

# S. 3959

**To eliminate the preferences and special rules for Alaska Native Corporations under the program under section 8(a) of the Small Business Act.**

## **Need for Legislation**

The Small Business Administration's 8(a) program was created to help small businesses compete during the early stages of development. It was later expanded to help socially and economically disadvantaged individuals and groups successfully compete in the federal marketplace. This is a meritorious program as originally intended. However, Alaska Native Corporations (ANCs), participants in the 8(a) program, have received significant and troubling advantages within the 8(a) program over other 8(a) participants. These advantages have subverted the original intention of the 8(a) program and cost the American taxpayer, while failing to provide much-needed employment and benefits to the Alaska Native people.

On July 16, 2009, the Subcommittee on Contracting Oversight held a hearing on contracting preferences for ANCs. This hearing was the culmination of a months-long investigation by the Subcommittee which examined several thousand pages of documents submitted by ANCs in response to Subcommittee requests for detailed company data for the years 2000-2008. The investigation found:

- ANC contract awards increased over 916%, approximately six times faster than overall federal contract spending. In total, ANCs received \$23.7 billion in federal contracts between 2000 and 2008;
- ANCs received \$6.6 billion in 8(a) sole-source contracts valued at more than \$3.5 million each;
- The 19 companies surveyed by the Subcommittee have enrolled 248 subsidiaries, joint ventures, or partnerships in the 8(a) program;
- On average, nearly 95% of ANC employees are not ANC shareholders. Of the 13 corporations which provided detailed information to the Subcommittee regarding executive compensation for non-Native executives, 69% of executive compensation was paid to individuals who were not shareholders in the Native Corporations; and
- Between 2000 and 2008, the 19 ANCs surveyed by the Subcommittee provided cash, scholarships, or other benefits valued at approximately \$720.1 million to members of the Alaska Native community as a result of federal contracts. On average, that amounts to a value of only \$615 per person per year.

New information reported by the Washington Post in a series of articles in September and October 2010 raises concerns about whether potential statutory and regulatory violations by ANCs has become pervasive, at a cost to both the taxpayer and the Alaska Natives these corporations purport to serve. According to the Post:

- “Last year, when EyakTek [formed by Eyak, an ANC, and the large government contractor GTSI] recorded \$409 million in federal revenue and Eyak reported a payroll of almost \$18 million for all of its operations, the native shareholders got direct dividend payments in December totaling about \$109,000”;
- SNC Telecommunications LLC, a subsidiary of Sitnasuak Native Corporation, “[l]ast year ... earned after-tax profits of \$14.5 million on revenue of \$212 million ... paid ... \$305 apiece [to Sitnasuak's 2,238 shareholders, and] ... \$6.4 million [to a non-native consultant and former executive]”;
- “Two other inexperienced [ANC] subsidiaries received contracts without competition worth nearly a billion dollars to provide guards to Army bases and passed on much of the work to Wackenhut Services and another security giant. The Army knowingly overpaid by 25 percent on the contracts compared with deals for the same work awarded through competitive bids, auditors later found”; and
- “Even some Alaska native corporation executives now say they think the system is flawed. ‘We have seen things that show some organizations have broken the law,’ said Aaron Schutt, chief operating officer of Doyon Limited, a native-owned company that is the largest land owner in Alaska, with more than 12 million acres in the heart of the state. ‘We believe reform is both necessary and good.’”

Legislation is needed to address these problems and restore fair competition in the 8(a) program.

### **Existing Law and S. 3959**

This legislation will place ANC on equal footing with other eligible 8(a) program participants. The below chart illustrates the preferences currently available for ANCs participating in the 8(a) program and the elements of the new legislation that will place ANCs on equal footing with other 8(a) participants.

#### **Existing Law and Preferences for ANCs**

Most applicants for 8(a) program participation must demonstrate social and economic disadvantage. ANCs are exempt from having to demonstrate social or economic disadvantage.

Unlike other 8(a) companies, which must be managed by socially and economically disadvantaged executives, Alaska Native Corporations can be managed by non-Native executives.

To qualify for the 8(a) program, businesses must be “small” as defined under the program. However, for ANCs, affiliates, subsidiaries, joint

#### **New Legislation**

Under the bill, ANCs must establish both economic and social disadvantage, as is required for other 8(a) participants.

Under the bill, businesses participating in the 8(a) program, including ANCs, must be owned and controlled by individuals qualifying as socially and economically disadvantaged and the requirement cannot be waived.

Under the bill, for ANCs choosing to participate in the 8(a) program, eligibility as a “small” business, shall be determined the same

ventures, and partnerships are excluded from consideration in determining size.

Other 8(a) participants may be awarded sole-source contracts not to exceed \$3.5 million for services or \$5.5 million for goods. ANCs, however, are exempt from both these thresholds and the maximum sole-source award limitations.

The 8(a) program limits businesses' participation to no longer than nine years. ANCs, however, can own a majority interest in an unlimited number of 8(a) subsidiaries at any one time and can form new subsidiaries to enroll in the program as the old ones graduate, effectively circumventing the nine-year graduation and ownership requirements.

8(a) program participants are required to report related payments and financial statements regarding their businesses' participation in the program.

as for other 8(a) participants.

Under the bill, ANCs and other 8(a) participants must abide by the same thresholds and maximum limitations for sole source contract awards under the program.

Under the bill, ANCs must adhere to the same standards as other 8(a) participants regarding ownership of multiple businesses in the program, making the nine year limitation applicable to all 8(a) participants, including ANCs.

Under the bill, ANCs must report their related payments regarding 8(a) participation, including revenue and benefits paid to ANC shareholders from contracting.