Testimony Before the Senate Committee on Small Business and Entrepreneurship on "Opportunities and Challenges with the Small Business Administration's Federal Contracting Programs."

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Carl H. Marrs
Chief Executive Officer
Old Harbor Native Corporation

Thank you for the opportunity to submit this testimony. My name is Carl Marrs, and I am Chief Executive Officer of Old Harbor Native Corporation, an Alaska Native Village Corporation formed pursuant to the Alaska Native Claims Settlement Act.. I have worked for Old Harbor Native Corporation as their CEO since 2012, and prior to that I was CEO of Cook Inlet Regional Corporation, an Alaska Native Regional Corporation. I am also an Alaska Native, and a shareholder of CIRI and Seldovia Native Corporation. Through my more than forty years of experience with Alaska Native Corporations, I have had extensive experience seeing Alaska Native Corporation's in the federal government contracting field, and have also seen first-hand the evolution of the SBA's 8(a) Program. Before I address the Small Business Administration's Section 8(a) Program that this testimony is about, I need to address why we are here, and some of the statistical data that will help the Committee understand the need for such programs.

Old Harbor Native Corporation (OHNC) is one of 252 Native village corporations established by Congress in 1971 under the terms of the Alaska Native Claims Settlement Act (ANCSA). OHNC was incorporated in 1973 and originally enrolled 329 shareholders under the Act. Today, there are 434 shareholders residing primarily in Anchorage, Kodiak and Old Harbor. Old Harbor is unique in its blending of older Alutiiq traditions, the Orthodox Christian Religion, and a strong subsistence based lifestyle with newer influences from modern American society.

ANCSA, which was a purposeful alternative to the Lower 48 reservation system, was the first settlement of its kind between Native Americans and the federal government. Alaska Natives were provided a corporate structure for holding land and capital, with the freedom to control their own economic and social future. OHNC's investments and operations are comprised of seven active operating areas, which include Government contracting, equipment sales and leasing, communications, engineering services, hospitality services and construction services. OHNC's primary line of business is to provide government and other contract services including information technology, logistics, engineering, ship maintenance, document management, cyber security, and base operations services.

We support our shareholders through dividend distributions, employment opportunities, internship programs, educational and cultural programs, and financial support for burial assistance. Additionally, we support our community through strategic planning, economic & infrastructure development, advocacy and administrative support for local entities. These community activities reflect the work of Old Harbor Native Corporation, Alutiiq Tribe of Old Harbor, and the City of Old Harbor who

collaborate to unite the community for a healthy future. OHNC works to enhance community life by preserving the culture and the land, while also providing opportunities for Shareholders to continue to thrive in their traditional Alutiiq home.

ANCSA and Native Alaskans

Congress enacted ANCSA in 1971 to accomplish "a fair and just settlement" of the aboriginal land claims of Alaska Natives. Section 2 of ANCSA mandates that this settlement should be accomplished "in conformity with the real economic and social needs of Natives." ANCSA required Alaska Natives to form corporations to participate in the settlement. To date, ANCSA corporations, including village corporations, are a vital cog in the economic life and success of Alaska Natives.

After thirty plus years of ANCSA, Alaska Natives, however, are still economically underperforming in comparison to other groups. For example, the national statistics for higher education attainment remain disproportionately lower among the Native American population than the national average. According to the National Center for Education Statistics, *Digest of Education Statistics*, Table 104.20., the percentage of Native American persons 25 to 29 years old who had attained a Bachelors degree or higher was 10.2% in 2016, a staggering drop from the previous year's rate of 15.3%. The national average has remained greater than 30% since 2008. Table I shows this disparity between the national average and Native Americans in regards to the attainment of higher eduction.

Table I- Higher Education Attainement, National Average and Native American

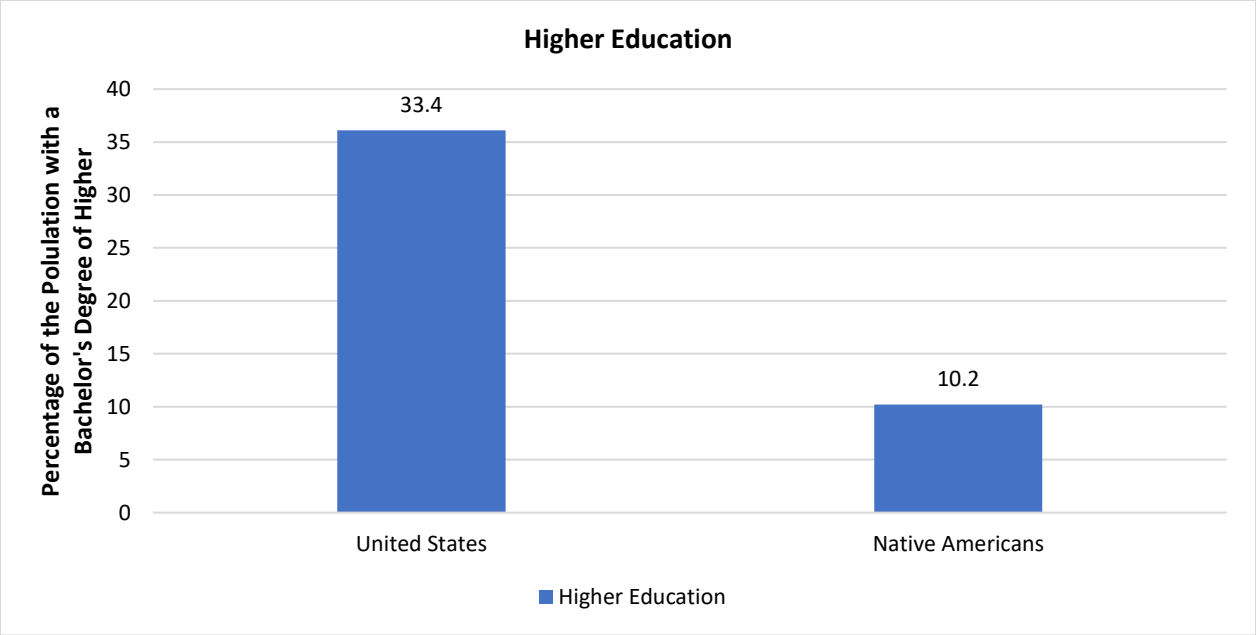
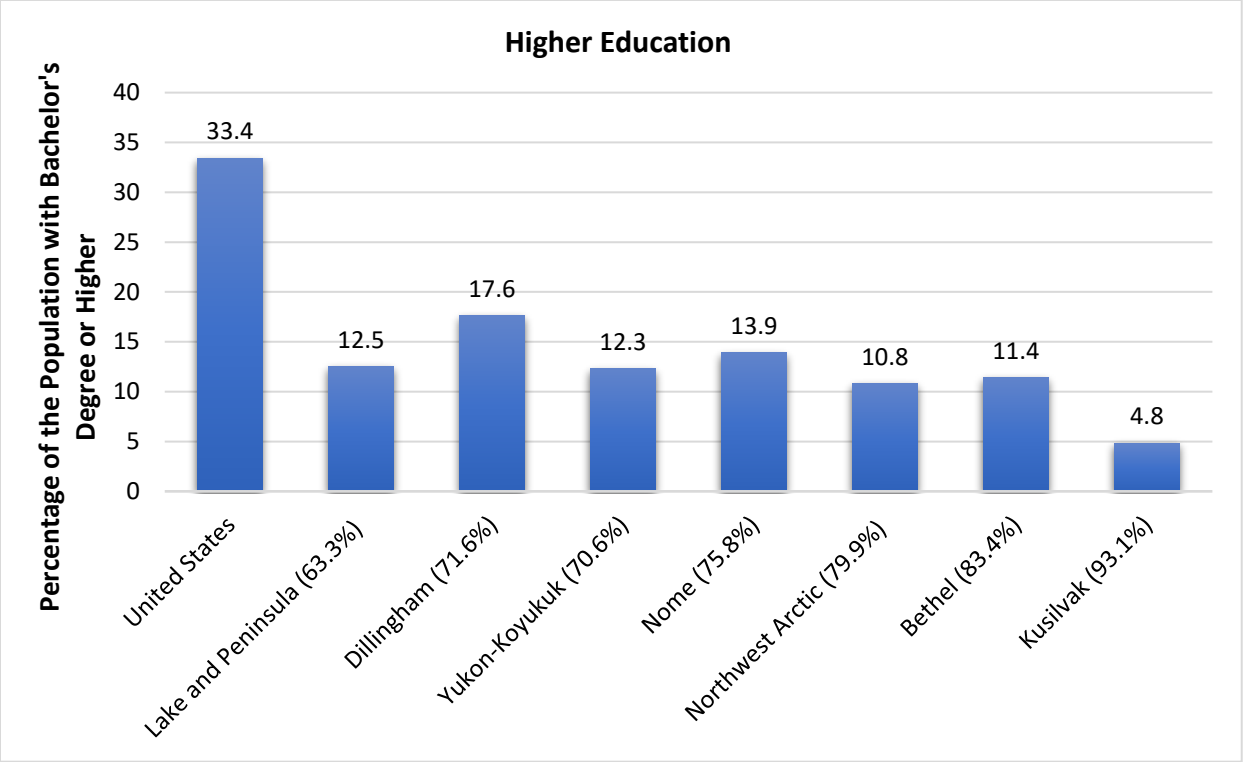


Table II reflects the percent of persons who have attained a bachelor's degree or higher in political boroughs/ municipalities throughout Alaska, with the percent of Alaska Native population in the region in parenthesis. Data was obtained from the U.S. Census Database generally, State & County QuickFacts, United States Census Bureau, http://www.census.gov/quickfacts/fact/table/US/PST045217 (last visited May 22, 2018).

Table II- Higher Education Attainment, Regional



Unemployment rates among the Native American population also remain disproportionately higher than the national average. Table III reflects the Unemployment rate in political boroughs/ municipalities throughout Alaska, with the percent of Alaska Native population in each region in parenthesis. *See* Local Area Unemployment Statistics, Bureau of Labor Statistics, https://www.bls.gov/lau/#data (last updated June 15, 2018).

Table III- Regional Unemployment Data for Native American communities

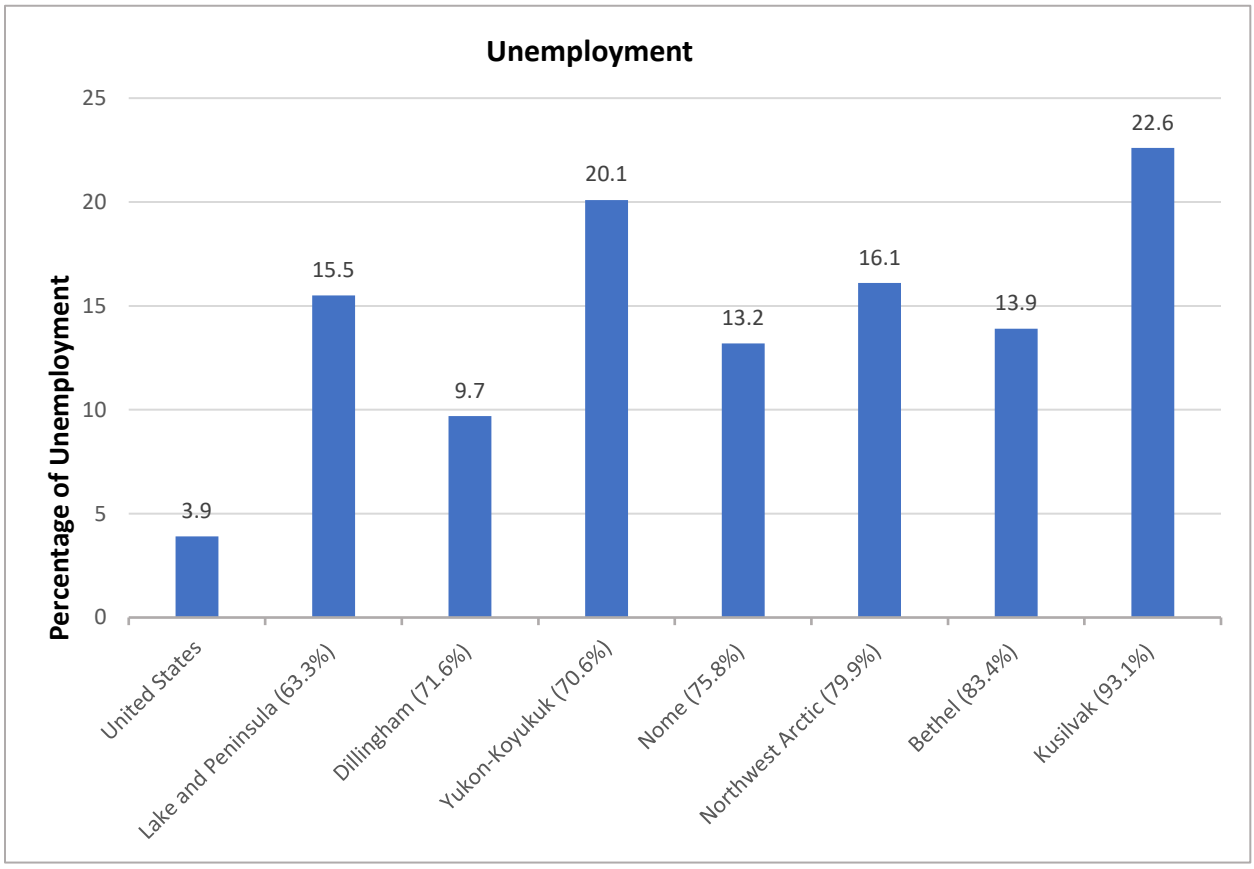


Table IV reflects the percent of persons living in poverty in political boroughs/ municipalities throughout Alaska, with the percent of Alaska Native population in each region in parenthesis. S*ee* U.S. Census Database, State & County QuickFacts, United States Census Bureau, http://www.census.gov/quickfacts/fact/table/US/PST0 4521 (last visited May 22, 2018).

Table IV- Regional Poverty data for Native American communities

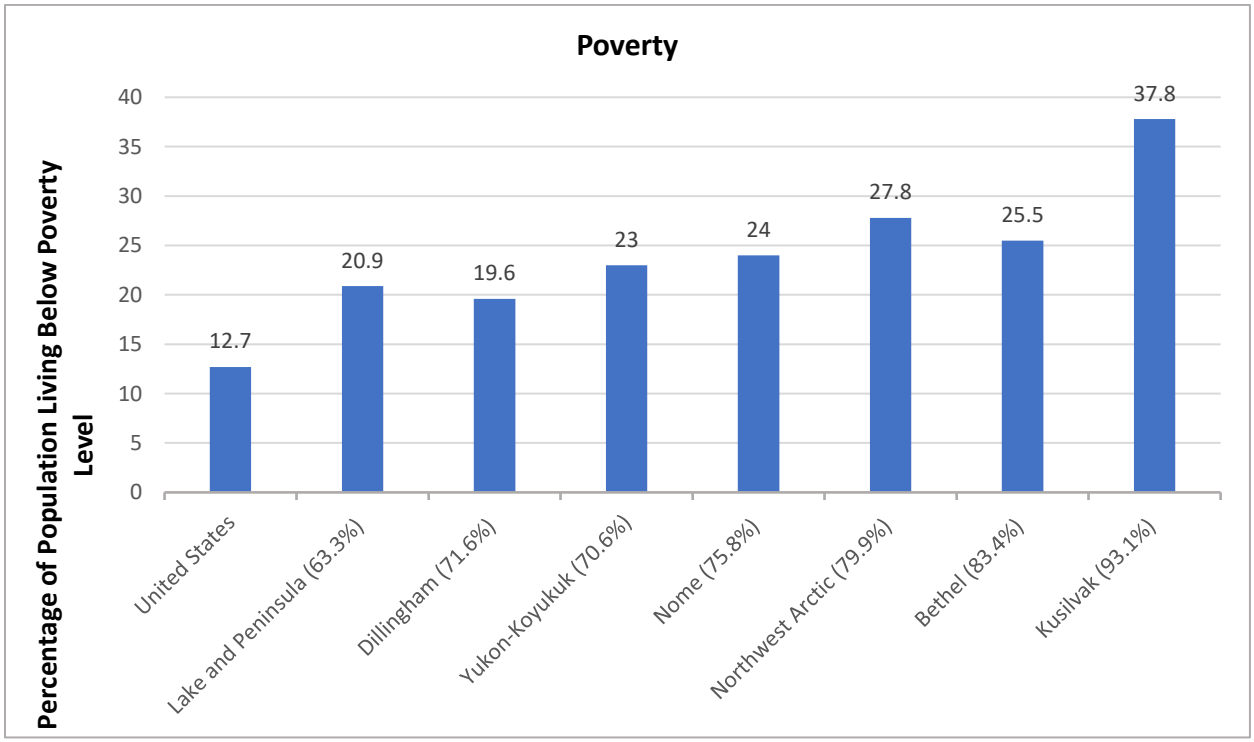
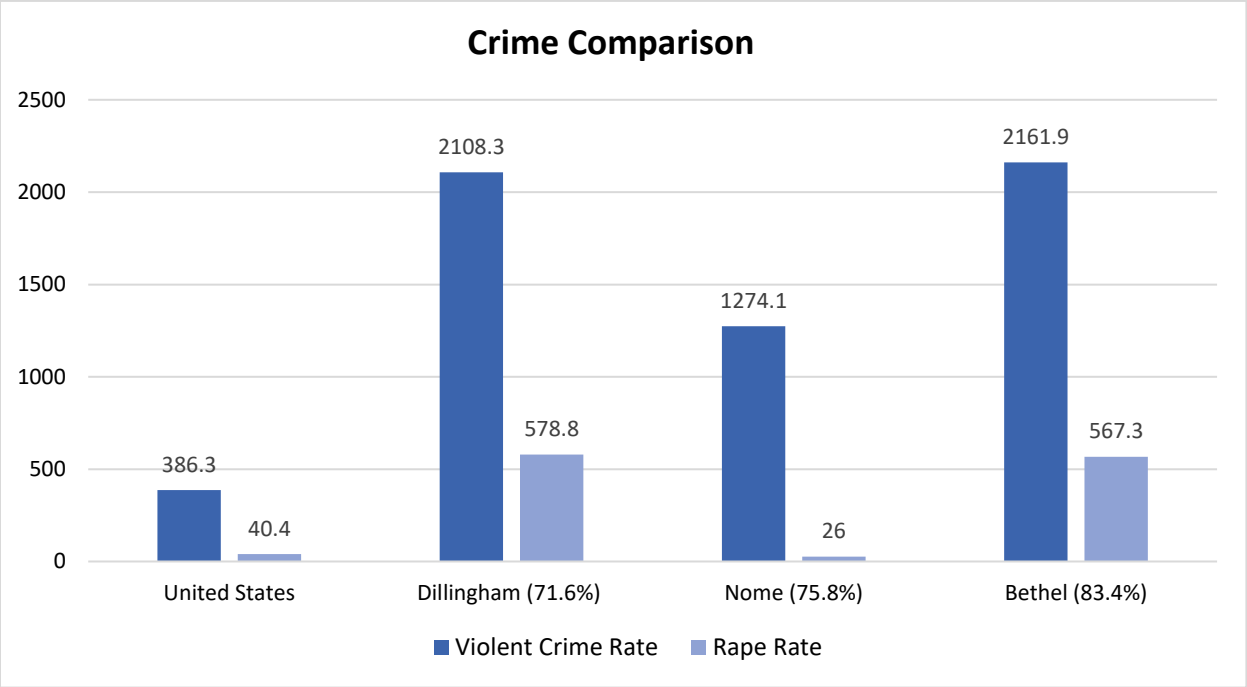


Table V reflects violent crime and rape rates in Alaska Native Communities, which are disproportionately high compared to the rest of the nation, data obtained from the 2016 Crime Report. United States 2016, Fed. Bureau of Investigation, https://ucr.fbi.gov/crime-in-the- u.s/2016/crime-in-the-u.s.-2016/tables/table-6/table-6-state-cuts/alaska.xls (last visited May 22, 2018).

Table V- Regional Crime Data for Native American communities



These economic disadvantages are combined with higher costs of living for many Alaska Natives. For example, according to the State of Alaska Fuel Price Report, heating costs for rural Alaskan Communities is exponentially higher than national averages, as shown by Table VI.

Table VI July 2017 On the Road System and Off the Road System: Prices in the Gulf Coast and Interior Regions

Gulf Coast	On Road System	Off Road System	Interior	On Road System	Off Road System
Heating Fuel:			Heating Fuel:		
High	$2.57	$5.90	High	$3.95	$10.00
Low	$2.37	$2.83	Low	$2.21	$3.45
Average	$2.49	$3.70	Average	$2.85	$5.85
Gasoline:			Gasoline:		
High	$3.28	$6.18	High	$4.00	$10.00
Low	$2.87	$3.25	Low	$2.49	$4.60
Average	$3.10	$4.46	Average	$3.35	$6.16

Alaska Native Corporations And The SBA's Section 8(A) Program

There is no doubt that Alaska Natives are struggling economically, due to limited economic opportunities for them in Alaska and the corresponding social, cultural, and educational barriers that poverty and poor economic conditions create. Alaska Native Corporations, however, are a significant and vital resource and method to assist Alaska Natives thrive and take their proper place in the economy of Alaska and the nation. One of the primary means by which Alaska Native Corporations can provide that economic and social assistance to their people in the form of jobs, scholarships, benefit programs, and dividends, is through the generation of revenue and employment opportunities through the Small Business Administration's 8(a) Program.

The United States Government has had federal preferences for small business contracting since World War II, and it is a major feature of federal procurement activities. *See* Jenny J. Yang, Small Business, Rising Giant: Policies and Costs of Section 8(a) Contracting Preferences for Alaska Native Corporations, 23 Alaska L. Rev. 35 (2006), at 319-20. As part of the federal procurement system's focus on utilizing small businesses, the SBA administers the Section 8(a) Program, which was authorized by the Small Business Act of 1958. The purpose of the Section 8(a) Program is assist otherwise eligible "small disadvantaged business concerns" with business development to compete in the American economy.

Congress has recognized the critical role the SBA's 8(a) Program has and will play for Alaska Native Corporations through amendments to ANCSA in 1988, 1992, 1998, and 2002, all of which were designed to permit and encourage Alaska Native Corporation participation in the SBA's 8(a) Program. With these amendments, Congress recognized that Alaska Native Corporations and their shareholders have traditionally been and are economically and socially disadvantaged, and that the federal government has a vested interest in providing them with a process by which they can grow economically to an level equal with other business entities that have not had the limitations, restrictions, and disadvantages historically experienced by Alaska Natives. Indeed, ANCSA has been specifically recognized as the "modern mechanism that designates Native Alaskan Corporations as the vehicle used to provide continuing economic benefits in exchange for extinguished aboriginal land rights." *AFGE v. United States*, 195 F. Supp. 2d 4, 21-22 (D.D.C. 2002), aff'd, 330 F.3d 513 (D.C. Cir. 2003), cert. denied, *AFGE v. United States,* v. U.S., 540 U.S. 1088 (2003) (citing to *Koniag, Inc. v. Koncor Forest Res.*, 39 F. 3d 991, 997 (9th Cir. 1994)).

Critically, in amending ANCSA to insure and provide for the ability of Alaska Native Corporations to participate in the SBA's 8(a) Program, Congress affirmed that it was not just regulating federal procurement from small business concerns, but exercising its constitutional authority to regulate commerce with Indian tribes. In 2002, Congress amended ANCSA to confirm the intent of Congress that "Federal procurement programs for tribes and Alaska Native corporations are enacted pursuant to its authority under Article I, Section 8 of the United States Constitution [authorizing Congress to regular commerce with Indian tribes]." *See* Pub. L. 107-117, Div. B, Ch.7, §702, January 10, 2002.

As such, the 8(a) Program, for Alaska Native Corporations, is not merely a matter of federal procurement from small businesses, but an exercise of the powers of Congress to regulate economic activities between the federal government and Native Americans and that the program is "further[ing] the federal policy of Indian self-determination, the United States' trust responsibility, and the

promotion of economic self-sufficiency among Native American communities." *AFGE v. United States*, 195 F. Supp. 2d 4, 18 (D.D.C. 2002), aff'd, 330 F.3d 513 (D.C. Cir. 2003). The 8(a) Program, for Alaska Native Corporations, is much more than a small business program. It is a means by which the Federal Government fulfills its unique relationship, and obligations, to American Indians, including Alaska Natives. *See e.g. AFGE v. United States,* 330 F.3d at 520 (D.C. Cir. 2002). Access to government contracting has long been used by the Federal Government to fulfill its fiduciary and trust obligations to Native Americans, and the Section 8(a) Program is a critical part of that.

Justified Expansion Of Sole Source Awards Under The 8(A) Program

Given the importance of the 8(a) Program, it is critical for Congress and the SBA to review, modernize, and streamline the 8(a) Program to make it a more effective and efficient program for both Alaska Native Corporations and the federal agencies that use the program. One of the most important aspects of the 8(a) Program as it relates to Alaska Native Corporations is the ability of federal agencies to award sole source contracts to eligible (and capable) Alaska Native Corporation 8(a) Program participants. There are, however, policies and regulations that limit the utilization of such sole source awards. They restrict the size of such awards to $22 million dollars (including all option years and modifications), and prevent the award of multiple sole source awards for the same contract to the same family of companies. These are some of the issues that I would like to address with the Committee today.

First, it is important to understand the rationale for permitting sole source awards of any size to Alaska Native Corporation's under the 8(a) Program. In most cases, 8(a) Program participants are only owned by one individual. Indeed, except for Alaska Native Corporations, Native Indian business concerns, and Native Hawaiian Organizations, the Section 8(a) Program's rules require that a single disadvantaged person own 51% or more of the 8(a) Program participant. As such, the traditional rules on limiting sole source awards to "individual owned" 8(a) Program participants to manufacturing contracts up to $6.5 million and for service contracts up to $4 million makes sense. Assuming a healthy 5% profit margin, a sole source award of $4 million to a traditional 8(a) Program participant who is wholly-owned by a single disadvantaged person would result in a healthy return to that person of $200,000.

Alaska Native Corporations, however, are not owned by only one individual. Most Alaska Native Corporations have hundreds of shareholders. As such, if that same $4 million sole source contract was awarded to an Alaska Native Corporation with 500 shareholders, and resulted in the same 5% profit margin, that would mean that each shareholder only realized a $400 benefit from the contract. To that end, subjecting Alaska Native Corporations to such limits on sole source awards, when considering the number of Alaska Native shareholders that Alaska Native Corporations have, would have effectively eliminated the utility of the 8(a) Program in regards to Congress's goal to use federal procurement policy as a method to fulfill its unique obligations to, and interests in, Alaska Natives and to assist them, and their shareholders, to achieve economic independence. Accordingly, recognizing that due to the unique nature of Alaska Native Corporations, *i.e.,* that they are "Community"-owned, not "Individually"-owned, and the fact that Alaska Native Corporations have been chosen by Congress "as the vehicle used to provide continuing economic benefits [to Alaska Natives] in exchange for extinguished aboriginal land rights," *AFGE*, 195 F. Supp. 2d at 21-22, Congress chose to remove the limitation on the size of sole source contracts that can be awarded to

qualified and capable Alaska Native Corporations in the Section 8(a) Program. As a point of reference, there are over 127,000 Alaska Native shareholders of the more than 200 Alaska Native Corporations. Alaska Native Corporations also not only benefit their respective shareholders, but Alaska Natives in general with programs set up for descendants of shareholders and the Alaska Native community as a whole.

Even though Alaska Native Corporations are serving this large base of Alaska Natives, restrictions on the use of sole source awards to Alaska Native Corporations in the 8(a) Program have been adopted over the years. Currently, under Section 811 of the 2010 NDAA which effectively only applies to Alaska Native Corporation 8(a) participants, federal agencies may award sole source contracts to ANC 8(a) companies only up to $22 million without going through a process to obtain a Justification and Approval (J&A) required by Section 811 for awards in excess of $22 million, a process that is rarely used and, for many agencies, requires approval of the head of the agency, rather than the contracting officer making the procurement decisions.

The blanket restriction on the award of sole source contracts in excess of $22 million without a Section 811 J&A, and the process and approvals required for such J&As, is a significant and unjustified limitation on the 8(a) Program. We, and the entire Alaska Native contracting community, praise Senator Sullivan's efforts to successfully obtain important guidance from the all branches of the Department of Defense ("DoD") clarifying that Section 811 of the 2009 NDAA, the provision that imposes a unique and separate "J&A" requirement on the award of sole source Section 8(a) contracts to Alaska Native Corporations (or to Native Hawaiian or Tribal Corporations) in excess of $22 million, is not intended to be a "de facto" bar on sole source 8(a) Program contracts to qualified Alaska Native Corporation contractors, and that guidance clarifies that the levels of approval for the J&A and contract award are commensurate with the dollar value of the contract, as is done under the Competition in Contracting Act. As important and useful as this guidance is, the key is to make sure it is implemented properly down the chain of command to the contracting officers themselves. Furthermore, the guidance adopted by the different agencies of the DoD regarding sole source awards to Alaska Native Corporations in the 8(a) Program should be expanded to other, non-DoD agencies. All federal agencies, and Alaska Native Corporation contractors, would benefit from reviewing and adopting the clarifications and understanding regarding the use of 8(a) Program sole source awards enacted by the DoD.

Furthermore, it would be a tremendous help to Alaska Native Corporations if the SBA would educate contracting officers on how to use the various SBA programs, including a focus on the proper use and purpose of the J&A process. Contracting officers currently too often view the J&A requirement as a barrier to awarding sole source contracts in excess of $22 million, turning what was meant to be a requirement to justify the sole source award to a de facto bar. That was not the intent of Section 811 of the 2009 NDAA, and the SBA should take immediate efforts to educate contracting officers on the proper use and implement of the J&A requirement for sole source awards.

In the longer term, the $22 million threshold for requiring a J&A should be increased and the value of modifications or option years should be excluded from determining if the $22 million threshold has been met. This makes logical sense, particularly when considering the original reason for removing the limitation on sole source awards to Alaska Native Corporations. Even if a sole source award for $22 million is made to an Alaska Native Corporation, if the awarded contract is for a base year plus

four option years, a relatively standard term, that $22 million contract is actually only a contract for $4,400,000 per year, resulting in the relatively minimal benefit to the individual Alaska Native shareholders as described above. Therefore, a further improvement can and should be the excluding of option years and modifications from the calculation as to whether the $22 million threshold requiring a J&A has been met.

For too long this provision limiting the size of sole source awards to Alaska Native Corporations has had a very negative chilling effect on Alaska Native Corporation contracting, and I applaud the efforts of Senator Sullivan, Senator Murkowski and Congressman Young, as well as other Members of Congress who support Native American contracting, to improve and clarify Section 811 of the 2009 NDAA.

The Benefit to Permitting More "Follow-On" 8(a) Contracts

Another important issue regarding the 8(a) Program and sole source awards are the restrictions on the award of sole source "follow-on" contracts. Currently, if an 8(a) Program participant completes an 8(a) sole source contract, SBA rules prohibit a federal agency from awarding a new sole source contract for that same work (a "follow-on" contract) or to any company in that contractor's family of companies (i.e. a subsidiary or a sister company). One thing that is very problematic about this rule regarding "follow-on" contracts is that it flies in the face of the basic purpose of the 8(a) program – giving small companies a growth opportunity as they earn new business through superior performance. In many cases, an 8(a) Program participant can be awarded a start-up project and do well only to watch the follow-on contract (and the subsequent growth opportunities) be handed off to another, unrelated company who will benefit from the work they started. Any limitation on follow-on contracts should recognize this fact by allowing the follow-on to occur no more than three times. Doing so will both benefit Alaska Native Corporations (and non-Alaska Native Corporation 8(a) Program participants such as "Lower 48" Tribal and Native Hawaiian Corporations) by permitting them to continue to grow and take advantage of the expertise and experience that they develop through hard work, while also benefiting the federal government by permitting them to continue to utilize the management team that has developed the experience and know-how to effectively, efficiently, and cheaply deliver under the contract. Only truly effective and efficient 8(a) Program participants will receive follow-on work through sole source contracts, as federal contracting officers are not going to issue sole source contracts to entities that have not demonstrated excellence and efficiencies in their prior performance of the work. It is important to recognize that sole source awards are not required—a variety of sole source authorities exist in federal law, and the SBA 8(a) authority is but one of them. These sole source authorities exist purely as "tools in the federal "tool box" to be used at the discretion of the federal agencies that need flexibility in acquisition and procurement. If conducted properly, the federal governments' interests are fully protected in the negotiation and award of a sole source award under the 8(a) Program.

The current rules, however, don't permit such follow-on sole source awards, so companies must currently begin every sole-sourced project with the goal of expanding the future scope of the work enough to keep them eligible for the follow-on acquisition. Companies must always be asking themselves and their customers, "What does our work here not provide this customer that it could or should provide?" BD and Project Managers must work together to answer this question, develop new support concepts, and sell them to the customer throughout the life of each sole-source project. In

this way, the contractor can attempt to influence the legitimate expansion of scope needed to keep the follow-on in the family. If the project doesn't legitimately require new scope and the customer doesn't want to go through the time and expense of a competitive acquisition, the incumbent loses a growth opportunity and the government loses a high-performing, experienced contractor. This is an unnecessary process, and both the government and Alaska Natives would benefit from permitting follow-on sole source contracts to the same family of companies, at least up to three times.

Excessive Delays in Obtaining Security Clearances for Government Contractors

In addition to the specific changes to the 8(a) Program discussed above, there are other important areas of needed improvement in the federal contracting area. One area of critical need is security clearances for both individuals and facilities. Obtaining the appropriate facility and personnel security clearances are a critical and major hurdle to successful government contracting by all small businesses, not just Alaska Native Corporations.

In 2014, the Office of Personnel Management's (OPM) major security clearance contractor, USIS, was targeted by a massive cyber-attack which compromised the personnel files of as many as 25 million government workers. As a result of this information compromise, OPM terminated its long-standing and substantial contracts with USIS and opted to pursue an in-house solution to security clearance processing. In January 2016, OPM announced the creation of a semi-autonomous agency, called the National Background Investigations Bureau (NBIB), which would be responsible for conducting investigations into individuals who need to hold security clearances for employment purposes. Today, NBIB is the primary service provider of background investigations for the Federal Government and conducts approximately 95 percent of government-wide background investigations for more than 100 federal agencies.

Implementation of this change was hampered as OPM struggled to standup the requisite personnel, creating a significant slowdown in clearance processing and an enormous backlog of pending clearance requests that exists to this day. During a Senate Intelligence Committee Hearing held on March 7th of this year, Charlie Phalen, Director of the NBIB said there are currently 710,000 investigations in backlog, of which 164,000 are records checks or credentialing support, 337,000 are initial investigations, and 209,000 are reinvestigations. Since 2014, the time it takes to get a clearance has more than doubled, with a Secret clearance taking more than eight months and Top Secret/Sensitive Compartmented Information (TS/SCI) clearances taking more than a year. ManTech CEO, Kevin Phillips, has testified that he estimates "approximately 10,000 positions required from the contractor community in support of the intelligence community have gone unfilled due to these delays" since 2014. The delays and costs of this process have caused the Government Accountability Office (GAO) to place it on its "High-Risk List," which designates government programs and projects in need of major improvements or overhaul.

These delays in obtaining security clearances has a material impact on small businesses, including those in the 8(a) Program. While there is a significant amount of unclassified work in the federal market, much of it requires security clearances. The classified work is especially attractive to contractors, because their contract values are generally higher than unclassified contracts of similar scope. However, getting a security clearance is very costly to small companies in terms of time, management involvement, and missed opportunities.

For example, small businesses are often subject to a Catch-22. To get a federal clearance, a company must first have key executives go through the process. After they are cleared, the organization can then request a facility clearance. This leaves small companies with two basic choices. They can find people with existing clearances to serve as Key Management Personnel (KMPs) – something large businesses can do quite easily but small businesses struggle to do - or they can initiate the personnel clearance process for their non-cleared company managers. Depending on the level of clearance required, this process can take up to eighteen months.

Now for the catch. Before a company can submit a request for a clearance, whether for personnel or for a facility, they must have a classified project. So, to get a project you need a clearance, but to get a clearance you need a project. To make this work, small companies are forced to find sponsors (government or contractor) who will agree to put them on their DD Form 254 and identify them as needing a security clearance. While it used to be a frequent practice, Federal Government agencies now rarely sponsor companies for clearance anymore. As a result, small companies are forced to find sponsors who will give them a subcontract and will wait for them to be granted their clearances. The longer the clearance process takes, the less agreeable sponsors are. As a result of the increasing delays in clearance processing, small companies are spending large amounts of limited resources and still finding themselves locked out of work they are otherwise qualified to do.

The issues described above are exacerbated by the fact that almost every agency in the Federal Government tends to put a unique spin on the clearance processes. There is no "one-process-fits-all" approach. Each has different paperwork, security requirements and investigative and adjudication process. Once granted, clearances issued by one agency are frequently not honored by another. So, companies like ours that work across a broad spectrum of federal domains are required to manage each process independently using specialty personnel who have experience in each domain. This adds significant indirect costs to companies with small revenue bases, dramatically impacting rates and reducing their competitive posture.

Another issue relevant to small, native-owned enterprises is a review that is conducted as part of the facility clearance process – the Foreign Ownership Control and Influence Review. Its purpose is to ensure there is no foreign control or influence over the firm before it is granted a clearance. Even firms that are 100% Alaska Native-owned are subject to this review, which constitutes the most time-consuming portion of the facility clearance process. Through their participation in the 8(a) Program and other small business programs, this step could be eliminated or expedited for Alaska Native-owned companies as way of issuing clearances faster.

The costs and management requirements of the clearance process would be tolerable if the time it takes to get through it didn't result in so many lost opportunities. Because of the current delays, small business contractors are missing out on many opportunities to grow and offer valuable services to the government. In our company, we are forced to pass on several every year. Alaska Native Corporations, other small businesses, and the Federal Government are harmed by this market reality that could be fixed with nothing more than timely processing of security clearances.

There are some concrete steps that can be taken to address and remedy some of these issues. First, we should learn something from the startup of the NBIB in 2016. The DoD is set to take over its own background investigations after a provision in the recently passed 2018 National Defense

Authorization Act transferred authority from NBIB to DoD. Many small business contractors we have talked to are concerned that what happened during the NBIB transition will also happen at DoD. Congress should insure that the DoD is adequately prepared and has the necessary resources to hit the ground running on security clearances, including clearing up the massive current backlog.

Second, Congress and the SBA should encourage government agencies to sponsor small companies. This will be especially helpful for small companies whose Key Management Personnel ("KMPs") are cleared, but they lack a corresponding facility clearance.

Third, the practice of expediting clearances for those designated as KMPs should be reinstated. This practice, which facilitated earlier eligibility for facility clearances and classified contracts, was recently suspended because of the tremendous backlog. While it was being used it was a big help, especially to small businesses where options for assigning KMPs are much more limited.

Fourth, the Federal Government should use technology to expedite the investigative process. Established and emerging technologies from email to artificial intelligence offer a wide range of opportunities to improve this process. The most basic improvements could come from simply applying everyday technologies to speed up outdated investigative techniques which are heavily dependent on manpower. For example, investigators must go in person and write notes, rather than use tablets or PCs. They must physically visit everyone, when social media could be effectively used for many needs. Subjects are prohibited from emailing any information to an investigator. They must use the postal system or fax machines for long distance data collection rather than the internet. Some experts speculate that artificial intelligence, applied appropriately, could do a better job of assessing reliability than the investigative techniques used today.

Fifth, common investigative standards that apply across all federal agencies should be implemented. In addition to the well-known DoD-level clearances we must process for employees, there are many other clearance types across the federal spectrum – each with their own parallel clearance standards and different investigative and adjudication standards. So when clearances are issued, some agencies will not recognize another agency's clearance and require contractors and employees to go through the investigation process again and again when moving across federal domains. A more standardized approach to security clearances, and recognition by one federal agency of the clearance granted by a different agency, should be mandated.

Sixth, the SBA should address and clarify the issue of facility clearances for SBA-approved mentor-protege joint ventures ("JVs"). SBA-approved JVs are, by rule, unpopulated (i.e. do not have employees). The paperwork to request a FCL, however, has a question that asks, "Is this an unpopulated JV?" and, when answered, "yes," the JV is typically denied the clearance. To avoid that, we have to use the rules permitting "administrative" staff to work for an unpopulated JV, so we can put a Facility Security Officer on the JV for a few hours of work. That makes the JV populated from an FCL standpoint, but still technically unpopulated by regulation. This unnecessary practice increases the complexity of 8(a) JVs to no advantage or benefit to the government.

Finally, there should be better management of the need for classified positions. Many positions are probably overclassified. There are an estimated four million federal employees and contractors who presently need a security clearance of one type or another. Better management of the number based

on true need would result in contractors being able to put more people to work and would save the Government money as cleared people are generally more expensive than others.

We like an idea put forth by Jane Chappell, Vice President of Intelligence, Information and Services at Raytheon. She has suggested what she calls a "four ones" strategy: one application for processing applications, one investigation that continuously looks for additional information, one adjudication that is respected by all agencies, and one clearance that is recognized across the government. We expect it will take the government a long time to get this outcome, but when it does it will have been worth the trip for many small federal contractors.

Inappropriate Use of Low Priced Technically Acceptable Solicitations

Another area of concern is in the use of low price technically acceptable ("LPTA") solicitations. While Congress has made significant progress on restricting the use of LTPA solicitations, more enforcement of new guidelines enacted by Congress is needed. The latest LPTA guidelines are still vague enough to allow federal contracting officers to employ LPTA far more widely than is needed and often not in the government's best interest– for instance even on services contracts where price-centric acquisition strategies just do not offer the government the opportunity to conduct true best value source selections. While LPTA is one way the government has attempted to commoditize the "services" business because it make source selection easier, it frequently fails to deliver the best solution to the customer. Having learned this the hard way, the government is now trying to minimize LPTA use on contracts where true trade-off best value approaches make more sense, but it appears that, in practice, LPTA use will remain a part of the landscape for a long time. Focus on the use by federal agencies of LPTA, and whether their use is consistent with the limitations adopted by Congress, and Congress's intent, is sorely needed.

Another area of needed improvement is in source selection debriefs. After a contract award, losing bidders have the opportunity to request a debrief from the government. The purpose of the debrief is to give them information as to why they did not win the contract. These debriefings use to have more value to a losing company – especially small businesses - in helping them shape and fine-tune future proposal responses, but the current protest and litigation environment has changed all that. Contracting officers are required to offer debriefs, but their primary purpose has changed from "explaining the decision and strengthening the offerors potential on future bids" to "avoid saying anything that could be used against us in a protest." We always ask for a debrief, but they are seldom valuable to our growth. Given the poor utility of the debriefs, we have begun going back to the agency after the protest period has ended to request more detail about how we could have improved our proposal as compared to the winner. While this takes at least some of the legal pressure off the government and allows for a more open dialog, it should not be necessary. Federal procurement officials should not be so concerned about the possibility of a protest that they make the debriefing process a useless formality. Improvements to the debriefing process should therefore be made to make them more effective and helpful to small businesses.

Unnecessary Use of Bridge Contracts In Federal Procurement Actions

The overuse of bridge contracts to address delays in the federal procurement process is also an issue that should be addressed. Currently, contracting officers will use bridge contracts when transitioning from one contract to a new one if the new contract is not ready by the time the first contract is

expiring. The bridge contract is with the incumbent contractor, and is an extension of the original contract. While bridge contracts have their rightful place, too often they are used as a justification for delaying the acquisition process. We can wait months and years for federal procurement officials to release RFPs, with the work continuing on a bridge contract. Then, when the RFP is issued and proposals are submitted, protests can add months to the final award of contracts. Contracting officers also use bridge contracts to buffer gaps in the process caused by them and non-selected vendors. This is expensive for small business and it also almost always adds to the taxpayer's burden. So, while bridge contracts are appropriate and helpful when not overly depended upon, federal procurement officials need to better manage the procurement process and timelines so as to minimize the need for bridge contracts.

The Impact of Cybersecurity Regulations on Small Businesses

Cyber security is also an important issue. The new cyber security requirements imposed by the DoD are a significant obligation that small businesses who contract with the federal government are struggling to meet. We recognize the need for enhanced cyber security in today's electronic day and age. However, the new standards adopted by the DoD, and the lack of clarity regarding those standards or how they will be implemented, has caused them to both be expensive to implement and have long-term cost impacts. Despite assurances to the contrary, the cost of DFARs compliance has not been minimal. It has been material and required substantial money, time and effort. In order to limit the impact on small businesses, we hope, and request, that Congress will take steps to ensure that non-DoD agencies adopt standards that are consistent with the new DoD standards so that competing or duplicative cyber security requirements are not imposed on small businesses.

Modernization and Improvement of the Buy Indian Act

Congress should also consider addressing the Buy Indian Act to make it a more viable and usefully contracting tool. We have not realized a significant benefit from the Buy Indian Act due to poor experience with it by our agency customers. The pool of dollars available under the Buy Indian Act is very-limited and the probability of getting money from the fund is very low. As such, we do not use it as a marketing tool because it automatically lowers our credibility with federal procurement officials. To make the Buy Indian Act effective requires additional funds for the Buy Indian Act fund and a more consistent approach to honoring the purpose and intent of the Buy Indian Act. Furthermore, neither the Buy Indian Act or its implementing regulations have evolved to address todays government contracting word. The SBA should work with other agencies, and Congress, to update the Buy Indian Act, its regulations, and the application of those regulations.

Conclusion

As Alaska Native Corporations, American Indians, and Native Hawaiians, these federal programs were intended to benefit those indigenous peoples. However, more often than not, the intent of Congress is undermined by federal agencies when they draft and apply implementing regulations. In many cases, what Congress intended with its legislation is watered down and rendered ineffective, less effective, or so costly and burdensome to the entities that the programs are intended to benefit that it becomes impossible to actually realize Congress's intent. In the case of the SBA and the 8(a) Program, it has

been, and is, clear that the current regulatory process is not what Congress intended by requiring ANCSA and its related programs, including the 8(a) Program as applied to Alaska Native Corporations, to be carried out in "conformity with the real economic and social needs of Natives." In contrast, the regulatory process has generated a regulatory framework that often flies in the face of that Congressional intent, by making it so expensive and burdensome for small businesses to grow and succeed in the federal contracting that it is almost impossible to either successfully enter the federal contracting marketplace, or to maintain and grow if they manage to gain a toehold.

Thank you very much for the opportunity to testify before the Committee today. The work and focus that you are providing on the SBA, its 8(a) Program, and Alaska Native Corporations' participation in that program is an important step to insuring that Congress meets its unique obligation and interest in providing for self-determination, economic and otherwise, of Alaska Natives. The SBA and its 8(a) Program, and its continued improvement and evaluation, is a critical part to meeting the Federal Government's goal of realizing the economic independence of Alaska Native Corporations and their shareholders. We appreciate your hearing of our concerns and suggestions, and we are confident that the Committee, and Congress as a whole, will take the necessary steps to strengthen and improve the 8(a) Program in specific, and government contracting in general, to benefit both the Federal Government and the Alaska Native people. We need action and not more procrastination by federal agencies on these important issues. Federal agencies need to carry out Congress's intent and allow the indigenous people of the United States the opportunity to grow and bring their people to the same economic level equal as others, instead of allowing the poorest of the poor to continue to wallow in the dirt. We are not asking for a hand-out, but we are asking for a fair chance, consistent with federal government's unique relationship and obligation to Alaska Natives, and Congress's intent and goal to provide the means for economic self-sufficiency of Native American communities, to become productive and equal members of the economy of the United States.