska continue, and the shareholders of these corporations continue to receive scholarship and cultural benefits for decades in the future. The question is how long will we continue to have a preference in the law that squeezes out good companies like Christina Schneider's and lots of companies in many States in this country that have the willingness to work for the government for less to provide the same service. And that is really what this is about.

I think we have gotten mixed up with whether or not Alaska Natives are entitled to something from the Federal Government and whether this is the best mechanism to deliver it. And that is what this discussion is about. If there is an entitlement program that is deserving of the people of Alaska, perhaps it needs to be through another way and not in a way that is driving the competitive process the wrong direction.

As I say, you are one small piece of this problem. You are not the major problem on competitiveness. There are many other problems on competitiveness. But we thought it was important enough to take a look at. I certainly appreciate all of the witnesses. I appreciate the fact that the two Senators from Alaska were able to be here. And to all of you who traveled from Alaska, thank you for coming and we respect and honor your traditions and we are glad you were here. Thank you, and this hearing is adjourned.

[Whereupon, at 5:06 p.m., the Subcommittee was adjourned.]

A P P E N D I X

**Testimony of
Debra S. Ritt
Assistant Inspector General for Auditing
U.S. Small Business Administration**

**Before the
Subcommittee on Contracting Oversight
Committee on Homeland Security & Governmental Affairs
United States Senate
July 16, 2009**

Chairwoman McCaskill, Acting Ranking Member Collins, and Members of the Subcommittee:

We appreciate the opportunity to testify today on our audit of Alaska Native Corporation (ANC) participants in the 8(a) program. The 8(a) program is the Federal government's primary vehicle for helping small-disadvantaged businesses compete in the marketplace and gain access to Federal and private procurement markets. Under the program, ANC-owned companies enjoy special procurement advantages beyond those afforded to most other 8(a) businesses. These advantages were intended to provide economic opportunities for impoverished Alaska Natives. Our audit was initiated based on issues identified by prior OIG and GAO audits related to SBA's oversight of ANC participant 8(a) activity.

As requested by the Subcommittee, my statement today will focus on our audit findings relating to three areas:

- Competitive and other advantages enjoyed by ANC firms in obtaining 8(a) contracts and the benefits derived from those advantages;
- The growth of ANC participant activity within the 8(a) program; and
- The Small Business Administration's (SBA) management and oversight of ANC participant activity.

8(A) CONTRACTING ADVANTAGES FOR ANC-OWNED COMPANIES AND BENEFITS SUCH COMPANIES DERIVE FROM THOSE ADVANTAGES

ANC and other tribally owned companies enjoy special procurement advantages over most other 8(a) program participants. Arguably, the most significant of these advantages is their ability to obtain unlimited sole-source awards of any value. ANC companies are exempt from (1) competitive thresholds in the Small Business Act that limit 8(a) companies from receiving sole source awards in excess of \$5.5 million for manufacturing

contracts and \$3.5 million for other types of contracts, and (2) the regulatory cap on sole-source awards that is triggered once a company receives a total of \$100 million in 8(a) competitively-awarded and sole-source contracts. These exemptions have resulted in ANC-owned companies receiving hundreds of millions of dollars in awards non-competitively.

ANC-owned companies are also not limited in the number of other companies they can be affiliated with for purposes of determining whether they are small, and thus eligible for 8(a) awards. ANCs can own multiple 8(a) companies as long as each business is in a different primary industry, and SBA has determined that the company does not have or is not likely to have a substantial unfair competitive advantage within an industry. Our audit confirmed that this advantage has allowed ANC companies that are large businesses through affiliation with their parent corporations, and who have access to the capital and credit of its parent, to compete against truly small disadvantaged companies. Allowing large ANC companies to compete against other 8(a) companies appears to be inconsistent with the primary purpose of the 8(a) program of helping small-disadvantaged businesses to compete in the American economy.

Although ANC companies enjoy substantial advantages over other 8(a) companies, such advantages were intended to help ANCs fulfill a mission that is broader than the bottom line of the corporations; namely to help Alaska Natives achieve economic self-sufficiency. Understandably, ANC companies have attempted to maximize the opportunities afforded them under the 8(a) program. We visited 11 ANC parent corporations, 8 of which told us that they derived at least 50 percent or more of their revenues from the 8(a) program. Two of the 8 said they relied on the program for 90 percent or more of their revenues.

While not all ANCs have generated profits in the past, in recent years the overall financial performance of ANCs has significantly improved. According to the *Alaska Native Claims Settlement Act (ANCSA) Regional Association's 2006 Report*, in 2006 total revenues for the 13 regional ANCs grew 22 percent, from \$4.4 billion in 2005 to \$5.4 billion in 2006, and profits increased by 75.6 percent, from \$282.4 million in 2005 to \$495.9 million in 2006. The following year, the *Alaska Economic Performance Report for 2007*, reported that revenues for 12 of the regional corporations totaled \$5.77 billion, with profits of \$483.7 million.

Unlike other 8(a) businesses whose profits generally go to one or two individuals, hundreds, and sometimes thousands, of tribal members or Native shareholders, share the profits from ANCs. ANCs have used use their profits to pay shareholder dividends, fund cultural programs, and provide employment assistance, jobs, scholarships, internships, subsistence activities, and numerous other services to their Alaska communities. Dollar for dollar, however, it is difficult to link these benefits to revenues earned from the 8(a) program, as they are financed from profits that have been generated by different revenue

sources. ANCs are also not required to report to SBA how they use the 8(a) share of their profits to support Alaska Natives.

GROWTH OF ANC ACTIVITY WITHIN THE 8(A) PROGRAM

Long-term 8(a) contracting trends show a continued and significant increase in obligations to ANC-owned participants, both in value and as a percentage of total obligations to 8(a) companies. Our audit found that from FY 2000 to FY 2008 obligations to ANC-owned participants increased by 1,386 percent, and more than tripled in recent years, from \$1.1 billion in FY 2004 to \$3.9 billion in FY 2008.

Although the amount of Federal contracting as a whole increased significantly during this time, what stood out from our review was the growth in the percentage of 8(a) contracting dollars going to ANC-owned companies as compared to other participants in the program. Between FYs 2004 and 2008, the percentage of 8(a) obligations to ANC companies doubled. In FY 2008, ANC companies received approximately 26 percent of total 8(a) obligations—even though they constituted just 2 percent of companies performing these 8(a) contracts. These trends suggest that ANC-owned companies are receiving a disproportionate share of obligations to 8(a) firms.

An additional noteworthy finding from our audit was that a significant portion of the 8(a) obligations made to ANC-owned companies went to a small percentage of the ANC participants. In fact, 50 percent of 8(a) obligations to current ANC participants in FY 2007 went to just 11 (or 6 percent) of the ANC companies reported by SBA to Congress that year. One of these companies accounted for nearly 20 percent of the 8(a) obligations made to active ANC companies, but had only 750 shareholders, or less than 1 percent of the total population of ANC shareholders. The top four companies, which received collectively about \$600 million in FY 2007, accounted for less than 4 percent of the 109,210 Alaska native shareholders represented by all of the ANC participant companies. Accordingly, revenues earned from ANC participation in the 8(a) program are not distributed evenly throughout the ANC population.

Finally, of note is that sole-source contracts continue to be the major contracting mechanism used by procuring agencies when obligating 8(a) funds to ANC participants. We found that in FY 2007 the top 11 firms received 82 percent of their 8(a) obligations through sole-source awards. As mentioned previously, ANC participants, like other tribally-owned firms, are exempt from SBA's cap on total sole-source awards. Generally, 8(a) companies that receive \$100 million in total 8(a) awards are ineligible for additional sole-source contracts. Of the top 11 companies, 3 had received contracts in excess of \$100 million over just a 2-year period. One company alone received approximately \$527 million, of which \$422 million had been sole sourced.

As reported by GAO and others, Federal agencies favor sole-sourcing awards to ANC participants because it is a quick, easy, and legal method of meeting their small business goals. While sole-sourcing contracts to ANC firms may provide an expedient means of meeting small business goals, due to the lack of competitive bidding, such awards often do not result in the best value for the government. Reports by OIGs and GAO have shown that noncompetitive contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results. Based on similar concerns, in March 2009, the President issued a memorandum discouraging the use of sole source awards unless their use can be fully justified and safeguards put in place to protect taxpayers.

SBA'S MANAGEMENT AND OVERSIGHT OF ANC PARTICIPANT ACTIVITY

Despite the growth in ANC participation in the 8(a) program, SBA has not performed a review to determine whether such growth is adversely affecting other 8(a) participants. For example, in FY 2008, ANC-owned participants received 66 percent of the 8(a) obligations made under the "facilities support services" industry code, which was the second largest industry code for 8(a) purchasing that year. However, SBA has not assessed the impact this has had on non-ANC-owned program participants. Neither has it determined whether procuring agencies are meeting their small-disadvantaged business procurement goals primarily through sole-source awards to ANC companies that essentially are large businesses through affiliation with their parent companies.

Further, although SBA officials recognize that ANCs typically enter into more complex business relationships than other 8(a) participants, it has not tailored its policies and oversight practices to account for ANCs' unique status and growth in the program. Audits issued by GAO in 2006 and by our office in 2008 identified shortcomings in five areas of SBA's oversight of ANC participant 8(a) activity. These involve monitoring:

- Secondary lines of business for multiple 8(a) participants owned by a single ANC. GAO reported that SBA does not track the business industries in which ANC subsidiaries have 8(a) contracts to ensure that ANCs do not have more than one subsidiary obtaining its primary revenue under the same industry code. GAO recommended that SBA collect information on ANC-owned participants as part of its 8(a) monitoring, to include tracking the primary sources of revenue. In July 2008, SBA began development of a system to collect primary revenue generators for ANC participants, but this capability will not be developed until a later phase of the project.
- Changes in ownership of ANC participants and the holding companies that manage them. SBA regulations require that ANC participants be majority-owned or wholly owned by an ANC, and that ANCs must seek SBA's approval before making ownership changes. However, SBA has had difficulty managing the large

volume of ownership change requests requiring approval. Last year, we identified an instance where an ANC was in violation of SBA's ownership rules and had not reported the ownership change to SBA. Our most recent audit disclosed that approving ownership change requests has dominated the workload of the Alaska District Office, leaving little time for monitoring other aspects of ANC compliance with 8(a) rules or for identifying where ANC-owned companies have not reported ownership changes.

- Whether ANC-owned companies have a substantial unfair competitive advantage within an industry. The Small Business Act provides that the size of a tribally owned company will be determined without regard to its affiliation with the tribe or any other businesses owned by the tribe unless the SBA Administrator determines that one or more of the tribally-owned businesses may have, or may obtain, a substantial unfair competitive advantage with an industry. GAO reported that SBA was not making these determinations and had no policy or procedures in place to make them. It recommended that SBA clearly articulate in regulation how it would comply with existing law. SBA has adopted a different approach involving training of its Business Development Specialists and Federal agencies to ensure that a previous procurement history is provided to facilitate such determinations, which does not appear to adequately address GAO's recommendation.
- Partnerships between ANC participants and large companies to ensure that they are functioning as intended. GAO reported that SBA's oversight of ANC partnerships with other companies and mentor-protégé arrangements was not adequate. When entering into joint ventures, ANC companies must manage the joint venture and receive at least 51 percent of venture profits. However, GAO identified instances either where mentors abandoned ANC participants after the contracts were not won or where mentor companies exploited the ANC partner for its 8(a) status. SBA has acknowledged that 8(a) joint ventures between mentors and their ANC protégés may be inappropriate for sole-source contracts above competitive thresholds. Despite this concern, our audit found that SBA headquarters was unable to identify the number of joint ventures involving ANC companies, and did not have a means for tracking 8(a) sole source contracts involving joint venture partners.
- Reviewing participant financial statements. In August 2008, we reported weaknesses in SBA's review of financial information reported annually by ANC participants. Because of these weaknesses, SBA did not identify that non-native managers of two 8(a) ANC-owned firms had secured millions of dollars of 8(a) revenue for companies they owned through management agreements that SBA had not approved. The management agreements were disclosed in footnotes to the financial statements of the ANC-owned firms that had been submitted to SBA.

Our report questioned whether SBA's Alaska District Office, which oversees the majority of the ANC participants, was adequately staffed. At the time, the office had only two full-time and one-part time employees to oversee 166 ANC participants. Although there are now over 200 ANC participants in the program, SBA has not yet increased the size of the district office. SBA has advised that it has is in the process of hiring two more employees for this office; however, these additional positions will not be sufficient to manage the current ANC participant level.

CONCLUSION

In conclusion, ANC participation in the 8(a) program has undeniably benefited Alaska natives and tribes. However, long-term 8(a) contracting trends show a continued and significant increase in obligations to ANC-owned participants, which may be limiting the ability of non-ANC-owned companies to secure 8(a) contracts. Further, a very small number of ANC participants receive a disproportionate share of the 8(a) obligations. The procurement advantages that ANC-owned companies enjoy, and their ability to get access to capital and credit through their parent companies, may be working to disadvantage other 8(a) participants. All of these factors indicate that changes to ANC participation in the 8(a) Program may be appropriate to ensure that this program works as designed and that taxpayers are receiving the best value from 8(a) contracts.

Because many of the advantages that ANCs enjoy come from statute, Congress may wish to consider whether:

- ANC-owned companies should continue to be exempt from the competitive threshold limits on the amount of individual sole-source awards, or whether there should be a statutory cap on the total amount of sole-source awards they may receive.
- The Small Business Act should be clarified to require SBA to determine that ANC-owned companies do not have a substantial unfair competitive advantage within an industry category before exempting ANC participants from size affiliation rules, or whether other limits should be placed on the affiliation rules applicable to ANC participants.
- ANCs should be required to submit regular reports to SBA identifying the percentage of its profits that are derived from 8(a) contracts, describing how the 8(a) share of its profits are being distributed in dividends or other support for Alaska Natives, and explaining how the distributed benefits assisted the Natives.
- The Small Business Act should be amended to either establish larger small-disadvantaged business contracting goals for procuring agencies that account for

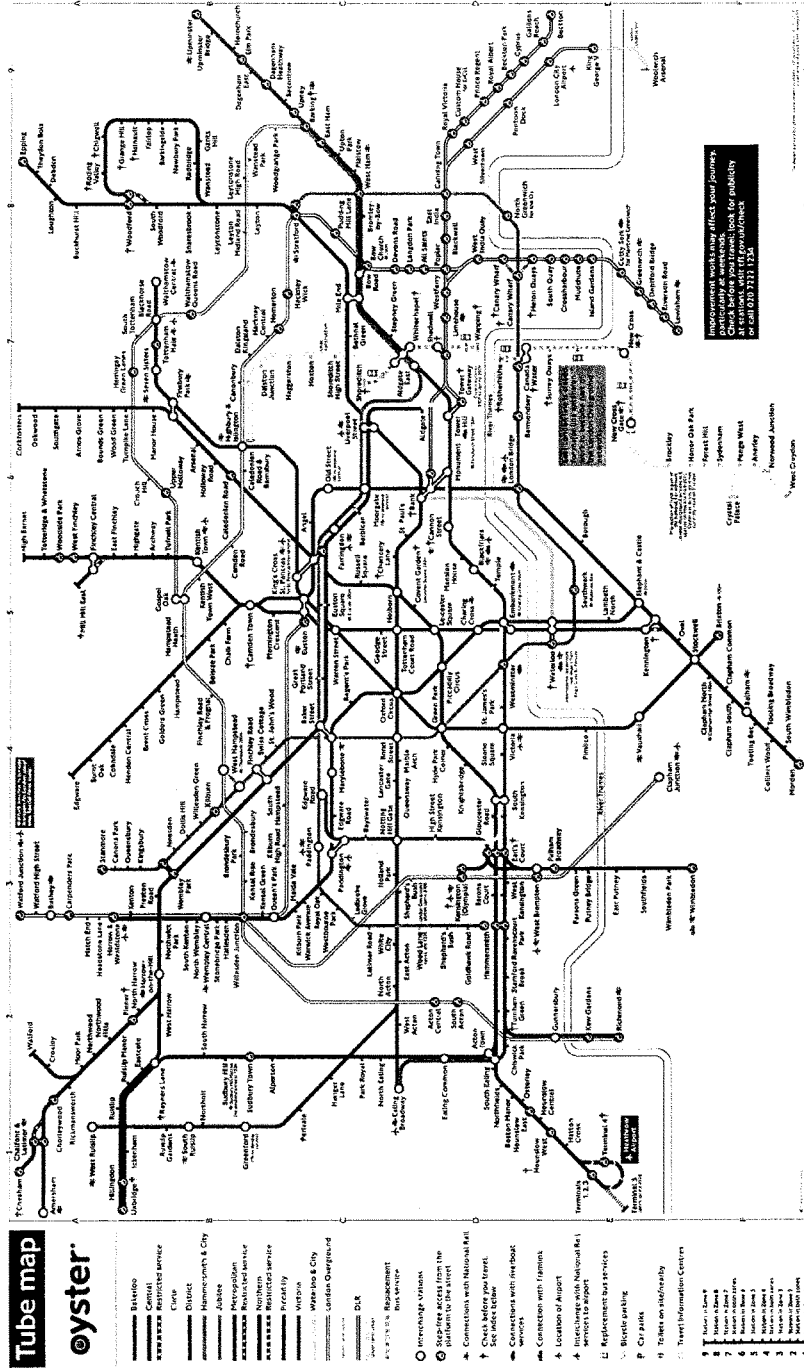
the growth in ANC 8(a) awards; or establish a separate goal for awards to tribally owned companies to ensure that other 8(a) companies are provided maximum opportunity to obtain 8(a) contracts.

We also recommend that SBA:

- Conduct a review to evaluate the impact that the growth in ANC 8(a) obligations has or will have on other 8(a) firms and the overall effectiveness of the 8(a) program; and make the necessary programmatic revisions.
- Determine whether 8(a) companies owned by ANCs and tribes should continue to be exempt from the regulatory cap on total sole source awards, and if not, remove the exemption from this regulation.
- Centrally track the award of 8(a) contracts to joint ventures involving ANC participants and the award of sole-source contracts to ANC participants.
- Expedite the implementation of an automated system to ensure that the Agency has information needed to oversee ANC participant activity.
- Finalize regulations and actions needed to fully implement GAO's recommendations.
- Fully staff the Alaska District Office.

To obtain a copy of our report, interested parties may go to the SBA OIG online library at <http://www.sba.gov/ig/onlinelibrary/index.html>.

Madam Chairwoman, this concludes my prepared statement. I would be happy to answer any questions at this time.



Testimony of Mr. Joseph G. Jordan
Associate Administrator for Government Contracting and Business Development
U.S. Small Business Administration

July 16, 2009

For:
U.S. Senate Committee on Homeland Security and Governmental Affairs
Ad Hoc Subcommittee on Contracting Oversight

Chairwoman McCaskill, Ranking Member Collins, and Members of the Subcommittee, thank you for inviting the U.S. Small Business Administration (SBA) to testify regarding the participation of Alaska Native Corporations (ANCs) in the SBA's 8(a) Business Development (BD) Program. My name is Joseph Jordan, and I am the Associate Administrator for the SBA's Office of Government Contracting and Business Development. My office has primary responsibility for the 8(a) program from a policy perspective.

The 8(a) program, authorized by Section 8(a) of the Small Business Act, seeks to remedy discrimination by helping eligible small businesses compete in the American economy through business development. Participation in the 8(a) program is restricted to businesses owned and controlled by socially and economically disadvantaged individuals.

In addition to management and technical assistance provided under the program, certified 8(a) firms may be eligible to receive Federal contracts. Furthermore, the government is able to award contracts to participating 8(a) firms without competition below certain dollar thresholds. The government can also restrict competition for federal contracts above stated dollar thresholds to only 8(a) certified firms.

Beginning in 1986, significant changes were made to the 8(a) program when Congress enacted legislation that allowed ANCs, Native Hawaiian Organizations (NHOs), community development corporations, and tribally-owned firms to participate in the 8(a) program. (1986, P.L. 99-272, sec.18015 added ANCs and tribes; 1988, P.L. 100-656, sec. 207 added Native Hawaiian Organizations, and P.L. 97-35; 1981 P.L. 97-35; sect. 626(a)(2) added Community Development Corporations.) Participating in the 8(a) program would allow these organizations to benefit from the business development opportunities available through the 8(a) program.

The 1971 Alaska Native Claims Settlement Act (ANCSA) enacted by Congress was intended to settle the claims of Alaska Natives to the land and resources of Alaska while simultaneously exploring an alternative method to the reservation system by which Alaska Natives could practice self-determination. Therefore the goal of ANCSA was Native American self-determination through participation in the U.S. capitalist society.

In accordance with ANCSA, 13 regional corporations and more than 200 Village Corporations were created to administer the 44 million acres of land and the \$962.5 million that Congress paid to settle Native Claims. In 1988 and 1992 ANCSA was amended. By enacting such amendments, Congress designated ANCs where natives hold majority ownership to be minority businesses and economically disadvantaged.

Alaska Native Corporations have two-fold missions of being a competitive and successful business accountable to 150,000 shareholders as well as providing a mechanism to self determination and sufficiency. Corporations undertake and underwrite comprehensive cultural, societal and community activities on behalf of their people, their culture and their communities as well as providing economic benefit to shareholders and their families.

The method by which ANC's conduct this mission is varied and determined by each corporation's goals as driven by their management.

The 8(a) BD program's regulations, which were promulgated as a result of the 1986 legislation, anticipate that organizational-owned firms, including ANCs, utilize the program to provide economic development to their respective communities. All other 8(a) participant firms utilize the program to receive individual business development assistance.

ANC-owned 8(a) firms, tribally-owned companies, and program participants owned by NHOs are not subject to the same rules as other individually-owned companies participating in the program in a number of areas. First, subsidiaries of these organization-owned businesses can participate in the 8(a) program without being considered affiliated with one another. This allows several subsidiaries to participate in the program at the same time and for each to be considered a small business individually.

Secondly, these firms are not subject to the sole source contract limitation. As a result of legislation enacted in 1986, there is no cap on the amount of a Federal contract award to an ANC-, tribally-owned 8(a) program participants. This means that these companies are able to receive a federal contract in any amount without competition. Similarly, in 2003, Congress authorized NHOs to receive 8(a) contracts above the competitive threshold amounts for Department of Defense procurements.

Lastly, companies owned by these organizations do not have a limitation on participation by non-disadvantaged individuals. For traditional 8(a) firms, the individual claiming social and economic disadvantage must control the day-to-day operations of the company, and must be the highest compensated; ANCs are not subject to such restrictions.

As it is currently operating, the 8(a) program provides business development opportunities to disadvantaged individuals and firms owned by certain organizations including ANCs.

It is also important to recognize that as a business development program, sole source contract awards continue to have an important role in 8(a). Competition also plays an important part, and has been used effectively in the 8(a) program.

At the same time, and as we do for all of our small business programs, SBA continually seeks to identify opportunities for improving the use of, and results achieved from, the ANC Program. In recent years, SBA's Inspector General, the Government Accountability Office, and Congress have identified a number of management challenges with the ANC Program, in particular. While we may differ over our analysis of a few of the details, we all agree on the overarching need for greater oversight to ensure the program operates in accordance with its intended purpose of promoting opportunities for ANC firms free of waste, fraud and abuse. The SBA has worked diligently to ensure that oversight of the ANC program in particular and the 8(a) business development program more generally is strong and effective. To this end, just in the past six months alone, the Administration has:

- sent four individuals to review the Alaska District office which handles the interface and caseload of ANCs; and begun the hiring process for two additional staff devoted to the 8(a) Business Development program in the Alaska District office
- funded initiatives to better track ANC participation in the 8(a) program; and
- developed a package of regulatory changes to ensure more effective administration of the 8(a) program for all participants including addressing decisions by the SBA's Office of Hearings and Appeals, correct deficiencies in the existing regulations, and making the SBA's rules for the 8(a) BD program more clear to the public.

We believe stronger and more forward-leaning management can help to address the types of concerns described in your letter of invitation. Some have recommended the consideration of competition as another possible option. The 8(a) Program currently provides for use of competition, generally on larger actions. This focus helps 8(a) contractors to build their competitive skills as they develop as companies and are able to handle larger contract opportunities. We are committed to conducting a measured analysis that carefully reviews the potential for extending the application of competition to ANC actions, in an appropriate manner that is consistent with business development for these entities.

Thank you for allowing me to share the SBA's views with you today, and I will be happy to answer any questions you may have.

**HOLD UNTIL RELEASED BY THE
SENATE COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

STATEMENT BY

MR. SHAY D. ASSAD

ACTING DEPUTY UNDER SECRETARY OF DEFENSE

(ACQUISITION & TECHNOLOGY)

BEFORE THE

**SUBCOMMITTEE ON GOVERNMENT CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

**DEPARTMENT OF DEFENSE
DEFENSE PROCUREMENT AND ACQUISITION POLICY**

CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS

JUNE 16, 2009

**HOLD UNTIL RELEASED BY THE
SENATE COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS**

Chairman McCaskill, Ranking Member Collins, Members of the Subcommittee: My name is Shay Assad and I am the Director of Defense Procurement and Acquisition Policy. I am also presently serving as the Acting Deputy Under Secretary of Defense for Acquisition and Technology, in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L).

After serving tours on board two Navy destroyers, I began my career in acquisition thirty-two years ago as a Naval Procurement Officer at the Naval Sea Systems Command. I left the Navy in 1978 and joined the Raytheon Company. Over my twenty-two year career at Raytheon I held a variety of contracting and operational positions ultimately serving as a corporate Vice President, a Senior Vice President, and finally, as Corporate Executive Vice President and Chairman and Chief Executive Officer of one of its major subsidiaries. I retired from Raytheon in July 2000.

In 2004, I entered Government service as the senior civilian contracting official for the U.S. Marine Corps where I was responsible for, among other things, all Marine Corps contracting in a combat environment. In April 2006, I was promoted to serve as the Director of Defense Procurement and Acquisition Policy where, among other things, I am responsible for all contracting policy related to contracting in a combat environment. I am also the functional leader for those who do contracting in a combat environment.

I want to thank you for the opportunity to appear before you and to participate in today's discussion on the role of Alaskan Native Corporations (ANCs) in the 8(a) program.

The Department recognizes the importance of small businesses to the nation and our industrial base as well as the statutory requirement to provide maximum practical opportunities for the small business community to participate in Department of Defense procurements. In addition to the general category -- the small business community -- the Department concerns itself with the following subsets: veteran-owned small businesses, women-owned small businesses, small disadvantaged businesses, historically underutilized business zone (HUBZone) participants, Service-Disabled Veteran Owned Small Businesses and small businesses participating in the 8(a) program. Small businesses owned by Alaskan Native Corporations, small businesses owned by Indian tribes and small businesses owned by native Hawaiian organizations are a subset of 8(a) small businesses. We appreciate and support Congressional mandated policies that provide opportunities for these entrepreneurs.

Your invitation asked me to address the role of ANCs in the 8(a) program. As you know, the Small Business Administration manages the 8(a) program. ANC firms, along with other tribally owned firms, participate in the 8(a) program, but, like Indian tribes and native Hawaiian organizations, receive unique procurement advantages not available to individually owned, 8(a) firms. For example, individually owned 8(a) firms generally compete for 8(a) set-aside procurements in which the anticipated total value of the procurement, including options, exceeds \$5.5 million for acquisitions assigned

manufacturing North American Industrial Classification System (NAICS) codes and \$3.5 million for all other acquisitions. ANC firms, on the other hand, are eligible to receive sole source 8(a) contracts regardless of the dollar amount. Additionally, 8(a) ANCs can also own multiple subsidiaries participating in the 8(a) program, provided each one is in a different primary North American Industry Classifications System (NAICS) code, unlike other 8(a) firms that can only own one company and no more than 20% of another 8(a) firm.

There are other differences in requirements for 8(a) ANC firms and other 8(a) businesses. Some of these advantages apply to other tribally owned concerns and native Hawaiian Organizations as well. Affiliated companies are not considered in size determinations for ANCs unless SBA determines that the 8(a) ANC firm or firms have a substantial unfair competitive advantage within an industry. There is no need for ANCs to demonstrate social and economic disadvantage since they have been deemed in legislation to be socially and economically disadvantaged. Finally, management of ANCs firms, i.e., the President/chief executive officer need not be a disadvantaged individual.

You also asked me to address the adequacy of the Defense Department's management and oversight of ANCs. Consistent with my expanded responsibilities following my appointment as Acting Deputy Under Secretary of Defense in January, 2009, I am currently attempting to determine the adequacy of our management and oversight concerns. I have asked my staff to work with the Defense Contract Audit Agency and the Defense Contract Management Agency to ascertain the extent to which

ANC contracts receive the same audit and oversight as other DoD contracts. To the extent they do not, I want to understand why and initiate whatever action is necessary to provide proper oversight. Our initial assessment indicates that over 70 percent of the 8(a) ANC contracts are for services. I want to ensure that these contracts are subject to the same management oversight and rigor that the Department has introduced in all its acquisitions for services. Further, I have directed my Deputy Director for Strategic Sourcing to initiate a detailed review of all of the Department's awards to 8(a) ANC firms for Fiscal Years 2008 and 2009. Through this review, we will gain a more detailed understanding of what we are procuring from ANC firms and in those instances where we are not competitively procuring, the rationale for a sole source approach. I will share the results with you when the review is complete.

In addition, I believe that we can strengthen the process when we make awards to 8(a) ANCs and we can add checks on subcontracting compliance. We need to ensure that all 8(a) firms perform at least 50% of the effort on 8(a) contracts as required by regulations. We stand ready to work collegially with SBA on these two specific aspects of small business procurement.

My purpose here today is not to challenge the assistance provided to 8(a) participants or specifically to ANC businesses. Again, I reiterate my support for the 8(a) program. My concern is with competition in this particular context, and the benefits the federal government and in particular, the Department of Defense, derives from the competitive marketplace. While we have the authority to use sole source procedures with 8(a) ANCs, we in fact do compete some 8(a) ANC procurements. In 2008,

approximately 40% of the DoD ANC awards were competed to some extent. I recognize this is below the DoD average and I would like to compete more.

On many occasions I have stressed the importance of fair competition which I believe is the cornerstone of our procurement system. It is important to obtain the best value for our warfighters and the best use of the taxpayer's dollars. GAO has reported that some sole source procurements to 8(a) ANCs have resulted in paying significantly more for services or products than was warranted. .

I respect the need to provide economic opportunities for 8(a) ANCs. However, based on the Department's experiences with the 8(a) program, I think there may be ways to promote additional competition in appropriate circumstances. The Department has used competition successfully to achieve best value in the 8(a) program and would welcome the opportunity to work with SBA in exploring options for the appropriate application of competition for actions involving ANCs. Who would benefit from this? Taxpayers would benefit because their dollars would be more efficiently and effectively spent. All the procuring agencies would benefit as the prices they would pay for requirements would be competitively determined. Small business would benefit as well because of the greater opportunities available. In short, an appropriate use of competition could provide economic opportunities for the 8(a) ANCs and further help agencies to obtain best value for the government and the taxpayer.

Finally, I would also like to emphasize the important role that small businesses play in the industrial base. Fostering an environment that is conducive to small business is critical in helping us to maintain our competitive procurement system. A strong and

vibrant small business program, which includes ANCs, is one that will allow small businesses to not only provide goods and services that are essential to our national security now, but will also enable them to develop over time so that they can meet the future needs of our nation's warfighters in a competitive marketplace.

SUMMARY

Again, thank you for the opportunity to address the role of 8(a) ANCs in defense procurements. I look forward to working with you and keeping you apprised of our progress in the detailed analysis of 8(a) ANC awards. I would be happy to address any questions that you may have for me. Thank you.

**STATEMENT OF
SARAH LUKIN
EXECUTIVE DIRECTOR
NATIVE AMERICAN CONTRACTORS ASSOCIATION**

Quyanaa (Thank You)

Cama'i (hello) Chairwoman McCaskill and Vice Chairwoman Collins, and distinguished Members of this Subcommittee. My name is Sarah Lukin. *Quyanaa* (thank you) for allowing me the opportunity to provide a perspective from some of the Native Community enterprises in this hearing, and to discuss how the 8(a) program has impacted Alaska Natives, Native Americans and Native Hawaiians. I have a short statement to read and would like to submit my longer, written testimony for the record.

INTRODUCTION

I am Alutiiq from the Native Village of Port Lions on Kodiak Island, a remote community of 250 people in the Gulf of Alaska. I am a shareholder of Afognak Native Corporation, my village Corporation, and Koniag Incorporated, my regional Corporation, each of which were created and mandated by the Congress through passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971. I have served on the Native Village of Afognak Tribal Council and the National Congress of American Indians Executive Council. I just started as Executive Director of the Native American Contractors Association (NACA) four short weeks ago, and moved my entire family across the country because I firmly believe that the 8(a) program is critical to their future and that of all our disadvantaged Native communities. The program has made a dramatic difference in my life, my family's and my community, and I am here today to help ensure other disadvantaged Native Americans and Alaska Natives have the same opportunities.

I am here before your Subcommittee on behalf of NACA.

NACA was formed in 2003 as a voice for Tribes, Alaska Native Corporations, and Native Hawaiian Organizations (NHOs) involved in the Native 8(a) program ("Native Enterprises"). Our mission is to increase self-determination through preservation and enhancement of government contracting participation based on the unique relationship between Native Americans and the federal government. NACA represents sixteen (16) ANC, Tribal, and NHO Enterprises. throughout the nation from Hawaii to Maine and Mississippi to Alaska.

CONTEXT

The stated topic of this Subcommittee hearing is "Preferences for Alaska Native Corporations." Labeling the Native 8(a) program as "Preferences" is inaccurate, and does not tell the whole story, and to some may have negative connotations. The Native 8(a) program represents an important policy determination by Congress to recognize the historic obligations of the Congress to Native American tribes, Native Hawaiians and Alaska Natives. These federal policies are an increasingly important economic development program for America's Native peoples.

In fact, today's discussion of the Native community enterprise 8(a) program involves more than federal government contracting policy and its oversight. It represents the confluence of all three major components: federal government procurement policy; federal small and disadvantaged business policy; and longstanding federal policy towards Native communities.

The Native 8(a) program, as the federal government has argued in court, "furthers the federal policy of Indian self-determination, the United State's trust responsibility, and the promotion of economic self-sufficiency among Native American communities." See *AFGE v. United States*, 95 F. Supp.2d4, 36 (D.D.C. 2002), *aff'd* 330 F.3d 513 (D.C.Cir. 2003).

Thus, this discussion here today implicates our Constitution, treaties, land claims settlements, federal statutes and regulations, and court decrees. And it directly engages those policies advanced by Presidents and this body's Committees on Indian Affairs and Small Business.

So it disturbs me when an official press release describes Tribal, ANC and NHO participation in 8(a) as a "federal loophole." The phrase has the connotation that somehow our economic disadvantages are not real.

The fact that these companies are owned by Native communities that are destitute and geographically isolated, decimated by centuries of failed federal policies, yet are still responsible for the health and welfare of hundreds or thousands of people and their descendants and dependents, that is real. When the poverty rate in our Native communities exceeds all other race categories, and is twice the national average, that is real. The fact that wise Members of Congress have tried to keep the promises made by their predecessors in countless treaties, land settlements, and the United States Constitution when taking hundreds of millions of acres of Native lands, that is real. And it is real too that Native women have earned an education because of Native 8(a) benefits, and that our Native children now speak a few words of their traditional language that had been lost for generations, and that our Native elders now receive a dividend to offset their very limited income.

I want to commend the Chairwoman, Vice-Chairwoman and this Subcommittee for the overdue focus on procurement policy and federal contracting reforms. Oversight of government contracting practices is healthy and welcomed as the Congress examines the full range of contracting issues: contracts awarded for the Iraq war, Afghanistan and hurricane Katrina, additional federal efforts responding to the financial crisis and deepening recession, and the very real challenges facing the acquisition workforce.

Notwithstanding the fact that Native Enterprises collectively represent less than 1.3 percent of federal contracting, we get a lot of attention. Sometimes we feel it is disproportionate attention. Nevertheless, we accept that scrutiny because we need this program to be as strong and effective as possible; because our people depend upon it and cannot afford to see it weakened by either unfair criticism or bad actions; and because any waste or abuse or weakening diverts critical resources from our Native people.

NEED

Over the past 500 years in the wake of European settlement of our indigenous continent, Native Americans have suffered from the loss of our land, economic assets and culture. These changes have resulted in the breakdown of many tribal systems, families and communities. By most social and economic indicators, Native Americans are at the lowest rung, struggling with the legacy of rural isolation and stagnant local economies. Nationwide, American Indian, Alaska Natives, and Native Hawaiians have suffered from decades of poverty and neglect. The 25.7% poverty rate in Indian Country with similar poverty rates in rural Alaska and among Native Hawaiians exceeds that of all other race categories, exceeds twice the national average, and contributes to the 40% unemployment rate -- multiples of the national average. Native communities experience many of the social ills associated with poverty: inadequate health care, a rate of suicide double the national average, alcohol and drug abuse, diabetes, and obesity at alarming numbers. Too many Native Americans and Hawaiians are without the resources and tools to build their communities and care for their families.

Remarkably, amid the widespread poverty and social distress found in Indian Country, there are increasingly signs of hope and examples of Tribes and Alaska Natives and Hawaiians in making strides in building strong communities and economies. There are many stories of struggle, such as the village of Chenega Bay that survived an earthquake and tsunami and rebuilt twenty years later only to be devastated by the Exxon Valdez oil spill. One village member said that her generation "had even forgotten the word in our native language for 'hope.'" But there is hope now, as Chenega Corporation has had a big hand in revitalizing this economically and physically distressed community.

SMALL BUSINESS ADMINISTRATION PROGRAMS

Recognizing that small businesses are critical to our economy, the Small Business Administration (SBA) is charged with assisting and protecting their interests. Congress found that small business concerns owned by those who were disadvantaged could develop and grow their businesses by providing access to the federal procurement market. The SBA has created numerous government procurement programs for businesses owned by disadvantaged individuals and groups. These programs include the 8(a) Business Development program (including Community Development Corporations), the Small and Disadvantaged Business ("SDB") program, the Historically Underutilized Business Zone ("HUBZone") program, and the Service-Disabled Veteran-Owned ("SDVOB") program, and promote minority and disadvantaged small business owners to do business with the federal government.

To ensure that small businesses have access to the procurement market, statutory goals have been established for the federal government to contract with small businesses, SDBs, women-owned small businesses, HUBZone businesses and SDVOBs. The federal government has a 23% mandated small business contracting goal and the SBA negotiates with procuring federal agencies to establish agency goals to ensure that the federal government meets these goals.

The statutory goals for the federal government are:

- 23% of prime contracts for small businesses;
- 5% of prime and subcontracts for SDBs;
- 5% of prime and subcontracts for women-owned small businesses;
- 3% of prime contracts for HUBZone small businesses; and
- 3% of prime and subcontracts for SDVOSBs.

America has a long history of using its purchasing power as a means to further the business development and economic development of various individuals and groups who would otherwise be excluded from the huge government contracting market. This furthers social goals, but more importantly it increases competition and expands and diversifies the sources of supplies and products for the government. Native Enterprises are starting to use these procurement programs just as the government intended -- to use business approaches and models to further self reliance and build strong Native communities, partially fulfilling the federal government's obligations to Native Americans.

NATIVE 8(a) PROGRAM

By creating unique Native 8(a) provisions, Congress recognized the special needs and its obligations to Tribes, Alaska Natives and Native Hawaiians. These are both similar to the legitimate policy goals that support business development efforts for other 8(a) program participants (as well as other small business set-asides for woman-owned businesses and service-disabled veteran-owned businesses, and small and disadvantaged businesses), and the unique relationship between Native Americans and the federal government.

In fact, hearings held by the Senate Indian Affairs Committee in 1987 and 1988 found a need to include Tribes and Alaska Native-owned firms in government contracting because President Reagan's "Commission on Indian Reservation Economies" had documented that the government's procurement policies were significant obstacles to economic development. Further, the Commission found that tribally-owned companies had a difficult time qualifying for 8(a) program certification. The Chairman of the Senate Indian Affairs Committee believed that remedial action was necessary to address the low participation of Native American and Alaska Native-owned firms in government contracting. During the 1988 hearing, Chairman Inouye stated that "directing the purchasing power of the federal government to accomplish social goals such as assisting disadvantaged members of society is well established" and he noted that unfortunately, "this public policy goal has not been achieved with respect to the participation of businesses owned by Native Americans."

As the Congress well knows, the federal government's unique obligations to Native Americans are recognized in the Constitution, federal laws, and by the Supreme Court, and those obligations empower Congress to enact legislation that recognizes the status of Native Americans. Indeed, in terms of economic development, this special relationship is embodied in the Indian Commerce Clause of the United States Constitution. In furtherance of this relationship, Congress enacted legislation to encourage the participation of Tribally-owned businesses, Alaska Native

Corporations and Native Hawaiian Organizations in the 8(a) program in a manner that advances the federal government's interest in promoting self-sufficiency and economic development in Indian Country.

Like other 8(a) firms, Native Enterprises can only participate in the 8(a) program through small businesses that are subject to defined program entry eligibility requirements. Native Enterprises have two key unique 8(a) provisions:

1. The competitive thresholds that limit the amount of sole-source contract awards do not apply; and
2. Native Enterprises can participate in the 8(a) program through more than one company as long as they are in a different industry.

This was the intent of Congress, and it makes sense in light of the economic and social disadvantages with which Native communities must contend and the numbers of Native Americans in need. The disadvantages suffered by Native Americans encompass entire communities and villages, as opposed to individuals who are socially or economically disadvantaged. The ability to operate more than one company allows Native Enterprises to provide for hundreds or thousands of their people.

Similarly, Native Enterprises are not subject to caps for a reason. Unlike the typical structure of a small business, with one or a few owners, Native Enterprises are responsible for combating historical disadvantage, rural isolation, and the depressed economies that have resulted from a multi-generational dearth of opportunity. The program rules were purposely drafted and Congressionally-mandated to reflect the social and economic obligations Native Enterprises have to their communities, the size of these communities, and the immensity of the problems we face. The Native 8(a) program is beginning to achieve what Congress intended: an economic development program to help disadvantaged Native American communities that lifts our people with a hand up -- not a hand out.

Native Enterprises provide quality services and cost-effective products to the federal government. It is no secret that the government contracting marketplace is highly concentrated and dominated by a few very large companies. In 2007, the five largest contractors received almost 24% of the total contract dollars awarded, almost 70% from sole source (www.fedspending.org). By providing additional sources of products and suppliers within the market, Native Enterprises give the government alternative procurement vehicles, provide competition to the big companies, and give the taxpayers' more value for their dollars.

Just one example: Integrated Concepts and Research Corporation (ICRC) (at the time, a subsidiary of Koniag Development Corporation, an Alaska Native Corporation) partnered with Qualis, a woman-owned small business, located in Alabama to bid on a NASA contract to provide aerospace materials testing. Over the life of the \$12.3 million five-year contract, the ICRC/Qualis team earned 100 percent of its performance and cost incentive fees. The ICRC/Qualis team has a reputation for consistently running 10 percent under target incentive budgets and through other initiatives has saved NASA close to \$1 million in contract costs.

Simply put, with more sources of supply and services for federal agencies, competition is increased and best value is provided.

NUMBERS AND PERSPECTIVES

The SBA IG Report just released speaks of a 1,386% increase in ANC contracts, and a doubling of the ANC share of 8(a) dollars, with a majority of those contract dollars going to "just a few ANC participants, primarily through sole source awards."

The growth of Native 8(a) contracts indicates the Native 8(a) program is working. Because growth flows in a natural business cycle, those community enterprises that started in the program early are more established and seasoned and are positioned to grow.

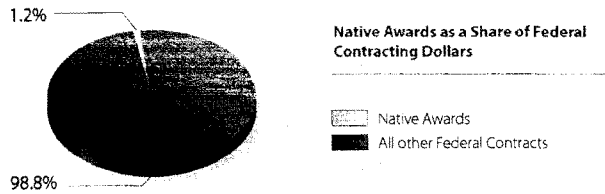
The Laguna Pueblo of New Mexico was the first Native community enterprise to enter the 8(a) program, followed years later by some ANCs, tribes in Montana, Mississippi, Maine, and Oklahoma. Some of these tribes mentioned above were early to the program and its success. Now, about 200 ANC, over 100 tribal, and over a dozen Native Hawaiian community enterprises are at work, vying for federal contracts with over a hundred thousand other federal contractors, and each other.

Frustratingly, now that some Native 8(a)'s are finally succeeding, some would use that success to bar the door to others. Equally frustrating is that some of the same critics argue that lack of success (the fate of many small businesses), or real success distributed in substantial dividends, are also reasons to bar the door.

However, before major judgments and critical policy decisions that are crucial to Native Americans are made, other perspectives using the Eagle Eye data are valuable:

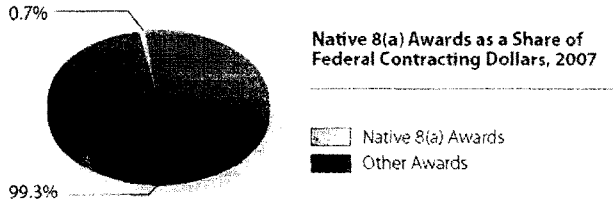
Native Share of Federal Contracting

In fiscal year 2007, the federal government spent a total of \$439.5 billion on procurement contracts. Contracts awarded to Native Enterprises totaled \$5.1 billion, or 1.2 percent.



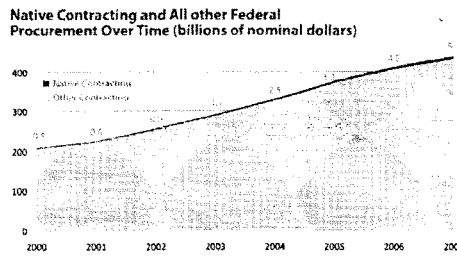
Native 8(a) as a Share of Federal Contracting

In fiscal year 2007, the federal government spent a total of \$439.5 billion on procurement contracts. Contracts awarded to Native Enterprises under Section 8(a) totaled \$3.2 billion, or 0.7 percent.



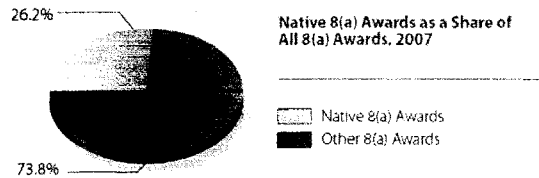
Native Contracting Growth Parallels Overall Contracting Growth

Historically, even though the total amount of Native contracting rose from \$0.8 billion in FY 2000 to \$5.1 billion in 2007, contracting of all other types more than doubled. The share of Native contracting has risen from 0.4 percent of all procurement contracts in fiscal year 2000 to 1.2 percent in fiscal 2007.



Native 8(a) Awards as a Share of All 8(a) Awards

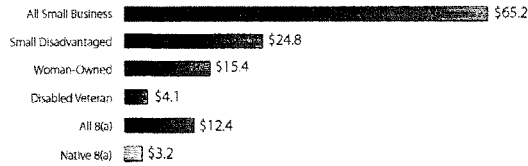
In fiscal year 2007, the federal government spent a total of \$12.4 billion on all 8(a) contracts, or 2.8 percent of all federal contracting. Contracts awarded to Native Enterprises under Section 8(a) totaled \$3.2 billion, or 26.2 percent of all 8(a) contracts.



Procurement Spending by Socioeconomic Category

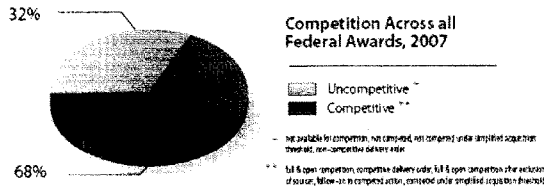
In FY 2007, 8(a) contracts awarded to Native Enterprises totaled \$3.2 billion, or 5 percent of all small business procurement.

Procurement Spending by Socioeconomic Category, 2007 (\$Billions)



Competition Across All Federal Procurement

In fiscal year 2007, \$299 billion in contracts or 68 percent were awarded competitively.



LOCATION

Concern has been raised by some that there is a significant presence of ANC employees in Virginia, Maryland, and other states. Jonathan Taylor, in his testimony to the House Natural Resources Committee, addresses that directly:

...it is not surprising that Alaska has the greatest share of all Native contracting. Virginia and Maryland also figure prominently because so many federal agencies are headquartered in those states, of course. But note also that states with relatively large proportions of Indians (Oklahoma) or large numbers of reservations (New Mexico and Washington) figure prominently in the top states where Native contractors perform their work for the federal government.

Further, when talking of the multiplier effect of a contract dollar on the Native community -- dollars that "would probably not find their way to the Flathead Indian Reservation or the Ahtna region of Alaska at all" without the Native 8(a) program -- Taylor speaks again to the location of the contract:

The Eagle Eye, Inc. data indicate that 20% of the Section 8(a) and 26% of all Native contract dollars in FY 2005 have a state of performance identical to the home state of the corporation. Could the proportion be higher? Perhaps some additional economic activity at the margin could be moved toward the reservations, but supply and demand forces, logistics costs, and geographic synergies create strong incentives for the federal government and the Tribal & ANC 8(a) contractors to operate where it is efficient to do so....

(See Attachment, Jonathan Taylor, "Native American Contracting Under Section 8(a) of the Small Business Act—Economic, Social, and Cultural Impacts," House Natural Resources Committee, September 19, 2007.)

No other 8(a) or small and disadvantaged business, or federal contractor, is restricted to working only in its location of headquarters or incorporation. Just like all industries, it makes sense that government contractors operate their business where, in fact, the government contracts are.

TAKING FROM OTHER 8(a) BUSINESSES

The IG Report makes unsupported conclusions regarding the impact of Native 8(a) contracting on other small and 8(a) businesses. It states that the ability of Native 8(a) firms to obtain unlimited sole-source awards "is arguably one of the most powerful contracting advantages" enjoyed by them, thereby allowing ANCs to capture large contracts. At the same time the IG Report later states that these successes "may have resulted in diminished opportunities for other 8(a) participants." This "possibility" is wholly unsupported by evidence or data or logic. In fact, logic dictates that if the "powerful advantage" for ANCs the ability to pursue contracts over the \$3.5M and \$5M caps, their market competitors would in fact be everyone but the individually-owned 8(a)'s.

The IG Report on this point is contradicted by those who track the 8(a) and Native 8(a) programs, including Calvin Jenkins, SBA Deputy Associate Administrator, before the House Committee on Oversight and Government Reform's subcommittee on September 2007, and Jovita Carranza, Deputy Administrator, U.S. Small Business Administration, who on January 16, 2008, said:

8(a) is an important source of revenue for Native American firms in particular...Indian Reservations are the underserved communities of underserved communities. While it may be challenging to encourage lenders to expand their rural or inner city programs, we all know the challenges are much greater for Indian Reservations. And this, we recognize, is crippling for small business ventures, which need capital to start, to grow and to create jobs and opportunities. Successfully starting a small business under the most auspicious conditions is a Herculean task. But the additional challenges that Native Americans face make it all the more so. Limited access to markets, limited access to an experienced workforce, and limited infrastructure are just a few problems. For these reasons, 8(a) is an essential program for developing Native American economies.

Just four months ago, the Center for Strategic and International Studies (CSIS) issued the attached report entitled *"Structure and Dynamics of the U.S. Federal Professional Services Industrial Base: 1995-2007."* This report relates to professional services contracting, which comprises a large portion of the federal procurement market, and examines the trends in this sector of federal procurement from 1995 to 2007. While this report does not cover the entire federal procurement market, it covers a substantial section of it. This CSIS Report supports the following conclusions related to Native 8(a)'s, small business contracting, and the role of large business in the federal procurement marketplace:

1. *In terms of market share it is large business which has steadily encroached on the overall market and grown its "share of the pie," principally to the detriment of middle market contractors* (page 25 and 31, Figure 3.17). Large business share of the federal professional services contract market increased from 37% in 1995 to 46% in 2007 (page 27, Figure 3.14). Small business' share has held steady between 19% and 21% during that time. However, medium size business (those that are not "small" by SBA standards, but with less than \$1 billion in revenue) fell from 44% in 1995 to 33% in 2007.

2. *Small Businesses have seen impressive real dollar growth and have held their own as a percentage of the overall market.* As noted in the CSIS Report, contract dollars for professional services contracts increased from just over \$100 billion in 1995 to \$233 billion in 2007 (page 10, Figure 3.1). During this time period small businesses held their own in terms of percentage of prime contracts awarded, generally ranging from 19 to 21% in total prime contract awards (pages 25, 27, Figure 3.14). Assuming a 20% share of prime contracts, this means the dollar value of awards to small business grew from approximately \$20 billion in 1995 to \$46 billion in 2007.

3. *The increase in dollar value of small business prime contracts far outstrips the value of ANC contracts.* As noted above, the dollar value of contracts awarded to small business has increased substantially since 1995, and is now in excess of \$46 billion per year. Small business has seen a Compound Average Growth Rate (CAGR) roughly equal to the overall growth in contracting, or approximately 7% in prime contract dollar value during this time period. While Native 8(a)'s have emerged in the federal procurement market during this time, the growth in the dollar value of awards to small businesses is many multiples of the value of contracts awarded to Native 8(a)'s. In other words, even if one subtracts the dollar value of awards to Native 8(a)'s, small businesses are still seeing substantial growth in contracting dollars. For example, in 2007 Native 8(a) contracts reached several billion dollars in value, whereas the value of awards to small business was ~\$46 billion. [Note: This analysis overstates the Native 8(a)'s' share of this growth in small business contracting dollars because the Native 8(a) figures are for ALL federal procurement, whereas the ~\$46 billion figure only relates to professional services contracts, which represent less than 50% of all federal contracting dollars.]

4. *Most importantly, the data shows that while the use of "minority" business set-asides grew substantially from 2000 to 2007, small business set asides also grew!* Figure 3.15 (page 28) of the CSIS Report dispels the myth that Native 8(a)'s are taking contracts from other small businesses. There are two important facts to be gleaned from this graphic. First, the percentage of small business set-asides (non-8(a)), grew at an 8% CAGR over the past five years. Not only

have small business set-asides not gone down because of awards to Native 8(a)'s -- the opposite is true: they went up. Second, there was a spike in 8(a) set-asides from 2000 to 2002 in which they went from barely a trace to nearly 4%, or from nearly zero to close to \$10 billion a year. While it is true that the Native 8(a) program also emerged at this same time, the value of Native 8(a) awards is only a fraction of the overall 8(a) set-aside market, and the growth of Native 8(a) set-aside contracts is roughly proportionate to those of all 8(a) contracts during this time. Third, the percentage of all set aside contracts grew from 5% of total federal spending on professional services contracts in the period 1995-2001 to 9% in the period 2002-2007. [Note: Again, keep in mind that the CSIS report is focused on only a portion of the federal market, whereas the figures related to Native 8(a)'s are for ALL federal procurement; this means that the dollar value of Native 8(a) set-asides is again overstated in percentage terms. In addition, the figures in the CSIS Report only relate to set-aside contracts, whereas most figures related to Native 8(a) revenues reflect all Native 8(a) contracting dollars, set-aside and non-set-aside.]

5. *There are far more contractors, including small businesses and Native 8(a)'s, participating in the federal market place than there were 10 years ago.* As noted above, the fact of the matter is that large businesses have been the primary beneficiaries of the federal prime contracting growth in the past 13 years and have gained a very significant amount of market share. Another more likely pressure point for all contractors, including in particular small 8(a) businesses, is the tremendous growth in the number of participants in the federal marketplace. For example, the CSIS Report notes that the number of small businesses nearly tripled from 31,000 in 1999 to more than 90,000 in 2007. While Native 8(a)'s also proliferated during this time, their growth is overshadowed by the enormous growth in the number of contractors in the marketplace.

Clearly, there are structural differences that affect the ability of small businesses, 8(a) or otherwise, to compete against the large government contractors, as some Native 8(a)'s can now do. For example, bonding is mandatory for any contractor. Under SBA limitations for net worth and revenue, individually-owned 8(a)'s often lack the ability to obtain sufficient bonding to perform significant construction contracts.

In the case of contracting generally, individually-owned 8(a)'s do not have the capacity to manage larger contracts given the net worth and size limitations under the 8(a) program as they require significant start-up and financial carrying costs to undertake recruiting, process human resources duties, and maintain payroll while waiting for government payments to kick in.

NACA strongly believes that these issues should be addressed positively, and we specifically support enhanced participation goals, larger thresholds and enhanced guidance and ease of mentoring for individually-owned 8(a)'s, as well as partnering and subcontracting between Native and individually-owned 8(a)'s. We have already seen some extraordinary examples of Native Enterprise/individually-owned 8(a) partnering, and I am sure the subcommittee will hear many success stories from women-owned businesses, service disable veteran-owned businesses, and other small businesses across America.

Further, the IG's comment that ANC success "may have resulted in diminished opportunities for other 8(a) participants" is more than simply unsupported, contradicted by fact and is illogical. It is disheartening because very late in this investigation (June 2009) "in preparation for a July

2009 congressional hearing," a "high importance" request for "information regarding the impact that ANC firms participating in the 8(a) program has had on other 8(a) firms" was made to SBA district directors. According to the email chain I was provided, the desired "information" was specific:

"Name of the ANC firm (if known)
Value of Contract Award (Missed opportunity for 8(a) Firm)
Brief Description of Complaint"

They did not ask for all information or for all impacts that would have provided a balanced review of ANC 8(a)'s. Instead they only asked for information on "missed opportunities" and "complaints."

It is also disheartening on an emotional and historical level. Native communities are intimately familiar with divide and conquer. Having grown up poor in rural Alaska, I am personally familiar with the tactic of pitting one disadvantaged group against another. It is unseemly and nonsensical to divide small businesses from 8(a) businesses, to divide individually-owned 8(a)'s from Native community 8(a)'s, and to divide ANCs from tribal 8(a)'s and those from NHOs.

This is especially exasperating when the needs are so great in Native America and the benefits for all America, and the American taxpayers, will come from growing the opportunities for all small businesses and all individual 8(a)'s and Native 8(a)'s. Large federal contractors need the competition, so it is even more maddening when we are told to spend huge amounts of our time and personnel chasing records for these investigations when, according to Federal Times, "only 12 percent" of what the top ten federal contractors won "came about through full and open competition" (Big Contractors Compete Least, January 14, 2008).

It is beyond my charge, or desire, to get dragged into the "great debate" involving sole source federal contracting. Clearly the 8(a) program is part of the sole source discussion, but its benefits are nominal compared to the contracts and dollars flowing to others, especially large contractors, through sole source and other delimitations of full and open competition. I do know there is an orthodoxy that abhors sole source contracting; mixing logic, rhetoric and substance. The argument against sole source is that the government does not get good value without competition. I must address this argument on behalf of Native 8(a)'s because the IG raises it as an identified concern.

This rhetorical ploy of saying the government "may" not be getting good value attempts to shift the burden to us to prove otherwise. Of course, the IG could have investigated the very issue; they could have gone to the contracting agencies and determined which of the tools available to the contracting officers (described below) were used to ensure "fair and reasonable" pricing from the 8(a)'s, as required by law. Contracting officers take this function very seriously and would have substantial documentation available for the IG -- had they been asked.

SOLE SOURCE NEGOTIATION PROCESS

Below are the legal aspects of "Price Analysis" that contracting officers are required to engage in under Federal Acquisition Regulation (FAR) Part 15, Contracting by Negotiation, the process by which most sole source contracts are awarded. The process is open and, as described by others, often results in the agency getting a better deal because the process is more open and flexible than "competition" as described in the FAR.

The FAR requires a contracting officer to ensure they are getting a "fair and reasonable" price in ALL contracts, including sole source contracts. FAR 15.402(a) ("contracting officers MUST obtain supplies and services from responsibly sources at prices that are fair and reasonable.") Proposed prices in settings where there is "adequate price competition" are presumed to be fair and reasonable. FAR 15.402(a)(1); 15.404-1(b)(2)(i). However, the FAR specifically contemplates that there will be situations where there is not adequate price competition (most contracts are not fully competitively awarded), and prescribes a variety of tools for contracting officers to use to ensure they are getting a fair and reasonable price.

These are spelled out at FAR 15.404-1(b)(2)(ii)-(vii):

- (ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.
- (iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- (iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- (v) Comparison of proposed prices with independent Government cost estimates.
- (vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.
- (vii) Analysis of pricing information provided by the offeror.

As a last resort, the contracting officer can also require "cost and pricing data" if none of the above techniques are satisfactory. This means they can require the contractor to provide specific estimates, subcontractor and supplier quotes, etc. -- basically open their books. The contracting officer has an obligation under the Truth in Negotiations Act (TINA) to be complete, honest and accurate in the information they provide and to update that information up to the time a final agreement on price is asked for if their estimates, supply costs, etc., change. There can be civil and criminal sanctions for violation TINA.

In addition, the price proposal process is not a "take it or leave it" one. The contracting officer and the 8(a) engage in a negotiation process, based upon the information provided by the

contractor and the information gathered by the agency (estimates, etc.) To call this a "negotiation" is not exactly fair to the contractor as the contractor has to basically lay all their data on the table, which is not how most commercial negotiations occur.

Beyond the legal process that establishes the government's ability/requirement to get a "fair and reasonable" price, there are at least two other arguments as to why the government still gets good value (and maybe even "best value") in the Native 8(a) sole source process.

First, there is often competition for these contracts, just not the formalistic version prescribed in the FAR. It is not uncommon for agencies to negotiate with two or more ANCs or Tribes for the same requirement (these are often referred to as "bake offs" or "beauty pageants"). While it's not the rigid competition called for under the FAR, there is competition, and maybe even more vigorous competition.

Second, because the FAR "competition" process is so rigid, it often prevents the government from getting the best value. The government has to prepare the specifications, etc. for its solicitations well ahead of time and without direct contact with the contractors who will be called upon to provide the solution. Therefore, the government is often not aware of the best possible solutions for a particular requirement when it drafts the specifications. Also, because the FAR-based "competition" puts significant limitations on how, when and what can be discussed with offerors, the government is not always having contractors bid to the statement of work that makes the most sense.

On the other hand, in the "competitive sole source" environment, the government does not have its hands tied the way it does in a "competitive" procurement. They can sit across the table from the vendor and talk openly about their needs and collaborate on the best approach to getting the job done, without all of the restrictions on communication set out in the FAR "competition" process. This results in the government having a better chance to get what it really wants and needs and to address potential innovations with the contractor. The contracting officers also get the Defense Contract Audit Agency (DCAA) involved early on to look at proposed pricing, etc. This process is sometimes referred to as "Alpha contracting," and DoD (and specifically AT&L) has a few documents on their website about the Alpha contracting process that laud its efficiency.

In addition to increasing the likelihood that the government will get what it really needs, there is also an administrative savings that is achieved in the sole source process because it just takes a lot less time to negotiate the deal (vs. drafting specifications, putting out the RFP, waiting 30-60 days, evaluating a host of proposals, potentially dealing with protests, etc.)

BENEFITS

The Native 8(a) program was designed to honor America's word and the contracts made with Native Americans, to empower Native communities to provide for our people, to sustain and expand our economies, and to combat the historic economic and social ills our communities face.

It is also a way for Tribes, ANCs and NHOs to engage outside communities, outside investors, and other expertise in economic activities that benefit Native communities.

As Jonathan Taylor noted in his testimony before the House Natural Resources Committee:

Tribal & ANC 8(a) companies distinctly represent whole communities of Americans. This characteristic means that the social and economic effects of Section 8(a) contracting tend to concentrate in the community of tribal members or ANC shareholders. In some cases, the effect proceeds directly to every individual Indian in the community, say, as a dividend check. Other benefits may be universally available (e.g., college scholarships or burial assistance), but not universally embraced. In other cases, the effect spreads across a community, such as would occur when the 8(a) company improves the community business climate or supports a Native cultural ceremony. Regardless of where in the communities these benefits arrive, they are nearly always needed, and in many cases they were unavailable prior to Section 8(a) contracting...

In addition to profits, jobs, and business experience, 8(a) contracting directly supports efforts underway to address and reverse the social consequences of poverty. Decades on end of below-average income combined with property expropriation, assimilation policy, and paternalistic federal approaches to social problems leave deficits in Indian social indicators ranging from life expectancy and educational attainment to overcrowded housing and criminal victimization. (See Harvard Project on American Indian Economic Development, 2007.) As noted above, federal resources available to address these deficits fall short of what is required and are in decline. To rebuild schools, to prevent late-onset diabetes, to reduce juvenile delinquency, to protect Indian graves, and to maintain Native water quality (among other things), tribes and Alaska Native communities need fiscal resources. Tribal & ANC 8(a) contracts help provide them.

Native enterprises are just now getting a foothold in the federal marketplace after being left out, locked out, and elbowed out for decades. With some modest success, Native 8(a)s now represent a small slice of the total procurement dollars; yet however small, it is beginning to have a big impact in Native communities.

A 2009 NACA survey of 11 ANCs that supplied benefits data to the Subcommittee and to NACA shows that they alone provided over \$530 million in various categories of shareholder benefits to over 67,000 shareholders in years 2000-2008:

Based on data from 11 ANCs:

More than \$ 341,627,449 total dividends 2000-2008
More than \$ 533,784,813 total shareholder benefits 2000-2008
11 ANCs represent 67, 610 shareholders

More than:

Shareholder Dividends	\$341,627,449
Lands Management Programs	\$26,734,770
Donations, Community Contributions, Sponsorships	\$19,807,900
Scholarships	\$20,726,980
Shareholder Development	\$1,094,930
Death Benefit/Burial Assistance	\$1,330,142
Elder Support & Recognition	\$4,585,566
Total Shareholder Benefits 2000-2008	\$542,642,382

Although the total in benefits flow from 8(a) and non-8(a) federal contracting profits, as well as other business ventures such as resource development, these figures show that Native participation in the 8(a) program is helping some Native communities to compete in the American marketplace, build successful and self-reliant families, develop their tribal member shareholders through training and business supports, provide basic social and community services, and to act as engines of growth in their communities.

Benefits include managing our remaining lands (lands the Native corporation is responsible for and which have great importance in Native culture), coordinating economic development opportunities, providing scholarships for college and vocational training, culture and language preservation programs, and donations to local non-profits that deal with a wide range of social services, educational and cultural issues affecting the region or village. Since there are problems and community obligations that cannot and perhaps should not be directly addressed by Native corporations, the latter--donations to local non-profits--are critical to assisting local communities in dealing with some of the toughest challenges Alaska Native communities face.

Donations to scholarship funds aim to increase the only 6% of Alaska Natives with a bachelor's degree. By increasing the number of Alaska Natives with college degrees, these communities hope to decrease the rate of unemployment in Alaska Native populations, typically twice the national average, and increase the number of Native people employed in Native Enterprises.

In the area of lands management Alaska Native Corporations have a responsibility to manage the lands they own on behalf of their Native people. Native Corporations spend a portion of their revenue ensuring that their communities have access to these lands for subsistence hunting and fishing, which makes up a significant portion of rural Alaskans' diet and has cultural importance as well.

Cultural preservation programs are revitalizing languages and traditions that have been decimated over the last century. These programs not only aim to preserve cultures, but also aim to address the horrible suicide rates that plague Alaska Native communities. According to a

recent study by the State of Alaska, Alaska Natives suffer 32.6 suicides per 100,000 people as compared to the National rate of 10.6 per 100,000 people. Cultural preservation and grounding in our traditional ways strengthens our communities and builds self-worth and cultural pride in our young – those most susceptible to taking their own life.

Bottom line for these few ANCs, some pretty successful, is that a half of a billion of dollars in benefits went to their people and communities. Those benefits are real, and important. Is it enough? No. Are all Alaska Natives benefiting? No. Did all their businesses succeed and their shareholders benefit equally? No. But do all small businesses succeed and their owners benefit equally? A half of a billion of dollars is a lot, and we can tell you that -- one Alaska Native story by one Alaska Native story -- it *truly* matters.

I know the issues our villages face intimately. I am one of those stories. Like so many of our Native children, I was a socio-economic statistic. Probably I am today part of some analyst's denominator divided into some dollar benefits numerator to get a number that says "too few benefits per shareholder." Well, this statistic comes from a broken family that faced substance abuse and poverty. I remember how ashamed I would feel when I had to buy groceries with food stamps and wear second hand clothes. No one in our family had ever earned a degree, but my two sisters and I have been given an opportunity our parents never had -- one that has empowered us to overcome enormous odds and experience our own American Dream.

Scholarships from my Native corporations helped me attend college. I earned a Bachelor's Degree from the University of Alaska Anchorage in 2001, and graduated with a Master's Degree in Rural Development from the University of Alaska Fairbanks in 2005. Both of my sisters have earned Master's Degrees and have worked for various Native organizations to improve the quality of life of our Native people.

My dad had been a carpenter and fisherman his entire life. A few years ago, at age 53, and after our village corporation had begun experiencing success in the 8(a) program, he decided to build his own sports fishing charter business in our village. He received Native corporation scholarships to cover the costs for the required Coast Guard trainings and certification, and he utilized his Native dividends to help purchase a boat and other needed equipment. Today, he's focusing on expanding his business and employing young students, directly impacting the local village economy. His story clearly illustrates the spirit of intent for Alaska Native Corporation and Tribal participation in the 8(a) program – to provide the tools necessary for people like my dad to give back to our communities, in more ways than just employment with our Native corporations.

My family is living proof of the positive impact the Native 8(a) program has had on our village. A paper, published by the Native Nations Law & Policy Center of the UCLA School of Law, titled *Federal Contracting Support for Alaska Natives' Integration into the Market Economy*, states, "Competitive and self-sufficient ANCs will help alleviate economic and social disadvantages of Alaska Native communities, increase tax revenues, and reduce the costs of government support programs to Alaska Natives." (See Attachment) Our Native corporations work hard, providing much needed services to the federal government at good value and, as a

result, it is able to help tribal member shareholders like me and other members of my family achieve a better future.

Alaska Native Corporations are dedicated to advocating for and assisting our Native people in finding employment within our Native corporations and with other organizations. Many ANC's have established Shareholder Development programs to improve shareholders' quality of life through providing our Native people with the training and educational opportunities necessary to improve their life skills and job prospects. Some ANC's have formal Internship Programs to provide tribal member shareholders and descendants with valuable work experience which in turn, will provide them with marketable skills. One Native corporation provides its interns with competitive pay and has had more than 200 students participate in its intern program since it started in 1981; the program has proven to be effective, with corporate headquarters shareholder employment around 70 percent, which includes many executives. This not only increases the quality of life of these Native people, it also provides the Native corporation with a network of capable prospective employees who meet the corporation's requirements and policies for shareholder hire.

Another Native corporation provides a Shareholder Employee Training Program to help shareholders that are currently employed by the Native corporation or one of its subsidiaries to accomplish their career goals by receiving the training they need to excel in the workplace. This corporation sets aside \$500 in training funds for each shareholder/descendent employee. Other shareholder development initiatives this ANC offers its shareholders and descendants include assistance in resume writing, employment applications, career counseling, and a Talent Bank to link qualified shareholders and descendants with employment opportunities within and outside the corporation. The ANC also provides shareholder business supports to help promote shareholder owned businesses and services by encouraging its shareholders, vendors, business partners, and staff to utilize shareholder owned businesses and services – a total of 16 shareholder businesses were listed in the online directory in 2008. It also promotes statewide partnership through its Shareholder Development Action Group to build partnerships between Native corporations and organizations that practice Shareholder and Alaska Native hire.

As noted, scholarships are also a vital component for our future to ensure we have educated, experienced shareholders to lead our corporations. As a result of the emphasis on shareholder employment, Alaska Native Corporations have a vested interest in the progress of their youth and many award scholarships to shareholders, their descendants and even dependents who are pursuing college and post-graduate degrees and post-secondary education. The scholarships enable our people to pursue levels of educational and vocational achievement they might not otherwise have been able to afford. The scholarships are based on a variety of criteria, including demonstrated commitment to the community's values, prior academic performance, financial need, and recommendations from others. Since its program's inception, one Native corporation has awarded scholarships to more than 3,000 recipients, and provided a total of more than \$5.7 million in scholarships from 2000-2008.

One Native scholarship recipient, a descendant of a shareholder, credited scholarship awards for setting her on a path of success and professional achievement. In her personal testimonial on how her Native corporation has benefited her, she explained that the scholarships she received from

both her regional corporation and her village corporation prevented her family from going into debt to pay for her education. She also applied for and received a summer internship with her regional corporation, which the shareholder development department encouraged her to continue full-time at a contract site during the school year. For her last two years of school, her regional corporation paid her tuition and reimbursed her for her textbooks. She also received excellent hourly pay and the opportunity to work at the jobsite level where she saw first-hand the importance of successful contract performance. Upon graduation, she applied for, and received, an apprenticeship with her regional corporation. This shareholder acknowledged that, "were it not for the benefits gained through my native corporation's participation in the SBA 8(a) program, I probably would not have had any of the experiences mentioned here."

Alaska Native Corporations created Annual dividends, Shareholder Permanent Funds, and Shareholder Trusts so that future generations will also benefit from today's business success. These dividends mean a tremendous amount to our members - young families just starting out, elders, and families who live a subsistence lifestyle in traditional villages suffering from poverty and unemployment levels that are an embarrassment to the industrialized nation. One Native corporation paid out a total of \$69,952,680 in dividends to its shareholders between 2000-2008. This corporation's 2005 shareholder survey found that the average household income of its shareholders was estimated at \$45,000, which is above the 2007 U.S. poverty guideline of \$25,820 for a family of four in Alaska. This data demonstrates that for an average shareholder with 100 shares, the Native corporation's annual dividends account for roughly 50% of their annual income. Without the support of the Native corporation, many of their Native people would be in poverty. For example, one tribal member shareholder relies on her dividend to help pay her mortgage so she can stay at home and care for her elderly parents, while another is on disability and needs her dividend to offset her very limited income.

The sources of revenue from which dividends are calculated require that an Alaska Native Corporation's business and investment strategies are well diversified - the 8(a) program for many ANCs is an important point of diversification that enables the Native corporation to maintain its dividends to shareholders and the creation of associated employment, contracting and subcontracting opportunities now and into the future.

In addition to dividends, jobs and scholarships, our Native corporations support a variety of programs run by local organizations to help sustain our culture and values. One of my favorite programs is the Dig Afognak Culture Camps, operated by the Native Village of Afognak. At these camps our children, like my son Kadin, are learning Alutiiq history, culture, language, and traditional ways from elders. Perpetuating Alutiiq traditions is a core value of our people, and keeps our youth grounded in their identity as they move forward in corporate America, strengthening our community.

POLICY STATEMENT ON SMALL BUSINESS CONTRACTING

Let me conclude with a discussion of the strong support by the National Congress of American Indians (NCAI), the National Center for American Indian Enterprise Development (NCAIED) and NACA for direct and immediate Congressional action that will enhance the 8(a) program. NCAI, NCAIED and NACA have been very active for years in pushing, pulling and prodding for reforms and more resources for the SBA. As the GAO study concluded now 3 years ago, Congress needs to focus on enhancing SBA's capacity -- more people, resources, enforcement, guidance, training, and direction to contracting agencies.

We not only want, but need, to make sure the Native 8(a) program is working properly for the sake of our people and our Native community enterprises. That is why we strongly support:

1. getting the SBA rules (that have gone through lengthy Tribal consultation and review) promulgated in 90 days;
2. increasing resources for the SBA Native 8(a) program by at least \$1M (see our joint letter to Senators Durbin and Collins, Appropriations);
3. increasing enforcement, training and compliance guidance; and
4. simplifying 8(a) classification, online transparency and program accountability.

However, many issues raised by the 2006 GAO report and the IG are not specific to Native Enterprises or the 8(a) program, but rather are inherent to the broader federal procurement system. America needs a larger, better trained acquisition workforce; more contract transparency; enhanced online technology; consistency in 8(a) and other classifications; clearer delineation of policies regarding prime/sub, mentor/protégé and directed contracts; and overall increase in accountability. Our three organizations support these efforts.

POLICY POSITIONS

NACA, NCAI, and NCAIED also strongly support policy changes that directly enhance the opportunities for all small businesses and specifically individually-owned 8(a)'s.

A. Expand Small Business Contracting Opportunities

The SBA's regulations and policies have not kept pace with many changes in the Federal contracting market, including: increases in the average size of contracts, now often exceeding the thresholds for individually-owned 8(a)'s and sometimes the capacity or efficiencies of small firms; the prevalence of teaming arrangements and joint ventures; the growth in bundling and consolidation of contracts; growth in emergency/overseas contracts; limited enforcement and lax compliance; downsizing of the procurement workforce and pressures to meet deadlines and small business goals; and the consolidation and merger of government contractors to perform larger contracts. These changes have made it harder for small businesses, particularly 8(a) firms, to compete for government contracts. In reauthorizing the Small Business Act, we support efforts to:

1. Fulfill Congressional intent to further the Indian Self-Determination policy set forth in 25 U.S.C. 450a, by preserving the provisions that promote the competitive viability of Native enterprises, small business concerns certified by SBA as owned by Tribes, ANCs and NHOs that help build stronger, more self-sufficient Native economies.
2. Enhance the ability of individuals to qualify for certification as 8(a) program participants and to pursue larger contracts on a competitive or non-competitive basis; increase and index the caps for individually-owned 8(a)'s.
3. Increase the net worth thresholds, including annual inflationary adjustments, for individuals seeking to qualify and retain eligibility for certification as 8(a) program participants.
4. Better track and monitor Federal agencies' achievement of their 23% small business and 5% minority business contracting goals, and increase these two goals to 30% and 8% respectively.
5. Support provisions that tighten limits on bundling and consolidation of contracts, break up such contracts for award to small businesses or employ procurement procedures to enable teams of Native enterprises and other small businesses to pursue larger contracts. Identify new ways to participate in the concentrated Federal procurement market, including innovative teaming contracts set aside for competition among teams of small businesses.
6. Encourage small businesses with larger contracts to implement subcontracting plans to develop stronger business alliances among all types of small business contractors, including 8(a) and other small disadvantaged concerns, service disabled veteran owned, HUBZone, women-owned and other small businesses.

B. Increase Administrative Oversight and Effective Monitoring

Strong oversight should help good people to do good things. Yet even permissible relationships, such as a mentor-protégé agreement with a large business, can be cast as improper, and doubt thrives on the scarcity of accurate data. Increased SBA and other agencies' oversight of existing requirements would verify that Native Enterprises and other 8(a) companies are good stewards of taxpayer funds.

The following steps can foster better administrative oversight:

1. Improve SBA's implementation of the 8(a) provisions applicable to Tribes, ANCs and NHOs by:
 - a. enhancing existing policies and procedures to improve outreach and assistance to, and oversight of, Native enterprises;
 - b. redesigning and improving the Tribal 8(a) certification process to reflect the unique nature of Tribal enterprises; and

- c. authorizing an Assistant Administrator for Native American Affairs to access the various programs of the SBA to improve the support provided to Native enterprises through contractual, financial and technical assistance.
2. Provide the SBA with sufficient resources to rebuild and train its staff and improve implementation of the 8(a) and other programs to assist all small business contractors in accessing the tools necessary to compete successfully and receive a fair share of Federal contracting opportunities.
3. Design and implement a transparent system to identify and track contract awards to Native enterprises owned by Tribes in Federal procurement data systems.
4. Establish a small business 8(a) training program to provide annual training sessions for both 8(a) contractors and contracting officers.

COMPLIANCE

NCAI, NACA, and NCAIED are deeply committed to ensuring that Native companies fully comply with all of the SBA requirements for the 8(a) program and other federal contracting requirements, both in the spirit and letter of the law and regulations. We strongly believe everyone must play by the rules, and anyone who does not should be held accountable.

To this end, our three organizations drafted recommendations for 8(a) program improvements designed to enhance accountability, improve transparency, and complement SBA's limited resources to engage in more efficient and effective management and oversight of the program.

As part of our ongoing efforts, NACA developed and adopted a best practices guide that emphasizes rigorous compliance with SBA program regulations and requirements. As additional aspects of our joint commitment, we are undertaking initiatives to:

1. Implement best practices through multiple levels of training;
2. Develop an education package for parent board oversight and governance;
3. Facilitate the development and implementation of Ethics Compliance Programs; and,
4. Conduct regular seminars on all aspects of 8(a) and small business contracting and compliance with all federal contracting requirements.

On specific issues, we work with SBA and other interested parties to:

1. Improve transparency/accountability in the disclosure of ownership agreements. Our organizations have already recommended more transparency on ownership in our previous administrative recommendations we submitted to the SBA (ANC GAO Report Comments April 2006 and SBA Consultation November 11, 2007). We have also explored whether a confirmation of ownership and the status of ownership agreements may be required in the annual audited financial statements, or whether a confirmation may be required from the management of the parent Tribe or Alaska Native Corporation.

2. Improve transparency/accountability in disclosures provided on the individual compensation worksheet in SBA Form 1450. We recommend that SBA issue clear and consistent directives on the application of this and other sections of the standard 8(a) Participation Agreement to Alaska Native Corporations and tribal companies. We will work with SBA in developing guidance for completion of the Participation Agreement by 8(a) companies of Tribes and Alaska Native Corporations.

3. Recommend changes to FAR Part 3.4 to clarify the qualifications of a bona fide sales agency. The ability to utilize bona fide sales agents is often crucial for effective business development by any government contractor, not just 8(a) companies and small businesses. The current version of the FAR does not provide guidance or specific factors for contractors to consider when evaluating agents, nor does it establish a ceiling or guidelines as to what fees are considered reasonable. In general, we believe the following principles provide a starting point:

- a. Agreements with bona fide agents should be in writing, established for a reasonable term, and contain appropriate representations and warranties against gratuities, conflicts of interest, and compliance with the Procurement Integrity Act;
- b. Agents should demonstrate adequate knowledge of a contractor's business services and products, as well as other industry qualifications demonstrating their qualifications to act on behalf of the contractor, and;
- c. Compensation paid under the Agreement should not be exorbitant or inequitable, when compared to the services performed or to customary fees for similar services related to commercial businesses.

CONCLUSION

Elders tell us to speak plainly and to the point. After so many words, I will still try.

The Native peoples of America, after centuries of failed federal policies and broken promises, face very harsh economic, social, health, safety and educational challenges. For many of our Native communities, the primary federal policy that offers a chance to embrace America's dream is the Native 8(a) program. Geographically and financially isolated, our people have had to go from 0 to 60 mph, learning corporate structure and culture and, at the same time, maneuvering through the federal contracting system -- all to provide real value to the federal agencies on goods and services that are often low margin and to the taxpayers who hire us all.

There have been wonderful successes. These have been achieved by Native 8(a)'s, our Native and non-Native employees and partners (many of them small and disadvantaged businesses), Native communities, their families and especially the young. The Native 8(a) benefits protect our land, our language, our culture, our elders and children, and our future. They help America keep its word. They build business capacity, work ethic, teachers and nurses and IT specialists, hope and opportunity. The hand-up is replacing the handout.

There have been difficulties too. The SBA is under-staffed and under-funded. Their enforcement, assistance, guidance and training has suffered. The usual small business hurdles,

and most small businesses fail, are exacerbated by the deprivations suffered by Native communities for centuries. So there have been missteps, and there are some problems, some very real problems that we do not minimize because they distract, weaken and take from the very program that many Native Americans literally depend on for survival. We strongly believe everyone must play by the rules, and those who do not should be held accountable.

Yet so much more needs to be done. Our Native people represent 4% of America but Native 8(a)'s still represent less than 1.3% of federal contracting, and our 8(a) awards represent less than 0.8%. The problems in government contracting are systemic and should not be visited on the Native 8(a) or the other small and disadvantaged business programs. Native 8(a)'s do not take business from other 8(a)'s, but we offer real competition to the large contractors and real value to the taxpayer.

We not only want, but need, to make sure the Native 8(a) program is working properly for the sake of our people and our Native Enterprises. That is why our three organizations (NCAI, NCAIED and NACA) have been very active for over 3 years in pushing, pulling and prodding for the GAO recommended reforms, additional reforms, and more resources for the SBA. We strongly support getting the SBA rules promulgated in 90 days, increasing resources for the SBA Native 8(a) program by at least \$1M, increasing enforcement, training and compliance guidance, and simplifying 8(a) classification, online transparency and accountability. As for the broader Federal procurement system, we support the efforts to build a larger, better trained acquisition workforce; increase transparency; utilize online technology; mandate consistency in 8(a) classifications; delineate policies regarding prime/sub, mentor/protégé and directed contracts; and enforcement and accountability.

Let me end where I began, *Qiyanaa* (thank you).



NATIONAL
CONGRESS
OF AMERICAN
INDIANS

National Congress of American Indians
Jacqueline Johnson-Pata, Executive Director
Hearing on "Contracting Preferences for Alaska Native
Corporations"
Thursday, July 16th, 2009
Dirksen Senate Office Building

Oral Testimony for the United States Senate Committee on
Homeland Security and Governmental Affairs,
Ad Hoc Subcommittee on Contracting Oversight

Good afternoon. My name is Jackie Johnson-Pata, and I am the Executive Director of the National Congress of American Indians, the largest and oldest organization representing American Indian and Alaska Native governments.

The U.S. Constitution and many statutes establish the unique American Indian and Alaska Native trust relationship with the federal government. Native peoples ceded **over 500 million** acres of land, and the United States entered into a trust relationship with American Indians and Alaska Natives.

Congress was very specific when articulating the federal government's relationship with Alaska Natives in the Alaska Native Claims Settlement Act or ANSCA. This law required federal compensation to settle Native land claims, and Congress mandated that Native-controlled corporations be created. Furthermore, in the Settlement Act, Congress confirmed that Alaska Native corporations are eligible for federal procurement programs.

The federal government has enacted numerous policies aimed at reducing poverty and creating economic opportunities for tribes. Specifically the 8(a) program has

helped tribal communities to overcome economic and social barriers and create new business opportunities for Native and surrounding rural communities that are far removed from major markets.

Inter-generational poverty remains a serious challenge. American Indians and Alaska Natives are among the most economically distressed populations in the United States, with a poverty rate of 25.7%. This far exceeds the poverty rate for any other group and is more than double the national average. Per-capita income of Indians living on reservations is still less than half of the national average, and Indian unemployment is twice the national average.

Many tribal governments lack the ability to provide the basic infrastructure that most U.S. citizens take for granted, such as water, sewage, roads, affordable housing, plumbing, electricity, and telephone service.

These substandard economic and quality of life indicators have a social toll. Health disparities are prevalent, and suicide rates - a symptom of lack of opportunity - are high, with over 60% more American Indian/Alaska Native suicides than the national average. Alcoholism and diseases like Tuberculosis are both over 500% higher among American Indians and Alaska Natives.

Despite these great needs, tribal governments have fewer resources than state and local governments to fulfill their governmental responsibilities to their citizens, making economic development even more important. The long-standing federal Indian policy of self-determination is

hollow without adequate revenue or economic development to carry it out.

The 8(a) program is an effective vehicle to realize Native self-determination. Business, educational, and leadership skills are being developed, and the results are impacting economic and social conditions in Native and rural communities. For example:

- Thousands of scholarships have been awarded to Native people.
- Hundreds of internships have given valuable work experience to our future workforce.
- Employment and, more important, career opportunities are available where they did not exist before.
- Business skills learned through government contracting, like strategic planning and management, are taking root in local communities.
- Leadership skills are being developed in councils and on boards. Leaders are being empowered to make choices about how best to sustain their economic enterprise, culture, and future generations.

NCAI has taken seriously the recommendations from the GAO report and the prior SBA Inspector General reports. Since these reports were issued, we formed a joint working group with the Native American Contractors Association, and the National Center for American Indian Enterprise Development. In 2007, we hosted a series of government-to-government tribal consultations with the SBA Administrator to discuss the GAO and SBA IG report recommendations and to identify solutions to address these concerns.

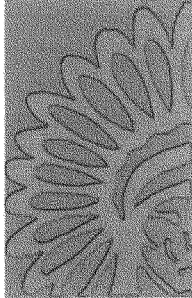
Through this process we developed comprehensive recommendations to improve program oversight. Consistent with the 2006 GAO report, the recommendations we proposed were administrative rather than legislative. Our recommendations include: developing effective data collection mechanisms; enhancing oversight through web-based reporting; setting milestones for Mentor-Protégé and joint ventures; and increased transparency of ownership agreements.

Additionally, we have urged Congress to increase funding for the SBA and charge the agency with re-engineering the Native 8(a) program to provide effective oversight and accountability. We believe these improvements would go a long way to addressing concerns that have been raised.

We feel it is important for this Committee and Congress to know that tools such as the 8(a) Business Development program, created to promote economic self-sufficiency, are working in Native communities as the federal government intended. The criticism about the success of tribal and ANC contracting is misplaced. More importantly, pitting one disadvantaged group against another only distracts from the many issues all small and disadvantaged contractors have in common. The federal procurement market is enormous -- and growing, and there is plenty of room for tribal, ANC, and other minority businesses to participate. To reflect the dramatic growth in the federal contracting arena, we have proposed increasing SBA contracting goals and size standards, as well as increasing the thresholds for individually-owned 8(a) companies.

Limiting access to the federal marketplace will have devastating effects in Native and rural communities. With conditions in Native communities comparable to those in developing nations, we should all be working to improve programs, like the 8(a) Business Development program, that create economic opportunity in Indian Country.

Thank you.



NATIONAL
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United States Senate

Committee on Homeland Security and
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Ad Hoc Subcommittee on Contracting
Oversight

Hearing on
Contracting Preferences for Alaska Native Corporations

Thursday, July 16th, 2009

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TRIBAL AND ALASKA NATIVE CORPORATION 8(A) BUSINESS
DEVELOPMENT: PROMOTING TRIBAL SELF-DETERMINATION AND SELF-
SUFFICIENCY

Introduction

The National Congress of American Indians (NCAI) is the intergovernmental body for American Indian and Alaska Native tribal governments. For over sixty-years tribal governments have come together as a representative congress through NCAI to deliberate issues of critical importance to tribal governments and endorse consensus policy positions. NCAI is honored to present at the Senate Committee on Homeland Security and Governmental Affairs, Ad Hoc Subcommittee on Contracting Oversight hearing to discuss the history, structure and benefits of the Native 8(a) Business Development program that our membership has deemed critical to growing tribal economies.

The Native 8(a) program demonstrates Congress' commitment to promoting tribal self-determination and self-sufficiency. This business development program reflects the unique character of Native communities and their responsibility to provide governmental services and other benefits to their members.

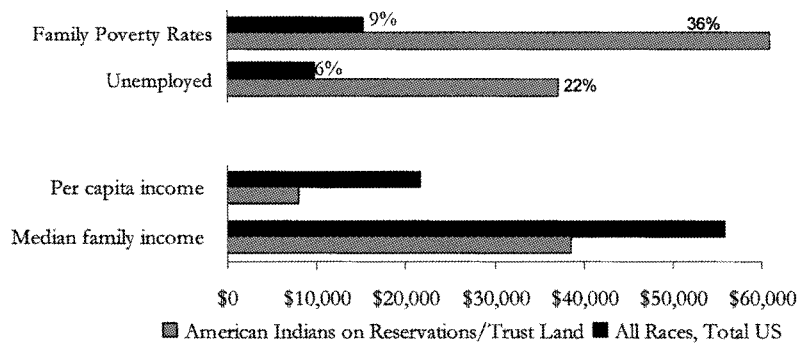
To promote economic development for Indian tribes and Alaska Native Regional and Village Corporations ("ANCs"), Congress authorized their participation in the Small Business Act's Section 8(a) Business Development program. When certified as an 8(a), they may contract with the federal government under unique terms which permit a federal agency to award a contract that is not subject to the competitive threshold that applies to individually-owned 8(a) companies and allows tribes and ANCs to operate multiple 8(a) firms. Congress purposefully created these distinctions to further its federal trust obligation to American Indian and Alaska Native tribes, to provide tools to combat poverty in tribal communities, and to remedy the low level of tribal and Alaska Native participation in the government contracting industry.

Due to the recent public and Congressional attention on sole-source contracting, recent investigations and press coverage have cast an unfair and harsh light on tribal and ANC sole source contracting. The U.S. Government Accountability Office's (GAO) 2006 report of Alaska Native Corporation's (GAO-06-399) participation in the 8(a) Program recommended that the Small Business Administration (SBA) and contracting agencies exert greater oversight and monitoring of ANC sole source contracting; it did not recommend that legislative changes to the program be made. Indeed, the Indian tribes' and Alaska Native Corporations' unique 8(a) provisions are consistent with other Congressional policies that advance Indian self-determination and economic development. The 8(a) Business Development program has demonstrated that it brings revenue growth, employment, profits, and social investment to tribal communities.

Indian Country is a world of economic extremes. There are a few high profile examples of tribes and ANCs who have prospered economically. However, there are

hundreds more who remain nearly invisible, who are struggling economically to preserve their lands and community. The social and economic conditions in many Native communities are comparable to those in developing nations around the world.

Generational poverty among American Indians and Alaska Natives remains a serious challenge. American Indians and Alaska Natives are among the most economically distressed populations in the United States. Nationwide, this population experiences a poverty rate of 25.7%, exceeding that of all other racial categories and more than double the national average of 12.4%. Indians living on reservations face poverty rates more than three times the national average. Reservation poverty is so pronounced it can be clearly seen on national maps, with hot spots of poverty in the northern plains, eastern Arizona, southeastern Utah, and western New Mexico- which overlap directly with Indian reservations.¹ Real per-capita income of Indians living on reservations is still less than half of the national average. In 2000, Indian unemployment stood at twice the national average and was more than three times as high on Indian reservations.



In addition, tribal governments have a severely limited tax base. Tribes cannot impose property taxes on trust land, and an income tax on impoverished people is not feasible. Recent Supreme Court cases have compounded this problem by permitting state taxation on Indian land while at the same time limiting the ability of tribes to tax non-members. In addition, tribes are hamstrung in their ability to access other traditional governmental revenue streams, such as tax exempt bond financing, in order to raise revenue for governmental services and are limited to what can be developed from tribal businesses.² In sum, tribal citizens often have greater service needs than their non-Native counterparts, and at the same time, tribal governments have fewer resources with which to fulfill their governmental responsibilities to their citizens. Meaningful economic development is sorely needed.

¹ Jonathan Taylor, "Native American Section 8(a) Contracting," p. 6 (October 2007).

² Matthew Fletcher, "In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue," 80 North Dakota Law Review 759 (2004).

Economic growth in the nation's tribal communities remains a substantial challenge, and until this improves significantly, the unique 8(a) contracting benefits should be part of the federal government's arsenal of policies that promote economic development.

Federal Indian Policy

The U.S. Constitution and many statutes establish rights for American Indian and Alaska Native tribes based on their trust relationship with the federal government. In exchange for Native peoples ceding over 500 million acres of land, the United States entered into a trust relationship with American Indians and Alaska Natives. Treaties, the supreme law of our land, were originally the primary way that this trust relationship was expressed. Today, the trust relationship is carried out through the U.S. Constitution and the many statutes enacted by Congress, including the Alaska Native Claims Settlement Act (ANCSA) and the Native 8(a) business development provisions. The federal government's unique relationship with American Indian and Alaska Native tribal governments derives from the U.S. Constitution's grant of power to Congress "to regulate Commerce... with the Indian Tribes."³ This Constitutional provision, and its interpretation in landmark Supreme Court decisions, gave rise to the federal government's special political relationship and trust responsibilities to American Indians and Alaska Natives.

The federal government has enacted numerous policies that are aimed at reducing poverty and creating economic opportunities for Indian tribes and Alaska Natives. Congress was even more specific about strategies to realize these goals when articulating, in the Alaska Native Claims Settlement Act ("ANCSA"), the federal government's relationship with Alaska Natives.⁴ This law required compensation to settle land claims, and Congress mandated that for-profit corporations be used to implement the settlement. In ANCSA, Congress declared:

(a) there is an immediate need for a fair and just settlement of all claims... based on aboriginal land claims; and (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property...⁵

Furthermore, in ANCSA, Congress confirmed that federal procurement programs for tribes and Alaska Native Corporations are enacted under the authority of the Commerce Clause, Article I, Section 8 of the U.S. Constitution.⁶ Among the most successful of these laws are the special provisions implementing Section 8(a) of the Small Business Act. These rules have helped tribal and ANC businesses overcome economic barriers. Competitive businesses have been created in both the private and

³ Article I, § 8, ¶ 3.

⁴ *See* 43 U.S.C §1601, *et seq.*

⁵ *See Id.* at § 1601.

⁶ 43 U.S.C. § 1629(e)(4)(A).

federal markets. New business opportunities and career paths have been created in remote rural communities that are far removed from major markets, and profits, when earned, are invested to ensure future sustainability or returned as benefits to their communities.

Community Benefits

Because of the high unemployment rates in tribal communities, Native capacity building is often the key goal of tribal governments and ANCs. In its 2006 Report, the GAO found that one-third of the ANC's it interviewed had management training programs in place that encourage the recruitment, training, and development of Native employees.⁷ Tribes and ANCs use internships, scholarships, on the job training, and subcontracting opportunities to build their own talent. This process can be slow and arduous as multi-generational poverty has taken its toll on worker preparedness, but success can be significant when it is achieved.

For example, the General Manager of Sealaska Environmental Services and a shareholder of Sealaska Corporation earned a bachelor and graduate degree with Sealaska Corporation; he interned at the company and eventually started a new 8(a) subsidiary of Sealaska that is a certified environmental remediation firm which provides a number of support services to federal facilities. Former scholarship recipients also have earned positions at Sealaska as: Vice President and Financial Officer; Vice President, Corporate Secretary, and Human Resources; Vice President and Chief Investment Officer; and Vice President and General Counsel. Sealaska Corporation has provided scholarships to 3,000 tribal shareholder recipients since the inception of its scholarship program, and from 2000-2008, it provided \$5.7 million in scholarships. Since the inception of its internship program in 1981, Sealaska has provided 200 internships, and 23 of these interns are currently employed by Sealaska.

Benefits derived from the government contracting program go beyond developing local Native capacity through scholarships, internships, and employment. Other benefits, that are just as important, have begun to take hold and advance self-determination, ensure cultural preservation, and ameliorate dire social conditions. For example:

- One Alaska Native Corporation has aligned its cultural values with its dividend payments. A special dividend program has been developed to provide additional support for elders, who hold a highly respected position in many Native communities.. When elder shareholders reach age 65, they are offered a special dividend along with additional shares, which provide a larger dividend payment in the future.
- Community-based non-profit organizations, supported through 8(a) business revenues, are carrying forward cultural values through such wide-ranging activities as youth camp, leadership training, curriculum development, and language preservation are.

⁷ US GAO, (GAO-06-09) 2006, 81.

- Cultural values and practices are reinforced through social and community programs funded by tribal and ANC 8(a) businesses, such as learning a traditional dance or language. Characteristics that bolster youth against negative environments and influences.
- Native people serve as role models for fellow tribal members and are valued for their contribution to community. Tribal and ANC 8(a)s provide an opportunity for American Indians and Alaska Natives to see one of their own go to college, get a job, or better still, work toward a career. These positive role models can increase community and individuals' hope for the future as well as provide inspiration .
- Business capacity is developed in the local community when tribal members and shareholders gain transferable business skills, like financial literacy, strategic planning, and management. These skills are necessary for all aspects of economic and community development. Native community members may choose to utilize their skills in variety of ways: to start a local business as a supplier, or provide a service that has been lacking in the community.
- Leadership capacity is developed when Native boards and tribal councils gain experience in making decisions that will directly affect the lives of their family, neighbors, and communities. Important investment and sustainability decisions are made in each tribal community: hiring, budgeting, dividend allocation, meeting community needs, and business and cultural sustainability.

Tribal government and ANC 8(a) companies have built in accountability- to their citizens and shareholders- and their decision-making is an exercise of Native self-determination. This business development program has enabled tribal communities to participate in the mainstream economy as intended, and the capacity building component has reaped real rewards as infrastructure and human capital have been built in local communities.

As Congress contemplates measures to bring more transparency and accountability to the 8(a) Business Development program, it also needs consider the legal, policy, and economic context for the special 8(a) provisions.

Native 8(a) Contracting History

Since World War II, the federal government has adopted policies to increase the diversity of suppliers to the federal government and to help businesses that have substantial barriers to capital formation and job creation more effectively compete and get a foot in the door in highly concentrated market. The Small Business Act's Section 8(a) Business Development program directs the government to purchase from small businesses. In 1987 and 1988, the Senate Indian Affairs Committee held hearings to determine why so few Native American-owned firms participated in government

contracting and why a Presidential Commission on Indian Reservation Economies found that existing procurement policies created substantial obstacles to Indian reservation economic development. As a result of these Congressional inquiries, changes to federal laws were made to ensure that American Indian and Alaska Native tribes could more effectively compete in the federal market place in a manner that reflects the unique federal obligations and different legal frameworks that apply in Indian Country.

Except in a few important ways, the rules and regulations that are applicable to all 8(a) companies owned by individuals, women, and minorities apply to Indian tribal enterprises and to Alaska Native Corporations. Congress altered this legal framework to take into account the unique ownership structures of enterprises owned by tribal governments and by Alaska Native Corporations created under the Alaska Native Claims Settlement Act. These ownership structures distinguish them from all minority-owned businesses and other types of private sector firms. Thus, tribal and ANC contracting differs from private 8(a) contracting.

Tribal enterprises are owned by tribal governments, and the tribal citizens determine who governs them and ultimately how the government will carry out economic activities through a tribally-owned business. The authority to create a tribal enterprise is typically governed by a tribe's constitution or governing authorities. A tribal governing council usually determines the officers of a tribal enterprise and hires a manager to oversee the day-to-day operations of the business. Usually, the tribal governing body will retain overall strategic direction of the enterprise, have the authority to acquire or distribute assets, and reinvest or distribute profits for the benefit of its tribal membership. Often, the sole shareholder of tribal enterprise is the tribal governing body itself.

The corporate structures created under ANCSA represented a new approach to settling land claims between the United States and Alaska Natives. ANCSA established a framework in which village and regional corporations would manage the assets, land, and natural resources that Alaska Natives received under the settlement.

Under ANCSA, shareholders may not sell their shares to non-Natives. In fact, Congress explicitly intended the use of corporate structures to give Alaska Natives greater control of their economic destiny—to achieve self-sufficiency as well as self-governance. In fact, in furtherance of this economic settlement, the opportunity to participate in federal procurement programs, including the 8(a) program, was embedded in ANCSA by amendments passed by Congress making it clear that ANC participation in these programs business development opportunities would be an integral part of the ANCSA settlement and contribute to the development a sustainable economy.⁸

⁸ In 1988, Congress passed amendments to the Alaska Native Claims Settlement Act, P.L. 100-241, which granted presumptive minority status to ANCs, as defined in 43 U.S.C. § 1626(e)(2). The intent was to grant qualifying ANCSA corporations or ANCSA corporation-owned firms the status of "a minority owned and controlled corporation for purposes of federal law." In 1992, the Alaska Land Status Technical Corrections Act, Public Law 102-415, amended §§1626(e)(1) and (2) by granting ANCSA corporations or ANCSA corporation-owned firms "economically disadvantaged" status.

The ownership structures of both tribally-owned enterprises and ANCs create a much broader mandate to address a wider range of interests than other minority-owned 8(a)s; tribal and ANC firms must operate and provide benefits that go far beyond the bottom-line of profitability. The special provisions which apply to tribal and ANC 8(a) contracting were tailored to take into account these differences and to take into account the federal Indian policy of promoting self-determination and economic self-sufficiency.

The special provisions include different criteria which govern the admission of tribal and ANCs into the 8(a) program, and they exempt tribal and ANCs from the competitive threshold that applies to individually-owned firms⁹ and also establish different affiliation rules, which permits tribal governments and ANCs to have multiple 8(a) companies. However, many of the other rules that apply to all 8(a) firms apply equally to tribes and ANCs. For example, all 8(a) firms have a maximum 9-year participation term in the 8(a) Program. Likewise, all 8(a) firms must be small to receive an 8(a) contract. When an ANC 8(a) firm grows out of its applicable size standard, it graduates out of the program, just like other 8(a) firms. Tribes and ANCs are permitted to form new 8(a) firms in different industries because of their responsibility to improve the livelihood of hundreds or thousands of community members. Accordingly, tribes and ANCs can operate multiple 8(a) firms and do not have a limit on the size of contract that can be awarded to them on a sole source basis. These provisions were intended to prepare tribal enterprises and ANCs to compete with others in their industry, particularly large contractors who have established relationships with government customers and possess capital and proposal capability sufficient to dominate the federal procurement market.

In order to compete effectively, Congress provided tribes and ANCs flexibility to hire experienced staff and management and the ability to use partnerships and subcontracting tools that are available to other contractors. This means that employees and top managers may not always be tribal members or Alaska Natives but the direction of the company, the management of assets and distribution of profits, is ultimately determined by a tribal governing council or Alaska Native Board of Directors. The governing council or board of directors is elected by tribal members or by Alaska Native shareholders. Top managers are tasked with the responsibility of improving the assets and profitability of the company, while at the same time carrying out cultural and broader social goals of the Native community.

Additionally, tribes and ANCs, like other individually-owned 8(a) companies, have the ability to form partnerships or subcontract in order to complete jobs and make profits. SBA regulations permit all 8(a) contractors to subcontract a portion of the work under certain conditions. This can create benefits for local businesses where a contract is awarded by permitting tribes and ANCs to work with local companies while still fulfilling its own goals of self-sufficiency.

⁹ Section 602 of the Business Opportunity Development Reform Act of 1988, P.L. 100-656 [H.R. 1807], November 15, 1988.

Similarly, tribes and ANCs can form joint ventures with large companies in the same manner available to all 8(a) firms. All 8(a) firms can form joint ventures under SBA's Mentor-Protégé Program. The use of teams and joint ventures are encouraged by the federal government as a means to stimulate growth, forge new business relationships, and develop expertise.

For example, Mandaree Enterprise Corporation faced bankruptcy in 1994. The tribal government owners, the Mandan, Hidatsa, and Arikara Nations of the Ft. Berthold Reservation in North Dakota hired a CEO to develop a turn-around strategy. Mandaree Enterprise became certified in the 8(a) Business development program and grew rapidly as it expanded into government contracting. Part of its success was due to its participation in DoD's Mentor-Protégé Program, which encourages major defense prime contractors to work in tandem with small disadvantaged businesses to develop their business and enhance their technical capabilities. The ultimate goal is to enhance the potential contributions of protégés, like Mandaree Enterprise Corporation, thus allowing them to more effectively compete for defense-related work. Through this program, Mandaree Enterprise Corporation developed a relationship with Northrop Grumman which contributed to their capabilities in manufacturing cables, wire harnesses, and circuit boards. Mandaree Enterprise Corporation and Northrop Grumman twice received special recognition from DoD by winning the Nunn-Perry award.

The criticism about tribal and ANC contracting success from some in the small business community is misplaced. It distracts from the many issues all small contractors have in common. While the federal contracting market has increased substantially, many small businesses believe they have been shut out of the market. The size of the market has increased; however, the federal government's statutory goals, which are intended to ensure small business participation, have remained stagnant, not keeping pace with the potential for greater small business participation. Additionally, the overall small business share has declined due to a number of reasons, such as bundling, the consolidation of contracts beyond the reach of many small business capabilities. The federal procurement market is huge, and there is plenty of room for tribal and ANC and all minority businesses to participate. We have worked with other small business organizations, such as the Minority Business Roundtable and Women Impacting Public Policy, to urge Congress to increase opportunities for all small businesses by increasing agency contracting goals and size standards, as well as increasing the thresholds for individually owned 8(a) companies. (*See Appendix A: Joint Legislative Recommendations, Sept. 25, 2007*).

Fostering the development of successful small business contractors advances the government's interests by broadening and diversifying its industrial base of service providers and suppliers. More competition can result by combating the consolidation of the government contracting industry into a few dominant large businesses. By providing different contracting provisions to qualified tribal enterprises and ANCs, Congress increased the likelihood of sustaining business opportunities, ownership, and revenues for American Indians and Alaska Natives. These provisions are helping to alleviate poverty, providing economic growth, and increasing the business capacity of tribes and ANCs.

Native people in the U.S. still suffer disproportionately higher rates of poverty and unemployment than other groups. The 8(a) program provides tribes and ANCs with critical tools needed to compete in the federal marketplace and enhances market-based competitive capabilities.

Recommendations for Program Improvement

We feel it is important for this Committee and Congress to know that these tools created to promote economic self-sufficiency in Native communities are working as the federal government intended. The 8(a) program is still a long way from universally building local tribal economies and offering hope to tribal citizens, but in its infancy, it has already proved to be an effective tool for those tribes and ANCs who have the tenacity to compete and profit in the federal market place.

Our member tribes, ANCs, and Native communities have all given us input on this issue, and their message has been simple and clear—keep the program in place; it is working. While a handful of tribes and ANCs have achieved significant success in government contracting, the vast majority of tribes and ANCs remain in desperate need of meaningful, diversified economic development opportunities. Tribal communities face many obstacles to economic development, including lack of access to capital, inadequate infrastructure, remote locations, complicated legal and regulatory status, and insufficient access to training and technical assistance, among others. In fact, given its proven success in a limited number of communities, we should all be working towards ways to strengthen the program so more communities can benefit from the purchasing power of the federal government.

With this directive from our member tribes, ANCs, and Native communities, NCAI set out to evaluate the program, listen to those who had concerns, and try to under misperceptions. We heard from tribal leaders about the economic challenges and opportunities during a national summit held jointly with the Department of the Interior. In addition, a joint working group was formed with NCAI, the Native American Contractors Association, and the National Center for American Indian Enterprise Development to ensure we were adequately representing the issues and concerns of American Indian/Alaska Native entities and speaking with a unified voice.

We evaluated concerns about the program by carefully reviewing the report and recommendations contained in the April 2006 GAO report on Alaska Native Corporation 8(a) contracting (GAO-06-399). The GAO recommendations centered on the need for greater oversight activities by the Small Business Administration (SBA) and federal agencies. To evaluate potential program improvements, we also held a series of government-to-government tribal consultations with the SBA Administrator to discuss the GAO and other SBA IG report recommendations and to identify potential solutions to address these concerns.

Through this process we developed two comprehensive sets of administrative recommendations to improve oversight in response to the recommendations made in the

GAO report (GAO-06-399) and other 8(a) SBA IG reports. We submitted these reports as part of the administrative record for the tribal consultation process that the SBA undertook as part of its 8(a) rulemaking on the SBA mentor/protégé program. Additionally, we have urged Congress to increase funding for the SBA to provide additional staff resources and to conduct an SBA assessment on re-engineering the Native 8(a) program with the goal of providing transparency, accountability, and training. This effort was undertaken to ensure that this program remains one of the critical tools available more broadly in Indian Country as a way to generate revenue and build business capacity.

Increased oversight and enforcement by SBA and other federal agencies of existing requirements will verify that tribal enterprises and ANCs are good stewards of taxpayer funds. These recommendations strengthen reporting systems and provide improved transparency and accountability for many of the concerns that have been raised. We have attached both sets of our recommendations and will highlight some of the key points that are related to ownership, performance of work, and compensation issues:

1. A web portal should be established for 8(a) companies to report data, such as contract performance, status of Mentor-Protégé and joint venture agreements, and annual reports, to the SBA. This would provide information to the SBA and contracting agencies on a real-time basis and could also serve as a mechanism for flagging potential problems early on so that they can be corrected.
2. Web-based reporting could track compliance with contractor performance requirements for all 8(a) sole source awards and could provide more detailed reporting on the amount of work performed by the 8(a) prime contractor and by sub-contractors which the CEO of the company would be required to certify.
3. Milestones should be established for reporting all 8(a) Mentor-Protégé joint ventures contracts awarded, including ownership interests; direct and indirect profits; and prime and subcontractor performance. This would provide greater accountability to ensure the tribal or ANC 8(a) protégé is gaining experience and contributing towards its performance requirements.
4. More transparency in the disclosure of ownership agreements could be provided by a confirmation of ownership and the status of ownership agreements in the annual audited financial statements.
5. On the issue of compensation of 8(a) managers, transparency and accountability in disclosures on the individual compensation worksheets could be improved by clarifying and applying consistent directives on what should be reported.

(See Appendix B: Joint Administrative Recommendations, Executive Summary)

We believe these improvements would go a long way to addressing concerns that have been raised which question whether tribal 8(a) enterprises and ANCs are performing the work required of them and whether tribal members or Alaska Native shareholders sufficiently benefit from the 8(a) program. There are numerous ways to strengthen the procurement system, without new statutory requirements, so that compliance with existing rules and benefits can be better reported and tracked.

Conclusion

To address concerns about obtaining good value for taxpayers in contracting and whether the goals of the program are being met, Congress and the Administration should focus on addressing the weaknesses in the procurement system that GAO identified and consider implementing the administrative recommendations we have made for program improvement, including additional funding for the SBA to strengthen its staffing and oversight function.

Limiting tribal government enterprises' and ANCs access to the federal marketplace will have devastating effects on Native communities. Tribal governments will need to look to Congress to establish additional tools to deal with the critical need to strengthen local tribal economies so that tribal governments will have more—not fewer—resources and opportunities to provide programs and services for their citizens. With conditions in Native communities comparable to developing nations, we should all be working to improve programs like the 8(a) program that create economic opportunity in Indian Country.

We want to thank you for giving us the opportunity to speak today on the importance of the 8(a) Business Development program to tribal communities. We look forward to your continued support of our self-determination efforts and our use of effective economic tools.

**Prepared Statement of Julie Kitka,
President, Alaska Federation of Natives**

Oversight Hearing on

Contracting for Alaska Native Corporations

Madame Chair, Ranking Member Collins, and distinguished Members of this Subcommittee, I appreciate the opportunity to present testimony on behalf of the Alaska Federation of Natives (AFN) regarding Alaska Native corporations contracting opportunities and their status under the Small Business Administration 8(a) program. I offer this testimony to speak to the legal and equitable basis of the Small Business Administration's 8(a) program and its importance to the Native people of Alaska, and other important considerations.

My name is Julie Kitka. I submit this testimony in my capacity as President of the Alaska Federation of Natives (AFN). As President of AFN, I have worked for many years with a remarkable group of Native leadership and others to improve the opportunities and resolve the challenges faced by Alaska Native people. When I think of rapid change in the world, I can think of no better example than in our own homeland. The changes we have seen and have been impacted by are profound.

By way of background, AFN is the largest statewide Native organization in Alaska representing more than 125,000 Alaska Natives residing in Alaska, and more than 120,000 Alaska Natives scattered over the rest of the 49 states. AFN was organized in 1966 to facilitate bringing the various regional and village associations together in order to advocate with one voice for a fair settlement of our aboriginal land claims, which became the Alaska Native Claims Settlement Act of 1971 (ANCSA).

Today, AFN is governed by a 37-member board of directors representing villages (both federally recognized tribes and ANCSA village corporations), 12 regional tribal consortiums, and the 13 regional ANCSA corporations. AFN's annual convention is the largest annual gathering of Native people within the United States. AFN's mission is to enhance and promote the cultural, economic and political voice of the Alaska Native community.

I would like to note at the beginning of this testimony that we understand the concerns expressed by the Chair and committee staff. These are extremely important matters and the need to insure fairness in contracting opportunities is an essential and proper function of this Committee and the Congress. It is my hope that this hearing provides a broader basis for understanding the background and nature of the contracting status of Native American tribes and Alaska Native corporations. To that end, I would extend a sincere invitation to the Chair, Subcommittee members, and staff to travel to Alaska and witness first hand the basis of the 8(a) contracting there, the nature of Alaska Native life, and learn more about the aspirations of the Native people and the importance and role of Native corporations in our society.

It is critical to the understanding of these issues to understand the nature of what Congress and the President intended when they enacted the Alaska Native Claims Settlement Act, in 1971. ANCSA is the foundation of much of the Alaska Natives economic and legal relationship with the federal government, but it is much more than that. It embodies most of our economic and relational agreements with the federal government, agreements for which our people relinquished valid legal claims to lands and resources in Alaska, our homeland. Our leaders took a tough stand. We accepted a

land claims settlement that freed the State of Alaska¹ to receive its lands and the federal government to manage its lands. The citizens of the United States and the federal government, received a bargain: the Trans-Alaska oil pipeline was built, which this summer will deliver the 16th billion barrel of oil to domestic consumers, from U.S. fields. 16 billion barrels of domestic oil, directly attributable to the agreements that are made possible by ANCSA. The fields of Prudhoe Bay alone have delivered several hundred billions of dollars of goods, services and taxes to the federal government. ANCSA made this possible by addressing the status and claims of Alaska Natives. For Native corporations the land conveyance process dragged on year after year, our economy struggled, and we were, by any measure, an economically disadvantaged group, and clearly a minority.² All of our Native corporations were start-ups. The laws enacted by Congress that provide the legal status under 8(a), simply recognized these essential facts.

The world-class discovery of oil in Prudhoe Bay, together with the need for clear title in order to build a pipeline across Alaska to transport the oil to meet the energy needs of our country, created a sense of urgency and a historic opportunity for a settlement of our land claims. In December 1971, after years of effort by Members of the U.S. Congress and Alaska Native leadership, the Alaska Native Claims Settlement Act (P.L. 92-203) was signed into law by President Richard Nixon.

For extinguishing aboriginal claims, Alaska Natives were allowed to retain fee simple title to 44 million acres of land and received \$962.5 million for lands transferred to the State, federal and private interests. The Act created 13 regional for-profit

¹ In 1971 when the Alaska Native Claims Settlement Act (ANCSA) was enacted by the Congress, Alaska was a fledgling state, not even 15 years old.

² Alaska Natives were a majority population in Alaska prior to World War II; but remain a minority on a national level.

corporations and more than 200 village corporations to receive and oversee the land and monetary entitlements. It took years, and in some respects decades though, to get the promises of ANCSA implemented. It is critically important to understand ANCSA was a land settlement, and the ability to retain our homeland, our identity and culture were and are paramount. The structure of ANCSA, of corporations owned and operated by Alaska Natives, was a secondary issue on the minds of Alaska Native people. Protecting the land and our traditional way of life, and surviving in the modern world was critically important then, as it is today.

The 8(a) treatment of Alaska Natives is part of ANCSA, literally. The basis of the treatment of Alaska Native corporations stems from amendments to ANCSA and to the Small Business Act. In 1986 & 1987, I was working on behalf of the Alaska Federation of Natives in Washington D.C. on a package of amendments to ANCSA called the "1991 Amendments" when the 8(a) amendment was enacted and I know this for a fact personally. The "1991 Amendments" were a result of five years of internal discussion and debate within the Alaska Native community, and with Members of Congress. This legislative effort modified ANCSA and addressed fundamental land protections, inclusion of young Alaska Natives, a legal ability to provide special benefits to our Elders, and major changes in the Native corporate structure. One major provision eliminated the 1991 date in federal statutes, a date, which would have required all Native corporations to go public and allow the Native stock to be sold. We knew at the time, if ANCSA was allowed to remain as it originally was enacted, that the Alaska Native people would lose their corporations, and all their lands and resources. Inclusion of amendments to the SBA 8(a) program were included in the "1991 Amendments" because

we had evidence that Alaska Natives corporations were excluded and ignored. The “1991 Amendments” were fully considered by Congress in 1987, passed without opposition, and was signed into law. The 8(a) amendments were also fully considered by the Congress again in 1992, passed Congress without opposition and signed by the President. The 8(a) amendments provided contracting authority that applies equally to all Native American tribes as well as Alaska Native corporations. The contracting opportunity available under 8(a) is not unique to Alaska Native corporations.

Also, it is worth considering the basis for the distinction between laws differentiating between Native American relationships and others. In a great many cases, Native Americans entered into agreements relinquishing ownership and use and occupancy of lands for treaties and statutes. The agreements embedded in these treaties and statutes properly provide a basis for differential treatment under the law. Congress can properly distinguish between Native American and non-Native American contracting opportunities. Congress’ authority to do so comes from the unique status of Indian tribes under federal law and the plenary power of Congress to legislate on behalf of federally recognized tribes and Alaska Native corporations. *Morton v. Mancari*, 417 U.S. 535, 551-52 (U.S. 1974). For these reasons, the Supreme Court has upheld legislation that singles out Native Americans for special treatment due to the unique history and role of dealings with Indians and has stated that as long as the special treatment can be tied rationally to the fulfillment of Congress’ unique obligation toward Indians, legislation regulating commerce with Indian tribes will not be disturbed. *Mancari*, 417 U.S. at 555.

To look back now and seek to separate the economic treatment of Alaska Natives from the settlement of aboriginal claims would not be just or fair. As we meet here

today, in this hearing, not all the lands that were promised to Alaska Natives have been conveyed to our people and our corporations -- 38 years after the Settlement Act of ANCSA was enacted. What is the net present value of the lost use of our lands, delayed in some cases by decades?

It is erroneous to refer to ANCSA as merely an "economic development statute." To call ANCSA merely an economic development statute is like calling the Civil Rights Act a community development law or the Voting Rights Act a polling statute. Those two laws, so fundamental to the relationship that our federal government has with minority groups, cannot rightly be minimized. To Alaska Native people, ANCSA is nearly as important as these foundational, fundamental human rights statutes. ANCSA is fundamentally recognition of the validity of the claims of Alaska Natives to lands and waters in Alaska, where our people resided for thousands of years. To pull out pieces now and examine them out of context would be wrong.

ANCSA corporations are not merely for-profit corporations; they are stewards of the Native homeland, sponsors of education and training opportunities, employers of "first resort" for our aboriginal people. There is so much more tied into these corporations than many people might guess. Most of our entire land base---our land is key to our heritage, culture and future---is held by the corporations, just as Congress intended in passing ANCSA. The corporations have broader responsibilities than many other corporations, for in their hands are our settlement lands, lands which we can not afford to lose. Alaska Native corporations were not started as ordinary corporations, and were not intended to function as ordinary corporations. These corporations were required to be formed by federal law, ANCSA, a requirement not applied elsewhere in other

aboriginal land settlements, or to many, if any, other corporations in America. The corporations were a foreign-type entity to our people, but we worked hard, and did what the law instructed us to do with the corporations. Our people struggled in many cases to overcome social and economic disadvantages of operating new corporations in what to the business world is remote Alaska, and to run the corporations as intended. Our people persevered to seek success as Congress intended. Contracting under section 8(a) is, and has been an important aspect of the success of some of our ANCSA corporations, and through them, we have seen important socio-economic benefits to thousands of our people, as intended. Again, our corporations hold the keys to our heritage, our lands, and economic base, which are essential to our well-being.

As these corporations began to succeed, many of the indicators of a healthy society began to improve. For example: Alaska Native life expectancy for both men and women has increased, infant mortality has decreased, poverty has been reduced from over 60% to 20% -- a major accomplishment.³ Key findings in the report commissioned by AFN shows dramatic improvements in positive indicators; dramatic decreases in negative indicators; and a **continuing thread of disparity** between the Alaska Native population and non-Alaska Native population, both in Alaska and in the U.S. in all indicators. Overcoming this disparity must be a targeted focus of all our efforts. Of course, AFN

³ In 2004, AFN commissioned a 30-year trend analysis on all major socio-economic and health indicators of the Alaska Native population. The University of Alaska, Institute of Social and Economic Research did the report. Key findings show that Alaska Natives have more jobs, higher incomes, and better living conditions, health care and education than ever. But they remain several times more likely than other Alaskans to be poor and out of work. All the economic problems Alaska Natives face are worst in remote areas, where living costs are highest. AFN can make it available upon request.

does not assert that ANCSA and our Native corporations are the source of all the improvements in the last thirty years. ⁴

I believe that it may be tempting to look at some of the recent greatest successes of Alaska Native corporations and see only success. From where we started, with small, new start-up corporations, beginning with a people that had not operated corporations before, our corporations have come a long way. But please don't skip over what we started with. We live and work in what is to most businesspeople the most remote corner of America, in one of the harshest climates in the world: with a history of extreme prejudice and discrimination; a history of wariness toward a people who, in a great many cases, literally spoke a different language than most businesspeople in America; a history of exclusion from genuine business opportunity; and a history of no business history with "mainstream" large economies in America. Is that not a case study of an economically disadvantaged minority business? That is why ANCSA and the Small Business Act were amended to provide for economic opportunity for our corporations.

SBA 8(a) contracting has created benefits that it was intended to create. Our corporations have built up a capacity that did not exist before. Methodically, efficiently and responsibly, these corporations have built up a capacity to provide employment to Native shareholders, provide training to young people, and develop and offer scholarship opportunities. Our corporations have built up a capacity to provide jobs and help young people see what it takes to succeed in modern America. They have built, as intended, a managerial and business expertise that can carry forward. They have helped create an economic stability where none existed before. Our people take pride in this work, and

⁴ Other significant impacts on well-being has been federal and state appropriations in health, education and social services; the Alaska Permanent Fund dividend – however the impacts of ANCSA are substantial.

feel strongly that this is our work, not the work of others. It is an accomplishment to behold, one which is worth understanding in full for its roots, path and basis in law, including Native American law.

Madame Chair, and Members of the Subcommittee, we sincerely request and invite you to see what a difference contracting has made for our people in Alaska. Please come to Alaska and witness for yourselves and for the United States Senate what a difference the success of these corporations has made.

Other Considerations

Monday, July 13, 2009Monday, July 13, 2009

U.S. President Barack Obama, in Ghana on July 11th said that “Africa is not separate from world affairs” and will have an impact on the shaping of the 21st century, the BBC reported. Speaking about Africa, President Obama said “what happens here has an impact everywhere”. The same can be said of Alaska and of the Native people of Alaska. What happens with Alaska Natives has an impact everywhere: our homeland, our traditional way of life, our economic future – so much depends upon our relationship with the U.S. Government, and the development of our Native people and our corporations. If they fail, we could lose everything.

As I reflect on ways to communicate to you how much is at stake at this hearing, and other important hearings being held – I am left with the following examples I would like to share and comment on.

I look at our Native corporations’ participation in government contracting as a repudiation of federal termination and assimilation policies of previous decades. With our participation in the SBA 8(a) program, our Native corporations become **integrated in**

the economy. At the same time, we retain our culture and identity; and control the amount of involvement or non-involvement.

I view the greatest benefit of our participation in the SBA 8(a) program is the **capacity building**, which is occurring and continues. We are both contributing to the U.S. economic recovery and building our capacity to help more. We are involved in **nation-building work**, which benefits all Americans. We work hard, we do quality work within budget and on time, or we do not receive contracts. We build tight financial and accounting systems because we want to work responsibly and according to the law. We are developing our people to be responsible US citizens capable of solving any problems or crisis and working to build our country.

With my example of characterizing SBA 8(a) government work as nation building, I believe the success of the program is so good that it could be considered a national model for integrating ethnic minorities into the modern global economy. Several areas around the world, which I am sure you monitor, could greatly benefit from the experiences we are gaining in nation building.

First, consider the unrest among the Muslim Uighurs in the autonomous province of Xinjiang, China that continues today. Second, consider the unrest in another autonomous province in China – Tibet. The upheavals in Xinjiang and Tibet, while very complex and historical in root causes, reveal the long-standing ethnic tensions and weakness in China's social and economic structure.

Unlike the Soviets, who dealt with potentially problematic ethnic minorities in part by moving them *en masse* from their homelands, China left its ethnic minorities largely within their traditional lands. Ethnic tensions arise and are exacerbated by

disparities in social status and economic situations in these two provinces, as well as elsewhere in the world.

In my view, together we have done many things right in the United States and Alaska. The ultimate benefit of the SBA 8(a) government contracts is the capacity building and the nation building work. It is the integration into the larger economy and the opportunity to contribute which is the genius of the U.S. approach. It hasn't been easy, and it is a lot of continuous work by our people, with continual adjustment, but we are on the right path.

As we look at 2009 with the economic crisis, we know we are looking at a new reality. The environment has changed. We are in the midst of a global economic crisis, which probably has not yet bottomed out. There is a critical need for the U.S. Congress and Administration's recovery act investment and further action taken and planned. The SBA 8(a) program is a proven way to move resources quickly and to get things done and employ people. With national unemployment figures at an all time 26-year high – we all must be concerned.

As we look towards a post-crisis recovery and how Native Americans, including Alaska Natives are helping and can help in the recovery, we request an opportunity for a dialogue with the appropriate Congressional committees on strategic, opportunity expanding ideas. We want to keep developing economic tools, infrastructure, expanding education and training for our people, and developing our institutions and organizations to be effective in the post-crisis economy and world. It will be a changed world, and we want to be ready for it.

We want to maintain our Native identity, our cultures and homelands. We want life opportunities and choices. We want to continue to build capacity within all our Native corporations, and tribes and to be known for our good governance and leadership. The continuation of the SBA 8(a) program helps us accomplish our aspirations and goals, and helps our country.

We would be pleased to continue a dialogue on this and other matters of concern to this Committee. Thank you for the opportunity to testify.

**TESTIMONY OF MARK J. LUMER
REPRESENTING CIRRUS TECHNOLOGY INC.
BEFORE THE SUBCOMMITTEE ON CONTRACTING OVERSIGHT
JULY 16, 2009**

I am Mark J. Lumer. I'm here representing Cirrus Technology Inc., a small business located in Huntsville, Alabama. Cirrus Technology is a HUBZONE and SDVOSB company, and a recent graduate of the 8A program.

Before I went to private industry I served as a contracting official with the Department of the Army for almost 33 years. My last assignment was as the Contracting Executive for the US Army Space and Missile Defense Command (SMDC), an SES position, and a post I was in for almost 13 years. Prior to that I was on the Army staff in the Pentagon where I helped write the FAR and DFARS for 4 years. Part 19 of the FAR and 219 of the DFARS were two of my areas of responsibility. I've been told I am the most decorated civilian contracting official in the history of the Army, but due to a fire about 35 years ago in a records storage area that statement cannot be currently verified.

The first observation I want to make is that as a contracting officer for 25 years, the unlimited sole source authority for ANCs was a very useful tool to get contracts awarded quickly under the Competition In Contracting Act. I authorized its use myself about 6 times in my 13 years at SMDC, for hundreds of millions of dollars.. I received very good performance from the ANCs and the prices proposed were audited, negotiated and ultimately determined to be fair and reasonable. I am not in favor of having that tool completely eliminated.

Representing a small business which was an 8A and is still a HUBZONE and SDVOSB, I have to state that it is incredibly difficult to compete with ANCs under the current rules. Cirrus has lost contracts that were bundled and awarded to ANCs, and lost opportunities to compete because a contract was awarded to an ANC non-competitively. As a general rule, Cirrus Technology will not compete for any procurement if there is a history of ANC involvement or where there is the likelihood that an ANC will go after the opportunity directly. I cannot provide you with any concrete evidence, but anecdotally, I firmly believe that many small businesses will routinely bypass procurements where ANCs are involved, because the chances of winning are so small, even if they are allowed to compete in the first place.

It is my firm belief that the extraordinary growth in sole source awards to ANCs is a direct byproduct of the extreme shortage of government contracting officers and specialists, a situation that will only get worse with the addition of billions of dollars in stimulus money. I have seen and heard estimates that most government contracting offices are short staffed by an average of 35%. I believe that figure may be low. Procurement officials are in the constant process of performing what I call "contracting triage"- they are looking to see what requirements can be legally awarded in the shortest amount of time using the least amount of resources... and that inevitably leads them to using ANCs because of the unique unlimited sole source authority that exists, the fact

that they get small business credit for the award, and the guarantee that there will be no protests sustained by the GAO.

Here are several areas where the playing field is currently uneven;

- a. The sole source limits on non-competitive awards to 8A (non-ANCs), HUBZONE and SDVOSBs, which are \$3.5 million services and \$5.5 equipment versus the unlimited sole source threshold for ANC.
- b. The size standards for most small businesses are determined by the number of employees (typically 500, 1000 or 1,500) or by income; as opposed to no employee limits on ANCs. This can create an extreme disparity in the ability to compete when some ANCs have thousands of employees, and yet are always counted as a small business.
- c. ANCs may have multiple 8A subordinate companies, while other firms are typically limited to one each. The ANCs unique authority to do this gives them an extraordinary ability to adjust overhead rates and general and administrative cost factors, thereby giving them cost advantages when there are actual competitions.
- d. The inability of companies to protest a contracting officer's decision to award a particular procurement to an ANC, especially where there may be a bundling issue.
- e. To obtain a HUBZONE designation from the SBA, one requirement is that 35% of the employees live in any designated HUBZONE track; yet there are no minimum requirements for ANCs to employ tribal members or Alaskans; in fact there is no requirement that they even have offices in Alaska, though most do.
- f. Even in the subcontracting arena, there are special incentives (up to a 5% payment) for prime contractors to award subcontracts to ANCs or other Indian Tribal companies. There are no incentives for subcontracts to HUBZONE, Women-owned or Service Disabled Veteran Owned Small Businesses.

I believe there are many legitimate reasons to provide procurement assistance to ANCs. I don't believe many companies would object to allowing ANCs to have some type of procurement preference in competing for government contracts. The current situation is out of balance, and it may be time to swing the pendulum back the other way.

I look forward to answering any questions the Committee may have.

TESTIMONY OF

CHRISTINA J. SCHNEIDER, CHIEF FINANCIAL OFFICER
PURCELL CONSTRUCTION CORP.
WATERTOWN, NEW YORK

Thursday, July 16, 2009 – 2:30 p.m.
Senate Subcommittee on Contracting Oversight
Room 342 Dirksen Senate Office Building

TOPIC: Contracting Preferences for Alaskan Native Corporations

Good afternoon, my name is Christina Schneider and I am the Chief Financial Officer of Purcell Construction Corp. I also serve on the Board of Directors for the Associated General Contractors of New York State (AGC NYS), a statewide trade organization which represents over 600 contractors and related firms in New York State. Our firm is also a member of the Associated General Contractors of America, the nation's oldest and largest construction group, with over 33,000 members nationwide.

One of the founding principles of AGC is to promote fair and open competition within the marketplace. The use of preference programs in awarding federal government contracts requires constant oversight to ensure they are meeting the original congressional intent and to protect taxpayers' interests. I commend Chairwoman McCaskill and Senator Collins for calling today's hearing and I am honored to present testimony on this subject. Specifically, my remarks will focus on the effects that sole source contracts to Alaskan Native Corporations (ANC's) have on Purcell Construction and other local general contractors.

Purcell Construction is a second generation mid-sized general contractor based in Watertown, New York. Watertown is a small community in rural Northern New York in which much of the economy is dependent upon Fort Drum, home of the US Army's 10th Mountain Division, currently active in both Iraq and Afghanistan.

From 2002 to 2007, our company was one of two local contractors holding a term contract to provide various construction services to the Directorate of Contracting at Fort Drum. Throughout our performance of this contract, we completed over 96 different task orders under a contract valued at \$57.5 million. Both firms involved in this contract received multiple commendations for the work performed and by all accounts performance exceeded contract expectations.

In 2004, the government anticipated exceeding our contract value limits, so they began preparing for the procurement of a follow-on contract - which we assumed would be procured

through a competitive bidding process. We were confident of our ability to compete for the new contract based on our previous experience and outstanding performance on the existing contract. However, we were shocked to learn that the Northern Region Contracting Center based in Fort Eustis, VA intended to award the two new contracts to two Alaskan Native Corporations, Chugach and Alutiiq, on a sole-source, no-bid, basis. Our firm and several other general contractors in Northern New York, who have a vast amount of experience and depend on this type of work, were totally shut out of competing for this contract. We were told by the contracting officials at Fort Drum, that while they did not agree with this decision, they had no power to override it.

We were given various reasons why this decision had been made, ranging from there not being enough time to procure this contract using traditional contracting methods to the unbelievable argument that this sole source contract would lead to the most potential for involvement by local companies.

In addition to being excluded from the bidding process, we had no opportunity to protest the decision. Federal regulations dictate that only a competing bidder on a project has legal standing to protest. With no competitors, there is no mechanism for protest. This was particularly frustrating in our situation, as we believed the ANC contractor, Chugach was ineligible to receive this contract award because they had multiple large affiliates which exceeded the small business size thresholds while operating in the same industry classification. When we provided the Small Business Administration in Washington with documentation to support our claim that this company was ineligible to receive a sole source award, the only thing we received was a letter stating they would forward our information to the Alaska SBA office. We have no evidence that this information was ever considered by the SBA prior to the award to Chugach.

After a large investment of time and energy in an attempt to reverse this decision, it became apparent that our continued efforts to fight these sole source awards would be futile.

Unfortunately, even though this particular sole source contract was awarded in 2004, local general contractors are still suffering from the impact of its 10 year \$400 million dollar obligation. We have learned over the past month that most of the current construction projects being procured through the Fort Drum Directorate of Contracting, including the bulk of the stimulus funds allocated to Fort Drum, are being funneled through these two ANC contracts.

While it is true that the ANC's employ local labor and subcontractors, this contracting preference has eliminated opportunities for general contractors. Our firm is a prime contractor. Our job is to lead the construction team and to help manage the construction process, and the dozens of subcontractors, vendors and suppliers who execute the work. ANC's

have replaced us in performing that function. It has hurt our markets, and has impacted the profitability of our firm and others like us who, as a practical matter, can no longer compete for this work. The preference to ANC's, and the economic benefit they undoubtedly realize, surely ends up outside of Northern New York State.

The foundation of the small business legislation is to temporarily provide assistance to fledgling firms, with the goal that they eventually grow to a point where they no longer need this support. Specifically, the 8(a) program under the Small Business Act, provides a nine year time limit, as well as a dollar volume thresholds, that apply to all firms -- except ANC's. According to the website www.governmentcontractswon.com, the two companies that were awarded the Fort Drum contracts, Alutiiq and Chugach, have amassed in excess of \$2.6 and \$3.8 billion dollars in government contracts, respectively, over the past 9 years. According to the SBA Inspector General's report issued last week, these two ANC's represent a total of 2,371 shareholders. This equates to \$2.7 million in contract dollars per shareholder. To us, these figures alone are staggering, but we also know that Alutiiq and Chugach and their affiliated companies are only two out of scores of ANC's being awarded Federal contracts.

In the construction industry, as with most businesses, when competition is removed, prices soar. We estimate the government should expect to pay 20 to 30% more when there is no competition. The cost of this arrangement to the Federal government is astronomical.

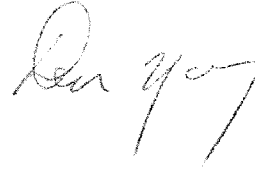
Another unfortunate side-effect of these preferences is the effect that it has on truly small businesses. Many contracting officials view this as an easy way to meet their small business contracting goals. The award of a large contract to an ANC surely comes at the expense of companies that meet traditional small business standards.

As is well documented, many of these firms are very large and well entrenched in the federal contracting system. It is hard to justify why these firms, which are in many cases multi-billion dollar corporations, continue to enjoy these preferences. We think the solution to this is straightforward. **The unfair advantages enjoyed by the large Alaskan Native Corporations must be closely re-examined. Their immunity to affiliation rules, and size standards, and the lack of dollar limits on sole-source contracts, should be eliminated.** ANC's that legitimately meet the small business standards would still be entitled to all of the benefits offered by the 8(a) legislation.

Preferences and subsidies that benefit traditionally disadvantaged groups certainly can be appropriate. However, by any standard, the cost to the taxpayers for these particular preferences, far outweigh any benefits that find their way down to those they were intended to help.

Thank you for the opportunity to present our concerns.

The Honorable Don Young
Congressman For All Alaska



Contracting Preferences for Alaska Native Corporations
Ad Hoc Subcommittee on Contracting Oversight, Senate Committee on Homeland
Security and Governmental Affairs

July 16, 2009

Alaska Native participation in the Small Business Association's 8(a) contracting program has been one of the most successful aspects of Federal Indian policy since we passed the legislation allowing all Lower 48 Indian Tribes, Alaska Native Corporations and Native Hawaiian Organizations to take part in the program. The Alaska Native Claims Settlement Act and the inclusion of Alaska Native Corporations in the 8(a) program have allowed Alaska Natives to begin to realize economic and social self-determination, something that has long been the goal of Federal Indian policy. Congress' decision to allow Alaska Native participation was the correct one, and we are beginning to see the pay off now.

I am sure that, after hearing today's testimony and carefully evaluating the data and history, the Subcommittee will come to the same conclusion I have. And it is important that the Subcommittee examine both the contracting data and the history of this program very carefully. Figures can be easily be taken out of context. And they can be even more misleading if they are looked at in a vacuum, without considering why and how we got to where we are today.

The Alaska Native Claims Settlement Act, or ANCSA, was an attempt to create the first Federal Indian policy that was not exploitive, that did not forcibly remove and relocate Native people and communities and that treated Natives fairly. Congress did not want to repeat the failed reservation policies of the past. And it has been the most successful piece of Federal

Indian policy because of that. In exchange for ceding their aboriginal claim to the 300 million acres of land that is the state of Alaska, the native community received title to 44.5 million acres and a \$962 million settlement fee and the creation and recognition of the 13 Regional Corporations and over 200 Village Corporations. And it is important to understand what these "Corporations" are. They are not the same as Boeing, or Microsoft or Lockheed Martin. They are another example of the new path that Congress was forging with ANCSA. They are the tribal governments of Alaska Natives. Their Shareholders are their citizens. This set up, however, when combined with 8(a) contracting preferences are what have allowed Alaska Natives to push toward the economic self determination that they never would have otherwise had an opportunity to achieve.

The 8(a) preferences are as important a part of Congress' policy toward Alaska Natives, Lower 48 Tribes and Native Hawaiian Organizations as any other. These preferences were created to help these groups provide economic opportunities to their people, as they are mandated to by law. In Alaska, this has helped Alaska Native Corporations overcome the many obstacles they have faced and provide their shareholders with benefits and opportunities to make their lives better. With the help of these preferences, the Regional and Village Corporations have overcome bankruptcies and lack of opportunity to achieve success for their people.

Today, Alaska Natives still face dire poverty in their villages, most of which are not connected by roads and lack many of the modern conveniences we take for granted today. If you have visited rural Alaska, you understand why Congress codified Alaska Native Corporations economic disadvantage. The revenue that Alaska Native Corporations have earned from 8(a) contracts has provided their people opportunities that they would not have otherwise. We are starting to see the fruits of the scholarships, job training and dividends today, and the

Subcommittee will see the benefits first hand during today's second panel of witnesses. The first generation of Alaska Natives with the education, training and experience to run competitive, modern businesses is coming of age today and that is largely due to their Regional and Village Corporations participation in the 8(a) program.

There are some, however, who have not taken this larger picture into consideration, choosing instead to focus narrowly on the different preferences that Native owned contractors have that individually owned 8(a) contractors do not. They focus on the increasing percentage of 8(a) contracting dollars going to ANCs, while ignoring the misleading use of percentage of contracting dollars instead of percentage of contracts and the fact that Native contracting is still less than 2% of all federal contracts. They argue that ANCs receive too many sole source contracts without mentioning that ANCs combined received only 2% of federal non-competitive awards. In fact, 98% of sole source contracts went to for profit companies, with some receiving more than every ANC combined. These companies that received over 98% of non-competitive contracting dollars have no obligation to directly fund their communities, preserve their traditions or provide for their shareholders education and medical expenses, as ANCs do.

And, despite attempts to show that Native participation has adversely impacted individually owned 8(a) businesses, neither the GAO nor the SBA Inspector General has been able to empirically prove that ANC participation has done so. In 2007, approximately 127 ANCs received 8(a) obligations, while over 4,000 non-ANC owned companies received obligations. While the revenue totals may not have been equal, neither were the number of people benefiting. While approximately one quarter of 8(a) contracting obligations went to ANCs, those revenues benefited approximately 80% of the total beneficiaries of the 8(a) program.

When Alaska Native Corporation participation in the 8(a) contracting program is put into the proper context, it becomes clear that Congress' decisions regarding their participation are the correct ones, just as the GAO found the first time Congress examined the issue in 2006. The underlying legislation does not need to be amended and is, in fact, doing exactly what it was supposed to do—provide Alaska Natives, Lower 48 Tribes and Native Hawaiian Organizations the opportunity to earn better lives for themselves while fulfilling negotiated and/or competed contracts to provide services to the Federal Government. It is an important part of Federal Indian policy, a promise that Congress made to Alaska Natives in the Alaska Native Claims Settlement Act and a program that is providing some of the poorest American citizens the opportunity to receive an education and live successful lives. In short, it is working just as intended, something that I know the Subcommittee will agree with.

Thank you.

SARAH PALIN
GOVERNOR
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July 23, 2009

The Honorable Claire McCaskill
United State Senate
Hart Senate Office Building, SH-717
Washington, DC 20510

Dear Senator McCaskill:

We are writing to you today to note at the outset that transparency and accountability have been a cornerstone of our administration. Alaska Native Corporations (ANCs), like all Alaska state corporations, are required to follow and abide by state and federal laws and regulations. If isolated cases of waste, fraud, or procurement abuses have occurred, we must identify and rectify them. Furthermore, as ANC involvement with the Small Business Administration's (SBA) 8(a) Business Development Program (8(a)) has grown, the SBA may wish to consider deploying additional resources and personnel to Alaska. However, we must be careful not to equate recent ANC growth and increases in 8(a) contracting as indicative of a generally unsound program or one in which ANCs are illegitimately benefiting.

Our administration supports the SBA's 8(a) program as it relates to ANCs. The 8(a) program has been a critical cultural, social, and economic pillar of Native Alaskan communities. Despite this progress, much work remains to be done. Many Native communities still contend with staggering poverty, chronic underemployment, and various social challenges. We are therefore concerned that modifications to the Native American 8(a) program may have negative consequences for Alaska's Native communities.

The enactment of the Alaska Native Claims Settlement Act (ANCSA) was a bold and pivotal turning point in the history of Alaska and Federal Indian policy. ANCSA embodied a completely new approach to resolving aboriginal title claims in the United States as it abandoned previous reservation models. Instead, Congress and the state of Alaska combined to provide nearly \$1 billion, and the federal government conveyed nearly 44 million acres of land to over 200 newly-created regional and village Native corporations, which were formed to manage the conveyed lands and bring economic development and social progress to Native communities.

The Honorable Claire McCaskill
July 23, 2009
Page 2

Many ANCs initially struggled; in the first 20 years, the regional corporations earned a combined average return on equity of negative 3.9 percent. Thus, many ANCs were on the verge of bankruptcy. Historically, private sector-led growth, opportunity, and management experience have too often been critical elements missing from Native American life. To remedy this problem and the underperformance of ANCs, Congress amended ANCSA and created ties between ANCs and the 8(a) program to foster development. These modifications allowed ANCs to contract with the federal government under special terms allowing for negotiation of federal contracts through sole-source awards. Congress undertook such changes by noting ANCs are owned wholly by entire communities of socially and economically disadvantaged people. These ANCSA and 8(a) modifications reinforced the pact and settlement between Alaska Natives and the federal government by underscoring the need for economic development in Native communities. It is widely accepted that without such amendments to ANCSA and the 8(a) program, many of the ANCs may have failed.

Fortunately, the revised Native American 8(a) program has revitalized ANCs. Since these reforms were enacted, ANCs have become critically important members of the Alaska business community, ranking among the largest employers in the state. Specifically, the ANCs' average return on assets in 2007 was 13.1 percent; shareholder equity totaled \$2.35 billion (up from the \$962.5 million in original capitalization under ANCSA); and total numbers comprise 16 percent of the 100 largest employers in Alaska. Moreover, as the SBA's inspector general's report concluded, "the 8(a) program has helped ANCs fulfill a mission that is broader than the bottom line of the corporations – namely, to help Alaska Natives achieve economic self-sufficiency."

Though for-profit, ANCs are unique when compared to traditional corporations. Whereas traditional 8(a) participants are often owned by an individual or small handful of individuals, ANCs are owned in perpetuity by hundreds, and in some cases thousands, of Native Alaskan shareholders. Further, these shareholders cannot buy, sell, or trade their stock. As a result, ANCs cannot sell additional shares to raise capital.

Moreover, all regional corporations, and many village corporations, operate non-profits upon which their shareholders have come to rely. These non-profits provide critical economic, social, and cultural programs for their rural villages, including language revitalization, support for school programs, elder care, college scholarships, burial assistance, health care assistance, resources for village infrastructure projects, and support for the subsistence economy. This unique model has generated significant economic and social benefits for Alaska Natives and for the state of Alaska as a whole.

The Honorable Claire McCaskill
July 23, 2009
Page 3

Since 1970, Native poverty has been cut in half; the percentage of Native homes without plumbing has dropped from 51 percent to 13 percent; Native high school graduation rates have increased from 14 percent to 46 percent; and the share of Alaska Natives with some college education has increased from 6 percent to 28 percent. These socio-economic advances are a unique result of individuals and families putting a priority on higher education along with ANCs working in tandem with various state and federal programs.

Although the 8(a) program has spurred economic development for some Native Alaskans, much work remains. Indeed, to truly appreciate why Alaskans are so supportive of the 8(a) program, it is worth discussing the challenges many Alaska Natives still face. In villages across the state, Alaska Natives lack basic necessities like running water, sewer systems, and affordable, reliable sources of energy. Alaska Native income levels remain 50 to 60 percent lower than those of other Alaskans. Even worse, 21 percent of Alaska Natives live below the poverty level. In 120 Native villages, half of the working-age adults do not have wage jobs, Alaska Natives drop out of high school at a rate three times the U.S. average, and only six percent of Alaska Natives have received a four-year college degree.

Poverty, low employment, and lack of education have had staggering social costs. Alaska Native suicide rates are nearly three times that of the U.S. as a whole; the smoking rate among Alaska Natives is approaching 50 percent; and homicide rates within this population are an astounding six times higher than the rest of the U.S. We, as Americans, should not consent to these numbers as acceptable for any community in our nation. Along with many Alaskans, we fear that proposed changes to the 8(a) program will exacerbate these dire economic and social conditions.

Though ANCs have just now begun to realize the possibilities created for their communities through the 8(a) program, misconceptions surrounding their participation in the program remain. Recent focus on the Native American 8(a) program has centered on a few high-profile ANCs. It is important to note, however, that these ANCs represent a fraction of the 203 ANC 8(a) participants.

Some have criticized ANC involvement in the 8(a) program by noting that many of the contracts awarded to ANCs are performed outside of Alaska and therefore do not benefit Native Alaskans. Such concerns appear to impose an artificial double standard for ANCs – corporations based in other states are not criticized for seeking business opportunities outside of state borders. Moreover, while it is true that a large portion of the value of ANC contracts are performed outside of Alaska, it is important to recognize that due to these contracts, ANCs have created over 31,000 jobs nationally, by hiring and sub-contracting locally in the communities in which they provide services. In addition, they

The Honorable Claire McCaskill
July 23, 2009
Page 4

have created the infrastructure necessary to care for Native Alaskan communities. Ultimately, what matters most is not where the work is performed, but that ANCs have been able to create the mechanisms necessary to continue to provide jobs, internships, scholarships, and other services to Native Alaskans.

There is also a perception among some that ANC sole-source contracting amounts to a figurative blank check and no oversight in the contracting process. This claim suggests a misunderstanding of the SBA program. ANCs are subject to the same accountability standards as all 8(a) participants and contracting officials must certify that the Federal government receives quality services and products at fair and equitable cost.

In conclusion, the expressed intent of ANCSA, and its subsequent reforms, was to utilize ANCs as a vehicle to modernize the socio-economic standing of Native Alaskans and as a means to revitalize and preserve their cultures. Though the state and federal governments can and should play a role in addressing the concerns of Native Alaskans, we remain convinced that problems within communities are best solved by the solutions generated within the communities themselves. At a time in which it is clear that these reforms are working as intended, it would be counterproductive and misguided for federal Indian policy to abandon this model.

As the passage of ANCSA approaches its 40th anniversary, some of the greatest successes of the legislation have only been realized in the last decade. However, much work remains. History has taught us that the Native communities across our nation learn from one another. A handful of ANCs are now seeing the fruits of their labor and have shown us what is possible through the Native American 8(a) program. In addition to being profitable enterprises, many ANCs have also played a critical role in providing much-needed services for their shareholders. We therefore urge you to be mindful that modifications to the Native American 8(a) program might derail current and future progress for our nation's First Americans.

Sincerely,



Sarah Palin
Governor



Sean Parnell
Lt. Governor

cc: The Honorable Joseph Lieberman, United States Senate

The Honorable Claire McCaskill
July 23, 2009
Page 5

The Honorable Carl Levin, United States Senate
The Honorable Daniel Akaka, United States Senate
The Honorable Thomas Carper, United States Senate
The Honorable Mark Pryor, United States Senate
The Honorable Mary Landrieu, United States Senate
The Honorable Jon Tester, United States Senate
The Honorable Roland Burris, United States Senate
The Honorable Michael Bennet, United States Senate
The Honorable Susan Collins, United States Senate
The Honorable Thomas Coburn, United States Senate
The Honorable John McCain, United States Senate
The Honorable George Voinovich, United States Senate
The Honorable John Ensign, United States Senate
The Honorable Lindsey Graham, United States Senate
The Honorable Dan Inouye, United States Senate
The Honorable Lisa Murkowski, United States Senate
The Honorable Mark Begich, United States Senate
The Honorable Don Young, United States Congress

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ENVIRONMENT AND PUBLIC WORKS
FOREIGN RELATIONS
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SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3205

July 30, 2009

Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
Washington, DC 20510-6250

Re: Alaskan Native Corporation Contracting Preferences

Dear Senator McCaskill:

It has come to my attention that the Subcommittee on Contracting Oversight recently held hearings to examine the issue of awarding unlimited dollar value, sole-source federal contracts to Alaskan Native Corporations (ANC's). As you know, federal contracting laws have created special exemptions which apply only to ANC's and other Tribal Entities and these preferences far exceed those offered to other small and disadvantaged business groups like 8(a), HUBZone and the Service Disabled Veteran owned businesses. These special exemptions have allowed tribal concerns to receive billions of dollars in federal sole-source contracts without competition from local contractors.

I am very concerned that the taxpayers are not getting the best value when government contracts are awarded on a sole-source, no-bid basis. Eliminating waste, fraud and abuse in government contracting should be a priority for all of us in these difficult economic times.

In my home state of New York, I am aware of two no-bid sole-source awards at the Fort Drum military base in Watertown. Two separate ANC's, Chugach and Alutiiq, were awarded sole-source contracts to perform construction, maintenance, and rehabilitation projects at Fort Drum over a 10-year period for a total contract value of \$400 million dollars. Despite pleas from several local contractors to competitively procure these contracts, they were awarded by the Army Contracting Agency in Fort Eustis, VA.


Even more alarming, I have just discovered that projects at Fort Drum being funded by the American Recovery and Reinvestment Act (ARRA) are being directed to these two Alaskan Native Corporations on a sole-source, no-bid basis. These projects consist of repairs and upgrades to barracks, roadways and utility systems and surely local general contractors should have been allowed to compete for this work. Awarding ARRA projects based in Northern New York to firms from Alaska on a sole-source, no-bid basis is simply unacceptable.

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It is apparent to me that the laws that allow this to happen need to change. I am offering my assistance and support to you in co-sponsoring legislation which will result in meaningful reform to the federal contracting process. Please let me know how I can be of help.

Sincerley,

A handwritten signature in black ink that reads "Kirsten E. Gillibrand". The signature is written in a cursive, flowing style.

Kirsten E. Gillibrand
Member of Congress



United States Senate
Committee on Homeland Security & Governmental Affairs
SUBCOMMITTEE ON CONTRACTING OVERSIGHT

**NEW INFORMATION ABOUT CONTRACTING
PREFERENCES FOR ALASKA NATIVE
CORPORATIONS (PART I)**

Majority Staff Analysis
Prepared for Chairman Claire McCaskill

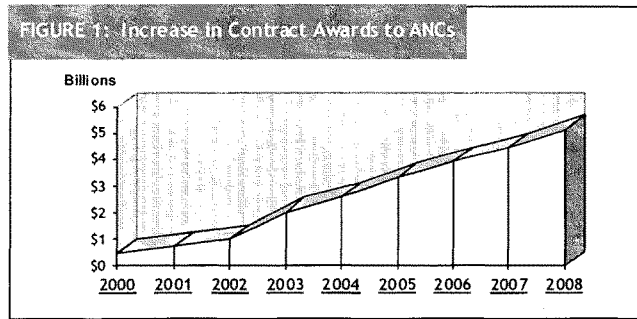
On July 16, 2009, the Subcommittee on Contracting Oversight will hold a hearing entitled, "Contracting Preferences for Alaska Native Corporations." The purpose of the hearing is to examine concerns relating to the award of contracts to Alaska Native Corporations (ANCs) through the Small Business Administration's 8(a) program. The preference given to Alaska Native Corporations in federal procurement was intended to provide economic opportunities for impoverished Alaskan communities. In recent years, however, critics have identified these preferences as a vehicle for avoiding competition and passing work through to large, non-Native contractors.

As one part of the Subcommittee's review of preferences provided to Alaska Native Corporations under the Small Business Administration's 8(a) program, the Subcommittee will examine the growth of ANCs within the 8(a) program over the last nine years.

In preparation for the hearing, Subcommittee majority staff reviewed publicly available data about contracts awarded to ANCs from 2000-2008. The data show that contract awards to Alaska Native Corporations increased by 916%, from \$508.4 million in 2000 to \$5.2 billion in 2008. In 2008, approximately 80% of the contract dollars awarded to ANCs was performed outside of Alaska. In 2004, 2006, 2007, and 2008, more contracts were performed in Virginia than Alaska.

New Data About ANC Contracts

Over the last nine years, ANC spending has increased dramatically.¹ Between 2000 and 2008, contract awards to Alaska Native Corporations increased by \$4.7 billion, from \$508.4 million to \$5.2 billion. See Figure 1.



¹ All information is based on data compiled by Eagle Eye, Inc., from the Federal Procurement Data System, the federal contract tracking system established by the General Services Administration. Unless otherwise noted, years cited denote fiscal years.

In percentage terms, ANC contract spending increased 916% from 2000 to 2008, an average increase of 33.6% per year. In total, ANCs received \$23.7 billion in federal contracts between 2000 and 2008.²

ANC spending has increased faster than overall federal contract spending. Between 2000 and 2008, ANC contract spending increased at a rate six times greater than that of overall federal contract spending. Overall federal contract spending increased 149% between 2000 and 2008, while ANCs have increased by 916% during the same period.

The Department of Defense is by far the largest user of ANC contracts. In total, the Department of Defense spent \$16.9 billion on contracts with ANCs from 2000 to 2008, more than 70% of ANC spending overall. The agencies with the next highest proportion of ANC contracts are the Department of the Interior (\$1 billion or 4.4%) and the Department of Homeland Security (\$980 million or 4.1%).

The Subcommittee's investigation has shown that most contracts with Alaska Native Corporations are performed outside Alaska. Between 2000 and 2008, only 21% of all contract dollars awarded to ANCs (\$5 billion) were performed in the state of Alaska. The state with the next highest percentage of contract dollars is Virginia (\$4.4 billion or 19%), followed by Maryland (\$1.6 billion or 6.7%), Florida (\$1.4 billion or 5.7%), and California (\$1.1 billion or 4.7%). In 2004, 2006, 2007, and 2008, more ANC contract dollars were performed in Virginia than in Alaska. See Figure 2.

Figure 2: States with More Than \$100 Million in ANC Contracts in 2008

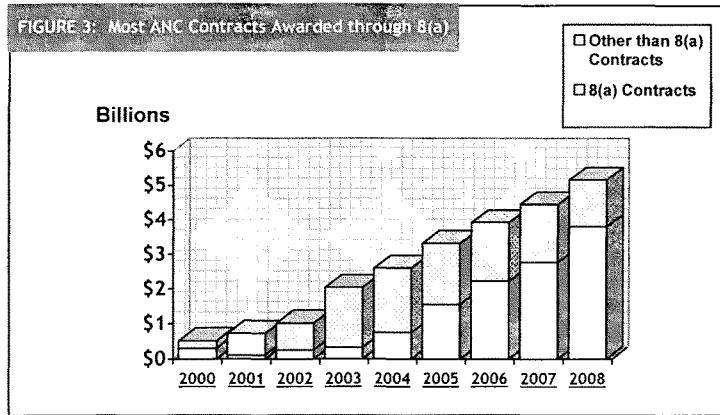
State	2008 Spending	Number of Contract Awards
Virginia	\$1,136,850,593.91	3,575
Alaska	\$1,008,654,385.95	2,395
Maryland	\$303,097,042.15	1,830
Texas	\$269,426,603.04	461

²The Subcommittee has learned of and corrected two errors in its June 23, 2009 Part I Analysis. Eagle Eye originally included 65 contract awards totaling \$23.9 million for the 2007 and 2008 fiscal years that were erroneously counted as ANC awards. The Subcommittee has removed these figures from its data set. A second error, compiling total ANC sole-source awards has also been corrected. Total ANC federal contract awards between 2000 and 2008 were \$23.7 billion not \$23.8 billion and ANCs received \$6.3 billion in 8(a) contracts valued at more than \$3.5 million between 2000 and 2008 not \$17.2 billion, as earlier reported. These changes and the related increase in percentages and decrease in figures have been corrected herein.

Florida	\$269,108,533.65	1,059
District of Columbia	\$207,465,047.88	626
California	\$200,832,441.74	1,325
Washington	\$158,851,442.04	661
Alabama	\$122,600,966.78	493
Georgia	\$117,379,153.61	428
Colorado	\$108,851,568.48	843

Many ANC contractors are located outside Alaska. Between 2000 and 2008, approximately 40% of all ANC contract dollars was awarded to companies located outside of Alaska. Approximately 18% of all ANC contract dollars (\$4.2 billion) was awarded to companies based in Virginia.

ANCs receive a disproportionate share of 8(a) contracts. Between 2000 and 2008, ANCs received \$12.1 billion in federal contracts through the 8(a) program. In 2008, awards to ANCs constituted 18% of all federal contract dollars awarded through 8(a) prime contracts. In 2008, 74% of contract dollars awarded to ANCs were awarded through the 8(a) program. See Figure 3.



Generally, sole-source 8(a) contracts must be valued under \$5.5 million for goods or \$3.5 million for services. ANCs, which are exempt from this restriction, received \$6.3 billion in 8(a) contracts valued at more than \$3.5 million each between 2000 and 2008.

Conclusion

In preparation for the Subcommittee's hearing on July 16, 2009, Chairman McCaskill requested information from 20 Alaska Native Corporations regarding their 8(a) subsidiaries, contracts, financial data, and benefits provided to shareholders. This information is highly relevant to assessing the impact of contracting preferences for ANCs. The Subcommittee will address its review of this material at the hearing.



**United States Senate
Committee on Homeland Security & Governmental Affairs
SUBCOMMITTEE ON CONTRACTING OVERSIGHT**

**NEW INFORMATION ABOUT CONTRACTING
PREFERENCES FOR ALASKA NATIVE
CORPORATIONS (PART II)**

**Majority Staff Analysis
Prepared for Chairman Claire McCaskill**

Executive Summary2

Introduction and Methodology4

Findings7

Growth in Alaska Native Contracting8

Alaska Native Corporations and the 8(a) Program9

 ANCs Exceed Size Limitations for Small Businesses..... 11

 Award of Large No-Bid Contracts 12

 ANCs' Use of Subcontracts 12

Relationship Between Federal Contracts and Benefits to Shareholders.....14

 Benefits to Shareholders and Communities 14

 Jobs for Shareholders 15

 Management and Executive Compensation 15

 Case Study: Chenega Corporation..... 16

 Case Study: Cook Inlet Region, Inc. (CIRI)..... 17

Conclusion17

Executive Summary

In the 1980s and early 1990s, Congress passed a series of laws which made Alaska Native Corporations (ANCs) eligible for federal contracting opportunities for socially and economically disadvantaged minority-owned businesses, including the Small Business Administration's 8(a) program. These designations and several subsequent legislative and regulatory preferences now allow ANCs to enjoy competitive advantages and benefits not available to other 8(a) small business participants. The most far reaching of these preferences is the ANCs' ability to be awarded no-bid federal contracts of unlimited value. ANCs can also have multiple 8(a) subsidiaries and remain in the 8(a) program indefinitely.

At the request of Senator Claire McCaskill, this analysis examines the impact of the Alaska Native Corporations' contracting preferences. The report is based on nonpublic information provided to the Subcommittee by 19 Alaska regional and village corporations. For each corporation, the Subcommittee requested and received data on contract awards, major subcontractors, corporate structure and revenues, executive and board compensation, shareholder employment, and the dividends and other benefits provided to shareholders.

The analysis finds that Alaska Native Corporations are multi-million or billion dollar corporations that are now among the largest federal contractors. Although ANCs provide some benefits to their shareholders, those benefits may not be in proportion to the potential for waste, fraud, and abuse created by the ANCs' contracting preferences.

Key findings in the analysis include:

- **Alaska Native Corporations are now among the largest federal contractors.** In 2008, four ANCs – Arctic Slope Regional Corporation, Afognak Native Corporation, NANA Regional Corporation, and Chugach Alaska Corporation – were among the top 100 recipients of federal contract awards.
- **Alaska Native Corporations are big businesses.** The majority of the Alaska Native Corporations surveyed by the Subcommittee exceed the size requirements applicable to other 8(a) companies. 11 out of the 19 companies – Afognak, Ahtna, Arctic Slope, Bristol Bay, Chenega, Chugach, the Cook Inlet Region, Inc. (CIRI), Doyon, Koniag, NANA, and Sealaska – have had annual revenues higher than the Small Business Administration's limit since 2002.
- **Alaska Native Corporations have created multiple 8(a) subsidiaries.** The Alaska Native Corporations have taken advantage of the exemption from the size requirements to create multiple 8(a) subsidiaries. Over the last 9 years, the 19 companies surveyed by the Subcommittee have enrolled 248 subsidiaries, joint ventures, or partnerships in the 8(a) program.
- **Alaska Native Corporations have been awarded multiple large federal contracts on a sole-source basis.** Between 2000 and 2008, ANCs received \$6.6 billion in 8(a) sole-source contracts valued at more than \$3.5 million each. The single largest ANC 8(a) contract is the \$1.13 billion Inter-Service Supply Support Operations Program (ISSOP)

contract that was awarded by the Defense Department to FSS-Alutiiq, a joint venture of Arctic Slope Regional Corporation and Afognak Native Corporation, in 2002.

- **Alaska Native Corporations may be passing work through to subcontractors.** The Afognak Native Corporation can be viewed as a case study of how Alaska Native Corporations use subcontracts to pass work to large, non-Native companies. Nine subcontractors alone received more than 70% of all subcontract awards under Afognak contracts. For 91 individual contracts collectively worth more than \$827 million, Afognak paid subcontractors more than 50% of the total prime contract revenue on each contract.
- **ANCs employ a relatively small percentage of shareholders.** The 19 Alaska Native Corporations which provided information to the Subcommittee employ more than 45,000 individuals throughout their corporations. Of these, approximately 2,400 employees – 5.2% - are shareholders (or relatives of shareholders) of the employing Corporation. On average, nearly 95% of ANC employees are not ANC shareholders.
- **Alaska Native Corporations have relied heavily on highly-paid, non-Native executives.** Of the 13 corporations which provided detailed information to the Subcommittee regarding executive compensation for non-Native executives, 69% of executive compensation was paid to individuals who were not shareholders in the Native Corporations. The information produced to the Subcommittee also shows that for one or more years between 2000 and 2008, eight Alaska Native Corporations paid their Chief Executive Officer, who was a shareholder, substantially less than a non-shareholder holding a lower-ranked position.

One of the primary rationales for the ANC contracting preferences is that they provide economic support and other benefits for Native shareholders and communities. The Subcommittee's investigation shows that the 19 ANCs have provided cash, scholarships, preservation of cultural heritage, or other benefits valued at approximately \$720.1 million over the last nine years to members of the Alaska Native community as a result of federal contracts. On average, that amounts to a value of \$615 per person per year.

Introduction and Methodology

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA) to distribute land and promote economic growth for Alaska Natives. ANCSA provided for the establishment of thirteen regional Alaska Native Corporations (ANCs) and what has now grown to over 200 village, urban, and group corporations. These regional and local corporations were tasked with dividing land, resources, and money among their shareholders, the Alaska Natives.¹

In the 1980s and early 1990s, Congress passed a series of laws which made the ANCs uniquely eligible for federal contracting opportunities for socially and economically disadvantaged minority-owned businesses. The Small Business Administration's 8(a) program was created to help small businesses compete during the early stages of a business' development.² To be accepted into the 8(a) program, businesses must demonstrate their social disadvantage by providing evidence of "racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups."³ Upon establishing their social disadvantage, businesses must then provide support for their claims of economic disadvantage.⁴

In 1986, Congress designated Indian tribes and ANCs as socially disadvantaged business enterprises.⁵ In 1992, Congress amended ANCSA to deem all ANCs to be "economically disadvantaged."⁶ These two designations enabled ANCs to participate in the Small Business Administration's 8(a) program by automatically deeming them to meet both social and economic disadvantage eligibility determinations.⁷ According to the Senate Energy and Natural Resources Committee, the amendment to ANCSA was intended to:

¹ Pub. L. 92-203, act of December 18, 1971, 85 Stat. 688, 691, 707, "Alaska Native Claims Settlement Act"; 43 U.S.C. § 1601, et seq.

² Pub. L. 83-163, § 207(c)-(d), 67 Stat. 230 (July 30, 1953). The program became permanent in 1958 and its mandate was expanded to focus on "socially and economically disadvantaged" small businesses in 1978. Pub. L. 85-536, § 8(a) (1)-(2), 72 Stat. 384 (July 18, 1958); Pub. L. 95-507, § 201-02, 92 Stat. 1757 (Oct. 24, 1978), codified in 15 U.S.C. § 637(a) and designated as the Business Development Program in 13 C.F.R. § 124.1.

³ 13 CFR § 124.103(a).

⁴ 13 CFR § 124.104.

⁵ Pub. L. 99-272, § 18015, act of April 7, 1986, 100 Stat. 82, 370-371, "Consolidated Omnibus Budget Reconciliation Act of 1985;" 15 U.S.C. § 637(a)(4).

⁶ Pub. L. 92-203, as amended by Pub. L. 100-241, § 15, act of February 3, 1988, 101 Stat. 1812, the "Alaska Native Claims Settlement Act Amendments of 1987"; 43 U.S.C. § 1626(e)(1)), and by Pub. L. 102-415, § 10, act of October 14, 1992, 106 Stat. 2115, the "Alaska Land Status Technical Corrections Act of 1992."

⁷ Unlike the ANCs, Indian tribes must still establish economic disadvantage in order to be eligible for the 8(a) program. See Pub. L. 92-203, as amended by Pub. L. 100-241, § 15, act of

further clarify that Alaska Native corporations and their subsidiary companies are minority and economically disadvantaged business enterprises for the purposes of qualifying for participation in Federal contracting and subcontracting programs ... [which] were established to increase the participation of certain segments of the population that have historically been denied access to Federal procurement opportunities.⁸

Several subsequent legislative and regulatory preferences now allow ANCs to enjoy competitive advantages and benefits not available to other 8(a) small business participants. Most 8(a) participants may be awarded sole-source contracts not to exceed \$3.5 million for services or \$5.5 million for goods, if it is first determined that there is no reasonable expectation of small businesses' ability to compete for or receive such awards at a fair market value.⁹ The Business Opportunity Development Reform Act of 1988 exempts all ANCs and economically disadvantaged Indian Tribes from these limits.¹⁰ As a result, Alaska Native Corporations participating in the 8(a) program can receive sole-source contracts of unlimited value.

Another preference allows ANCs to take advantage of their small business designation indefinitely. Other 8(a) participants are limited to one-time eligibility for 8(a) participation, cannot own more than 10-20% interest in another 8(a) firm, and cannot participate in the program for longer than nine years.¹¹ ANCs, however, may own a majority interest in an unlimited number of 8(a) subsidiaries at any one time so long as no more than one 8(a) firm operates in the same primary area of work.¹² In other words, ANCs can form new subsidiaries to enroll in the program as the old ones graduate, effectively circumventing the nine-year graduation and ownership requirements.

Two other preferences created in the past nine years have been utilized by the Department of Defense to benefit ANCs, including subsidiaries which are not part of the 8(a)

February 3, 1988, 101 Stat. 1812, the "Alaska Native Claims Settlement Act Amendments of 1987"; 43 U.S.C. § 1626(e)(1)), and by Pub. L. 102-415, § 10, act of October 14, 1992, 106 Stat. 2115, the "Alaska Land Status Technical Corrections Act of 1992."

⁸ S. Rept. 102-349, p. 14.

⁹ 15 U.S.C. § 637(a)(1)(D)(i)(I) & (II); 48 C.F.R. § 19.805-1(a)-(b)(2).

¹⁰ Pub. L. 100-656, § 602(a), act of November 15, 1988, 102 Stat. 3853, 3887, the "Business Opportunity Development Reform Act", 15 U.S.C. § 637 as amended; 13 CFR § 124.506(a)(iii); 13 CFR § 124.506(b); 48 C.F.R. § 19.805-1(a)-(b)(2). The original \$3 and \$5 million award limits were subsequently increased to \$3.5 and \$5.5 million. *Id.*

¹¹ 13 C.F.R. § 124.108(b); 13 C.F.R. § 124.2; 13 C.F.R. § 124.105(g).

¹² 13 C.F.R. § 124.109(c)(3)(ii).

program. First, so long as funds are appropriated, all contractors (including ANC prime contractors) can be paid up to a 5% bonus to subcontract to an Alaska Native Corporation.¹³

Second, ANCs have a unique ability to obtain work performed by federal employees. Generally, when a federal agency decides to contract out federal civilian jobs to the private sector, it must conduct a competition known as an “A-76”, named after the Office of Management and Budget Circular which established the competitive procedures.¹⁴ In 2000, Congress inserted a provision in the Department of Defense Appropriations Act which allows the Department to outsource federal jobs without following the A-76 procedures if the contract was awarded to a Native American-owned business.¹⁵ In 2004, Congress clarified that the language in the 2000 exception included Alaska Native Corporations, and added a provision which allows the Department of Defense to count these conversions towards the agency’s competition goals.¹⁶

Little information has been made available to the public about the impact of the contracting preferences for Alaska Native corporations. The Federal Procurement Data System, the electronic database of federal government contract awards, has only recently allowed users to track the awards to Alaska Native Corporations as a unique category. And as private companies, the ANCs are not regulated by the Securities & Exchange Commission and do not have to comply with disclosure rules applicable to publicly-traded corporations. Although the State of Alaska requires ANCs to file disclosure statements, these statements are available only to those members of the public who travel to Alaska to access the paper documents.

To assess the impact of the contracting preferences for the Alaska Native Corporations, Senator Claire McCaskill requested nonpublic information from the 13 Alaska regional corporations and seven of the largest village corporations: Ahtna, Incorporated; The Aleut Corporation; Arctic Slope Regional Corporation; Bering Straits Native Corporation; Bristol Bay Native Corporation; Calista Corporation; Chugach Alaska Corporation; Cook Inlet Region, Inc. (CIRI); Doyon, Limited; Koniag, Incorporated; NANA Regional Corporation; Sealaska Corporation; The 13th Regional Corporation; Afognak Native Corporation; Tyonek Native Corporation; Cape Fox Corporation; Chenega Corporation; Eyak Corporation; Goldbelt, Inc.; and Olgoonik Corporation.

For each corporation, the Subcommittee requested data on contract awards from 2000 to 2008. The corporations were asked to provide information relating to their revenue from federal contracts and subcontracts, major subcontractors, and the dividends and other benefits provided to shareholders. The corporations were also asked to provide information relating to their

¹³ 25 U.S.C. § 1544. In 2009, Congress appropriated \$15 million for this purpose. Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Pub. L. 110-329, Sec. 8021.

¹⁴ Federal Office of Management and Budget Circular A-76, Performance of Commercial Activities (August 4, 1983), revised 1999.

¹⁵ Pub. L. 106-79, Sec. 8014(3).

¹⁶ Pub. L. 108-87, Sec. 8014(b)((1)(C), incorporating 25 U.S.C. § 450b(e).

corporate structure and revenues, executive and board compensation, and shareholder employment. Nineteen companies provided complete or substantially complete responses to the Subcommittee.¹⁷

Findings

In recent years, federal auditors and academics have raised concerns that the preferences granted to Alaska Native Corporations create the potential for waste, fraud, and abuse in government contracting.

In 2006, the U.S. Government Accountability Office (GAO) concluded that the Alaska Native Corporation contracting preferences were an “open checkbook” for government agencies. According to GAO, federal agencies used Alaska Native Corporation preferences to quickly award large contracts without going through the lengthy competitive process and to help meet their small business contracting goals. GAO also found an “increased risk that an inappropriate degree of the work” on the contracts was being performed by large, non-Native subcontractors, rather than by the ANCs themselves.¹⁸

Steven Schooner, a government contracts professor at the George Washington University Law School, recently stated:

The ANC program, as currently implemented, is a blunt instrument that distorts the procurement system, injects well-founded cynicism into the process, and reinforces the belief that government procurement is more about allocating political spoils than ensuring that the government receives value for taxpayer money.¹⁹

One rationale for the Alaska Native Corporations’ contracting preferences is to further the federal government’s policy of supporting small, disadvantaged businesses. Supporters have also suggested that the ANCs’ contracting preferences provide economic and other benefits to ANC shareholders and Alaska Native communities. The Native American Contractors Association (NACA) has stated that the 8(a) provisions applicable to ANCs have enabled the Native Corporations “to generate revenues and create jobs that benefit entire Native

¹⁷ One company, the 13th Regional Corporation, failed to provide any response to the Subcommittee’s request. The Subcommittee has since learned that the 13th Regional Corporation’s financial distress may prevent it from providing a response at this time. For additional information regarding the 13th Regional Corporation, see *13th Regional Corp. Lays Out Its Difficulties*, Anchorage Daily News (Dec. 3, 2008).

¹⁸ U.S. Government Accountability Office, *Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight* (Apr. 27, 2006) (GAO-06-399).

¹⁹ *Business is Booming for Alaska Native Corporations*, Government Executive (March 6, 2009).

communities,” including incentives for economic development, educational scholarships and training.²⁰

The Subcommittee’s investigation shows that the Alaska Native Corporations are multi-million or billion dollar corporations that are now among the largest federal contractors. Although ANCs provide some benefits to their shareholders, ANCs’ contracting preferences also create the potential for waste, fraud, and abuse.

Growth in Alaska Native Contracting

Contract awards to Alaska Native Corporations have increased dramatically. Over the last nine years, ANC contract awards increased by \$4.7 billion, from \$508.4 million in 2000 to \$5.2 billion in 2008.²¹ In total, ANCs received \$23.7 billion in federal contracts between 2000 and 2008. In percentage terms, ANC contract awards increased 916% from 2000 to 2008, approximately six times faster than overall federal contract spending.²²

Alaska Native Corporations are now among the largest federal contractors. In 2008, four ANCs – Arctic Slope Regional Corporation, Afognak Native Corporation, NANA Regional Corporation, and Chugach Alaska Corporation – were among the top 100 recipients of federal contract awards.²³ In 2009, six ANCs – NANA Regional Corporation, Arctic Slope Regional Corporation, Chenega Corporation, Eyak Corporation, Afognak Native Corporation, and Chugach Alaska Corporation – made Washington Technology’s list of the top 100 federal technology contractors.²⁴

ANC contract spending has been concentrated among a few corporations. The five largest ANC contractors received more than \$15.2 billion from 2000 to 2008. Almost 20% of this – more than \$4.6 billion – was awarded to Chugach Alaska Corporation. The top 5 ANC contractors received 64% of the contract dollars awarded to ANCs between 2000 and 2008.²⁵

²⁰ Native American Contractors Association, *The Native American Communities 8(a) Program Works* (online at <http://www.nativecontractors.org/media/pdf/NACA-Advocacy-Packet-2009.pdf>) (accessed July 14, 2009).

²¹ Data are based on information compiled by Eagle Eye, Inc., from the Federal Procurement Data System, the federal contract tracking system established by the General Services Administration, and are current through February 2009. Unless otherwise noted, years cited denote fiscal years.

²² *Id.*

²³ *Top 100 Recipients of Federal Contract Awards for FY 2008* (online at <http://www.usaspending.gov>) (accessed July 7, 2009).

²⁴ *2009 Top 100* (online at <http://washingtontechnology.com/toplists/top-100-lists/2009.aspx>) (accessed July 14, 2009).

²⁵ Eagle Eye, *supra* Note 21.

The major ANC contractors are now large national corporations. Over the last 9 years, the 19 corporations surveyed by the Subcommittee have created or participated in 723 subsidiaries, joint ventures, or partnerships based in Alaska and across the United States.²⁶ For example, subsidiaries of the Chenega Corporation are located in Las Vegas, Nevada; Lorton, Chesapeake, Ashburn, Alexandria, Vienna, and Norfolk, Virginia; Sioux Falls, South Dakota; and Jacksonville, Florida.²⁷ Alutiiq, a subsidiary of the Afognak Native Corporation, maintains offices in Chesapeake, Virginia; Washington, DC; Charleston, South Carolina; Huntsville, Alabama; San Diego, California; Dallas, Texas; Denver, Colorado; and Honolulu, Hawaii, in addition to an office in Anchorage.²⁸ Between 2000 and 2008, approximately 40% of all ANC contract dollars was awarded to ANC subsidiary companies located outside of Alaska.

Last year, the single largest ANC contractor was Arctic Slope Regional Corporation. According to information produced to the Subcommittee, Arctic Slope received \$868.9 million in prime contracts and an additional \$98.7 million in subcontracts in 2008. From 2000 to 2008, Arctic Slope received approximately \$3.1 billion in federal contracts, of which more than \$1.4 billion (46%) was awarded through the 8(a) program.²⁹

Since April 2009, Alaska Native Corporations have received nearly \$30 million dollars in federal stimulus contracts. These contracts were awarded as new task orders under existing noncompetitive contracts to Chugach Alaska Corporation, Alutiiq (a subsidiary of Afognak Native Corporation) and Arctic Pipe & Materials (a subsidiary of Cape Fox Corporation). Between April and July 2009, these companies were awarded 73 task orders to perform construction and maintenance for the Department of Defense, including the repair of roadways and rail crossings, plumbing, barracks renovation, and upgrades of dining facilities. The work will be performed at Fort Drum in New York, Kirtland Air Force Base in New Mexico, Eielson Air Force Base in Alaska, Offutt Air Force Base in Nebraska, and Scott Air Force Base in Illinois.³⁰

Alaska Native Corporations and the 8(a) Program

The Alaska Native Corporations now receive a disproportionate number of 8(a) contracts. Between 2000 and 2008, ANCs received \$15.1 billion in federal contracts through the 8(a) program.

²⁶ All data not otherwise cited herein are based on information received by the Subcommittee in response to Chairman McCaskill's May 12, 2009 requests for information (online at <http://mccaskill.senate.gov/issues/soco/docs.cfm>).

²⁷ Chenega Corporation Website (<http://www.chenega.com>) (accessed July 8, 2009).

²⁸ Alutiiq Website (<http://www.alutiiq.com>) (accessed July 8, 2009).

²⁹ Eagle Eye, *supra* Note 21.

³⁰ This information was received from data publicly available through a recovery awards search of FedBizOpps.Gov, an electronic database maintained by the U.S. government; www.fbo.gov (accessed July 7, 2009).

Alaska Native Corporations receive the majority of their contract dollars through 8(a) contracts. In 2008, awards to ANCs constituted 19% of all the federal contract dollars awarded to 8(a) firms. In 2008, 65% of contract dollars awarded to ANCs were awarded through the 8(a) program.³¹

The ANCs' share of the 8(a) contracting program has raised significant concerns among other small business groups. Harry Alford, President of the Black Chamber of Commerce, has called for an end to the ANCs' 8(a) preferences. In 2006, Mr. Alford stated:

Bundling and a "runaway freight train" known as the ANCs are wreaking havoc on 8(a) firms and the African American, Hispanic, Asian and, yes, the Native American communities. We are losing jobs, destroying businesses and negatively affecting communities who need progress the most. ANC's [sic], in effect, have become predators on the minority business community.³²

Some experts have concluded that the ANCs' 8(a) preferences ultimately may be detrimental to the ANCs themselves. Jenny Yang, the author of a recent law review article about the ANCs, suggests that the ANCs' contracting preferences may lead to their dependence on those advantages.³³ According to Ms. Yang:

The practices of creating subsidiaries to take on follow-on contracts and of creating holding companies have the effect of perpetuating the ANC's benefit from the 8(a) Program when it possibly has outgrown the preference. The circumvention of graduation and other aspects of the 8(a) Program not only diverts 8(a) resources and opportunities away from new small disadvantaged businesses but also hurts the ANCs by delaying their entry into the world of competitive contracting. This can thwart the development of any accompanying drive to prepare their businesses to succeed in that world.³⁴

The Subcommittee's investigation shows that the ANCs have taken advantage of their 8(a) contracting preferences. Unlike other 8(a) contractors, which must comply with the SBA's size and economic disadvantage eligibility requirements, ANCs are now large, wealthy corporations which receive billions in sole-source contracts not available to other 8(a) contractors. ANCs have also used the subcontracting rules to pass a significant portion of the work on their contracts through to other businesses, to the extent that some corporations appear to have abused the SBA's subcontracting limitations.

³¹ Eagle Eye, *supra* Note 21.

³² House Committee on Government Reform and House Committee on Small Business, Written Testimony of Harry Alford, President of the National Black Chamber of Commerce, *Joint Hearings on Northern Lights and Procurement Plights: The Effect of the ANC Program on Federal Procurement and Alaska Native Corporations* (June 21, 2006).

³³ Jenny J. Yang, *Small Business, Rising Giant: Policies and Costs of Section 8(a) Contracting Preferences for Alaska Native Corporations*, Alaska Law Review (Dec. 2006).

³⁴ *Id.*

ANCs Exceed Size Limitations for Small Businesses

Unless a business is certified as “small,” it is not eligible to participate in the 8(a) program.³⁵ A business’s size is based on evaluation of annual receipts (and in select cases, assets), or number of employees.³⁶ The size determination limits vary by industry to reflect differences within each field. The Small Business Administration has set the highest allowable annual receipts threshold at \$35.5 million.³⁷

The business size restrictions for 8(a) participation do not apply to ANCs in the same way as other 8(a) participants. While individual companies owned by ANCs are subject to the same size determination requirements as other 8(a) participants, the total size of the ANC and its other subsidiaries and affiliates are not included in those size determinations.³⁸ And because each individual ANC subsidiary, joint venture, or partnership is assessed independently, the ANC can have a potentially unlimited number of employees and revenues as long as each individual 8(a) subsidiary meets the size requirements.³⁹

The majority of the Alaska Native Corporations surveyed by the Subcommittee exceed the size requirements applicable to other 8(a) companies. 11 out of the 19 companies – Afognak, Ahtna, Arctic Slope, Bristol Bay, Chenega, Chugach, CIRI, Doyon, Koniag, NANA, and Sealaska – report annual revenues higher than \$35.5 million every year since 2002.⁴⁰ In 2007 and 2008, not one of the companies which provided information to the Subcommittee had annual revenues below \$35.5 million. In 2008 alone, 17 companies had total revenues in excess of \$100 million.

The Alaska Native Corporations have also taken advantage of the exemption from the size requirements to create multiple 8(a) companies. Over the last 9 years, the 19 companies surveyed by the Subcommittee have enrolled 248 subsidiaries, joint ventures, or partnerships in the 8(a) program. On average, each company has operated 13 8(a) subsidiaries since 2000.

³⁵ 13 CFR § 121.101(a).

³⁶ 13 CFR § 121.201; 13 C.F.R. § 121.106(b); 13 C.F.R. § 121.104(a).

³⁷ 13 CFR § 121.201. Select industries such as commercial banking and credit card issuers have maximums set at \$175 million in assets, instead of annual receipts. *Id.* The Subcommittee is not aware of any ANCs which participate in these industries.

³⁸ 13 C.F.R. § 124.109; *See also* 13 C.F.R. § 121.103.

³⁹ *Id.* In addition, the Small Business Administration should determine that no “substantial unfair competitive disadvantage” exists when excluding these entities from size determinations. 13 C.F.R. § 124.109.

⁴⁰ To determine annual receipts, SBA averages total income plus cost of goods sold averaged over the three preceding years. *See* 121 CFR 121.104. Because the Subcommittee’s calculations are based on total revenues averaged over the three preceding years, a company’s annual receipts as determined by the SBA may be even higher.

Award of Large No-Bid Contracts

The most far reaching of the legal and regulatory preferences is ANCs' ability to be awarded federal contracts of unlimited size and amount on a sole-source basis as 8(a) small and disadvantaged businesses.⁴¹ Between 2000 and 2008, ANCs received \$6.6 billion in 8(a) sole-source contracts valued at more than \$3.5 million each.⁴² These include a \$480 million Army Corps technology support contract awarded to Eyak Corporation⁴³; a 10-year, \$500 million Air Force contract awarded to Chugach Corporation to provide base operations support at MacDill Air Force Base⁴⁴; and a 10-year, \$475 million Customs & Border Patrol contract awarded to Chenega to maintain metal detectors, x-ray machines, and other equipment at airports and along the U.S. border.⁴⁵

The single largest Alaska Native 8(a) contract is the Inter-Service Supply Support Operations Program (ISSOP) which was awarded in 2002 by the Defense Department to FSS-Alutiiq, a joint venture of Arctic Slope Regional Corporation and Afognak Native Corporation.⁴⁶ This contract, which is used in the United States, Puerto Rico, Guam, the Middle East, and elsewhere to provide logistics and supply support services to the Navy, is valued at \$1.13 billion.⁴⁷ To date, FSS-Alutiiq has received over \$570 million through the ISSOP contract.⁴⁸

ANCs' Use of Subcontracts

One criticism of the Alaska Native Corporations' contracting preferences is that the corporations have been used as pass-throughs to large, non-Native companies. Under the 8(a) rules, ANCs may subcontract service or supply contracts to non-8(a) participants so long as at

⁴¹ Pub. L. 100-656, § 602(a), act of November 15, 1988, 102 Stat. 3853, 3887, the "Business Opportunity Development Reform Act", 15 U.S.C. § 637 as amended; 13 CFR § 124.506(a)(iii); 13 CFR § 124.506(b); 48 C.F.R. § 19.805-1(a)-(b)(2).

⁴² Eagle Eye, *supra* Note 21.

⁴³ FedBizOpps.Gov, *Notice: 70--Technology for Infrastructure, Geospatial, and Environmental Requirements (TIGER)* (Sept. 30, 2005) (online at <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=28d95a48d30d8f393627dcdd19f7dc29&cck=1&au=&ck=>).

⁴⁴ Eagle Eye, *supra* Note 21; *MacDill Air Force Base: 'Minority' Contractor Bumps Dozens of Enlisted and Civilian Personnel*, Tampa Tribune (Sept. 20, 1999).

⁴⁵ Department of Homeland Security Office of Inspector General, *Customs and Border Protection Award Fees for Enforcement Equipment Maintenance and Field Operations Support Contract* (Feb. 11, 2009).

⁴⁶ Department of Defense, *Press Release: Navy Contracts* (Sept. 12, 2002).

⁴⁷ *Id.*

⁴⁸ Eagle Eye, *supra* Note 21.

least half of these contracts are performed by ANCs.⁴⁹ ANCs may also subcontract to non-8(a) participants for construction and specialty trade-related contracts so long as ANCs perform at least 15 percent of the cost of construction contracts and at least 25 percent of the cost of specialty trade contracts.⁵⁰ ANCs' ability to subcontract large portions of no-limit sole-source 8(a) contracts, sometimes worth several hundreds of millions of dollars, to non-8(a) participants means large, non-Native corporations may ultimately have access to much of the work.

In 2006, the U.S. Government Accountability Office found "almost no evidence" that federal agencies were enforcing the provisions designed to prevent the ANCs from passing the work and the benefits of their federal contracts along to subcontractors.⁵¹ In one example reported by the Washington Post in 2008, the Food and Drug Administration intentionally awarded a sole-source contract to an Alaska Native Company in order to direct the work to Quorvis Communications, a major non-Native public relations firm, as a subcontractor.⁵²

The Afognak Native Corporation can be viewed as a case study of how Alaska Native Corporations use subcontracts to pass work to large, non-Native companies. From 2000 to 2008, Afognak was awarded 294 unique contracts, of which 150 (51%) had subcontracts valued at 10% or more of the contract value. Afognak paid its subcontractors more than 50% of the total revenue it received for 91 of those contracts, and 56 of these 91 were awarded through the 8(a) program. For 15 8(a) contracts totaling \$206 million, including 11 construction contracts, Afognak paid subcontractors more than 85% of the total revenue received from the prime contract.⁵³

Examples of high subcontracting activity within Afognak's 8(a) sole-source awards include: 93.0% of a one-year, \$48 million Army contract for advertising; 88.2% of a four-year,

⁴⁹ 13 C.F.R. § 125.6(a)(1)(2). "(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. (2) In the case of a contract for supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials)." *Id.* See also FAR 52.219-14(b)(1)(2).

⁵⁰ 13 C.F.R. § 125.6(a)(3)(4). "(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials). (4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials)." *Id.*, See also FAR 52.219-14(b)(3)(4).

⁵¹ U.S. Government Accountability Office, *Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight* (Apr. 27, 2006) (GAO-06-399).

⁵² *FDA Takes End Run to Award Contract to PR Firm*, Washington Post (Oct. 2, 2008).

⁵³ As noted above, federal regulations require an 8(a) company to perform 15% or more of the cost of the contract for construction contracts with its own employees. 13 CFR 125.6(a)(3,4). Cost of the contract excludes cost of materials. *Id.*

\$116 million Army contract for prefabricated metal buildings and component manufacturing; and 87.8% of a four-year, \$22 million Army contract for specialty trade construction.

Afognak's largest 8(a) sole-source award was given to Alutiiq Security & Technology LLC, on or around July 30, 2003, to guard Fort Bragg. Between 2003 and 2008, Afognak reports prime contract revenue of \$296 million; at least \$135 million (45.5%) was subcontracted to Wackenhut Services, Inc.

Relationship Between Federal Contracts and Benefits to Shareholders

One of the primary rationales for the ANC contracting preferences is that they provide economic development and other benefits to the Native shareholders and communities.⁵⁴ The Subcommittee's review of information produced by 19 Alaska Native Corporations shows that the ANCs have provided \$1.6 billion in cash dividends and benefits from 2000 to 2008. On average, each member of the Native community received approximately \$615 per year from 2000 to 2008 as a result of Alaska Native Corporations' federal contracts.

In addition, the corporations paid \$106.7 million in compensation for shareholders serving as board members and senior executives from 2000 to 2008 and currently employ almost 2,400 of their own shareholders.

Benefits to Shareholders and Communities

The Alaska Native Corporations have provided substantial benefits to their shareholders and communities. In total, the 19 corporations which produced benefit information to the Subcommittee distributed \$1.3 billion in cash dividends and \$303.7 million in scholarships, community development, and other social and cultural contributions.

The information received by the Subcommittee does not address how much of these benefits were directly connected to the Corporations' 8(a) contracts. The ANCs derive income from multiple sources beyond federal contracts. On average, the 19 ANCs which produced information to the Subcommittee received only 44% of their total yearly revenues from federal prime contracts.

The Subcommittee conducted an extensive analysis of information received from 19 companies to quantify the benefits provided to the Alaska Native Community as a result of federal contracts. The Subcommittee estimates that federal contracts have provided cash, scholarships, preservation of cultural heritage, or other benefits valued at approximately \$720.1 million over the last nine years to members of the Alaska Native community as a result of the ANCs' federal contracts. On average, this amounts to a value of \$615 per person per year.⁵⁵

⁵⁴ Native American Contractors Association, *About Us* (online at <http://www.nativecontractors.org/pages/about-us.php>) (accessed July 14, 2009).

⁵⁵ To arrive at this figure, the Subcommittee multiplied the 2000-2008 total benefits provided by the 19 Corporations (\$1.6 billion) by 0.44 (the percentage of total revenue attributable to federal prime contracts) to arrive at a dollar value of benefits attributable to

The information provided to the Subcommittee also includes detailed accounts of various contributions to the community, the value of which is not purely monetary. For example, Sealaska Corporation has helped secure funding for municipal drinking water improvement systems and management of the Hubbard Glacier overflow in order to prevent catastrophic flooding on the Situk River. Several corporations have funded programs to renew cultural awareness and preserve native languages.

Jobs for Shareholders

The 19 Alaska Native Corporations which provided information to the Subcommittee employ more than 45,000 individuals within their corporations. Of these, approximately 2,400 employees – 5.2% – are shareholders (or relatives of shareholders) of the employing Corporation. On average, nearly 95% of ANC employees are not ANC shareholders.

The employment of shareholders increases substantially at companies based in Alaska. For example, approximately 20% of the employees at the corporate office of Chugach Alaska Corporation are shareholders. Over 70% of the employees at Bristol Bay's corporate offices and 66% of the employees at Ahtna's corporate offices are shareholders.

Afognak Native Corporation, a village corporation with only 728 total shareholders, has the lowest percentage of shareholders employed by the ANCs. Afognak, which recognized nearly \$763 million in federal contract revenue in 2008, currently employs over 6,400 individuals, of which only 59 – less than 1% – are shareholders.

Management and Executive Compensation

One major benefit provided to Alaska Native corporation shareholders is the compensation earned by corporation executives and board members. Over the last 9 years, the 16 Alaska Native Corporations which provided top-level compensation information by shareholder to the Subcommittee have paid \$215.8 million to their boards of directors and executive officers.⁵⁶ Alaska Native shareholders serving on the Corporations' boards of directors and as executives received \$106.7 million, or 49%, of that total sum between 2000 and 2008.⁵⁷

Unlike other 8(a) companies, which must be managed by socially and economically disadvantaged executives, Alaska Native Corporations can be managed by non-Native

federal prime contracts, then divided that number by 130,000, the estimated number of individuals in the Alaska Native Community who have derived benefits from the Alaska Native Corporations' contracting preferences over the last nine years. *See, e.g., Increase in Native Contracts Brings Senate Scrutiny*, Anchorage Daily News (June 23, 2009).

⁵⁶ Bristol Bay and CIRI did not provide data which permitted the Subcommittee to calculate this information with certainty. The Chenega Corporation failed to provide an adequate response to the Subcommittee's request.

⁵⁷*Id.*

executives.⁵⁸ The Alaska Native Corporations have taken advantage of this exception. Of the 13 corporations which provided detailed information to the Subcommittee regarding executive compensation for non-Native executives, 69% of executive compensation was paid to individuals who were not shareholders in the Native Corporations. One Corporation, Afognak, paid more than 99% of the executive compensation reported to the Subcommittee to individuals who were not shareholders in Afognak Native Corporation.

In most publicly-traded corporations, e.g. Coca-Cola or Exxon Mobil, the chief executive officer is the most highly-paid employee. The information produced to the Subcommittee shows that for one or more years between 2000 and 2008, eight Alaska Native Corporations paid their Chief Executive Officer, a shareholder, substantially less than a non-shareholder holding a lower-ranked position. In 2008, for example, NANA's non-shareholder General Counsel earned 114% more than the shareholder Chief Executive Officer. Also in 2008, Bering Straits' Vice President of Government Services and Vice President of Business Development, both non-shareholders, were paid 88% and 91% more than the Chief Executive Officer, respectively. Bristol Bay's non-shareholder Senior Vice President/Chief Operating Officer was paid nearly 107% more than the Chief Executive Officer. And in 2000, 2001, and 2002, Bristol Bay's Chief Financial Officer was paid an average of 204% more than the Chief Executive Officer. Bering Straits' Bay's Vice President of 8(a) Operations made 29% more than the Chief Executive Officer in 2005, the only full year for which the position existed.

Case Study: Chenega Corporation

Between 2000 and 2008, Chenega Corporation's federal contract awards increased 4,190%, from \$9.6 million in 2000 to \$412.9 million in 2008. Over the last nine years, Chenega was awarded federal prime contracts totaling more than \$1.9 billion.⁵⁹

Over the last nine years, Chenega received approximately 84% of its prime contract dollars through the 8(a) program. In 2008 alone, approximately 90% of the prime contract dollars Chenega received were awarded through the 8(a) program. For example, Chenega-Blackwater Solutions, a joint venture of Chenega and the private security company Blackwater, received an 8(a) contract in 2006 to provide security at a U.S. military facility in Japan. Over the last three years, Chenega-Blackwater Solutions has received more than \$30.6 million for this contract.⁶⁰

Between 2000 and 2008, Chenega's total revenues exceeded \$5.8 billion. Federal prime contracting comprised approximately 34% of this sum. Chenega distributed benefits of more than \$16.8 million to its shareholders and the community between 2000 and 2008, an average of \$1.8 million per year. As of April 2009, Chenega employed 5,356 employees, of which 52 (0.97%) were shareholders.

⁵⁸ 43 U.S.C. § 1626(e)(1) ; 13 C.F.R. § 124.109(a)(4).

⁵⁹ Eagle Eye, *supra* Note 21.

⁶⁰ Eagle Eye, *supra* Note 21.

Case Study: Cook Inlet Region, Inc. (CIRI)

Over the last 9 years, CIRI has built a business that is not dependent on federal contracting. Instead, CIRI has focused on real estate development, tourism, energy and resource development, construction and oilfield services, telecommunications, and private equity and investment securities.

According to CIRI, “the Company’s strategy is to increasingly pursue contracting opportunities which are not dependent upon the sole sourcing provisions of 8(a).”⁶¹ Between 2000 and 2008, CIRI relied on federal contracting for only 2.7% of its cumulative total revenue. Of the \$48.8 million that CIRI has received through federal prime and subcontracts, only one prime contract for \$3.7 million was awarded through the 8(a) program.

Between 2000 and 2008, CIRI’s revenues totaled nearly \$1.8 billion. As of December 31, 2008, CIRI had \$422 million in retained earnings available. CIRI also distributed benefits of more than \$735 million to its shareholders and the community between 2000 and 2008. In addition, 35% of CIRI’s employees are shareholders – one of the highest percentages of any of the 19 corporations surveyed by the Subcommittee.

Conclusion

In recent years, federal auditors and academics have raised concerns that the preferences granted to Alaska Native Corporations create the potential for waste, fraud, and abuse in government contracting. The record before the Subcommittee shows that the Alaska Native Corporations are multi-million or billion dollar corporations that rank among the largest federal contractors. The Subcommittee’s investigation shows that the ANCs have taken advantage of their 8(a) contracting preferences, receiving large no-bid contracts and passing through much of the work to other contractors. The record also shows that ANCs provide some benefits to their shareholders.

⁶¹ Cook Inlet Region, Inc., *Annual Report 2008*.

Executive Summary

Status of Alaska Natives 2004

Institute of Social and Economic Research • University of Alaska Anchorage • May 2004



The Alaska Federation of Natives asked ISER to report on social and economic conditions among Alaska Natives. We found that Natives have more jobs, higher incomes, and better living conditions, health care, and education than ever. But they remain several times more likely than other Alaskans to be poor and out of work. Alcohol continues to fuel widespread social problems. Native students continue to do poorly on standard tests, and they're dropping out in growing numbers. Rates of heart disease and diabetes are rising. In the face of all these challenges, subsistence remains critical for cultural and economic reasons. And there are more challenges to come. In the coming decade, when economic growth is likely to be slower than in the past, thousands more young Alaska Natives will be moving into the job market.

- Alaska Natives are increasingly urban. About 42 percent live in urban areas now, and that share could reach more than 50 percent by 2020.
- The fastest Native population growth since 1970 has been in urban areas, boosted by thousands of Natives moving from rural places.
- Populations of remote Native villages continue to grow, despite the migration to urban places.
- At current trends, the Native population will grow from 120,000 in 2000 to 165,000 by 2020.
- Natives are a young people. Those 19 and younger make up 44 percent of all Natives, compared with about 29 percent among all Americans. But the elder population has also been growing fast.
- Natives gained more than 8,000 jobs between 1990 and 2000. But only about 35 percent of all Native jobs are full-time and year-round.
- Native women held more jobs than Native men by 2000. Working-age women are also the most likely to live in urban areas.
- Despite job gains, the number of unemployed Natives increased 35 percent from 1990 to 2000.
- Demand for jobs will continue to grow, with 25 percent more Alaska Natives entering the work force between 2000 and 2010.
- Incomes of Natives remain just 50 to 60 percent those of other Alaskans, despite gains. Transfer payments are a growing share of Native income.
- All the economic problems Natives face are worst in remote areas, where living costs are highest.
- Natives are three times as likely as other Alaskans to be poor. Half the Native families below the poverty line are headed by women.
- Many Alaska children are growing up in families headed by women, but the share is about a third larger in Native families.
- Alcohol continues to fuel high rates of domestic violence, child abuse, and violent death in the Native community. But two thirds of small villages have imposed local controls on alcohol.
- Current Native health problems—like the spread of diabetes and heart disease—are linked more to the modern American way of life than to poor living conditions, as problems were 30 years ago.
- Native education levels continue to rise, but haven't yet reached those among other Alaskans. Native women are significantly more likely than men to attend college.
- Native students are more likely to drop out of school and less likely to pass standard tests.

A WORD ABOUT THE 2000 CENSUS

The 2000 U.S. census reported nearly 120,000 Alaska Natives living in Alaska, including 21,000 who were Native and some other race. That was the first census to give people the option of specifying more than one race. Before that, everyone had to choose just one primary race to describe their heritage. The change in 2000 means:

- More people were probably counted as Native in 2000 than would have been under the old system. At least some people who were Native and some other race would likely have named the other race, if they had to choose.
- Since most Native people of mixed race live in urban areas, urban growth is the most likely to be overestimated.

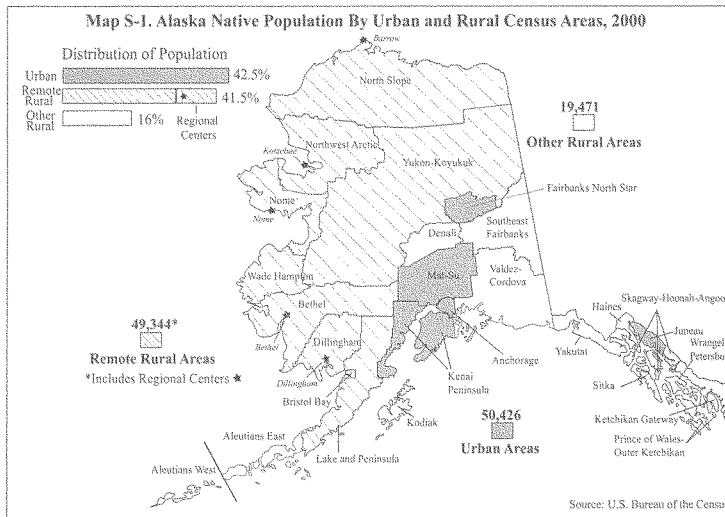
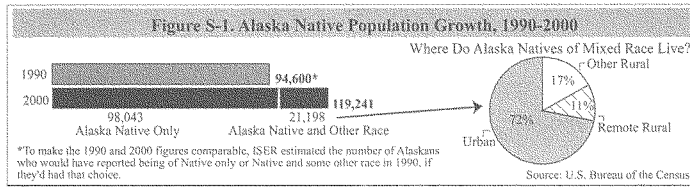
Still, the U.S. census is the best information available on conditions among Natives (and all other Americans), and it reliably shows trends and patterns.

POPULATION GROWTH AND TRENDS

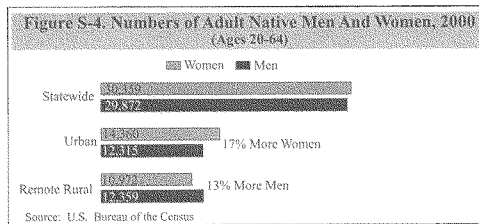
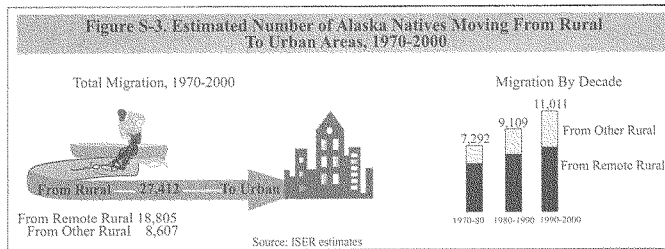
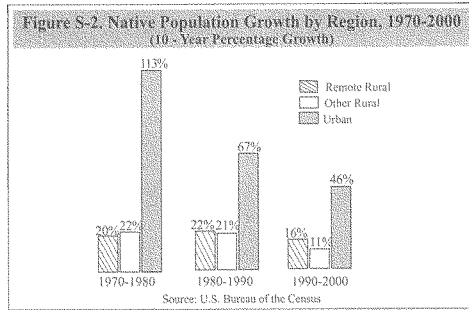
• *Alaska Natives are only about half as likely as Native Americans nationwide to be of mixed race.* The 18 percent of Natives who are of mixed race are mostly young people living in urban areas (Figure S-1).

• *Today Alaska Natives are just as likely to live in urban areas as in remote rural places* (Map S-1). In 2000, nearly 43 percent of Alaska Natives lived in the urban areas of Anchorage, Fairbanks, Juneau, and the Mat-Su and Kenai Peninsula boroughs. Close to 42 percent lived in remote places in northern, interior, and western Alaska, including several regional centers. The remaining 16 percent lived in less remote rural areas.

• *The Native population grew in both urban and rural areas in the 1990s*, but the fastest growth was in urban areas—as it has been for the past 30 years (Figure S-2).

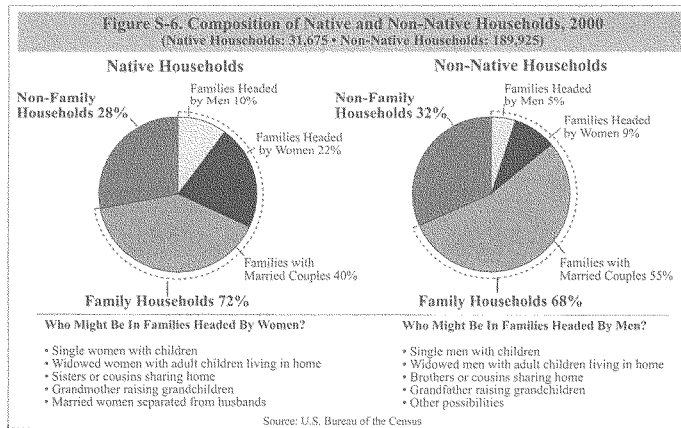
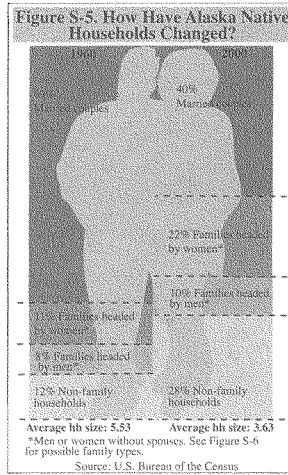


- *Much of the fast growth in urban areas has been due to the thousands of Natives moving from rural to urban areas.* An estimated 27,400 Natives moved from rural places to urban areas from 1970 through 2000. Most of those people moved from remote rural areas, as Figure S-3 shows. Roughly 11,000 rural Natives moved to urban areas just in the 1990s.
- *Despite the movement out of rural areas, the rural Native population still grew in every decade since 1970.*
- *Native women of working age are especially likely to live in urban areas.* As Figure S-4 shows, numbers of adult Native men and women (ages 20 to 64) were close to equal statewide in 2000. But adult women outnumbered adult men in urban areas by 17 percent. By contrast, adult Native men in remote rural places outnumbered women by about 13 percent.



HOUSEHOLDS AND FAMILIES

- *Native households are far less likely to be married couples and much more likely to be headed by women today than 40 years go, as Figure S-5 shows. In 1960, 69 percent of Native households were married couples, compared with 40 percent in 2000. Women without husbands headed 11 percent of Native households in 1960, but double that share—22 percent—by 2000. Similar trends happened in households nationwide, but the changes in Native households were more dramatic.*
- *Households that aren't families also make up a much bigger share of Native households today, up from just 12 percent in 1960 to 28 percent by 2000. Most non-family households have just one person.*
- *Native households are also considerably smaller today, dropping from an average of 5.5 persons in 1960 to 3.6 in 2000.*
- *Native households are twice as likely as non-Native households to be headed by women without husbands—22 percent, compared with 9 percent for non-Natives (Figure S-6). Keep in mind that while many women who head households are raising children alone, not all are. Some families headed by women could be, for instance, sisters sharing a home or widows whose adult children live with them. Extended family households are common in the Native community.*
- *Native men without wives are also far more likely than non-Native men to head households—10 percent versus 5 percent. But again, not all these men are raising children alone; they could also be adult cousins or other relatives sharing a home.*

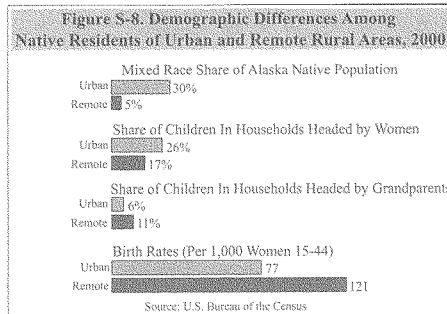
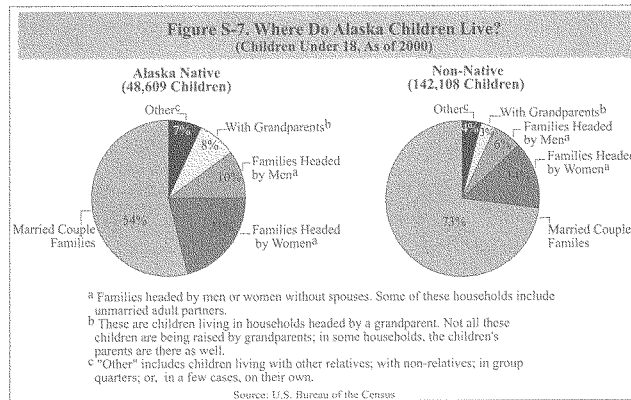


- **Just over half of Native children live in married-couple families**, compared with nearly three quarters of non-Native children (Figure S-7).
- **One in five Native children and one in seven non-Native children are growing up in households headed by women.** These households are by far the most likely to be poor (as Figure S-28 on page 13 shows).
- **Nearly 10 percent of Native children live in households headed by their grandparents**, compared with about three percent among non-Native children. But again, keep in mind that grandparents aren't raising all these children. The children's parents also live in many of these multi-generational households.

URBAN-RURAL DEMOGRAPHIC DIFFERENCES

Not only are there demographic differences among Natives and non-Natives, there are also significant differences among Natives living in urban places and in remote rural areas (see Map S-1 on page 2). As Figure S-8 shows:

- **Natives in urban places are about six times more likely to be of mixed race.**
- **Native children in urban places are more likely to live in households headed by women.**
- **Native children in remote rural places are almost twice as likely to live in households headed by their grandparents.**
- **Birth rates among Native women in remote areas are about 50 percent higher than those among women in urban areas.**



LONG-TERM IMPROVEMENTS IN LIVING CONDITIONS

When Alaska became a state, most Alaska Natives—especially in the western, northern, and interior regions—lived in remote villages without safe ways to get water or dispose of sewage. Houses in the villages were mostly small, crowded, dilapidated, and without electricity. Basic medical care was typically available only when public health nurses or doctors visited.

Alaska Natives died young and suffered high rates of tuberculosis, hepatitis, and other illnesses caused or aggravated by their living conditions.

But since the 1970s, the federal and state governments have sharply improved sanitation, housing, and health care in Native villages. As a result, Alaska Natives are living longer, fewer babies are dying, and many infectious diseases have been eliminated or sharply curtailed. Table S-1 shows a few results of better living conditions—lower infant mortality and death rates and increased life expectancy.

The figures here and on the facing page show the broad picture of improvements in sanitation, housing, and health care since the 1970s.

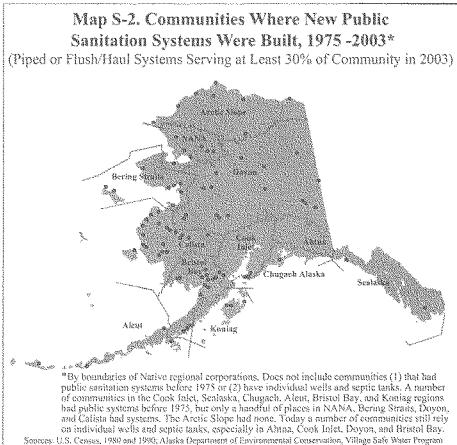
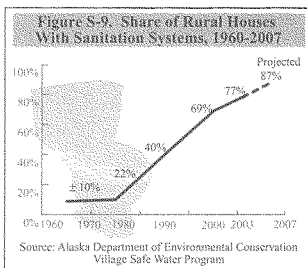
- **More than 75 percent of rural houses had sanitation systems by 2003**, according to figures from the Alaska Village Safe Water Program. That's up from about 40 percent in 1990 and around 20 percent in 1980 (Figure S-9).

- **Nearly 90 rural communities got new sanitation systems between 1975 and 2003.** Map S-2 shows locations of places, by Native regional corporation boundaries, where new systems serving at least 30 percent of houses have been built since 1975. Most of the new systems are in the remote areas of the state; many communities in southcentral and southeast Alaska had public sanitation systems in the 1970s. Many existing systems have also been improved over the years.

- **As of 2003, 32 communities in interior and western Alaska still lacked public sanitation systems**, and in another 23 communities less than 30 percent of houses had such systems.

	1960	1990	2000
Infant Mortality Down (Deaths per 1,000 Births)			
Native	87.0	15.1	9.5 ^a
U.S. Average	25.7	9.2	7.0 ^a
Total Death Rate Down (Deaths per 1,000 from all causes)			
Native	9.4	5.8	5.6
Non-Native	4.8	3.3	4.4
Life Expectancy Up (Years expected at birth)			
Native	61.1	68.8	69.5 ^b
U.S. Average	69.7	75.4	76.5 ^b

^a Average, 1998-2000 ^b As of 1997
Sources: Alaska Area Native Health Service; Alaska Bureau of Vital Statistics; U.S. Bureau of the Census



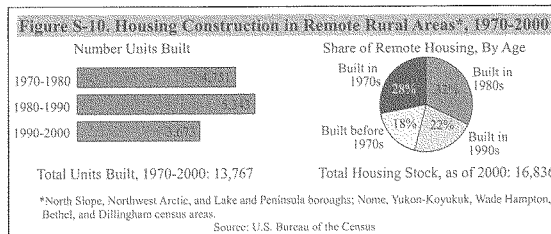
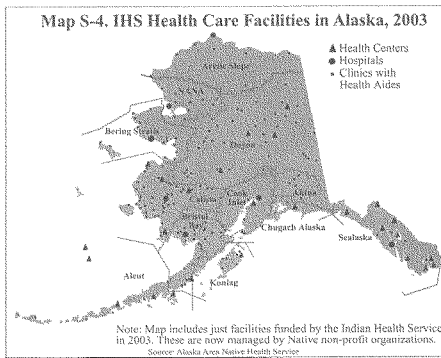
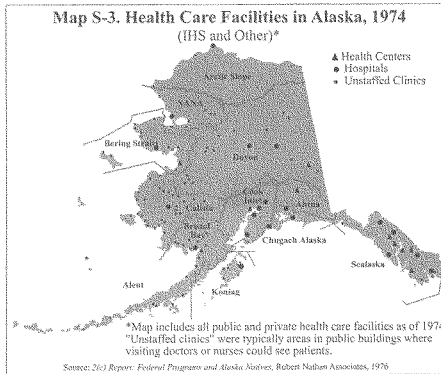
Maps S-3 and S-4 show expansion of basic health clinics and centers in rural areas since the 1970s. (Hospitals are mainly in the same locations where they were in the 1970s, but hospital facilities have been improved.)

Only a couple of health centers (which were usually staffed by at least some medical person) existed in remote western Alaska in 1974. A number of villages in the interior, western, and northern regions had unstaffed health clinics—these were usually areas of public buildings where visiting doctors or nurses could see patients.

By 2003, around 170 villages had health clinics staffed by local health aides, and a number of new health centers had been established in western, southwestern, and interior areas. Many places also had access to the telemedicine system, which allows health aides in villages to transmit electronic images of patients to consultant doctors in larger communities.

However, rural residents report that in 2004 many clinic facilities still need improvement. The federal Denali Commission (established to help improve rural facilities) has worked with communities and identified about \$235 million in needed improvements to basic facilities.

A third major improvement since the 1970s is in rural housing. Figure S-10 shows that close to 14,000 new housing units were built in remote rural areas between 1970 and 2000, including about 3,700 units in the 1990s. Only about 18 percent of the housing in remote places today was built before 1970.



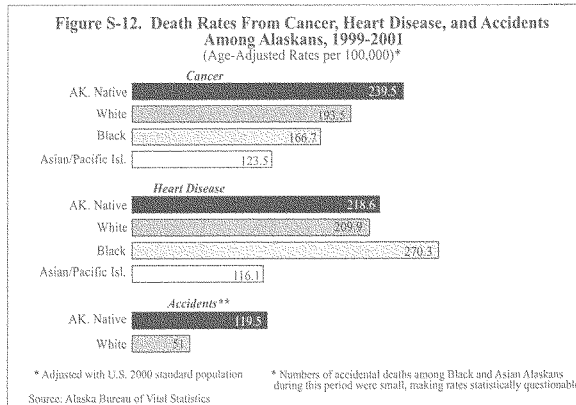
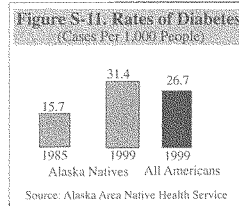
HEALTH AND SOCIAL PROBLEMS

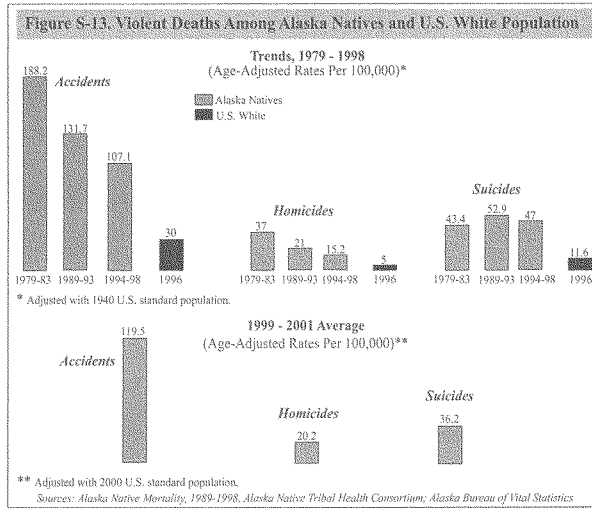
The last two pages showed how better living conditions have helped Alaska Natives lead longer, healthier lives than in the past. But today they face other health and social problems. Experts link many of these problems to the modern American diet and way of life and to widespread alcohol abuse.

- **Rates of diabetes among Alaska Natives doubled in just 15 years**, as Figure S-11 shows. By 1999, diabetes had become more widespread among Natives than among Americans as a whole.
- **Natives today share the two leading causes of death—heart disease and cancer**—with other Alaskans (Figure S-12). Natives die of cancer at higher rates than any other Alaskans and from heart disease at just over the rate among white Alaskans. Twenty years ago, Natives were much less likely to die from heart disease.
- **Accidents are among the top five causes of death for all Alaskans**, but rates of accidental death among Natives are more than twice those among other Alaskans and three times those in the U.S. as a whole.
- **Still, rates of accidental death among Natives fell nearly 40 percent from the early 1980s to the late 1990s** (top half of Figure S-13). Experts credit the drop at least in part to widespread safety campaigns by Native organizations and government agencies. The bottom half of the graph shows the most recent figures, which are not directly comparable with the earlier figures because they are adjusted on a new basis.
- **Trends in homicides and suicides are less clear**, although rates at least aren't increasing. The figures from the late 1990s appear to be lower than in the 1980s. But

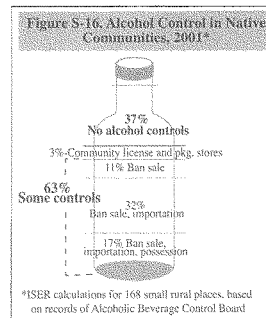
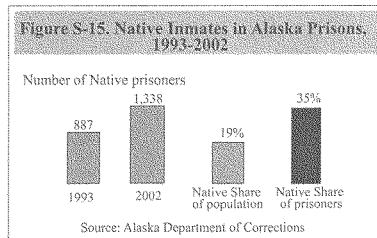
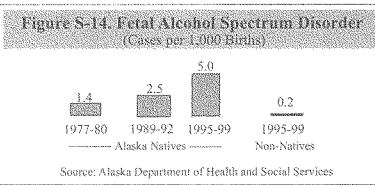
a relatively small increase or decrease in suicides or homicides in a given year can change the rates substantially. Again, the bottom half of Figure S-13 shows the most recent figures, which are not directly comparable with the older ones because they are adjusted on a new basis.

- **Alcohol continues to take a heavy toll** on Native people. Experts link most of the high rates of crime, violent death, and social problems among Natives to alcohol abuse.
- **Use of inhalants by Native high-school students declined by half between 1995 and 2003**, according to the Youth Risk Behavior Survey. About 10 percent of both Native and non-Native students report ever sniffing gasoline fumes or other inhalants. But Native students have become more likely to smoke marijuana, with the share reporting current use up from about 29 percent in 1995 to 36 percent in 2003.
- **Native children suffer half the child abuse in Alaska**, although they make up only one quarter of all children. Native women suffer more than a third of reported domestic violence, while making up about a fifth of Alaska women.



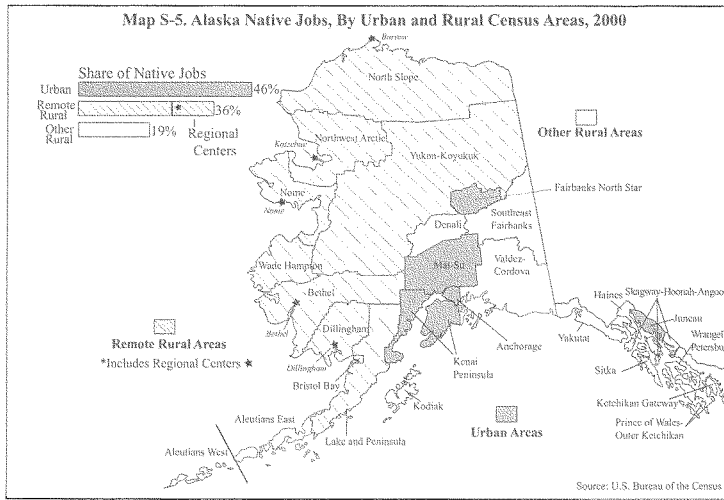
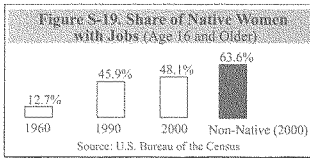
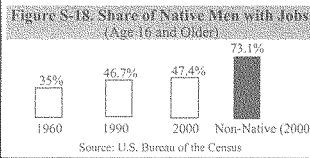
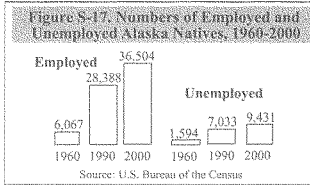


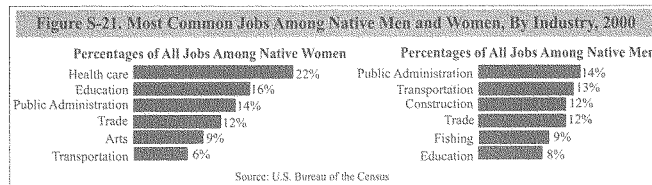
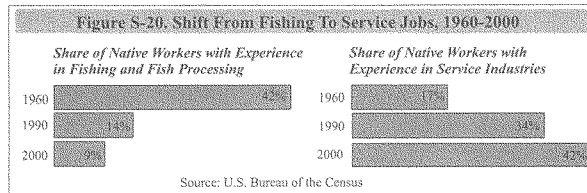
- **The rate of Fetal Alcohol Spectrum Disorder among Native babies doubled in the 1990s.** Part of that increase may be due to improved diagnosis in recent years. Still, rates among Native children are many times higher than among other children.
- **The number of Native prisoners in Alaska jumped 50 percent from 1993 to 2002** (Figure S-15). Natives make up more than a third of prisoners but less than a fifth of the population.
- **Native communities are fighting back against alcohol,** with about two thirds of small villages controlling alcohol under state law. Research has shown that local control of alcohol has helped prevent as many as one in five violent deaths that would otherwise have occurred.



THE CHANGING JOB PICTURE

- **The number of Alaska Natives with jobs was 30 percent bigger in 2000 than in 1990 and six times bigger than in 1960** (Figure S-17).
- **Native women in particular continued to gain jobs** in the 1990s, and by 2000 they had a slight edge on Native men (Figures S-18 and S-19).
- **But both Native men and women continue to be far less likely than non-Natives to have jobs.** Less than half of adult Natives have jobs, compared with 73 percent of non-Native men and 64 percent of non-Native women.
- **Native jobs are also more likely to be part-time or seasonal.** About 35 percent of Native jobs in 2000 were full-time, year-round, compared with close to 60 percent among non-Natives. But a growing share of Native women's jobs are full-time—40 percent, up from 27 percent in 1990.
- **The number of Natives without jobs grew at about the same pace as those with jobs in the 1990s—**because many more Natives moved into the labor force (Figure S-17).



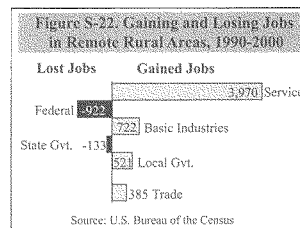


- **Jobs are much harder to come by in remote rural areas, especially outside the regional centers.** Map S-5 shows that just 36 percent of Native jobs are in remote areas and nearly a third of those are concentrated in regional centers. But Map S-1 on page 2 shows that 42 percent of the Native population lives in remote areas. Both urban areas and less remote rural places have bigger shares of jobs than of population.

- **The kinds of jobs Alaska Natives hold have changed over time.** In 1960, more than 40 percent of Native workers reported that their main experience was in commercial fishing or fish processing. Today, more than 40 percent say they've worked primarily in service jobs (Figure S-20).

- **The most common jobs among Native women now are in health care,** followed by education and public administration. Native men most commonly work in public administration, transportation, and construction (Figure S-21).

- **Service jobs are especially common in remote areas,** where Native non-profit organizations manage federal health care and other social service programs. Federal grants for such programs grew sharply in recent years. Figure S-22 shows that three quarters of the new jobs created in remote areas in the 1990s were in service industries. Remote areas gained some basic industry jobs (in mining and petroleum) in the 1990s, but many of these jobs are held by non-residents. The region also gained some jobs in local government (which includes school districts) and in trade, but lost state and federal government jobs.



INCOME AND POVERTY

- **Native income has increased every decade since the 1960s**, even after it is adjusted for inflation. Figure S-23 shows that real per capita Native income in 2000 was more than four times higher than in 1960. But the gain in the 1990s was much smaller than in earlier times—only about 7 percent.

- **Native incomes remain far below those of non-Natives.** In 2000, Native per capita income was just over half that of non-Natives—a slight improvement from 1990 (Figure S-23).

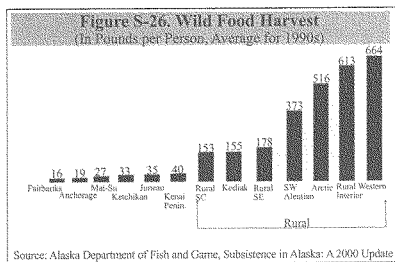
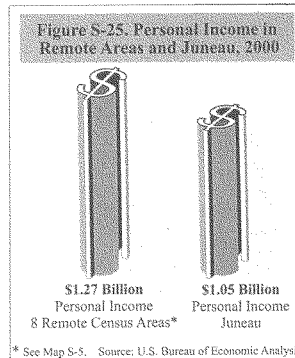
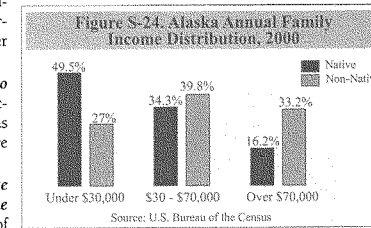
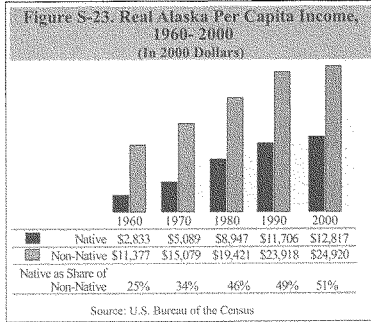
- **Half of Native families have incomes below \$30,000 a year**, compared with about one quarter of non-Native families (Figure S-24). And since we know that Native families are on average larger, those lower incomes often support more people.

- **Incomes are especially low in remote areas**, due to a combination of fewer jobs and more part-time or seasonal work. Natives in remote rural areas have, on average, incomes about 60 percent those of Natives in other parts of Alaska.

- **The remote areas where incomes are lowest are also the places where costs are highest.** For example, electricity is two to three times as expensive in remote areas as in Anchorage, and food costs are 50 percent or more higher.

- **The entire personal income of the eight most remote areas in 2000 was barely larger than that of just the city of Juneau** (Figure S-25). That's a clear measure of the small size of the economy in remote areas. (See Map S-5 for regional boundaries.)

- **Subsistence hunting and fishing are important not only for cultural but also economic reasons** in Native communities, especially in the remote rural areas where incomes are lowest. Figure S-26 shows that wild food harvests in the 1990s averaged hundreds of pounds per person in the northern, interior, and western regions.



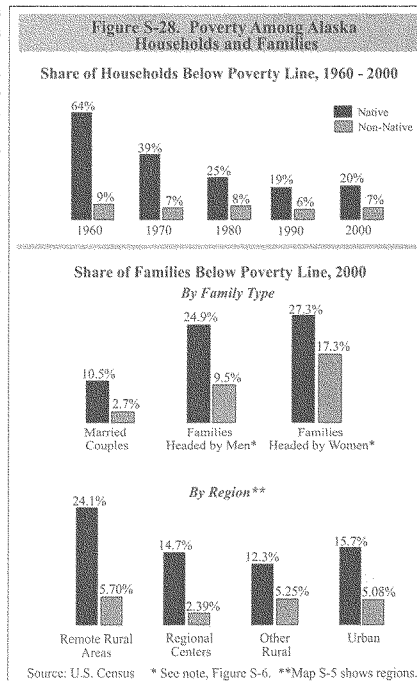
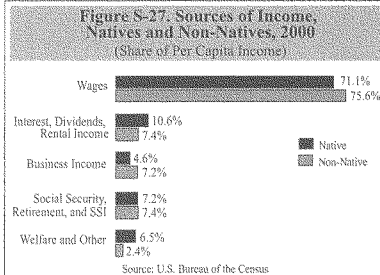
- **Almost all Native and non-Native households get some income from wages.** In 2000, about 85 percent of Native households and 90 percent of non-Native households got at least some income from earnings. But on average, Native household earnings are only about two thirds those of non-Native households.

- **Wages make up most income for all Alaskans, but other sources of income differ.** Alaska Natives get more of their non-wage income from interest and dividends and welfare payments, and non-Natives get a bigger share from business income (Figure S-27). Keep in mind that these are *shares* of income, not *amounts*. In almost every category, non-Natives have larger incomes than Natives.

- **Alaska Natives are three times as likely as other Alaskans to live in poverty.** Figure S-28 shows that 20 percent of Native households were below the federal poverty threshold in 2000, compared with 7 percent of non-Native households. Poverty levels among Natives dropped sharply from 1960 through 1990, but held steady from 1990 through 2000.

- **Families headed by women are the most likely to be poor, among both Natives and non-Natives.** More than one quarter of all Native families headed by women were below the poverty line in 2000, compared with about one in 10 among married couples (Figure S-28).

- **Native families in small remote places are more likely to be poor than families elsewhere in the state.** In 2000, nearly 25 percent of all Native families in remote villages lived below the poverty line—and that figure doesn't take into account the higher costs of living in remote areas. Native families in urban areas have the next highest rate of poverty, with about 15 percent below the poverty line.



EDUCATION SUCCESSSES

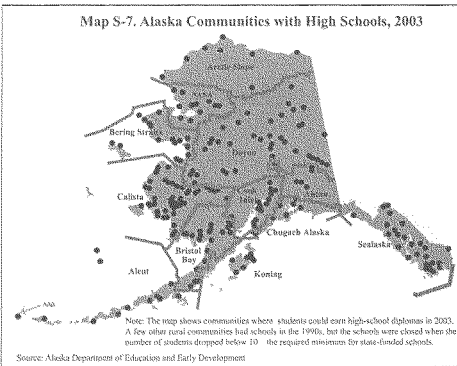
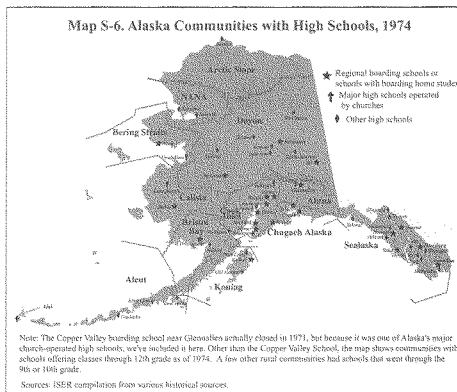
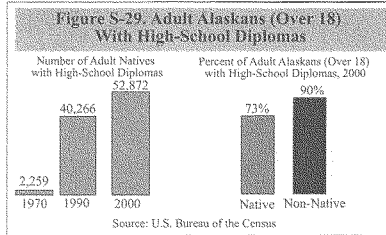
The biggest success in education among Native people in the past 25 years is that tens of thousands have graduated from high school. As recently as the 1970s, only a relative few had finished high school, as Figure S-29 shows.

- *The number of Alaska Natives who have graduated from high school has soared, up from around 2,400 in 1970 to 40,000 in 1990 and 53,000 by 2000.*

- *Nearly 75 percent of Alaska Natives over 18 had high-school diplomas by 2000.* That share still fell short of the 90 percent of other Alaskans with high-school diplomas—but the gap was much narrower than in the recent past.

The surge in high-school graduates is due in large part to the construction of high schools throughout rural Alaska since 1976. Before then, only a handful of the largest rural Native communities had high schools, as Map S-6 shows. Most Native students who wanted to go to high school had to attend boarding schools in Nome or a few other places, or board with families in large communities—like Anchorage—that had high schools. Churches also operated a handful of high schools for Native students.

Then a group of Native students went to court, charging that the state government wasn't providing them equal access to education. In a 1976 settlement of that case (*Tabeluk v. Lind*), the state agreed to build high schools in dozens of small rural communities. Map S-7 shows the result: in 2003, all communities with at least 10 students had local high schools.



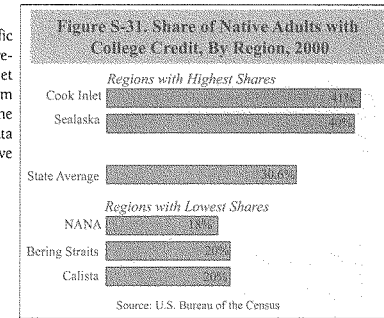
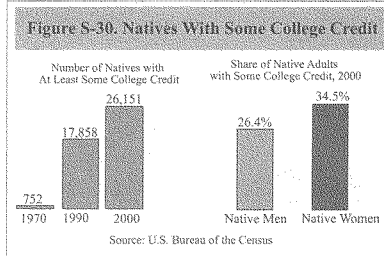
Another success since 1970 is Native college attendance, as shown in Figure S-30.

- **Over 26,000 Alaska Natives had some college credit in 2000**, up from about 18,000 in 1990 and fewer than 1,000 in 1970.

- **Native women are considerably more likely than men to have college credit.** In 2000, about 35 percent of adult Native women and 26 percent of men had college credit.

- **Natives living in the Cook Inlet and Sealaska regional corporation areas are the most likely to have college credit.** More than 40 percent in those regions had attended college as of 2000, compared with about 20 percent in the Bering Straits, NANA, and Calista regions (Figure S-31).

Keep in mind that Natives living in specific regional corporation areas aren't necessarily shareholders in those regions. For example, the Cook Inlet region includes Anchorage, where many Natives from other regions have come to work or to attend the University of Alaska. It isn't possible to use the data we have to determine the home regions of Native people who live in other regions.



CONTINUING EDUCATION CHALLENGES

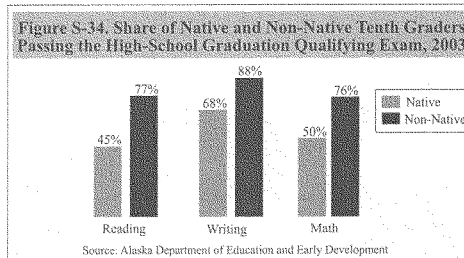
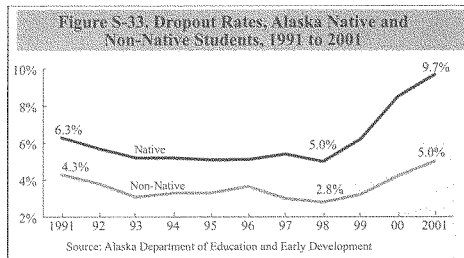
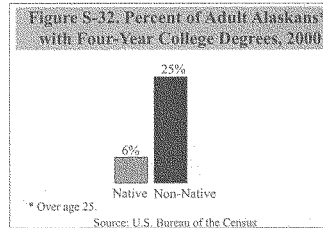
Despite the growing rates of high-school graduation and college attendance, major challenges in Native education remain.

- *Even though college attendance among Alaska Natives is growing, only about 6 percent have four-year degrees*, compared with 25 percent among other Alaskans (Figure S-32). And recent figures from the University of Alaska show that Native college students have been only about half as likely as other students to complete four-year degrees at UA.

- *Native students drop out at higher rates than other students*—and those rates climbed sharply in recent years. As Figure S-33 shows, Native dropout rates held steady or even declined slightly during most of the 1990s. But between 1998 and 2001, Native dropout rates doubled, increasing from 5 percent to nearly 10 percent. That increase was largely in rural schools, which had previously enjoyed very low dropout rates.

- *Dropout rates also increased among non-Native students during the late 1990s*, growing from less than 3 percent to 5 percent. Still, those rates remain only half those among Native students.

- *Large numbers of Native students continue to fail standard tests of reading, writing, and math.* Figures from benchmark tests in elementary and middle school in recent years show on average anywhere from 40 to 60 percent of Native students passing the tests, compared with 70 to 80 percent among non-Native students. Figure S-34 shows the results from the 2003 High-School Graduation Qualifying Exam, which Alaska students have to pass to get diplomas. About half of Native tenth graders passed the reading and math sections and close to 70 percent the writing section. Among other tenth graders, about three quarters passed the reading and math tests and nearly 90 percent the writing test. (Students who fail the test in tenth grade can re-take it in their junior and senior years.)



- *Few teachers in Alaska are Alaska Native.* Some analysts believe that having Native teachers—who share a common cultural heritage—would help Native students do better in school. In 2001, about 400 teachers statewide were Native. That's about 5 percent of Alaska teachers, with the share varying from none in some districts to nearly a third in a couple of rural districts. (However, in some districts with small numbers of teachers, a third might be only a handful of teachers.) At the University of Alaska, only 3 percent of those teaching are Native, and many of those are instructors rather than professors.

SUMMARY OF CURRENT CONDITIONS

The story since 1990 for Alaska Natives is a mixed one. They gained thousands of new jobs and improved their incomes, as they have every decade since 1960. Native women in particular continued to move into the work force. But the gains in the 1990s were smaller, and thousands of Natives who wanted jobs couldn't find them. The modest income gains were not in wages but mostly in transfer payments, including the state Permanent Fund dividend.

Native incomes on average remain just over half those of other Alaskans, and Natives are still about a third less likely to have jobs. Native households are three times more likely to be poor; poverty is especially high among households headed by women. These economic problems are all worse for Natives in remote rural villages. Subsistence hunting and fishing continue to be crucial not only for cultural but also for economic reasons.

Basic housing, sanitation, and health care in Native villages also continued to improve in the past decade. With better living conditions and improved access to health care, more Native babies are surviving and Native people are living longer. Hepatitis and other illnesses linked to poor sanitation have dwindled.

But the effects of the modern American diet and way of living are becoming more apparent among Native people, who now die from heart disease and cancer at higher rates than other Alaskans. Climbing rates of diabetes are a growing worry for doctors and the Native community. Natives are also more likely to smoke, although rates among Native teenagers are dropping.

Natives continue to die by accident, suicide, or homicide much more often than other Alaskans. But rates of accidental death are down significantly.

Widespread alcohol abuse continues to fuel high rates of Fetal Alcohol Spectrum Disorder, child abuse, domestic violence, and other crimes. But Native communities are fighting back, with two thirds imposing some local controls on alcohol. More Natives also entered alcohol-treatment programs in the 1990s.

More Alaska Natives are graduating from high school and going on to college, especially women. But Native students are also more apt to drop out of school, and many fail standard tests. Native students' knowledge of their own cultures and languages is also an important gauge of education, but we currently have no way to measure such knowledge.

FUTURE IMPLICATIONS

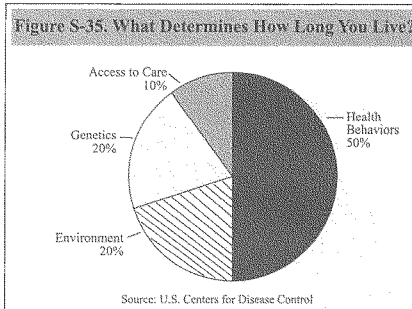
The social and economic challenges of the future for Native people are in many ways different from those of the past.

Improving village living conditions has been a long process that isn't finished yet—but the federal and state governments have made major progress. Today, the health problems among Alaska Natives are—like those of other Americans—related more to behavior than to living conditions.

Figure S-35 shows the factors that affect life expectancy. Genetics, living conditions, and medical care together account for about half of life expectancy. The other half—as much as all the other factors combined—is behavior. And as all of us know, changing behavior isn't easy.

Eating too much of the wrong kinds of foods, smoking, and not getting enough exercise have helped spread diabetes, heart disease, and other problems among Americans for decades. Such health problems are now also widespread among Alaska Natives.

We've also reported the high rates of child abuse, domestic violence, and other crimes among Alaska Natives—as well as high rates of violent death. Experts link about 80 percent of violence and crime to alcohol. The Native community and public health officials are trying to curb alcohol abuse. But finding ways of dealing with these problems is not as straightforward as—for instance—building better houses or improving water supplies.



And in economic conditions there are also looming challenges. For much of the 1970s and 1980s, Alaska enjoyed fast economic growth that helped create jobs and income for all Alaskans, including Alaska Natives. State spending of billion-dollar oil revenues in particular fueled economic growth in the first half of the 1980s.

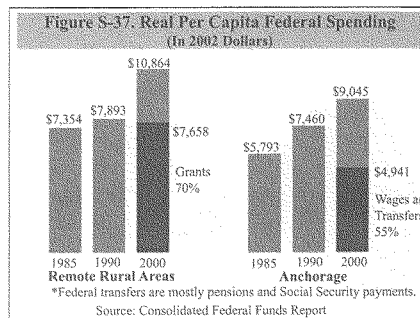
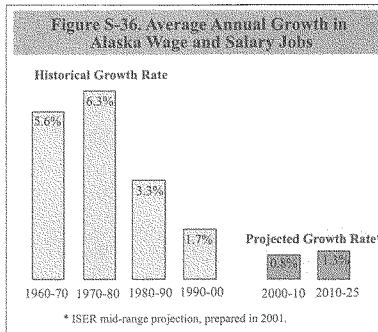
In the 1990s economic growth was slower, as Figure S-36 shows. The state oil revenues responsible for so much economic growth dropped as North Slope oil production declined, and the state faced budget deficits during much of the decade. The Community Development Quota (CDQ) system for fisheries and the Red Dog zinc mine provided some economic gains in the remote rural areas.

But the biggest source of new money in the 1990s was the federal government. All of Alaska—but especially the remote rural areas—came to depend more on federal spending. As Figure S-37 shows, per capita federal spending in remote rural areas increased about 35 percent between 1990 and 2000. Per capita spending in Anchorage was also up more than 20 percent during the same period. (Map S-5 shows which regions are "remote rural.")

Grants make up most of the federal spending in remote areas, and grants in particular increased in the 1990s as Native non-profit organizations took over management of federal health care and other social services for Alaska Natives. In Anchorage, by contrast, wages and transfers make up the bulk of federal spending.

Future levels of federal spending in Alaska are not predictable. But given the federal government's own budget problems and other factors, it seems unlikely that spending in the coming decade will increase as it did in the 1990s.

Unless there is some big surprise—and the state's history is full of surprises—economic growth in the state will likely be slower in the coming decade than it has been most of the time since statehood (Figure S-36). And at the same time, the Native population and labor force are expected to grow sharply.



PROJECTED POPULATION AND LABOR FORCE GROWTH

At current rates, the Native population will increase from 120,000 in 2000 to 140,000 by 2010 and 165,000 by 2020. Unless there is a big influx of non-Natives (which happens when there are big economic developments), Natives could make up 22 percent of Alaskans by 2020, up from about 19 percent today.

And if current patterns continue, much of the Native population growth will occur—as it has since 1970—in urban areas. So by 2010 the share of the Native population in urban areas could be 48 percent, compared with about 43 percent in 2000. By 2020, the urban share could grow to 53 percent (Figure S-38).

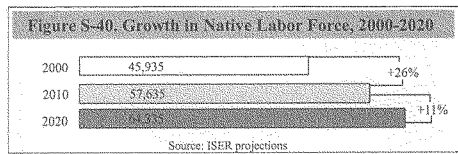
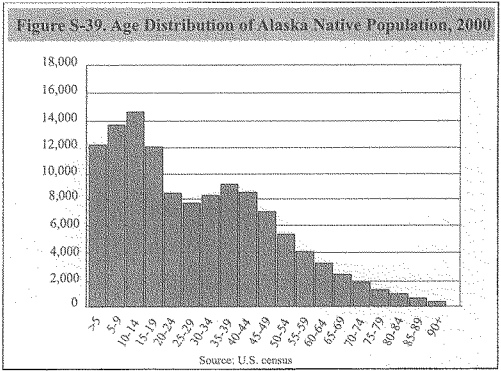
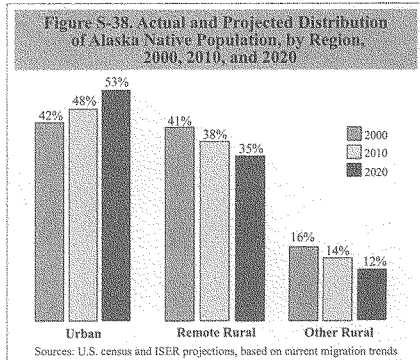
The number of Natives in remote rural areas will also continue to grow, but more slowly. So the share living in remote places could drop from the current 41 percent to 38 percent by 2010 and 35 percent by 2020. The share in other, less remote, rural places could drop from 16 percent to 14 percent by 2010 and 12 percent by 2020.

The age composition of Alaska Natives in 2000 offers some other demographic clues about trends for the coming decade (Figure S-39).

Because of the large numbers of Natives who were 10 to 14 in 2000, young adults will be the fastest growing part of the Native population in the coming years.

Also, the relatively large numbers of Natives who were mature adults in 2000 will be approaching retirement age in 2010. And the young adult population will begin having children of their own, so the number of school-age children will begin growing rapidly after 2010.

About 11,700 Natives are expected to move into the labor force between 2000 and 2010, and another 6,700 between 2010 and 2020. Those numbers translate into a 26 percent increase in the Native labor force by 2010 and another 11 percent between 2010 and 2020 (Figure S-40).



WHAT WE DON'T KNOW

This report paints a broad picture of social and economic conditions among Alaska Natives today, based on the best sources of information we could find. But it isn't perfect and raises questions it can't answer.

To begin with, existing information doesn't tell us everything we'd like to know. One of our major findings is that rural Natives by the tens of thousands have moved to urban areas since 1970: they are moving where the jobs are. But we don't know how that movement from rural to urban areas is affecting Native health and well-being. Does better access to health care make urban Natives healthier? Is the widespread problem of alcohol abuse worse in urban or in rural areas? And so on: we don't know those answers.

Another problem is that we don't have any good way of measuring some things. For instance, as we pointed out in the section on education, we can't assess how much Native students know about their own histories and cultures—which is an important measure of education.

And we can't analyze all the issues implicit in some of the changes we describe. For instance, we report that most villages now have modern sanitation systems, with more being built every year. Those systems are making village life healthier—but we also know that many small places have trouble paying for and maintaining them. How the costs of sanitation and other utility systems will affect communities over time is a major economic issue.

Finally, keep in mind that this report comes at a time of major changes in the way information is collected and reported. We've talked about the change in the 2000 U.S. census that allowed people to choose more than one primary race. That change made our analysis much more complicated. Beyond this analysis, the change means that recent data are more detailed—which is an improvement—but at the same time, it opens the question of how information by race will be reported in the future, since so many people describe themselves as multi-racial.

Also, the federal government in 2000 adopted a new "standard population" for computing rates of death and other measures. Statisticians use this standard population, with specific percentages of people in each age group, to compare across populations that have different age breakdowns. This may not seem an important change—but it is, because rates calculated with the new standard aren't comparable to those calculated under the old standard. So, for example, if you see that rates of heart disease jumped between 1995 and 2000, the change may be due to the use of the new standard population rather than to a sudden increase in heart disease.

Still, despite all that, the report has a wealth of information. We hope Native people will find it useful as they make decisions for themselves and their communities.

ABOUT THE AUTHORS

Scott Goldsmith was the principal investigator for the project and also did the analysis of economic conditions. Dr. Goldsmith is ISER's director and a professor of economics. He has nearly 30 years' experience analyzing Alaska's economy. He is widely recognized for his projections of population and job growth and his analyses of state fiscal policy issues.

Lance Howe did the demographic analysis for the report. Dr. Howe is an assistant professor of economics who joined ISER in 2002. Much of his work has been in analyzing rural economic issues and changes in rural settlement patterns.

UAA's Institute for Circumpolar Health Studies (ICHS); Jane Angvik, an Anchorage consultant; and **Linda Leask**, ISER's editor, all contributed to the description of Native health and well-being. The Alaska Legislature created ICHS in 1988 to help find solutions for health problems in Alaska and the rest of the circumpolar north. Ms. Angvik has more than 30 years' experience in Alaska public policy development and in working with Native communities and organizations. She was formerly the president of the Alaska Native Foundation and vice-president of the Alaska Native Heritage Foundation.

Alexandra Hill, a research associate at ISER, did the assessment of education issues. She has been with ISER for 15 years, analyzing a wide range of education and other public policy issues.

The full report, *Status of Alaska Natives 2004*, is in three volumes—the main body of the report, which is about 400 pages, and two volumes of detailed tables from the 2000 U.S. census. It is available at cost from ISER (907-756-7710) or the Alaska Federation of Natives. The report is also at: www.iser.uaa.alaska.edu.

The study was prepared for the Alaska Federation of Natives, with funds from the Alaska Native Sobriety and Alcohol Control Program and the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Additional funding was contributed by ISER's *Understanding Alaska* program, a special series of research studies examining Alaska economic development issues. The studies are funded by the University of Alaska Foundation. See more about the program at: www.alaskanecconomy.uaa.alaska.edu.



Special thanks to the First Alaskans Institute for help throughout the study; FAI also provided photos.

**Post-Hearing Questions for the Record
Submitted to Debra Ritt
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

Are individually owned 8(a) firms or large business contractors that receive sole source contracts from the federal government, restricted to operate in the neighborhoods or states where their owners are located?

OIG SBA Response: We are not aware of any such restriction.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

OIG SBA Response: We do not have any opinion on such geographic restriction.

2. In FY2007, the federal government spent a total of \$439.5 billion on procurement contracts. Of that amount, contracts awarded to Native enterprises under the 8(a) program totaled \$3.2 billion, or just 0.7%. However, contracts awarded to Native enterprises as a share of total federal contracting dollars, represented \$5.1 billion or 1.2%. I would appreciate your thoughts on the following question:

In your opinion, if Tribal and ANC participation were removed from the 8(a) program, would the 1% of total federal contracts they are receiving now, likely go to big business, or to other 8(a) small firms? What is your rationale for your response?

OIG SBA Response: It is unclear whether this question is asking about contracts that ANC-owned firms are currently performing or contracts that are awarded in the future. Regarding contracts that are currently being performed, if ANCs were removed from the 8(a) program, SBA regulations allow 8(a) firms that leave the program to complete work on any existing 8(a) contracts.

Regarding contracts that might be awarded in the future, our July, 2009 audit found that, in Fiscal Year 2008, Federal 8(a) obligations going to current and former ANC participants totaled \$3.9 billion, representing 26 percent of total 8(a) dollars. In the past, procuring agencies have generally met the congressionally mandated goal that five percent of all contracts be awarded to small and disadvantaged businesses. Therefore, if ANCs were not permitted to participate in the 8(a) program, procuring agencies would likely award more contracts to other 8(a) firms in order to meet this goal.

3. *When you discuss and use the term "shareholders" to describe the Alaska Native ownership of Alaska Native Corporations, is this a term that represents what we commonly understand in business ownership, as corporate "investors"?*

OIG SBA Response: No. Shareholders as discussed in our audit report refers to Alaskan natives that are members of the relevant ANC.

As Alaska Native shareholders are unable to buy, sell or trade stock in their corporation, even if business is conducted outside of Alaska, the control of the ANCs are limited to their shareholders. Correct?

OIG SBA Response: It is our understanding that this may be correct, however, we have not independently reviewed whether shareholders of ANCs have the ability to transfer their shares to other persons or entities.

Contracting Preferences for Alaska Native Corporations
Chairman McCaskill
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs
Thursday, July 16, 2009, 2:30 P.M.

Questions for the Record
Mr. Joseph Jordan, Associate Administrator for Government Contracting & Business
Development, Small Business Administration

Current law authorizes the U.S. Small Business Administration (SBA), in determining the size of economically disadvantaged Indian tribes, defined to include Alaska Native Corporations, (ANCs), to exclude any affiliates or subsidiaries from such a count, unless SBA determines that such exclusion from size determination would create a "substantially unfair competitive advantage." In the past nine (9) years alone, 19 Alaskan Native Corporations and village corporations have enrolled 248 subsidiaries, joint ventures, or partnerships in the 8(a) program.

The SBA Office of Inspector General, in its July 10, 2009 Report, stated that with respect to unfair competitive advantage determinations, "SBA officials told GAO that [this] statute was confusing and that they [the SBA] were not sure how to implement it." When asked at the hearing whether you thought this law was confusing, you stated "I don't believe I am in a position to declare it confusing one way or not confusing right now."

- 1) Does SBA consider this rule confusing?

No

- 2) Of the 248 subsidiaries, joint ventures, or partnerships created by ANC and village corporations in the past nine years, did SBA make any determinations for any business concerns as to whether a substantially unfair competitive advantage had or would occur and did SBA take any action to require readjustment of size determinations for any ANC or village corporation business concern in the 8(a) program?

The SBA does not track these actions. However, because SBA admitted these firms to the 8(a) Business Development (BD) program, SBA must necessarily have determined that their admittance would not create a substantially unfair competitive advantage.

- 3) In the past 18 years, has the SBA ever made any determination that a substantially unfair competitive advantage had or would occur from exclusion of any business concern, entity, or affiliation of an Indian tribe in determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe or wholly owned business entity of such tribe? Please provide a list of all such determinations.

The SBA does not track these determinations.

Almost three years ago, the Government Accountability Office (GAO) found problems with SBA's oversight of ANCs. It made 10 recommendations, including: (1) clearly articulating how SBA will comply with existing law requiring unfair competitive advantage determinations, as discussed above, (2) determining whether other small businesses are losing contracting opportunities when ANC firms obtain awards through 8(a), and (3) evaluating training and staffing levels needed to effectively oversee ANC participation in 8(a). The SBA claims to have implemented five of the ten recommendations, but the SBA IG asserts that only two have been complied with.

- 4) Please explain what actions SBA has taken with respect to the three additional recommendations SBA claims to have implemented in its response to the SBA IG's July 10, 2009 Report, and whether these actions have resulted in resolution of the problems GAO originally identified.

SBA is continuing to implement IG's recommendations. See attached document that outlines the actions SBA has taken which have resulted in the resolution, and closeout, of three of GAO's recommendations.

- 5) What are SBA's plans and timelines for implementation of each of the remaining recommendations? If SBA does not intend to take any further action with respect to these recommendations, please explain why.

Four of the ten recommendations have been closed. The SBA is continuously working with GAO to close outstanding recommendations. It is expected that several of the outstanding recommendations in GAO's evaluation of ANCs will be closed out upon finalization of SBA's proposed regulations regarding the 8(a) BD program.

- 6) With respect to the staffing level recommendations in the GAO report, the SBA IG's office indicated that two SBA employees were responsible for overseeing more than 200 8(a) participants, including 166 ANCs. The SBA has now begun the hiring process for two (2) more employees in the Alaska District office. Is this an adequate response? If SBA believes these two additional positions are not sufficient, what are SBA's plans to ensure adequate staffing and oversight in this area?

In addition to the two new hires, SBA is also converting a third Alaska District Office employee to work with 8(a) participants. The SBA continuously monitors the implementation of its staffing plans, and will apply additional staffing resources if necessary.

In response to questions about the difference between Alaska Native Corporations, Native Hawaiian Organizations, and tribal entities, you testified that "[t]he one area in which Alaska Native Corporations are different from Indian tribes is the presumption of economic disadvantage. ANCs are presumed economically disadvantaged whereas tribes are not. However, to the best of my knowledge, there has not been a case where a tribe was rejected from the 8(a) program based on that."

The following questions were asked and the following answers were given:

Senator McCaskill: "But don't you lose your status as economically disadvantaged once you get to a certain threshold, Mr. Jordan?"

Mr. Jordan: "You do as a--Senator McCaskill, as you said, there are differences between ANCs, tribes, and Native Hawaiian organizations and the traditional 8(a) business development program participant. The way the—."

Senator McCaskill: "Including the Indian tribes."

Mr. Jordan: "Yes, but the larger difference is between ANCs, tribes, Native Hawaiian organizations, and community development corporations, and the individual socially and economically disadvantaged business owner. And so when you are looking at the net income, net asset threshold over which you become no longer presumed economically disadvantaged, the process by which Indian tribes are evaluated is obviously more complex than the process for evaluating one individual small business owner."

Senator McCaskill: "Well, but it is my understanding, Mr. Jordan, that the law carves out a permanent economic disadvantage status for ANCs."

Mr. Jordan: "You are correct."

Senator McCaskill: "And it does not do that for Indian tribes."

Mr. Jordan: "You are correct, yes."

However, at a later point in the hearing, you testified:

"But I do want to get back to the--so I do not have to get back to you later on the tribes versus the ANCs. So under the regulations, tribes have a one-time determination of whether that tribe is economically disadvantaged. So this happens with the first 8(a) firm from that tribe. For every other 8(a) firm owned by the tribe, they do not have to establish that economic disadvantage. ... [t]here is a difference in the law. That is correct. In terms of how that difference plays out over time, I would have to get back to you."

- 7) Please provide your response now to the question you raised about how the legal distinctions between ANCs and tribes “play out over time.” Please include the applicable statutory and regulatory requirements in your response.

The SBA was attempting to explain in this section of the Q&A that we are in the process of ascertaining the effect that potential advantages enjoyed by tribes and ANCs have on other 8(a) BD program participants. As you correctly note, pursuant to the Alaska Native Claims Settlement Act, concerns that are at least 51% owned by an ANC are statutorily deemed to be owned and controlled by Alaska Natives and an economically disadvantaged business. See also 13 CFR § 124.109(a)(4). While a concern owned by an Indian tribe is not afforded the same statutory designation as an economically disadvantaged business, SBA’s regulations provide, in pertinent part, the following:

(b) Tribal eligibility. In order to qualify a concern which it owns and controls for participation in the 8(a) BD program, an Indian tribe must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Thereafter, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically required to do so by the AA/8(a)BD or designee. Each tribally-owned concern seeking to be certified for 8(a) BD participation must comply with the provisions of paragraph (c) of this section. 13 CFR 124.109(b)

Thus, after establishing its economic disadvantage in connection with the first application for participation in the 8(a) BD program of a firm owned by a specific tribe, the tribe generally does not have to re-establish its economic disadvantage for succeeding 8(a) applications of other firms owned by that tribe. In that sense, after the initial application, the treatment of tribes and ANCs is similar.

Statutory: Sections 7(j)(1)(B)(iii), 8(a)(4)(A)(i)(II), 8(a)(6)(A), and 8(a)(13) of the Small Business Act; 43 U.S.C. § 1626(e).

Regulatory: 13 CFR § 124.109

- 8) How does SBA enforce the procedures requiring establishment of economic disadvantage for Indian tribes attempting to qualify concerns for participation in the program?

As stated above, the SBA evaluates a tribe’s economic disadvantage at the time the first tribally-owned business applies for the 8(a) BD program.

- 9) Apart from the exception allowing Indian tribes to avoid reestablishing economic disadvantage for 8(a) participation of other business that they own, how does SBA enforce the separate requirement for annual submittal of economic disadvantage certifications for Indian tribes? Does SBA review these submittals?

Requiring tribes to annually verify economic disadvantage would be inconsistent with the SBA's regulation at 13 CFR 124.109(b) (see above).

- 10) Please describe SBA's process for receiving, maintaining, and reviewing records of tribal entities' annual certification that such entities are meeting the requirements for participation in or graduation from the 8(a) program.

Each participant in the 8(a) program must annually verify their eligibility for the program. Through this Annual Review process, firms submit documentation which is analyzed by SBA to ascertain whether the firm remains eligible for the 8(a) BD program. The SBA maintains the information electronically, and keeps paper documentation in each firm's case file.

**Post-Hearing Questions for the Record
Submitted to Joseph Jordan
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. In your testimony, you state the Small Business Administration (SBA) has “developed a package of regulatory changes to ensure more effective administration of the 8(a) program for all participants...”

Have these proposed changes been made public and what is the time line for implementation of these changes?

At this point, the proposed regulations are undergoing the review process by the Office of Management and Budget. Once this review is completed, the regulations will appear as a proposed rule in the Federal Register.

Can you elaborate on what involvement tribal and Alaska corporations had in the development of these proposed regulatory changes?

The SBA held two tribal consultations - one in Alaska, and one in Denver, Colorado. The SBA is considering additional tribal consultations after the proposed rule is published, but prior to issuing a final set of regulations.

2. Some have suggested that Alaska Native Corporations (ANCs) should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

Are individually owned 8(a) firms or large business contractors that receive sole source contracts from the federal government, restricted to operate in the neighborhoods or states where their owners are located?

No.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

The SBA believes that a geographic limitation on Tribal and ANCs would impede the business development of these companies, which would be inconsistent with the intent of the 8(a) Business Development (BD) program.

3. In FY2007, the federal government spent a total of \$439.5 billion on procurement contracts. Of that amount, contracts awarded to Native enterprises under the 8(a) program totaled \$3.2 billion, or just 0.7%. However, contracts awarded to Native enterprises as a share of total federal contracting dollars, represented \$5.1 billion or 1.2%. I would appreciate your thoughts on the following question:

In your opinion, if Tribal and ANC participation were removed from the 8(a) program, would the 1% of total federal contracts they are receiving now, likely go to big business, or to other 8(a) small firms? What is your rationale for your response?

For an individual contract, the answer to this question depends upon the size of the contract. For smaller-sized contracts, other 8(a) participants could perform those contracts. Because many of the contracts that Tribal- and ANC-owned participants in the 8(a) BD program are receiving are larger value contracts, SBA believes that the majority of these contracts would no longer be awarded to small businesses. In these instances, ANC- and Tribal-owned firms are being awarded contracts that would otherwise be awarded to firms that do not qualify as small businesses. Very few 8(a) BD program participants that are not Tribal- or ANC-owned have the capacity that would allow them to receive contracts of this magnitude.

4. *In your opinion based on your experiences and understanding of the SBA 8(a) program, do you think the provisions later created by Congress to include Tribal government corporations and ANCs was intended to serve a different purpose than the 8(a) firms for minority and disadvantaged individual owned firms? And what is that purpose?*

The three-fold statutory mission of the 8(a) BD program is to:

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

As modified by statutory provisions to allow companies owned by ANCs and Native Tribes entry into the 8(a) BD program and certain advantages in their participation, the additional statutory mission of the 8(a) BD program is to assist with the economic development of ANCs and Tribes as opposed to individualized business development assistance for companies not owned by organizations.

5. *As sole-source contracts awarded to ANCs may be larger in size than other contracts. Have ANCs partnered or subcontracted work for such contracts to other 8(a) participants?*

Anecdotally, SBA has heard of a number of circumstances in which ANCs have partnered with and subcontracted to other 8(a) BD program participants, including tribally-owned 8(a) BD firms. If you would like, SBA could contact ANC-owned participants and ask for specific instances of such partnerships or subcontracts.

Senate Committee on Governmental Affairs
Hearing Date: July 16, 2009
Subject: Contracting Preferences for Alaska Native Corporations
Witness: Mr. Assad
Senator: Senator McCaskill

1. Question: In your written testimony, you stated: "I respect the need to provide economic opportunities for 8(a) ANCs. However, based on the Department's experiences with the 8(a) program, I think there may be ways to promote additional competition in appropriate circumstances." What current incentives or circumstances are causing the Department of Defense to rely on sole-source contracting within the 8(a) program?

Answer: In the 8(a) program, the preferred approach is to compete contracts expected to exceed \$5.5 million, including options, for assigned manufactured NAICS codes and \$3.5 million for all other acquisitions. A requirement may be set aside for competition if it is anticipated that there is a reasonable expectation that two or more offers will be received and award can be made at a fair market price.

The Federal Acquisition Regulation (FAR), implementing the Small Business Act, states that if an acquisition exceeds the 8(a) thresholds of \$ 5.5 million for manufacturing and \$3.5 million for all other acquisitions, the Small Business Administration (SBA) may reserve the requirement for award to a concern owned by an Indian tribe or an Alaska Native Corporation on a sole source basis (FAR 19-805-1(b)(2)). With respect to the Department of Defense, the SBA may also accept requirements in excess of the competitive threshold for a sole-source 8(a) award on behalf of a small business concern owned by a Native Hawaiian Organization. As a result, the normal 8(a) rules for competition above these thresholds are not applicable to 8(a) ANCs, tribally-owned firms, or small business concerns owned by Native Hawaiian Organizations.

2. Question: What statutory, regulatory, or administrative changes are necessary to realize the goal of additional competition?

Answer: Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and Federal Acquisition Regulations 19.805-1 set forth the thresholds for competition limited to eligible 8(a) firms. For contracts expected to exceed \$5.5 million, including options, for assigned manufactured NAICS codes and \$3.5 million for all other acquisitions, the procedures of the 8(a) program require competition if there is a reasonable expectation that two or more offers will be received and award can be made at a fair market price.

Since the statutory and implementing regulatory procedures governing the 8(a) ANC program do not require competition at any threshold, the statute and implementing regulations would need to be changed to realize the goal of additional competition.

3. Question: What potential harms exist for the federal government, the Department of Defense, the warfighter, or the taxpayer if the current preferences for sole-source awards in the 8(a) program remain unchanged?

Answer: The SBA IG report number 9-15 dated July 10, 2009, noted that the significant increase in sole source 8(a) awards to ANC firms from FY2000 through FY2008 may have resulted in diminished opportunities for other 8(a) program participants. In addition, due to the special contracting advantages for Native American firms under the 8(a) program, the overall effectiveness of the 8(a) program is adversely impacted. The SBA IG report also suggests that sole source awards do not always provide the Government with the best value. As stated in my testimony, the appropriate use of competition could provide economic opportunities for the 8(a) ANCs and further help agencies to obtain best value for the government and the taxpayer.

4. Question: You also stated in your written testimony that the Department needs to ensure that all 8(a) firms perform at least 50% of the effort on 8(a) contracts, as required, and that the Department is working with the Defense Contract Audit Agency and the Defense Contract Management Agency to determine whether ANCs are receiving the same audit and oversight as other DOD contracts. Do you believe that ANCs are not receiving the same type of oversight now?

Answer: The Department has confidence that contracts administered by Defense Contract Management Agency (DCMA) are carefully monitored in accordance with the Federal Acquisition Regulation Part 42, Defense Federal Acquisition Regulation Supplement, Cost Accounting Standards, and agency policies and procedures. Currently, DCMA manages 133,000 service contracts. Of these 26,000 are for Research & Development, 14,000 for repair and Overhaul/Maintenance and the remaining 93,000 are for other services. My staff is continuing to work with DCMA and DCAA to determine how many ANC contracts are administered by these agencies, and the level of oversight and monitoring.

5. Question: Do you believe that ANCs and other 8(a) entities are not performing at least 50% of the effort on certain 8(a) contracts? As you indicated, you have initiated a review of Department awards to 8(a) ANC, which you intend to share with the Subcommittee upon completion. Thank you and please share any initial information or findings you feel are relevant to this discussion.

Answer: At the present time, we do not have the information necessary to answer that question. My staff is continuing to work with Defense Contract Management Agency and the Defense Contract Audit Agency to achieve a full picture of the issues inherent with 8(a) ANC contracts.

6. Question: Two related preferences were created in the 2000 and 2004 Department of Defense Appropriations Acts. The first authorized the Department to outsource federal civilian jobs without complying with the Office of Management and Budget's competition procedures (the A-76) if the contract was awarded to Native-owned businesses. The second preference allowed these conversions to be counted towards the agency's competition goals. Do these exceptions in the law present the same concerns you outlined in your written testimony about lack of competition?

Answer: Yes. However, the Department has not used the exceptions to outsource federal civilian jobs to the preferences specified in these statutes. Specifically, the Defense Appropriation Act for Fiscal Year 2004, Pub. L. 108-87, sec. 8014(b)(1)(c), and included as

section 8015 of the Defense Appropriation Act for FY 2009. Any such conversions would be based on competition by comparing the cost of performing the work with federal civilians to that of the specific preferential source cited in these laws.

7. Question: Is the Defense Department planning on reviewing contracts awarded using these preferences?

Answer: Section 737 of the Omnibus Appropriations Act for Fiscal Year 2009, places a federal Government-wide moratorium on beginning or announcing a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy. The Department is conducting an assessment of all outsourced services.

Senate Committee on Governmental Affairs
Hearing Date: July 16, 2009
Subject: Contracting Preferences for Alaska Native Corporations
Witness: Mr. Assad
Senator: Senator Akaka

1. Question: Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located. Are individually owned 8(a) firms or large business contractors that receive sole source contracts from the federal government, restricted to operate in the neighborhoods or states where their owners are located? In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

Answer: No. 8(a) firms do not have geographic restrictions and are free to do business in any state.

2. Question: In your testimony, you state "...there may be ways to promote additional competition in appropriate circumstances." Could you elaborate on what those "appropriate circumstances" may be?

Answer: For contracts expected to exceed \$5.5 million, including options, for assigned manufactured NAICS codes and \$3.5 million for all other acquisitions, the current procedures of the 8(a) program require competition if there is a reasonable expectation that two or more offers will be received and award can be made at a fair market price.

Under section 8(a), as qualified by section 602 of Public Law 100-656, as amended, competition is not a requirement at any threshold for participants that are owned and controlled by economically disadvantaged Indian Tribes (which includes any ANC). An appropriate circumstance for additional competition might be those instances where there is a reasonable expectation that two or more 8(a) ANC firms are capable of meeting the government's requirement for a product or service. Traditionally, Congress has determined overall small business policy for federal agencies, and has taken the lead in establishing a balance between various social goals and business needs.

3. Question: As sole-source contracts awarded to ANCs may be larger in size than other contracts, have ANCs partnered or subcontracted work for such contracts to other 8(a) participants?

Answer: Neither the Federal Procurement Data System (FPDS) nor the Electronic Subcontracting Reporting System provides information specific enough to answer this question; the Department of Defense knows of no other database that might be queried for such information.

**Post-Hearing Questions for the Record
Submitted to Sarah Lukin
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located. *In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations? How might this limit economic opportunities for tribal and Alaska communities?*

There is no basis or valid public policy purpose served by imposing geographic restrictions on Tribal, Alaska Native or Native Hawaiian community enterprises. Native Enterprises, like all American businesses, follow the work, and when they have the opportunity to work outside of their home state, they do. Native Enterprises are headquartered in their home states and all profits are brought back to their local Native communities to benefit their people.

Dr. Jonathan Taylor, Research Associate at the Harvard Project on American Indian Economic Development and Senior Policy Associate at the Native Nations Institute at the University of Arizona, testified before the U.S. House Natural Resources Committee in September, 2007 regarding the economic impact of the Native 8(a) program. He noted that without work in other states and internationally, dollars that now flow to Native people would be lost because, “...supply and demand forces, logistics costs, and geographic synergies create strong incentives for the federal government and the Tribal & ANC 8(a) contractors to operate where it is efficient to do so” (see pages 8-9 of Lukin written testimony).

The Commonwealth of Virginia had the largest number of federal government contracts in the nation –over 16,000 federal contracts awarded in FY 2008 alone. Thousands of non-Virginia government contractors are headquartered and/or work in Virginia, vying for government contracts. Native 8(a)’s are among them. Northrop Grumman, a California-headquartered company, is the largest government contractor in Virginia. In FY 2007 alone, Northrop Grumman won \$4.6 Billion, or roughly 10%, of all the awards issued from Virginia. No one would suggest that the behemoth contractors, such as Northrop Grumman, be restricted to only California even though their Virginia-based contracts in FY 2007 alone were 150 percent that of all corporations participating in the Native 8(a) Program.

With the exception of matters pertaining to a HUBZone enterprise, no where in the federal contracting system is the location of a corporation’s headquarters relevant. It is absolutely discriminatory to suggest that only Native 8(a) corporations would be so restricted. The intent of the 8(a) business development program is to enable 8(a) corporations to get federal contracting experience as part of their development. It is essential that all 8(a) corporations be able to bid on work regardless of where the contract emanates.

2. Some may argue that benefits to shareholders can be quantified for an ANC by determining the total dollar amount of contracts awarded, divided by the number of shareholders of an ANC or a similar calculation. *Is this an appropriate methodology to account for the benefits accrued by shareholders from ANCs? Are such calculations the only measurement available? And can you describe or share examples of how ANCs are improving the cultural, social, and economic standing of their shareholders?*

Quantifying shareholder benefits by dividing the total dollar amount of contracts by the number of Shareholders of an ANC, or a similar calculation, is a flawed methodology. The result would be inaccurate. The process used by Subcommittee majority staff and presented at the hearing is evidence of a fundamental misunderstanding of the structure and responsibilities of ANCs to their Native people. Federal policy relating to Native peoples, with differing histories, cultures, traditions, needs, legal standing, governance structures, geography, resources and populations, especially mixed in with federal contracting and small business policy, demands a more comprehensive analysis.

Cash dividends are but one part of the return to Native people by their ANCs. It is important to understand that ANCs, like Tribes, are each unique organizations representing unique cultures, communities and Native peoples. They are responsible for serving their people in perpetuity and provide distinctive benefits to address the needs of their particular cultural group. Of the more than 200 ANCs, some may focus on jobs, some on educational scholarships, some on drug abuse prevention programs, or community infrastructure, while others may emphasize cash dividends. It is the ANC's responsibility to provide the benefits and services to address the needs of their community. Each ANC is governed by elected Boards of Directors to determine how benefits will be provided to its shareholders. Often it is up to individual shareholders to decide on use of the benefits offered. For instance, a shareholder may decide to go to college and use a scholarship from his ANC, or he may instead focus on participating in a job training program his ANC offers.

My testimony (pp 14-20) discusses at length the benefits ANCs provide to their Native communities through Native 8(a) profits. In addition, the testimony of the National Congress of American Indians, the Alaska Federation of Natives, and others address benefits. The Government Accountability Office, the Small Business Administration, and the SBA Inspector General, through reports and direct Congressional testimony over the last three years have all concluded that the Native 8(a) program measurably, directly and indirectly benefits Native peoples. The SBA Inspector General itself stated:

...the program has helped ANCs fulfill a mission that is broader than the bottom line of the corporations – namely, to help Alaska Natives achieve economic self-sufficiency. Unlike other 8(a) businesses, whose profits generally go to one or two disadvantaged individuals, the profits from ANCs are shared by hundreds, and sometimes even thousands of tribal members or Native shareholders (pp 4-5).

Further, I submitted for the record the report by Dr. Jonathan Taylor on "Native American Contracting Under Section 8(a) of the Small Business Act – Economic, Social and Cultural

Impacts," which quantifies the direct and indirect economic, social and cultural benefits to Native peoples from the 8(a) program; and the paper by the Native Nations Law & Policy Center of the UCLA School of Law, titled "Federal Contracting Support for Alaska Natives' Integration in the Market Economy." Both Senators Murkowski and Begich detailed experiences and data describing the progress that has flowed from the Native 8(a) program, and Senator Begich requested and referred to the Institute of Social and Economic Research, University of Alaska Anchorage, website detailing "Benefits of Alaska Native Corporations and the SBA 8(a) Program to Alaska Natives and Alaska" (<http://www.iser.uaa.alaska.edu/Home/8a.html>).

I would also argue that the effects and benefits of some programs, like language revitalization, are immeasurable. How can one qualify the success of a program that saves a traditional language like mine where only six Native elders remain who can speak our dialect? To hear my three-year-old daughter speak Alutiiq, our traditional language that my grandparents were forbidden to speak and my parents never learned is simply amazing. My ANCs (both the regional and village corporations) are using profits from their 8(a) businesses to help fund our language revitalization effort. So much of how the Alutiiq people see our world can be understood through how we describe things in our Native language. To lose our language completely would mean losing part of ourselves and our culture. How can one quantify that?

3. Recognizing ANCs are uniquely positioned to be awarded federal sole-source contract, to your knowledge have ANCs partnered with other individually owned 8(a) small businesses? Also, for work being conducted outside of Alaska have ANCs employed local labor and subcontractors?

Native 8(a)s have a history of partnering with other Native Enterprises and other individually owned 8(a) and small businesses. In fact, some of the current Native 8(a) successes began as partners, protégés, or subcontractors for other Native 8(a)s. Arctic Slope Regional Corporation mentored S&K Industries, an 8(a) business of the Salish and Kootenai Tribe of Montana, which then mentored the Native 8(a) of the Mandaree of North Dakota.

Similarly, there is a concerted effort to partner with small businesses and individually-owned 8(a) companies. I mentioned in my testimony the ICRC/Koniag partnership with Qualis, a woman-owned small business in Alabama, as a way to provide the federal government alternative procurement vehicles, provide competition to the big companies, and give taxpayers more value for their dollars (p 5). I am attaching here letters from AJA, Arinbe Technologies, Averalink, GTI, NWS, Huntsville Radio Service, INSUVI, Alcyon, Knowledge Vortex, Samantha's Contracting, SuccessTech, and USS, commenting on their experiences with Alutiiq, an ANC subsidiary, and their efforts at partnering.

There are hundreds of other similar examples, but NACA, the National Congress of American Indians and the National Center for American Indian Enterprise Development believe that much more needs to be done. We have Best Practices Policies that strongly encourage partnering with other 8(a)'s and small businesses. We have active outreach and cross-memberships going with African-American, Hispanic, Asian-American and women-owned business associations to expand these efforts, and we understand the special privilege of partnering with service-disabled veteran owned small businesses.

More needs to be done by the federal government as well. In my testimony, I note that NACA, NCAI, and NCAIED strongly support federal policy changes that directly enhance the opportunities for all small businesses and specifically individually-owned 8(a)'s. These include enhancing the ability of individuals to qualify for certification, increasing the caps, the net worth thresholds and the agencies' small business and minority business contracting goals, reducing bundling and consolidation of contracts in a way that allows greater small business participation, and encouraging subcontracting plans that support 8(a) and other small disadvantaged concerns, service disabled veteran owned, HUBZone, women-owned and small businesses.

Alcyon, Inc
4901-H Corporate Drive
Huntsville, AL 35805
July 2, 2009

To Whom It May Concern:

My name is Autumn Sellars and I am president and owner of Alcyon, INC , an 8(a), woman-owned consulting business that provides technical and engineering services for various Department of Defense organizations. I am writing to express how Alutiiq, LLC has positively impacted my business. My relationship and dealings with the Alaskan Native owned company is described in the following paragraphs.

As part of a strategic business expansion decision, I decided to relocate my Franklin, Tennessee based company to Huntsville, Alabama in early 2008. I relocated to better position Alcyon in a growing defense contracting community with what I felt were great business opportunities. When I relocated to the Huntsville, Alabama area, my company consisted of 2 employees sharing a 1 room temporary office space. Although Alcyon had been performing work as a prime contractor for the U.S. Navy for many years, we did not have a facility clearance, excluding us from pursuing several contacting opportunities that were available in the community. I quickly understood my business would be greatly hindered without securing a facility clearance and work to justify it.

Through a professional contact, my company was referred to Greg Hambright, who was building a reputation for himself in Huntsville as a small business champion, spearheading Alutiiq's Micro-Business initiative. When I met Mr. Hambright, he explained to me that he was looking for small businesses who had demonstrated they were ethical, viable, and already performing excellent work, but were having trouble advancing past their current stage and goals because of limited infrastructure or past performance roadblocks. Mr. Hambright explained that Alutiiq was hoping to help small companies with some of these hurdles, as he understood the importance of building relationships with small companies that one day would grow and help him pursue strategic partnerships.



1901 N. Moore St. # 805
Arlington, VA 22209
703-968-6052(o), 703-783-8392(f)

July 6, 2009

To Whom It May Concern:

Subject: Subcontracting with Alutiiq (an Afognak Native Corporation)

This letter is composed to provide feedback as to our experience subcontracting to Alutiiq (an Afognak Native Corporation). Our experience with Alutiiq has been an overwhelmingly positive experience. The corporate structure and the individuals that provide support to our corporation as a subcontract have been extremely helpful, professional, and knowledgeable. Our business dealings with Alutiiq have been honest, ethical and fair. Although our relationship is not categorized as a formal "mentor/protégé" relationship, the interaction that we have had with Alutiiq has taken on the feel of that type of relationship.

Our corporation is providing engineering, information assurance, program/project management to our military installations in the Continental United States (CONUS). Having the relationship that we have with Alutiiq meets our ongoing goal of providing support to active military and federal government programs/projects. We are at the frontline of supporting an active mission and goal for homeland security related requirements across the CONUS.

Since establishing our relationship with Alutiiq, it is projected that our annual revenues for the year will increase by 20%. Due to the nature of work being performed under this contract with Alutiiq, Arinbe will expand its reach to all of the geographical regions of the United States. Additionally, the relationship has improved our competitive competencies in software engineering, program/project management, research and development, information assurance, and electronic security surveillance. Lastly, the relationship with Alutiiq has allowed us to maintain employment for 3 individuals who otherwise would have been laid off.

Overall, we have been please with our relationship with Alutiiq. We hope to continue it for years to come. If you have any questions of me, please feel free to contact me at the numbers above or the email address below.

Cordially,

A handwritten signature in black ink, appearing to read 'Reginald Marbray', written in a cursive style.

Reginald Marbray
President/CEO
Arinbe Technologies, Inc.
marbrayr@arinbe.com



1535 Hobby St Suite 203E
North Charleston, South Carolina 29405
O: (843) 735-5846
M: (843) 469-4678

To Whom It May Concern:

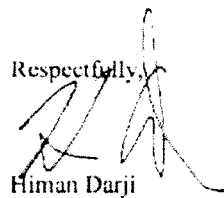
Working with Alutiiq on the various projects has helped my business in the following ways:

- My business has grown by 100%;
- Helped me develop competitive competencies in new areas, such as Program Management;
- Introduced me to new government customers I otherwise would not have known;
- Hired up to 4 new employees;

In my business dealings with Alutiiq I have found the company to be:

- Fair
- Ethical
- Honest
- Straight forward
- Easy to work with
- Committed to doing the right thing

If you have any questions, please contact the undersigned at (843) 469-4678.

Respectfully,

Himan Darji



820 PortCentre Pkwy
Portsmouth, VA 23704
(757)673-2479 office
(757)673-4327 fax

July 2, 2009

To Whom It May Concern:

Working with Alutiiq, LLC on various projects has helped my business in the following ways:

- My business has grown by 80% due to the relationships that have been formed.
- Introduced me to multiple new government contacts I otherwise would not have known.
- Expanded the geographic reach of my business into multiple states we had previously not done work in.
- Hired one new employee

In my business dealings with Alutiiq, LLC I have found the company to be:

- Fair
- Ethical
- Honest
- Straight forward
- Easy to work with
- Committed to doing the right thing

If you have any questions, please contact the undersigned at (757)673-2479 extension 343.

Regards,

A handwritten signature in black ink that reads "Nikki Ashford". The signature is written in a cursive style with a large, looped "N" and "A".

Nikki Ashford

Senior Sales & Marketing Representative

757-673-2479 ext 343

757-967-8159 fax

Nikki.ashford@gtisystems.net

HUNTSVILLE RADIO SERVICE, INC.
Communications Specialists



July 6, 2009



To whom it may concern:

Huntsville Radio Service, Inc., a Small Woman Owned Business, has been working with Alutiq for many years. We have worked as a partner and as a subcontractor. Alutiq acts as the onsite Quality Control for some of our work, such as doing Preventative Maintenance on the 11 tornado sirens we installed and maintain on Redstone Arsenal (RSA) for Department of Public Works. Any alteration or movement of towers and alarms go through Alutiq. Huntsville Radio maintains an area wide system shared by NASA & RSA through a Motorola Contract. This requires some coordination with Alutiq. Alutiq is very responsive in dealing with Huntsville Radio and RSA and we are very proud of how the emergency warning system and the communication system looks and operates. We enjoy a very good working relationship with Alutiq and look forward to this continuing.

Jim Graham, Outside Tech

A handwritten signature in black ink, appearing to read 'Jim Graham'.

David V. Brock, General Manager

A handwritten signature in black ink, appearing to read 'David V. Brock'.



INSUVI

Information Services Unique Value, Inc.

July 02, 2009

Subject: INSUVI Growth and Expansion Update

Dear Mr. Hambricht.

On behalf of Information Services Unique Value, Inc. (hereinafter "INSUVI"), I want to convey my sincere appreciation for the opportunity to work with Alutiiq on the RITS, OMEMS, and Kwajalein projects at this time. As you are aware, INSUVI was primarily concentrated in commercial work prior to working on these projects. That was until you shared with us Alutiiq's Micro-Business initiative and encouraged INSUVI to participate. It was so exciting to learn that this company sponsored program seeks opportunities to subcontract to small businesses allowing, in many cases, firms to gain security clearances, past performance, banking credentials, expanded capabilities, and grow one's business to the next levels of success.

A year later, I can honestly say that INSUVI is experiencing all the objectives that the Micro-Business initiative offers its subcontractors. For instance, INSUVI is now developing competencies in Information Technology as a subcontractor to Alutiiq International Solutions, LLC, and in Training as a subcontractor to Alutiiq Business Services, LLC. INSUVI has also expanded its support internationally to Kwajalein Atoll where it is providing Security Guard and Patrol services as a subcontractor to Alutiiq Global Solutions, LLC. The total growth from these contractual efforts comes to 95% with personnel having increased from 1 to 7 employees. An undeniable benefit of this growth is that INSUVI marketing is increasing as customers now have a level of comfort with the past performance gained. Contributing to their comfort level is the fact that Alutiiq fully supports and oversees that all its subcontractors are successful.

INSUVI's most recent accomplishment is acceptance by the Small Business Administration to participate in the 8(a) Business Development Program. The past performance and revenue gained from the Alutiiq subcontracts greatly contributed to our obtaining this certification. Noteworthy of mentioning also is that INSUVI's experience working with the Alutiiq management staff has truly been outstanding. Your corporate staff continually goes out of their way to provide answers to questions we have in the areas of contracts, accounting, payroll, security, and more. This in my strong opinion is nothing short of the type of quality mentoring that INSUVI and small businesses alike require at this stage of the game.

In closing, words cannot express how grateful I am for your believing in INSUVI and encouraging us to give the Micro-Business initiative a try. We are so very proud to be working with a prime contractor who has a proven reputation for being fair, ethical, honest, and committed to doing the right thing by its subcontractors at all times.

Sincerely,

Ernestine Caudle
CEO

Cc: Corporate File



Knowledge Vortex

...focused energy, powerful solutions

July 2, 2009

I am writing this letter to describe how Alutiq LLC in Huntsville, Alabama has been instrumental in the early success of my company, Knowledge Vortex. My name is Elisa Krupa, and I am the owner and President of Knowledge Vortex, a small, woman-owned, service-disabled, veteran-owned business that delivers Information Technology services and professional administrative services to the federal government and DoD Prime contractors.

Since Knowledge Vortex's incorporation in 2007, I have done what most small government consulting business owners do – spend every possible hour marketing my company to federal Prime contractors and trying to network with key decision makers.

I joined every networking organization I thought would be beneficial, including the Chamber, Huntsville Aerospace Marketing Association (HAMA), the Huntsville Association of Small Businesses in Advanced Technology (HASBAT), the Air Force Association, AUSA, Women in Defense, NDIA, etc. I took classes at the Woman's Business Center and the Huntsville Chamber of Commerce.

In the first 10 months, I met with over 20 large businesses, over 25 small businesses, and a multitude of government/DoD Small Business Liaison Officers (SBL's), Procurement Technical Assistance Program (PTAC) counselors, Department of Veteran's Affairs officers, and Small Businesses Administration Officers. I made no measurable progress as a subcontractor, mainly because my company had no corporate past performance to cite, only strong capabilities.

Then on June 18, 2008, I had my first meeting with Alutiq LLC. Greg Hambright, Senior Vice President of Technical Services, told me about their micro-business initiative aimed at helping local small businesses gain their first quality past performance. It is a unique program that clearly establishes Alutiq LLC as a strong supporter and mentor of newly formed, local small businesses. This is not a DoD-funded mentor-protégé plan and Alutiq LLC gains no subcontracting plan credits from the government for having this program. But Alutiq LLC recognized the necessity for a program that helps micro-businesses grow to the next level of success, and they stepped in to fill the need with the establishment of this program.

I asked to be admitted to the program, and after a vetting process, Knowledge Vortex became a subcontractor to Alutiq LLC. We now support Alutiq LLC and the Redstone Garrison DOIM on the Redstone IT Services (RITS) contract. Alutiq LLC also sponsored Knowledge Vortex's Facility Clearance, because a DoD SECRET clearance was required for all personnel supporting RITS. In every instance, Alutiq LLC has been straight forward and ethical.

Now that Knowledge Vortex has established citable past performance as a subcontractor to Alutiq LLC on RITS, we have been invited to join the following Teams as a subcontractor: AMCOM EXPRESS (all domains) which supports Army Aviation and PEO Missiles and Space; SETAC, which supports the Army Space and Missile Defense Command/US Army Forces Strategic Command; Encore II, which supports DISA; and numerous Teams for upcoming procurements, including NASA NICS and MiDAESS for the Missile Defense Agency.

Alutiq LLC has been more than helpful in Knowledge Vortex's success – they have been instrumental, and I am proud to be associated with this Alaskan Native Corporation.

Sincerely,

Elisa Krupa, President
Knowledge Vortex
*A Service-Disabled Veteran-Owned
 & Woman-Owned Small Business*
 (256) 541-2744





July 06, 2009

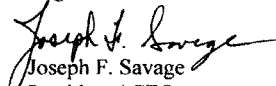
Alutiiq International Solutions
ATTN: Greg Hambright
101 Quality Circle, Suite 130
Huntsville, Al 35806

Greg,

I'd like to thank you and Alutiiq for the opportunity to participate in the micro-business initiative your company has established to support the small business community here in Huntsville, Alabama. You said this was a top priority for the company and you made it come true as promised. The effects of having a subcontracting and business development relationship has made a great difference in our company having the ability to be introduced to new local customers which was not possible before, as well as new customers in the Northern Capital Region.

We have been a part of two formal DOD mentor protégé programs and did not receive the attention we have from your top management and leadership without being reimbursed for their time and I like to highlight and bring this to your attention. Because it not only shows Alutiiq's commitment to local small businesses it also shows the value Alutiiq brings to the community. Our overall business dealing with Alutiiq has been honest, fair, and very straight forward which is special in such a strategic and technical bastion like Huntsville, Alabama. I look forward to continued success and growth with Alutiiq in the years to come.

Regards,


Joseph F. Savage
President / CEO
New World Solutions, Inc.



Samantha's Contracting
1045 Rescue Road
Union Grove, AL 35175
256-426-4906 or 426-4904

Date: July 2, 2009

Alutiiq
Building 3531 Shillelagh Circle
Redstone Arsenal, AL 35808

Attention: To All It May Concern

I am the owner of a small general contracting business located in Union Grove, Alabama. I have been very privileged to do business with Alutiiq for some time now. Each time I have needed support for my business in their line of work, someone has always been committed to help me out. Alutiiq employees have also contacted me for subcontract electrical work which provides my business with the opportunity to succeed. I have worked with many individuals employed by Alutiiq and each one has been honest, straightforward, and very efficient in getting my needs met. Whether our contact was Alutiiq providing a service for me or Samantha's Contracting providing a service for them, it has always been a pleasure to do business. I know that I can count on employees from Alutiiq to handle any future tasks.

Sincerely,

Samantha Vansandt, Owner



July 6, 2009

Greg Dodge, PMP
Program Director
Alutiiq International Solutions, LLC
8619 Westwood Center Drive
Vienna, VA 22182

Subject: Letter of Commendation

Mr. Dodge:

SuccessTech commends Alutiiq International Solutions, LLC (Alutiiq) for your efforts to identify, solicit and select qualified small businesses to team with for various Government acquisitions. Our teaming relationship with Alutiiq began with the immediate requirement to fill several vacant positions for a mission critical task with the US Department of State. With the assistance of Alutiiq, SuccessTech was able to fill 95% of the vacancies in less than two weeks. The project leadership provided by Alutiiq allowed for a seamless transition to the US Department of State that enabled the team to maintain continuity of operations and zero disruption in services.

Working with Alutiiq has helped SuccessTech in the following ways:

- Alutiiq sponsored SuccessTech for a facility clearance so the company could perform work on classified contracts;
- Helped SuccessTech develop competitive competencies in new areas, such as General Services and Physical Security;
- Introduced SuccessTech to new government customers that the company otherwise would not have known - such as the US Department of State and the Food and Drug Administration; and
- Hired 10 new employees;

In our business dealings with Alutiiq I have found the company to be:

- Fair
- Ethical
- Honest
- Straight forward
- Easy to work with
- Committed to doing the right thing

Please contact me at your earliest convenience if you need more information or other feedback.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sheila Brown Pannell".

Sheila Brown Pannell
President & CEO



*United System Solutions, Inc.
1337 Gibbons Road
Ridgewood, SC 29472*

A total Security and Public Safety Company

July 2, 2009

Mr. T. R. Williamson
Alutiiq, LLC
Vice President of Electronic Security Systems
1007 Bankton Dr.
Hanahan, SC 29410

Dear Mr. Williamson:

I want to thank Alutiiq for your support during the start up of United System Solutions, Inc (USS). USS began business in South Carolina as an engineering and software support company in May 2007. We are now incorporated in the State of South Carolina.

The company began with one full time and one part time employee attempting to market our capability with the Department of Defense (DOD). We found it to be very difficult to obtain contracts as a small business with DOD. It was suggested through our marketing efforts that we team with a larger corporation currently working in DOD as a mentor for our company. Having previously worked with Alutiiq and knowing their proven performance (excellent CPARS) with the National Guard Bureau throughout all the States and Territories and with the Space and Naval Warfare Command, I approached the management of the local office in Charleston to market our capability.

Alutiiq tasked USS to provide engineering support for their remote Test Site and to develop plans for testing new candidate technology in support of the National Guard Electronic Security System (ESS) Program. The success of this tasking resulted in additional tasking for engineering design reviews of all Installation Design Plans developed for the National Guard ESS program. USS was able to increase it's engineering staff to accommodate this substantial increase in tasking.

In 2008, USS was invited to team with Alutiiq as a subcontractor on a new National Guard contract. The Alutiiq contract team assisted USS with proposal development, mentoring my management staff on "how to" develop a viable proposal that would highlight our personnel's experience in light of the fact that we are a relatively new company. This contract was awarded in late 2008 and USS is now involved with the Alutiiq Test Site, engineering design reviews and ESS management support on various program elements. The support by USS has expanded from the Charleston area to other states under the contract as well as supporting the sponsor staff in Washington, DC as required by Alutiiq.

Alutiiq has been extremely fair in their dealings with USS and has provided valuable oversight and advice during our association. USS has grown in employment and also in

our capability to work within the DOD environment. Alutiq is a company that is committed to their customer as proven by the great success of the National Guard ESS program. You were complemented by the National Guard Program Manager with the following statement, "In less than five years we have made this a model program in the Army" and, you are just as committed to your subcontractors.

USS is looking forward to continuing our successfully association with Alutiq on the National Guard Program as well as future projects that Alutiq is currently pursuing.

I wish to thank Alutiq again for sharing knowledge, guidance and advice to this new small business, helping it to get a good start in a very competitive market.

Sincerely,
James L. Strobel
James L. Strobel
President
United System Solutions, Inc.



AJA Inc.
130 Kingswood Drive
Huntsville, AL 35806
July 2, 2009

Greg Hambright
Sr. Vice President
Alutiiq
101 Quality Circle
Huntsville, AL 35806

Dear Greg:

I would like to comment on my corporate experience with Alutiiq with regard to the upcoming Senate Subcommittee on Government Oversight on the 16th of July 2009.

As you may remember, in 2006 I started a professional consulting company with nothing but my good name and a wealth of IT experience. My intent was to provide professional IT services to the Federal government on Redstone Arsenal Alabama and perhaps even more locations as I grew the company. I started with a very small prime consulting contract in 2007 and that basically covered my salary and expenses of running a company. I tried to win more work in the area but ran in to the same problems most small businesses have trying to secure government contracts, lack of past performance. It's almost cruel that the government wants new and innovative ideas from the small business arena but will not consider a small business until they have demonstrated past performance with the government, a catch-22 scenario at best.

In the middle of 2007 I visited your office and gave you a capabilities briefing. I was still a one man show but you realized that if AJA Inc. were to grow I would need credible past performance. You brought my company on as a subcontractor to the Alutiiq owned Redstone Arsenal Information Technology Services contract and immediately awarded AJA Inc. 2 full time positions. Remember that I had no Human Resource experience, very little facility clearance experience and barely enough experience in contract administration but somehow was able to place two new employees to work within one week. To my surprise you kept increasing my headcount until we reached 10 full time employees inside of 90 days and soon would be put on a second contract with Alutiiq as a subcontractor. I started to gain the past performance needed to pursue more work on my own. During the first 6 months or so of working with you

AJA INC.
130 KINGSWOOD DRIVE
HUNTSVILLE, AL 35806
256.527.8795 256.270.4401(F)

and the other members of the Alutiiq family I was able to learn valuable skills by just asking for help when I needed it. It didn't matter if it was a payroll question, a contract question, or even how to negotiate the clearance system Alutiiq was there to help mentor and grow my business.

As a small business person joining teams and searching for additional work can be rewarding and profitable at times. Other times you feel that you are in deep water and swimming with the sharks. My personal experience with you and Alutiiq has been more than I ever asked for, the organization is always easy to work with. An example of that is when the contract was having modification difficulties and invoices were slow to be paid by the government you offered to pay my invoices before Alutiiq had received their money on the contract not once but 3 different times.

I have had personal mentoring sessions with you and many of your staff that helped AJA Inc. become the company it is today. I have learned the basics of preparing a response for a Request for Proposal, how to manage contracts, and even business development all at no charge. Nothing has ever been asked for in return, only that we perform on the contracts to best of our ability and keep the customer first and foremost in our mind.

Let me end this letter with a few summary points that others may want to know:

AJA Inc. grew from 1 person to 10 full time employees under Alutiiq's micro business initiative.

AJA Inc. has excellent credible past performance in its core competencies

AJA Inc. has always found Alutiiq to be an excellent mentor, extremely helpful and great to work with.

If given the opportunity to work with Alutiiq in any other capacity I would not hesitate to do so. I understand that there are always two sides to a story, feel free to share my side.

Sincerely,



A.J. Albert
President
AJA Inc.

AJA INC.
130 KINGSWOOD DRIVE
HUNTSVILLE, AL 35806
256.527.8795 256.270.4401(F)

**Post-Hearing Questions for the Record
Submitted to Jacqueline Johnson Pata
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

How might this limit economic opportunities for tribal and Alaska communities?

The suggestion of imposing geographic restrictions only on Alaska Native Corporations and tribally-owned businesses is un-American at best. Tribes and Alaska Native Corporations would certainly perceive the action as discriminatory and reflective of failed US policies of the past that sought to economically marginalize Native populations.

The United States promotes nation-to-nation free trade globally and states have long ago realized that having porous trading borders is beneficial to both the home state and the country. Imposing trade restrictions only on Native businesses that contract with the federal government would contradict long-held federal and state trade policy - not to mention the purpose of the Alaska Native Claims Settlement Act. The Settlement Act purpose related to economic development was to promote Alaska Native participation in the mainstream economy. There is no better way for Congress to meet this goal in geographically-remote and disadvantaged areas than to provide a mechanism for Alaska Natives to provide goods and services to the federal government - the largest purchaser of goods and services in the nation.

Businesses all across the nation realize the value in establishing offices where clients need to be served. In the case of all government contractors, this means establishing offices in Washington DC, near military bases and overseas to serve the need of our troops. Limiting large defense contractors like Boeing or Raytheon to a single state would be an unacceptable request that would place large contractors at a competitive disadvantage. Especially those companies located in states with limited federal contracting facilities. Placing a specific class of businesses, already deemed small and disadvantaged, at an even greater competitive disadvantage seems even more inappropriate.

2. Some may argue that benefits to shareholders can be quantified for an ANC by determining the total dollar amount of contracts awarded, divided by the number of shareholders of an ANC or a similar calculation.

Is this an appropriate methodology to account for the benefits accrued by shareholders from ANCs?

Are such calculations the only measurement available? And can you describe or share examples of how ANCs are improving the cultural, social, and economic standing of their shareholders?

Alaska Native Corporations were established to have the boards accountable to their shareholders who are their family members, clan members, and relatives. The boards of these corporations have a tremendous responsibility to ensure the needs of their families, communities and other communities (through the 7(i) program) are considered when deciding how dividends, if any, should be spent, distributed, or reinvested back into the company to ensure future success.

Many ANC's have not experienced a great deal of success in the government contracting arena; while others, after experiencing a difficult start, have just begun to realize success. Those who are successful have already established programs that benefit their respective shareholders and communities in various and far-reaching ways. For example, Native corporations have established scholarship funds, internships and recruitment efforts to build local capacity. In addition, numerous non-profits have been formed with the goal of providing valued community services to local citizens like leadership development, youth engagement and cultural programs. These programs help to build the cultural, community and corporate leaders of tomorrow and help to address the disparate socio-economic disparities common among Native people.

The concern with measuring benefits is that the person doing the measuring usually gets a strong say in what is valuable to a local community and culture. In addition, there is also concern that any profits may be allocated or reinvested by a federal authority far removed from the community served using a formula that, no matter how well-thought-out will never take the place of community leaders addressing community concerns directly.

Boards in corporate America are assumed to have the best interest of the shareholders in mind when deciding on the best use of profits. The corporate structure supports this assumption and the federal government has little say outside of using federal taxes to incent distribution and reinvestment of profits. Owners of all other small and disadvantaged businesses are not held to any standard of reinvesting profits into poor communities or non-profits serving their class, like women or veterans. They are also not held to a formula dictating how much they can make and how much of the profits should be returned to their disadvantaged class.

Native businesses, that serve entire communities, have been established to be accountable to the families, clans and communities they serve. There is no need for Congress to provide any other incentive beyond what already exists and is already working. Furthermore, Congress should not venture down the path of measuring the cultural, capacity building, and governance benefits of Native communities, especially considering the structure established by Congress already includes a proven incentive and structure to ensure benefits are returned to shareholders.

**Post-Hearing Questions for the Record
Submitted to Julie Kitka
From the Subcommittee on Contracting Oversight**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

To limit Native American eligibility for 8(a) contracts to remote, economically isolated locations---a realistic assessment of where the 8(a) status would apply---is a recipe for restriction, limitation and failure of program objectives.

The basis and purpose of such a geographical restriction seems similar to the principles underlying many of the historically-discredited motives that led to the current reservation economic system, which confined opportunities and livelihoods of Native Americans to a specific geographic area, often in economically depressed, isolated areas. In every case that we are aware of, the reservations were far smaller, and far more remote, than the areas previously used and occupied by Native Americans for centuries. Certainly, this is true in Alaska, where many areas were placed off-limits to Alaska Native ownership by the Alaska Statehood Act, and other federal laws.

It is well understood and accepted by many scholars and historians that the areas set aside for reservations or Alaska Native ownership were purposely limited to remote locations, well away from the centers of commerce in most states. It is hard to imagine any rational and justifiable basis for imposing geographic limitations to areas which are removed from sustainable and sustained economic commerce, particularly where the underlying federal program is designed to foster the growth of small businesses into larger, job-creating entities.

How might this limit economic opportunities for tribal and Alaska communities?

A geographic restriction is neither fair nor logical. For these reasons noted above, limiting economic opportunities to the localities of the tribes or Alaska Native communities would, in a great many cases, limit the economic opportunities available to isolated, remote locations, where subsistence lifestyles necessarily predominate. Most

Alaska village and regional corporation locations are well away from centers of economic commerce, as well as far from most federal agency contracting opportunities.

The real economic need for Native Americans is to be engaged in the real economy, not an artificial one. The global economy touches every part of our lives, and Alaska Natives need to have the reach to participate in it fully. Limiting us to a geographic location does not make economic sense at all.

Any objective review would show that the vast majority of Federal agency contracting opportunities naturally occur where the agency missions and facilities are located, not where the contractor is located. It would be unjust and unfair to exclude these areas and opportunities in 8(a) contracts or limit the opportunities to Non-Indian companies.

2. Some may argue that benefits to shareholders can be quantified for an ANC by determining the total dollar amount of contracts awarded, divided by the number of shareholders of an ANC or a similar calculation.

Is this an appropriate methodology to account for the benefits accrued by shareholders from ANCs?

It is not an appropriate methodology. A large number of the 8(a) awards to Alaska Native Corporations and tribal businesses have been, and continue to be, for service industry work, a sector which is widely understood to have extremely low profit margins. It is not fair, and not accurate, to measure benefits to corporations for this work based on the gross dollar amount of the award. Such a measurement is deceptive and greatly exaggerates the potential benefit to the awardee company, by ignoring the low profit margin and the relative higher costs applicable for this sector. As Senator Begich noted during the hearing, it would be more accurate to focus on net revenue as a measure of benefits to Alaska Native Corporations and their shareholder, rather than gross revenues.

In addition, a core question which was not the subject of the hearing, but in our view should have been – is – What benefits does the government receive? Can Native corporations, Indian tribes or Native Hawaiian organizations document cost savings to the government? Can they document improvements for the government or commendations given for superior performance? The whole area of what the government receives in value seems to have been forgotten. This is not make-work – it is providing real services to the government at a good value, on time and on budget.

Are such calculations the only measurement available?

At a minimum, to provide an accurate measure, the revenue amount of the calculation should be based on a net revenue calculation. Such calculations may be difficult to establish, but it would provide the only fair estimate of potential benefit to the corporation and are certainly more fair and accurate than using a gross revenue amount.

There are numerous methods to measure successful economic development for Native American tribes and Alaska native organizations. All such measurements should take into account the significance of capacity-building in Native organizations. The vibrancy and duration of economic development is not in a profit score of the initial contracts---it is in the success of building a long-term capacity in the Native organization to thrive and succeed in providing jobs and true economic development in target communities. Unless a core capacity is built within these economic organizations, success is likely to be fleeting and sporadic, as it has been, all too often, in the past. The measure of success must take into account the ability of the Native companies to succeed, as economic entities over the long term, and the foundation of the ability is capacity building of the type and extent that Alaska Native companies are just now experiencing.

Measuring the success of federal policy objective is always challenging, but it becomes even more challenging if the policy objective does not seek to weigh the unique relationship of the federal government, acting through federal policies, to Native American people and institutions. We agree with your observations made during the recent oversight hearing by Senators Akaka, Murkowski and Begich, as well as those in Senator Murkowski's letter of July 29, 2009, in which she noted:

"Respecting the unique relationship that American Indians, Alaska Natives and Native Hawaiians have with the United States, the contracting preferences in question need to be examined in manner that is independent, fair, and in the context of the history of Native peoples."

And can you describe or share examples of how ANCs are improving the cultural, social, and economic standing of their shareholders?

We appreciate being asked this question, since so much of the benefit of the 8(a) program to Alaska Natives goes beyond a purely monetary measurement. With the participation of Alaska Native Corporations in the 8(a) program, our Native corporations have become far more integrated in the economy as a whole. At the same time, we retain our culture and our identity; and control the amount of our individual involvement with the economy as a whole. Since our Native corporations have a unique dual-purpose mission under federal law---to provide employment yet preserve land and identity---the success of the socio-economic efforts and federal policies to preserve Native land and culture must be weighed carefully, even if that success is not easily calculated. In contrast to some other major developed countries around the world, it is precisely the attempt to foster the economic integration of Native people into the larger economy and the opportunity to contribute---despite prior discrimination and remote geographic locations---that is the genius of the U.S. approach.

As noted in the SBA Inspector General Report,

“...the profits from ANCs are shared by hundreds and sometimes even thousands of tribal members or native shareholders. A large number of ANC parent companies told us that they derive most of their revenue from the 8 (a) program, and that profits from those companies have helped pay shareholder dividends and fund cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities and numerous other services to the communities where their shareholders live and work.”

We at the Alaska Federation of Natives know personally, in our communities and indeed in our families, a great many Alaska Native individuals who are not shareholders due to being born after 1971, who receive job assistance and scholarships from corporations using 8(a) revenues. These benefits, which range from vocational educational opportunities to the highest post-secondary education, greatly enhance educational and employment opportunities to our people, regardless of their legal status as corporate shareholders. The economic and social benefits of this greater educational and employment opportunity are immense and, significantly, are cross-generational.

The economic standing of our people has improved dramatically, and will improve more as the capacity building effort that is at the heart of the 8(a) experience matures and shows its strength. To a large degree, the benefits of capacity building are already being demonstrated. Our people work hard, work within tight budgets, and deliver their work on time. We understand operating businesses now, to a degree unprecedented in our history.

Many of these benefits would not be available if the contract preference was limited to contracts within those communities

An Executive Summary of AFN's Thirty Year Trend Analysis of Socio-economic conditions of Alaska Natives will be sent under separate cover. We mentioned it in our testimony and we ask it be made part of the record. The report which spans the last thirty years will show vast improvements and a continuing disparity gap which need to be addressed.

Contracting Preferences for Alaska Native Corporations
Chairman McCaskill
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs
Thursday, July 16, 2009, 2:30 P.M.

Questions for the Record

Mr. Mark Lumer, Senior Vice President for Federal Programs, Cirrus Technology, Inc.

In your written testimony, you indicated that as a former contracting official with the Department of the Army, you experienced an extreme shortage of contracting officials. You stated that "Procurement officials are in the constant process of performing what I call "contracting triage"- they are looking to see what requirements can be legally awarded in the shortest amount of time using the least amount of resources... and that inevitably leads them to using ANC's because of the unique unlimited sole source authority that exists."

- 1) Can you describe what accounts for this "contracting triage" among government officials and what pressures unique to the 8(a) program may heighten this problem?

Answer: Government procurement officials are for the most part dedicated to doing a good job and getting goods and services for their customers at a reasonable price, within the rules of the FAR, the Defense FAR Supplement (for DoD) and the particular Agency supplements. The extreme shortfall in contracting office personnel, coupled with an ever increasing workload and more and more statutory and regulatory requirements, means that procurement programs will not be executed to the 100% level. Additionally, the 8A program has goals that most federal agencies are required to achieve (often with limited success). While there are other socio-economic programs that also have mandatory goals, the 8A program (along with the HUBZONE and SDVOSB program) also authorizes contracting officers to award sole source contracts to certain qualified and certified companies within those programs.

The pressure to issue contracts quickly, using the minimum resources possible, combined with the requirements to meet required socio-economic goals puts contracting officers in a difficult position. Using the sole source authorities of the 8A and other programs solves the contracting officer's problems- if the procurement is under the threshold, they will find an 8A, HUBZONE or SDVOSB qualified firm to do the work, or issue a set-aside procurement to limit the competition to firms in a particular socio-economic category. If the requirement exceeds the threshold, an ANC will be selected on a sole source basis, usually.

- 2) You also stated that the growth in sole-source awards and shortage in contracting officers created a situation that was only going to get worse over time. Why do you believe this to be the case?

Answer: The stated goals of President Obama to hire 12,000 acquisition personnel are insufficient in my opinion. I believe the 20,000 goal expressed by Secretary of Defense Gates is also insufficient. I believe that the increased workload, the increased oversight, the increasing

complexity and requirements levied on the contracting professionals, coupled with more work being brought in-house necessitates a workforce increase of 50,000 personnel, as a minimum.

Several other subject matter experts also have recently pointed out a critical fact. Contracting officers do not grow on trees- they must be developed over time. In my case, I became a contracting officer with an unlimited warrant after 5 years of experience, a record for my Command for a civilian- and I was not prepared for my responsibilities. Contracting officers must earn their stripes through years of experience and formal training, coupled with strong mentorship and oversight by higher level officials- and that just takes time.

Even if the government could somehow hire 50,000 contracting professionals in FY 10, it would take 6-8 years to develop qualified and quality contracting officers. Unfortunately, in that time the government will spend about \$4 trillion in contracts and grants and I am not confident the workforce will be fully trained and competent to do so. Certainly the levels of GAO protest sustainment over the last 5-7 years (the highest ever) and the unacceptable and inexcusable mistakes made in highly visible procurements like the Air Force Tanker program, clearly demonstrate we have a huge problem today, and one that won't be solved for years.

You also indicated in your testimony that you are now working in the private sector as an employee for Cirrus Technology Inc., a recent 8(a) graduate and a HUBZONE and SDVOSB business located in Huntsville, Alabama.

- 3) You indicated in your written testimony that Cirrus has lost contracts that were bundled and awarded to ANCs, yet others have disputed that there is any negative impact to other businesses from this process. Do you disagree and can you discuss instances where these ANC preferences have made the current playing field uneven and difficult for other businesses to compete with ANCs?

Answer: Yes, I strongly disagree. At the hearing, the small business lady from upstate New York provided a clear example of how the ANC preferences damaged a small business. Her company had the base support contract for Fort Drum for a number of years, and it performed well. Suddenly the contracting officer announced that rather than another contract, or even an opportunity to compete for another contract, the new base support procurement was being awarded sole source to an ANC, as authorized by the FAR. She did not even have a chance to file a protest, since the GAO will not hear protests when an ANC is selected for a major sole source contract.

In Cirrus Technology's most recent case, we had a small transportation contract at Redstone Arsenal. The company performed well and the customer was happy with the service we provided. Instead of a follow on contract (and please remember Cirrus was an 8A, HUBZONE and SDVOSB at the time), the contracting office decided to combine that requirement along with many others and create one big base operations contract, which was subsequently awarded to an ANC.

You also indicated in your written statement that in your opinion, many small businesses will bypass procurements where ANC's are involved because the chances of winning are so remote.

- 4) How has ANC participation affected small businesses in Alabama, Florida, and the region you have been working in during your time with Cirrus?

Answer: As I previously stated, Cirrus Technology lost a follow on contracting opportunity when Redstone Arsenal decided on one huge, combined base support contract. Because the procurement was well over the standard 8A, HUBZONE and SDVOSB threshold, the local Command (the US Army Aviation and Missile Command [AMCOM]) decided to award the contract to an ANC. A number of small businesses obviously lost the opportunity to compete for and win this contract.

A review of military bases and other government facilities in the Southern part of the U.S. will show a number of instances where ANC's have been awarded sole source contracts. I do not, and am not, criticizing either the government contracting officers or the ANC's for using the procurement regulations to their advantage. Again, as the former Contracting Executive for the US Army Space and Missile Defense Command in Huntsville, Alabama, I myself authorized approximately 6 sole source awards to ANC's over a 13 year time period for hundreds of millions of dollars. It is one of the fastest ways to get a company under contract that I know of. Part of the cost for that speed however, is the elimination of competition, which often has a greater impact on small businesses than large ones.

**Post-Hearing Questions for the Record
Submitted to Mark Lumer
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations?

Answer: I see no valid purpose in placing such limits on the ANCs. I believe this type of restriction would effectively destroy the program and render it useless and ineffective.

How might this limit economic opportunities for tribal and Alaska communities?

Answer: Such a restriction would prevent ANCs for competing in over 99.9% of all federal procurements, in my opinion. ANCs would lose almost 100% of their current income from federal contracts.

2. Recognizing ANCs are uniquely positioned to be awarded federal sole-source contracts; to your knowledge have ANCs partnered with other individually owned 8(a) small businesses? Also, for work being conducted outside of Alaska have ANCs employed local labor and subcontractors?

Answer: While I do not have enough information to respond to this question with specific names of companies, I am 100% confident that ANCs have utilized all of the recognized socio-economic groups as subcontractors, including 8A firms. ANCs have also used large businesses as subcontractors as well. In my personal experiences with ANCs as a senior Army contracting official, ANCs always performed well for me and used whichever subcontractors would provide the best goods and services at a reasonable price.

In my experience, ANCs employed mostly local labor for these contracts- there were very few Alaskans or tribal members employed locally on the contracts awarded by the Army Space and Missile Defense Command to ANCs for work outside Alaska. To the best of my recollection, the subcontractors were spread out all across the country.

Contracting Preferences for Alaska Native Corporations
 Chairman McCaskill
 United States Senate, Subcommittee on Contracting Oversight,
 Committee on Homeland Security and Governmental Affairs
 Thursday, July 16, 2009, 2:30 P.M.

Questions for the Record
 Ms. Christina Schneider, Chief Financial Officer, Purcell Corporation

In your opening statement before the Subcommittee and in your written testimony, you discussed a contract originally awarded to your company and another upstate New York company for \$57.5 million over a five year period, which was subsequently awarded for \$400 million dollars over a 10 year period to two Alaskan Native Corporations, Chugach and Alutiiq, on a sole-source basis.

- 1) Where was this original contract award performed and what types of services were to be performed under the contract? Were these services unique to one company's ability to perform them?

The original contract was performed at Fort Drum, NY. The services we provided under this contract were maintenance, repair and rehabilitation type construction contracts. The task orders let under this contract were not unique to one company's ability to perform them. Numerous general contractors could have performed the work under these task orders.

- 2) Did your company and the other company perform well on the original contract?
 Both companies received several commendations and Blue Ribbon awards for performance under this the original contract. We do not believe the award to ANC's was based on non-performance of local companies.

The original 5 year contract performed by two firms amounted to approximately \$115 million and in your statement you indicated that the subsequent 10 year contract performed by the two ANC firms was awarded on a sole-source basis for approximately \$400 million.

- 3) Even if the original contract award is doubled to cover the same 10 year period, what accounts for the approximately \$170 million difference in the amounts paid to these two ANC firms? Does this \$400 million award represent an example where the federal government may have paid more than it should have by awarding on a sole-source basis?

Since my testimony before this committee in July 2009, there has been local media coverage here in Northern New York about the sole source ANC contract awards at Fort Drum and the Recovery Funds being allocated to these contracts on a sole source no-bid basis. As a point of clarification, a representative from the ANC's lobby group, Renee Limoge from Native 8(a) works, posted a comment on the media's web site indicating the

contract is 5 years with a \$40 million per year maximum, not 10 years as I originally claimed in my testimony.

Unfortunately, we don't find comfort in this clarification, which only makes the magnitude of the value of the contract more exaggerated. The government awarded \$400 million over 5 years to two separate ANC contractors. When compared to the original contracts of \$115 million to two local firms for 5 years, we are at a loss as to what the justification could have been to award a "small business" contract to ANC's which is \$285 million or 3.5 times greater than the prior contract award.

As I stated in my testimony, any time competition is removed, the government will pay more than it should. We are absolutely certain that if the government introduced competition into these contracts, the probability that they will receive fair and reasonable pricing will be significantly increased.

4) Once you lost this contract, did you have any remedies available to protest this award?

Because the contract was not solicited or competed, we had no vehicle to protest the award under the current federal procurement system. We were not able to compete for the contract, so we had no standing to protest the award.

5) In your written testimony, you also stated that one of the ANCs, Chugach, was actually ineligible to receive this award. What was the basis for your claims?

On May 11, 2005 we met with Mr. Al Stubblefield, Associate Administrator of the U.S. Small Business Administration in Washington, DC. Subsequent to that meeting, we hired the services of a database firm, Eagle Eye, to compile contract award data on Chugach. Once the data was compiled, we provided written correspondence, dated June 2, 2005, which contained all the supporting data from Eagle Eye (in electronic and hardcopy format). We asserted that Chugach was ineligible for this contract award based on violations of the Code of Federal Regulations which (1) prohibit ANC's from operating multiple 8(a) affiliates in the same primary SIC code and (2) the data indicated Chugach had an undue reliance on the 8(a) program. Our correspondence to Mr. Stubblefield specifically cited the following:

- 13 CFR § 124.109 (c)(2)(i) states: "[a] tribally owned applicant concern must qualify as a small business concern as defined for purposes of Federal Government Procurement in Part 121 of this Title."
- 13 CFR § 124.109(c)(3)(ii) states "[a] tribe cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary SIC code as the applicant."

13 CFR § 124.509(a)(1) states "To ensure that Participants do not develop an unreasonable reliance on 8(a) awards, and to ease their transition into the competitive marketplace after graduating from the 8(a) BD program, Participants must make maximum efforts to obtain business outside the 8(a) BD program."

At the time, our written correspondence to Mr. Subblefield indicated the following summary of our findings:

1. Between 1999 and 2004 Chugach and its affiliates were paid in excess of **\$2 billion dollars** through hundreds of Federal contracts. Since 1999, nearly **\$1.9 billion or 94%** of the contract dollars paid to Chugach and its affiliates have been through the SBA 8(a) programs.
2. The current NAICS Code for the Fort Drum project is 236220 - Commercial and Institutional Building Construction. Chugach and its affiliates were paid in excess of **\$93 million dollars** in 2002, 2003, and 2004 in this NAICS Code 236220 – Commercial and Institutional Building Construction.
3. Chugach was paid in excess of **\$930 million dollars** in NAICS Code 561210 - Facilities Support Services for years 2002, 2003, 2004. Footnote 12 of the *SBA Table of Size Standards Matched to NAICS Code* states that “If one or more activities of Facilities Support Services can be identified with a specific industry and that industry accounts for 50% or more of the value of the entire procurement, that the proper classification of the procurement is that of the specific industry, not Facilities Support Services.” As a majority of the federal contracts held by Chugach are for maintenance and construction work on Federal facilities, we suspect that most of these contracts are properly coded using NAICS 236220 - Commercial and Institutional Building Construction.
4. Chugach was paid in excess of **\$130 million dollars** for NAICS Code 236210 - Industrial Building Construction for years 2002, 2003, and 2004. Again, as a majority of work performed by Chugach was on Federal installations, we suspect this work is should be coded to NAICS Code 236220 - Commercial and Institutional Building.
5. Chugach owns 51% or more of the following firms which perform a majority of work in the three NAICS codes mentioned above:
 - Chugach Alaska Corporation
 - Chugach Development Corporation
 - Chugach Eareckson Support Services
 - Chugach Kennedy JV
 - Chugach Management Services
 - Chugach McKinley
 - Chugach Support Services
 - Chugach Alitiiq JV

Based on the information provided above, we believe Chugach is ineligible for a sole source award on this project for the following reason:

Some or all of the affiliates appear to exceed the size standard based on the applicable NAICS code, which is \$28.5 million for NAICS code 236220 and 236210 and \$30 million for NAICS code 561210.

- *Chugach appears to own 51% or more of at least eight different companies operating in the same primary NAICS code in violation of Title 13 Section 124 of the Code of Federal Regulations.*
- *Chugach Alaska Corporation appears to have an unreasonable reliance on the 8(a) program in violation of Title 13 Section 124.509 of the Code of Federal Regulations.*

The data above was collected and presented to the Small Business Administration in 2005. Since then, over the past four years, we know that Chugach has been awarded many more millions in government contracts over the years since 2005. Available contract award data clearly shows that Chugach, and many other ANC's, are ineligible for the 8(a) sole source awards, yet government agencies continue to award sole source contracts to these companies, in violation of the Code of Federal Regulations.

6) Did SBA, the Army, or any officials with authority ever take action that you are aware of?

Nearly four months later, on October 25, 2005, we received a reply from Mr. Stubblefield which said he referred the matter to his Office of General Council and requested further review by the SBA Alaska District Office.

We were not contacted by the Office of General Council or the SBA Alaska District Office. We have no knowledge of any action was taken on this matter and an award was made to Chugach.

7) What effect did this sole-source award have on upstate New York contracting firms, businesses, individuals, and the local economy?

Local general contractors were precluded from bidding on the work as prime contractors. Giving the Recovery Funds to Chugach & Alutiiq is a continuing example of how sole source contracts to ANC's cause damage to local general contractors. No general contractors were allowed to compete as prime contractors for Recovery work because all the recovery funds went to the ANC's. ANC's do the work, either through subcontractors or their employees. ANC's profits on the Recovery projects are returned to Alaska. It would be have been much better for the local economy if local firms could have performed the Prime Contract work of the Recovery Funded projects and the profits derived from that work retained in our local community.

8) In light of the recent influx of contracting based on stimulus spending, have you seen similar instances in your region or elsewhere, where sole-source awards to ANCs have resulted in the potential for the government to be paying more than it should have?

We monitor the federal contract awards through fbo.gov and contract award announcements published on www.defenselink where we see sole source awards to ANC's often throughout the country. Not all awards are announced, so we are only seeing a small portion of the sole-source award activity. The award announcements we do see typically avoid the use of the term sole source, but rather, we see the use of terminology like "one bid solicited, one bid received". In most cases, this terminology indicates an ANC sole source award. I have accumulated many announcements of sole-source awards to ANC's throughout the years. Again, anytime there is no competition, there is a high probability that the government is paying more than it should.

**Post-Hearing Questions for the Record
Submitted to Christina Schneider
From Senator Daniel K. Akaka**

“CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS”

July 16, 2009

1. Some have suggested that Alaska Native corporations should only do business in Alaska, or that tribal corporations should only do business on the reservations in the state locales where they are located.

In your opinion, what basis and what purpose would be served by imposing such geographic restrictions on tribal and Alaska Native corporations? How might this limit economic opportunities for tribal and Alaska communities?

We are not advocates that tribal corporations be subject to geographic restrictions. We believe that tribal corporations should meet the same small business and 8(a) definitions that all other small business and 8(a) businesses must meet.

2. *Recognizing ANCs are uniquely positioned to be awarded federal sole-source contracts; to your knowledge have ANCs partnered with other individually owned 8(a) small businesses? Also, for work being conducted outside of Alaska have ANCs employed local labor and subcontractors?*

We have are not aware of ANCs partnering with other individually owned 8(a) small businesses. We are aware of large multi-national businesses they have partnered with.

