

Testimony of Mr. Joseph G. Jordan
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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:

- o 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
- o funded initiatives to better track ANC participation in the 8(a) program; and
- o 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.