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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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October 6, 2010

Peggy E. Gustafson
Inspector General
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Ms. Gustafson:

I am writing to request that you initiate an investigation into potential violations of federal statutes and regulations applicable to Alaska Native Corporations (ANCs).

As you know, on July 16, 2009, the Subcommittee on Contracting Oversight held a hearing on contracting preferences for ANCs. At the hearing, the Subcommittee heard testimony relating to the ability of ANCs to receive sole-source contracts of unlimited value, qualify automatically as economically and socially disadvantaged, have non-native management, and be deemed “small” businesses regardless of actual size or revenues for purposes of participation in the Small Business Administration’s (SBA) 8(a) program.¹

At the hearing, SBA’s Assistant Inspector General for Auditing, Debra Ritt, testified about the SBA Inspector General’s recent audit of the ANCs. According to Ms. Ritt:

Our audit confirmed that [ANCs’ ability to own multiple 8(a) companies] has allowed ANC companies that are large businesses ... to compete against truly small disadvantaged companies. Allowing large ANC companies to compete against other 8(a) companies appears to be inconsistent with the primary purpose of the 8(a) program of helping small-disadvantaged businesses to compete in the American economy.²

¹ Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, *Hearing on Contracting Preferences for Alaska Native Corporations* (July 16, 2009). See also Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, *Majority Staff Analysis: New Information on Contracting Preferences for Alaska Native Corporations (Part II)* (July 16, 2009).

² Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, Testimony of Debra Ritt, SBA Assistant Inspector General for Auditing *Hearing on Contracting Preferences for Alaska Native Corporations*, (July 16, 2009).

Ms. Ritt also testified that SBA had failed to conduct the limited oversight required to ensure that ANCs' multiple small businesses do not create an unfair competitive advantage. She continued, "[ANCs] are not restricted in the number of subsidiaries that they can enter into the 8(a) program. And as we have seen, as firms graduate, new ones get created ... [and] it happens quite frequently."³

On September 30, 2010, published accounts raised new information regarding potential abuses by ANCs of their 8(a) contracting preferences. According to the *Washington Post*, H. James Nunes, a consultant and former non-native executive for a subsidiary of Sitnasuak Native Corporation, SNC Telecommunications LLC (SNCT), may have improperly withheld information required by the government.⁴ According to the *Post*:

in July 2009, [Sitnasuak's interim president] found a binder containing documents known as SBA 1790 forms ... [which] are the required disclosures from people whom companies use to obtain government business ... [and] [f]orms for 2006 said SNCT had no one working in that capacity ... [and] were signed by Nunes above a line that said: "President, Partner, or Proprietor." On Sept. 10, [Sitnasuak's interim president] was given a letter from the SBA informing her that the management agreements with Nunes's firm had not been previously disclosed and approved in writing by SBA and "must be terminated" by the end of September 2009, according to a copy of the letter.⁵

The *Washington Post* also reported a pattern of lax oversight by the SBA which allowed the ANCs to award pass-through contracts to large corporations.⁶ These revelations confirm previous published reports and the Subcommittee's own findings. In 2009, the Subcommittee conducted a detailed investigation of 19 ANCs. In a review of subcontracts awarded by just one of those ANCs, the Afognak Native Corporation, the Subcommittee found:

From 2000 to 2008, Afognak was awarded 294 unique contracts, of which 150 (51%) had subcontracts valued at 10% or more of the contract value. Afognak paid its subcontractors more than 50% of the total revenue it received for 91 of those contracts, and 56 of these 91 were awarded through the 8(a) program. For 15 8(a) contracts totaling \$206 million, including 11 construction contracts,

³ Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, *Hearing on Contracting Preferences for Alaska Native Corporations* (July 16, 2009).

⁴ *Bethesda Consultant Made Millions with Alaska Firm*, *Washington Post* (Sept. 30, 2010).

⁵ *Id.*

⁶ *For Many with Stake in Alaska Native Corporations, Promise of Better Life Remains Unfulfilled*, *Washington Post* (Sept. 30, 2010); *In Deals Between Alaska Corporation and D.C. Area Contractor, a Disconnect*, *Washington Post* (Oct. 1, 2010).

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Afognak paid subcontractors more than 85% of the total revenue received from the prime contract.⁷

I am discouraged by the Small Business Administration's continued failure to adequately manage and oversee ANC participation in the 8(a) program. As a result, I request that you investigate the multiple instances of potential waste, fraud, and abuse referenced in the *Washington Post* articles discussed above. I also request that you refer all relevant findings to the Department of Justice, should such steps be warranted.

The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress).

Please contact Margaret Daum with the Subcommittee staff at (202) 228-3862 with any questions.

Sincerely,



Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

cc: Scott Brown
Ranking Member

⁷ Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Contracting Oversight, *Majority Staff Analysis: New Information on Contracting Preferences for Alaska Native Corporations (Part II)* (July 16, 2009). Federal regulations require an 8(a) company to perform 15% or more of the cost of the contract for construction contracts with its own employees. 13 CFR 125.6(a)(3,4). Cost of the contract excludes cost of materials. *Id.*