

April 2006

CONTRACT MANAGEMENT

Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight





Highlights of [GAO-06-399](#), a report to congressional requesters

Why GAO Did This Study

Alaska Native corporations (ANC) were created to settle land claims with Alaska Natives and foster economic development. In 1986, legislation passed that allowed ANCs to participate in the Small Business Administration's (SBA) 8(a) program. Since then, Congress has extended special procurement advantages to 8(a) ANC firms, such as the ability to win sole-source contracts for any dollar amount. This report identifies (1) trends in the government's 8(a) contracting with ANC firms, (2) the reasons agencies have awarded 8(a) sole-source contracts to ANC firms and the facts and circumstances behind some of these contracts, and (3) how ANCs are using the 8(a) program. GAO also evaluated SBA's oversight of 8(a) ANC firms.

What GAO Recommends

GAO recommends that SBA take actions to improve oversight of ANC 8(a) activity and recommends that the seven procuring agencies in this review provide guidance to contracting officers. GAO received comments on the draft report from all 8 agencies in the review and the Native American Contractors Association. The procuring agencies agreed with the recommendation, except for the Department of Energy which did not address it. SBA expressed concern with aspects of the report and, in a subsequent e-mail, disagreed with several of our recommendations. GAO disagrees with SBA's comments and believes its recommendations need to be implemented.

www.gao.gov/cgi-bin/getrpt?GAO-06-399.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine Schinasi at (202) 512-4841 or schinasi@gao.gov.

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What GAO Found

While representing a small amount of total federal procurement spending, 8(a) obligations to firms owned by ANCs increased from \$265 million in fiscal year 2000 to \$1.1 billion in 2004. In fiscal year 2004, obligations to ANC firms represented 13 percent of total 8(a) dollars. Sole-source awards represented about 77 percent of 8(a) ANC obligations for the six procuring agencies that accounted for the vast majority of total ANC obligations over the 5-year period. These sole-source contracts can represent a broad range of services, as illustrated in GAO's contract file sample, which included contracts for construction in Brazil, training of security guards in Iraq, and information technology services in Washington, D.C.

In general, acquisition officials at the agencies reviewed told GAO that the option of using ANC firms under the 8(a) program allows them to quickly, easily, and legally award contracts for any value. They also noted that these contracts help them meet small business goals. In reviewing selected large, sole-source 8(a) contracts awarded to ANC firms, GAO found that contracting officials had not always complied with certain requirements, such as notifying SBA of contract modifications and monitoring the percent of work that is subcontracted.

ANCs use the 8(a) program to generate revenue with the goal of providing benefits to their shareholders. These benefits take many forms, including dividend payments, scholarships, internships, and support for elder shareholders. A detailed discussion of the benefits provided by the ANCs is included as appendix X of the report. Some ANCs are heavily reliant on the 8(a) program for revenues, while others approach the program as one of many revenue-generating opportunities. GAO found that some ANCs have increasingly made use of the congressionally authorized advantages afforded to them. One of the key practices is the creation of multiple 8(a) subsidiaries, sometimes in highly diversified lines of business. From fiscal year 1988 to 2005, ANC 8(a) subsidiaries increased from one subsidiary owned by one ANC to 154 subsidiaries owned by 49 ANCs.

SBA, which is responsible for implementing the 8(a) program, has not tailored its policies and practices to account for ANCs' unique status and growth in the 8(a) program, even though SBA officials recognize that ANCs enter into more complex business relationships than other 8(a) participants. Areas where SBA's oversight has fallen short include: determining whether more than one subsidiary of the same ANC is generating a majority of its revenue in the same primary industry, consistently determining whether awards to 8(a) ANC firms have resulted in other small businesses losing contract opportunities, and ensuring that the partnerships between 8(a) ANC firms and large firms are functioning in the way they were intended. During our review, SBA officials agreed that improvements are needed and said they are planning to revise their regulations and policies.

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Abbreviations

ANC	Alaska Native corporations
ANCSA	Alaska Native Claims Settlement Act
CIFA	Counter Intelligence Field Activity
DOD	Department of Defense
DUNS	Data Universal Numbering System
FPDS	Federal Procurement Data System
MOU	memorandums of understanding
NAICS	North American Industry Classification System
NASA	National Aeronautics and Space Administration
SBA	Small Business Administration

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April 27, 2006

Congressional Requesters:

In December 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA)¹ to resolve long-standing aboriginal land claims and to foster economic development for Alaska Natives. This legislation created Alaska Native corporations (ANC), which would become the vehicle for distributing land and monetary benefits to Alaska Natives in lieu of a reservation system.² ANCSA permitted the conveyance of about 44 million acres of land to the ANCs, along with cash payments of almost \$1 billion in exchange for extinguishing the aboriginal land claims in Alaska. Regional corporations were required to be formed as profit-making entities, while village, urban, and group corporations could decide whether to be profit or nonprofit entities. As of December 2005, there were 13 regional corporations and 182 village, urban, and group corporations. ANCSA does not set any requirements on how ANCs are to use the profits they generate.

In 1986, legislation passed that allowed ANC-owned businesses to participate in the Small Business Administration's (SBA) 8(a) program—one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals. This program allows the government to award contracts to participating small businesses without competition below certain dollar thresholds. Congress has repeatedly emphasized in legislation the business development aspects of the 8(a) program. Each 8(a) firm, including those owned by ANCs, must qualify as small under an industry size standard as measured by number of employees or average revenues from the previous 3 years, and must be majority-owned by a disadvantaged individual or a qualified entity, such as an ANC. Firms approved as 8(a) participants can receive business development assistance from SBA and are eligible to receive contracts that agencies offer to SBA for the 8(a) program. In 1998, SBA started negotiating memorandums of understanding (MOU) that

¹Pub.L. 92-203 (codified as amended in 43 U.S.C. 1601, et seq.).

² Aside from monetary benefits, ANCs also provide other benefits to their shareholders, such as scholarships, internships, burial assistance, and benefits for elder shareholders. The benefits ANCs provide are discussed in detail in appendix X.

allowed federal agencies to contract directly with 8(a) firms. The MOUs (also called partnership agreements), delegate contract execution responsibility to the agencies and require them to monitor certain requirements of the contract.

Since 1986, Congress has extended special procurement advantages to ANC firms beyond those afforded to other 8(a) businesses.³ Table 1 shows the advantages.⁴

³In this report, the term “ANC” refers to the parent corporation, usually located in Alaska. The term “ANC firm” denotes a business owned by an ANC. This has the same meaning as “ANC-owned concern” which is the term used in SBA’s small business regulation. We use the term “subsidiary,” as used in ANSCA, to refer to direct and indirect ANC subsidiaries.

⁴We found the legislative history leading to the procurement advantages to be sparse and to contain some confusing language. For example, legislative language suggests that 8(a) businesses owned by Indian tribes (defined to include ANCs) were exempt from sole-source dollar thresholds because such businesses are located on reservations and account for the major employment of the workforce. ANCs, however, do not have reservations.

Table 1: Differences in Requirements for Other 8(a) Businesses and 8(a) ANC Firms

Requirement	Other 8(a) businesses	8(a) ANC firms
Number of firms an 8(a) participant may own	Only one in a lifetime and no more than 20 percent of another 8(a) firm	No limit as long as each business is in a different primary industry
Size determination for eligibility in 8(a) program	For-profit, nonprofit, domestic, and foreign affiliates considered in size determination	Other affiliated companies not considered in size determination; however, SBA may find the existence of affiliation if, for example, it determines that the 8(a) ANC firm or firms have a substantial unfair competitive advantage within an industry.
Competitive threshold	Can receive sole-source contracts for up to \$5 million for manufacturing or \$3 million for all other contracts.	No threshold
	Procurements must be competed whenever possible before being accepted on a sole-source basis.	Procurements need not be competed before being accepted on a sole-source basis.
Demonstration of social and economic disadvantage	Must (1) be a member of a group deemed as socially disadvantaged or prove social disadvantage by meeting certain standards and (2) must prove economic disadvantage	Deemed in legislation as socially and economically disadvantaged
Management background	President/chief executive officer must be a disadvantaged individual	President/chief executive officer need not be a disadvantaged individual
Potential for success	Must be in business in primary industry classification for at least 2 years before 8(a) application date SBA can waive the requirement if certain conditions are met, such as substantial business experience, adequate capital, and past success on contracts.	Must be in business in primary industry classification for at least 2 years before 8(a) application date or demonstrate to SBA potential for success (i.e., technical and management experience; financial capability; past experience).

Source: GAO analysis.

Note: Other groups, such as Indian tribes, Native Hawaiian Organizations, and Community Development Corporations, have some advantages in the 8(a) program similar to those afforded ANCs. Further, Congress has provided preferences to businesses owned by Indian tribes (defined to include ANCs), under the Office of Management and Budget's A-76 program in several prior Defense Appropriation Acts, including the Defense Appropriations Act for fiscal year 2006. Department of Defense Appropriations Act, 2006, Pub. L. 109-148 § 8014(b)(1)(C).

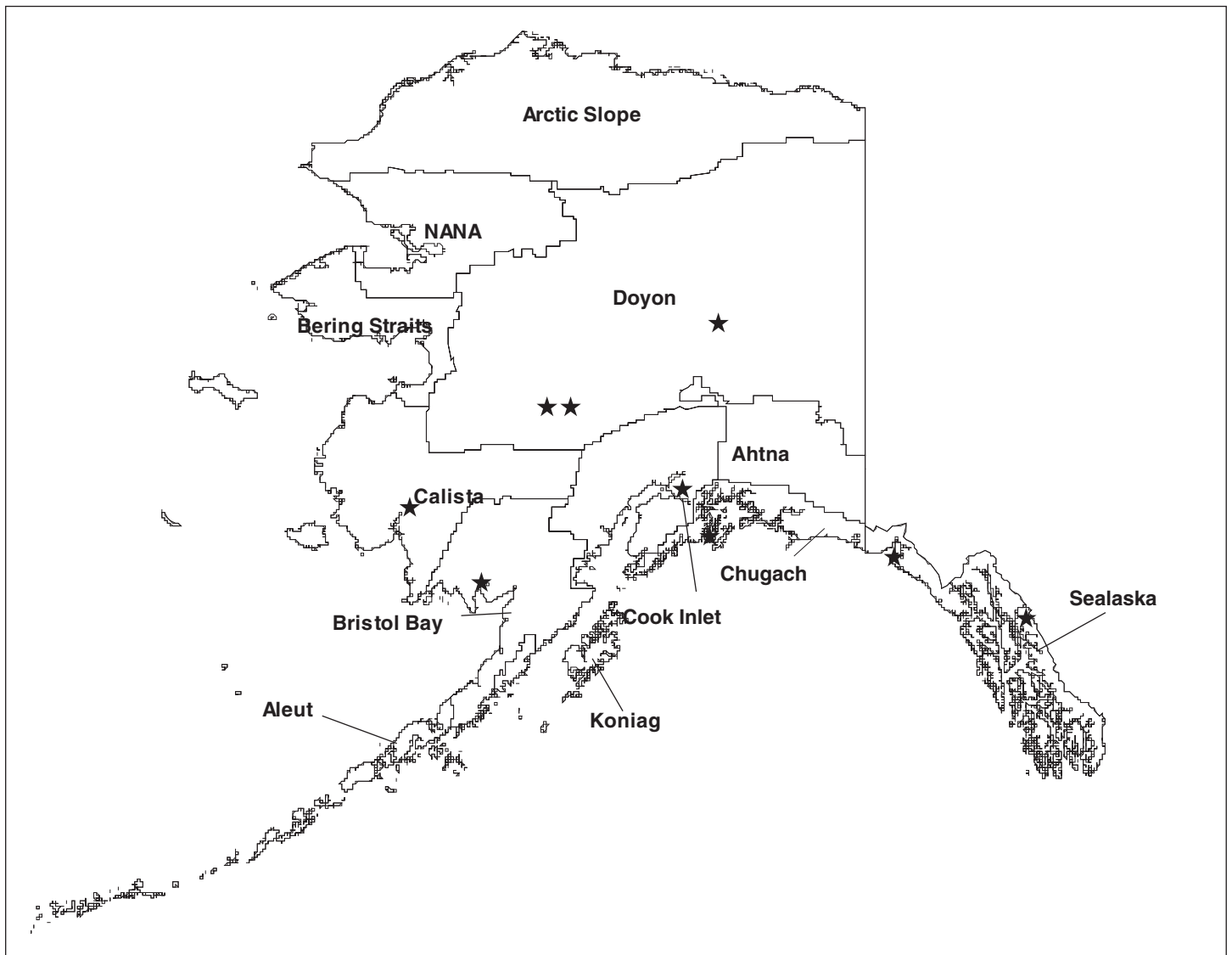
Recently, a number of high-dollar, sole-source 8(a) contracts awarded to ANC firms have attracted the attention of Congress and the media. This report identifies (1) trends in the government's 8(a) contracting with ANCs from fiscal years 2000 to 2004; (2) the reasons agencies have awarded 8(a) sole-source contracts to ANC firms and the facts and circumstances behind some of these contracts; and (3) how ANCs are using the 8(a) program. In addition, we evaluated SBA's oversight of 8(a) ANC firms, given these companies' unique procurement advantages.

To gather data on federal 8(a) contracting with ANCs, we identified each ANC firm's Data Universal Numbering System (DUNS) number⁵ and used this information to obtain data from the Federal Procurement Data System (FPDS) for fiscal years 2000 through 2004. We tested the FPDS data for reliability by comparing this information with procurement data submitted by six agencies that accounted for almost 85 percent of total 8(a) ANC obligations over the 5-year period: the departments of Defense, Energy, the Interior, State, and Transportation and the National Aeronautics and Space Administration (NASA). We planned to include the Department of Homeland Security's data in our trend analysis but did not do so for two reasons. First, because the department became operational in March 2003, FPDS data would reflect only part of fiscal year 2003 and beyond. Second, we found that the data from Homeland Security were inconsistent, and therefore questioned the reliability of the data overall.

We analyzed documents provided by SBA's headquarters and Alaska district office and interviewed officials from those offices. We reviewed 16 large, sole-source 8(a) contracts awarded to ANC firms by the six agencies cited above as well as by the Department of Homeland Security and interviewed appropriate contracting officials. We traveled to Alaska and met with executives representing 30 ANCs, including each of the 13 regional ANCs and 17 village or urban corporations. Of the 30 corporations, 26 were participating in the 8(a) program and 4 were not at the time of our review. We also spoke with Alaska Native shareholders and reviewed the companies' annual reports and other relevant documentation. Figure 1 depicts the sites we visited in Alaska.

⁵A DUNS number is a 9-digit identification number assigned by Dun & Bradstreet, Inc., to identify unique business entities.

Figure 1: ANCSA Regions and Sites We Visited



Source: GAO analysis of Census Bureau information.

Note: Stars identify villages and urban areas where we conducted our work. See appendix I for the names of the villages and corporations.

We also spoke with representatives from small businesses, an 8(a) association, and the Native American Contractors Association. Our work included a detailed review of the laws, regulations, and legislative history that afforded ANCs their special 8(a) provisions. Appendix I contains more

details on our scope and methodology. We conducted our review from April 2005 to March 2006 in accordance with generally accepted government auditing standards.

Results in Brief

While representing a small amount of total federal procurement spending, dollars obligated to ANC firms through the 8(a) program grew from \$265 million in fiscal year 2000 to \$1.1 billion in 2004, with a noticeable increase in 2003. Overall during the 5-year period, the government obligated \$4.6 billion to ANC firms, of which \$2.9 billion, or 63 percent, went through the 8(a) program. About 13 percent of total 8(a) dollars were obligated to ANC firms in fiscal year 2004. For the six agencies included in our trend analysis, sole-source 8(a) obligations to ANC firms rose from about \$180 million in fiscal year 2000 to \$876 million in fiscal year 2004, representing about 77 percent of these agencies' total obligations to 8(a) ANC firms over the 5-year period. As illustrated in our contract file sample, these sole-source contracts can represent a broad range of services, such as contracts for construction in Brazil, training of security guards in Iraq, and information technology services in Washington, D.C.

Agency officials told us they have turned to 8(a) ANC firms as a quick, easy, and legal method of awarding contracts for any value. At the same time, the officials noted that these contracts help them meet small business goals. In our review of selected large dollar value, sole-source contracts, we found that contracting officials had not always complied with requirements to notify SBA when modifying the contracts to increase the scope or dollar value and to monitor the percentage of work performed by the ANC firms versus their subcontractors. One contracting officer was under the impression that the scope of work could be expanded to include any additional lines of business not in the original contract because it was a sole-source 8(a) ANC contract.

ANCs use the 8(a) program as one of many tools to generate revenue with the goal of benefiting their shareholders. Appendix X contains detailed information on benefits the corporations are providing. Some ANCs are heavily reliant on the 8(a) program for revenues, while others approach the program as one of many revenue-generating opportunities, such as investments in stocks or real estate. ANCs are using the congressionally authorized advantages afforded to them, such as ownership of multiple 8(a) subsidiaries, sometimes in diversified lines of business. From fiscal year 1988 to 2005, numbers increased from one 8(a) subsidiary owned by one ANC to 154 subsidiaries owned by 49 ANCs, with the largest growth occurring in recent years. ANCs sometimes leverage expertise and

management by sharing staff and expertise among subsidiaries to win new contracts and create a subsidiary to win a follow-on contract when the original subsidiary outgrows its designation as “small.” Another practice is partial ownership of subsidiaries, which in some cases means that subsidiary executives retain a portion of the profit they generate—up to 44 percent in one case we found. Other ANCs have purposely limited their 8(a) involvement to a targeted industry with the goal of becoming independently sustainable—a strategy that, in their view, is consistent with the business development intent of the 8(a) program. ANCs have also formed partnerships with other ANCs or other firms to increase opportunities to obtain federal contracts. Finally, some ANCs have created holding companies to increase efficiency across multiple subsidiaries.

SBA has not tailored its policies and practices to account for ANCs’ unique status in the 8(a) program and their growth in federal contracting, even though SBA officials recognize that ANC firms enter into more complex business relationships than other 8(a) participants. The officials agreed that improvements are needed and told us they are planning to revise their regulations and policies. Examples where SBA’s oversight has fallen short include not

- determining whether more than one subsidiary of the same ANC is generating the majority of revenue under the same primary industry;⁶
- consistently determining whether other small businesses are losing contracting opportunities when large, sole-source 8(a) contracts are awarded to ANC firms;
- adhering to a legislative and regulatory requirement to ascertain whether 8(a) ANC firms have, or are likely to obtain, a substantial unfair competitive advantage within an industry;
- ensuring that the partnerships between ANC firms and large firms are functioning in the way they were intended under the 8(a) program; and
- maintaining information on ANCs’ 8(a) activity.

SBA officials told us that they have faced a challenge in overseeing the activity of the 8(a) ANC firms because ANCs’ charter under ANCSA is not always consistent with the business development intent of the 8(a) program. They noted that the goal of ANCs—economic development for Alaska Natives from a community standpoint—can be in conflict with the

⁶The primary industry is the primary line of work that the 8(a) firm performs. 8(a) concerns may also seek opportunities through secondary business activities, as long as they qualify as small for the size standards pertaining to each line of work.

primary purpose of the 8(a) program, which is business development for individual small, disadvantaged businesses.

We make recommendations in this report to SBA on actions that can be taken in revising its regulations and policies as well as ways to improve practices pertaining to its oversight of ANC 8(a) procurements. We also recommend that the procuring agencies involved in our review work with SBA to develop guidance for their contracting officers on how to comply with the requirements of the 8(a) program to help address some problems we found with the 8(a) sole-source contracts we reviewed.

Six of the procuring agencies involved in our review agreed with the recommendation we made to them. The Department of Energy did not comment on the recommendation. In some cases, the agencies provided technical comments or clarifications, which we incorporated as appropriate. We also received written comments from the Native American Contractors Association. The association believes that we should more fully acknowledge the legal and policy basis of 8(a) program rules for native entities and that we should provide a broader perspective on issues that impact the entire federal procurement system. We believe we have adequately addressed the legal and policy basis for the ANCs' 8(a) provisions. While we have reported in the past on the broader issues raised by the association,⁷ these matters were outside the scope of this particular audit. In separate technical comments, the association suggested we add, for context, total federal government spending. We have added this information as a note to figure 3.

In written comments on a draft of this report, SBA took issue with several aspects of the report, stating that the concerns we raised were “subjective” and based on isolated individual anecdotes. We strongly disagree with SBA’s characterization of our report. Our findings are supported by the facts we gathered during our audit and the analyses we conducted, and these findings directly support the recommendations we make. It is an

⁷ For example: GAO, *Federal Procurement: Spending and Workforce Trends*, [GAO-03-443](#) (Washington, D.C.: April 30, 2003); GAO, *Contract Management: Impact of Strategy to Mitigate Effects of Contract Bundling on Small Business is Uncertain*, [GAO-04-454](#) (Washington, D.C.: May 27, 2004); GAO, *Small Business Contracting: Concerns About the Administration’s Plan to Address Contract Bundling Issues*, [GAO-03-559T](#) (Washington, D.C.: March 18, 2003); GAO, *Reporting of Small Business Contract Awards Does Not Reflect Current Business Size*, [GAO-03-776R](#) (Washington, D.C.: May 7, 2003); and GAO, *Interagency Contracting: Problems with DOD’s and Interior’s Orders to Support Military Operations*, [GAO-05-201](#) (Washington, D.C.: April 29, 2005).

undisputed fact that 8(a) ANC activity has increased in recent years. Clearly, 6 of the 7 procuring agencies involved in our review—which account for most of the government’s 8(a) dollars to ANC firms—agree that they need to partner with SBA to ensure that contracting officers understand the tailored provisions Congress has provided these firms. SBA stated that it has taken a number of steps to improve oversight of the 8(a) program, including taking into consideration special provisions afforded to ANC concerns. Despite our requests throughout our review for specific information on actions SBA was taking, the agency did not provide us with any evidence that would support its statement. SBA’s comment letter did not indicate whether it plans to implement our recommendations, but in a subsequent e-mail SBA expressed disagreement with several of them. A detailed discussion of the comments begins in the “Agency Comments” section of this report.

The written comments we received are included in their entirety in appendixes II through VIII.

Background

ANCSA created 12 regional ANCs, each representing a region of Alaska, and a 13th corporation for Alaska Natives living outside Alaska. There are also 182 village, urban, and group corporations located within the 12 regions.⁸ In most cases, the regional corporations received a mixture of surface and subsurface rights to land while the village, urban, or group corporations received only surface rights. Some village corporations opted out of the ANCSA settlement to receive surface and subsurface rights to their former reservation lands and relinquished all ANCSA benefits, including claims to additional land, monetary payments, or shares of stock in a regional corporation. Additionally, in some cases, village corporations merged with each other or with the regional corporation.

The legislative history of ANCSA is focused on economic development for the benefit of Alaska Natives. Each eligible Alaska Native is generally entitled to membership both in the corporation established for his or her village and in the regional corporation in which the village is located. As shareholders, Alaska Natives are entitled to a voice in the management of and a share in the lands, assets, and income as decided by the board of

⁸ANCSA created village corporations for communities of 25 or more Alaska Natives, group corporations for associations of fewer than 25 Alaska Natives, and urban corporations for urban communities of Alaska Natives.

directors of the corporations, which own and manage the land and money. ANCSA implemented restrictions that generally allow original shareholders to transfer shares only under certain circumstances, such as divorce or through a gift or a will.⁹ Additionally, four of the 30 corporations we reviewed have chosen to issue new stock to descendants of the original shareholders or those who did not have the opportunity to enroll as a shareholder originally.

ANCs vary widely in number of shareholders and profitability. Table 2 illustrates some examples.

Table 2: Overview of Number of Shareholders and Net Incomes for the Corporations We Reviewed (Fiscal Year 2004 Data)

	Most shareholders	Fewest shareholders	ANCs with net income over \$10 million	ANCs with net loss
Regional corporations	17,242	1,137	4	3
Village and urban corporations	3,238	137	2	5

Source: GAO analysis of data provided by ANCs.

For ANC firms in the 8(a) program, SBA has specific oversight responsibility for

- accepting the firm into the 8(a) program, which includes ensuring that the ANC does not have more than one 8(a) firm in the same primary line of business, defined by a North American Industry Classification System (NAICS) code;¹⁰

⁹43 U.S.C. 1606(g)(2) and (h)(1)(C). Although the ANCs have ownership and control over their lands, the act provided that Alaska Natives could not sell their shares of corporation stock to the public for 20 years after December 18, 1971 (Pub.L. 92-203 § 7(h)). In 1988, Congress extended this provision, but gave the individual Natives the option to sell the stock publicly if a majority of the shareholders approved. (Pub.L. 100-241 § 8 codified at 43 U.S.C. 1629c).

¹⁰SBA has designated a small business size standard for every NAICS code. 8(a) applicants must qualify as small under their primary NAICS code at the time of application and SBA's certification date. SBA regulation requires that at least 2 years lapse after an ANC firm exits the 8(a) program before another firm owned by the same parent ANC can enter the program with the prior firm's primary NAICS code. However, once accepted into the program, 8(a) firms may pursue contracts in any line of work, called secondary NAICS codes.

-
- verifying each firm’s size status to ensure that it qualifies as small under the NAICS code assigned to the procurement; and
 - annually reviewing 8(a) firms to track their progress in the 8(a) program.

There is a 9-year limit to participation in the 8(a) program, and firms—including ANC firms—are required to obtain a certain percentage of non-8(a) revenue during the last five years to demonstrate their progress in developing a viable business that is not reliant on the 8(a) program. SBA’s district offices are responsible for tracking the business mix of 8(a) and non-8(a) revenue on an annual basis. If a firm does not meet its required business mix during one of the last five years, SBA invokes a plan of remedial action for the next year, in which the firm reports to SBA its progress toward compliance with the required business mix. Until the required mix is demonstrated, the firm will not be eligible for sole-source 8(a) contracts. Currently there are over 9,400 firms in the 8(a) program.

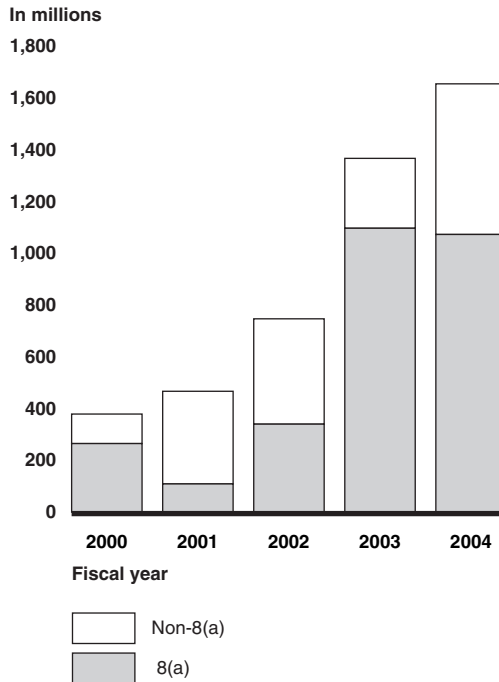
Increase in 8(a) Federal Contracting with ANC Firms

From fiscal year 2000 to 2004, the federal government obligated a total of about \$4.6 billion to ANC firms, of which \$2.9 billion, or 63 percent, went through the 8(a) program. About 13 percent of total 8(a) dollars were obligated to ANC firms in fiscal year 2004. Further, from fiscal year 2000 to 2004, sole-source awards accounted for 77 percent of ANC 8(a) contracts for the six agencies in our trend analysis. The sole-source 8(a) contracts that we reviewed demonstrate the wide diversity of services provided by ANC firms worldwide.

Dollars to ANC Firms Governmentwide Have Increased

Our analysis, based on FPDS data, shows that federal dollars obligated to ANC firms through the 8(a) program grew from \$265 million in fiscal year 2000 to \$1.1 billion in 2004, with a noticeable increase in 2003. Over the 5-year period, about 63 percent of the government’s obligations to ANC firms went through the 8(a) program. Figure 2 shows the breakdown between 8(a) and non-8(a) dollars obligated to ANC firms.

Figure 2: 8(a) and Non-8(a) Obligations to ANC Firms Governmentwide for Fiscal Years 2000 to 2004 (in Millions)

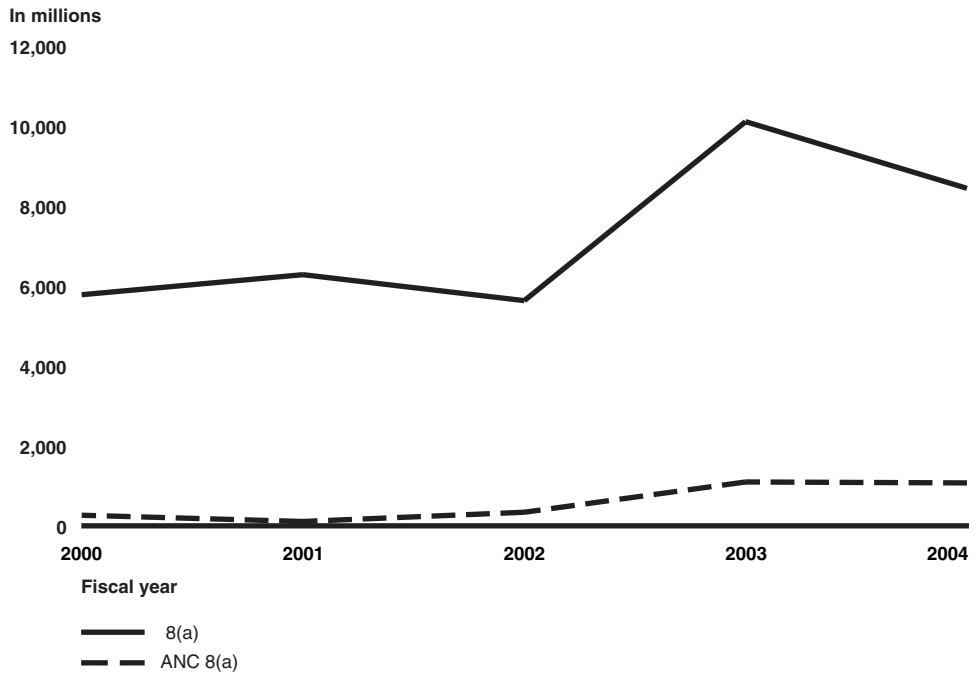


Source: GAO analysis based on information from the Federal Procurement Data System.

Increasing Percentage of Total 8(a) Dollars Obligated to ANC Firms

We also analyzed the percentage of total 8(a) dollars obligated to ANC firms from fiscal years 2000 to 2004. Total obligations to all 8(a) firms grew from about \$5.8 billion in fiscal year 2000 to about \$8.4 billion in fiscal year 2004. The percentage obligated to 8(a) ANC firms grew from about 5 percent to about 13 percent during this time period. Whereas obligations to 8(a) ANC firms decreased only slightly between fiscal years 2003 and 2004, dollars obligated to other 8(a) firms decreased by almost \$2 billion during that same time frame. SBA officials could not explain the decrease. Figure 3 depicts this trend.

Figure 3: Obligations to 8(a) Firms Overall and to 8(a) ANC Firms, Governmentwide, for Fiscal Years 2000 to 2004 (in Millions)



Source: GAO analysis based on information from the Federal Procurement Data System.

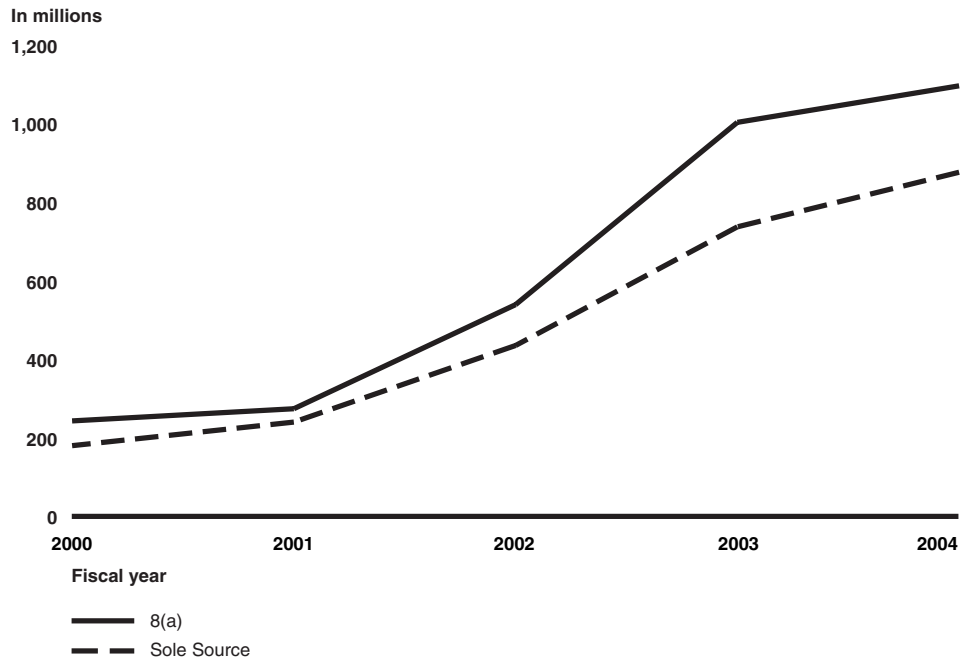
Notes: Excluding dollars obligated to 8(a) ANC firms does not change the overall trend of total 8(a) dollars (top line of graph). For context, total federal government procurement spending in fiscal year 2004 was more than \$341 billion, according to FPDS data.

Sole-Source Contracts Represent Majority of 8(a) ANC Obligations for Selected Agencies

For the six agencies included in our 8(a) trend analysis, sole-source obligations to ANC firms increased from about \$180 million in fiscal year 2000 to almost \$876 million in fiscal year 2004. Over the five-year period, sole-source obligations represented about 77 percent of these agencies' total obligations to 8(a) ANC firms.

Figure 4 depicts the trend in 8(a) sole-source obligations to ANC firms for the six agencies.

Figure 4: Sole-Source Obligations to 8(a) ANC Firms for Fiscal Years 2000 to 2004 for Selected Agencies (in Millions)



Source: GAO analysis of data provided by the departments of Defense, Energy, the Interior, State, Transportation, and NASA.

Federal Agencies Contract with ANC Firms for a Variety of Services Worldwide

In recent years, ANC firms have performed a wide variety of services for the federal government, spanning 18 broad industries, across the United States and overseas. The services included facilities support services; construction; professional, scientific, and technical services; information technology services; and manufacturing. Our review of selected large sole-source 8(a) contracts further demonstrates the wide diversity of services provided by ANC firms, as shown in table 3.

Table 3. Location and Services for Selected 8(a) ANC Sole-Source Contracts

Agency	Location	Contractor	Approximate contract value (in millions)	Services
Defense	Florida	Chugach Management Services, Inc.	\$593	Facilities support services
Defense	Alabama	Chugach Management Services, Inc.	230	Facilities support services
Defense	Nationwide	Bowhead Manufacturing Company, LLC	33	Distribution of water and fuel tanks to U.S. storages sites in support of the Iraq War
Defense	Iraq	ASRC Airfield & Range Services, Inc.	50	Train and equip security guards
Energy	Former Soviet Union and other unsecured countries	Ahtna Government Services Corporation	80	Design, construction, and installation of radiation portals and communication equipment
Energy	New Mexico	Sage Systems Technologies, LLC	25	Analysis and assessment of organizational effectiveness
Homeland Security	New York	Ahtna Technical Services, Inc.	20	Detention facility operations support
Homeland Security	Florida	Ahtna Technical Services, Inc.	11	Detention facility operations support
Interior (contract awarded on behalf of Homeland Security)	New York	Field Support Services, Inc.	65	Facilities operation and maintenance
Interior (contract awarded on behalf of Defense)	Virginia	TKC Communications, LLC	100	Leasing and management of commercial property and construction oversight
NASA	Virginia and Maryland	ASRC Aerospace Corporation	32	Scientific and technical information content acquisition and management and information technology support
NASA	Ohio	Akima Corporation	60	Technical and fabrication support services
State	Worldwide	KUK/KBRS Global, a joint venture between Kuk Construction LLC and Kellogg Brown & Root Services, Inc.	145	Compound security upgrades at multiple facilities
State	Sao Paolo, Brazil	Alutiiq Fluor Constructors, LLC, a joint venture between Alutiiq Management Services, LLC and Fluor Federal Services	55	Renovation of existing office buildings
Transportation	Washington D.C.	Bowhead Information Technology Services, Inc.	\$200	Consolidated information technology services

Agency	Location	Contractor	Approximate contract value (in millions)	Services
Transportation	Washington D.C.	Bowhead Support Services, a division of Bowhead Transportation Company, Inc.	20	Information technology support services

Source: Agency contract files and discussions with contracting officials.

Notes: Some of the contracts included in our review were indefinite quantity contracts. For these, the approximate contract value reflects the base year plus all potential option years.

The Homeland Security contracts were awarded by the former Immigration and Naturalization Service prior to the department's creation. Homeland Security's Immigration and Customs Enforcement organization now has responsibility for the contracts in our sample.

Agency Officials View Contracting with ANC Firms as Quick and Easy, but Rules Not Always Followed

In general, acquisition officials at the agencies we reviewed told us that the option of using ANC firms under the 8(a) program allows them to quickly, easily, and legally award contracts for any value. They also pointed out that awarding 8(a) contracts to ANC firms helps agencies meet their small business goals. Our review of 16 large sole-source contracts found that contracting officials had not always complied with requirements to notify SBA when modifying contracts, such as increasing the scope of work or the dollar value, and to monitor the percentage of the work performed by 8(a) firms versus their subcontractors.

Sole-Source 8(a) Contracts to ANC Firms Viewed as Expedient

Agency officials told us that awarding sole-source contracts to 8(a) ANC firms is an easy and expedient method of meeting time-sensitive requirements. Some examples follow.

- An Army contracting official told us that his agency's limited contracting staff was the primary reason his office awarded an 8(a) sole-source contract to an ANC firm for base operations support. The official added that this contract had been competitively awarded three times previously to large businesses, but in 1999 his office decided it did not have the staff to administer another full and open competition.
- Another Army official commented that she had to fill an urgent requirement for water and fuel tanks in support of the war in Iraq. Rather than directly award to a large manufacturer, which would require a justification and approval process for a sole-source award, the contract went sole source to an 8(a) ANC firm as a quicker acquisition strategy given the time-sensitive nature of the requirement.
- An e-mail in the contract file from a NASA official remarked that a sole-source award to an ANC firm would save much time as opposed to having to work through a competitive process, since the office was running short on available staff. Another NASA official stated that the

additional resources needed to run a competitive procurement would likely negate any monetary savings that might be gained through competition.

- Another contracting official told us that it was the “unofficial” policy in his organization that for urgent requirements over the competitive limits for other 8(a) firms, an ANC firm is sought out. He described contracting with ANC firms as an “open checkbook” since sole-source awards can be made for any dollar amount.

We found one example, however, where the process of awarding to an 8(a) ANC firm was not particularly expedient. An ANC firm proposed a price for a State Department construction contract that was almost twice as much as the government’s original cost estimate. The State Department negotiated extensively for over a month, requesting four different price proposals from the contractor. At one point, the contracting office considered terminating the solicitation and awarding competitively to a prequalified firm, but due to time constraints the department decided to accept the ANC firm’s final proposal, which was still slightly over the government’s estimate.

In another example from our file review, the Interior Department’s GovWorks¹¹ awarded a sole-source 8(a) contract on behalf of the Department of Defense’s (DOD) Counter Intelligence Field Activity (CIFA) to an ANC firm. The contract was primarily to consolidate and co-locate the space available for contractor personnel, but also included some work to oversee construction and facilities program management. This contractor, which specialized in information technology services, told us it had been approached by CIFA for this project because it had successfully obtained space for another government agency. When awarding the contract, GovWorks did not consider any alternatives other than sole-source contracting with the ANC firm because CIFA had requested that firm. Contractor officials told us that the cost of the office space was incidental to a larger project for CIFA, yet we found that over 80 percent of the contract price was for the space. Furthermore, although SBA’s

¹¹GovWorks is a franchise fund within the Department of the Interior. Franchise funds are government-run, self-supporting businesslike enterprises managed by federal employees. They provide a variety of common administrative services, such as payroll processing and contracting support, to government agencies. We recently reported on franchise funds and placed management of interagency contracting on our high risk list. GAO, *Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD is Not Demonstrated*, GAO-05-456, (Washington, D.C.: July 29, 2005) and GAO, *High-Risk Series: An Update*, GAO-05-207 (Washington, D.C.: Jan. 2005).

Alaska district office had accepted the contract under the 8(a) program, a subsequent size determination found that at the time of award, the contractor did not qualify as small under the size standard for the contract.¹²

We also found an example where an agency could have competed the contract had there been adequate acquisition planning, but chose to award sole-source to an ANC firm because it was easier method. The Immigration and Naturalization Service¹³ awarded a facilities operation and maintenance contract for a federal detention facility. A contracting official who reviewed the presolicitation and pre-award packages told us that this was a recurring requirement and the contracting officer should have known well in advance that the existing contract was expiring. With sufficient acquisition planning the agency could have awarded an 8(a) competitive contract, according to this official. However, he was advised by the contracting officer that awarding to an ANC firm was the quickest and easiest method and avoided competition. We reviewed the contract file and did not find a formal acquisition plan that addressed the strategy used. We reported in 2003 that the lack of adequate advanced planning by the Immigration and Naturalization Service for several detention center contracts limited opportunities for competition.¹⁴

ANC 8(a) Awards Help Agencies Meet Small Business Goals

The Small Business Reauthorization Act of 1997 directed the President to establish a goal of not less than 23 percent of the federal government's prime contracting dollars to be awarded to small businesses each fiscal year.¹⁵ As part of this goal, Congress has directed that 5 percent of prime contract dollars be directed to small, disadvantaged businesses. SBA is

¹²According to an SBA official, a calculation error was made in determining the ANC firm's average revenues over the past 3 years, which resulted in the SBA's Alaska district office approving the ANC firm for the contract.

¹³The Immigration and Naturalization Service was absorbed into the Department of Homeland Security in March 2003.

¹⁴GAO, *Contract Management: INS Contracting Weaknesses Need Attention from the Department of Homeland Security*, [GAO-03-799](#) (Washington, D.C.: July 25, 2003).

¹⁵15 U.S.C. 644(g)(1).

charged with working with federal agencies to ensure that agency goals, in the aggregate, meet or exceed these goals.¹⁶

Several contracting officers told us that they had turned to 8(a) ANC contracts as a way to help their agencies meet small business goals. ANC firms in the 8(a) program are deemed in legislation as socially and economically disadvantaged. Because contract awards can be categorized by agencies to allow them to take credit in more than one small business category, awards to 8(a) ANC firms can be applied to the agencies' overall small business goal as well as to their small, disadvantaged business goal. One Energy contracting official told us that there is tremendous pressure to award contracts to small businesses, so she turns to 8(a) ANC firms whenever possible. A NASA official told us that his contracting office had been aggressive in promoting socioeconomic development with small disadvantaged businesses and had particularly wanted to award a contract to benefit the Native American community. Although several small businesses expressed interest in NASA's requirement for technical and fabrication support services, rather than compete the procurement, NASA opted for a sole-source award with an 8(a) ANC firm.

Required Notifications of Contract Modifications Not Always Done

SBA regulation requires that, where the contract execution function is delegated to the agencies, they must report to SBA all 8(a) contract awards, modifications, and options. Further, the MOUs between SBA and the agencies require the agencies to provide SBA with copies of all 8(a) contracts, including modifications, within 15 days of the date of award. However, we found that contracting officers were not consistently following this requirement. While some had notified SBA when incorporating additional services into the contract or when modifying the contract ceiling amount, others had not.

One contracting official told us that SBA has "stepped aside" when it comes to overseeing 8(a) contracts and that it would not occur to her to coordinate a contract modification, such as a scope change, with SBA. We also found the following example where the contracting officer was under

¹⁶On June 3, 2005, a rule was proposed to amend the Federal Acquisition Regulation to allow, among other things, large businesses to count subcontracts to ANC firms toward their small business subcontracting goals, even if the firms are not small businesses, certified small disadvantaged businesses, or certified 8(a) firms under SBA's regulations. This rule proposes to amend the Federal Acquisition Regulation to implement § 702 of Pub.L. 107-117, as amended by § 3003 of Pub.L. 107-206.

the impression that the scope of work could be expanded to include any additional lines of business not in the original contract because it was a sole-source 8(a) ANC contract.

- The Department of Energy awarded an \$8.5 million sole-source contract to an ANC firm for administrative and general management consulting services, but one year later broadened the scope of work to include 10 additional lines of business related to facilities management support and engineering services. The additional work almost tripled the cost of the contract, raising it to \$25 million. None of these changes were coordinated with SBA, despite the fact that SBA's letter to the Department of Energy approving the procurement clearly stated that if the statement of work was changed, SBA would have to re-determine the appropriateness of the NAICS code and the acceptability of the offer under the 8(a) program. The contracting official acknowledged that the scope change should have been coordinated with SBA, but her understanding was that because it was an ANC firm, anything could be added to the contract regardless of the dollar amount. By adding additional lines of business to the contract, the contracting officer was potentially improperly expanding beyond the scope of the contract. Moreover, by not notifying SBA, the agency had no assurance that this ANC firm qualified as small under the contract's additional lines of business.

We found that SBA's letters to the agencies approving 8(a) procurements did not always reiterate the notification requirement. Of the 16 contract files we reviewed, we found only five cases where the letter requested that all contract modifications be coordinated with SBA. Four of these specifically requested the agency to forward a copy of any scope changes. SBA officials could not explain why the acceptance letters were inconsistent. SBA officials in Alaska recently revised their approval letter template, which now requests copies of contract modifications if additional work is being added to the original contract or an option year is being exercised.

Contracting Officials Not Consistently Monitoring Subcontracting

The "limitations on subcontracting" clause in the Federal Acquisition Regulation requires that, for 8(a) service contracts with subcontracting activity, the 8(a) firm must incur at least 50 percent of the personnel costs with its own employees (for general construction contracts, the firm must

incur at least 15 percent of the personnel costs).¹⁷ The purpose of this provision, which limits the amount of work that can be performed by the subcontractor, is to insure that small businesses do not pass along the benefits of their contracts to their subcontractors.¹⁸ For the 16 files we reviewed, we found almost no evidence that the agencies are effectively monitoring compliance with this requirement, particularly where 8(a) ANC firms have partnered with large firms. As a result, there is an increased risk that an inappropriate degree of the work is being done by large businesses rather than by the ANC firms.

The procuring agency and the 8(a) firm both play a role in ensuring compliance with the limitations on subcontracting clause. The MOUs between SBA and the procuring agencies state that the agencies are responsible for the monitoring. SBA's regulation requires the 8(a) firms to certify in their offers to the appropriate SBA district office that they will meet the applicable percentage of work requirement for each contract when subcontracting.

In general, the contracting officers we spoke with were confused about whose responsibility it is to monitor compliance with the subcontracting limitations. Some thought it was SBA's responsibility; one asserted that the contractor was responsible for self-monitoring; and others acknowledged that it was their responsibility but were not monitoring it formally. For the contracts in our file review, SBA's letters to agencies approving the 8(a) procurements were not consistent in reminding contracting officers to include the limitations on subcontracting clause in the contract. Six of the letters did not include this language. We brought this discrepancy to the attention of SBA officials, who stated that all approval letters should contain this requirement as standard language. In addition, we found that two of the awarded contracts did not contain the limitation on subcontracting clause, as required. The responsible contracting officials told us the clause should have been included and was omitted as a result of an oversight.

¹⁷FAR 52.219-14, "Limitations on Subcontracting." FAR 19.811-3(e). In the case of a contract for supplies (other than procurement from a non-manufacturer in such supplies), the concern will perform at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

¹⁸See United States Court of Federal Claims, *Transatlantic Lines LLC vs. United States of America and Strong Vessel Operators LLC*. No. 05-866C filed September 30, 2005.

We also found that contracting officers were unclear about how to monitor the subcontracting requirements under indefinite quantity contracts, under which agencies place task or delivery orders.¹⁹ SBA's 8(a) regulation states that for indefinite quantity service or supply contracts, the participant must demonstrate semi-annually whether it has performed 50 percent of personnel costs with its own employees for the combined total of all task or delivery orders at the end of each 6-month period. This does not mean that the 50-percent minimum requirement applies to work performed under each individual task order or that a contractor must meet the requirement cumulatively for all work performed under all task orders at any given point in time. We found contracting officers who misinterpreted the regulation to mean that the contractor must perform the required percentage over the life of the entire contract. As a result, one contracting officer decided it was too difficult and thus did not monitor the subcontracting effort.

In one example from our file review, the Energy Department awarded a sole-source indefinite quantity contract for a construction project to an 8(a) ANC firm primarily because this firm had a previous business relationship with the large incumbent contractor and planned to use the incumbent as a subcontractor for the new contract. The contracting officer believed that the limitations on subcontracting must be demonstrated by the end of the entire contract period. We reviewed an invoice that showed that cumulatively for all tasks to date, the subcontract labor costs made up 90 percent of the total labor, which would indicate the need for attention to be paid to the 6-month task order review requirement.²⁰

An agency contracting official told us that it is not uncommon for large businesses to approach him wanting to know how to "partner" with an ANC firm. Furthermore, representatives from one ANC firm told us that an agency had awarded it a "pass-through" contract, or one where the subcontractor performs most of the work, to take advantage of the 8(a) ANC firm's ability to obtain sole-source contracts. The agency wanted to

¹⁹This type of contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

²⁰SBA regulation states that for indefinite quantity contracts for general construction, the participant must demonstrate semi-annually that it has incurred 15 percent minimum of the personnel cost for all orders issued.

contract with a particular business, but could not award a sole-source contract directly to that business. The agency awarded the contract to the ANC firm and required it, through a directed subcontracting plan, to subcontract with the desired business.

When asked what recourse contracting officers would take if they found an 8(a) firm to be out of compliance with the limitations on subcontracting, some agency officials responded that they had no plan in place. In fact, one contracting officer commented that he would be “laughed out of the office” if he brought up the compliance issue as a reason for terminating the contract. Several contracting officials told us that they review the cost proposals to assess how much work was planned to be subcontracted out, but they do not follow up during contract performance to ensure that the prime contractor complies with the plan. In one case, we found that an 8(a) ANC firm’s technical proposal to the Department of Transportation for an information technology consolidation project included an intention to subcontract with a large firm, yet did not clearly delineate the breakout of work between the firms. From reviewing the agency’s evaluation of the proposal, we did not find any evidence that contracting officials questioned the relationship or the division of labor prior to contract award. Later, however, the contracting officer modified the contract to require the 8(a) firm to provide semi-annual subcontracting reports that would detail the subcontracting percentage for the previous 6 months.

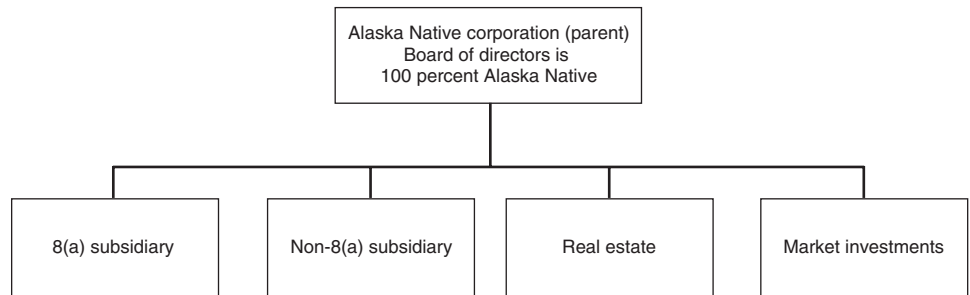
ANCs Use the 8(a) Program to Increase Revenue and Provide Benefits

ANCs use the 8(a) program as one of many tools to generate revenue with the goal of providing benefits to their shareholders. ANCs participating in the 8(a) program have various business strategies to maximize revenue. For example, some own multiple 8(a) subsidiaries, either in niche markets or diversified industries. Others recruit outside expertise to manage their 8(a) operations. Additionally, many form partnerships—with other ANCs or other businesses—and holding companies for increased efficiencies.

8(a) Program among Revenue Sources for ANCs to Provide Benefits

Federal contracts awarded through the 8(a) program are one of a number of sources of revenue, such as timber, tourism, real estate, or market investments, for ANCs participating in the 8(a) program. Corporations consolidate their income to fund operations at the parent level, to invest in subsidiary operations, and to provide benefits to shareholders. Figure 5 shows a sample ANC’s revenue sources.

Figure 5: Revenue Sources for a Sample ANC



Source: GAO analysis.

Some corporations rely on federal contracting with 8(a) subsidiaries as a primary revenue source, while others do not. For example, of the five corporations whose subsidiaries comprised 76 percent of the government's 8(a) ANC dollars from fiscal years 2000 to 2004, three depend almost exclusively on current, exited, or planned participants in the 8(a) program for their revenues. However, for the other two corporations, 8(a) subsidiaries are only one investment in a diversified portfolio that includes energy services, telecommunications, and oil-field and mining support. We also interviewed four corporations that do not participate in the 8(a) program, relying instead on telecommunications, real estate, tourism, natural resources, and other investments.

The ANCs we reviewed do not track the benefits provided to their shareholders specifically generated from 8(a) activity. Thus, an explicit link between the revenues generated from the 8(a) program and benefits provided to shareholders is not documented. However, ANCs do track benefits generated from their consolidated revenue sources. Benefits vary among corporations, but include dividend payments, scholarships, internships, burial assistance, land gifting or leasing, shareholder hire, cultural programs, and support of the subsistence lifestyle. For more information on benefits, see appendix X.

We found that sizable 8(a) revenues do not guarantee a higher level of shareholder benefits, as two of the five ANCs that account for most of the 8(a) ANC dollars obligated from fiscal years 2000 to 2004 demonstrate.

- One corporation, which provides sizable benefits, credits the 8(a) program with its continued existence, its return to profitability after declaring bankruptcy, and its ability to provide monetary benefits. In

the early 1990s, the corporation was required to pay off its debts before paying any dividends.²¹ Its board and management attribute its return to profitability to its heavy participation in the 8(a) program. By 2004, the ANC paid out dividend amounts that were among the highest of all regional corporations. An original shareholder owning 100 shares, for example, received \$3,500 in dividends in 2004. The ANC also provided a number of other benefits to its shareholders, their spouses and descendants, such as scholarships and a business assistance program.

- In contrast, another ANC with a high level of activity in the 8(a) program is currently unable to provide a comparable level of monetary benefits. This corporation encountered a few years of heavy losses due to lawsuits and management malfeasance. Since being in financial recovery for the past 5 years, it has not been allowed to issue dividends to shareholders.²² However, it provides other benefits, such as scholarships and protection of land and subsistence rights for its shareholders.

We also found that a high level of benefits can exist even if an ANC is not participating in the 8(a) program at all. For example, at the time of our review, one regional corporation received all of its revenues from its diverse non-8(a) investments, including real estate, natural resources, telecommunications, tourism, golf resorts, casino gaming, construction, and oil-field services. From 2000 to 2004, this corporation provided dividend payments that were substantially higher than any others we reviewed and also provided a number of additional types of benefits to its shareholders.

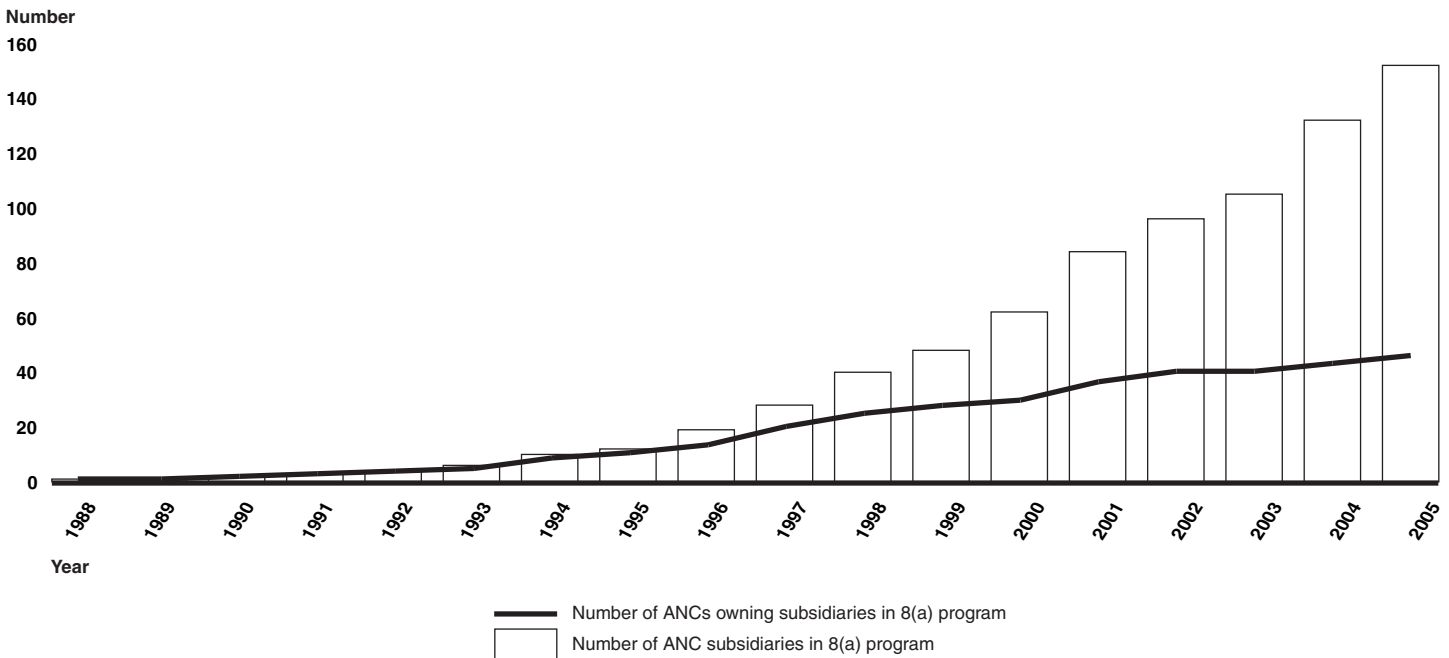
Key Practice Is Creation of Multiple 8(a) Subsidiaries

To generate revenue, many ANCs own multiple businesses in the 8(a) program, taking advantage of their special ability to do so. Many of the subsidiaries have offices that are located outside of Alaska, which is not prohibited by statute or regulation. As Figure 6 demonstrates, the number of 8(a) ANC subsidiaries has increased markedly.

²¹Alaska Corporations Code, § 10.06.358(a)(1); 10.06.360; 10.06.960(h)(1).

²²Id.

Figure 6: Number of ANC Parent Corporations and Subsidiaries Active in 8(a) Program, 1988 to 2005



Source: GAO analysis of SBA data.

As of December 2005, 49 ANCs owned a total of 154 8(a) firms and 30 ANCs owned more than one 8(a) firm. See appendix IX for a listing of these 49 ANCs. The corporation owning the most subsidiaries had a total of 14 active or graduated 8(a) subsidiaries. The five corporations that represented the largest volume of 8(a) ANC dollars from 2000 to 2004 owned a total of 45 active and exited 8(a) subsidiaries, or 24 percent of the total. Regional corporations have been more active than the village and urban corporations in forming multiple subsidiaries.²³

SBA’s 8(a) regulation requires that the subsidiaries of each ANC be certified in the 8(a) program under a different primary NAICS code, representing different lines of business. However, the 8(a) businesses can pursue work in an unlimited number of secondary NAICS codes, regardless of their primary line of work declared at the time they apply to the 8(a) program. This means that an 8(a) subsidiary of an ANC may

²³None of the group corporations participated in the 8(a) program at the time of this report.

pursue government contracts under any of its primary or secondary NAICS codes, including those that overlap with the secondary NAICS code of another 8(a) subsidiary owned by the same parent corporation.

ANCs use their ability to own multiple businesses in the 8(a) program, as allowed by law, in different ways. The following table summarizes some of the practices we identified in our interviews with ANCs and our review of their documentation.

Table 4: Practices Pertaining to Owning Multiple Subsidiaries

Practices ANCs are using	Our observations
Own multiple subsidiaries with overlapping NAICS codes, either as a primary or secondary line of business.	Six of seven 8(a) subsidiaries of one corporation marketed their ability to perform work under the same NAICS code for facilities support services, either as the primary or secondary NAICS code for each subsidiary. Appendix XI provides an example.
Leverage the expertise and management from existing subsidiaries to aid with the development of the newer subsidiaries.	One corporation shared staff and management between its older and newer 8(a) subsidiaries. Additionally, the two subsidiaries market themselves together on one website. Officials from one ANC told us it had an 8(a) ANC firm with only 2 employees. Nevertheless, the firm had leveraged the expertise and management of other subsidiaries owned by the ANC to be in a position to enter negotiations with NASA for a \$30 million sole-source contract.
Create a second subsidiary to win follow-on work from a graduating subsidiary.	One corporation created a second subsidiary in anticipation of its first one's graduation from the 8(a) program. The newer firm successfully obtained a sole-source follow-on contract that the original subsidiary had performed. In another example, an ANC subsidiary had an 8(a) contract that was expiring, yet the subsidiary was graduating from the 8(a) program. Based on its experience with this ANC firm, the government agency awarded a \$21 million follow-on contract to a different subsidiary of the same ANC.
Some ANCs wholly own their 8(a) subsidiaries, while others invest in partially-owned subsidiaries. ^a	Of the 26 ANCs we reviewed that were active in the 8(a) program, 13 wholly-owned all of their 8(a) subsidiaries and 13 partially-owned at least one 8(a) subsidiary. Some ANCs shared ownership of 8(a) subsidiaries with other ANCs. Other corporations shared ownership with subsidiary executives. For example, one corporation owns 56 percent of its 8(a) subsidiary, and the subsidiary executives, who were not Alaska Natives, retain 44 percent of profits.
Some ANCs own subsidiaries that specialize in a niche market with the goal of developing an independently sustainable business.	Two corporations we interviewed said they take this specialized approach, rather than creating individual subsidiaries with multiple capabilities. Both corporations noted that the intent of the 8(a) program is business development. One corporation's subsidiaries specialize in aircraft maintenance and niche manufacturing, with the intent of reducing future competition and increasing the potential for long-term success past graduation from the 8(a) program.
Other ANCs diversify their subsidiaries' capabilities to increase opportunities to win government contracts in various industries.	One subsidiary marketed its abilities to perform work in construction, landscaping, manufacturing, computer and software wholesaling, engineering, management consulting, research and development, and administrative services. Some corporations stated that they diversified their subsidiaries' capabilities in response to requests from agencies to perform work that was outside the companies' original focus.

Source: GAO analysis of ANC data.

^a To be eligible for the special provisions for ANCs in the 8(a) program, an ANC must be the majority owner of the business. The minority owners receive a percentage of the profits the subsidiary generates based on ownership arrangements.

According to SBA data, 36 ANC firms exited the 8(a) program from 1998 through 2005. Eleven subsidiaries exited because they completed their 9-year term in the program. The remaining 25 subsidiaries exited the

program before completing the full 9-year term. Of these, seven graduated early from the program after exceeding SBA's size standards for revenue or number of employees. Though no longer 8(a) participants, these subsidiaries are obligated to continue to perform work on previously awarded 8(a) contracts, including any priced options that may be exercised. Another subsidiary lost its 8(a) status after failing to file paperwork with SBA. Other subsidiaries dissolved, became inactive, or were sold to other businesses.

ANCs Pursue Other 8(a) Business Strategies

We found a variety of other strategies that ANCs use to generate revenue, as discussed below.

Relying on Outside Expertise

Although all of the ANCs that we reviewed retained a board composed entirely of Alaska Natives, several have recruited outside executives who are not Alaska Natives to manage the parent corporation or their 8(a) operations. Some corporations recruited these executives for their specific experience in the 8(a) program, which they gained working on other government contracts or in operations at other 8(a) ANC subsidiaries. Some corporation executives stated that this managerial expertise was a key factor to success in the 8(a) program. For example, representatives from one corporation told us that its 8(a) subsidiary suffered after its executive left to work at another ANC. Some of these managers command salaries significantly higher than those of the executives at the parent corporation. For example, in 2004, a corporation paid one of its chief executive officers for 8(a) operations almost \$1 million — more than three times as much as the highest-paid executive of the parent corporation.

Additionally, a few ANCs hire outside marketing firms to assist them with securing contracts. One such firm provides services such as locating potential contracts for its ANC client, interviewing potential partners on the project, meeting with contracting agencies, and following up with the contracting officer after award.

Creating Partnership Arrangements

Another business strategy is to create partnerships with individuals or other businesses to gain access to capital, experience, or expertise. For example, one corporation entered into a partnership by sharing subsidiary ownership with another ANC when it did not have the necessary capital to create a new subsidiary. The other corporation benefited from the partnership because it was new to the 8(a) program and needed the other corporation's experience.

In addition to ownership arrangements, many ANC's pursue other types of partnerships, such as joint ventures and mentor-protégé relationships, as a business strategy to better position themselves for federal contract opportunities through the 8(a) program.

Joint venture agreements. A "joint venture" is an agreement between an 8(a) participant and one or more businesses to work together on a specific 8(a) contract.²⁴ With SBA's approval, an 8(a) subsidiary may enter into an unlimited number of joint venture agreements. Of the 26 corporations we interviewed that were participating in the 8(a) program, 22 owned subsidiaries that participated in a total of 57 joint venture agreements. In 2001, a joint venture between two ANC's was awarded a \$2.1 billion contract by the National Imagery and Mapping Agency.

Mentor-protégé agreements. SBA established the mentor-protégé program to encourage relationships between 8(a) businesses and other firms that act as mentors to provide technical, financial, and other assistance to their protégés.²⁵ An 8(a) subsidiary may be a protégé to only one mentor at a time.²⁶ Of the ANC's that we interviewed that were participating in the 8(a) program, 19 owned a total of 24 subsidiaries participating in mentor-protégé agreements.

Forming Holding Companies

ANC's create holding companies – non-8(a) subsidiaries that provide shared administrative services to other subsidiaries, for a fee – which also aid their participation in the 8(a) program. Of the 30 corporations we interviewed, 11 had formed holding companies. Two corporations had established three separate holding companies.

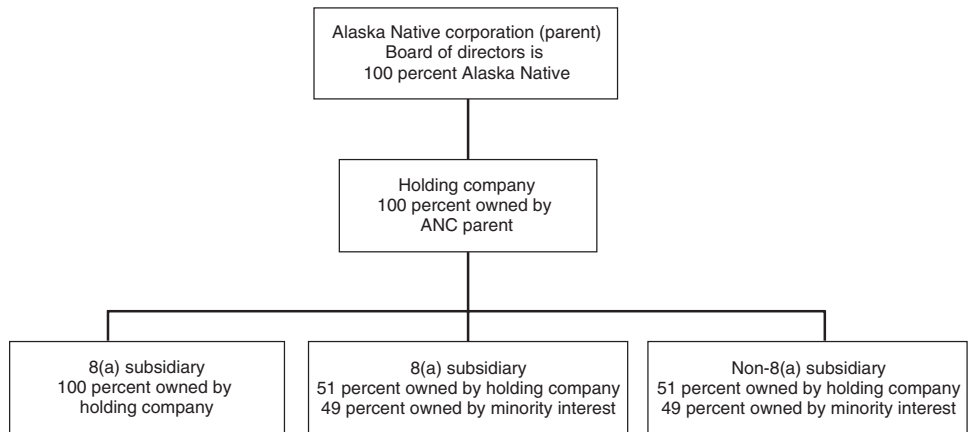
Figure 7 shows a sample ANC with a holding company for subsidiaries in and outside of the 8(a) program.

²⁴SBA's regulations allow two or more businesses to joint venture on no more than three business ventures over 2 years.

²⁵Individual agencies, including Defense, Energy, Homeland Security, State, Transportation, and NASA, have their own mentor-protégé programs with slightly different guidelines.

²⁶However, a firm may mentor more than one 8(a) business at a time as long as the protégé firms are not competitors and the mentor firm is capable of handling multiple protégés. The SBA regulations note that generally, a mentor will have no more than one protégé at a time.

Figure 7: Sample ANC with Holding Company



Source: GAO analysis.

SBA requests that ANCs seek approval before forming a holding company, which must be wholly-owned by the parent ANC for the subsidiaries to be eligible for the 8(a) program. During the course of our review, we found one holding company that was 80-percent owned by the parent ANC and 20-percent owned by two holding company executives. SBA’s records, however, showed the company as 100-percent owned by the parent ANC. A representative of the holding company told us that the ownership arrangement was changed after SBA’s initial approval of the holding company. The company did not notify SBA of the change because the holding company is not itself a participant in the 8(a) program and it wholly owns all of its subsidiaries, thereby maintaining compliance with the minimum 51-percent ownership requirement. SBA points to the statute and its regulations, which show that ANC 8(a) participants must be majority-owned by an ANC or a wholly-owned entity of an ANC. Therefore, subsidiaries under a partially-owned holding company are no longer eligible to participate in the 8(a) program. Since this situation came to light, the ANC and the holding company executives rescinded the 20-percent ownership arrangement to maintain compliance with SBA requirements. Further, the SBA Alaska district office revised its template letter approving a change in ownership to clarify the restrictions on ownership of a holding company.

ANC executives told us the benefits of holding companies included:

Greater efficiencies. The holding companies can provide accounting, human resources, legal, marketing, or other services, allowing the ANC to operate more efficiently. Since subsidiaries underneath the holding company do not need to perform these functions, they may employ fewer administrative staff and instead employ only technical staff. A lean staff is especially important since subsidiaries can become ineligible for the 8(a) program when they exceed a certain number of employees.

Consistent policies and procedures. Some corporations established holding companies to facilitate consistent policies, procedures, and corporate governance across the subsidiaries.

Easier administration. Corporation officials cited several administrative benefits to establishing holding companies, including the following examples:

- The holding company's smaller board allowed for faster decisions than assembling the parent corporation's entire board.
- Only one entity—the holding company—would be audited by the Defense Contract Audit Agency as opposed to each of the individual subsidiaries.
- The holding company saved time on security clearances. For example, for a contract involving classified work, the holding company management and board of directors already had security clearances, saving the time of performing background checks on the corporation-level management and board of directors.

Coordination among subsidiaries. One corporation official told us that the holding company helps prevent competition among its subsidiaries for the same contracting opportunities.

Legal protection. Representatives from two corporations stated that the holding company separates the parent company from most liability that a subsidiary may incur. For example, if the subsidiary went bankrupt, the parent corporation generally could not be held legally or financially responsible.

Improvements Needed in Oversight of ANCs in the 8(a) Program

SBA has not tailored its policies and practices to account for ANCs' unique status in the 8(a) program and growth in federal contracting, even though officials recognize that ANCs enter into more complex business relationships than other 8(a) participants. SBA officials told us that they have faced a challenge in overseeing the activity of the 8(a) ANC firms because ANCs' charter under ANCSA is not always consistent with the business development intent of the 8(a) program. The officials noted that the goal of ANCs—economic development for Alaska Natives from a community standpoint—can be in conflict with the primary purpose of the 8(a) program, which is business development for individual small, disadvantaged businesses.

However, the officials agreed that improvements are needed in their oversight and said they are considering various actions in this regard. They told us that they are planning to revise their regulations and policies to address ANCs' unique status in the 8(a) program. Moreover, they are now in the process of implementing a new, automated data collection tool to more readily collect information on 8(a) firms. It is expected to be operational during fiscal year 2007.

SBA Oversight of ANCs in the 8(a) Program Is Not Adequate

SBA's oversight has fallen short in that it does not

- track the business industries in which ANC subsidiaries have 8(a) contracts to ensure that more than one subsidiary of the same ANC is not generating the majority of its revenue under the same primary NAICS code;
- consistently determine whether other small businesses are losing contracting opportunities when large, sole-source contracts are awarded to 8(a) ANC firms;
- adhere to a legislative and regulatory requirement to ascertain whether 8(a) ANC firms, when entering the 8(a) program or for each contract award, have, or are likely to have, a substantial unfair competitive advantage within an industry;
- ensure that partnerships between 8(a) ANC firms and large firms are functioning in the way they were intended under the 8(a) program; and
- maintain information on ANC 8(a) activity.

SBA officials from the Alaska district office reported to headquarters in the most recent quality service review that the make-up of their 8(a) portfolio is challenging and requires more contracting knowledge and business savvy than usual because the majority of the firms they oversee are owned by ANCs and tribal entities. The officials commented that these firms tend to pursue complex business relationships and tend to be

awarded large and often complex contracts. We found that the district office officials were having difficulty managing their large volume and the unique type of work in their 8(a) portfolio. When we began our review, SBA headquarters officials responsible for overseeing the 8(a) program did not seem aware of the growth in the ANC 8(a) portfolio and had not taken steps to address the increased volume of work in their Alaska office.

Not Tracking Secondary Lines of Business across Multiple 8(a) Firms Owned by One ANC

As discussed above, ANCs can create multiple 8(a) subsidiaries that can be based across the United States. SBA's Alaska district office, which is responsible for overseeing most 8(a) ANC contracting activity, does not track the business industries in which the subsidiaries win 8(a) contracts under secondary NAICS codes. Thus, SBA is not ensuring that a firm's secondary NAICS codes do not, in effect, become the primary business line by generating the majority of revenue. This situation could allow an ANC to have more than one 8(a) subsidiary perform most of its work under the same primary NAICS code, which SBA regulation does not allow. Appendix XI shows an example of an ANC with subsidiaries marketing their ability to perform work in a number of different industries.

Headquarters officials told us that they do not monitor the industries from which 8(a) participants receive revenue because they do not want to stifle the growth of the company. However, the officials acknowledged that they would be concerned if a subsidiary's primary industry revenue source changed without SBA being notified. They have not developed a plan to increase monitoring of ANCs' secondary NAICS codes, even though many of these firms take advantage of their ability to obtain contracts under secondary lines of business.

Not Consistently Determining Whether Other Small Businesses Are Losing Contract Opportunities

We found cases where SBA did not take action when incumbent small businesses lost contract opportunities when an 8(a) ANC firm was awarded a large sole-source contract. For example:

- The Department of Transportation awarded an information technology contract to an 8(a) ANC firm in an effort to support transition to a single integrated infrastructure. According to the department's acquisition plan, the goal is to create a more mission-effective, secure, and cost-effective computing environment that will provide common services. Previously, this service was being provided under separate contracts with eight small businesses. The consolidation project will likely discontinue the work performed by these small businesses and replace it with the single infrastructure managed by the 8(a) ANC firm. One of the incumbent small businesses protested the award to our agency. In its submission to our bid protest office, SBA acknowledged

that it had not conducted the required adverse impact analysis, but asserted that it had viewed the requirement as “new” and therefore had incorrectly concluded it was not required to perform the analysis. SBA also noted that the 8(a) regulation provides that, even where there is a presumption of adverse impact, SBA “may”—rather than “shall”—determine whether adverse impact exists. SBA interprets this to mean that it has the discretion to accept a contract into the 8(a) program even where one of the contractors meets the presumption of adverse impact.²⁷

- The scope of an Air Force base contract with an ANC firm has been expanded as additional base civil engineering services, previously provided by small businesses, have been absorbed into the contract. Since the initial contract award, the estimated contract value has increased by \$46 million to nearly \$600 million. The contracting official coordinated these changes with SBA via e-mail. Rather than disapproving the request or evaluating the impact on other small businesses, SBA only expressed concern that the contracting officers were absorbing work into the contract that was well within the capability of other 8(a) contractors, indicating that it was “troubled” over the loss of a prime contracting opportunity for other small businesses. The contracting officer told us that the Air Force has now decided to stop adding services to the contract and will maintain the other existing small business contracts.

When a procuring agency is interested in offering a requirement to a specific participant in the 8(a) program for a sole-source contract, the agency is required to send SBA an offering letter with information on the description of the work, the NAICS code, anticipated dollar value of the requirement, and the names and addresses of any small business contractors that have performed on the requirement during the previous 24 months, among other things. At the time that SBA accepts a procurement for award into the 8(a) program, it is required to consider whether individual small businesses, a group of small businesses in a geographical area, or other business programs will be adversely

²⁷GAO ultimately denied the protest on the basis that GAO is required to give deference to an agency’s reasonable interpretation of its regulations and SBA’s analysis showed that the small business protestor would appear not to have met the requirements for presuming adverse impact. *Catapult Technology, Ltd.*, B-294936, B-294936.2, January 13, 2005.

impacted.²⁸ Adverse impact is determined to be present where, among other things, a small business has been performing the requirement outside the 8(a) program and this work represents 25 percent or more of its revenue.²⁹

In almost all cases for the 16 large sole-source contract we reviewed, SBA's letters to the agencies approving the procurements contained boilerplate language: "a determination has been made that acceptance of this procurement will cause no adverse impact on another small business concern." The language in the acceptance letters suggests that SBA conducted a formal adverse impact study, yet this was not the case for any of the contracts we reviewed. The letters do not clarify whether the determination was made based on a formal adverse impact study or whether no determination was required because the requirement was new or previously had been performed by a large business. SBA officials told us that the language is intended to encompass all situations where there is no adverse impact.

SBA officials stated that it is difficult for them to ensure that other small businesses are not negatively affected because they are relying on the procuring agency to provide the procurement history, and, in their view, procuring agencies are not always forthcoming. During our review, the Alaska district office revised its standard letter to agencies to state that the adverse impact determination was made based on the procurement history the agency provided to SBA in its letter offering the procurement to the 8(a) program. The letter also now states that the determination that acceptance of the procurement will cause no adverse impact on another small business was made on the basis of the agency's identifying the requirement as new or not identifying an incumbent contractor.

²⁸If the requirement was already being performed under an 8(a) contract or is considered a new requirement, SBA is not required to perform the adverse impact study. SBA is required, under certain circumstances, to consider that adverse impact may exist if the requirement is a consolidation of work previously performed by small businesses.

²⁹The other requirements are that the small business concern must have performed the requirement for at least 24 months and is currently performing the requirement or finished performing within 30 days of the offering into the 8(a) program.

**Failing to Determine
Substantial Unfair Competitive
Advantage**

The Small Business Act states the following

In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe³⁰ (or wholly owned business entity of such tribe) each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.³¹

SBA has incorporated this language into its 8(a) regulation, but is not making the determinations that these business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage. In fact, the agency has no procedure in place to make these determinations. Officials told us that the language in the statute is confusing and that they are not sure how to implement it. They had not taken steps to obtain clarification and make any needed revisions to the 8(a) regulation or their standard operating procedures. SBA officials noted that the amount of participation by ANCs in the federal contracting market is so minimal when compared to all other businesses that they do not expect an ANC would have a substantial unfair competitive advantage in one industry.

**Not Ensuring That Partnerships
between ANCs and Large Firms
Operate As Intended**

SBA is required to approve partnerships between 8(a) and other firms, such as mentor-protégé and joint venture arrangements, to ensure the agreements are fair and equitable and will be of substantial benefit to the 8(a) concern. Where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA regulations state that SBA will not approve the joint venture agreement. SBA officials told us that they work closely with the partnership firms to ensure that the 8(a) company has control in the joint venture and will be gaining from the relationship. Further, SBA's regulations state that SBA will not approve a mentor-protégé relationship that it determines is merely a vehicle to enable a non-8(a) participant to receive 8(a) contracts.

³⁰Indian tribe in this case is defined to include ANCs.

³¹15 U.S.C. § 636(j)(10)(J)(ii)(II).

We found indications that oversight of these partnership relationships, particularly in the context of ANCs' unique provisions and large businesses that want to take advantage of those provisions, may not be adequate. For example, representatives from an ANC firm told us that its mentor firm exploited it for its 8(a) status. In pursuit of a particular contract, the Alaska-based subsidiary invested in an office and staff in Arkansas at the advice of its mentor. When the contract was not won, the mentor deserted the protégé, and the subsidiary was left to search for federal work on its own in Arkansas.

ANC firms in the 8(a) program provide information to SBA on their partnership arrangements as part of the annual review process, and SBA is reliant on this information to assess the partnerships' success. Therefore, SBA may not obtain all necessary information to determine if the partnership is working as intended, even though SBA has primary responsibility to monitor these arrangements.³²

We found examples where the procuring agency had concerns about a partnership situation, but did not report its concerns to SBA, nor did SBA ever inquire whether the partnership was working as intended.

- A State Department program official told us that his office had good intentions when it identified a joint venture between an 8(a) ANC firm and a large firm for a sole-source 8(a) award of an international construction services contract. In line with the business development aspect of SBA's mentor protégé program, the State Department official had envisioned that the ANC firm would gain construction experience from the globally recognized larger partner and then compete on its own for other construction work at the State Department. However, the official, who was also the contracting officer representative, expressed concern that all the actual construction work was being subcontracted out and the joint venture was only doing construction management, which was not the intent when the requirement was offered to the 8(a) program. Moreover, in an e-mail to the contracting officer, this official suggested that the contractor had some performance problems and may have been circumventing the prices negotiated in the contract by using subcontracts for all the work. The program official never made these concerns known to SBA, nor did SBA ever inquire whether the partnership was working as intended.

³²SBA can request additional information from the participant as it deems necessary as part of its annual review.

According to State Department officials, the contracting officer looked into the matter and found the concerns were unfounded.

- In another example at the State Department, officials had some concerns that the 8(a) ANC firm was a front company for the large business in a joint venture for another construction project. In response to the concerns, representatives from the joint venture presented information to State officials on the role of the ANC firm, stating that it was involved with management from top to bottom and that the large firm would provide construction expertise where needed. We found no evidence that State officials contacted SBA about this issue at the time.

SBA recognizes that the mentor-protégé aspect of the 8(a) program can be an important component of the overall business development of small businesses. However, officials believe that joint ventures between mentors and their protégés may be inappropriate for 8(a) sole-source contracts above competitive thresholds set for other 8(a) firms. SBA cites complaints that non-8(a) firms have received substantial benefits through the performance of large sole-source 8(a) contracts as joint venture partners with tribally-owned and 8(a) ANC firms. Further, where the joint venture involves a large business mentor, SBA recognizes a perception that large businesses may be unduly benefiting from the 8(a) program.

Not Collecting Information on ANC Participation

SBA lacks adequate data regarding the 8(a) program in general and does not collect any information on ANCs' 8(a) activity. SBA could not provide us with reliable data for ANC revenues in the 8(a) program, even though all program participants are required to report this information annually. An SBA official explained that the district offices stopped using the database that collects this information and therefore the agency had no recent data on 8(a) participants' revenues. Overall, data on ANC 8(a) contracting activity were not readily available. There is no mechanism in place for agencies to code 8(a) awards to ANCs in FPDS, for example.

Conclusion

The complex nature of some ANCs' 8(a) business practices, combined with the competing ANCSA and 8(a) program goals of economic development for Alaska Natives versus development of individual small businesses, create the need for SBA to tailor its regulations and policies as well as to provide greater oversight in practice. Furthermore, since agencies can contract directly with ANC firms, they too have responsibility to ensure that these firms are operating in the program as intended.

Without this level of oversight, there is clearly the potential for unintended consequences or abuse.

Recommendations for Executive Action

We recommend that the Administrator of SBA take the following five actions when revising relevant regulations and policies:

- Ascertain and then clearly articulate in regulation how SBA will comply with existing law to determine whether and when one or more ANC firms are obtaining, or are likely to obtain, a substantial unfair competitive advantage in an industry.
- In regulation, specifically address SBA's role in monitoring ownership of ANC holding companies that manage 8(a) operations to ensure that the companies are wholly owned by the ANC and that any changes in ownership are reported to SBA.
- Collect information on ANCs' 8(a) participation as part of required overall 8(a) monitoring, to include tracking the primary revenue generators for 8(a) ANC firms to ensure that multiple subsidiaries under one ANC are not generating their revenue in the same primary industry.
- Revisit regulation that requires agencies to notify SBA of all contract modifications and consider establishing thresholds for notification, such as when new NAICS codes are added to the contract or there is a certain percentage increase in the dollar value of the contract.
 - Once notification criteria are determined, provide guidance to the agencies on when to notify SBA of contract modifications and scope changes.
- Consistently determine whether other small businesses are losing contracting opportunities when awarding contracts through the 8(a) program to ANC firms.

We also recommend that the Administrator of SBA take the following five actions to improve practices pertaining to SBA's oversight.

- Standardize approval letters for each 8(a) procurement to clearly assign accountability for monitoring of subcontracting and for notifying SBA of contract modifications.

-
- Tailor wording in approval letters to explain the basis for adverse impact determinations.
 - Clarify MOUs with procuring agencies to state that it is the agency contracting officer’s responsibility to monitor compliance with the limitation on subcontracting clause.
 - Evaluate staffing levels and training needed to effectively oversee ANC participation in the 8(a) program and take steps to allocate appropriate resources to the Alaska district office.
 - Provide more training to agencies on the 8(a) program, specifically including a component on ANC 8(a) participants.

To ensure that agencies are properly overseeing ANC 8(a) contracts, we recommend that the Secretaries of the Departments of Defense, Energy, Homeland Security, the Interior, State, and Transportation and the Administrator of NASA take the following action:

- Work with SBA to develop guidance to agency contracting officers on how to comply with requirements of the 8(a) program such as limitations on subcontracting and notifying SBA of contract modifications, particularly when contracting with 8(a) ANC firms.

Agency Comments and Our Evaluation

We provided a draft of this report to the departments of Defense, Energy, Homeland Security, Interior, State, and Transportation and to NASA and SBA. We received written comments from SBA, Homeland Security, the Interior, NASA, State, and Energy. We received official oral comments from Defense and Transportation. We also received written comments from the Native American Contractors Association. The written comments we received are included as appendixes II through VIII.

In its written comments, SBA took issue with several aspects of the report. Its letter did not indicate whether or not it plans to implement the recommendations we made, but in a subsequent email the agency expressed disagreement with several of them. SBA’s comments and our views on them follow.

- The agency referred to the concerns we raise as “subjective” and stated that our analysis relies “far too heavily on isolated individual anecdotes” to support findings and recommendations pertaining to 8(a) ANC activity. We strongly disagree with this characterization.

Our findings are supported by the facts we gathered and our analysis of regulations, policies, contract files, ANC annual reports, FPDS and agency data, and other relevant documentation, as well as interviews with agency contracting officers and acquisition officials, SBA officials in headquarters and the Alaska district office, and representatives of 30 ANCs. The findings we developed and the shortcomings in oversight we found directly support the 10 recommendations we make to SBA. Further, it is an undisputed fact that there has been significant growth in federal dollars awarded to 8(a) ANC firms in recent years, as recognized by SBA in its comment letter. Clearly, 6 of the 7 procuring agencies in our review—which account for most of the government’s 8(a) dollars to ANC firms—agree that there is a need for them to work with SBA to develop guidance for contracting officers in light of the unique procurement advantages Congress has provided 8(a) ANC firms.

- SBA believes that our report should cite federal dollars to women-owned and other small business categories and the government’s achievement of small business goals in general. That information is not relevant to this report. Our review focused specifically on ANC activity in the 8(a) program, as set forth in appendix I, which outlines our scope and methodology.
- SBA states that it has recently taken a number of steps to improve oversight of the 8(a) program, including taking into consideration special provisions afforded to 8(a) ANC firms, Native Hawaiian Organizations, and Indian tribes. It is unclear what steps SBA is referring to. While we note in our report that SBA officials told us they were planning to revise regulations and policies, we were not provided with any evidence that this or any other planned action had been taken, despite our requests for the information.
- SBA states that it is “conjecture” to make recommendations pertaining to data on 8(a) ANC activity until the lack of data explaining 8(a) participants’ economic activities, including ANC firms, is resolved. Our recommendation on data collection is intended to address this very gap. It is directed at SBA because that agency is responsible for managing the 8(a) program. We found that SBA lacked adequate data on the 8(a) program in general and was not collecting any information on ANC firms’ activity specifically.

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- SBA pointed out that the statutory language refers to “substantial” unfair competitive advantage, a change we have made to the report. SBA found our focus on this issue unreasonable, stating that all 8(a) participants have been accorded a competitive advantage. During our review, it was clear that SBA had in place no policy or procedure to make unfair competitive advantage determinations. We do not understand how SBA can ignore the fact that Congress has directed it to make these determinations specifically for ANC firms in the 8(a) program.
 - SBA refers to the tone of our report as “unsettling” and suggests that it could lead readers to conclude that we have concerns with the fact that agencies can count 8(a) ANC contracts toward their federal small business goals. We express no concerns of the kind. Rather, our concerns, as reflected in the recommendations to SBA, pertain to the level of oversight it is exercising over 8(a) ANC activity.
 - In an e-mail sent after the comment letter, SBA expressed disagreement with several of the recommendations but did not address the others. It stated that its annual reviews track ownership changes and the business mix of all 8(a) participants and that its regulations require contracting officers to report contract modifications. These comments are not responsive to our recommendations. Our recommendations specifically discuss monitoring ownership of ANC holding companies, tracking primary revenue generators across 8(a) ANC subsidiaries, and establishing thresholds for notification of 8(a) contract modifications. SBA disagreed with the recommendation on determining whether other small businesses are losing contracting opportunities, stating that it already does so for all 8(a) sole-source offerings. As illustrated by the examples in our report, this is not the case.

SBA’s written comments are included as appendix II.

The Department of Homeland Security agreed with the recommendation affecting it and indicated it would partner with SBA to ensure that the department’s contracting officers have a thorough understanding of all contracting regulations on awarding contracts under SBA’s 8(a) program. Homeland Security requested that we reflect that the department has only been in existence since 2003 and that FPDS data would not be available for the 5-year period. We agreed and added this point to our explanation of why we did not include the department in our trend analysis. In addition,

the department stated that, in providing us a list of contracts awarded to firms with the DUNS numbers we provided, officials did not indicate that it included all contracts awarded to ANC firms. Homeland Security attempted to reconcile the identified missing contracts from the list of contracts awarded to ANCs; however, we still determined that the agency's data were inadequate to include in our trend analysis. Homeland Security's written comments are included as appendix III.

The Department of the Interior agreed with the recommendation affecting it and proposed that an interagency work group be established and headed by the SBA to develop guidance for contracting officers. The department also provided specific comments on the contract awarded to an ANC firm on behalf of DOD's Counter Intelligence Field Activity (CIFA). The Interior Department said that the referenced contract was not awarded to the ANC firm "because CIFA...had requested that firm." The evidence we gathered from the contract file, as well as interviews with the contracting officer and the ANC firm, support the facts as we have stated them. CIFA, through a preauthorization letter, had arranged with the ANC firm to provide a variety of urgently needed services and requested that GovWorks award the contract to that firm. Interior's written comments are included as appendix IV.

NASA agreed with the recommendation affecting it and indicated that it will work with the SBA to develop guidance and to provide whatever assistance SBA may need to address the recommendations directed to it. NASA's written comments are included as appendix V.

The State Department agreed with the recommendation affecting it, stating that it will work with the SBA to develop standardized guidance to contracting officers on monitoring limitations on subcontracting and SBA notification of contract modifications. The State Department noted that the contract negotiations involving an 8(a) ANC joint venture took place in a compressed acquisition cycle and that SBA was in direct contact with the venturing parties at the time they were negotiating the contract. State concludes that because of SBA's "simultaneous interaction" with the venturing parties and with State's contracting officer, a formal request for SBA intervention would have been superfluous. However, our discussion focuses on the concerns about the extent of work being performed by the 8(a) ANC firm versus that of its joint venturing partner. These issues were raised within the State Department several months after the contract was awarded, and SBA was not notified at that time. The department also suggested some technical changes, which we incorporated as appropriate. The department's written comments are included as appendix VI.

The Department of Energy did not comment on the recommendation. It stated that our report gives the impression that agencies rely “significantly” on the ANC program to achieve small business goals. Our report does not state or imply that. Rather, we note that contracting officers have turned to 8(a) ANC firms as a way to help them meet their goals. The department also pointed to a perceived inconsistency in the report dealing with the “limitations on subcontracting” clause as it pertains to construction contracts. We disagree; the section in the report on this matter clearly establishes that the limitation for construction contracts is different than for other services. Energy’s written response is included as appendix VII.

In official oral comments, DOD agreed with the recommendation, stating that the development of additional guidance by the department to ensure the effective oversight of 8(a) ANC contracts is necessary and that the department will work closely with SBA to develop this guidance. DOD added that, prior to commencement of these efforts, it is imperative that SBA undertake the actions we recommended for revising its relevant regulations and policies and improving its oversight practices concerning 8(a) ANC contracts, as these changes will form the basis of the new or expanded DOD-specific guidance.

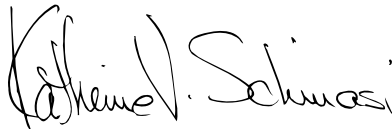
In official oral comments, the Department of Transportation agreed with the recommendation. Transportation also provided some technical comments that we incorporated as appropriate.

We also received written comments from the Native American Contractors Association. The association believes that we should more fully acknowledge the legal and policy basis of 8(a) program rules for Native Entities. We believe the report thoroughly explains the legislative basis for 8(a) ANC firms’ procurement provisions and that it sets forth the rules for ANC firms as compared to those for other 8(a) firms. The association also raised several broader issues that impact the entire federal procurement system that it believes we should have included, such as in the areas of contract bundling, acquisition workforce, improper counting toward small business goals, and modifications to contract scope. While these are areas that we have reported on in the past, the focus of this audit was on 8(a) ANC contracting. Contrary to the association’s assertion, we do place certain findings—particularly with regard to the limitations on subcontracting and notification to SBA of contract modifications—in the context of the 8(a) program in general. For example, our recommendations to SBA on these issues are not limited solely to 8(a) ANC contracting activity. In technical comments provided separately, the

association suggested that, for context, we include reference to total federal procurement spending on goods and services. We have added this information as a note to figure 3. The association's comments are included as appendix VIII.

We are sending copies of this report to the Secretaries of Defense, Energy, Homeland Security, the Interior, State, and Transportation; the Administrators of SBA and NASA; the Director, Office of Management and Budget; the Native American Contractors Association; and other interested congressional committees. We will make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have questions about this report, please call me at (202) 512-4841 or schinasik@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. See appendix XII for a list of major contributors to this report.



Katherine V. Schinasi
Managing Director
Acquisition and Sourcing Management

LIST OF REQUESTERS

The Honorable Donald Manzullo
Chairman

The Honorable Nydia M. Velazquez
Ranking Minority Member
Committee on Small Business
House of Representatives

The Honorable Tom Davis
Chairman

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Don Young
House of Representatives

The Honorable Peter T. King
Chairman

The Honorable Bennie G. Thompson
Ranking Minority Member
Committee on Homeland Security
House of Representatives

The Honorable Olympia J. Snowe
Chair

The Honorable John F. Kerry
Ranking Minority Member
Committee on Small Business and Entrepreneurship
U.S. Senate

Appendix I: Scope and Methodology

We conducted our work at the Small Business Administration (SBA), including its national headquarters and district office in Anchorage, Alaska; the Departments of Defense, Energy, Homeland Security, the Interior; State, and Transportation, and the National Aeronautics and Space Administration (NASA). We traveled to Alaska and met with representatives of 30 Alaska Native corporations (ANC). We also met with representatives of the Native American Contractors Association in Washington, D.C. and interviewed officials from a number of small businesses as well as representatives from an 8(a) association. We reviewed relevant legislation, including the Alaska Native Claims Settlement Act (ANSCA) for background on the ANC corporate structure and the Small Business Act and other relevant legislation to understand the pertinent procurement advantages that ANC firms receive in the 8(a) program.

To identify overall trends in the government's contracting with ANCs, we obtained data from the Federal Data Procurement System (FPDS) for fiscal years 2000 through 2004. To gather data on federal 8(a) contracting with ANCs, we identified each ANC firm's Data Universal Numbering System (DUNS) number and used this information to obtain data from FPDS and agencies. To assess the reliability of the procurement data used in our 5-year trend analysis, we (1) compared FPDS and agency data to verify the accuracy of the data; (2) reviewed related documentation, including contract files; and (3) worked closely with agency officials to identify and resolve any data problems. When we found discrepancies, we brought them to the agency's attention and worked with them to correct the discrepancies before conducting our analyses. We determined that the data were sufficiently reliable for the purposes of our report. We had planned to include Homeland Security in our trend analysis, but did not do so for two reasons. First, since FPDS only includes Homeland Security contract data for part of fiscal year 2003 and beyond, we were unable to confirm the reliability of the data for the purposes of our 5-year trend analysis. Second, we found that the data from Homeland Security were inconsistent and therefore questioned the reliability of the data overall. For example, the data provided did not include contracts awarded by Immigration and Customs Enforcement and contained other data errors, such as contracts recorded with either an incorrect dollar value or as sole source when awarded competitively.

To assess the trends in government 8(a) sole-source contracting with ANCs from fiscal years 2000 to 2004, we reviewed data from the six federal agencies that, according to FPDS, comprise about 85 percent of total federal dollars obligated to ANCs via the 8(a) program. These agencies

were the departments of Defense, Energy, the Interior, State, and Transportation and NASA, which obligated about \$2.5 billion in sole-source contracts to ANCs for fiscal years 2000 through 2004. To understand the facts and circumstances surrounding specific contract awards, we reviewed contract files, interviewed agency contracting officers, and reviewed any relevant bid protests for 16 large dollar value, sole-source 8(a) contracts at seven agencies. Whereas we included six agencies in our 8(a) sole source trend analysis, we added the Department of Homeland Security to our contract file review. To identify two sole-source contracts awarded by Homeland Security, we began reviewing the contracts with the largest dollar awards from the data provided, but had to exclude a number of the largest contracts from our file review due to errors in the data. We brought significant data errors to the attention of Homeland Security officials and the department stated that it has initiated corrective action. For the seven agencies, we selected contracts based on high ultimate award values and high dollars obligated to date that represented a variety of contractors and services. We made the initial contract selections based on the available data at that time.

To assess how ANCs use the 8(a) program, we reviewed documentation and spoke with representatives from 30 Alaska Native corporations—all 13 regional and 17 selected village or urban corporations—and some of their 8(a) subsidiaries. In selecting corporations to interview, we considered diversity in geography, financial strategy and profitability, and participation in the 8(a) program. Tables 5 and 6 show the corporations included in our review.

Table 5: ANCs with Subsidiaries Participating in the 8(a) Program (26)

Regional corporations (12)		
Ahtna, Incorporated		
Arctic Slope Regional Corporation		
Bering Straits Native Corporation		
Bristol Bay Native Corporation		
Calista Corporation		
Chugach Alaska Corporation		
Doyon, Limited		
Koniag, Incorporated		
NANA Regional Corporation		
Sealaska Corporation		
The Aleut Corporation		
The 13th Regional Corporation		
Village and urban corporations (14)		
Corporation	Village(s) or urban area	Region
Afognak Native Corporation	Afognak, Port Lions	Koniag
Baan o yeel kon Corporation	Rampart	Doyon
Bethel Native Corporation	Bethel	Calista
Chenega Corporation	Chenega	Chugach
Choggiung, Limited	Dillingham	Bristol Bay
Goldbelt, Incorporated	Juneau	Sealaska
Kikiktagruk Inupiat Corporation	Kotzebue	NANA
K'oyitl'ots'ina, Limited	Allakaket, Alatna, Hughes, Huslia	Doyon
MTNT, Limited	McGrath, Telida, Nikolai, Takotna	Doyon
Olgoonik Corporation	Wainwright	Arctic Slope
Tanadgusix Corporation	Saint Paul	Aleut
The Eyak Corporation	Cordova, Eyak	Chugach
Tyonek Native Corporation	Tyonek	Cook Inlet
Ukpeagvik Inupiat Corporation	Barrow	Arctic Slope

Source: Documentation provided by the ANCs.

Table 6: ANCs That Do Not Have Subsidiaries Participating in the 8(a) Program (4)

Regional (1)		
Cook Inlet Region, Incorporated		
Village (3)		
Corporation	Village(s) or urban area	Region
Huna Totem Corporation	Hoonah	Sealaska
Kuukpik Corporation	Nuisqut	Arctic Slope
Yak-Tat Kwaan, Incorporated	Yakutat	Sealaska

Source: Documentation provided by the ANCs.

Additionally, we visited seven villages with populations that had a high percentage of Alaska Natives to understand the lifestyle and livelihood of the Alaska Native people. We selected these villages based on diversity in geography, population, average per capita income, and shareholder culture and history. We also attended a shareholders’ annual meeting at one of these villages to observe communication and relations between shareholders and corporate management. Table 7 shows the villages we visited.

Table 7: Villages Visited

Village	Associated village corporation	Corporation participating in 8(a) program?	Region	Estimated population (2004)	Average per capita income	Percentage Alaska Native^a
Bethel	Bethel Native Corporation	Yes	Calista	5,888	\$20,267	68%
Chenega Bay	Chenega Corporation	Yes	Chugach	81	\$13,381	78%
Dillingham	Choggiung, Limited	Yes	Bristol Bay	2,422	\$21,537	61%
McGrath	MTNT, Limited	Yes	Doyon	367	\$21,553	55%
Napaskiak	Napaskiak, Incorporated	No	Calista	436	\$8,162	98%
Nikolai	MTNT, Limited	Yes	Doyon	121	\$11,029	81%
Yakutat	Yak-Tat Kwaan, Incorporated	No	Sealaska	680	\$22,579	47%

Source: State of Alaska, Department of Commerce.

^a Defined as percent of population reporting race as Alaska Native alone or in combination with one or more races

To understand the structure, shareholder population, and involvement in the 8(a) program of each corporation, we examined annual reports and other documentation from our selected 30 corporations and spoke with Alaska Native shareholders. We also interviewed ANC executives on

corporate governance, strategies for participation in the 8(a) program, and benefits provided to shareholders. Additionally, we met with executives at selected subsidiaries participating in the 8(a) program to understand their structure, business strategies, and relationship to their parent corporations.

To establish whether SBA's oversight over ANCs in the 8(a) program is adequate, we reviewed relevant regulations and operating procedures to understand the requirements for oversight of the 8(a) program and of ANC 8(a) activity. We interviewed SBA officials at the Alaska district office and reviewed relevant files to understand that staff's oversight role and workload priorities. Finally, we analyzed documents from and spoke with SBA headquarters officials in the Washington, D.C. office to understand their oversight of district offices and the 8(a) program and whether the officials have assessed and addressed the impact of increased ANC activity on the 8(a) program.

Appendix II: Comments from the Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

Ms. Katherine V. Schinasi
Managing Director
Acquisition and Sourcing Management
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Schinasi:

Thank you for the opportunity to comment on the draft Government Accountability Office (GAO) report entitled, "Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight" (GAO-06-399).

The draft report clearly shows that the Alaska Native Corporations (ANCs) have successfully utilized the Small Business Administration's (SBA) 8(a) Business Development program (8(a)) to improve local economic conditions and provide increased social services to Native Alaskans.

This outcome was precisely what Congress intended when it passed legislation in 1986 to allow concerns owned and controlled by ANCs to participate in the 8(a) program. As the report notes, Federal contract dollars obligated to firms owned by ANCs grew from \$265 million in FY 2000 to \$1.1 billion in FY 2004.

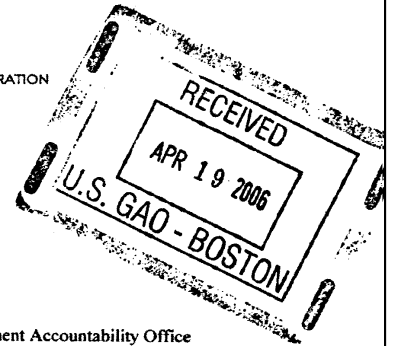
It needs to be emphasized that there is no indication within this report of wrongdoing by any participant in this program. The subjective concerns raised by the authors appear to come from activities that are allowed within the program as Congress designed it.

The report fails to cite the significant increases in Federal contract dollars during the same period of time going to women-owned small businesses (reaching \$9.1 billion in FY 2004), service disabled veteran small businesses (\$1.2 billion), HUBZone firms (\$4.8 billion), and small business in general (\$69.2 billion). It also neglects to report that the Federal Government achieved its goal during FY 2003 and FY 2004 that 23 percent of its prime contracting dollars be awarded to small businesses.

These successes have been achieved through the SBA's continuing oversight of Federal procurement programs. Even before the premature release of this report, the Agency had already taken a number of steps to improve the oversight of the 8(a) program, including taking into consideration special provisions afforded to 8(a) concerns owned and controlled by ANCs, Native Hawaiian Organizations, and Indian tribes.

Additionally, the Agency is revising its Partnership Agreements with the various procuring agencies to make clear their roles and responsibilities for monitoring contract compliance of and performance by 8(a) firms. A new management team responsible for the 8(a) program has also recently been installed.

The SBA is concerned with the comments attributed to two isolated contracting officers in the draft report as to their perception for awarding contracts and proper contract administration for ANC 8(a) firms. The reliance on these individuals as being representative of the entire program greatly skews the presentation found in this draft report.



The Agency also has several specific concerns with the draft report:

- This analysis relies far too heavily on isolated individual anecdotes to suggest specific findings and recommendations about ANC participation in the 8(a) program.
- The lack of data explaining the economic activities of firms within the 8(a) program, including ANCs, needs to be resolved before substantive program changes can be implemented. It is conjecture at this time to make such recommendations until the current situation is more fully understood.
- The GAO concerns discussed in the report apply to the entire 8(a) program, not merely the participation of an individual group conducting activities within the program. These concerns are subjective in nature. Moreover, nothing in this report appears to be indicative of wrongdoing by program participants.
- The SBA has concerns with GAO's focus on the alleged inability to articulate when ANCs have an "unfair competitive advantage" within an industry. The statute (as shown in the report) clearly designates a higher threshold for regulatory action – a "substantial unfair competitive advantage."

SBA also finds this focus unreasonable, as the statute clearly creates a non-competitive, sole-source procurement system that is used widely by all 8(a) participants. By design, the 8(a) program yields a competitive advantage to all participating firms over other small businesses.

- The tone of the report is unsettling. The ANCs are utilizing the statute to bring resources back to improve their Native Alaskan communities. Current law gives Federal contracting officers the ability to count these set-asides toward meeting the Federal 23 percent goal. The tone of the report could lead one to conclude that GAO has concerns with this result.

We look forward to working with GAO to further strengthen our administration of the 8(a) program. Thank you for taking our views into consideration.

Sincerely,



Calvin Jenkins
Deputy Associate Deputy Administrator for
Government Contracting and Business Development

Appendix III: Comments from the Department of Homeland Security

Note: Page numbers in the draft report may differ from those in this report.

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 12, 2006

David Cooper
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Cooper,

RE: Draft Report GAO-06-399, Contract Management Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight (GAO Job Code 120437)

The Department of Homeland Security appreciates the opportunity to comment on the Government Accountability Office's (GAO) draft report. We agree with the recommendations contained therein. However, pursuant to discussion between DHS representatives and GAO representatives on April 6, 2006, DHS recommends revising the statement "Due to incomplete data maintained by the Department of Homeland Security, we could not include that department in our overall trend analysis". Given the fact that the GAO's trend analysis spanned a five year period and the Department has only been in existence since 2003, it is unclear how DHS could have been included in GAO's five year trend analysis for this study. We respectfully suggest the following language be included in lieu of the language contained on page 3 of the draft report, "We planned to include the Department of Homeland Security's data in our trend analysis; however, since DHS has only been in existence since 2003 DHS' Federal Procurement Data System data only includes contract information from 2003 and beyond and could not be included in our five year trend analysis."

In response to the statement "Further, we found that the data from Homeland Security was inconsistent, and therefore questioned the reliability of the data overall" which was included under Appendix I, Scope and Methodology, page 41, GAO is reminded that in order to provide a listing of DHS contracts awarded to ANCs, DHS conducted a search based on the Data Universal Numbering System (DUNS) numbers provided by GAO. This listing was limited to contracts awarded to firms who possessed the DUNS numbers provided by GAO and had dollars obligated. Our original response was based on GAO's requested DUNS numbers. We did not indicate that the list we provided was an all inclusive listing of DHS contracts awarded to ANC's. This was previously noted in discussions with GAO.

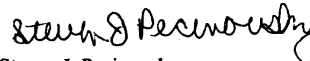
www.dhs.gov

As far as the statement indicating the DHS information “contained other data errors, such as contracts recorded with either an incorrect dollar value or as sole source when it was awarded competitively”, which was also included under Appendix I, Scope and Methodology, page 41, we thank the GAO for providing specific information on the six (6) contracts which contained inaccurate system information. DHS has initiated corrective action by contacting the responsible Procurement Offices to instruct them to have the responsible Contracting Officer correct each identified inaccuracy.

Although DHS currently has severe procurement staffing shortages (reference GAO report 05-179), we realize the importance of maintaining complete and accurate system data and will continue to emphasize this importance to the DHS components responsible for this data.

We believe the GAO’s recommendations are useful in recommending that Small Business Administration (SBA) take a variety of actions, including revisions to regulations, policies, and practices, to improve oversight of ANC 8(a) activity and that procuring agencies provide guidance to contracting officers. DHS recognizes the need of improved oversight and better guidance and will partner with SBA to ensure DHS contracting officers have a thorough understanding of all DHS contracting regulations relative to awarding contracts under SBA’s 8(a) program.

Sincerely,



Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix IV: Comments from the Department of the Interior

Note: Page numbers in the draft report may differ from those in this report.



United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240



APR 12 2006

Ms. Michele Mackin
Assistant Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
Washington, DC 20548

Dear Ms. Mackin:

Thank you for providing us with the opportunity to review and comment on the draft report entitled, "Contract Management: Increased Use of Alaska Native Corporations' (ANC) Special 8(a) Provisions Calls for More Oversight (GAO-06-399)."

The draft report provides comprehensive information on the unique and rapidly growing field of ANC 8(a) contracting and ANC's in general. We concur with the recommendation made to the Department of the Interior and six other agencies to work with the U.S. Small Business Administration (SBA) to "develop guidance to agency contracting officers on how to comply with requirements of the 8(a) program such as limitations on subcontracting and notifying SBA of contract modifications, particularly when contracting with 8(a) ANC firms." To address the recommendation, we propose that an inter-agency work group be established and headed by the SBA to develop this important and much needed guidance for our contracting and Small and Disadvantaged Business Utilization and Development communities.

In addition, the following comments are provided to clarify the general nature of, and special circumstances surrounding, the contract for management support functions and the provision of contractor collocation space referred to on pages 13, 15, and 16 of the draft report:

The referenced contract was not awarded to the ANC firm "because CIFA [the DoD Counterintelligence Field Office] had requested that firm." The contract was awarded on the basis of representations made by the Director of CIFA regarding the urgency of the requirement coupled with the responsiveness of the proposal submitted by the ANC firm. The May 28, 2003 letter conveying those representations invoked the authority of section 856 of the Homeland Security Act (Pub. L. 107-296) to exercise streamlined procedures as set forth in 10 U.S.C. § 2304(c)(1), (2), (6), and (7), which may be other than fully competitive.

The letter from the Director of CIFA also included a specific representation that coordination had been effected with the Deputy Director of the General Services Administration (GSA) Metropolitan Service Center for the National Capital Region, and

that GSA regulations would not govern this contract. The letter also included the concurrence of the Chief Counsel, U.S. Department of Justice Foreign Terrorist Tracking Task Force.

Although the ANC firm did have experience in information technology, they also were certified by the SBA for construction and facilities management services. The ANC had previously performed this same type of support through contracts for other executive agencies. The contracting officer considered the firm's past performance before pursuing a contract of the same scope in behalf of CIFA. A full legal review from the Department of the Interior's Office of the Solicitor was obtained prior to contract award.

If you or your staff has any questions regarding our comments, please contact Debra Sonderman, Director, Office of Acquisition and Property Management and Senior Procurement Executive on 202-208-6352, or Patricia Corrigan of her staff on 202-208-1906.

Sincerely,



R. Thomas Weimer
Assistant Secretary

Appendix V: Comments from the National Aeronautics and Space Administration

National Aeronautics and
Space Administration
Office of the Administrator
Washington, DC 20546-0001



APR 12 2006

Ms. Katherine Schinasi
Managing Director
Acquisition and Sourcing Management
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Schinasi:

NASA has reviewed the draft GAO report, "Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight" (GAO-06-399) and thanks you for the opportunity to provide comments. The information gathered from your report should help us improve NASA's participation with Alaska Native corporations (ANC).

In addition to the recommendations directed specifically to the Administrator of the Small Business Administration (SBA), the report contains one recommendation addressed to the Secretaries of the Departments of Defense, Energy, Homeland Security, Interior, State, Transportation, and the Administrator of NASA. Specifically, GAO recommends that these agencies, "Work with SBA to develop guidance to agency contracting officers on how to comply with requirements of the 8(a) program such as limitations on subcontracting and notifying SBA of contract modifications, particularly when contracting with 8(a) ANC firms."

NASA concurs with this recommendation. NASA's Acting Assistant Administrator for the Office of Small and Disadvantaged Business Utilization will work with the SBA to develop such guidance and to provide whatever assistance SBA may need to address the recommendations directed to them.

If you have any questions, or require additional information, please contact Mr. Jim Balinskas (202) 358-0445.

Sincerely,

A handwritten signature in black ink, appearing to read "Shana Dale".

Shana Dale
Deputy Administrator

Appendix VI: Comments from the Department of State



United States Department of State

Assistant Secretary and Chief Financial Officer

Washington, D.C. 20520

APR 12 2006

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "CONTRACT MANAGEMENT: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight," GAO Job Code 120437.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Shapleigh Drisko, Senior Procurement Analyst, Bureau of Administration, Office of Small and Disadvantaged Business Utilization, at (202) 647-6078.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford R. Higgins", with a long horizontal flourish extending to the right.

Bradford R. Higgins

cc: GAO – Michelle Mackin
A – Frank Coulter (Acting)
State/OIG – Mark Duda

Department of State Comments on GAO Draft Report

**Contract Management: Increased Use of Alaska Native Corporations'
Special 8(a) Provisions Calls for Tailored Oversight**
(GAO-06-399, GAO Code 120437)

Thank you for the opportunity to respond to the report entitled *CONTRACT MANAGEMENT: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight*. The report cites instances where we did not notify the Small Business Administration (SBA) of concerns that we had over the formulation of joint ventures under the 8(a) mentor protégé program or other contract management matters.

In your report, you stated:

We found one example, however, where the process of awarding to an 8(a) ANC firm was not particularly expedient. An ANC firm proposed a price for a State Department construction contract that was almost twice as much as the government's original cost estimate. The State Department negotiated extensively for over a month, requesting four different price proposals from the contractor. At one point, the contracting office considered terminating the solicitation and awarding competitively to a prequalified firm, but due to time constraints the department decided to accept the ANC firm's final proposal, which was still slightly over the government's estimate.

We continued to negotiate with the firm because they were a small business and this was the first time they had offered a proposal on a Departmental solicitation. As with any new firm doing business with the Department, there is a learning curve where they begin to understand our requirements and we reach an understanding of what perceptions they had when putting their price proposal together. It is not an unusual situation. Once communications improved, their understanding of the needs of the Department resulted in their offered price becoming closer to the Government estimate of what the project should cost. The price went from twice as much to slightly above our estimate. The negotiations came to a successful conclusion and we were able to determine that the final price was fair and reasonable.

In the supporting documentation of the contract, the Price Negotiation Memorandum states, "Based on the pricing analysis conducted on the companies noted above (3 companies) in evaluating the Offeror's submitted

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pricing, it has been determined that the Offeror's pricing structure does meet fair market value and is deemed to be fair and competitive."

You also stated the following:

A State Department contracting official told us that his office had good intentions when it awarded a construction services contract to a joint venture between an 8(a) ANC firm and a large firm. In line with SBA's business development program, the State Department had envisioned that the ANC firm would gain construction experience from the globally recognized larger partner and then compete on its own for other construction work. However, the official expressed concern that all the actual construction work was being subcontracted out and the joint venture was only doing construction management, which was not the intent when the requirement was offered to the 8(a) program. Moreover, the contracting officer representative, in an e-mail to the contracting officer, suggested that the contractor had some performance problems and may have been circumventing the prices negotiated in the contract by using subcontracts for all the work. The official never made these concerns known to SBA, nor did SBA ever inquire whether the partnership was working as intended.

The individual interviewed and referred to in your paragraph was not the contracting officer. While the individual is knowledgeable in his area of expertise, he is not directly involved in all aspects of the conduct of an acquisition. That is the responsibility of the contracting officer and the acquisitions staff.

ANC firms have sporadically targeted the Department in their marketing and outreach efforts. In our 1999 outreach visit to Anchorage, we discovered that the ANC construction firms possessed skill sets in project mobilization, logistics and reacting to significant variances in operational site conditions that routinely are hundreds of miles from their headquarters or bases of operations. This capability is almost nonexistent in the small business construction firms that we had previously known. We realized that there were significant similarities between these firms and the large businesses who routinely were awarded large overseas construction contracts.

We encouraged these Alaskan small businesses to consider the Department of State as a potential market. We felt that through subcontracting to our large business primes, these firms could gain the knowledge and experience needed to hopefully bid on our construction requirements on their own. When the SBA subsequently implemented their 8(a) mentor protégé program, we felt that this new program was particularly helpful in

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developing new competitors for our international construction requirements. This contract was the second iteration of our use of the SBA 8(a) mentor protégé program for ANC program participants venturing into international construction.

Based on your comments, it appears that our main difficulty was not fully articulating to the program office and COR the complete details involved in the development of additional competition for the small number of large businesses who regularly dominate the international construction market. During the GAO review, we assumed that we had clearly communicated these efforts to develop new competitors.

You additionally noted an email communication between the COR and contracting officer that was not referred to the SBA. The contracting officer did look into the COR's concerns and found that they were unfounded. There is no instance of documented performance problems or anything else to indicate that the contractor's performance has been anything less than satisfactory. Specifically, the contracting officer has found no evidence to substantiate the allegation that the venturing parties were, or had done anything to circumvent the negotiated pricing structure by using subcontractors.

Your final comments about our negotiations stated:

In another example at the State Department, officials had some concerns that the 8(a) ANC firm was a front company for the large business in a joint venture for another construction project. In response to the concerns, representatives from the joint venture presented information to State officials on the role of the ANC firm, stating that it was involved with management from top to bottom and that the large firm would provide construction expertise where needed. We found no evidence that State officials contacted SBA about this issue at the time.

This contract was being negotiated in a compressed acquisition cycle. The SBA was in direct contact with the venturing parties parallel to the Department of State's negotiation of the terms and conditions of the contract. The SBA was actively engaged in efforts to have the venturing parties structure their joint venture so that it would comply with the SBA regulations that prohibit any "front" relationship between an 8(a) program participant and any joint venturing partner. Where questions concerning the firm's relationship arose at the Department of State, the venturing parties were required to explain their relationship. They explained to the contracting officer's satisfaction that the 8(a) venturor was actively and

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materially participating in the management and control of contract performance. This was reinforced by SBA's directed restructuring of the joint venture prior to obtain their approval. Furthermore 8(a) firm was required to provide copies of the SBA approved joint venture agreement as a prerequisite for contract award. The simultaneous interaction of the SBA with the venturing parties and the Department of State's contract officer's negotiations appeared to make a formal request for SBA intervention superfluous at the time.

Our response to the GAO's specific recommendation follows:

Recommendation 1: To ensure that agencies are properly overseeing ANC 8(a) contracts, we recommend that the Secretaries of the Departments of Defense, Energy, Homeland Security, the Interior, State, and Transportation and the Administrator of NASA take the following action: Work with SBA to develop guidance to agency contracting officers on how to comply with requirements of the 8(a) program such as limitations on subcontracting and notifying SBA of contract modifications, particularly when contracting with 8(a) ANC firms.

We concur with this recommendation, and will work with the SBA to develop standardized guidance to contracting officers on monitoring limitations on subcontracting and SBA notification of contract modifications.

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Appendix VII: Comments from the Department of Energy

Note: Page numbers in the draft report may differ from those in this report.



Department of Energy
Washington, DC 20585

APR 19 2006

Katherine V. Schinasi
Managing Director
U.S. Government Accountability Office
Acquisition and Sourcing Management
441 G Street, NW
Washington, D.C. 20548

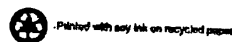
Dear Ms. Schinasi:

The Department of Energy (DOE) appreciates the opportunity to review and comment on the draft report entitled: "Contract Management, Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight" (GAO-06-399). This letter provides DOE's comments.

The Government Accountability Office (GAO) notes at page 17 that several contracting officers, including one from DOE, used the 8(a) Alaskan Native Corporation (ANC) program as a way to help their agencies meet small business goals. As the draft report well establishes, the ANC program, as authorized by statute and implementing regulations, is an appropriate tool for agencies to use in meeting their small business goals. However, the discussion suggests that agencies, including DOE, rely "significantly" on the ANC program to achieve their small business goals.

DOE contracting officers do not limit the award of small business contracts to only ANCs. In fact, the substantial number of DOE contract awards to small business, including those of the National Nuclear Security Administration (NNSA), go to small businesses *other than* ANC firms. In Fiscal Year 2005, DOE's obligations to ANCs were only 6.9 percent of all DOE small business obligations.

Secondly, the draft report at page 20 discusses the limitation of subcontracting clause that requires the prime contractor in service contracts to perform 50 percent of the work associated with personnel costs, citing the example of the DOE contract with AHTNA. As the draft report correctly notes, in footnote 18, the contract with AHTNA is a construction contract and is, therefore, subject to a different standard. Accordingly, there is an internal inconsistency between the language on page 20 and footnote 18. The draft report should be corrected prior to its final release.



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If you have any further questions, please feel free to contact Edward R. Simpson,
Director of the Office of Procurement and Assistance Management, at (202) 287-1310.

Sincerely,



Ingrid Kolb
Director
Office of Management

cc: Theresa Speake, ED-1
David Boyd, NA-63
Andrew S. Geary, MA-62

Appendix VIII: Comments from the Native American Contractors Association

Note: Page numbers in the draft report may differ from those in this report.



888 16th Street N.W., Suite 800
Washington, D.C. 20006
Ph: 202-349-9845
Fax: 202-355-1399
www.nativeamericancontractors.org

April 17, 2006

Ms. Katherine Schinasi, Managing Director
Acquisition and Sourcing Management
United States Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Re: GAO Report on ANC 8(a) Procurement

Dear Ms. Schinasi:

The Native American Contractors Association (“NACA”) submits the following comments to the Government Accountability Office’s (“GAO”) report on procurement from ANCs in the Small Business Administration’s (“SBA”) Section 8(a) Business Development program (the “8(a) Program”).¹ NACA was formed to increase the awareness of the benefits of using firms owned by Indian Tribes and Alaska Native Corporations (“ANCs”) (collectively “Native Entities”) to provide goods and services to the federal government. The mission of NACA is to enhance self-determination through preservation of government contracting participation based on the government-to-government relationship between Native Americans and the federal government.

I. Introduction

NACA believes the GAO report shows the success of the federal policy of promoting Native American government-to-government participation in the federal marketplace. Federal contracting promotes economic self-sufficiency and provides economic and employment benefits for Native Americans, who are among the poorest communities in the nation. It is important to note that the GAO did not find evidence of abuse by ANC 8(a) companies. Rather, the GAO found that some government agencies do not always follow the rules, and absent improved oversight, there might be potential for abuse. In reviewing the report, NACA recognizes that GAO found government acquisition processes to be flawed in some respects. NACA will work with government officials to improve these processes and urges lawmakers to focus on improving oversight and not to make substantial changes to the Native provisions of the 8(a) program.

The report correctly notes that some ANCs have achieved success by participating in the 8(a) Program. NACA also notes that most Native Entities are just beginning to enter the federal marketplace as a way to generate long-term revenue streams, create jobs for their members and

¹ On March 28, 2006, representatives of NACA were briefed by the GAO on the draft ANC report. However, NACA was not permitted to keep a copy of the draft report. Accordingly, these comments reflect our views on the broad parameters of the report and not all the details contained therein.

in the communities in which they work, and provide cultural and social benefits to member communities. Participation in the 8(a) Program has also enabled Native Entities to develop the experience, skill, and expertise necessary to succeed in the competitive federal marketplace. NACA believes that the GAO should more fully acknowledge the legal and policy basis of 8(a) Program rules for Native Entities and should provide a broader perspective on issues that impact the entire federal procurement system. For instance, the potential for abuse of sole-source contracting does not stop and start with 8(a) contracts.

The GAO report identifies a number of areas in which the SBA and other agencies can improve oversight of ANCs in the 8(a) Program. NACA is not commenting on matters in the Report that relate solely to government procurement processes and oversight. However, we note that the recommendations could involve the development of policies that could significantly impact shareholders of ANCs and Indian tribes in the 8(a) program. Executive Order 13175 calls for consultation and collaboration with tribal officials in the formulation of federal policies that have "tribal implications".² Should the SBA take any action to implement GAO's recommendations, the agency is legally obligated to consult with Native Americans and, where appropriate, to use consensual mechanisms including negotiated rulemaking. Since NACA represents Native Entities that would be directly impacted by any changes to existing federal policy, we encourage the SBA and other agencies to consult with NACA when considering regulatory recommendations in this report.

II. Indian Law and Policy: Why Native Entities Have Special Contracting Rights

SBA 8(a) Program Regulations

The GAO report recognizes that Congress provided unique contracting provisions in the 8(a) Program to help spur economic development for Native Americans. These provisions include:

- Program eligibility rules for Native Entities that allow parent companies to own multiple 8(a) firms without violating limitations on affiliation.
- Exclusion from the competitive thresholds limiting the size of sole-source contracts in order to help these firms develop a sustainable revenue base—rather than mandating their employment practices or limiting their activities to a single geographical area.

The 8(a) Program rules applicable to a Native Entity purposely differ from the rules governing 8(a) firms owned by individuals.³ Unlike an 8(a) firm owned by an individual, a Native Entity has an organizational obligation to provide for the significant social and economic needs of all of its community members—who can number anywhere from hundreds to tens of thousands. Native Entities share a moral imperative to create permanent, self-sustained business operations to provide for current and future generations of their community members.

² *Memorandum for the Heads of Executive Departments and Agencies, Government-to-Government Relationship with Tribal Governments* (Sept. 23, 2004); Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 6, 2000).

³ Including Small Businesses, Small Disadvantaged Businesses, Women-Owned Businesses, HUB Zone firms or Service-Disabled Veteran-Owned concerns, as defined by the Small Business Act.

Federal Trust Responsibility to Foster Economic Development

Since the federal Indian policy of producing sustained benefits for Native Americans is embodied in the 8(a) Program, it is important to understand the legal, policy, and social context for these provisions. We discuss below how the 8(a) Program is working for Native Americans. The federal government's unique relationship with Native Americans derives from the U.S. Constitution's grant of power to Congress "to regulate Commerce... with the Indian Tribes."⁴ 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 Native Americans. As the Court stated, "the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else..."⁵ No other group of U.S. citizens has a comparable relationship with the federal government.

Congress was even more specific when articulating, in the Alaska Native Claims Settlement Act ("ANCSA"), the federal government's relationship with Alaska Natives.⁶ 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...⁷

ANCSA represented a new and experimental approach to fulfilling federal obligations to Native Americans: providing Alaska Natives with village and regional corporate structures, rather than a reservation system (as was done in the lower 48 States). 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. Congress has repeatedly emphasized that the most effective way to promote economic self-sufficiency and to minimize the dependence of Alaska Natives on federal assistance is through ANCs.⁸

As part of the federal government's constitutional trust responsibility, Congress has enacted many laws to foster self-sufficiency and economic development in Native communities. Among the most successful of these laws are the special provisions implementing Section 8(a) of the Small Business Act. These rules have helped Native Entities overcome economic barriers, create and expand competitive businesses in the private and federal markets, create new business opportunities in remote rural areas far removed from major markets, and return profits to their communities.

⁴ See Article I, § 8, ¶ 3.

⁵ See *Cherokee Nation v. Georgia*, 30 U.S. 1, 15 (1831); *see also Worcester v. Georgia*, 31 U.S. 515, 519 (1832) (recognizing "[t]he Indian nations had always been considered as distinct, independent political communities... and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection.")

⁶ See 43 U.S.C §1601, *et seq.*

⁷ See *Id.* at § 1601.

⁸ See *Alaska Native Commission Final Report, Vol. 1.* (1994).

Native Entities represent a separate type of contracting that makes sense when one considers they have a responsibility to provide benefits to entire communities. All 8(a) firms, including Native Entities, have a maximum 9-year participation term in the 8(a) Program. Likewise, all 8(a) firms, including Native Entities, 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. Native Entities 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, Native Entities 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 Native Entities 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.

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 Native Entities, Congress increased the likelihood of sustaining business opportunities, ownership, and revenues for Native Americans. These provisions are fulfilling the federal government's special legal obligations to Native Americans.

III. Government Contracting—a Vehicle for Economic Activity

Core Mission

The core mission of companies owned by Native Entities is much broader than typical companies because Native Entities must generate community-wide benefits and meet social and cultural needs. We appreciate that GAO noted the public policy goals of the 8(a) Program: developing business expertise, management capabilities, and sustaining economic development. Government contracting has been an effective tool for Native Entities to achieve their social, educational, and economic goals. Many Native Entities have leveraged their success in the 8(a) Program into other lines of business, learned to control their resources effectively, created new business opportunities, and reduced federal dependence. Procurement activities are especially important to Native communities located in remote rural areas that are far away from commercial markets.

As GAO points out, earning contracting revenues is only part of the mission of ANCs and other Native Entities. They also provide many other benefits including scholarships, training, and cultural programs. Seen in this broader context, statistics about the progress of ANCs in government contracting are impressive:

- Beginning with only one 8(a) participant in 1988, about 150 ANC 8(a) firms are operating today.
- 15 ANCs paid shareholder dividends (attributable to federal contracts) of \$18 million in 2003 and \$27 million in 2004.

- From 1999 to 2004, ANC 8(a) firms awarded shareholder scholarships of \$14.2 million.
- In 2004 alone, ANCs made \$4.8 million in additional donations to benefit Alaska Natives.
- In 2004, ANCs employed 2,116 shareholders in jobs related to Government contracts.
- ANCs provided jobs to 7,747 Alaskans, with a total payroll in Alaska attributable to federal contracts of \$141 million.⁹

These numbers prove how seriously ANCs consider their mission of advancing economic and social needs of their shareholders, and prove that 8(a) Program provisions for Native Entities are working as Congress intended. While the benefits of government contracting may not currently be distributed evenly among Native companies, a growing number of tribally- and ANC-owned companies are making gains in the government market. More tribes and ANCs are forming government contracting companies and applying for 8(a) certification.

The GAO report refers to statements by government officials who criticize the partnerships between ANCs and large companies. Working with a more established company can help an ANC acquire necessary technical and financing capabilities and transfer skills and knowledge. Not only are ANC joint ventures permissible, they are in the public interest because ANCs assume a proportionate risk, develop technical and human resource capabilities, and benefit from the expertise, experience, and financing capabilities of others. Also, as discussed below, government officials are awarding larger contracts and in order for small businesses to compete for them, it is sometimes necessary to partner with another company. These benefits help fulfill the longstanding Congressional policy of promoting ANC and tribal self-determination. As they build their capabilities, Tribes and ANCs can diversify their economies, create more jobs with higher skill and income levels, and generate more revenues for their communities—both at home and where they work.

In sum, the 8(a) provisions for Native Entities help the federal government fulfill its responsibility to promote Native self-determination and self-sufficiency. Just as Congress intended, this effective federal program helps spur economic development, taps into the existing federal marketplace, and provides contracting agencies with cost-effective and flexible procurement options.

Strategic Planning

Casual observers must be mindful not to make unjustified assumptions based on limited or superficial data on ANCs' business structures, executive compensation, or strategic decisions. Like any other business, ANCs utilize sophisticated strategic planning tools to balance these risks and benefits, with an eye on the bottom line and ongoing economic development. Moreover, ANCs must carefully balance between distributing profits to shareholders through

⁹ These figures are based on self-disclosures by the 13 ANCSA regional corporations and two village corporations. The focus of the GAO report was on ANCs, so comparable data on firms owned by tribes was not gathered.

dividends, and reinvesting profits to expand their revenue streams. Each ANC Board of Directors determines the proper balance between current cash distributions to its Native shareholders and investment back into the corporation to generate future benefits.

The GAO report includes a table that lists various business strategies used by ANCs. It must be noted that each organizational strategy is fully consistent with the law. In fact, federal statutes and regulations encourage the use of intermediate holding companies, as some ANCs operate. It is also important to note that decisions about corporate structure are but one of many strategic choices made by all firms, whether small or large. Corporate structure should be analyzed only within the context of overall business strategies, such as organizational design, business development, sales, and marketing; product and services delivery, customer service, and human resource development.

The 8(a) Program is Working

The 8(a) Program is working by enabling ANCs to acquire critical business skills and experience, leverage these to build self-sustaining businesses, diversify their economies, and directly and indirectly fund social, economic, and cultural benefits for Alaska Natives.

Table 1

Signs of Success: ANCs are Becoming:

More Competitive Within the 8(a) Program.			
	<u>2000</u>	<u>2004</u>	<u>Percent Change</u>
Competitive 8(a) Revenue	\$60,000,000	\$250,000,000	317%
More Competitive in the Overall Procurement Arena.			
	<u>2000</u>	<u>2004</u>	<u>Percent Change</u>
Non-8(a) Revenue	\$130,000,000	\$550,000,000	323%
No More Reliant on 8(a) Contracting.			
	<u>2000</u>	<u>2004</u>	<u>Percent Change</u>
Non-8(a) Revenue Relative to Government Contracting Revenue	34%	34%	0%
No More Reliant on Sole Source Contracting.			
	<u>2000</u>	<u>2004</u>	<u>Percent Change</u>
Competitive Revenue Relative to All 8(a) Revenue	24%	24%	0%

Source: Figures 2 & 4 of the GAO's Report.

As *Table 1* show, ANCs have increased the level of non-8(a) federal contracting by over 300% in the 5-year period analyzed by the GAO. This dramatic increase in ANCs' ability to win revenue outside the 8(a) Program demonstrates the economic development resulting from 8(a) Program rules for Native Entities. Similarly, the amount of competitive business won by ANCs also increased over 300% between 2000 and 2004. A lot of attention has been devoted to the dramatic rise in 8(a) contracting among ANCs, however, GAO data shows that during the study period, ANCs have *not* become more reliant on 8(a) contracting in general, or on sole-source

contracting in particular. Although 8(a) contracting represents the same percentage of ANC business in 2004 as in 2000, ANCs have earned a far larger dollar volume of competitive and private-sector revenues.

Further, this data does not account for companies that have “graduated” from the 8(a) Program (and have thus disappeared from the GAO’s data set). Accounting for this data would likely show that ANC reliance on 8(a) contracting, both competitive and sole-source, has fallen. A number of additional facts cited by the GAO provide evidence of the importance of the 8(a) Program for ANC shareholders:

- ANCs are using 8(a) revenues to create management-training programs and to build sustainable businesses and Native economies. As GAO notes, one-third of the 30 firms surveyed have instituted management-training programs.
- ANCs pay market rates to bring in high-level executive talent to contribute their expertise, train native managers, and pursue benefits for shareholders.
- ANC holding companies are hiring experienced talent from partners and subcontractors and leveraging human capital to win competitive contracts.¹⁰
- ANCs are using the 8(a) Program to diversify their economic base across disparate businesses.¹¹
- ANCs actively engage in Mentor-Protégé relationships to transfer skills and knowledge from experienced partners into the ANCs themselves and from ANC Mentors to tribally owned Protégés.

While the GAO report appears to attribute lack of oversight of ANC participation in the 8(a) Program to unclear regulations, we respectfully urge caution against regulatory changes which would undermine the success of ANCs. The 8(a) Program, as applied to Native Entities, is an exceedingly rare example of federal Indian policy successfully promoting economic diversification and self-sustainability of Native Americans, without large direct federal appropriations.

Against all odds and predictions of extinction, Native Americans have continued to evolve in the worst conditions and climates. We are proud that our businesses are adapting to circumstances beyond our control, and succeeding in spite of historic challenges. The 8(a) Program has proven to be an invaluable tool in achieving economic self-sufficiency. ANCs have a long-term interest in providing good value for fair prices, with honesty and integrity, contrary to anecdotal invective.

¹⁰ See Table 1 above and GAO reference to hiring by ANCs of former partner and subcontractor employees.

¹¹ See GAO Appendix, describing ANCs operation in multiple NAICS codes. It should be noted that while the GAO report states that 2 of the 5 largest ANC participants in the 8(a) program utilize 8(a) as “only one investment in a diversified portfolio” (at p. 22), the GAO’s own example demonstrates that even ANCs focused exclusively on 8(a) can achieve diversification of their economic portfolios – through contracting in a wide variety of businesses and by building 8(a) companies that have graduated to become viable (and in some cases saleable) businesses in their own right (at p. 22).

IV. Government-wide Procurement Challenges

The percentage of all government contracts held by ANCs is small relative to all federal procurement dollars. In 2004, about 13 percent (\$1.1 billion) of all 8(a) contract dollars were awarded to Alaska Native Corporations that represent 100,000 Alaska Native shareholders. The remaining 87 percent (\$7.3 billion) of the 8(a) contract dollars were awarded to roughly 9000 8(a) companies owned by individuals.

Many of the principal criticisms presented in the GAO report are not specific to ANC contracting, but rather are common to the entire procurement system. Still other issues address concerns that involve *all* small businesses, not just ANCs. While GAO's scope was limited to a review of the ANC portion of the 8(a) Program, a fair treatment cannot be obtained by isolating ANCs from overarching procurement problems that GAO has diagnosed in other reports. By presenting these issues only in the context of the 8(a) Program, the GAO report obscures the wider public policy issues and minimizes their significance.

ANCs are not at the root of small businesses' contracting problems.

Contract bundling and consolidation are a systemic concern for policymakers, procurement officers, SBA officials, and small businesses. ANC 8(a) firms play a minimal role, yet the GAO report implies that ANCs antagonize small businesses. Contracts are bundled because "increased demands to make the acquisition process quicker and less complex coupled with reductions in the overall acquisition workforce have driven acquisition managers to bundle requirements."¹² The Office of Federal Procurement policy has found that substantially fewer small businesses are receiving federal contracts and the federal government is suffering from a reduced supplier base.¹³ It is not ANCs that inhibit the ability of small firms to win such awards, but rather the large number of tasks required by bundled contracts, their increasing dollar size, and often broad geographic scope.

A report prepared for the SBA's Office of Advocacy found that, for every 100 "bundled" contracts, 106 contracts are no longer available to small businesses. Similarly, for every \$100 awarded on a "bundled" contract, there is a \$33 decrease in contracts awarded to small businesses.^{14,15} Since bundled contracts typically run for a longer period of time and are broader in scope, the total number of new contract awards has declined. Consequently, although overall small business contracting dollars remained relatively constant, there has been a sharp decline in

¹² *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business*, Office of Federal Procurement Policy, (October 2002).

¹³ *Id.*

¹⁴ *The Impact of Contract Bundling on Small Business: FY 1992-FY 1999*, Eagle Eye Publishing for the SBA Office of Advocacy, (September 2000).

¹⁵ We note that there has been some disagreement on how to interpret the statutory definition of contract bundling. For example, GAO in the past has questioned the value of the Eagle Eye data in an earlier report on contract bundling because the definition used for [continued] bundling was different than the statutory definition. Nevertheless the OFPP report relied on the Eagle Eye data cited above as anecdotal evidence of contract bundling.

the number of new contract awards. The Office of Federal Procurement Policy found that significantly fewer small businesses received federal contract awards: from a high of 26,506 in fiscal year 1991, to a low of 11,651 in fiscal year 2000.¹⁶

If these contracts were not awarded to ANC 8(a) firms, the requirements would nonetheless be bundled and likely available only for large business performance. Moreover, there is no guarantee these contracts would be awarded competitively in the absence of rules for ANCs. A far more prevalent trend is the use of large Indefinite Delivery Indefinite Quantity (IDIQ) contracts to avoid competition and protests from disappointed bidders, as GAO's own Administrator, David Walker, recently pointed out to the Acquisition Advisory Panel.¹⁷

The decline of small business contracting has also been exacerbated by the acquisition reforms of the 1990's. GAO found that the acquisition workforce was reduced approximately 22 percent from 1990 to 1998.¹⁸ The GAO reported that, according to agency officials, contracting officials sought ways to streamline procurement practices partly as a result of workforce reductions. These practices include contracting vehicles such as blanket purchase agreements, IDIQ contracts, and GSA Federal Supply Schedules.¹⁹ Pressure on agencies to do more with less results in the award of larger contracts, for which all small firms have difficulty competing. As a result, the list of the top 100 large federal contractors has changed very little despite reform efforts.²⁰

In addition to skirting the broader problem of contract bundling, the GAO report makes no mention of another factor which has a negative impact on all small businesses: agencies improperly counting awards to large businesses toward their small business goals.²¹ As a result, it is clear that agencies have not met their statutory obligation to award 23% or more of their contract dollars to small business. GAO and other government investigators have thoroughly explored these issues and have conclusively demonstrated that they are cardinal problems facing all small businesses.

Despite these well-documented systemic problems with the procurement system, a small but vocal few in the small business community have targeted ANCs as a convenient scapegoat. Unfortunately, the GAO's report may exacerbate such mistaken assumptions. In reality, federal prime contracting has ballooned to over \$300 billion in recent years. No group of small businesses has actually "lost" volume; the only change is to the perception that others might have gained a proportionally greater share. The unfortunate truth is that, as a whole, all lawful participants in SBA's contracting programs have seen their total share diminish well short of

¹⁶ Fn. 11.

¹⁷ Testimony of David Walker, March 29, 2006, before the Acquisition Advisory Panel, as reported in BNA's Federal Contracts Report, Vol. 85, No. 13, p. 357 (April 4, 2006).

¹⁸ GAO-01-119, *Trends in Federal Procurement in the 1990's*.

¹⁹ See Major Clark III, J.D. and Chad Moutray, Ph.D., *The Future of Small Businesses in the U.S. Federal Government Marketplace*, SBA Office of Advocacy (2004).

²⁰ *The Future of Small Businesses in the U.S. Federal Government Marketplace*, p. 14.

²¹ See GAO: *Reporting of Small Business Contract Awards Does Not Reflect Current Business Size*, GAO-03-704T (May 7, 2003.); *Report Prepared for SBA: Analysis of Type of Business Coding for the Top 1,000 Contractors Receiving Small Business Awards in 2002*, Eagle Eye Publishing, (December 2004).

statutory goals (which, are a floor—not a ceiling). Congress should respond to the advice GAO by urging the SBA and other contracting agencies to honor and enforce existing small business procurement goals and provide enough oversight to make these goals stick.

Non-competitive practices pervade the procurement system.

To suggest that ANCs are the root of the Federal Government's anticompetitive practices belies the facts. During fiscal years 1998 through 2003, the Department of Defense awarded \$362 billion in contracts without full and open competition, more than one-third of the department's procurement budget. The top five contractors alone received \$145 billion in sole-source contracts from the Department of Defense.²²

SBA and Agency failure to track and enforce rules on subcontracting limitations applies to all small business contracting.

ANCs have taken very seriously the limitations on subcontracting and will work with SBA and the agencies to develop a system to gather data to demonstrate their compliance. That said, the limitations on subcontracting apply not only to ANC 8(a) contracts, but to all small business contracting programs.²³ The failure of SBA and other agencies to enforce these provisions is not limited to ANCs and cannot be properly viewed in isolation. In fact, in 2005 the U.S. Court of Federal Claims published a decision involving the subcontracting limitation regulations and the offender in that reported decision was not an ANC.²⁴ The GAO's report does not acknowledge that this is an SBA-wide requirement and a government-wide shortcoming.

The GAO report has not acknowledged the fact that performance of work requirements provide a compelling advantage to small businesses and taxpayers. As recently noted with respect to post-Katrina contracting, large prime contractors commonly use multiple layers of subcontracting to procure the goods and services needed for reconstruction efforts.²⁵ At each level, primes and higher-tier subcontractors add administrative markups that, cumulatively, result in prices several times larger than the true cost of such goods and services. In small business contracting, the markup problem diminishes because small business prime contractors are required to self-perform large portions of their contracted work. The GAO report does not mention this important benefit of small business contracting.

Modifications Beyond Scope

Among other systemic deficiencies in federal procurement is the lack of regulatory guidance and meaningful enforcement of rules concerning contract modification. Specifically, the rules are not clear on when a modification is within the scope of an *existing* contract, and when modifications should be considered *new* contracting action. GAO has addressed this issue

²² *Outsourcing the Pentagon*, Center for Public Integrity, (November, 2004).

²³ Limitations on subcontracting define the percentage of work a prime contractors must perform in-house. See 13 C.F.R. § 125.6.

²⁴ See *e.g.* *Transatlantic Lines v. United States*, 68 Fed.Cl. 48, (September 30, 2005).

²⁵ See *e.g.* *Multiple Layers of Contractors Drive Up Cost of Katrina Cleanup*, Washington Post, p. A1, (March 20, 2006).

in previous reports about the procurement system.²⁶ One of the most notorious illustrations of this problem is the well-chronicled use of Department of Interior contracts by DOD to obtain interrogation services in Iraq. To confine reference to this issue only to ANC 8(a) contracts is patently unfair to ANCs, their communities, and taxpayers. Moreover, it ignores a broader problem acknowledged by the entire procurement community. Although NACA welcomes the call for better guidance on changes in contract scope, it is concerned that the limited scope of the GAO report gives the false impression that its recommendations will ameliorate broader systemic problems.

SBA and Agency procurement staffs must be increased.

NACA supports any effort that brings relief to the long-suffering SBA workforce, especially the Alaska District Office. In addition, NACA welcomes efforts to increase agencies' acquisition workforces and other resources. We regret that GAO has not tied this report to the body of research about the critical decline of the procurement workforce.²⁷ This shortage is at the root of each issue in the GAO report on ANCs: failure to track and meet small business goals, avoidance of competitive processes whenever possible, failure to track and enforce small business performance of work requirements, and improper expansion of contract scope to avoid new contracting actions.

V. Conclusion

We appreciate that GAO recognized NACA as a representative of Indian tribes and Alaska Native Corporations. Our members are grateful for the opportunity to provide these comments and information during the GAO's research. In closing, we echo the GAO's finding that the 8(a) Program helps Native Entities to overcome economic barriers, create and expand businesses, participate in the federal marketplace, and provide cultural and social benefits to their communities. We look forward to the chance to assist the federal government in continuing to fulfill its special obligations to Native Americans.

Sincerely,



Chris McNeil, Jr.
Chairman

²⁶ See *GAO: Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, GAO-05-201 (April 2005).

²⁷ See *GAO High-Risk Series - An Update*, GAO-05-207 (January 2005).

Appendix IX: Alaska Native Corporations with Subsidiaries Participating in the 8(a) Program

Below is a list of Alaska Native corporations that own subsidiaries participating in the 8(a) program as of December 2005:

Regional Corporations (12)

Ahtna, Incorporated
Arctic Slope Regional Corporation
Bering Straits Native Corporation
Bristol Bay Native Corporation
Calista Corporation
Chugach Alaska Corporation
Doyon, Limited
Koniag, Incorporated
NANA Regional Corporation
Sealaska Corporation
The Aleut Corporation
The 13th Regional Corporation

Village Corporations (33)

Afognak Native Corporation
Alaska Peninsula Corporation
Baan o yeel kon Corporation
Becharof Corporation
Bethel Native Corporation
Cape Fox Corporation
Chenega Corporation
Choggiung, Limited
Cully Corporation
Deloycheet, Incorporated
Dinyea Corporation
Gana-a'Yoo, Limited
Kaktovik Inupiat Corporation
Kikiktagruk Inupiat Corporation
Klukwan, Incorporated
K'oyitl'ots'ina, Limited
MTNT Limited
Ninilchik Native Association, Incorporated
Old Harbor Native Corporation
Olgoonik Corporation
Ouzinkie Native Corporation
Paug-Vik, Limited
Port Graham Corporation
Sea Lion Corporation
Sitnasauk Native Corporation
St. George Tanaq Corporation

**Appendix IX: Alaska Native Corporations
with Subsidiaries Participating in the 8(a)
Program**

Tanadgusix Corporation
The Eyak Corporation
The Kuskokwim Corporation
The Tatitlek Corporation
Tikigaq Corporation
Tyonek Native Corporation
Ukpeagvik Inupiat Corporation

Urban Corporations (4)

Goldbelt, Incorporated
Natives of Kodiak, Incorporated
Kenai Natives Association, Incorporated
Shee Atika, Incorporated

Group Corporations (0)

Appendix X: Benefits That Alaska Native Corporations Provide to Their Shareholders

Through our review of documentation provided by the 13 regional and 17 village or urban Alaska Native corporations (ANC) included in our review, as well as interviews with corporation representatives and shareholders, we gained an understanding of how the corporations communicate with and obtain input from their shareholders and of the benefits they provide.

The ANCs communicated with their shareholders through surveys, Web sites, newsletters, annual reports, local media, shareholder committees, and annual and other periodic meetings. Some had “open door” policies, which gave shareholders the opportunity to voice their opinions to management at any time. Additionally, corporations took steps to reach out to shareholders both out of state and in the villages. For example, one corporation’s officials conducted the annual meeting via Web cast and noted that Internet attendance was beginning to outpace in-person attendance. Another corporation rotated its annual meeting among Anchorage, Seattle, and its regional hub. Additionally, several of the regional corporations regularly traveled to their villages to seek input. Steps taken by one to facilitate village outreach included moving the location of its annual meeting from the regional hub to the villages; holding the meeting in the native language; and investing in a boat to facilitate transport to the region’s villages.

Shareholder preferences for benefits differed among corporations. For example, one corporation stated that its shareholders prioritized protection of their land and the subsistence lifestyle.¹ Shareholders of other corporations placed a greater value on dividends, scholarships, training, and job opportunities.

Corporations reported targeting benefits towards the needs of their shareholders. Such projects included

- investing in low-cost Internet service as a tool to reduce the isolation of a particularly remote village;
- issuing death benefits in the form of food vouchers because the cultural tradition among its shareholders is to host and feed visitors from the time of death through burial services;

¹ The subsistence lifestyle depends on wild resources for basic needs such as food, clothing, and fuel as well as for trade, arts, and ceremony.

- investing in an insurance company when other insurance companies were reluctant to insure shareholders' homes; and
- subsidizing heating oil for residents of a small, remote community north of the Arctic Circle, absorbing a loss of \$2.75-\$3.00 per gallon.

Some regional corporations stated that they required sizable revenues to provide benefits to a large shareholder base. Of the corporations we reviewed, the 13 regional corporations had approximately 102,000 shareholders, and the 17 village and urban corporations had about 17,000 shareholders.² Overall, the corporations we reviewed saw a 31 percent increase in their number of shareholders since incorporation.³ The number of shareholders at two regional corporations more than doubled since incorporation.

The 30 ANCs included in our review reported providing three categories of benefits

- dividends,
- other direct benefits, and
- indirect benefits

Dividends: In 2004, the 30 corporations paid a total of \$121.6 million in dividends. Eleven corporations issued no dividends. Of the corporations that issued dividends, payments ranged from \$1.71 per share to \$171.00 per share. In a given year, a shareholder may have received a dividend from his or her village corporation and an additional dividend from his or her regional corporation.

Corporate officials noted that dividend payments, no matter how small, meant much to their shareholders in many rural villages where basic necessities were expensive—for example, milk cost \$12 per gallon and fuel cost \$5 per gallon.

Original shareholders received 100 shares upon incorporation. One village corporation's 137 shareholders owned as few as one and up to 200 shares, with an average of about 50 shares.

²Each eligible Alaska Native is generally entitled to membership both in the corporation established for his or her village and in the regional corporation in which the village is located.

³One corporation was unable to provide us with its original enrollment data.

A third of the ANCs created permanent funds to build up a reserve for future dividends. Two corporations told us that these funds allowed them to issue dividends even in years when they were unprofitable.

Half of the ANCs established policies specifying an amount or percentage of net income to be distributed as shareholder dividends. For example, one corporation's board required an increase in its annual dividend amount by 10 percent over the previous year. Another corporation annually distributed 66 percent of its average net income for the prior 5 years to shareholders. The result of this policy coupled with some unprofitable years was that in 2004, this ANC paid 100 percent of its income in dividends to shareholders.

Other Direct Benefits:

- *Shareholder hiring preference and job opportunities.* All of the corporations we interviewed reported a hiring preference for shareholders. Some corporations extended this preference to shareholders' families, other Alaska Natives, and/or other Native Americans.
- *Other employment assistance programs.* In addition to offering a shareholder hire preference, corporations made efforts to encourage other shareholder employment. Nine of the 30 corporations offered a management training program. Some corporations had agreements with partner companies encouraging shareholder hire. One corporation had a preference to conduct business with shareholder-owned businesses. Another corporation's employment assistance programs included mentoring; one-on-one counseling; business and career fairs; survey of shareholders over 18 seeking employment; and tracking shareholder employment status and interests in a database.
- *Benefits for elder shareholders.* Twelve of the 30 corporations we interviewed reported issuing benefits for elder shareholders. Some corporations paid additional regular dividends to elders, while others made one-time financial payments. Two corporations made in-kind benefits for elders, such as a lunch program or a bus service.
- *Scholarships.* Almost all corporations offered scholarships for shareholders.
- *Internships and other youth programs.* Many corporations provided internships or other youth programs for shareholders at parent and subsidiary companies. Two Washington, D.C.-based subsidiaries provided housing and other relocation assistance to their interns. Additionally, one corporation instituted the Young Adult Advisory

Mentor program, which allows its youth to participate in the corporation. Corporate officials told us that they instituted mentoring and internship programs to lead to future involvement of shareholders in management and leadership roles.

- *Burial assistance.* Twenty-two of the 30 corporations reported providing some kind of assistance to the family of a deceased shareholder. Forms of burial assistance include cash, life insurance payments, or in-kind donations.
- *Land leasing, gifting or other use.* Most of the village and urban corporations we interviewed leased, gifted, or made other use of the land given to the village corporation in the Alaska Native Claims Settlement Act⁴ settlement for shareholders. For example, one corporation gifted five acres to any shareholder who requested it.
- *Community infrastructure.* Several corporations invested in the infrastructure of their villages. For example, after the Department of the Interior's Bureau of Indian Affairs ceased barge service to its remote village, one corporation established a transportation company that became the only mechanism to bring goods to the community. Other projects included remodeling the community washateria⁵ and administering and subsidizing a village's cable and Internet utilities.
- *Support of the subsistence lifestyle.* Corporations took steps to protect and maintain the subsistence lifestyle of their shareholders. One corporation built in subsistence leave into its personnel policy. Another corporation leased its land for "fish camps," or plots along a river for shareholders to catch and smoke fish in the summertime.
- *Cultural preservation.* Twenty-four of the 30 corporations we interviewed invested in cultural and heritage programs, which included museums, culture camps, or native language preservation.
- *Establishment and support of affiliated foundations or nonprofit organizations.* Twenty-one of the 30 corporations established affiliated foundations or nonprofit organizations.

Indirect Benefits:

⁴ Pub.L.92-203 (codified as amended in 43 U.S.C. 1601, et seq.).

⁵ A washateria is a community laundry and shower facility found in villages without running water.

- *Donations to other nonprofit organizations.* Almost all of the corporations donated to various nonprofit organizations. For example, one corporation donated to organizations that advocate for Alaska Natives, such as the Alaska Federation of Natives, Alaska Native Arts Foundation, Alaska Native Justice Center, and Get Out the Native Vote.
- *Support to other corporations.* Some regional corporations provided various kinds of assistance to the village corporations in their regions. For example, one regional corporation is trying to develop 8(a) partnerships with its village corporations to help them enter the 8(a) program with lower start-up and administrative costs. Other regional corporations provided recordkeeping, natural resources, and regulatory and community planning services for their village corporations.

Appendix XI: Example of an Alaska Native Corporation Owning Subsidiaries That Market Their Capabilities under Overlapping NAICS Codes

One Alaska Native corporation that we reviewed owned seven subsidiaries participating in the 8(a) program, with six of them marketing their abilities to perform work in the same line of business.

Subsidiary	NAICS Codes
Subsidiary A	443120 Computer and software stores
	511210 Software publishers
	541512 Computer systems design services
	561210 Facilities support services
Subsidiary B	221112 Fossil fuel electric power generation
	531130 Lessors of miniwarehouses and self-storage units
	561210 Facilities support services
Subsidiary C	562111 Solid waste collection
	335312 Motor and generator manufacturing
	335313 Switchgear and switchboard apparatus manufacturing
	336611 Ship building and repairing
	561210 Facilities support services
Subsidiary D	561612 Security guards and patrol services
	611430 Professional and management development training
	443120 Computer and software stores
	511210 Software publishers
	561210 Facilities support services
Subsidiary E	517310 Telecommunications resellers
	238210 Electrical contractors
	541511 Custom computer programming services
	561210 Facilities support services^a
Subsidiary F	562111 Solid waste collection
	541618 Management consulting services
	541930 Translation and interpretation services
	561210 Facilities support services
	611420 Computer training

Source: GAO analysis of ANC data.

^aSubsidiary E marketed 561210 (Facilities Support Services) as its primary NAICS code.

Appendix XII: GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

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