

# **Senate Homeland Security and Governmental Affairs**

## **Subcommittee on Contracting**

### **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).

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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 Alaska<sup>1</sup> to receive its lands and the federal government to manage its lands.

The citizens of the United States and the federal government,

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<sup>1</sup> 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.

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.<sup>2</sup> 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.

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

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 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.<sup>3</sup> 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 does not assert that ANCSA and our Native corporations are the source of all the improvements in the last thirty years.<sup>4</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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.

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 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, 2009

U.S. President Barack Obama, in Ghana on July 11<sup>th</sup> said that “Africa is not separate from world affairs” and will have an impact on the shaping of the 21<sup>st</sup> 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.