

United States Senate

WASHINGTON, DC 20510

January 27, 2012

Mr. John P. Hutton
Director
U.S. Government Accountability Office
Acquisition and Sourcing Management
Room 4440A
441 G Street, N.W.
Washington, D.C. 20548

Re: GAO Report: Federal Contracting: Monitoring and Oversight of Tribal
8(a) Firms Need Attention

Dear Mr. Hutton:

I appreciate the upcoming GAO report regarding Tribal involvement in the Small Business Administration's (SBA) 8(a) program. As you know, the continued participation of Alaska Native Corporations (ANCs) in this program is critically important to the state of Alaska, Alaska Native communities, and the federal government.

Alaska Native Corporations are good corporate citizens and provide significant economic stimulus in Alaska and across the U.S. They are major employers and benefactors to the Alaska Native tribal non-profits. Through participation in the 8(a) program, ANCs provide educational opportunities for Alaska Natives and carry out cultural preservation initiatives. The socio-economic benefits from 8(a) contracts have been crucial to the development of Alaska's rural communities. Participation in the 8(a) program is essential to continuing this positive trend.

I would like to point out that the vast majority of federal contracts administered in conjunction with Tribal entities comply with the SBA's regulations. While this report focuses heavily on the flaws of the 8(a) program, I would like to call attention to the numerous benefits and success stories that have flourished as a result of Tribal involvement in 8(a). I find it unfortunate that a handful of bad actors have tarnished the reputation of the thousands of small businesses who are in ethical compliance with the SBA's 8(a) program.

This GAO report notes that no law or statute outlines the purpose of Tribal 8(a) firms' participation in the 8(a) program as being different than any other 8(a) in

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SBA regulations. I would like to direct you to a court finding that defined the special relationship which exists between the Federal government and Tribes and Alaska Native Corporations. For your reference, *AFGE v. United States*, 195 F. Supp.2d 4 (D.D.C. 2002) (“*AFGE I*”), *aff’d*, 330 F.3d 513 (D.C. Cir.) (“*AFGE II*”), *cert. denied*, 540 U.S. 1088 (2003), provides a basis for why Tribes and Alaska Native Corporations possess unique status and are able to receive special benefits in the 8(a) program. As you will note, in this case, the courts ruled that the Native-American preference in the SBA’s 8(a) program was declared constitutional.

Through various amendments to ANCSA, and the Business Opportunity Development Reform Act, which provided an “Indian Tribe Exemption”, Congress has made it clear that favoring Alaska Native Corporations for government contracts is an integral part of ANCSA’s economic settlement. The overwhelming importance of the 8(a) contracting opportunities for uplifting Alaska Natives and for the success of ANCSA cannot be understated.

This GAO report states clearly that SBA and contracting personnel compliance in enforcing and overseeing rules and regulations of Tribal involvement in the 8(a) program is paramount to its success. Adequate training of the contractor workforce and appropriate resourcing of SBA is necessary for this to occur. I concur with GAO’s recommendation for the SBA to beef up staffing for better oversight of such contracts. I also look forward to the initiation of the database being developed by the SBA and am optimistic that with the new SBA regulations in place the 8(a) program will continue to provide important benefits to Alaska and the rest of the country.

Thank you for your time and consideration, I look forward to working with you in the future.

Sincerely,

Mark Begich
United States Senator