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TRIBAL CONSULTATION MEETING

WASHINGTON, D.C.

OCTOBER 5, 2010

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TRIBAL CONSULTATION MEETING

October 5, 2010

NASA Headquarters Auditorium
300 E Street, S.W.
Washington, D.C. 20024

The meeting convened, pursuant to notice at
9:12 a.m.

PRESIDING:

DANIEL GORDON, Office of Management and Budget
JACQUELINE JOHNSON-PATA, National Congress of
American Indians
EDWARD LOEB, Government Services Administration
WILLIAM McNALLY, NASA
LINDA NEILSON, Department of Defense

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1 P R O C E E D I N G S

2 WELCOME

3 MS. JOHNSON-PATA: Good morning, everyone.
4 I'm Jacqueline Johnson-Pata. I'm the executive
5 director of the National Congress of American
6 Indians. I am here in an assistance role today on
7 the DOD 811 consultation.

8 Before I get started, before we get started
9 today, I just wanted to be able to, first of all,
10 thank all of you for being here and helping us launch
11 the first of the three consultations that will be
12 moving forward, and I also wanted to thank the Office
13 of Management and Budget and the Federal Acquisitions
14 Regulatory Council for this government-to-government
15 consultation.

16 Government-to-government consultation is very
17 important to tribal nations across the country. It's
18 one of the pillar principles that the tribes across
19 the country continue to advocate for, and for any of
20 you who intimately know our history and our
21 relationship with the Federal Government, it has
22 always been a standard, whether in the negotiation of
23 treaties, negotiating of policies and, of course,
24 today, we think that we are more civilized around
25 those negotiations, and we welcome the opportunity

1 that this Administration has given us to expand the
2 government-to-government consultations across all
3 agencies and to be able to come up with models that
4 work. So we really appreciate you taking this
5 directive from our President and implementing it in a
6 way that makes sense.

7 It certainly is a learning curve for all of
8 us. I know across the country, as we have been
9 trying to look at improving consultations not only
10 from the federal side, but also from the tribal side
11 so that we're more prepared and ready, I'm sure by
12 within the next, you know, couple of years here, we
13 will have come up with the processes that make sense
14 for both of us and that are efficient and help us
15 really have a dialogue.

16 Before I get any more started, I wanted to
17 thank the federal representatives that are here and
18 are hosting these consultations, Dan Gordon, who is
19 the administrator for the Federal Procurement Policy
20 for OMB and the chair of the FAR Council, and also
21 the representatives of the FAR Council, including the
22 Department of Defense, the National Aeronautics and
23 Space Administration, and the General Services
24 Administration, and we're pleased that the Small
25 Business Administration is also represented at these

1 consultations.

2 For a little bit of consultation background,
3 and I'm not going to go into great detail, but the
4 National Defense Authorization Act for Fiscal Year
5 2010 was passed by both the Senate and the House and
6 signed by the President on October 28, 2009. Section
7 811 of the law includes a provision requiring
8 justification and approval of sole-source contracts
9 over 20 million.

10 Section 811 of the law will impact the
11 ability of tribal leaders to develop their economies,
12 create jobs for their citizens, and it changes the
13 way our enterprises participate in the federal
14 contracting. Because of these impacts, we felt it
15 was very important for the FAR Council to host these
16 consultations in keeping with the President's
17 memorandum on Executive Order 131.75 supporting
18 tribal consultations.

19 The memorandum charges agencies to carry out
20 regular and meaningful consultation in collaboration
21 with tribal officials in the development of federal
22 policies that have tribal implications. We work with
23 a number of agencies in developing consultation plans
24 and setting up agency consultations, and the FAR
25 Council has developed a format for these

1 consultations that include a briefing and some
2 guideline questions to focus on the conversation, and
3 I just want to let you know that we really appreciate
4 the efforts, the pre-meetings that we were able to
5 have with them in trying to help prepare and plan for
6 this consultation.

7 I also, from a tribal perspective, appreciate
8 looking at this format to see how effective it might
9 be in helping us with other consultations. We learn
10 from every single consultation and we're hoping to
11 come up with a way that makes sense for a variety of
12 federal agencies.

13 So I just wanted to let you know that the
14 plan is, first of all, I wanted to mention the
15 format. As always, we try to be able to have a
16 format in the room, set up in the room that allows
17 for a meaningful dialogue. So I don't want you to
18 feel like there's us and you're out there. That
19 wasn't the intention. Use whatever room you have,
20 and it's the spirit of the consultation that's going
21 to be more important than the setup of the
22 consultation.

23 So we ask that -- we have roving mikes. So
24 if you have questions out there and you feel more
25 comfortable, we ask that formal presenters come up

1 here and we'll call you up in order so that you can
2 sit up here and everybody can hear you and hear your
3 presentation. We will have dialogue around the
4 questions, and I'm very intrigued and like the fact
5 that they actually asked questions that they really
6 want to hear from us on.

7 So I'm hoping that you out there, whether or
8 not you've signed up to give a formal presentation on
9 your own, that you engage in the dialogue around the
10 questions. I know a number of you are here observing
11 today because you're looking forward to submitting
12 your written conversation -- your written comments
13 and more formal comments, but I still urge you to
14 engage in the dialogue around these issues. The more
15 that we can have this conversation as we deal with
16 the three sessions across the country, the better
17 that we will be able to help educate and influence
18 each other to come to a common direction.

19 So I really appreciate all of those
20 recommendations, those comments and questions that
21 they've prepared for us. We do have speaker sign-up
22 sheets out there. If you haven't signed up, please
23 feel free to do so. If you wish to change your
24 status of a no speaker to a yes status, you're
25 welcome to do so. Just send me a little slip of

1 paper saying you'd like to speak, and I'll also be
2 soliciting comments from you too.

3 So with that, I would like to go ahead and
4 introduce Dan Gordon.

5 MR. GORDON: Thanks very much.

6 Good morning. Can everyone hear okay?
7 Great.

8 We are delighted to be here this morning with
9 you today. We welcome the opportunity to consult
10 with you to get your input as we in the FAR Council,
11 the Federal Acquisition Regulatory Council, begin the
12 process of writing a regulation to implement the new
13 statutory provision that Ms. Pata referred to and
14 that I believe you all have copies of. If you don't,
15 we have additional copies out front. We're happy to
16 be sure that everyone has it, because that is where
17 we're focused in terms of what our role is.

18 We want to be sure that everyone that wants
19 to be heard is heard, and that can either be in the
20 session today or in the session later this week in
21 Albuquerque or in the session in a couple of weeks in
22 Fairbanks. It can also be through written comments.
23 Your doing one doesn't exclude you from doing the
24 other. The more input, the better. It is very much
25 welcome as part of this process.

1 To that end, we on the federal official side
2 want to be brief in what we say this morning so that
3 the vast majority of our time today is spent with you
4 getting a chance to give us input and then for us
5 talking together. The session today is being
6 transcribed, but I was told that I should perhaps let
7 you know it is not being videotaped notwithstanding
8 the presence of cameras in the space here. So we're
9 being transcribed and that transcript will be
10 available, but we're not being videotaped.

11 I would like to introduce the federal
12 officials that are with me here on the stage. We
13 represent the component agencies in the FAR Council,
14 the Federal Acquisition Regulatory Council. I will
15 tell you that I always endeavor not to use acronyms,
16 although I suspect that everybody in this room is
17 very familiar with a lot of the abbreviations. I'll
18 at least try to spell things out once before I start
19 using acronyms just in case there is someone out here
20 that isn't familiar with some of these acronyms.

21 As I said, I would like to introduce my
22 colleagues from the FAR Council here. The FAR
23 Council, although the chair is from the Office of
24 Management and Budget, OMB, and that's my role as the
25 Office of Federal Procurement Policy administrator,

1 but the three agencies that sit on the council and
2 that are represented here are NASA, the General
3 Services Administration, and DOD, the Department of
4 Defense.

5 I want to introduce first Bill McNally from
6 NASA, who is, I think, officially our host today as
7 well in this lovely facility. That's Bill McNally.

8 Next to Bill is Ed Loeb from GSA and next to
9 Ed is Linda Neilson from the Department of Defense.
10 We are joined by officials from other parts of the
11 Federal Government and including, in particular, as
12 Ms. Pata said, the Small Business Administration as
13 well as other colleagues of mine from OMB in
14 particular.

15 I should point out Susan Truslow, who is
16 sitting in the front row and who has taken the lead
17 in preparing today's session and the other sessions
18 as well. Susan and I will be traveling so that we
19 will both be at the Albuquerque session and the
20 Fairbanks session in a couple of weeks.

21 INITIATIVES TO IMPROVE GOVERNMENT CONTRACTING

22 MR. GORDON: With your permission, then, I
23 would like to turn to the first item on the agenda.
24 Again, I hope you all have copies of the agenda.
25 We're going to talk briefly, and I want to emphasize

1 the word "brief", because we're hoping that the
2 federal officials' presentations, all told, will be
3 less than 60 minutes and perhaps much less than 60 to
4 be sure that you have the opportunity to make your
5 formal presentations as well as your less formal
6 comments and our dialogue together.

7 I do want to start by saying a few words
8 about initiatives to improve federal contracting
9 under this Administration. After I talk about two
10 parts of that, we'll be joined by a colleague from
11 the SBA, the Small Business Administration, talking
12 about efforts to strengthen SBA's 8(A) business
13 development program.

14 First, though, President Obama signed on
15 March 4, 2009 -- just a few weeks after he entered
16 office, he signed a memorandum on government
17 contracting. I want to say a few words about that
18 memorandum and then I'm going to say a little bit
19 about the recently released report of the interagency
20 task force on small business contracting.

21 The President's March 2009 memorandum carried
22 a series of -- highlighted a series of key priorities
23 which we have been carrying forward in our efforts,
24 particularly at OMB, but you see it as well across
25 the Federal Government: Number one, strengthening

1 the Federal Government's acquisition workforce which
2 has been substantially weakened over the past decade;
3 secondly, clarifying what work can properly be
4 contracted out and what work needs to be reserved to
5 be performed by federal employees. In addition, the
6 memorandum calls for guidance on the use of
7 sole-source contracts and efforts to maximize the use
8 of competition. Finally, the President's March 2009
9 memorandum expresses concern about potentially
10 unjustified use of cost reimbursement contracts
11 because of the fiscal risk that they impose on the
12 Federal Government.

13 We in the Administration are carrying out the
14 President's direction from that March 2009 memorandum
15 in a number of ways. Let me highlight just a few,
16 but if you want to during the dialogue session, we
17 can go into more detail.

18 Number one, we are taking concrete steps to
19 strengthen the federal acquisition workforce at all
20 of our agencies. Certainly, it's true for the
21 agencies represented here, but you'll see it across
22 the government. To give one concrete example, the
23 President's budget for Fiscal Year 2011 includes \$158
24 million to strengthen the civilian agencies'
25 acquisition workforce.

1 In addition, we at OMB issued a draft policy
2 letter in March of this year to clarify what work was
3 inherently governmental, what work needed to be
4 reserved to be performed by federal employees and
5 could not be contracted out, and the third point that
6 I would highlight in this very brief overview in
7 terms of our implementation of the President's March
8 2009 memorandum is that we at OMB have called on all
9 federal agencies to establish acquisition savings
10 plans so that we buy smarter and in ways that are
11 fiscally responsible and that we reduce the use of
12 high-risk contracting vehicles which include both
13 uncompeted contracts when they're not justified and
14 cost reimbursement and time and materials contracting
15 when those methods are not justified.

16 That's a very brief overview of the
17 priorities in the procurement area for this
18 Administration flowing from the President's March
19 2009 memorandum.

20 THE REGULATORY PROCESS

21 MR. GORDON: I now would like to highlight a
22 few key points related to the interagency task force
23 report on small business contracting. You may
24 remember that the President in April of this year
25 directed that that interagency task force be created

1 and provide him a report by late August. The task
2 force was co-chaired by SBA, the Department of
3 Commerce, and my office, the Office of Management and
4 Budget, but we have participation from many agencies
5 including the three represented by my colleagues here
6 on the stage.

7 We held a public meeting. We solicited
8 written comments and we received many written
9 comments. We met the deadline that the President set
10 of having a report come to him by late August, and
11 that report has now been publicly released. It
12 addresses a large range of issues relating to small
13 businesses and the challenges that they face in
14 getting federal contracts and in participating in the
15 federal contract space.

16 As desired by the President, the report
17 includes a series of concrete recommendations to
18 reduce barriers to entry to the federal marketplace
19 that small businesses face and to facilitate their
20 fair participation in the federal contracting arena.
21 Let me just point to a few key areas, but again, the
22 report is publicly available and we're happy to
23 discuss it either today or going forward.

24 The report talks about the need to strengthen
25 and clarify the rules and the policies that apply

1 with respect to small business contracting. One key
2 area is with respect to set-asides for small
3 businesses. That is to say reserving of procurement
4 for small businesses only where there have been some
5 issues about when those rules applied, especially
6 with respect to task and delivery orders.

7 Secondly, the report focuses on the need to
8 improve the training of our federal acquisition
9 workforce and the need to hold agencies accountable
10 for meeting small business contracting goals, an area
11 where although progress has been made, we still need
12 to do more work to meet the statutory goals for small
13 business contracting.

14 And, third, the report talks about the need
15 to improve outreach to our small businesses and in
16 particular to make better use of technology to ensure
17 that data is accurate, complete, and available.

18 Again, following the President's direction,
19 the agencies are now working to implement the
20 recommendations in that report, and I hope that we
21 will see concrete improvement in the small
22 businesses' access to the government contracting
23 opportunities in the near future.

24 With that, I would like to turn to our
25 colleague from SBA. I think John Kline from SBA is

1 going to be speaking and he's welcome to come join us
2 here.

3 Oh, I'm sorry. I didn't see you come in.
4 Welcome. You're welcome to speak from there. Go
5 right ahead.

6 MS. DELANEY: Thank you. I'm obviously not
7 John Kline. My name is Leanne Delaney. I am the
8 deputy associate administrator for the Office of
9 Business Development at SBA. The Office of Business
10 Development administers the 8(A). I'm here on behalf
11 of the Office of Business Development and
12 particularly our new associate administrator. I
13 should say our new experienced associate
14 administrator, Darrell Hairston. If that name sounds
15 familiar in the context of the 8(A) business
16 development program, it's because Darrell actually
17 was the associate administrator a number of years ago
18 and we're pleased to have him back. He's been with
19 us about a month now.

20 One of the things we're working on to
21 strengthen the 8(A) business development program is a
22 regulation package that many of you are aware of, I'm
23 sure, that we've been working on for about the past
24 year. The purpose of this regulation package is
25 threefold, first, to implement statutory provisions,

1 secondly, to eliminate waste, fraud, and abuse, and
2 thirdly and lastly, to ensure that benefits of the
3 8(A) program flow to the intended recipient.

4 We're in the process of finalizing that
5 regulation. It's taken so long because we did a
6 10-city tour. We did two tribal consultations and
7 then had a third consultation. Particularly for
8 those companies located in Alaska, we had a
9 telephonic conference.

10 All told, we had 2300 individual comments on
11 sections of the regulation and we are finalizing the
12 regulation as we speak and should have that over to
13 OMB for their 90-day review period here within the
14 next couple of weeks. I'm hoping to finalize that by
15 the end of this calendar year, hopefully, and at the
16 latest, not too much into the new year.

17 So I thank you for being here, and that's
18 about I have.

19 MR. GORDON: Leanne, thank very much. We
20 appreciate it.

21 At this point I would like to turn the floor
22 and, actually, the mike as well over to Linda Neilson
23 who is going to do a six-hour presentation -- oh, no
24 -- who is going to do a brief overview of the FAR
25 regulatory process.

1 MS. NEILSON: And I promise to keep it brief.

2 The FAR Council consists of the DAR Council
3 and the CAC. There are the acronyms again: The
4 Defense Acquisition Regulations Council where we have
5 the various defense agencies, and NASA sits with DOD
6 on this council.

7 Can everyone hear me by the way?

8 As well, the CAC, a separate council GSA
9 chairs and all of the civilian agencies that use the
10 FAR sit at the CAC, the principal agencies.
11 Similarly, and we're not going to go into the weeds,
12 not every DOD agency sits at the DAR Council and not
13 every civilian agency. They're all welcome to play,
14 and some of them are just tiny and we help them out
15 by representing them at these councils.

16 Our work product by the acquisition
17 regulations, at the federal level, it's the Federal
18 Acquisition Regulation, and at the NASA level, it's
19 the NASA FAR Supplement. DOD has a FAR supplement.
20 GSA has a FAR supplement.

21 The acquisition regulations speak to
22 contracting officers who contract on behalf of the
23 various agencies and provide them with a blueprint,
24 or a cookbook, as I like to look at it, but a
25 blueprint for how to conduct contracting. All of

1 this activity is governed by the Office of Federal
2 Procurement Policy Act, which is the framework,
3 provides the process framework for rulemaking for the
4 acquisition regulations. The OFPP Act, as we refer
5 to it, designates the administrator for OFPP as the
6 chair of the council, and NASA, GSA, and DOD jointly
7 sign the changes to the FAR that implement statute
8 and overarching federal policy.

9 So when we are presented with a new statute,
10 our challenge is to implement that statute into the
11 regulations, into the guidance to the contracting
12 officers, and weave it into the tapestry of
13 implementations of other existing laws and to ensure
14 that we don't inadvertently create a conflict with
15 any existing implementations of existing laws. So
16 sometimes we're more timely than others and more
17 prompt than at other times in accomplishing this
18 task, and sometimes that has to do with the
19 complexity of weaving the new law into that tapestry
20 of existing laws that are reflected in the
21 regulations.

22 I think without driving everyone crazy by
23 going into incredible detail, that probably can serve
24 as the overview of our mission and what it is we do
25 when we turn on the lights and come to work.

1 MR. GORDON: Thank you. Linda, thanks very
2 much for a brief, succinct, and focused explanation.

3 I hope it gives you a feel for the process
4 that we go through when we move from a statute such
5 as Section 811, to writing the FAR provision, and one
6 of the points that you said, I think is worth
7 underscoring because it may help us in our
8 conversation during the day today, and that is that
9 FAR is really meant to be -- was the phrase "a
10 blueprint"? It's supposed to help our contracting
11 officials understand what the rules are, how we
12 actually move forward. It's the FAR that our
13 contracting officers typically look for guidance in
14 deciding how to act.

15 LEGAL FRAMEWORK FOR COMPETITION AND THE EXCEPTIONS

16 MR. GORDON: The next item on our agenda is
17 the legal framework for competition and the
18 exceptions, and I have to begin by recognizing the
19 complexity of our system. For those of us on the
20 federal official side that live this all the time, we
21 get accustomed to these rules, but when you step
22 back, I think you have to recognize how complicated
23 our system is.

24 There are situations where our legal system
25 requires unrestricted competition, what we often call

1 full and open competition, and you see that in the
2 1984 statute, the Competition in Contracting Act, or
3 CICA as we often call it, but there are many other
4 situations in which unrestricted competition is not
5 required in our legal system.

6 One example at the opposite end of the
7 spectrum, if you will, is where no competition at all
8 is required. That can be because of the dollar
9 amount for what we call micro purchases, which I
10 think is now under \$3,000. There are no competition
11 rules at all.

12 Another example where no competition at all
13 is required can be where there is an emergency. For
14 example, when our United States Agency for
15 International Development, USAID, was responding to
16 the earthquake in Haiti in January, they conducted
17 procurements with no competition because of the
18 urgency of the situation. In those cases, however,
19 there is a requirement for a justification and
20 approval, what we often call a J and A, what my
21 colleague Bill McNally will be talking about shortly.

22 There are also situations between those two
23 extremes of full and open competition and no
24 competition at all where competition maybe limited,
25 but permitted on a limited basis. That can be

1 through the use of simplified acquisition procedures,
2 typically for relatively small purchases, especially
3 purchases of commercial items, but there can also be
4 situations where there is limited competition in the
5 sense that competition is open, but open only to a
6 certain category such as competition that is among
7 small businesses so that the competition or, rather,
8 the procurement is set aside for small businesses,
9 but among small businesses, there is, in fact,
10 competition.

11 That can also be done for subcategories of
12 the small business world. For example, you can have
13 a competition that's limited to small businesses
14 owned by service disabled veterans.

15 As I'm sure everybody in this room knows,
16 agencies are allowed to do sole-source contracts
17 without competition for 8(A) firms. That is normally
18 up to a specific dollar threshold, either three and a
19 half million or five and a half million dollars,
20 depending on what the government is buying, and above
21 that dollar threshold, the agency has to do a
22 competition, although it can be limited to entities
23 within the 8(A) world. The exception, as everybody
24 in this room, I'm sure, knows is that tribal
25 organizations, the Alaska Native corporations, the

1 Hawaiian organizations, the Hawaiian Native
2 organizations where that dollar threshold does not
3 apply so that a sole-source contract can be applied,
4 can be awarded at dollar values above three and a
5 half or five and a half million dollars.

6 That's meant to give you a brief overview of
7 the context from full competition to no competition
8 and then the various alternatives and permutations
9 along that continuum as they are set out in our legal
10 system. With that, I'm going to turn the mike over
11 to our colleague, Bill McNally, to talk about J and
12 As, justifications and approval.

13 Thanks, Bill.

14 MR. McNALLY: I'm going to change things up a
15 little bit and use a Power Point slide. I spent 26
16 years in the Air Force and can't do much without
17 Power Point.

18 So what I want to talk about is the process
19 for documenting and the personnel responsible for
20 documenting situations when it's going to be a
21 noncompetitive procurement and also documenting when
22 you're not going to go full and open competition, and
23 that's the justification and approval process. Often
24 called J and A, some organizations use the term "Joe
25 Fox". It's basically, though, the same thing,

1 justifying and getting approval when you're not doing
2 full and open competition and when you're not in
3 situations when doing competitive acquisitions.

4 The responsibility is placed on the
5 contracting officer to not begin negotiations until
6 it does receive approval of doing other than full and
7 open competition, and the documentation reflects the
8 rationale for doing the sole-source action or other
9 than full and open competition.

10 Here are the seven exceptions to full and
11 open competition. I'll briefly talk about each one.
12 First is only one responsible source. That could be
13 a situation when you ran a competition. You picked a
14 contractor to develop a complex system. They had the
15 capability, and you have more items to build. So you
16 really only believe you have one responsible source
17 that can build that item in a timely and efficient
18 manner. So you would document why that contractor is
19 the only source to build the complex system.

20 The second one, unusual and compelling
21 urgency, again, Dan mentioned earlier about the
22 earthquake situation or at NASA, we've had some
23 centers that have come under hurricanes. You have to
24 quickly go in and buy items in an urgent fashion. So
25 you would use these exceptions to do that. They're

1 supposed to be done for short-time products or
2 services, not long term procurements.

3 The third one is when we need to maintain an
4 essential capability. That would be if I need to
5 maintain maybe a shipyard or maintain a certain type
6 of facility in the benefit of the government. So I
7 would document using Exception 3.

8 Number four is international agreement in
9 case the United States has an agreement with another
10 company [sic], and that would result in some contract
11 actions and those would relate to the international
12 agreement. So we would use that exception.

13 The fifth one is authorized or required by
14 statute. This is where you would have the programs
15 like with the companies that employ people with
16 disabilities or within the 8(A) programs or the
17 service disabled veteran owned, so when you're
18 contracting and something is authorized by statute
19 that would preclude you from doing full and open
20 competitions.

21 The next one would be national security. In
22 many cases, when we can't publicly disclose our
23 requirement, one would use this exception to do
24 potentially limited competitions.

25 And last is based on public interest, and the

1 key to this exception is that you only use this when
2 Exception 1 through 6 can't be utilized for your full
3 and open competition justification.

4 Again, when is it not required? When you do
5 full and open competition, J and A is not required.
6 Then there's other situations within the FAR or
7 acquisitions where FAR Part 6 doesn't apply:
8 Simplified acquisitions procedures, and those are,
9 you know, when you're doing purchase orders or small
10 dollar amounts. FAR Part 6 doesn't apply. There's
11 other parts of the FAR that you follow to do your
12 procurement.

13 Contracts awarded, again, expressly
14 authorized by statute: So there's another statutory
15 authority that's being utilized to do your
16 procurement.

17 Contract modification: So if I'm modifying
18 my contract and the work is just changing the
19 specification, I do not have to follow FAR Part 6
20 procedures to contract with a company that I'm
21 already under contract with when I'm changing the
22 specification within the contract, or if I'm
23 exercising a priced option within a contract that was
24 carried out in a competitive environment, then I do
25 not have to follow FAR Part 6.

1 Then orders under IDIQ contracts do not
2 follow FAR Part 6 procedures.

3 Then there's the exclusion of sources, and
4 that's when we're trying to maintain alternative
5 sources. So this is when we're trying to maybe
6 maintain a facility. So we would be not doing full
7 and open competition or various set-aside procedures
8 that we have, small business set-asides, 8(A)
9 set-asides, hub zone set-sides, or service disabled
10 veteran-owned business set-asides. So we're running
11 a competition, but we're only doing it with entities
12 within those subcategories within the small business
13 program.

14 And then the last part is where there's local
15 firms in a declared emergency area that we can go out
16 and do business without doing full and open within
17 the entire economy.

18 The elements of the J and A, the key thing
19 is, you know, it contains who the agency is, the
20 description of the services or supplies, what
21 authority are we using. Again, the authorities are
22 the ones that I showed your earlier, Exception 1
23 through 7. What's the unique qualifications of the
24 company or the situation that lends itself to either
25 going sole-source or limited competition? What is

1 the agency doing to try to solicit as many sources as
2 practical to do the procurement?

3 Determination, that would be the anticipated
4 costs will be fair and reasonable. What market
5 research was conducted under this acquisition? What
6 facts support the use of other than full and open
7 competition and the list of sources who have
8 expressed an interest? So before you go off and do
9 your J and A, you've got to conduct market research
10 and synopsise. So you put it out on Fed Bus. Ops and
11 get companies to express an interest in the
12 procurement.

13 Statement of actions that the agency has
14 taken to remove or overcome barriers for competition
15 for this acquisition and future acquisitions, and,
16 again, it's reflective of the contracting officer,
17 and on the bottom bullet there, it talks about a
18 certification from the technical person who is
19 certifying that all the information contained in the
20 J and A is accurate and complete.

21 Here is the dollar thresholds: So, for
22 instance, at NASA, anything over 62 and a half
23 million dollars, I have to have approval the
24 justification and authority to enter into the
25 contract in other than full and open, and then

1 contracting officers are at the level of \$650,000.

2 Transparency is becoming more and more of an
3 element in our government acquisition. So when we
4 are doing one of these J and As, we have to make it
5 publicly available, and here are some of the
6 situations that it contains. The bottom line is we
7 may not be able to publicly post some documents
8 because of national security interest.

9 That's all I have.

10 MR. GORDON: Thank you. Bill, thanks very
11 much and, again, once we wrap up our presentations,
12 when we come to the dialogue section of today, you
13 should feel very, very free to raise questions and
14 concerns about any aspect of what you've heard so
15 FAR.

16 SECTION 811 OF NDAA 2010: PROVISIONS AND KEY
17 QUESTIONS

18 MR. GORDON: We are on track to wrap up our
19 section of the presentations within 60 minutes, which
20 was our goal, but now I want to say a few words about
21 Section 811 itself. One thing I would suggest is
22 that you may want to have the copy of it handy, both
23 now and as the day goes on, because for us on the FAR
24 Council, the key thing that we're looking at is the
25 statutory language as we're deciding how to implement

1 it in the FAR, and it is for your input in that
2 thinking that we're having these consultations.

3 The Section 811 of the National Defense
4 Authorization Act of 2010 enacted in October of 2009,
5 as Ms. Pata said at the beginning, is fairly short,
6 but as lawyers tend to do, it's written in such a way
7 that it can be tough to understand. I want to give
8 us a brief overview, and then we may be talking about
9 it more as we go forward.

10 It directs that the FAR be amended -- that's
11 why the FAR Council has this central role -- the FAR
12 be amended to say that sole-source contracts with a
13 value above \$20 million require a J and A,
14 justification and approval, which is to be in writing
15 and to be made public. You may notice when you read
16 the page with Section 811, there's no reference to
17 Alaska Native corporations, to tribal organizations
18 at all. The way you can tell that that's what it's
19 referring to is through the definition of covered
20 procurements down below, and you have to go through
21 the statutory citations before it becomes clear that
22 that is, in fact, what they're talking about.

23 So 811 requires a J and A that is in writing
24 and it is made public for sole-source contracts to
25 those 8(A)s that are allowed to have sole-source

1 contracts at the level of \$20 million. That is to
2 say tribal organizations and ANCs, and 811 says what
3 needs to be in the justification. It needs to
4 describe the agency's needs. It needs to specify
5 statutory provision relied on for the sole-source
6 contract. It needs to include a determination, a
7 statement, that the use of the sole-source contract
8 is in the best interest of the agency, and it needs
9 to state that the anticipated cost of the contract
10 will be fair and reasonable.

11 As we on the FAR Council begin to think about
12 translating that statutory language into FAR
13 language, we are listening and hoping to hear from
14 you today and in our other consultation sessions and
15 then eventually in a public comment process once we
16 have a proposed draft. We are looking for input in
17 how that language in the statute translated into the
18 FAR.

19 Working with Ms. Pata and other organizations
20 in addition to the one that she represents, we've put
21 together the questions that were handed out, but you
22 should feel free in giving us your input to respond
23 and do comment in a way that you feel most
24 comfortable, and you should not feel constrained by
25 those questions.

1 With that, Ms. Pata, I'm going to turn the
2 mike back over to you, if I may, so that you can lead
3 us in the next part of the session. Thank you.

4 PREPARED STATEMENTS AND OPEN DIALOGUE

5 MS. JOHNSON-PATA: Thank you for much and
6 thank you for the presentations. The presentations
7 are meant to set a framework so everybody had the
8 right information about the focus of what today's
9 sessions was going to be, and I think the presenters
10 all did a very good job, very short and succinct, but
11 it was great.

12 I want to be able to lead today with the
13 prepared statements, and given the number of folks
14 who are here observing, I just wanted to remind you,
15 as we spoke earlier, a lot of folks are observing and
16 they'll be preparing formal comments as we go through
17 the process. I would like to go ahead and lead with
18 more prepared statements and then I'm hoping that we
19 will just open a dialogue around the questions so
20 that other folks can join without having a more
21 formal statement.

22 So I would like to begin start this morning
23 with, of course, Lance Morgan from Ho-Chunk, but also
24 the chairman of NACA, Native American Contractor
25 Association.

1 MR. MORGAN: Should I get up?

2 MS. JOHNSON-PATA: Wherever you feel
3 comfortable.

4 MR. MORGAN: I like to swing my arms around.

5 I'm going to do something that I used to not
6 like. I see one of my old bosses out there. I think
7 I've done this to her once. It's kind of tradition
8 in a tribal community, and I didn't necessarily
9 understand it when I was a young faster lawyer, and
10 somebody would get up. They'd tell some story and
11 what they were trying to do is tell me something or
12 set the tone for the event, and I always wanted to
13 get to the specifics, but that is our way and I'm
14 going to play that role today.

15 I'm the chairman of NACA. I'm the CEO and
16 the first employee of a tribal corporation owned by
17 the [indecipherable] tribe in Nebraska. I'm a member
18 of that tribe. That's the tribe that sent me to
19 school, sent me to law school, you know, and I have
20 had the honor of coming back and building that place
21 up. We were one employee. Now we have a thousand.

22 We had no revenue when we started. Now we
23 have 157 million. Government contracting is a small
24 piece of what we do. We're in the economic
25 development self-sufficiency job-hope business on our

1 reservation, but government contracting is an
2 important part of what we do in our growth.

3 So what I want to do is basically tell our
4 perspective, and then I think we can get into the
5 specifics of this as we go. So if you'll bear with
6 me, I think it's about five or ten minutes. I'm
7 trying not to get mad. I've been mad the whole time.
8 I get mad easy though. When you're a native tribe,
9 you're paranoid, you know. I mean, that's just the
10 way it is.

11 I was on the plane coming here yesterday, and
12 I see the U.S. Senator Johanns from Nebraska. That's
13 a small state. He said, Hi, Lance. How are you
14 doing, Senator? Where are you going? I said, I'm
15 going to D.C. to do some more complaining. He said,
16 I would expect nothing less. He's used to us.

17 I guess I told you a little bit about our
18 company and we'll maybe get into more of that as we
19 go through this, but I want to talk to you about a
20 conversation I had when we were talking about 811 and
21 government contracting in general. You know, we view
22 this -- you guys are very specific 811-ers today, but
23 we view this as a much more global issue for us.
24 It's about 8(A) contracting in general. It's about
25 the whole program that seems to be under assault.

1 We had a conversation and somebody used the
2 term "bad actors", and I think that's kind of a
3 governmental term. Right? I think what -- so I
4 think there probably are some bad actors. I read an
5 article in the "Washington Post" and some non-Indian
6 exploited some little Indian company for their own
7 gain. You know, there's no big surprise there, not
8 from our standpoint. I don't know how that's news.
9 That's happened, what, a thousand times?

10 So somehow that's news, I guess, but these
11 bad actors somehow have to be punished. I'm all for
12 that. Right? String them up, whatever it is we do
13 in government contracting. The SBA doesn't have
14 badges anymore. I don't know if they ever did, but I
15 mean let's do something about it. Right? I'm all
16 for it. No one is in favor of any kind of abuse,
17 especially when someone takes advantage of a tribe,
18 but it seems to me that every time there's a solution
19 put forward, it tends to global in nature. Right?
20 It feels like, a little like, an old-time punishment
21 expedition, and this is what used to happen.

22 An Indian would go to town and something
23 would go wrong. The Indian would commit a crime.
24 Who knows? Right? A fight. Maybe he didn't do
25 anything. It doesn't really matter, does it? Or it

1 didn't then, but all the non-Indians would get
2 together, ride in on their horses and meet in town
3 and shoot everybody they could find. It was called a
4 punishment expedition, and it was not an uncommon
5 practice in our world.

6 It feels a little bit like a modern day
7 version of that, what seems to be going on, not
8 necessarily 811 alone, but this whole constant
9 anti-tribal government contracting initiative that
10 seems to -- that 811 seems to just be a part of. It
11 feels like we're all getting bunched together and
12 we're all suffering together, and I can't think of
13 another group that's punished as a race in anything.
14 That's exactly what's going on. It's this weird form
15 of kind of racism without saying it.

16 I read 811 and I can't even tell we're being
17 killed. Right? You can't even read -- there's
18 nothing in there at all that mentions tribes or ANCs.
19 It's a very confusing kind of thing just to the
20 regular person, and that's the new game. Right? But
21 we are all subject to this kind of strange
22 across-the-board approach that is designed to hurt
23 us, and it's a very unique, almost clever form of
24 racism, and that's really what it is.

25 I think that what I want to get into is I

1 want to list a few things. I want to list a few
2 things that I'm afraid of. I guess we have this 811
3 process and we're going to go through it. Trust me.
4 We've got some questions and we've got some specific
5 things, but there's a lot of people that are going to
6 do that, but I want to tell you from my perspective
7 what I see is what I'm afraid of. I'm afraid that
8 this is just the opening shot, that this is an
9 ongoing kind of thing.

10 I have talked to people who are doing this.
11 Their stated goal to really abolish Native 8(A) down
12 to a point where it's really going to be
13 non-impactful on reservations. I have 4600 tribal
14 members that we're trying to figure out a way to
15 support and build a community around, and if we build
16 one more small little 8(A), well, it's just a waste
17 of our time, to be honest, because the scale of the
18 problems that we face are tremendous. I mean, we're
19 working on trying to avoid our seventh generation of
20 poverty. That's what we focused on, but this has the
21 potential to put us back.

22 I'm worried that reform really means kill
23 here in this town, you know. I mean, I'm all for
24 whatever makes the most sense to be efficient. I
25 have been a proponent of reforming all kinds of

1 things in terms of the application process and how
2 you do some of these things in the SBA, but I think
3 sometimes reform means kill, and I feel like this
4 could be the start of the eulogy for the 8(A), you
5 know, and it's very disturbing.

6 You know, this seem like the repeating of a
7 cruel pattern to us. This is all very professional
8 and we're talking about the rules, but to us, it's
9 just one more thing that's being taken away from us.
10 We have given and we have given in this country, and,
11 you know, we had all the land. Well, that's gone.
12 Actually, we've got 30,000 acres, which is a lot less
13 than Wisconsin which is what we started with.

14 I was talking to somebody earlier. I was at
15 the last consultation on the Cigarette Act, the Pack
16 Act, and those guys all came armed. So I appreciate
17 you guys not bearing any weapons that I can see. So
18 already things are getting better here. Right?

19 But we owned the entire State of Wisconsin.
20 So we were doing okay then. Right? And now we have
21 this little corner of Nebraska, and that land was
22 taken. All our natural resources for tribes are
23 owned by the Federal Government. We get some little
24 piece of them maybe on the royalty end, but we don't
25 even control that. I mean, you know, everything that

1 we have has been taken in some way. The government
2 doesn't like giving us money anymore. So they
3 suggest that we do self-determination. The problem
4 is we don't control our own assets.

5 The court systems are against us. Our
6 government system have imposed -- all of our -- we
7 don't have taxes. All of the economic slate is
8 pitched against us. We're forced to go into
9 tribal-owned businesses to get going.

10 So we've got this really horrible economic
11 slate and impediments, and we've got socialism and
12 communism is the answer for us? That's what you guys
13 are pitching to us on the Federal Government level.
14 So we do it, and we did it and we lost \$700,000 over
15 four years cutting our teeth, learning. Our board of
16 directors wanted to kill our government contracting,
17 and we finally turned the corner and it's very
18 successful for us and now we face this.

19 So it's very disheartening to be encouraged
20 to use something and then be successful and have it
21 taken away, and what I worry about, again, is that
22 it's taken away not by government officials, but by
23 our competitors peddling political influence and
24 corporate power and money. You know, we used to be
25 the guys that would make them check the box with us

1 and they'd give us a little contract and we'd sit in
2 a small room. I've been to the small rooms. There's
3 one in North Dakota, a little back room in the town
4 that was flooded by the Federal Government in the
5 fifties so that St. Louis wouldn't flood. So they
6 flooded the Indian town instead, and there's a little
7 room there where they do a little contract, and what
8 they do is they snap little pieces of wires together.
9 Right?

10 Now, that makes -- that checks the box for
11 Northrop Grumman and it makes them feel good and it
12 gives us a job so we should be happy. What 811 --
13 not 811. What 8(A) has done for us is flipped the
14 equation. It's turned us into the little box
15 checkers, the little widget makers, the ones that
16 make you feel good about doing a good deed for giving
17 an Indian a job. It gives us the hope that we can be
18 a prime contractor, that we can learn sophistication,
19 that we can develop.

20 I now have a company that started with one
21 employee on a reservation with 65 percent
22 unemployment. We have now have 700 more jobs than
23 working age people. We run an international
24 corporation. You could not have -- Spielberg
25 couldn't have thought of this story, and here we are

1 and it's all in jeopardy because why? Because
2 somebody, one of our competitors, wants us to go
3 away. They want to send us back down into the
4 subcontracting genre where we beg for the scraps, and
5 that's what we are right now. You know, we want to
6 be the prime contractor and this is a way to do it.
7 This is relegating us to the back of the bus, to the
8 back of the room, the same old thing, and what's
9 scary is that it's not going to stop. This was done
10 not in open dialogue and debate. It's interesting
11 that we're consulting about it now. This was done
12 kind of in the dark of night during a consultation
13 between the Senate and the House.

14 I wonder who horse traded us away. Who took
15 our rights when we weren't even there to talk about
16 them, and this happened and it took us weeks or even
17 a month to figure out it even happened to us, because
18 it doesn't say anything in there.

19 So I am worried that will happen again. I
20 mean, I've got a lot of worries. I've got a couple
21 more here. I'm worried about my employees. You
22 know, you have to understand how this goes.

23 You know, D.C. is an antiseptic place, you
24 know, maybe not all the streets, but you can sit in a
25 room. You can make up a rationalization. You can

1 vote amongst yourselves, pass a law, and you feel
2 like you've done a good job and you use your
3 rationalization to sleep at night, but those have the
4 effect -- those little pieces of paper that you sign
5 or vote on can do great things like Native 8(A) or it
6 can do horrible things, and my employees, I mean
7 literally hundreds of them, over a thousand of them,
8 all have jobs where they never would have had them
9 before. I can assure you they wouldn't be managing
10 anything in Corporate America, but here we are. Our
11 top staff is all Native American and they're all
12 doing things that are incredible. We have 10 interns
13 this summer. It's wonderful. We're giving our
14 employees homes. We're giving them a chance at a
15 future. We're using \$1 million of our profit this
16 year to help 20 families get \$50,000 for downpayment
17 assistance because all of our houses are owned by the
18 Federal Government on our reservation. All of our
19 land is owned by the government. So you can't get a
20 mortgage.

21 So we're doing everything we can to stimulate
22 a kind of emerging middle class so that our future is
23 strong, so that people have values, equity. They can
24 work on education and, you know, but if you pass a
25 law here and whatever your rationalization is, we

1 don't care, because the result is something is taken
2 away from us.

3 Those laws tend to be -- two things tend to
4 happen. Somebody else gets the contract for the jobs
5 and we go back to welfare, homelessness, alcoholism,
6 desperation, those kinds of things, and it just kills
7 me to sit here and have this kind of professional
8 legal-oriented conversation when I know what's going
9 to happen if these things just keep on going down
10 this path.

11 There is -- I'm going to slow down a little
12 bit. I think that now you know why I'm standing up,
13 because I get very -- this is real to us. Right?
14 You know, we don't go home to the suburbs, you know.
15 We don't hop the train. We don't have traffic jams.
16 We don't do all of these things. You know, this is
17 real life impacts for all the tribal people that are
18 out there. I could care less about what happens in
19 D.C., to be honest. I actually tend to try to ignore
20 it as much as possible, but in these instances,
21 you've got to get your suit on -- I've got my tie in
22 my pocket. I can't go all the way -- and you come
23 out here and do your part, but what I want to do is I
24 guess I want to serve notice, for what it's worth. I
25 don't think anyone is afraid of us, but our little

1 NACA went from seven tribes to 37 in a few years.

2 So, obviously, people care.

3 I want to serve notice that we are not going
4 to just give up. Now, we don't have the money and
5 influence to play the political power game, but we've
6 got truth on our side. We've got fairness on our
7 side. There must be some room for that in our minds,
8 and we think to ourselves that, you know, 8(A) is the
9 right thing to do. Some people think it's unfair.
10 They talk about abuses. They talk about just general
11 things that are negative about it, and I suppose I
12 can't even argue rationally against some of the
13 criticisms, but I will make a counter argument, that
14 we don't view 8(A) as some special thing for us. We
15 view it, frankly, as the least the government can do
16 for us.

17 As I said earlier, we gave to this country.
18 We've given all the land, all the resources. Native
19 Americans give their lives all the time in the
20 military for this country. To us, it's the least you
21 can do.

22 You know, all we're asking to do is take out
23 your trash, clean your floors, sell you some food, or
24 do any of number of a thousand tasks that you want us
25 to do. You take everything from us and all we want

1 to do is work for you. You know? I mean, that's it.
2 I know, I know without a doubt, that if the 8(A) is
3 eliminated or continues to be widdled down that we
4 will be back in that room, back on some lonely
5 reservation, snapping the wire and harness together
6 and having somebody come in and feel good about that
7 because they've checked their liberal box. They've
8 checked the initiative to do some sort of minority
9 business, but we'll be back to being unsophisticated.
10 We'll be back to talking about the good ole days, and
11 once again, something will have been taken from us.

12 I guess with that, I think I'm just going to
13 stop, and what I'm hoping is that this sets enough of
14 the tone so you understand the emotional element to
15 this and the real life element to this, and we'll get
16 into some of the specifics as we go forward. I
17 appreciate it. Thank you.

18 MS. JOHNSON-PATA: Thank you, Lance. Lance
19 has never been known not to speak his mind. We
20 appreciate your comments. Thank you very much.

21 The next person who has agreed to give us a
22 presentation is Kurt Francis from the Penobscot
23 Nation, and then after that, I'm not sure -- I'm just
24 double checking -- Nate Cox, are you going to be
25 presenting? No? Not verbally?

1 And then Sarah Lukin will follow Kurt
2 Francis.

3 MR. FRANCIS: Good morning, everyone. I
4 won't be quite as direct as Lance. I have prepared
5 written comments this morning, but I do think that I
6 find all his comments very much agreeable from our
7 standpoint, and I think he makes some excellent
8 points.

9 As Jackie said, my name is Kurt Francis. I
10 am tribal chief at Penobscot Indian Nation, proudly
11 just re-elected. I also serve on the Penobscot
12 Indian Nation Enterprises Board of Directors and sit
13 on the Executive Committee for the United South and
14 Eastern Tribes.

15 The Penobscot Indian Nation Enterprise is a
16 Section 17 corporation that's wholly owned by the
17 tribe. I'm here to provide comment on Section 811 of
18 the National Defense Authorization Act for Fiscal
19 Year 2010. In Maine, the four tribal nations have a
20 unique legal relationship with the state due to the
21 Maine Indian Land Claim Settlement Act. Varying
22 interpretations of the act have long prohibited the
23 nation from accessing adequate economic tools to
24 provide a better quality of life to our citizens.
25 Tools like the Indian Game and Regulatory Act have

1 been deemed to be not accessible to us by the State
2 Government, and those views have been upheld within
3 the state legislature in their courts.

4 Despite this, our people have worked very
5 hard to grow their individual capabilities through
6 educational achievement only to find there is little
7 to no opportunity for them in a state that is
8 predominantly rural with high unemployment rates.
9 According to the recently released Margaret
10 Chase-Smith Policy Center report on poverty, if
11 things continue at their current pace, by 2014, there
12 will be more people in Maine on welfare than working
13 in the private sector. This is only magnified within
14 our territory as our unemployment rate fluctuates
15 between 20 and 40 percent.

16 So with very limited resources, our tribe
17 worked very hard for the past four years to create
18 opportunity through the 8(A) program. Today, I'm
19 proud to say that our people are again hopeful that
20 there is a better tomorrow for them to be able to
21 have access to opportunity and a quality of life
22 equal to every other American.

23 With the revenues we generate from
24 participation in the 8(A) program, we have three
25 goals: One, to build our knowledge and capability to

1 move towards total self-sufficiency; and, two, to
2 create revenue that in its entirety will go to the
3 Nation for supplementing essential services and
4 adequate help for our people which focuses on the
5 collective benefit for our tribal of 2400 citizens;
6 and, three, to create local jobs in a big way that
7 will significantly reduce our unemployment and
8 elevate our people through these opportunities.

9 This program allows us to give a helping hand
10 to our people and not a handout as it is our goal to
11 get to non-dependency in all areas of our citizens'
12 lives. Dependency has crippled tribal communities
13 for decades.

14 With all of this, we view Section 811 as a
15 serious detriment to the tremendous progress we have
16 made with this one economic tool that is available to
17 us to lift our people out of centuries of poverty and
18 the associated social ills. This concern has already
19 been very real for us. Section 811 was recently
20 quoted to us as a reason our \$30 million sole-source
21 opportunity to refurbish boats for the Federal
22 Government was ended by the Coast Guard as they were
23 quoted in saying there is uncertainty with Section
24 811.

25 We are also partnered with major companies in

1 Maine to bring these opportunities to Maine, and this
2 lost opportunity would have provided the past
3 performance needed for us to bid eventually without
4 our mentor as it is our goal to succeed again in a
5 self-sufficient way. This negative result, because
6 of the uncertainty around Section 811, was not just a
7 missed opportunity for our tribal, but for an entire
8 area starving for opportunity in Maine.

9 There are absolutely sound reasons why the
10 Federal Government created the Small Business
11 Administration and its 8(A) program, to aid, counsel,
12 assist, and protect the interests of small business
13 concerns. The SBA helps Americans start, build, and
14 grow businesses. The Business Development Office of
15 the SBA assists firm owned and controlled by
16 economically and socially disadvantaged individuals
17 to enter the economic mainstream.

18 The 8(A) program creates opportunities for
19 such disadvantaged entities to compete for federal
20 contracts, and in the 1980s, Congress amended the
21 Small Business Act to specifically assist businesses
22 owned by Indian tribes to compete for these
23 contracts, including provisions that eliminated caps
24 on sole-source contracts.

25 The reasons for this were the extreme poverty

1 that exists in our communities and the realization
2 that a tribally-owned small business benefits not
3 just a single family that might own a business, but
4 an entire tribe or community who benefit by the job
5 creation and income produced through the securing of
6 federal contracts. That is why the Congress allows
7 for Native-owned business to receive sole-source
8 contracts in larger amounts than businesses owned by
9 individuals.

10 Each year, the Federal Government laudably
11 sets goals for the amount of contracting it would
12 like to do with minority and disadvantaged
13 businesses, and every year, it struggles to meet
14 those goals.

15 All 8(A) contracts combined account for three
16 percent of Federal Government contracts, and Native
17 American, Alaskan Native, and Native Hawaiian
18 small-owned businesses combined receive less than 1.3
19 percent of all federal contracts. It should also be
20 noted that one-third, 32 percent to be precise, of
21 all federal contracts are awarded sole-source. The
22 combination of these facts certainly begs the
23 question as to why there seems to be so much focus on
24 sole-source contracting to native enterprises.

25 With a government that annually struggles to

1 meet its small business goals and native enterprises
2 that obviously help in this area, it is our fear that
3 the Federal Government small business goals will
4 continue to be missed if rules are put in place that
5 limit native enterprises from contract awards. Will
6 such a rule implicitly provide for huge government
7 contracting companies who are already awarded an
8 overwhelming majority of sole-source contracts to get
9 even bigger?

10 For some, this is simply about policy,
11 resources, politics, but for native people, this is
12 about our very survival and overcoming centuries of
13 being left behind and forgotten. Native people and
14 enterprises must continue to play a significant role
15 in the future of our country in a self-sufficient,
16 self-governing way to overcome the past and send a
17 message that our government-to-government
18 relationship is going to be one that allows native
19 people to prosper and truly be a partner in the
20 future.

21 In conclusion, it is important that you
22 clarify the application of Section 811 because, as
23 I've explained, it will and already has had a
24 negative effect on our efforts even before
25 regulations have been promulgated to implement it.

1 Rules should not be implemented without first hearing
2 from and giving serious consideration to the voices
3 of those most affected stakeholders, the native
4 enterprises.

5 So we appreciate this consultation is taking
6 place and we are asking the following if the rule is
7 implemented: That regulations clarify the fact that
8 there should be a justification and approval process
9 for sole-source 8(A) awards in excess of \$20 million
10 as opposed to creating a flat \$20 million cap for
11 contracts to native-owned businesses. We understand
12 that the Armed Service Committee has indicated that
13 this was their intent; that the \$20 million figure
14 apply only to the base year of the contract and not
15 to the total value of the contract that could include
16 subsequent option years; that the elements of
17 justification in Section 811 not be added to on top
18 of existing requirements for sole-source contracts so
19 as to create a severe burden for agencies to justify
20 sole-source awards to native contractors; and that
21 allowing an agency to meet its small business goals,
22 contracting goals, be specifically identified as
23 being in the agency's best interest per language
24 contained in Section 811.

25 So like Lance, we have a lot of feelings on

1 this rule, but I think I'll close with that, and on
2 behalf of our tribes, the Penobscot Indian Nation,
3 Penobscot Indian Nation Enterprises, and, again, the
4 United South and Eastern Tribes, thank you very much
5 for your time.

6 MS. JOHNSON-PATA: Thank you very much.

7 And just on a side note, I was reading a book
8 last night that hasn't been published yet, but the
9 first chapter was all about the blueberry-picking up
10 in your nation and how many jobs it creates for the
11 couple of weeks a year and that's basically it. So
12 your comments are well taken. Thank you.

13 The next speaker is Sarah Lukin. Many of you
14 know Sarah Lukin is the executive director of the
15 Native American Contractors Association.

16 MS. LUKIN: Cama'i. Hello, everyone. Good
17 morning.

18 I'll tell you how to spell that later.

19 My name is Sarah Lukin. I'm an Alutiiq from
20 the Native Village of Port Lions. It is a remote
21 village in the Gulf of Alaska. So I'm going to bust
22 out my Alaskan map for you lower 48-ers. Okay. So
23 here is the state. I'm from right here in case
24 you're all wondering, but I live and work in
25 Washington, D.C. now. I am the executive director of

1 the Native American Contractors Association, or NACA.

2 NACA is a national native advocacy
3 organization. We represent almost 40 tribes, Alaska
4 Native corporations, and Native Hawaiian
5 organizations who do government contracting and, in
6 particular, participate in the SBA 8(A) program.

7 NACA has pushed, pulled, and prodded for
8 these tribal consultations on Section 811 for almost
9 a year. So we are very excited to see our efforts
10 and I should say our joint efforts with many of you
11 here today, including the National Congress of
12 American Indians and the National Center for American
13 Indian Enterprise Development to see all of those
14 collective efforts come to fruition today.

15 I also want to say a very quyanaasinaq, thank
16 you very much, to those tribes and Alaska Native
17 corporations who are here today. It means a
18 tremendous amount to me individually and to our
19 organization collectively that you flew from such a
20 far distance to come and tell your story.

21 So I didn't have formal comments put together
22 for today, but I assure you I'll speak at every
23 consultation. So I'm going to go through some notes
24 I put together, and I apologize if I ramble a bit. I
25 was literally writing them while Lance was speaking.

1 But NACA truly hopes that the FAR Council is
2 here today to listen to the voice of our native
3 people as we as a collective group struggle to
4 achieve socioeconomic self-sufficiency. Throughout
5 history, we've seen Congress and the Administration
6 attempt to implement various policies and programs
7 designed to help native people achieve that
8 self-sufficiency, and I think we've heard Lance and
9 Kurt allude to that a little bit.

10 So some of those policies, I would argue,
11 have been very good. Unfortunately, many of them
12 have also been very bad. Participation in the 8(A)
13 program is one of the few federal Indian policies
14 that's actually working to help sustain -- to help
15 build sustainable native economies.

16 So native 8(A)s, I would argue, are building
17 viable businesses and providing tremendous value back
18 to their native communities and native people as a
19 direct result of this program. Unfortunately, last
20 week, many of you probably read in a prominent
21 newspaper suggestions by a U.S. Senator that the
22 Federal Government would be better served doing away
23 with Native 8(A) and, instead, putting our native
24 people back on welfare.

25 As an Alaska Native child who knew all too

1 well welfare and federal handouts, I'm here to say
2 that that is not the right approach. Our people, I
3 assure you, would much rather work and provide value
4 to the Federal Government and the U.S. taxpayer and
5 bring those benefits back to our native people
6 through participation in programs like 8(A).

7 So NACA firmly, firmly -- I'll pound the
8 table while I say that -- firmly disagrees with
9 Section 811. It, unfortunately, was dropped into a
10 must-pass bill without input from the native
11 community or members of Congress who serve and
12 represent us; however, I understand that today, it is
13 about providing you our thoughts and recommendations
14 on the implementation of Section 811.

15 So as such, NACA will be providing the
16 following recommendations. We have also submitted
17 those in writing if you would like more technical
18 detail. I'm going to gleam over them in a general
19 sense today.

20 We would like to clarify that \$20 million
21 should be defined as the base year of the contract,
22 not the life of the contract. We would like to argue
23 as well that the justification and approval process
24 should only include the five elements that are
25 outlined in the FAR, and that's -- excuse me --

1 should only include the five elements that are
2 outlined in Section 811(B). All right?

3 Now, what's my thought process behind this?
4 Why do I think that this needs to be the case?
5 Because there are 12 elements currently of
6 justification in the FAR. All right? And if you
7 read Section 811, it lists five elements. Now, three
8 of those five elements are duplicative of the 12 in
9 the FAR. I highly doubt that it was the intention
10 of Congress that native enterprises be required to do
11 justification of 12 elements in the FAR plus the two
12 that are now duplicative in Section 811, effectively
13 forcing native enterprises to do more justification
14 and approval than any other government contractor in
15 existence.

16 Okay. So again, NACA's recommendation is
17 that native enterprises be required to do only
18 justification in the five elements outlined in
19 Section 811, and I think the fact that they're
20 duplicative, three of them are duplicative, also
21 better explains that.

22 As you define other matters that's outlined
23 in Section 811, you know, we suggest that you
24 consider things like small business goals, meeting
25 small business goals, meeting federal Indian policy,

1 that those would clearly matter in defining other
2 matters of justification. Certainly, as Kurt
3 mentioned earlier, you have a 23 percent small
4 business goal to meet. Native enterprises only
5 represent collectively 1.3 percent of that, but we do
6 help you achieve that small business goal, and that
7 should be considered.

8 And, lastly, really reiterating and
9 clarifying to contracting officers and agencies that
10 Section 811 is not a cap, but it's just a requirement
11 to do justification and approval. All right. This
12 is absolutely important. I have heard repeatedly
13 stories from my membership across the nation who have
14 been denied contract opportunities with various
15 federal agencies because the contracting officer has
16 said that Section 811 is a cap. Okay?

17 For now, that's all I've got. I'd be happy
18 to answer any questions that you have.

19 No questions?

20 MS. JOHNSON-PATA: Yet.

21 MS. LUKIN: No questions yet. Okay.

22 Quyanaa, thank you.

23 MS. JOHNSON-PATA: Thank you, Sarah, for your
24 tireless efforts over this week too, keeping us
25 well-informed of the media issues and made sure that

1 we've had a collective response. I appreciate all of
2 the work that Sarah has been doing.

3 Now I'm gleaning from the list here folks who
4 didn't adamantly say no. So I'm going to ask if you
5 would want to provide some remarks.

6 Frank Lamere. Frank is also from the
7 Ho-Chunk Nation. Many of us know him much more
8 better as the Native American chair for the
9 Democratic Caucus at the conventions.

10 MR. LAMERE: I thank you and the council for
11 this opportunity that you've afforded to Indian
12 country and, more notably, even to our own Ho-Chunk
13 people. I just would like to share a couple of
14 things that I hope are fitting and appropriate and
15 pertinent to the discussion today.

16 You know, sometimes I process things very
17 slowly, but it soaks in, and there was something that
18 Lee said a little bit earlier that I think really has
19 to be remembered and that I would want us to remember
20 it, because I sense the nature of this discussion.
21 We want to get to a place where we are all on the
22 same page.

23 You had mentioned that we want to take these
24 things we're talking about with 811 and weave it into
25 the tapestry of existing law. You go on to mention

1 that we want no conflict. The very nature of the
2 discussion of doing something that would disaffect
3 all of Indian country will lead to conflict,
4 continued conflict, and that's what I would want to
5 share with you.

6 Our good young relative, I'm very proud of
7 his remarks. I want to say ya-ho to him because
8 Lance hit on some things that were very important,
9 and I want to say that the Ho-Chunk people, the
10 Winnebago people, we do not go away simply because it
11 is imperative that we do things that are important
12 for the generations alive and for the generations to
13 come. It's very important that we speak to that.

14 As I sat in this audience today and I looked
15 up here on the stage, I noticed this behind the
16 speaker, and the first Ho-Chunk leader who spoke
17 about the generations to come was Rubin Snake. I
18 want to share this with you today because it's very
19 pertinent and fitting today. He said the eagle that
20 sits atop the staff from which hangs this country's
21 symbol of justice and democracy, that is my lawyer.
22 That is the interceder between humankind and the
23 creator of all things. These are my understandings
24 of the Indian way of life.

25 Rubin said these things to me when I was a

1 much younger man, and he spoke to that because of the
2 necessity of carrying those things forward, providing
3 something for the generations to come, and he was
4 also the first among the Ho-Chunk people who spoke of
5 self-sufficiency and the need for that. I share
6 those things with you.

7 The other thing I think is very important by
8 way of sharing some things with you, and I'm not as
9 well traveled on the technical matters that we speak
10 of today, but I have heard and I have seen the
11 discussion that people are having about the chilling
12 effect that this proposal has on businesses and those
13 who would contract with native people. I wish to
14 underscore that, because chilling effect, you can
15 probably describe that in many ways, but a chilling
16 effect to me as simply a man on the street means that
17 somebody is going to fail, I would guess, because of
18 the chilling effect on native tribes and on native
19 businesses.

20 I don't think that you can explain that away.
21 "The chilling effect", I think when you even use that
22 term, it causes red flags to be raised, because
23 somebody is going to fail, and I believe and we've
24 read into this too many times in Indian country and
25 even among the Winnebago people is our strong belief

1 the government should not determine who fails and who
2 succeeds in a marketplace. We have seen that many,
3 many times.

4 If we have a proclivity for something and
5 they talk about gaming and we do it, Well, then I
6 want a piece of that, and now looking at this free
7 enterprise system and trying to make an impact to
8 change things for the people, the see the successes,
9 and I know they've even seen the successes among the
10 Ho-Chunks, and somebody evidently wants a piece of
11 that. To my mind, that is what I see.

12 My teachings of the Winnebago leaders to the
13 point causes me to think that. Lance spoke very
14 eloquently at a very young age of these things. If
15 you have something in the Indian country that works
16 for you, somebody is going to want it, and under the
17 color of law, you can get it, and I share those
18 things with you.

19 Lance mentioned the fact that we play by the
20 rules. We play by the rules laid out there and we do
21 the best that we can to succeed. I'm understanding
22 that we came to this place where we're talking about
23 this Section 811. You know, it is not hyperbole to
24 say that it was done in the middle of the night. It
25 was presented to us, and we understand that a certain

1 senator has strong feelings and she has a right to
2 speak to these things, but we have a strong concern
3 about these rules and how we've arrived at this
4 place.

5 I say that because the good senator does have
6 a right to say that, and on behalf of the Ho-Chunks,
7 on behalf of my own family, before I leave here
8 today, there's a couple of things I'm going to do in
9 Washington. I am going to go over to that Vietnam
10 Veterans Memorial and I am going to put down some
11 tobacco over there on Panel 3-West Y-96, because
12 there inscribed is the name of a young Winnebago, my
13 best friend, my younger brother, Anthony John Lemere,
14 who died at the age of 20 years and 20 days defending
15 the Constitution of the United States in Vietnam,
16 even defending that senator's right to do these
17 things and to speak the way that she has spoken about
18 811, but I don't think he had the cover of darkness
19 in mind when he paid the supreme sacrifice.

20 Winnebagos play by the rules. Winnebagos
21 serve our country. Winnebagos do the best we can
22 given what we have, and all we ask is for that mutual
23 respect and that opportunity.

24 Lastly, I would say that had things been
25 different and things had not ended up the way that

1 they ended up, perhaps, Anthony John Lemere would be
2 here speaking to you today.

3 Those are the ways that we see things from
4 one generation to the next, and this generation,
5 we've got to hold the line. We've got to protect
6 what little we've got, what little we've been able to
7 realize from the opportunities given us, and we would
8 ask that you be very mindful of these things as we
9 proceed.

10 There's conflict. We can never go away
11 because if we go away, we turn our backs on our
12 relatives, turn our backs on our elders, turn our
13 backs on the generations to come, and we begin to
14 take away from those opportunities that we have been
15 able to realize here.

16 The other thing, and I will be done here,
17 that I'm going to do today, and this indirectly comes
18 from the impact of what we do at Ho-Chunk and what we
19 among the Winnebago people do, my wife has the
20 opportunity to work there. She appreciates that job,
21 and between her and myself, we have been able to let
22 our freshman daughter go and seek an education
23 opportunity over here at Catholic University, a tough
24 school to get into, a lot of reading, I understand,
25 but she's there, and I'm going to say that Lance

1 talked about the importance of looking at these
2 things from a very real perspective. Well, this is
3 real. Without the opportunities given us as
4 Winnebago parents, I don't know if she would be there
5 today, and I don't know. Unless you begin to let
6 tribes do the best they can, leave them -- when
7 something is working, leave it alone, and if we
8 forget that premise, I don't know how long she'll be
9 able to stay there.

10 That's real life. That's what we deal with,
11 and so I implore you today to be mindful of these
12 things. We can talk about the technical aspects of
13 them, but rely not only on the technical aspects, but
14 on the real impact and, you know, that can result if
15 we do not look at this, you know, from other
16 perspectives than just the technical things.

17 I share that with you. I say penagigean
18 [phonetic]. Our young relative here spoke very
19 eloquently, all of those speakers who came forward.
20 This is real. Thank you very much, members of the
21 committee.

22 MS. JOHNSON-PATA: From the list, I'm just
23 checking in. Carolyn Fortune, did you want to make a
24 statement? No?

25 All right. And Ben Supple? Yes? No?

1 Okay. And I think that was the only other
2 one. George Bruster?

3 Excuse me. Go ahead.

4 MR. BENAFIELD: I'm Steve Benafield. I would
5 like to speak.

6 MS. JOHNSON-PATA: Yes, please.

7 MR. BENAFIELD: I hope that the mike works
8 with my height here. Can everybody hear?

9 I'm Steven Benafield. I was not going to
10 speak today. I didn't have prepared comments, but
11 I'm glad this has turned into more of an emotional
12 kind of real -- from our perspective, instead of just
13 a dry type of a hearing.

14 I'm the managing officer of Choctaw Defense
15 in Oklahoma of the Choctaw Nation of Oklahoma. We're
16 the third largest Indian Tribe, at least in the lower
17 48.

18 We hear a lot about the ANCs. We are not an
19 ANC. We're a Tribal 8(A). We are a manufacturer,
20 one of the few manufacturers, I suppose, that
21 participates in the 8(A) program of any significance,
22 but I can only take from my perspective and what the
23 8(A) program has done for us.

24 We've been in the business -- we started out
25 with a dirt floor building, a 12,000 square foot

1 building in Hugo, Oklahoma. It probably has in the
2 neighborhood of 20 percent unemployment, and that
3 would be -- I mean if you figure you've got a job at
4 Walmart or the Sonic Drive-in, that's a job, not a
5 career. That's for sure, but I think in some of what
6 have I heard earlier here, some of our circumstances,
7 we -- I remember the first time I drove into our
8 plant.

9 Our little plant was called a finishing
10 company and we weren't an 8(A) company. We're a
11 little manufacturing company, but Raytheon and Texas
12 Instruments Missile Defense Systems had found us and
13 wanted to support us to help us build a business, and
14 what we ended up doing was doing their dirty work for
15 them, a little bit here and there.

16 When I first came in 1998, we lost \$800,000
17 working for these guys, Raytheon and Texas
18 Instruments, doing hand assembly and things like
19 that. I had my first meeting with those guys. They
20 treated us pretty good, but no respect whatsoever.
21 They were getting their check mark. They were
22 getting their minority participation, and I was
23 surprised to find that we won the Don Perry award for
24 the outstanding mentor-protégé relationship with
25 those guys that year.

1 So we all got to come to Washington, and all
2 those guys, they were real proud of how they helped
3 us lose \$800,000 on \$2 million worth of revenue that
4 year. They also received a million dollar grant from
5 the Department of Defense to help us become ISO 9000
6 certified so we could move up the ladder and start
7 doing some more work ourselves, kind of independently
8 because we had the quality ratings to do that.

9 The million dollars went through pretty
10 quick. What I found out is one of their engineers,
11 if they didn't have a project to assign him to, they
12 sent him up to work with us, and so he would charge
13 his time to the million dollar program there to help
14 us. After three years, we weren't ISO 9000
15 certified, long from it.

16 That was my background. I was asked to come
17 in and I had worked for another section of the trial,
18 an 8(A) company, a start-up on the services side.
19 They said we see you've got some background in ISO
20 9000 and all of that; can you go in and just kind of
21 assess where we are. So I went in and I couldn't
22 find anything. What I did find was an embarrassment
23 as far as the documentation and things like that that
24 they had been helping us with.

25 So I found a contact, this big prime

1 contractor, and I gave him a call, and, Who are you?
2 Why are you calling me? How did you get my number?
3 What kind of questions do you have? I just finally
4 hung up. I was, Okay, thanks; I think I know where
5 we stand now.

6 So we called the group together, the quality
7 staff who had no training, you know, through all the
8 help from our friends, our mentors there. We just
9 pulled out a big trash can and we just dumped
10 everything that had been done in the last three years
11 in the trash can and said let's just do this thing
12 ourselves, and within about five months, we had our
13 ISO 9000 certification, and so we knew that if we
14 stayed as a subcontractor with these guys -- and they
15 wanted to do business with us. They wanted their
16 check mark, Boeing and Lockheed Martin. All these
17 guys wanted to come to us to do some of their little
18 assembly work or do some of their nasty painting that
19 they can't do anywhere else.

20 There's a paint called CARC. It's Chemical
21 Agent Resistant Coating. It can't be sprayed here in
22 Washington. It can't be sprayed in California. It
23 can't be sprayed just about anywhere except for
24 Indian country in the middle of the United States.
25 So they wanted us to do their CARC painting because

1 it's too poisonous to paint and the regulations won't
2 allow it in most areas of the country, but we've got
3 clean air and clean skies, so we've got a permit to
4 paint with CARC where we come from.

5 We just made a decision. We weren't 8(A)
6 certified at the time. So let's get our 8(A)
7 certification; let's become a prime contractor
8 ourselves; let's see if we can't get in here with
9 some of these guys. So we have grown. Our first
10 contract was with the Army. It was a prime contract
11 to make stinger missiles, the storage containers that
12 goes with those, out of Alabama. That was our first
13 federal contract.

14 That was in about 2001. We've grown from
15 there. A hundred percent of the work is done by our
16 people right there in the Choctaw Nation. We have a
17 plant in McAllister, Oklahoma and Hugo, Oklahoma,
18 about 206 employees we've grown to now.

19 Last year, on about \$30 million in revenue,
20 we made about \$3 million. We're making about 10
21 percent profit like, you know, a good defense
22 contractor should. We are doing it without being
23 subcontractors to these other guys. You know, we've
24 got to the point where we've got such a reputation of
25 quality and our price is right that the Army wants to

1 do business with us. We do business with the
2 Marines, Air Force, all these guys. We still do
3 business with Raytheon. It used to be a hundred
4 percent of our business. We do more business with
5 them now than we ever have and they account for about
6 for two percent of our business, and we take business
7 away from those guys.

8 We take business away from Secorski. We take
9 business away from BAE Systems and Osh-Kosh Truck,
10 and they don't like it when we take business away
11 from them, but we go out there with the cheaper
12 better faster block. Some of the road blocks are
13 taken away when we do 8(A) contracting. The
14 contracting officers, they know they can come to us
15 and get a better product at a better price and, you
16 know, won't have to go through two years of ordeal
17 trying to procure this thing.

18 I guess where we've come down to now, we are
19 working on a program with the Army Tank and
20 Automotive Command out of Detroit, Michigan, Warren,
21 Michigan. We've been working on this for about two
22 and a half years, getting to the point where we can
23 get an 8(A) award to develop a new water system,
24 basically replacements for a lot of these water
25 systems, water tanks and trailers that have been

1 since the Vietnam Era. They're worn out. They need
2 to replace them, and we are looking to get a
3 sole-source contract. This thing could be worth
4 probably \$200 million dollars over a ten-year period,
5 and it's come to a halt. They're trying to get it
6 in. I've talked to the contracting officers. I've
7 talked to -- what they're telling me is, you know,
8 the 811 thing, basically, we don't know which way
9 it's going to go; we're just going to stand down for
10 now.

11 Osh-Kosh is lined up. They want to jump
12 there. When we lose this thing, it's going to go to
13 Osh-Kosh. It's going to go to BAE Systems. It's
14 going to go to one of the big companies instead of
15 coming back home down here to a very capable
16 supplier. We've invested in the last five years
17 \$10.2 million at the very least in facilities to get
18 ready to try to ramp up and do large volume
19 production like this to compete with the big boys.
20 We've added 80,000 square feet of manufacturing
21 space. We've paid for all of that with the profits
22 from our business and we borrowed \$4.2 million that
23 we're paying back now to equip our plant to do the
24 Camel system. We do Marine Corps systems that we do
25 for those guys, but every bit of our profit goes

1 right back into our company.

2 We've pumped \$70 million worth of payroll in
3 the last eight years. That's as far as my figures go
4 back, eight years. It all has gone right back into
5 our community.

6 We hire tribal members. A majority our
7 tribal members. We hire non-tribal members. We are
8 a part of the community. The Choctaw Nation in
9 McAllister, Oklahoma has got a population --
10 McAllister is about 28,000 or so. They had one fire
11 station. The Choctaw Nation built a new fire station
12 in McAllister. The Choctaws only make up a small
13 portion of the population in McAllister, Oklahoma,
14 but the tribe is a good neighbor, and I don't know,
15 but it was somewhere in the neighborhood of a \$2
16 million fire station that was paid for with tribal
17 funds because we're part of the community.

18 So it just makes me -- it upsets me when I
19 see the story in the "Washington Post" the other day
20 about the Beltway Bandits \$14 million in fees and
21 such. I don't know if he calls himself the CEO of
22 the company or what. He doesn't live in Alaska with
23 the ANC he's representing, but he's making a lot of
24 money. He lives in Washington, but I am -- I guess
25 you would call me a CEO or a managing officer. I'm

1 paid a modest salary. I drove 55,000 miles last
2 year, windshield time, between our three plants, and
3 we've got one sales guy -- that's me -- for the
4 company, and one of my deputy managing officers, a
5 Choctaw lady, we're the ones who built this company,
6 and I think it just -- you know, we're approached all
7 the time. The more success we have, it seems like
8 the more we're approached by these guys that want to
9 represent us. We've been around long enough. We're
10 sharp enough that we're not going to be taken
11 advantage of by these people, but, you know,
12 evidently there's quite a few of the ANCs and some of
13 the tribes that are being taken advantage of. I
14 think that's what's given the program a bad name, and
15 it's going to kill us, and I think there needs to --
16 if there's a focus on anything, I think you need to
17 take a look at who is really involved in these
18 programs, who are the good guys and who are the one
19 that are abusing it, and the good guys, without the
20 8(A) program -- if this thing goes away, we're going
21 to be back and working for these subcontractors and
22 we'll be letting 150 people go back to where we were
23 about 20 years ago.

24 We've already graduated from the program.

25 One of our manufacturing companies has graduated. It

1 is a success story. We had sole-source contracts and
2 all of that. The thing was going to manufacturing.
3 We graduated from the program and it continues on
4 today. It employs about 80 people. We'll do
5 probably about \$18 million in contract with the old
6 legacy company. We're building on with new
7 capabilities in the spirit of the program.
8 Manufacturing, the first company, we're welding
9 metal, machined metal, and we're working with a
10 larger program management engineering and things like
11 that.

12 So I rambled here a little bit, but I want
13 you to know I see this whole thing revolves around
14 some of these large companies. I hear some of these
15 companies are billion dollar companies. My gosh. A
16 billion dollars. I couldn't fathom having a billion
17 dollar company and some of the profits these people
18 are making. We're a \$30 million company, you know,
19 and you get into the kind of systems we're talking
20 about in the defense world. \$20 million a year for a
21 contract is not a large major contract. It's a nice
22 size contract, but to think we're all getting rich
23 off of a \$20 million contract, what I'm doing is
24 trying to keep about 205 employees employed.

25 I and my partner, Cindy, have got to go out

1 and get a million and a half dollars worth of work
2 about every week to kind of maintain what we're doing
3 right now. So just think about it. Next year -- we
4 did 30-some-odd million this year. Next year, we'll
5 be at 50 million. That's a million dollars over five
6 business days. We've got to go find new work to go
7 back in there, and a \$600,000 contract here and there
8 and a \$1.2 million contract spread out is not going
9 to get us where we need to be to keep our people
10 employed.

11 So I just -- I had a conversation with
12 Lockheed Martin. We did a small contract for them,
13 and I was talking to their plant manager. He's out
14 of the Philadelphia area. I visited his plant, but
15 he was talking about how big Lockheed Martin is and
16 he was telling me his plant was about 200 people. I
17 don't know what their annual revenue was, but he said
18 he's just a fly speck to Lockheed Martin at his
19 facility and the annual revenue and annual production
20 and the rest of his plant accounts for about one hour
21 of Lockheed Martin's annual salary or annual
22 production flow through that plant, and he's bigger
23 than we are.

24 So I guess the bottom line is our Camel
25 Program, if we're able to hold onto it, it's going to

1 create jobs and put money back into our community and
2 do what the 8(A) program was supposed to do for the
3 next 10 years. If it goes away, it's going to
4 Lockheed or some of those guys.

5 So I'll wrap up. Again, I appreciate you
6 guys hearing this. I know we -- I think as a group,
7 we've asked for these consultations. I don't think
8 they were volunteered at first, but I appreciate you
9 guys hearing our concerns and allowing us to speak
10 and maybe from some of the good guys who are trying
11 to do right by the program.

12 Thank you.

13 MS. JOHNSON-PATA: Thank you, Steve. It's
14 great to hear the story of your company and the
15 challenges, which I'm hoping we'll hear more from
16 other folks as they decide to step up.

17 So right now, Lynn, would you like to come
18 up? Lynn is from the Cherokee Nation Businesses.

19 MS. ALSLEY: Good morning to everyone. I'm
20 here from the Cherokee Nation. My name is Lynn
21 Alsley, and I work for Cherokee Nation Businesses.
22 That's the business side of the Cherokee Nation, and
23 I appreciate Steve's comments. I think the Cherokee
24 Nation is kind of at the same place as the Choctaws
25 are as far as being in the 8(A) business and having

1 our businesses be a small part, really, of our
2 revenue stream.

3 We run eight casinos right now, currently,
4 and that's the majority of our revenue. We basically
5 have eight 8(A)s right now. That's kind of hard to
6 say, eight 8(A)s, but with the blessing of the SBA, I
7 hope that we have two more soon. They're sitting in
8 San Francisco waiting for certification right now.

9 What I do, basically, is I oversee these 8(A)
10 companies as director of government contracting, and
11 I can tell you for about 18 months, I ran one of
12 these companies, these small start-up companies. I
13 can tell you how difficult it is to get one of these
14 new companies off the ground without any past
15 performance or without buying an acquisition and
16 slipping them into these companies.

17 For 18 months, I sat behind a desk trying to
18 put together solicitations on a competitive basis,
19 and as you know, those of you who have put these
20 things together, how time consuming those
21 solicitations can be in preparing those, and at the
22 time that we did these, we did not receive one
23 contract under those competitive 8(A) solicitations.
24 So I'm very well aware of what 811 is and what it can
25 do for us.

1 We would love to have a \$20 million contract.
2 We do not have a \$20 million sole-source contract.
3 The majority of our contracts are probably three to
4 five million dollars, and as our program year last
5 year, we did about \$17 million in prime contracts.
6 That's a very, very small piece of the bucket, and
7 this year, we're going to do probably 40 to 50
8 million.

9 So we've seen tremendous growth there. The
10 Cherokee Nation has not really -- like I say, we're
11 in the infancy in government contracting. We've
12 depended mostly on our casinos for our healthcare
13 programs and other programs, but we're trying to take
14 the items that we're good at with our casinos, such
15 as security and safety, which was a big deal in a
16 casino, as you probably know. Our IT is state of the
17 art. We're taking those expertise that we have and
18 we are developing those into our 8(A) companies.

19 So we've got about eight companies right now.
20 Three of those are IT companies. They are active in
21 the 8(A) program and they are getting contracts for
22 the Federal Government right now, but those are very
23 small.

24 So when I see these kind of limitations on
25 our contracting business, I think that that's just

1 going to make it more and more difficult to get these
2 contracts. For instance, I talked to our CEOs that
3 run these 8(A) companies, and we do business at the
4 Mike Monroney Aeronautical Center in Oklahoma City,
5 and those contracting officers down there will
6 sometimes ask our companies to write the
7 solicitations for us or develop those with them. So
8 any time you put more work on a contracting officer
9 to justify and get approval at higher levels, it's
10 going to make it more and more difficult for us to
11 get those sole-source contracts.

12 Like I say, the competitive business has
13 gotten so difficult that it is almost impossible if
14 you cannot go -- if you are already at that facility,
15 to come in as a new company with very little
16 performance behind you and get a contract. It just
17 doesn't happen. You've got to go in with a strong
18 partner, which part of your revenue or profits are
19 going to that other partner.

20 What we are trying to do is build that
21 competency in house without depending so much on
22 those other partners so that we can keep the revenues
23 and the profits within our company itself, and that
24 helps to grow our companies.

25 I want to give you a little example. We

1 talked about the benefits and how those benefits flow
2 back to our tribal members. I got the opportunity to
3 travel last month with Ross Swimmer. He's a form
4 chief of the Cherokee nation, and while we were
5 waiting in the airport, a lady came up him and just
6 profusely thanked him for giving her a job 30 years
7 ago. She had just retired from a 30-year job with
8 the Cherokee Nation, and her and her husband were
9 going to Europe for a month-long vacation; and
10 without those kind of programs, we're not going to be
11 able to provide those jobs back to our tribal
12 members, and these are much -- the Cherokee Nation is
13 headquartered in Tahlequah, Oklahoma, which is a very
14 small community, and most of our tribal members live
15 in the northeastern part of Oklahoma, which are very,
16 very rural territories. These are jobs that we're
17 providing in rural territories which helps those
18 people stay in those areas and develop that economy
19 in that area.

20 So these programs are very, very near and
21 dear to our heart. Like I say, we are only in the
22 infancy of the program and we're looking to grow, you
23 know, triple our revenue potentially the following
24 year, but like I say, if we see 811 go in as it is, I
25 think that's going to really hurt the contracting

1 officers because I think it's going to be more and
2 more difficult for them to sole source those
3 contracts.

4 That's all I have for today. Thank you.

5 MS. JOHNSON-PATA: Thank you, Lynn.

6 Is there anybody else who would like to join
7 in and make some comments at this time?

8 Okay. Do you want to make some comments?
9 Otherwise, we can go through and see if people want
10 to discuss some of these questions. Do you want to
11 make some comments first?

12 MR. GORDON: Thank you very much. We very
13 much appreciate your statements. I will speak for
14 myself and then see if any of my colleagues want to
15 speak.

16 It is both moving and helpful to hear the
17 concrete stories of the impact of the 8(A) program on
18 your communities and on the economies within the
19 communities and the people there. As I say, I find
20 the stories both moving and very helpful for us in
21 putting a framework to this.

22 So I want to thank every one of you who
23 spoke. It was an experience that I will take with me
24 as we go forward.

25 I don't know if any of my colleagues want to

1 make any remarks.

2 [No response.]

3 MR. GORDON: It's really whatever you think
4 best in terms of the best way to proceed. We want to
5 be absolutely sure that if people want to address any
6 of the issues, whether those in the questions that we
7 together prepared or otherwise. We want to be
8 absolutely sure that you have this opportunity to
9 speak.

10 MS. JOHNSON-PATA: I'm just going to look
11 here and see. We've been going since -- it's eleven
12 o'clock now, a little after eleven, and I wasn't sure
13 if you wanted to take a short break or if you want to
14 just keep going until the noon hour and then take a
15 break.

16 I was hoping that we would get in some more
17 engaging dialogue around some of these questions, but
18 we could actually get into some dialogue just amongst
19 ourselves around these questions, because I know that
20 not everyone wants to make a format statement at this
21 point.

22 So what's the wishes of yourselves here?

23 AUDIENCE MEMBER: Take a break.

24 MS. JOHNSON-PATA: Take a break?

25 Okay. So let's take like about a ten-minute

1 break. We'll come back at 11:15 and we'll spend some
2 45 minutes on the questions before we take a lunch
3 hour break and make our assessment about where we are
4 with questions then.

5 All right. Thank you, everybody.

6 [Recess.]

7 MS. JOHNSON-PATA: As I was telling Dan, it's
8 kind of like this is the warm-up session. In
9 Albuquerque, there will be a lot more folks talking
10 and then by the time you guys get to Alaska, you'll
11 just be there for the all-nighter; but I think we had
12 some really great speakers this morning and
13 presentations. I was glad to see so many tribal
14 enterprises being represented.

15 I was hoping that we could take advantage of
16 this time before the noon hour to go through some of
17 the questions, and as we both stated earlier, we had
18 a pre-teleconference where there were some specific
19 things that the agency represents would really like
20 to hear from our tribal representatives that could
21 help them, particularly around where they go, next
22 steps, and give them some guidance. The first two
23 questions that were general questions were really
24 about some of the stories we heard this morning, just
25 getting a better flavor and feel for the kinds of

1 enterprises that are in Indian country and, you know,
2 your enterprises' participation along those lines.

3 I think any of you that are planning on
4 submitting written comments, I really urge you to not
5 just speak to the technical pieces, but also speak to
6 this other component, because it really -- as we
7 build those stories and the knowledge and
8 understanding, it really helps folks understand how
9 businesses differ in Indian country, the structures,
10 but the value that comes back to the community,
11 because it's such a different environment than from
12 an independent enterprise owner. The community
13 nature of those things, I think that's very helpful.

14 So if anybody wants to speak that at all, add
15 any examples of their tribal enterprises, at this
16 time, I'm open for comments along those lines.

17 And if not, I'm really hoping that we could
18 spend a little time on the 811 questions that are
19 more specific. Once again, this is just a dialogue
20 so for those of you who are concerned that you don't
21 have formal comments yet.

22 If you look at the sheet, there were four
23 questions on the general 811, and I'm going to let
24 you speak to the questions, Dan, because you did such
25 a good job on the teleconference explaining why these

1 questions are important for you to hear from us.

2 I'm urging you to think about responding.

3 MR. GORDON: Thank you.

4 We very much welcome your comments now on
5 these issues, but again, you're welcome to reflect on
6 this and to send us written comments. You'll see in
7 the handout the details of how to submit written
8 comments, what the deadline is. We welcome that.

9 You're also welcome to join us if you want to
10 go traveling to Albuquerque. We'll be in Albuquerque
11 the day after tomorrow. We'll be in Fairbanks in a
12 couple of weeks. We welcome comments at those
13 sessions or written comments, but, first of all, of
14 course, we welcome your comments this morning.

15 In terms of the J and A process, when you
16 look at the specific questions, the first question as
17 we've put it, but you're welcome to use it as a
18 springboard to a broader or somewhat different
19 comment, the first question is when do you think
20 agencies should be deciding that they should be doing
21 a sole-source contract above \$20 million.

22 I thought it was particularly helpful that a
23 number of the speakers this morning said that they
24 thought the FAR should make very clear that the \$20
25 million is not a cap on sole-source contracts. It's

1 merely the point at which or the threshold above
2 which if there a sole-source contract, a
3 justification and approval of J and A needs to be
4 written.

5 Our first question here, if anyone would like
6 to address it, you're welcome to, is what steps
7 should an agency take to decide if a sole-source
8 contract above \$20 million is in the best interest of
9 the government and what do you think the factors
10 should be in deciding that it's in the best interest
11 of the government. We heard from a couple of
12 speakers this morning talking about that. My notes
13 show that one speaker pointed out that meeting the
14 small business goals would be a reason that you
15 thought it should be taken into account, and I also
16 noted down that meeting the Native American policy
17 goals should be a reason taken into account.

18 Does anybody want to supplement those answers
19 on this point. If you want to, this is a nice
20 opportunity to, but again, don't feel compelled.

21 MS. JOHNSON-PATA: We have the microphones
22 here. You can come down to them or one of our folks
23 will grab a microphone and bring it up to you,
24 wherever you feel more comfortable.

25 John, do you want to assist the gentleman

1 right there in the back?

2 AUDIENCE MEMBER: I can probably speak loudly
3 enough.

4 MS. JOHNSON-PATA: No. We really need that
5 for the transcriber. Thank you very much.

6 AUDIENCE MEMBER: I'm John Sanders from the
7 Nova Corporation. We are actually the Navaho's
8 Nation's first 8(A) company, and we do specifically
9 Department of Defense IT services work.

10 One of the thing I think that's missing would
11 be just, since our focus is DOD, is the need of the
12 [inaudible], and, obviously, the contracting officers
13 take that into account prior to this anyway, but
14 obviously that's one thing that would have to be
15 taken into account as well as just the capability of
16 the money that's going to be saved. I think one of
17 the things that was missed in the article last week
18 or the articles was how much money is saved by doing
19 some of these sole-source contracts, because I could
20 show you line by line where Nova Corporation has
21 saved significant dollars to the government.

22 MR. GORDON: If you're willing, John, as part
23 of your dialogue, don't feel compelled, but if you
24 want to tell us a little bit more, it would help me
25 understand. When you say savings, tell us a bit more

1 about how a sole-source contract brings savings.

2 AUDIENCE MEMBER: Well, just from a prior
3 contractor, I don't want to call any large business
4 names out, but we've had large -- most of our
5 contracts right now, we are the prime. We have acted
6 as sub previously as well, but I can specifically say
7 on say on multiple contracts, we've saved the
8 government over 20 percent from our large partner --
9 I shouldn't say partner, the incumbent price that was
10 there previously. When they went through the
11 sole-source process, they were able to save over 20
12 percent. I think that many of the other businesses
13 would probably be able to echo that if they actually
14 went in and did a line-by-line comparison.

15 So I know that was one of the concerns from
16 the senator last -- I guess a year and a half ago
17 when she was discussing this, was the cost, and I
18 think if there was an in-depth review, we would find
19 that the cost is actually less in many cases.

20 MR. GORDON: Thank you.

21 One of the issues that comes up is whether if
22 an 8(A) company would offer lower costs than a
23 non-8(A) company, why there shouldn't be a
24 competition, because then the 8(A) would win the
25 competition in those situations if its costs were

1 lower. I don't know if anyone in the audience wants
2 to address that. That might be an issue that we
3 would find helpful here.

4 MR. MORGAN: I think I can address that and
5 make a minor point. The question specifically was
6 why would -- if an 8(A) is going to be lower costs,
7 why would we just go with that. I think that it's
8 pretty simple from our perspective, especially with a
9 larger contracting opportunity. There is a risk
10 element when you choose a Native American
11 corporation, I think at least in the contractor's
12 mind.

13 You have smaller companies. You have less
14 experienced companies than the larger competitors. I
15 mean, there's a phrase that no one gets fired in IT
16 for buying Cisco. Right? IT managers don't. So we
17 are not Cisco, you know. That's Boeing. That's
18 Lockheed Martin. That's Northrop Grumman, those
19 kinds of things.

20 So I think Frank earlier used the term
21 "chilling effect". So I think that what will happen
22 is from a perception standpoint, we will probably
23 lose that battle, and the reason I kind of think that
24 is because we always have before and I think
25 everybody kind of knows that that's what's really

1 going on in this situation.

2 Another comment on the \$20 million issue:
3 There is a program in the lending for the Bureau of
4 Indian Affairs and they give a certain amount of
5 money and they can loan up to a hundred million
6 dollars a year authority. It's one of the only
7 programs that even lend on trust land, which is the
8 land that we have. So I've always argued that it
9 acts as a sort of kind of capital infusion cap in
10 Indian country. We've got lots of land and lots of
11 people, but we can only lend a hundred million
12 dollars capital to kind of deal with the problems of
13 two million people in an economically depressed area,
14 and I think what you have going on here is something
15 quite similar on the \$20 million cap, because that's
16 what they're calling it. I mean, nobody really want
17 to do the justification to do it or it's going to be
18 very difficult to go through that kind of thing.

19 So I think that that's a real issue in terms
20 of what we face and, frankly, government contracting,
21 once you get started and pass over the hump, \$20
22 million isn't necessarily that large of a number in
23 some of the contracts that you play with. So what
24 it's done is it's going to relegate us to the bottom,
25 you know, and acts as a functional cap to what we can

1 and cannot do and basically leaves the larger
2 contracts open to the larger competitors and they can
3 compete amongst themselves and play their normal
4 game. They won't just be somebody they don't have to
5 worry about again.

6 MR. GORDON: Thank you.

7 Does anybody else want to address the issues
8 of the ability of the 8(A)s to compete and the
9 advantages and disadvantages that they bring that may
10 be taken into account in a best interest
11 determination to a sole-source contract above \$20
12 million?

13 MS. BEALOCK: Good morning. My name is
14 Leslie Bealock. I work for Mann Development
15 Corporation on their government contracts and
16 commercial contract sides. I'm also a member of the
17 Oneida Nation of Wisconsin, FYI.

18 A couple of the situations that I look into,
19 I have been a regulatory analyst in the past and look
20 at competitive analysis. You, in terms of the FAR,
21 are required to look at more justification than just
22 competitive analysis and what you're trying to do is
23 develop the justifications, most of which can't be
24 quantified in terms of 50 percent of that, 40 percent
25 of this. What you probably need to do is to focus on

1 keeping the playing ground level and in doing so,
2 trying to figure out what your internal needs are
3 agency by agency.

4 So, for example, does it make sense at the
5 end of the fiscal year when the agency has funding
6 that it need to spend, it has a project it needs to
7 fund, it needs to get that project out the door
8 quickly, does it make sense to go with the Native
9 8(A), the Tribal 8(A). Maybe it does. Does it make
10 sense for the agency to try to make the percentages
11 where it's short-falling in terms of giving business
12 to any kind of an 8(A) organization that holds
13 special things for Tribal 8(A)s or Native 8(A)s or
14 other 8(A) organizations. Perhaps it does.

15 You're looking at different requirements.
16 You went through a whole number, a list of
17 requirements, justifications that are already there.
18 There are sufficient justifications there already.
19 You don't need to add any more. What you need to do
20 is to help the agencies understand with regard to
21 Tribal 8(A)s what the justifications are for them.

22 I understand that you asked a question and
23 I've thrown it back at you, but I think that's not
24 necessarily an easy question to answer and it depends
25 very much on the timing as the Department of Defense

1 spokesperson said. It depend on which agency you're
2 dealing with, and to meet Lance's point, that I think
3 stood out more than any other in my mind, it means
4 setting some sort of parity so that you're not
5 pushing back the tribal organizations, pushing them
6 down to the subcontracting position.

7 I just wanted to add one more thing from the
8 perspective of people that my companies have been
9 going to talk to in just introductory sessions, one
10 of my new presidents, an old company, new president
11 came in and said here's my business plan and I want
12 talk to you about it, and he got about a third of the
13 way through the plan and the person he was talking
14 to, an agency representative, said, Excuse me, what's
15 your company and tell me about it, and he stopped him
16 and said, You're a Tribal 8(A); well, I just wanted
17 to let you know that that program is toast and had I
18 known that you were Tribal 8(A), I would not have
19 entertained this session.

20 Thank you.

21 MR. GORDON: Thank you for sharing your
22 comments.

23 MS. JOHNSON-PATA: Is there other folks who
24 would like to add comments to this question?

25 Maybe we'll move on to the next question

1 then.

2 MR. GORDON: We mentioned in the list of
3 questions the issue of past performance and possibly
4 bringing in new firms. We wondered whether that
5 might be something that you thought contracting
6 officers should think about when they're making
7 decisions about sole-source contracting to 8(A)s
8 above \$20 million. If anybody wants to talk about
9 that issue, we would welcome those comments now.

10 [No response.]

11 MR. GORDON: If not, with your permission,
12 we'll go the next question.

13 MS. JOHNSON-PATA: Yes.

14 MR. GORDON: We were wondering whether you
15 might have thoughts about some form of competition
16 rather than sole-source contracting and, if so, what
17 you thought might make sense. That might be a factor
18 taken into account above or below the \$20 million
19 threshold. We didn't know if people wanted to talk
20 about that. You may remember from my opening remarks
21 when I talked about competition, there's many
22 different kinds of competitions. You can imagine a
23 competition among 8(A)s. You can imagine a more open
24 competition than that, a less restricted one.

25 We didn't know if anyone wants to address the

1 possibilities of some kind of competition rather than
2 a sole-source contractor or, to put it slightly
3 differently, if someone wants to talk about how they
4 think an agency should do its deliberation when
5 they're considering doing a sole-source contract
6 above \$20 million.

7 MS. LUKIN: I wasn't planning to speak on
8 this today, Dan, but I feel compelled to say
9 something. Combined tribes, Alaska Native
10 corporations, and Native Hawaiian organization
11 sole-source awards on the 8(A) program represent
12 eight-tenths of one percent of the federal
13 contracting pie, eight-tenths of one percent. So I
14 would argue if Congress or the Administration were
15 truly interested in dealing with sole-source
16 contracting, that perhaps you focus on the other 34
17 percent of the federal contracting pie that's
18 sole-sourced.

19 I think there's some creative ways you can
20 look at competition, restricted competitions between
21 native enterprises and other avenues which I'll be
22 happy to put down in writing, but verbally today, I
23 wanted to convey to you that as you consider
24 restricting sole-source options for native
25 enterprises, that you put those restrictions in

1 perspective with the greater contracting pie.

2 Thank you.

3 MR. GORDON: Thanks very much. I appreciate
4 the comment. The context that you set out is a
5 helpful one for us to consider. I should also tell
6 you in terms of context that much of my time is spent
7 dealing with the issue of needing to expand
8 competition, and it's usually not in the context of
9 8(A) at all. It's in the context of all sorts of
10 weapons systems and major service acquisitions. The
11 8(A) is not at the center of our focus when we're
12 talking about our concern about sole-source
13 contracting.

14 Thank you.

15 MS. JOHNSON-PATA: Does anybody else have any
16 other ideas that you would like to put on the table?

17 [No response.]

18 MS. JOHNSON-PATA: All right. John, I can
19 tell you're just antsy.

20 JOHN: I actually have a comment.

21 MS. JOHNSON-PATA: Comments are fine. Go
22 ahead.

23 MR. GORDON: Comments are very, very welcome.

24 JOHN: I think in this -- I don't know if
25 it's much of a suggestion, but at least in our

1 experience with sole-sourcing, we've always had to
2 respond to market research anyway. So the
3 contracting officer has always gone out and received
4 three bids, if you will, and we only get those after
5 we've demonstrated to that contracting officer that
6 we can do the past performance and we can do the
7 contract anyway.

8 So there is some sort of mini competition, if
9 you will, and my suggestion would simply be that if
10 there was something we need to put in there, it would
11 be that they would do the market research of three
12 companies which they already do. That's already
13 done, at least in my experience with all the
14 sole-source contracts that we've participated in.

15 MS. JOHNSON-PATA: While you've got that and
16 maybe -- you may or may not want to answer that. One
17 of the questions when we were talking at our
18 pre-conversation was really, you know, do you have
19 any ideas about what that market research might mean
20 for Native American companies or is it generally or
21 do you have any other ideas or suggestions around the
22 mark research that the contracting officer -- any
23 guidance that we would give to the contracting
24 officers about market research that would be
25 applicable particularly for the Tribal or ANC Native

1 companies.

2 JOHN: No.

3 MS. JOHNSON-PATA: Okay.

4 MR. GORDON: Let me, if I could, pursue that
5 a bit and perhaps someone in the audience will want
6 to address this. I want to go outside the 8(A)
7 context for a moment. If a contracting officer is
8 about to do a procurement and she or he learns or
9 already knows, but in any event, she knows that there
10 are two or more small businesses that are -- well,
11 we'll leave it at regular small business for a
12 minute. I was going to get to subsets, but he or she
13 knows that there are two or more small businesses
14 that can do the work needed at a fair market price,
15 that procurement should be set aside for small
16 businesses and should not be open to large businesses
17 as part of the competition. That market research
18 leads to a limited competition.

19 Any implications that people see here in the
20 811 context? If you say that you think the
21 contracting officer should do market research and she
22 or he does market research and finds two or more
23 tribal organizations or ANCs that could do the work,
24 it strikes me as a little bit surprising that you
25 would then say, in that case, do a sole-source to one

1 of them. I'm wondering if anybody wants to address
2 that issue. You said that the contracting officer
3 should do market research, and if they do that and
4 find two or more eligible companies that could do the
5 work, do you think there would, nonetheless, be a
6 basis to do a sole-source award?

7 AUDIENCE MEMBER: One of the things I think
8 you need to keep into context also is for the purpose
9 of the 8(A) program, which is a business development
10 program. The purpose of the tribal function within
11 the 8(A) program is an economic development purpose.
12 Okay. So in the context of competition and things
13 like that, you need to really focus on what the
14 intent of these programs is.

15 Yes, there may be two or more native tribal
16 firms who can perform the work, but in the economic
17 development and the business development context of
18 the 8(A) program, sole-source is definitely
19 warranted. Sole-source is a tool within the 8(A)
20 program for economic development for the purpose of
21 native firms and -- I'm sorry -- tribal and business
22 development purposes for individually-owned 8(A)
23 firms.

24 So I think the business development context
25 of the 8(A) program needs to be considered here as

1 well.

2 MR. GORDON: Thank you.

3 MR. CALLAHAN: Good morning. I'm Tim
4 Callahan. I'm with S&K Technologies. I'm a senior
5 vice president for contracts, and I would like to
6 second many of the remarks that have been said this
7 morning already. Certainly the intent of the 8(A)
8 program to encourage Native American business is
9 important. The socioeconomic programs are authorized
10 by regulation. The FAR does provide for sole-source
11 awards under 6302-5.

12 So there is goodness in that in and of
13 itself. Going sole source does not mean the
14 government is going to get a high price or an
15 unreasonable price. The one gentleman talked about
16 that already. We're subject to audit. We're subject
17 to negotiations, and at the end of the day, it is a
18 fair and reasonable price that the government gets.

19 We also have gone through the market research
20 where we have been called before a government agency
21 as one of several native companies that were being
22 looked at as a potential sole-source for a particular
23 requirement. In one particular case, it happened to
24 be with the Department of Energy, and it was for a
25 remediation effort providing technical assistance to

1 the Utah uranium mill site. On that particular
2 effort, the S&K team, and we did bring a company with
3 DOE specific experience to the table, was able to
4 convince DOE that, in fact, we did have with our team
5 the capability to perform. In fact, after a little
6 over a year on that particular project, the S&K team
7 was chosen as the DOE small business contractor of
8 the year.

9 So Native American companies bring to the
10 table not just an easy way to get on a contract
11 through the sole-source mechanism, but we look at it
12 as not a -- you know, that we're entitled to a
13 contract through the 8(A) program. We look at it as
14 an opportunity to prove that the Native American
15 companies can perform the work as well as or better
16 than any other contractors out there and certainly
17 cheaper than a lot of the large businesses.

18 We have a contract that Warner Robbins at the
19 Air Logistics Center that we've had just going on
20 nine years now for the repair and return of F-15
21 components from foreign military sales customers.
22 That contract originally had been performed by the
23 OEI. I will tell you that the savings that we have
24 brought to the table on that have been remarkable,
25 and we have the documentation and we'll be able to

1 provide that as part of the written input for the
2 record, as to the savings that we have shown to the
3 government over the years and continuous savings from
4 where the repair cost was 25 cent on the dollar
5 compared to a new acquisition price down to around 15
6 cents on the dollar over the eight or nine years of
7 the contract.

8 So we bring value to the table. We work hard
9 for our customers. There is a chilling effect to the
10 811 in that anything that requires additional work on
11 the part of the government acquisition team, whether
12 it's the requirements people or the contracting
13 officer, to use a particular contract vehicle or
14 contract approach is going to be an impediment.
15 They're going to be less likely to take those
16 additional steps if there is quicker, easier way to
17 get on contract.

18 So the government workforce, acquisition
19 workforce right now doesn't have the experience that
20 they had in the past. I think there's a lot of new
21 people coming into the acquisition community. I
22 think it's going to be incumbent upon the agencies
23 and the FAR Council to ensure that the contracting
24 officers and the requirements personnel across the
25 government are aware of the intent of the

1 socioeconomic programs, particularly the 8(A) and the
2 preferences and make sure that they will avail
3 themselves of those in the proper circumstances.

4 MR. GORDON: That's very helpful. Thank you,
5 you've actually also helped us address the last
6 point. I will say that the training issue is one
7 that, as I said in my opening remarks, fits in with
8 the President's interagency task force on small
9 business, the importance of being sure that our
10 contracting officer and, as you say as well, our
11 requirements personnel, the program people are aware
12 of our obligations under the various socioeconomic
13 programs.

14 Thank you.

15 MS. JOHNSON-PATA: Can I just add to thank
16 Tim for his comments, but S&K is probably one of the
17 -- of the tribes, they have been in business one of
18 the longest in the 8(A) government contracting area.

19 MR. GORDON: I know that name well.

20 MS. JOHNSON-PATA: Yeah.

21 MR. MORGAN: Actually, S&K has helped us and
22 that's who basically started us scale in government
23 contracting by sharing a contract with us. So we
24 like them. You know, that's actually what it's
25 about in some ways.

1 You asked a specific question about what if
2 you had three Native 8(A) firms, you know, what's
3 wrong with competition in that area. I think that
4 somebody mentioned that, you know, sole-sourcing is
5 an important option. You know, for a small company,
6 you know, these proposals are very hard and very
7 difficult and time consuming to put together. I
8 think somebody mentioned they spent 18 months doing
9 them. You know, you never quite get lucky.

10 I once gave a speech, in 2002, that said I'm
11 tired of being the Indian on the bid list; I would
12 like to do one of these for once. Obviously, we've
13 gone beyond that, but I think the scenario that you
14 outlined is probably something that would deal with
15 some of the issues, especially for contracts over the
16 \$20 million threshold.

17 In my sinister suspicious mind, I think that
18 some of these attacks are motivated by larger
19 competitors to keep us locked out. A scenario where
20 you have, say, something over a \$20 million contract
21 where it's limited, you know, to 8(A)s, which
22 essentially would probably be a Native 8(A) in
23 functionality because of the scale of it, I think
24 that that's something that probably is a viable tool
25 that at least would keep us from using our very small

1 resources to compete against the bigger guys and
2 probably lose more than our share.

3 So I think that the tribes themselves will
4 probably feel that was a fairer fight, so to speak,
5 and that would solve some of the competitive issues.

6 MR. GORDON: Thank you.

7 MS. JOHNSON-PATA: You brought up the issue
8 of training, and I know that that was something that
9 Sarah and I and Don have had conversations with DOD.
10 I know we got a commitment from Shea Hassad that at
11 their annual training session, there would be a
12 session for contracting officer. There will be a
13 session on just the Native 8(A) contracting
14 provisions to help alleviate this issue, but I was
15 wondering if other folks had -- I know earlier in the
16 NACA recommendations, the joint recommendations that
17 NACA and NCAIE supported, we talked a lot about
18 training as being a vehicle for trying to make sure
19 not -- now we have the burden of trying to make sure
20 that there's fairness and equity and it's not seen as
21 a cap, but at the time, we were just trying to
22 address the challenge of training in understanding
23 native businesses and enterprises.

24 I was just wondering if there are other
25 vehicles that you would propose that we could assist

1 helping put forward a joint effort in developing
2 training or a training curriculum where we'd actually
3 bring in some of these Native 8(A)s and some of the
4 experts to be able to talk a little bit at those
5 training sessions about not only the mechanics of the
6 guidelines that you will develop, but also the impact
7 and how the designate enterprises operate.

8 MR. GORDON: I welcome suggestions. I don't
9 know if any of my colleagues want to speak to that,
10 if they have things in mind; otherwise, I'm sure we
11 would welcome suggestions.

12 MR. McNALLY: I'll speak from an agency
13 perspective, from the NASA perspective. We do annual
14 workshops with our procurement community. Usually,
15 we touch upon small business contracting as part of
16 that. Also, there is someone who is responsible for
17 the small business program, and they go out and do
18 training. Plus we're doing more and more setting up
19 websites, putting information on websites for people
20 to go to instead of waiting for a conference or
21 something like that.

22 The key thing to understand is I'm
23 responsible also, even though not directly, for the
24 small business program within NASA for making sure we
25 meet our goal. We are one of the few agencies

1 because of our mission, large systems like the
2 shuttle program, we're -- actually our goal is under
3 23 percent. So there's more and more pressure us for
4 us to meet our goal plus the goals of the
5 subcategories of small disadvantaged business,
6 women-owned business, hub zone, service-disabled
7 veteran-owned business.

8 So any new rule that comes out, like from
9 Section 811, I still have responsibility to get money
10 into the small business program at the prime level,
11 and what we have done is really done a lot of 8(A)
12 competitions and very large dollar values and they've
13 actually been very successful in getting competition
14 and getting us contracts in the small business
15 program, and a lot of companies have grown to now
16 they're no longer even in the small business program
17 because they're very successful.

18 So I would look at it from a perspective of
19 making sure we train our individuals that we still
20 want to keep money in the small business program, and
21 I have personally gone out to train my workforce to
22 keep reminding them the purpose of procurement in the
23 government is to meet the needs of the agency and the
24 socioeconomic needs of the United States Government.

25 So we've just got to keep reminding our folks

1 of that purpose of procurement.

2 MS. NEILSON: Just an addition to what Mr.
3 Hassad committed to you, in my role on the FAR
4 Council and the DAR Council, we provide training
5 annually on the statutory changes that we have
6 incorporated into the FAR and the Defense FAR
7 supplement, and 811 is already on the list. Even
8 though we're not sure what it will say, it's already
9 on the list so that those -- that role can be
10 clarified to the contracting officer community
11 through that vehicle.

12 MS. JOHNSON-PATA: Thank you, and I'll just
13 make one other suggestion. I'm not sure where this
14 was, but I know there was the development through the
15 White House interagency Native American work group,
16 developed an online training for Federal Government
17 partners that anybody who is working with native
18 programs to do this training just to understand the
19 general 101 Indian Country training, and that was
20 made available, I believe, through SBA and through
21 the FCC. Even though I know there's a cost for it
22 for federal officials to participate, the FCC
23 actually paid the annual fee last year so that
24 anybody could participate and use that.

25 It could be a vehicle that you might want to

1 adapt and add some specific contracting pieces to,
2 but I encourage you to encourage your contracting
3 officers to take advantage of that training.

4 AUDIENCE MEMBER: I just have a question.

5 MS. JOHNSON-PATA: Go ahead.

6 MS. BOYLIN: I'm Jamie Boylin and work for
7 S&K Industries as well. The question is if the
8 statute is unclear or you really can't make a lot of
9 sense out of it, and I think we're all having trouble
10 with it, is it the responsibility of these agencies
11 to go to Congress and say you've got to rewrite this
12 or redraft this? I mean how do you all interact with
13 Congress in making something like 811, which we think
14 is off the charts in terms of confusion and lack of
15 foresight in what the language actually does -- I
16 mean do you just accept the language and go with it
17 and just interpret it the best way you know how?

18 MR. GORDON: Thanks for the question. My
19 colleagues on the FAR Council are welcome to address
20 this. I would say that we don't -- we view the
21 statute as our marching orders and we don't go back
22 to Congress and say we think you should do this
23 differently or whatever.

24 Our job is to implement the statute. I will
25 say I'm not sure that I understand what you mean when

1 you say that 811 is -- in your criticism of 811. One
2 can disagree with 811 as a policy matter, and I
3 understand a good number of the speakers here today
4 disagree with that. I'm not sure that it's unclear
5 what it's saying. In fact, the very fact that people
6 disagree with it points to it being clear. They just
7 disagree with it.

8 So I'm not sure I would say -- as we work to
9 implement 811, I'm not sure our challenge is that we
10 have no idea what it says. Our challenge is that any
11 statute gives some flexibility in the implementation
12 process. It doesn't nail down every detail of how
13 it's to be implemented. It's at that stage that the
14 FAR Council is focused, what the best way to
15 implement that statute.

16 Would my colleagues like to supplement that
17 or correct me if I've got it deeply mistaken?

18 MS. NEILSON: You're not deeply mistaken at
19 all. I would just like to add on to that and simply
20 say that under the OFPP Act in our processes, we
21 obtain public comment, and so if we may have missed
22 the mark or have not quite gotten it right, the
23 public has the opportunity to help us, and we look,
24 read, and analyze every single comment that we
25 receive. So I just wanted to make sure that that was

1 -- that aspect of it was clear.

2 MS. JOHNSON-PATA: Does anybody have any
3 comments to any of the proposed questions or any
4 other comment?

5 Yes, Sarah.

6 MS. LUKIN: Thanks. I should have just hung
7 out there with you guys. We've been talking a lot.

8 I was wondering what -- first of all, before
9 I ask my question, when you open up that public
10 comment period, we would appreciate any notification
11 that it's out or however you do that. I'm drawing a
12 blank on that process right now, but we would,
13 obviously, like to participate in that because I'm
14 some thoughts for you.

15 In addition to that, I wanted to check with
16 you on the status under last year's appropriation
17 bill. There was a requirement to do a study on the
18 implementation and impacts of Section 811 and, in
19 particular, how it affects native enterprises
20 nationwide. So I was wondering where you are in that
21 implementation study and when we should expect to see
22 the results of that.

23 MR. GORDON: I'm sorry. I'm not in a
24 position to add anything to that part of the
25 conversation, but let me go back. I think Linda

1 Neilson said this, but just to be clear, the normal
2 process is as follows: The FAR Council through the
3 two councils under it will develop a proposed
4 regulation or a proposed rule -- the terms mean the
5 same today -- and they will put that out for public
6 comment, and in that sense, you will absolutely get
7 notice. There will be a public posting through the
8 Federal Register of that proposed regulation, and the
9 public is welcome to comment on that.

10 At that stage, once the comments come in, the
11 FAR Council or the team working for the FAR Council
12 Reviews the public comment, as Linda Neilson said,
13 and eventually prepares a final rule which will then
14 be promulgated.

15 What we're doing here is we're doing the
16 tribal consultation before the proposed regulation is
17 issued so that, in fact, you all are having the
18 opportunity through the consultation process to
19 comment before anyone else, before there is a
20 proposed regulation, but you will certainly have the
21 opportunity to comment again once the proposed
22 regulation is issued so that you are not going to be
23 losing an opportunity. You will be gaining an
24 opportunity through this process.

25 MS. JOHNSON-PATA: That's why we're here, to

1 help shape the rule before it goes out.

2 Any questions? Yes, Frank.

3 MR. LEMERE: You know, we have a lot of --
4 you know, I'm just real pleased. We've had quite a
5 lot today. We have a lot of technical minds here and
6 I don't envy you in your work because you have a lot
7 of things to consider.

8 I want to share with you we'll have this
9 opportunity again and I'm real pleased with that, but
10 I want to say something to you that probably ages me
11 a little bit, but I will tell you, as I say this to
12 all of our young relatives, as one gets older, things
13 get a little bit easier and they get more clear, and
14 I think sometimes we miss that when we deal with
15 these kind of processes.

16 I'm understanding that SBA in their wisdom
17 decided at some point in time that our indigenous
18 people, the Ho-Chunks who gave up seven million acres
19 of land for an opportunity, determined that they
20 would try to give the tribes a leg up and an
21 opportunity and a chance to make things a little bit
22 better, and they have done that. I think that that
23 cannot be lost because it would be hard to explain
24 that in Winnebago, that they gave us this opportunity
25 and now in some respects, they want to take away from

1 that. That's hard to communicate.

2 It is impossible to communicate for those
3 many, many scores of tribes and probably even Alaska
4 Native corporations who will never even realize an
5 opportunity to be successful like some of these
6 interests here. They'll never have that opportunity.

7 I just think it's good to think about that.
8 Not everybody understands the importance and the
9 wonder of what SBA has done with 8(A) yet, and out of
10 the shoot, they're already being penalized. This is
11 just something to think about for the future.

12 As to the comment period, nobody has -- I've
13 not heard the term today yet. So I have to make sure
14 it gets on record. Sometimes as it becomes clear,
15 sometimes we've got to say maybe we should just leave
16 well enough alone or, you know, perhaps if you have
17 to undertake this process because you have marching
18 orders, let us see what we can do to lessen or to
19 make sure that there is minimal impact. If you,
20 indeed, have marching orders to go out and deal with
21 those Native Americans, deal with those Alaskan
22 Natives, make that approach -- the impact be minimal.

23 I would share that with you because sometimes
24 it is hard for us to understand. You know, sometimes
25 I get to thinking you would much rather be the United

1 States of America. Sometimes people like things, you
2 know, as they are. It makes us more dependant.

3 On behalf of Ho-Chunks and Winnebagos, it's
4 going to be hard to go back and communicate to them
5 what really happened here, because we tell them that
6 we bought into this 8(A) concept and we appreciate
7 what the United States Government is doing and we're
8 taking full advantage of it. We talk about those
9 good things, but it's going to be hard to explain to
10 them, Well, we've done so well that they've got to
11 penalize us now.

12 I just want you to think about that. You
13 know, things are working in at least one place,
14 probably many, if there has to be impact, make it
15 minimal. Hopefully, all of us will gather and we'll
16 see you again and perhaps touch you in your heart and
17 in your mind, and I would hope that we do that.

18 So I want to say thank you for indulging us
19 and me today. Some good must come from this. I
20 don't know what that means yet, but some good must
21 come from this for the people. That's why we're
22 here. We're doing it in many different ways, but
23 some good must come from this for the people and the
24 children and those generations who don't even know
25 what this is about.

1 Anyway, I say penagigean [phonetic]. Thank
2 you for that today.

3 MR. GORDON: Thank very much.

4 MS. JOHNSON-PATA: Any other comments,
5 closing comments?

6 CLOSING

7 MS. JOHNSON-PATA: Well, I would like to,
8 first of all, just -- I know that it's the lunch hour
9 and I think everybody has been very efficient with
10 their time. So it seems like we are ready to call
11 the orders of the day earlier than anticipated, which
12 means we have a lot on our agenda.

13 I want to thank you, everybody, once again
14 for your comments today, for opening and initiating
15 this consultation. I know how important this has
16 been for Indian country, and even though there's not
17 as many faces in the audience, there are many that
18 have asked and who will continually monitor what is
19 happening with the process. I'm sure you'll hear
20 more from those folks that are there.

21 Particularly the tribal speakers today in
22 sharing your stories, I know that that was an
23 important educational process for all of us. Thank
24 you very much for allowing us to be here and
25 assisting in the effort to try to make this a

1 partnership going forward.

2 MR. GORDON: Thank you very much. I
3 appreciate all of you who came here, all of you who
4 spoke, all of you who will submit written comments.

5 I also want to thank NASA in particular.
6 Bill, thank you for hosting this event here and your
7 colleagues from NASA. I want to thank my colleagues
8 from GSA and from DOD, and, Linda, we very much
9 appreciate your participation.

10 We look forward to your written comments.
11 Thank you for sharing your comments with us today.

12 [Whereupon, at 12:05 p.m., the meeting was
13 adjourned.]

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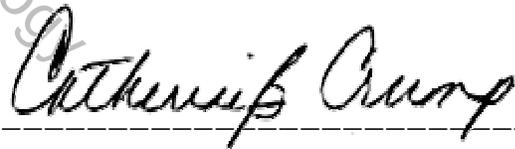
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