

TESTIMONY OF

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WATERTOWN, NEW YORK

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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.