

**HOLD UNTIL RELEASED BY THE  
SENATE COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS**

**STATEMENT BY**

**MR. SHAY D. ASSAD**

**ACTING DEPUTY UNDER SECRETARY OF DEFENSE**

**(ACQUISITION & TECHNOLOGY)**

**BEFORE THE**

**SUBCOMMITTEE ON GOVERNMENT CONTRACTING OVERSIGHT  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE**

**DEPARTMENT OF DEFENSE  
DEFENSE PROCUREMENT AND ACQUISITION POLICY**

**CONTRACTING PREFERENCES FOR ALASKA NATIVE CORPORATIONS**

**JUNE 16, 2009**

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Chairman McCaskill, Ranking Member Collins, Members of the Subcommittee: My name is Shay Assad and I am the Director of Defense Procurement and Acquisition Policy. I am also presently serving as the Acting Deputy Under Secretary of Defense for Acquisition and Technology, in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L).

After serving tours on board two Navy destroyers, I began my career in acquisition thirty-two years ago as a Naval Procurement Officer at the Naval Sea Systems Command. I left the Navy in 1978 and joined the Raytheon Company. Over my twenty-two year career at Raytheon I held a variety of contracting and operational positions ultimately serving as a corporate Vice President, a Senior Vice President, and finally, as Corporate Executive Vice President and Chairman and Chief Executive Officer of one of its major subsidiaries. I retired from Raytheon in July 2000.

In 2004, I entered Government service as the senior civilian contracting official for the U.S. Marine Corps where I was responsible for, among other things, all Marine Corps contracting in a combat environment. In April 2006, I was promoted to serve as the Director of Defense Procurement and Acquisition Policy where, among other things, I am responsible for all contracting policy related to contracting in a combat environment. I am also the functional leader for those who do contracting in a combat environment.

I want to thank you for the opportunity to appear before you and to participate in today's discussion on the role of Alaskan Native Corporations (ANCs) in the 8(a) program.

The Department recognizes the importance of small businesses to the nation and our industrial base as well as the statutory requirement to provide maximum practical opportunities for the small business community to participate in Department of Defense procurements. In addition to the general category -- the small business community -- the Department concerns itself with the following subsets: veteran-owned small businesses, women-owned small businesses, small disadvantaged businesses, historically underutilized business zone (HUBZone) participants, Service-Disabled Veteran Owned Small Businesses and small businesses participating in the 8(a) program. Small businesses owned by Alaskan Native Corporations, small businesses owned by Indian tribes and small businesses owned by native Hawaiian organizations are a subset of 8(a) small businesses. We appreciate and support Congressional mandated policies that provide opportunities for these entrepreneurs.

Your invitation asked me to address the role of ANCs in the 8(a) program. As you know, the Small Business Administration manages the 8(a) program. ANC firms, along with other tribally owned firms, participate in the 8(a) program, but, like Indian tribes and native Hawaiian organizations, receive unique procurement advantages not available to individually owned, 8(a) firms. For example, individually owned 8(a) firms generally compete for 8(a) set-aside procurements in which the anticipated total value of the procurement, including options, exceeds \$5.5 million for acquisitions assigned

manufacturing North American Industrial Classification System (NAICS) codes and \$3.5 million for all other acquisitions. ANC firms, on the other hand, are eligible to receive sole source 8(a) contracts regardless of the dollar amount. Additionally, 8(a) ANCs can also own multiple subsidiaries participating in the 8(a) program, provided each one is in a different primary North American Industry Classifications System (NAICS) code, unlike other 8(a) firms that can only own one company and no more than 20% of another 8(a) firm.

There are other differences in requirements for 8(a) ANC firms and other 8(a) businesses. Some of these advantages apply to other tribally owned concerns and native Hawaiian Organizations as well. Affiliated companies are not considered in size determinations for ANCs unless SBA determines that the 8(a) ANC firm or firms have a substantial unfair competitive advantage within an industry. There is no need for ANCs to demonstrate social and economic disadvantage since they have been deemed in legislation to be socially and economically disadvantaged. Finally, management of ANCs firms, i.e., the President/chief executive officer need not be a disadvantaged individual.

You also asked me to address the adequacy of the Defense Department's management and oversight of ANCs. Consistent with my expanded responsibilities following my appointment as Acting Deputy Under Secretary of Defense in January, 2009, I am currently attempting to determine the adequacy of our management and oversight concerns. I have asked my staff to work with the Defense Contract Audit Agency and the Defense Contract Management Agency to ascertain the extent to which

ANC contracts receive the same audit and oversight as other DoD contracts. To the extent they do not, I want to understand why and initiate whatever action is necessary to provide proper oversight. Our initial assessment indicates that over 70 percent of the 8(a) ANC contracts are for services. I want to ensure that these contracts are subject to the same management oversight and rigor that the Department has introduced in all its acquisitions for services. Further, I have directed my Deputy Director for Strategic Sourcing to initiate a detailed review of all of the Department's awards to 8(a) ANC firms for Fiscal Years 2008 and 2009. Through this review, we will gain a more detailed understanding of what we are procuring from ANC firms and in those instances where we are not competitively procuring, the rationale for a sole source approach. I will share the results with you when the review is complete.

In addition, I believe that we can strengthen the process when we make awards to 8(a) ANCs and we can add checks on subcontracting compliance. We need to ensure that all 8(a) firms perform at least 50% of the effort on 8(a) contracts as required by regulations. We stand ready to work collegially with SBA on these two specific aspects of small business procurement.

My purpose here today is not to challenge the assistance provided to 8(a) participants or specifically to ANC businesses. Again, I reiterate my support for the 8(a) program. My concern is with competition in this particular context, and the benefits the federal government and in particular, the Department of Defense, derives from the competitive marketplace. While we have the authority to use sole source procedures with 8(a) ANCs, we in fact do compete some 8(a) ANC procurements. In 2008,

approximately 40% of the DoD ANC awards were competed to some extent. I recognize this is below the DoD average and I would like to compete more.

On many occasions I have stressed the importance of fair competition which I believe is the cornerstone of our procurement system. It is important to obtain the best value for our warfighters and the best use of the taxpayer's dollars. GAO has reported that some sole source procurements to 8(a) ANCs have resulted in paying significantly more for services or products than was warranted. .

I respect the need to provide economic opportunities for 8(a) ANCs. However, based on the Department's experiences with the 8(a) program, I think there may be ways to promote additional competition in appropriate circumstances. The Department has used competition successfully to achieve best value in the 8(a) program and would welcome the opportunity to work with SBA in exploring options for the appropriate application of competition for actions involving ANCs. Who would benefit from this? Taxpayers would benefit because their dollars would be more efficiently and effectively spent. All the procuring agencies would benefit as the prices they would pay for requirements would be competitively determined. Small business would benefit as well because of the greater opportunities available. In short, an appropriate use of competition could provide economic opportunities for the 8(a) ANCs and further help agencies to obtain best value for the government and the taxpayer.

Finally, I would also like to emphasize the important role that small businesses play in the industrial base. Fostering an environment that is conducive to small business is critical in helping us to maintain our competitive procurement system. A strong and

vibrant small business program, which includes ANCs, is one that will allow small businesses to not only provide goods and services that are essential to our national security now, but will also enable them to develop over time so that they can meet the future needs of our nation's warfighters in a competitive marketplace.

### SUMMARY

Again, thank you for the opportunity to address the role of 8(a) ANCs in defense procurements. I look forward to working with you and keeping you apprised of our progress in the detailed analysis of 8(a) ANC awards. I would be happy to address any questions that you may have for me. Thank you.