

A408487
HEARING October 7, 2010

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FEDERAL ACQUISITION REGULATION

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TRIBAL CONSULTATION

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JUSTIFICATION AND APPROVAL OF

9

SOLE SOURCE 8 (a) CONTRACTS

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October 7, 2010

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Indian Pueblo Cultural Center

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2401 12th Street, Northwest

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Albuquerque, NM 87104

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9:28 a.m.

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REPORTED BY: Rachel M. Lopez, RPR, NM CCR #276

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1 MR. GARCIA: Good morning, everyone.
2 (Greeting in Tewa.) That means good morning in my
3 language, Tewa. My come from Ohkay Owingeh. My name
4 is Joe Garcia. Before we do anything -- before we even
5 do the -- I'd like to have Mr. Ron Solimon, who is the
6 CEO of the Indian Pueblo Cultural Center as well as the
7 CEO for Indian Pueblo Marketing, give you a welcoming,
8 and then we'll proceed.
9 MR. SOLIMON: Thanks, Joe. I want to just
10 welcome the FAR council and everyone else that's here
11 representing the different tribal organizations and
12 corporations today. It's our privilege to have you all
13 here. You're here at a great time, here in
14 Albuquerque, especially, because it's the Albuquerque
15 International Balloon Fiesta time, in case you didn't
16 notice either traffic-wise or all those things up in
17 the air. It's a wonderful time of the year. And it's
18 early fall for us; leaves are just turning and falling,
19 and the green chili and the pinon fireplaces are going
20 strong. So it's always great to be in the valley.
21 I love to wake up and smell those smells because
22 they remind me of where I came from, which is Laguna
23 Pueblo, just west of here, and the good old days with
24 our wood stoves and seeing grandma at the stove cooking
25 up breakfast early in the morning, 12 eggs for one

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1 individual, that kind of thing. And I just want to
2 extend a special welcome to you.
3 I also serve a couple of roles, two at the
4 national level, one for the National Center for
5 American Indian Enterprise Development, located in
6 Mesa, Arizona. And we're very lucky to have
7 Eric Trevan here today. He's our new CEO, and he'll be
8 making some comments a little bit later this morning.
9 So I'm hosting him, it's his first time up here, to our
10 center.
11 And then I serve on the National Museum of the
12 American Indian board of trustees. So those are a
13 couple of my national roles, and I have worked in the
14 defense contracting area. That's where I earned all my
15 silver or gray or white hair, trying to comply, trying
16 to make production schedules and all that. So that was
17 my previous life.
18 And I did a lot back in Washington in the early
19 days, trying to promote opportunities for
20 tribally-owned companies, especially to participate in
21 the 8(a) program, kind of open that door for people --
22 for tribes to try to achieve their own dreams through
23 the formation of companies that would work with the
24 Department of Defense, especially. So that's my --
25 part of my 14-year history.

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1 I've been here at the center for almost ten
2 years. This November, I'll be here for ten years,
3 especially. So it's hard to believe. But it's our
4 privilege, really, to host meetings like this so that
5 our tribes and representatives can come forward and
6 provide comments.
7 I really want to extend a special appreciation
8 to the FAR council coming out to -- for traveling
9 around the country, really, to receive input from all
10 of us that have been involved in business and economic
11 development for our tribes.
12 So as Joe mentioned, you know, we usually begin
13 all of our meetings with a prayer, and we -- he serves
14 as the chairman of the All Indian pueblo Council here;
15 basically, a group of 20 pueblo Indian tribes,
16 including Isleta del Sur, now, down south of us here,
17 in El Paso, Texas. And I'm sure they'd rather be in
18 New Mexico, but they located in El Paso, Texas, and
19 they are part of the organization that we have.
20 And Joe has served as the chairman -- or the
21 president of the National Congress of American Indians,
22 where he did a great job. He's representing us well.
23 And he's also the head councilman at the Ohkay Owingeh
24 pueblo, up north. So I'm very proud to call him my
25 brother. He's not only a great tribal leader, that's

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1 been involved in development there at his own pueblo,
2 served as governor, served as lieutenant governor,
3 served in overriding capacities there, and really has a
4 spiritual element with his role out there at Ohkay
5 Owingeh as well.
6 So I'd like to introduce him, with a great deal
7 of respect and admiration. Ladies and gentlemen,
8 Joe Garcia, chairman of the All Indian Pueblo Council.
9 MR. GARCIA: Thank you so much. Well, as it
10 customary, we'll just start with an invocation. So I
11 will go ahead and do that. If you'll all stand,
12 please.
13 (Invocation.)
14 MR. GARCIA: Just a brief translation. It
15 is okay to do translation. What I've asked this
16 morning is that we come together for a common purpose
17 at the meeting that you all have called. We come here
18 respectfully and that we all acknowledge the respect
19 that we have and we welcome you to Pueblo Country, to
20 the State of New Mexico, Land of Enchantment. And I
21 have called upon the spirits to be here with us, to
22 give you strength, courage, and a knowledge-base that
23 you have a lot more knowledge building today; that you
24 share your knowledge, that you share your experience,
25 that you share your wisdom with all of us here; and

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1 that when you leave here, you go back home, and you
2 share it with your communities, you share it with the
3 organizations, you share it with the departments.
4 And that all in all, as they say in the Native
5 American way, you put your shoulders together, and our
6 heads together, and our hearts together, that we will
7 overcome all these things that we set out to do; and
8 that when we leave here, we'll have a lot more
9 solutions than gripes to move forward.
10 So -- and then I also asked the spirit to guide
11 you home, to get you home safely back to your loved
12 ones. As well, I've introduced myself as (spoken in
13 Tewa); that means, "Mark of the Misty Lady," commonly
14 known as Joe Garcia. So with that, that's what I have
15 called upon for today. And we will -- we will be
16 successful, ladies and gentlemen. Thank you.
17 Excuse me. I got two different agendas, but
18 I'll kind of -- it looks like we've got not as many
19 people as I thought we would, but it doesn't matter. I
20 think we have enough brain power today so that we can
21 come up with some good ideas, good suggestions. So
22 please feel free to do all of that.
23 And don't be bashful. I know you aren't
24 bashful, because I've seen a lot of you out there. I
25 know you're not bashful. And just because we have

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1 people from Washington, D.C., it's no reason to be that
2 way. I know that you're not. So I'm just kind of
3 joking around.
4 This tribal consultation is an important piece
5 that I think we'll all hear about today from some
6 initial discussions about the consultation, itself, and
7 Section 811. I thought when I saw Section 811, it had
8 to do with 9/11, something like that, and I said, "Oh,
9 geez. What are we going to talk about?" And it turns
10 out that it's a section within the legislation having
11 to do with procurement, justification and approval of
12 sole source 8(a) contracts. That's what this tribal
13 consultation is about.
14 So whatever ideas you have, we'd like to hear
15 them today. I'd like to also go through and introduce
16 everyone before we -- each one introduce yourself
17 before we get started with some other opening remarks
18 regarding the section today. So I'll turn to my left,
19 and ask Dan to introduce himself and where he comes
20 from.
21 And don't be like the other people, we told them
22 the other day that, "Tell us who you're with." What we
23 meant was, "Tell us what company you're with." And so
24 my brother, one of my brothers introduced himself and
25 said, "I'm here with him."

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1 MR. GORDON: I'm Dan Gordon. I'm the
2 administrator for federal procurement policy within the
3 office of management and budget in Washington. And I
4 also served as the chair of the federal acquisition
5 regulatory council, the FAR council that we'll be
6 talking about shortly.
7 MR. GARCIA: We'll go -- well, go that way.
8 MR. SOLIMON: I was hoping you wouldn't say
9 that, Joe. I've got a mouthful of scone. I got the
10 heavy hitter here.
11 I introduced myself a little bit earlier. I'm
12 the CEO for the two corporations here, Indian Pueblo
13 Cultural Center, which is a 501(c)(3) not-for-profit,
14 and I'm also the CEO for the Indian Pueblo Marketing,
15 which is a section 17 federally-chartered corporation.
16 So we have -- my responsibility is over the two
17 corporations. And the for-profit corporation generates
18 the operating revenue or the operating budget for the
19 Indian Pueblo Cultural Center, and that's how we're set
20 up.
21 Part of the National Center for American Indian
22 Enterprise board of directors, and that entity has
23 every year an Impro (phonetic spelling) event that's
24 coming up here in Isleta on October 21st. And that is
25 a procurement trade fair, and largely a buyer's kind of

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1 forum for opportunities for both native and non-native
2 companies to come in and be apart of that. And we have
3 a huge recognition dinner that goes on that evening.
4 And again, I would invite all of you -- if you haven't
5 heard about it, please see me, and I'll make sure we
6 get information. And we also have our president of the
7 organization here. So again, welcome, and I look
8 forward to further interaction with you today.
9 MR. TREVAN: Good morning. My name is
10 Eric Trevan. I'm the president and CEO of the National
11 Center American Indian Enterprise Development. And
12 I've been with them for -- since May, May 3rd. And I
13 was previously with another tribal government as their
14 operations officer. But most of my career has been
15 with economic development and working with businesses
16 one on one.
17 And I appreciate Joe's comments to say who are
18 you here with. I want to be with everybody in this
19 room. And we really -- we've got multiple ways that we
20 can address this, but specifically with 811, the
21 intent -- the intent of 811 is really to help our
22 native communities and our native businesses and
23 minorities to be able to lift themselves to
24 self-sufficiency. So I think if we can keep our
25 comments focused around that and try to look at the

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1 long term intent of that, everyone's going to have
2 different opinions and some great ideas. And I am
3 really looking forward to hearing all of them, as we in
4 this room are all together.
5 And I appreciate the comment of Impro. It's our
6 35th anniversary for the premier awards show in Indian
7 Country, that's on October 21st. Other people know the
8 National Center for the Reservation and Economic
9 Summit, the res event, the largest economic development
10 conference with Indian country in North America.
11 That's March 14th through 17th. I'm trying to think if
12 there's any other shameless plugs here.
13 But -- and some of you know us through business
14 services, American Indian P-Tech that we operate. So
15 we have eight offices throughout the nation, and we're
16 really trying to -- we've been around 41 years. We're
17 in our 42nd. We're really trying to set the stage and
18 framework so that we can continue on the good mission
19 of the national center for another 40 years.
20 So thanks for allowing me to speak today some
21 time, and I look forward to speaking with all of you
22 while I'm here.
23 MS. LUKIN: Good morning. My name is
24 Sarah Lukeen. I'm the executive director of the Native
25 American Contractors Association. Thank you for having

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1 us here in beautiful New Mexico. It's an honor to be
2 here today.
3 MR. TEEGARDEN: Good morning. I'm
4 Tom Teegarden. I'm the vice president for Native
5 Resource Development, that's a Navajo woman-owned 8(a)
6 company based out of Gallup. And I also serve as a
7 board member for a corporation, and Navajo Nation 8(a).
8 Good morning.
9 MS. DELANEY: Good morning, my name is Leann
10 Delaney. I'm the deputy associate administrator in the
11 office of business development with SBA, which -- in
12 the office of business development administrators, the
13 AA program.
14 MS. PRATT: Good morning. My name is
15 Clara Pratt. I'm with the office of Native American
16 Affairs at the Small Business Administration.
17 MR. LEE: Good morning. Steven Lee, NOVA
18 Corporation. We're a tribally owned 8(a), and pleased
19 to be here. Thank you.
20 MR. YOUNG: Mark Young with Welding
21 Construction out of Palmer, Alaska.
22 MR. COAL: Geri Coal, with Chupach Alaska
23 Corporation. I'm the director of regulatory affairs
24 and also one of our subsidiary presidents of Trugat
25 Integration (phonetic spelling.)

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1 MS. PANTEAH: Good morning. I'm
2 Darlene Panteah. I'm from the Pueblo of Zuni, and
3 right now I hold the position of CEO for a company by
4 the name of the Indian Tribal Information Technology
5 Company. We started this company in 2002, and it's
6 8(a) certified. We're in our seventh year.
7 And what it is, is that we have a DOD contract
8 that we do document conversion. Our subcontractors are
9 other native owned companies that are located in -- two
10 in Alaska, one in Hawaii, two in North Dakota, one
11 South Dakota, Wyoming, Montana, and Oklahoma. And the
12 people there are the ones that do the work, the
13 document conversion. And what we wanted to do, was
14 because reservations, Alaska native villages, and
15 native Hawaii homeland suffer from a high unemployment
16 rate. We wanted to create jobs there. And so I guess
17 at our peak, we employed as many as 500 people there.
18 And right now, we're in our seventh year. We're
19 closing out our first, I guess, project, the Native
20 American Document Conversion project. So we're kind of
21 in close-out mode. But we got that money from the
22 appropriations from Senator Inoya in 2001. And it was
23 funded for five years, and like I said, we're kind of
24 finishing that out. But we just learned that we might
25 have some in the 2011 appropriations. So hopefully

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1 we'll keep the lights on. Thank you.
2 MR. JOHNSON: Kevin Johnson with -- I'm
3 working with Intertribal Information Technology
4 Company, came on back in February, helped to close out
5 with the NDACP. And we're having fun. So there you
6 go.
7 MR. LOVATO: Good morning, everybody. I'm
8 Ron Lovato, with Tsay Construction Services, owned and
9 operated by Ohkay Owingeh, one of the pueblo tribes
10 here in New Mexico, up north here.
11 MR. BAILEY: Good morning. I'm John Bailey,
12 with Tewa, Inc., from Isleta del Sur pueblo in El Paso.
13 I am brand new as their CEO, just came on in August.
14 So I'm looking for some opportunity. We are an 8(a)
15 certified, tribally-owned company. We've been in the
16 program one year and really focussed on growth at
17 Fort Bliss. I also have background, I ran Aleut
18 Management Services for the Aleut Corporation for six
19 years. So I've been involved in the different
20 contracting, Alaskan, natives, tribal companies for --
21 probably right now, probably about eight years. So
22 I've got a background on that.
23 We're looking for the growth at Fort Bliss to
24 put our tribal members together. We have 1600 tribal
25 members in the pueblo that are registered, and a

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<p>1 majority of them do live in the El Paso area. So we're 2 looking at opportunities to put them to work. Thank 3 you.</p> <p>4 MR. TENORIO: My name is Joe Tenorio. I'm 5 with Chestnut Law Offices. We represent several firms 6 that are either in the process of the 8(a) application 7 or in their early development stage of the 8(a).</p> <p>8 MR. NEPHEW: Good morning. My name is 9 Elfonzo Nephew. I'm the CFO for NOVA Corporation. We 10 are the first tribal 8(a) for the Navajo Nation. And 11 we are an IT services company. And the Department of 12 Defense is one of our largest clients, and we want to 13 continue that relationship. And we just recently 14 opened, standed up in an office in Bahrain, so a lot of 15 great results.</p> <p>16 MR. HENDERSON: Good morning, everybody. My 17 name is Al Henderson, I represent the University of New 18 Mexico, Gallup branch. I have two responsibilities 19 there. The first one is to teach business management 20 courses to the young college students there. The 21 second one is to help them establish the Real 22 Entrepreneur Institute. And both of those 23 responsibility are very challenging, and I'm very happy 24 to have joined University of New Mexico, Gallup.</p> <p>25 I am also a former 8(a) certified company, when</p> <p style="text-align: right;">Page 14</p>	<p>1 Pedro from the Pueblo of Laguna. I'm also the 2 executive director for the American Indian Chamber of 3 Commerce of New Mexico and also the project director 4 for the New Mexico Native American business enterprise 5 center that is a program funded by the US Department of 6 Commerce, minority business development agency. Our 7 two programs represent over 300 Native American owned 8 businesses throughout New Mexico. So I appreciate 9 the -- you selecting Albuquerque to have this meeting 10 here. Thank you very much.</p> <p>11 MS. TRUSLOW: Good morning. My name is 12 Susan Truslow. I work for the office of management 13 budget of the federal procurement policy, and I really 14 appreciate all of you coming today to discuss 811. 15 Thank you.</p> <p>16 MR. LANTIER: Good morning. I'm Rod Lantier 17 for the general services administration, where I'm the 18 assistant deputy chief acquisition officer. Along with 19 NASA and DOD, we write the federal acquisition 20 regulation, in cooperation with the office of federal 21 procurement policy.</p> <p>22 MS. NIELSON: Good morning. I'm Linda 23 Nielson. I'm with the Department of Defense, and I'm 24 here in my capacity as the chair or director of the 25 defense acquisition regulation council, and as such, I</p> <p style="text-align: right;">Page 16</p>
<p>1 I was in private business, operating my fleet of waste 2 management trucks. And I sold the company, and 3 basically I want to know if I can get back into the 4 8(a) program.</p> <p>5 MR. UPSHAW: Good morning. I'm glad to be 6 here. My name is Mike Upshaw. I'm legal counsel for 7 NOVA Corporation. And again, thank you.</p> <p>8 MR. ROMERO: Good morning, and thank you for 9 your warm welcome. My name is Robert Romero. I'm with 10 the San Ildefonso Pueblo, the enterprise corporation 11 that's owned by San Ildefonso Pueblo. And we just got 12 started with a few 8(a)s, and we just got a grant for 13 Tewa Broadband Communication to do Internet service to 14 rural areas. Thank you.</p> <p>15 MR. NEMO: Good morning, my name is David 16 Nemo. I'm the general counsel for Chickasaw Nation 17 Industries. We've been in the program 10, 12 years 18 now, have a number of 8(a) firms, very interested in 19 the topic today. I look forward to discussing with you 20 the program and the FAR council's obligations with 21 regard to the implementation of 811. I hope we can 22 share with you our passion for the program, itself, and 23 for the great benefits as having the Native American. 24 So I look forward to today.</p> <p>25 MR. PEDRO: Good morning, my name is Ted</p> <p style="text-align: right;">Page 15</p>	<p>1 sit as a member of the FAR council.</p> <p>2 THE COURT: Good morning. I'm 3 Bernita (inaudible). I am staff to the National 4 Congress of American Indians.</p> <p>5 MR. GARCIA: There's also some mics on the 6 table. When it's your turn to speak, you can just grab 7 them.</p> <p>8 MS. NASA: Good morning. My name is 9 Sonya Nasa, and I'm a contracting officer from the 10 Indian Health Services.</p> <p>11 MS. LEE: Good morning, I'm Victoria Lee, 12 the department manager for the Navajo Nations business 13 regulatory department.</p> <p>14 MS. CONNOLLY: Good morning, Mindy Connolly. 15 I'm with the office of federal procurement policy.</p> <p>16 MS. WASHINGTON: Good morning my name is 17 Yvette Washington. I'm with the contracting office 18 here with the Bureau of Indian Affairs.</p> <p>19 MR. GARCIA: Yeah, we also have a very 20 important person down here, so I'd like to have her 21 introduce herself.</p> <p>22 (Court reporter introduction.)</p> <p>23 MR. GARCIA: Either that, or you can speed 24 us up.</p> <p>25 Well, I guess to get started -- before we get</p> <p style="text-align: right;">Page 17</p>

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1 started, I'd like to have some opening comments so that
2 we get on the right track, hopefully. Number one, I'd
3 like to re-welcome the people from the OMB and the
4 administration for being here. Thank you for your
5 efforts, and thank you for -- I know it's going to be a
6 hard agenda, but we can get through it all, and
7 hopefully we find some solutions. So welcome to
8 New Mexico, Land of Enchantment.

9 As I said. Just a little bit of background I'd
10 like to get through, and then we can -- I'll turn it
11 over to Dan. The National Defense Authorization Act
12 for fiscal year 2010 was passed by both the House and
13 the Senate and signed by the President,
14 President Obama, on October 28th of 2009. Section 811
15 of the law includes a provision requiring justification
16 and approval of sole source contracts over \$20 million.

17 Now, Section 811 of the law will impact the
18 ability of the tribal leaders to develop their
19 economies, to create jobs for the citizens, and changes
20 the way our enterprises participate in federal
21 contracting. Because of these impacts, we felt it was
22 important for the FAR council to host consultations in
23 keeping with the President's memorandum on Executive
24 Order 13175, supporting tribal consultations.

25 The memorandum charges agencies with carrying

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1 out regular meaningful consultation in collaboration
2 with tribal officials in the development of federal
3 policies that have tribal implication. We have worked
4 with a number of agencies in developing consultation
5 plans and setting up agency consultations. The FAR
6 council has developed a format for these consultations
7 that includes a briefing and some guidelines and
8 questions to focus the conversation.

9 We appreciate their efforts in respecting tribal
10 leader input, and taking a fresh approach to hosting
11 consultation. We have the opportunity as tribal
12 leaders and executive to see if this forum is helpful
13 and if we want to use this format in future
14 consultations.

15 Now, a simple reminder is that I guess since we
16 don't have 100 people here, we'll have enough time to
17 have everyone speak that wants to speak. And I imagine
18 that there will be statements made, but then hopefully,
19 there will be some time for some face-to-face
20 discussions, rather than a statement and then a
21 statement and then a statement. So maybe that might
22 lead us to some more expeditious resolutions, if you
23 will. So please be cognizant that there are others
24 that are going to be speaking.

25 And the order of speaking, we had to determine

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1 what might be a good way. And so I have a list here, a
2 check-in list, and so one way is to use that list. But
3 rather than follow the standards, the first one first,
4 the second one next, I want to do the first one, and
5 then go all the way to the bottom, and do the last one,
6 and alternate back and forth. So that will be a little
7 bit different.

8 Now, I'd like to turn it over to John to say a
9 few words about whatever you need to say, and about the
10 process and whatever else you may wish to present.

11 MR. GORDON: Thank you. Thank you very
12 much, Chairman Garcia. And I do want to again say how
13 appreciative I am for the opportunity to be here, and I
14 know that my colleagues share that sense of
15 appreciation and anticipation of this session. I am
16 particularly happy to be in Albuquerque, this beautiful
17 country. When I walk outside and I see the mountains
18 and enjoy the air and the bright sun, it's just
19 extraordinary. And this facility, which I haven't yet
20 had a chance to explore properly, but I'm hoping to
21 before I have to get back on a plane to Washington, I
22 can see some of the beautiful things that, so far, I
23 have only been able to walk quickly by on my way into
24 this space. But I do want to visit this facility. It
25 looks beautiful.

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1 Thank you for hosting us.

2 MR. SOLIMON: Thank you.

3 MR. GORDON: We on the FAR council are very
4 appreciative of the opportunity to consult with you to
5 get your input. As we begin shortly, the process of
6 writing regulations, to implement Section 811 that the
7 chairman mentioned, we do want to be sure that
8 everybody that's here today has a full opportunity to
9 speak and have their views heard, so that we're, on the
10 federal official side -- we're going to start, as the
11 chairman said, by putting sort of a framework up so
12 that we have an appreciation, a shared appreciation of
13 what we on the FAR council are doing; but we will be
14 very brief.

15 I'm confident -- it's now five to 10:00, I'm
16 confident that within 45 minutes, we will have finished
17 our comments so that the bulk of the day will be
18 devoted to your comments. And in fact, I'm not even
19 sure it's going to take us 30 minutes to do our
20 comments.

21 I do want to be sure, though, that you hear a
22 little bit in these introductory comments about the
23 initiatives that we in the administration are
24 undertaking to improve government contracting. I'm
25 going to ask our colleague from the Department of

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<p>1 Defense, Linda Nielson, who has graciously agreed to 2 talk about the regulatory process in this area, so that 3 you have a good sense of what's about to happen in the 4 FAR council process. I'll then speak a little bit 5 about competition and the alternatives to competition 6 in that procurement system, so you have a feel for 7 what's out there. Our colleague from GSA, Rob Lantier, 8 is going to talk about the justification and approval 9 process, since that's actually mentioned in Section 10 811.</p> <p>11 Again, we want to make sure that you have a feel 12 for the framework that we see on the FAR council. I 13 think we can do that fairly briefly, and we will do our 14 best to be brief in that.</p> <p>15 I think you all know, we conducted a 16 consultation session in Washington on Tuesday, the day 17 before yesterday, Sarah -- Sarah Lukin and some other 18 people that are here today were also at that session. 19 We will be doing a consultation session in Fairbanks, 20 Alaska, in a couple of weeks, and we welcome each of 21 these opportunities to get more feedback and more input 22 and more dialogue as we start this process.</p> <p>23 As the chairman said, the session today is being 24 transcribed by our court reporter, and that transcript 25 will be available afterwards. In addition, for those</p> <p style="text-align: right;">Page 22</p>	<p>1 may be some gaps in knowledge, I'll try to fill them in 2 as we go forward. Feel free to let us know if any of 3 us on the federal official side are using too many 4 abbreviations. They make the court reporter unhappy, 5 but they can also cause confusion. So if you see a 6 moment where we're using acronyms that aren't clear, 7 let us know. We will stop and explain them. And I 8 apologize if I do that, because I've been known to use 9 and also love acronyms. It's part of the Washington 10 world, I'm afraid.</p> <p>11 I'd like to say a little bit about two parts of 12 our initiatives to improve government contracting. And 13 then, our colleague, Leann Delaney, from SBA, has 14 agreed to talk a little bit about the initiatives to 15 improve and strengthen the 8(a) business development 16 program. First, though, a few words about 17 President Obama's memoranda from March of last year, 18 March 2009, in which he wrote, just six weeks after he 19 entered the White House, on the need to improve 20 government contracting. I'll then speak again briefly 21 about the very recently-released report from an 22 interagency task force that the President directed be 23 set up, to improve opportunities for small businesses 24 to obtain contracts from the federal government. The 25 President's memorandum, from March 2009, had a number</p> <p style="text-align: right;">Page 24</p>
<p>1 of you that are here, but also people that aren't here 2 today, if people want to make written comments, those 3 written comments are very much solicited. They are 4 very much welcome, and we will be sure that you all 5 have the e-mail address and the details about how to 6 submit written comments.</p> <p>7 Sometimes people are shy about speaking in a 8 session, but do have things they want to share or 9 comment. Sometimes people have further thoughts, 10 either because of what they hear in the session or just 11 because of reflection that they want to share. We very 12 much welcome all written comments.</p> <p>13 I was going to introduce our colleagues, but I 14 know that we've already gone around and introduced 15 them. I should point out that we're particularly 16 pleased that our colleagues from the Small Business 17 Administration are here, because SBA, although it's not 18 a member of the FAR council, plays an extremely 19 important role, particularly with respect to the 8(a) 20 program, which helps tribal organizations and Alaskan 21 native corporations, in addition to other small 22 disadvantaged businesses.</p> <p>23 With that, let me turn to some framework. I 24 know that many of you are familiar with the federal 25 acquisition process. But on the off chance that there</p> <p style="text-align: right;">Page 23</p>	<p>1 of points in it I want to just highlight, very briefly, 2 and tell you what we in the administration are doing to 3 implement them.</p> <p>4 First, the memoranda talked about the need to 5 strengthen the federal acquisition workforce. And I 6 can tell you that for us, in the office of management 7 and budget, that is a very, very high priority.</p> <p>8 Second, the memorandum directed us and OMB to 9 make clear for everyone inside the government and 10 outside what work could be done by contractors and what 11 work needs to be done by federal employees. The 12 President expressed concern that the line between work 13 that could be contracted out and that, that must not be 14 contracted out, has become blurred.</p> <p>15 Third, the President called for guidance on the 16 use of sole source contracts to be sure that they're 17 not used inappropriately and to maximize the use of 18 competition.</p> <p>19 Fourth, the President expressed concern about 20 unjustified use of cost reimbursement contracts and 21 other contracts that put the federal government at 22 greater risk of paying too much.</p> <p>23 We in OMB and across the administration are 24 carrying out the President's direction from that 25 March 2009 memorandum in a number of ways, and I just</p> <p style="text-align: right;">Page 25</p>

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1 want to very briefly highlight a few of them. We are
2 taking concrete steps to strengthen the federal
3 acquisition workforce. We are hiring more people,
4 albeit, in limited numbers. We are strengthening
5 training.

6 Let me give you a concrete example. The
7 President's budget for the year 2011 that just began,
8 the fiscal year, includes a request for \$158 million
9 for hiring and training of the civilian agency's
10 acquisition workforce.

11 Second, we issued a draft policy letter in March
12 of this year. We'll be finalizing it shortly. That is
13 called "Work Reserve For Federal Employees" to explain
14 what work is inherently governmental or otherwise needs
15 to be done by federal employees.

16 Third, we have called on agencies to establish
17 acquisition savings plans, so that they can be more
18 fiscally responsible with the taxpayer funds that
19 they're spending on the procurement process. We've
20 called on them to reduce their use of high risk
21 contracts, which include uncompleted contracts, as well
22 as cost reimbursement and time and materials contracts.

23 We'll be happy afterwards, if you like, to talk
24 with you about any aspect of the President's March 2009
25 memorandum on government contracting or our responses

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1 to it.

2 In terms of the recently-released report on
3 small business contracting, the President, in April of
4 this year, directed that our interagency task force be
5 set up to look for ways to remove barriers to small
6 businesses, obtaining federal contracts, and to look
7 for affirmative ways to help small businesses compete
8 successfully in the federal marketplace. The President
9 directed that the task force be co-chaired by the Small
10 Business Administration, the Department of Commerce,
11 and OMB, but we have participation from many of the
12 contracting agencies across the federal government.

13 We had a public meeting. We solicited and
14 received many written comments, and we issued a report
15 in late August, consistent with the President's
16 direction, that covers a whole range of issues and
17 includes, as the President wanted, concrete
18 recommendations for improvements. Let me highlight
19 here, because of the shortness of time, just a few, but
20 we'll be happy to point you to the website where you
21 can see the entire report.

22 We very much need to strengthen and clarify the
23 rules and the policies that effect small businesses.
24 For example, the rules for setting aside work under
25 task and delivery orders for small businesses, there is

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1 confusion about the rules, and we think that small
2 businesses suffer because of that confusion.

3 A second cluster of recommendations relate to
4 improving the training, a matter very relevant to
5 Section 811, so that our federal acquisition workforce
6 understands what the rules are. And we need to be sure
7 that our agencies and their officials are held
8 accountable for meeting our small business contracting
9 goals.

10 Third, there's a cluster of recommendations to
11 improve outreach to our small businesses and to make
12 better use of technology and data, to help the small
13 businesses and to help us achieve our small business
14 goals.

15 As I said, the report was released at the end of
16 August, and we are in the midst of gearing up across
17 the agencies to implement those recommendations
18 promptly.

19 With that, I'd like to turn the floor over to
20 our colleague, Leann Delaney, to address the efforts by
21 SBA to strengthen the business development program.
22 Thanks.

23 MS. DELANEY: Thank you. One of the primary
24 ways that we're looking at strengthening the 8(a)
25 program is through a regulatory process that we've been

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1 undergoing for the past couple of years. Really, the
2 regulations are focused on three primary areas: first
3 is implementing statutory provisions; secondly is
4 ensuring that the benefits of the 8(a) program flow to
5 the intended participants; and third, to eliminate
6 waste, fraud, and abuse.

7 We did a ten-city tour on these proposed
8 regulations. We actually conducted two sets of tribal
9 consultations, first in 2007, to talk about what should
10 go in the regulation. And then again in 2009-10 --
11 being the year 2009 and the year 2010, we did this
12 ten-city tour, which included tribal consultations as
13 well. And it's taken awhile to get these proposed
14 regulations finalized.

15 We did receive over 2,300 individual comments on
16 sections of the regulations, so it's been a lot to
17 digest. I did want to highlight that the consultations
18 that we had in connection with the 8(a) program
19 regulations are in no way linked to these
20 consultations. So these are two separate and distinct
21 things. I just wanted to make that point. Thank you.

22 MR. GORDON: Thank you, Leann. Our
23 colleague, Linda Nielson, has graciously agreed to give
24 us a thumbnail overview of the FAR regulatory writing
25 process.

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1 MS. NIELSON: Can you hear me? Am I on? Is
2 it working? Thank you. How many people in this room
3 are familiar with the federal acquisition regulation?
4 I know you are. Thank you, because that helps me with
5 where to direct this.
6 The FAR council is consistent -- consists of our
7 leader, the administrator of federal procurement
8 policy, the DSA, DOD, and NASA, who was unable to
9 attend today. At the layer beneath that, who funnels
10 the regulations into the FAR council are the Department
11 of Defense subagencies, the Army, the Navy, the Air
12 Force, the defense and logistics agency, the defense
13 contract management agency, all of the various defense
14 agencies, and NASA sits with the Department of Defense
15 on the defense acquisition regulations council; and the
16 civilian agencies, who GSA represents on the FAR
17 council, many of whom sit at the table with GSA,
18 including SBA. And many of them are represented by GSA
19 in the deliberations, because they are sort of a --
20 there's a funneling effect, if you will, and the FAR
21 council adjusts and changes the FAR.
22 The FAR is the way in which we provide guidance
23 to the contracting officers on how to conduct federal
24 procurements. And in a nutshell, it provides a
25 blueprint. It implements new laws as they are enacted.

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1 In weeding the new laws into the FAR, we have to do
2 that in a way that is consistent with existing laws and
3 existing regulations, SBA regulations, labor
4 regulations, a plethora of regulations.
5 And so I sort of think of it as a tapestry, you
6 don't want to cut any of the threads, when you weave
7 new pieces in. We can't do that. We get marking
8 orders from congress. Congress tells us, "We'd like
9 you to do this, this, and the other," and then we
10 implement those in guidance for the contacting
11 officers. And those are the federal acquisition
12 regulation rules that we publish.
13 We do all of this under the process prescribed
14 by the Office of Federal Procurement Policy Act. And
15 that act lays out a process by which we obtain public
16 comment, pretty much at every stage as we go. And so
17 we publish our rules in the Federal Register, same
18 place where we published the notice for these
19 consultations and solicit public comment. On occasion,
20 we may hold a public meeting, if there is a lot of
21 interest in the rule.
22 And I think that pretty much covers the process.
23 MR. GORDON: Thank you, Linda. And again,
24 we will have an opportunity, if anybody wants to ask
25 questions or clarify any step of the process, as we go

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1 along.
2 I'm going to talk, with your indulgence, very
3 briefly about the legal framework in terms of a sole
4 source contracts competition, other variations, again,
5 for the sake of context. And I'll begin almost with an
6 apology, because the federal procurement system is very
7 complicated. It is very complicated.
8 In terms of the issue of competitions, sole
9 source contracts and the like, you can think of it
10 almost as a -- as a continuum. At one end of the
11 continuum is sole source contract. At the other end of
12 the continuum is what we often call "full and open
13 competition," or "unrestricted competitions." And the
14 fact is that there are -- under our federal acquisition
15 rules, the statutes and the regulations and the FAR,
16 there are situations where anything along that
17 continuum may be called for. Let me give a few
18 examples.
19 There are situations where no competition at all
20 is required, for example, where a sole source award is
21 permitted. And that happens in a number of context and
22 not only the one that relates to Section 811. Let me
23 point out a couple of those other contexts. One is
24 where the dollar amount is very small. If it is below
25 \$3,000, what we call a micro purchase, there's no

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1 requirement for any competition at all. Another is
2 where there are special situations that justify moving
3 forward on a sole source basis, and the most commonly
4 discussed is probably urgency.
5 Again, I'll give you a concrete example. The US
6 Agency For International Development, USAID, needed
7 contracting work done in January of this year after the
8 earthquake in Haiti. Did USAID have to do competitions
9 for that emergency relief work, the goods and the
10 services for Haiti? Absolutely not. They were able to
11 do a justification and approval, what we often call a
12 J&A -- what Rob is going to be talking about shortly --
13 so that they can do sole source awards.
14 But as I said, it's really a continuum, and
15 they're possibilities along the route, something that's
16 neither sole source nor full and open competition. One
17 common example is a set aside, where you reserve a
18 procurement for a particular category. Within that
19 category, there's competition, but entities outside the
20 category cannot compete. The most common example may
21 be a small business set aside, although there are also
22 set asides for subgroups within the small business
23 community; for example, you can have a competition
24 among 8(a) firms.
25 I think you know that sole source contracts are

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<p>1 permitted for 8(a) firms, normally up to a dollar 2 ceiling of \$3.5 million or \$5.5 million dollars, 3 depending on what's being purchased. But above that 4 level, there has to be a competition, although the 5 competition could have been in 8(a) firms. The 6 exception, as I'm sure everyone in this room realizes, 7 is the tribal organizations, the native Hawaiian 8 organizations, and the Alaskan native corporations for 9 whom that dollar threshold of 3.5 or 5.5 million does 10 not apply.</p> <p>11 I hope that that gives you some sense of both 12 the complexity and the variation of possibilities 13 within the federal procurement system, in terms of the 14 rules for how much competition is required in a 15 particular context.</p> <p>16 And with that, I'm going to turn the floor over 17 to our colleague, Rob Lantier from GSA, to give you a 18 sense of that J&A process, justification and approval 19 process.</p> <p>20 MR. LANTIER: I'll take just a couple of 21 minutes with this, and emphasize a couple of key 22 points. The first one that I'll emphasize is that 23 justification and obtaining approval of a sole source 24 contract is a contracting officer's responsibility. 25 Writing up that justification, considering a number of</p> <p style="text-align: right;">Page 34</p>	<p>1 of others who may have expressed interest in, also, 2 that particular contract.</p> <p>3 Approvals must be in writing just as the 4 justification must be in writing. And I talked a 5 little bit about who the approving officials could be 6 in the various agencies.</p> <p>7 Justifications, as a final step, are made 8 available to the public within 14 days of contract 9 award. They can be posted a number of places in 10 federal business opportunities, FBO, as we call it, on 11 an agency website and anywhere else that has public 12 access. And that will be kept up there for 30 days or 13 longer.</p> <p>14 That pretty well summarizes it. Again, if you 15 want to know a little bit more, you can check subpart 16 6.3 of the FAR regarding the justifications and 17 approval and the 6.1 talks about full and open 18 competition. Thank you.</p> <p>19 MR. GORDON: Rod, thanks very much. 20 Chairman Garcia, I said that we would be brief, 21 and we are going to be very brief. I've got about 22 three more minutes, but it's now about, actually, 23 Section 811, and then we'll be ready for the next step. 24 Section 811, itself, I don't know if the people 25 in the room have all had a chance to read it. We can</p> <p style="text-align: right;">Page 36</p>
<p>1 different points that are listed in the FAR and FAR 2 part 6, is again, the contracting officer's primary 3 responsibility. Depending upon the threshold, the 4 total dollar amount involved with that contract, the 5 actual approval can either be provided by the 6 contracting officer, him or herself, or by a head of 7 contracting activity within that particular agency, or 8 potentially with a competition advocate or senior 9 procurement executive within the agency.</p> <p>10 Again, the level of approval is driven by the 11 dollar value of the contract. There is some 12 flexibility for one agency to another based on internal 13 requirements. But again, FAR part 6 would enumerate 14 that.</p> <p>15 The contracting officer has to consider a number 16 of things, whether a sole source is truly available; 17 whether there's a compelling reason to use a sole 18 source, sometimes national security, public interest. 19 Dan talked about the emergency in Haiti. All of those 20 could be potential considerations. The justification, 21 itself, that the contracting officer writes up would be 22 a description of the product or service that would be 23 provided, an explanation as to why the sole source 24 being used is uniquely qualified to fulfill the 25 contract, a description of those efforts, and a listing</p> <p style="text-align: right;">Page 35</p>	<p>1 get copies for you. It is a fairly-brief provision, 2 and I hope you won't be shocked when I tell you that it 3 is not entirely clear, when you look at it, what it 4 says.</p> <p>5 It is -- as legal provisions are often the case, 6 it includes references to various section numbers and 7 laws, and it takes a lawyer, sometimes, to sift your 8 way through it in terms of what it says. I want to try 9 to give a summary here, which I hope will give you a 10 feel for what the provision says. And I -- and again, 11 I hope you appreciate that from our point of view, on 12 the FAR council, our role is not to write section 11 13 better or to agree or disagree with what section 11 14 says. That's not our mandate. Our mandate is to 15 translate that statutory directive into a regulation 16 that fits in what Linda calls the tapestry -- I'm not 17 sure I ever heard the FAR referred to as a tapestry, 18 although it's a lovely idea: The tapestry of the FAR.</p> <p>19 Section 11 says that the FAR is to be revised to 20 make clear that sole source contracts with a value 21 above \$20 million require a justification and approval, 22 a J&A, number one. Number two, that J&A, justification 23 and approval, needs to be in writing; and number three, 24 the justification and approval is to be made public. 25 That's sort of the core requirement in the statute.</p> <p style="text-align: right;">Page 37</p>

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<p>1 If you look in the statute and look for a 2 reference to tribal organizations or Alaska native 3 organizations, you won't see one. That's what I meant 4 when you have to follow all the cross-references and 5 the numbers, and whatever. 6 If you do track, though, all the various 7 references, you will see in the definition, in the 8 statute, what they call "covered procurements," that, 9 in fact, the Statute 811 is referring to 8(a) 10 contracts. And then of course we know, everyone in 11 this room knows, that those -- the only 8(a) contracts 12 that would be affected will be those being awarded to 13 tribal organizations and AMCs, because they are the 14 only ones eligible under current law for a sole source 15 contract at \$20 million or above. But that is not 16 explicitly stated in the statute. 17 In terms of what the J&A requires, the 18 justification for the sole source contract for a 19 contract above \$20 million, the statute is specific, 20 and here, actually, is quite clear. The justification 21 and approval has to describe the agency's needs. It 22 has to specify the statutory provision being relied on 23 for the sole source contract. In other words, we're 24 doing it -- we're doing the sole source contract under 25 the authority of statute X. You have to name that</p> <p style="text-align: right;">Page 38</p>	<p>1 would work. 2 And we're going to take a five-minute break, by 3 the way. So how is that for timing. 4 (Recess taken from 10:25 a.m. to 10:36 a.m. 5 and the hearing continued as follows:) 6 MR. GARCIA: Well, I've got two sheets here. 7 And if I look at the second sheet, it looks like we 8 have 130 people here. Now, you all know that's not 9 true. So we're passing out a set of questions that 10 might help guide you in asking your question for 11 preparing your comment. And then there's the Section 12 811 being handed out, so you can use that as a 13 reference, refresh your memory. 14 But at this time, we'd like to go ahead and 15 start the discussion part. So when you begin to speak, 16 please identify yourselves so the transcriber can 17 document that properly and the company that you work 18 for. And if you're representing a tribe as well, state 19 that as well. 20 Do we have any newcomers? Okay. I'm going to 21 follow this list, so we'll get rolling. 22 And do we have a lunch break, or are we going to 23 work through lunch? 24 MR. GORDON: Whatever you want. 25 MR. SOLIMON: Mr. Chairman, can we have Dave</p> <p style="text-align: right;">Page 40</p>
<p>1 statute. The justification and approval must include a 2 determination that using the sole source contract is in 3 the best interest of the agency. And finally, the J&A 4 must state that the anticipated cost will be fair and 5 reasonable. 6 Our job on the FAR council is to move from that 7 statutory language to language in the FAR, which will 8 help our contracting officers as they are deciding 9 whether, in fact, to make a sole source award. 10 We have worked with the tribal organizations, in 11 preparing this session, to have some key questions. 12 But we want to be sure that you feel free today to 13 raise whatever point, whatever issues, whatever 14 concerns you want to raise. We don't want you to feel 15 constrained by any particular questions. 16 And that, Chairman Garcia, concludes our part of 17 the presentation. 18 MR. GARCIA: Okay. Great, Dan. I wanted to 19 see -- the Section 811 is like a page and a quarter, so 20 I wanted to take a poll to see if you might need copies 21 of that. We'll go and make some copies. Would you 22 like that? Okay. So -- -- 23 MR. GORDON: I think one for everyone would 24 be a good idea. 25 MR. GARCIA: Probably about 30, 40 copies</p> <p style="text-align: right;">Page 39</p>	<p>1 introduce himself? 2 MR. GARCIA: Oh, yeah. 3 MR. MELTON: Dave Melton from Sacred Power 4 Corporation. We are an energy company, member of 5 Pueblo of Laguna. So thank you for inviting me. 6 MR. GARCIA: David, you signed this one, so 7 you don't need to sign that one. Thank you. And 8 welcome. 9 Okay. So we start with -- number 1, is 10 Elfonzo Nephew. You have the floor, sir. And there's 11 a microphone there. I hope they're all working. 12 MR. NEPHEW: Thank you. I think I put my 13 name on the second page, so I would be further down the 14 list. 15 MR. GORDON: It didn't do no good. 16 MR. GARCIA: You're number 1 on the list. 17 MR. NEPHEW: But thank you again. And I 18 guess for the record, my name is Elfonzo Nephew, chief 19 financial officer for NOVA Corporation, a tribal 8(a) 20 company owned by the Navajo Nation. 21 I've -- myself and the CEO prepared kind of a 22 written statement, which I will read off. 23 "On behalf of NOVA Corporation, a Navajo Nation 24 owned tribal SBA designated 8(a) company, we 25 respectfully submit the following comments in regard to</p> <p style="text-align: right;">Page 41</p>

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<p>1 the recently passed Section 811 on the National Defense 2 Authorization Act for fiscal year 2010 and highlight 3 how the new legislation could adversely effect and/or 4 hinder the development of tribal 8(a) companies, and by 5 extension, tribal economies. 6 "The legislation establishes a new requirement 7 for federal agencies to justify a sole source contract 8 award to a business under the small business 9 administration's 8(a) business development program, 10 including businesses owned by Native American tribes, 11 native Hawaiian organizations, and Alaskan native 12 corporations if the sole source award exceeds 13 \$20 million. A summation of our requests are as 14 follows: 15 "First, an outright repeal of Section 811. If a 16 repeal is not an option, inserting definitive language 17 in the regulation defining and clearly explaining that 18 the 20 million is a threshold for justification and 19 approval of it, rather than a cap. 20 "Thirdly, clearly define and explain that 21 \$20 million applies to the base year only. 22 "The ability to sole source contract plays a 23 clear role in government contracting. The benefit in 24 relation to tribal authorizations is that sole sourcing 25 offer results in a very fair and reasonable cost. This</p> <p style="text-align: right;">Page 42</p>	<p>1 profitability was marginal. 2 "The vision for NOVA corporation is that it will 3 be the first brick in the building of a self-sustaining 4 economy, based on federal government contracting that 5 will, in turn, provide job opportunities for a new 6 generation of Navajo workers. The implementation of 7 this overregulation will stagnate NOVA Corporation's 8 success and cool economic stimulus generated by the 9 Navajo tribe. 10 "Legislation should continue to encourage 11 economic activity and competition. The SBA 8(a) was 12 designed to help the less fortunate and economically 13 disadvantaged. NOVA Corporation and its shareholder 14 believe that, in the capitalistic spirit of 15 competition, that tribal corporations should have the 16 slight advantage of the tribal 8(a) designation and a 17 fair shot at sole source contracts. 18 "NOVA Corporation and other tribal 8(a) 19 companies have a strong track record of providing 20 exemplary service to federal agencies. 21 "In conclusion, as the US economy continues to 22 recover, tribal 8(a) economies can be great 23 contributors to stimulating the economy with job 24 creation and dividends to tribal owners for further 25 economic development on Indian reservations."</p> <p style="text-align: right;">Page 44</p>
<p>1 is due to the fact that tens or hundreds of thousands 2 of that would be spent on completing a full blown 3 competitive proposal are not spent and that savings 4 results in lower cost to the government or the ability 5 to provide greater benefit to the shareholder. There 6 are many other clear benefits that come from providing 7 the ability for a contracting officer to sole source to 8 a proven company, not the least of which is that, as a 9 percentage, many more procurements are being protested 10 than ever before, resulting in much greater cost to the 11 government and the taxpayer. A sole source to a tribal 12 organization has proven that it can, by itself, or with 13 a teaming partner that brings to the table accomplish a 14 given order, and this be can be accomplished at a fair 15 and reasonably priced result in cost savings and 16 streamline procurement cycle. 17 "NOVA Corporation and its shareholder, Navajo 18 Nation, have now just begun to realize the many 19 opportunities of 8(a) contracting and have begun 20 improving the lives of tribal members. Currently, NOVA 21 has instituted a scholarship program that will allow up 22 to 20 Navajo students to pursue degrees in many diverse 23 technology-related fields; furthermore, NOVA has 24 provided numerous monetary donations to entities for 25 the betterment of tribal members, even when</p> <p style="text-align: right;">Page 43</p>	<p>1 Thank you. 2 MR. GARCIA: Thank you, so much. Remember, 3 we're going to go through one round of allowing people 4 to speak, and then we'll go into discussion. Because 5 there's only seven people identified as wishing -- 6 wishing to speak. So we'll probably have a lot more 7 time for discussions as we sit here. 8 So now, according to the little process, 9 number 2 is Ron Lovato, Tewa Construction and 10 Corporation. 11 MR. LOVATO: Thank you, Chairman Garcia. 12 Good morning, everybody, again. 13 One of the comments I'd like to make on behalf 14 of Tewa Corporation and Ohkay Owingeh is, you know, I'm 15 going over the section B, number 3, and one of the 16 things that's -- I'm not clear on how you all would do 17 this, is it says, "In the best interest of the agency." 18 And it just seems to me that that's a very narrow 19 guideline that would be given to an agency without 20 taking into account the broader policy issues of, say, 21 Indian policy in general. 22 And so it -- for example, the Department of 23 Defense agencies would limit their scope to defense 24 issues, and would totally not be able to take into 25 account Indian policy issues or other parts of the</p> <p style="text-align: right;">Page 45</p>

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1 federal government trust responsibility, things that
2 are there in the Indian nations. I just think that
3 that one word, "In the best interest of the agency,"
4 without -- without the agency having the latitude to
5 take into account the broader -- the broader
6 perspective or the broader goals of the federal
7 government when it comes to Indian policy is going to
8 be -- it's very limiting, and it does -- it's not going
9 to help --
10 You know, as Indians, we're constantly, even
11 when we got into business, because we didn't like
12 politics -- I did. But still, yet, public policy plays
13 such a big role in whether we're successful or not.
14 And so we have to come to things like this. We have to
15 participate. Because the decisions you all are making
16 are really going to limit, or enhance, our ability to
17 be successful.
18 And you know, we're -- my company, for one,
19 we're doing it right. We're doing the program right.
20 We're doing everything right. And I -- I just
21 encourage you to please pay attention to things like
22 that, because that one phrase, limiting it to the best
23 interest of the agency, it's going to preclude them
24 from considering broader -- broader perspectives on
25 issues. Thank you.

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1 MR. GARCIA: Thank you, Ron. Number 3 is
2 Sarah Lukin, Native American Contractors. There's a
3 microphone right there.
4 MS. LUKIN: Thank you.
5 MR. GARCIA: And on deck is Eric Trevan.
6 MS. LUKIN: So you can stress -- I'll talk
7 really slow, so you have a long time to stress out.
8 Let me see, I'll try to get comfortable here.
9 Hello again. My name is Sarah Lukin. I'm
10 Alutiiq from the native village of Port Lions, which is
11 a remote community located in the gulf of Alaska. I'm
12 an enrolled tribal member of the native village of Port
13 Lions and the native village of Afognak, and an Alaska
14 native shareholder of Koniag, Incorporated, and Afognak
15 Native Corporation. But I live and work in Washington,
16 D.C. now, where I serve as the executive director of
17 the Native American Contractors Association, or NACA.
18 For those of you who may not know, NACA is a
19 national native advocacy organization that really
20 pushes for the rights of tribes, Alaska native
21 corporations, and native Hawaiian organizations in
22 government contracting, and in particular your
23 participation in the SBA 8(a) program. Currently,
24 NACA'S membership consists about 48 percent tribal
25 enterprises, 48 percent Alaska corporations, and the

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1 remaining percentage represented by native Hawaiian
2 organizations. Collectively, NACA'S members perform
3 all government contracts in all 50 states, several US
4 territories and foreign countries, employs thousands
5 and bringing benefits back to their approximately
6 475,000 tribal members, Alaska native shareholders, and
7 native Hawaiian people.
8 So I wanted to take a moment and say that the
9 SBA team is an enormous advocate for America's small
10 businesses and in particular our native enterprises,
11 and I would be terribly remiss if I didn't take a
12 moment to thank them for participating in these FAR
13 council consultations. So ladies, thank you very much
14 for being here today.
15 NACA would also like to thank the FAR council
16 for holding this series of tribal consultations. We
17 know that this is the first tribal consultations the
18 FAR council has ever held. Right? Yeah. And we thank
19 you for your willingness to engage in these enterprises
20 in a dialogue prior to drafting of a regulation that we
21 believe will dramatically effect the future of our
22 native enterprises and our native economies. I truly
23 hope that today you will listen to the statement,
24 stories and insight shared by native enterprise and
25 tribal leaders and that you will implement this

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1 regulation in a manner that lessens the impact on
2 agencies, contracting officers, native enterprises, and
3 most importantly the native communities and people that
4 they serve and benefit.
5 Although tribes, Alaska native corporations and
6 native Hawaiian organizations, combined, represent less
7 than 1.3 percent of the federal contracting pie, their
8 small slice of the pie is helping to build business
9 capacity and bringing benefits back to their tribal
10 members and native communities. Just when these
11 enterprises are beginning to utilize tools like 8(a)
12 programs to diversify native economies and work towards
13 some level of economic self-sufficiency, which they so
14 desperately need, they now face additional restrictions
15 and uncertainty.
16 Section 811 was slipped into the National
17 Defense Authorization Act, a must pass defense-specific
18 bill, but this is a government-wide provision. Since
19 the passage of Section 811, NACA has pounded the halls
20 of congress, urging for its repeal, because we knew
21 native enterprises would experience a chilling effect.
22 Not surprisingly, I recently learned that one
23 tribal 8(a) was working with another firm to prepare a
24 bid for a contract with an estimated value of 300 --
25 value between 300 and 600 million over ten years.

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<p>1 After two years of preparation work, the partners 2 received a pre-award notification. After the 3 announcement that Section 811 had been included in the 4 National Defense Authorization Act, communications 5 between the department and the partners stopped, and 6 the multimillion dollar contract was ultimately 7 cancelled. The tribe has the clear impression that the 8 uncertainty of using Native 8(a) under the ambiguous 9 constraints of Section 811, was a key factor in the 10 loss of this large contract.</p> <p>11 During the same period, another tribally-owned 12 8(a) company was in the process of negotiating a sole 13 source contract for \$80 million to provide IT 14 infrastructure services overseas; however, as soon as 15 the National Defense Authorization Act was passed, the 16 contracting officer informed the Native 8(a) that there 17 is a \$20 million cap for sole source awards to native 18 enterprises, and that the \$20 million award would 19 require permission from the head of an agency. While 20 the approval for a \$20 million contract was eventually 21 obtained, the tribal enterprise lost the remaining 22 \$60 million of the contract, and the agency was unable 23 to meet its needs in a timely manner.</p> <p>24 Meanwhile, we see another tribally-owned 8(a) 25 company that has a Small Business Administration</p> <p style="text-align: right;">Page 50</p>	<p>1 regulations, NACA also recommends that the 2 justification process for native enterprises only 3 include the five elements listed in Section 811, not 4 the 12 preexisting justifications in the FAR, plus the 5 five elements in Section 811.</p> <p>6 I would also like to take a moment to provide a 7 bit more detail in recommendations regarding elements 8 3, 4, and 5, in Section 811.</p> <p>9 When determining that the use of a sole source 10 contract is in the best interest of the agency 11 concerned, NACA recommends the agency consider how an 12 award to a tribe, Alaska native corporation, or a 13 native Hawaiian organization 8(a) will allow it to meet 14 the agency's small business goals. Under the 8(a) 15 program, agencies are already required to ensure that 16 every 8(a) contract is at fair market price, as 17 outlined in FAR 19.807, which provides specific 18 guidelines for small business awards.</p> <p>19 NACA recommends that element 4 of Section 811 20 regulation defined "fair and reasonable," to be the 21 same as "fair market price," in FAR 19.807. And for 22 Linda's benefit, I think that that would go to that 23 tapestry effect.</p> <p>24 Regarding element 5, NACA recommends such other 25 matters as the head of the agency concerned shall</p> <p style="text-align: right;">Page 52</p>
<p>1 approved mentor protege agreement with a defense 2 contractor. Following months of negotiation, the 3 contracting officer stated that he was unsure about the 4 status of sole source contracts with a tribally-owned 5 8(a), due to the adoption of Section 811, and the 6 negotiations came to a halt.</p> <p>7 Similarly, an ANC 8(a) company recently 8 negotiated an extension for a contract they had 9 previously taken over from a nonperforming entity. 10 After the contracting officer took the contract through 11 her chain of command, she was told she could not exceed 12 \$20 million for the total contract value, due to 13 adoption of the new Section 811. The company and the 14 department are still trying to come to an understanding 15 about the true meaning of Section 811.</p> <p>16 If the intent of Section 811 is simply to 17 require justification and approval for any sole source 18 contract over \$20 million and not act as a cap on such 19 contracts, then that intent does not appear to have 20 been communicated to contracting officers. Instead, 21 Section 811 is being interpreted as a cap on sole 22 source contracts for native enterprises. Clarification 23 that Section 811 is just J&A and not a cap is 24 absolutely necessary.</p> <p>25 In reviewing Section 811 and existing</p> <p style="text-align: right;">Page 51</p>	<p>1 specify -- that's a mouthful -- for purposes of 2 Section 811, be limited to those factors outlined in 3 section 19.804-1 of the FAR, which explains the steps 4 agencies must take when setting aside a contract for 5 the 8(a) program. This is especially appropriate, 6 given that this is a government-wide provision, and 7 such clear direction in the implementation will ensure 8 uniformity in the 8(a) award process and decrease 9 uncertainties within the J&A process for both native 10 enterprises and agencies.</p> <p>11 I'd like to pause a moment and say I am very 12 happy to see the ladies from IHS and BIA here, because 13 this provision will effect your organizations, 14 probably.</p> <p>15 Additionally, NACA recommends that the head of 16 agency requirement under element 5 be delegated, as is 17 done with other government contracting J&As.</p> <p>18 In addition to the items that I just went over, 19 I also -- obviously, NACA has provided you guys formal 20 written comments. We also provided oral comments in 21 addition to what I just said today at the D.C. tribal 22 consultation, and I have absolutely every intention of 23 providing additional comments to that in Fairbanks, 24 Alaska.</p> <p>25 And I will say that without these clarifications</p> <p style="text-align: right;">Page 53</p>

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<p>1 to Section 811 that NACA has just proposed, there will 2 continue to be a dramatic chilling effect on native 3 enterprises, limiting the government's ability to meet 4 its small business goals, while awarding more contracts 5 to the huge government contractors that already receive 6 such a significant portion of the federal contracting 7 pie.</p> <p>8 Thank you for your time.</p> <p>9 MR. GARCIA: Thank you. Thank you so much. 10 Next is Eric Trevan. Is it's Treband? And then, on 11 deck will be John Bailly.</p> <p>12 MR. TREVAN: Thanks for playing games with 13 me with the microphone.</p> <p>14 Thank you, Chairman Garcia.</p> <p>15 First of all, I want to thank everybody for the 16 opportunity to provide these comments and -- whereas 17 our comments may be a little longer orally, we do have 18 copies of them that we will be able to pass out to 19 follow. So this will be our only consultation we'll be 20 attending, but we think it's important, that in 21 partnership, as I discussed before, that we can provide 22 specific recommendations where we feel Indian country 23 stands. And if I can just take a moment -- it's not 24 just Eric Trevan drafting these comments. We've got a 25 great legislative community that really looks through</p> <p style="text-align: right;">Page 54</p>	<p>1 appreciate the Obama administration's decision to 2 conduct these consultations.</p> <p>3 Just a quick background of the National Center. 4 We were organized over 40 years ago. We are the 5 longest serving Native American business development 6 assistance provider in the United States, with 7 permission to develop the American Indian private 8 sector as a means to help native communities become 9 self-sufficient. We operate a national network of 10 nonprofit centers across the country with eight 11 offices, with us having our ribbon cutting in 12 Albuquerque, I believe on October 20th.</p> <p>13 MR. SOLIMON: Right.</p> <p>14 MR. TREVAN: Okay. Thank you. But you 15 know, we already talked -- and we provide services to 16 Indian tribes, and businesses owned by those entities, 17 as well as individual Native Americans, Alaskan 18 natives, and native Hawaiians. Our business centers 19 assist a broad range of first generation native 20 entrepreneurs. It's sophisticated tribal enterprises 21 result in business feasibility studies, business plans, 22 banking relationship, line of credit, marketing. We're 23 supported by federal agencies.</p> <p>24 And I just want to thank the DOD, Department of 25 Congress, Department of Interior. And they have</p> <p style="text-align: right;">Page 56</p>
<p>1 everything, with Mr. Ron Solimon, Michelle Holiday, 2 John Echohawk, and our chairman, Margo Grey-Proctor in 3 the national center. And we do this in conjunction 4 with our attorneys in D.C. So I just wanted to make 5 sure that they were recognized as being a part of the 6 team that provided these comments.</p> <p>7 And if you do get these comments, balance them 8 against the oral comment. I am going to try to 9 expedite some of the areas that we can take out.</p> <p>10 So you know, the National Center really bases 11 these comments on countless hours of assisting many 12 8(a) enterprises capacity, to be effectively compliant 13 with applicable procurement rules. For national 14 regional conferences, we have provided business 15 matchmaking opportunities for native 8(a) enterprises, 16 as well as training sessions conducted by contracted 17 experts. These training sessions counsel best 18 practices in an 8(a) contract formation, subcontract in 19 limitation, and other performance requirements to 20 foster compliance of both the spirit and the letter of 21 the 8(a) rules.</p> <p>22 Since virtually no opportunity was given to the 23 Native American community to comment on government wide 24 application of Section 8(a)" -- sorry -- "Section 811 25 requirements before they were enacted. We really do</p> <p style="text-align: right;">Page 55</p>	<p>1 been -- and the other federal agencies that support 2 Indian country, have been great partners for us to work 3 with, and we want to continue that partnership with 4 this open dialogue.</p> <p>5 In addition to what we talked about, we provide 6 national regional trade to promote market native 7 enterprises to the public and private sectors, and our 8 signature event, which most people know us as, the Res 9 conferences, reservation economics, and American Indian 10 business trade fair. Res.</p> <p>11 I'm just going to cover the bullets -- the legal 12 framework of the Native 8(a) program on Section 811. 13 Very compelling reasons prompted congress to authorize 14 the Native 8(a) program's provisions. Their enactment 15 was grounded on the confluence of federal Indian 16 policy, federal small business policy, and federal 17 procurement policy considerations, fully justified by 18 sobering socioeconomic indicators that have proved very 19 little over time.</p> <p>20 Foundations of the political trust relationship. 21 The governments of American Indians, Alaskan Natives 22 and Native Hawaiians were considered sovereign nations 23 for their first interaction with the European settlers. 24 The US constitution granted congress the power to 25 regulate commerce with the Indian tribes and its</p> <p style="text-align: right;">Page 57</p>

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<p>1 interpretations. Subsequent landmark Supreme Court 2 decisions gave rise to the federal government special 3 political trust relationship with the responsibilities 4 to the tribe. These cases arose from violations of 5 constitutional treaty protection. Tribes across the 6 country entered the treaty, giving up land in exchange 7 for promises of federal protections and support for 8 education and community development, only to suffer 9 more treaty violations.</p> <p>10 General Allotment Act of 1887 forced conversion 11 of more than 90 million acres, two-thirds of 12 reservation land for tribal ownership, often without 13 compensation, denied Indian settlers the surplus land. 14 The 1867 treaty granted Alaska natives peaceful 15 possession of their lands, and the Alaska Statehood Act 16 confirmed these rights.</p> <p>17 Then discovery of rich oil fields led to 18 enactment of the Alaska Native Claims Settlement Act 19 and relinquishment of 89 percent of Alaska native 20 claim. That act created regional and village 21 corporations to administer the settlement funds and 22 generate revenue to the benefit of many thousands of 23 Alaska native shareholders. This constitutional 24 statutory foundation underpinned subsequent 25 congressional action to assist these native communities</p> <p style="text-align: right;">Page 58</p>	<p>1 native shareholders.</p> <p>2 Such an 8(a) exemption from the competition and 3 contract. Congress created the 8(a) program 4 specifically to permit the use of sole source contracts 5 as a tool to enable an economically and socially 6 disadvantaged companies to penetrate and succeed in the 7 federal procurement market. Congress recognized that 8 in these disadvantaged companies, in their early stages 9 of development were forced to compete against 10 contractors of far greater capacity, they would never 11 succeed and thrive. Congress also recognized that 12 because of sole source contracts, disadvantaged firms 13 under 8(a) program, were subject to SBA reviews and 14 approval, they should be exempted from the requirement 15 of justification and approval, J&A, imposed on all 16 their sole source contracts.</p> <p>17 Contest of Section 811. While the Native 8(a) 18 program has been the subject of several years of 19 scrutiny, including a congressional hearing, Section 20 811 and the concepts it imposes were enacted with very 21 little notice or debate. Section 811 was not 22 considered in the contract with either of the House or 23 the Senate's small business committee, which have, 24 primarily, jurisdiction over the 8(a) programs or was 25 Senate Indian affairs committee and House natural</p> <p style="text-align: right;">Page 60</p>
<p>1 in the struggle for economic business and community 2 development, self-determination, and self-sufficiency.</p> <p>3 In the 1970s, congress created the 8(a) program 4 for federal agencies to award contracts through the SBA 5 to small minority-owned businesses with the goal of 6 awarding at least 10 percent of all federal contracts 7 to such businesses, including those owned by American 8 Indians, Alaska natives, and native Hawaiians. Ten 9 years later, when the native affairs committee held 10 hearings to determine why native-owned enterprises were 11 participating in federal procurement, witnesses 12 testified the various problems, including lack of 13 federal agency use of the Indian preferences available 14 in various contracts and programs, such as the Buy 15 Indian Act, and the eligibility of tribal owned 16 companies to apply for 8(a) certification.</p> <p>17 As a result, these -- and several small business 18 committee hearings, congress enacted various amendments 19 to allow tribes and AMCs to apply for 8(a) 20 certification and be eligible for awards of sole source 21 competitive contracts above the competitive thresholds 22 imposed on 8(a) firms owned by the individuals, because 23 Native 8(a) enterprises are responsible for generating 24 continuing income for jobs and improving the livelihood 25 of hundreds of thousands of tribal members and Alaska</p> <p style="text-align: right;">Page 59</p>	<p>1 resources committee, which has exclusive jurisdiction 2 over matters affecting federal Indian policy.</p> <p>3 Section 811 is narrowly drafted to address a 4 specific procurement recordkeeping process. It in no 5 way purports to change any portion of the small 6 business act or federal Indian policy. As discussed 7 below, Section 811 and does not impose any substantial 8 requirement on federal agencies, nor does it limit the 9 use of the Native 8(a) sole source provisions in any 10 substantial way.</p> <p>11 For each of these reasons, Section 811 must be 12 read narrowly. And despite what critics of the 8(a) 13 program may have alleged, congress did not cap or 14 otherwise limit the dollar failure of a contract that 15 can be awarded to sole source to a Native 8(a) 16 enterprise, nor did congress direct that the J&A 17 requirement held to other sole source contracts be 18 applied to the Native 8(a) awards over 20 million. It 19 prescribed a limited J&A process.</p> <p>20 In summary, it's essential that regulations 21 implementing Section 811 take into account respect all 22 the following the considerations: The trust 23 relationship that underpins the 8(a) program and 24 applies to Native 8(a) enterprises; congress's attempt 25 to preserve the 8(a) sole source provision that allowed</p> <p style="text-align: right;">Page 61</p>

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<p>1 native enterprises to receive sole source awards, 2 sufficient size to generate revenues and other benefits 3 for other native communities. 4 Other regulatory reviews and approvals already 5 impose in the sole source awards of native 8(a) 6 enterprises. The fact that Section 811 does not create 7 any new substantial requirements or limitations on any 8 8(a) native sole source contracts, the importance of 9 the above considerations and determinations by use of a 10 sole source award to a Native 8(a) enterprise is the 11 best interest of the agency and that the anticipated 12 cost of the contract would be fair and reasonable. 13 Now, specific comments for these proposed 14 regulations, (A), is to clarify a required J&A under 15 Section 811 to apply only to sole source contracts 16 whose value is to be 20 million in the base here. 17 The National Center, for the record, agrees with 18 the position of Native American Contractors 19 Association, NACA, that there is no basis either in the 20 statutory language or legislative history of Section 21 811 with the figure of 20 million that was inserted as 22 a threshold for the special J&A process imposed. 23 Certainly, this figure did not result from any 24 complication with the tribal community. 25 Now that these consultations provide an</p> <p style="text-align: right;">Page 62</p>	<p>1 Therefore, we are -- the preamble to both the 2 proposed and final implementing regulations to include 3 a plain statement that the 20 million is merely a 4 trigger for the streamlined J&A procedure specified in 5 811, not a cap on the amount of sole source awards. 6 (C), proposed implementing regulations and -- FR 7 6.302-5. Implement Section 811 in 6.302-5 and limit 8 the J&A requirements to those specified in the statute. 9 For the reasons set forth below, the National Center 10 agrees with NACA that the Section 811 implementing 11 regulations should be set forth in 48 CFR 6.302-5. 12 Sole source awards in the Native 8(a) 13 enterprises are authorized by the Small Business Act. 14 Prior to the enactment of Section 811, Native 8(a) sole 15 source awards of any value were exempted. They were 16 exempt from J&A requirements. Section 811 also has a 17 longstanding exemption by imposing specific J&A 18 requirements only on sole source awards over 20 19 million. As such, an 811 did not cap at 20 million. A 20 sole source awards to Native 8(a) enterprise, the 21 implementing regulations should be set forth in 48 CFR 22 6.302-5, in a FAR provision that addresses awards 23 authorized or required by statute. 24 Section 811(b) specifies the elements of 25 justification for a sole source contract award over</p> <p style="text-align: right;">Page 64</p>
<p>1 opportunity for us to comment, we urge that the 2 implementing regulation specify that the \$20 million 3 threshold applies to the value of the contract and its 4 base. This clarification will be set forth in the 5 preamble to both the proposed and the final regulation. 6 Any other interpretation of the \$20 million figure 7 would conflict with congress's intent to enable Native 8 8(a) enterprises to receive larger contracts to support 9 greater revenues and job opportunities to help meet the 10 needs of their native communities. 11 (B), clarify that Section 811 is not a cap on 12 sole source awards with a Native 8(a) enterprise, but 13 only a trigger for a streamline J&A process, if the 14 contract has a \$20 million value for its base year. 15 Substantial confusion, purposeful or otherwise, 16 continues to circulate among federal contracting 17 officers, other federal agency officials, members of 18 congress, and attendees here as to what the intent of 19 Section 811 is to cap sole source awards at 20 million, 20 which definitely requires streamline J&A process for 21 sole source awards over 20 million. Nothing on the 22 face of Section 811, or in its limited legislative 23 history, states or even suggests that the 20 million 24 per year is a cap on sole source awards in Native 8(a) 25 enterprises.</p> <p style="text-align: right;">Page 63</p>	<p>1 20 million. The National Center once again agrees with 2 NACA'S position, that only the elements listed in 3 Section 811 should be included in the implementing 4 regulations. Section 811 is not authorized, imposing 5 Native 8(a) awards to the unrelated FAR requirements 6 that must be met to justify other sole source awards. 7 These provisions were designed to apply 8 contractor's prior to award sole source contracts under 9 the specific exemption of the competition and contract 10 act, a statute that specifically exempted from those 11 J&A requirements all sole source contracts under the 12 SBA's 8(a) program. Section 811 altered that blanket 13 exemption, given the important small business 14 development and federal Indian policy self-sufficiency 15 objective of the Native 8(a) program. We submit that 16 congress intended to limit the J&A process to the 17 elements specified in Section 811. 18 It's noted previously, Section 811 does not 19 impose any new requirements on agencies and determining 20 whether to award sole source contracts under the native 21 8(a) program. Of the four of the five elements in 22 Section 811, all of them merely reflected on existing 23 requirement, imposed by statute and regulation. For a 24 variety of reasons, agencies must describe their needs 25 to create an enforceable contract. The Small Business</p> <p style="text-align: right;">Page 65</p>

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<p>1 Act provides the specific statutory authority in 2 Section 8(a) for the section with -- from the 3 competition requirement. What constitutes the best 4 interest of the agency remains a matter reserved to the 5 discretion of the agency. The federal law only 6 requires the government to ensure that it is receiving 7 a fair and reasonable price.</p> <p>8 On the last point, it prescribes the methods in 9 which an agency makes a determination, and these 10 methods are already routinely utilized in negotiating 11 and awarding sole source contracts in the Native 8(a) 12 program. While 811(b)(5) speaks of other matters as an 13 element, it does not provide any direction or statutory 14 authority for the FAR council or the contracting 15 agencies to impose additional substantial requirements 16 for the justification process.</p> <p>17 The other matter's language must be read very 18 narrowly, or even eliminated, because, one, Section 811 19 does not impose the subject matter requirements and 20 sole source contracting for the Native 8(a) program or 21 otherwise; two, other laws authorizing and governing 22 the Native 8(a) program remain unchanged.</p> <p>23 Two, proposed provisions to clarify the J&A 24 element. The National Center agrees with NACA'S 25 recommendation to add several new subsections to CFR</p> <p style="text-align: right;">Page 66</p>	<p>1 concerned.</p> <p>2 Four, a determination that the anticipated cost 3 of the contract will be fair and reasonable.</p> <p>4 By specifying these elements in the implementing 5 regulations, the FAR would eliminate any ambiguity to 6 whether any additional J&A requirements apply to sole 7 source contracts exceeding 20 million. Moreover, since 8 811(b)(5) has not authorized any additional substantial 9 requirements, it is meaningless, or at best redundant, 10 to other requirements of law, including the other 11 matters by which, in the regulation, will only create 12 ambiguity and uncertainty in implementation, and, 13 therefore, we recommend its deletion.</p> <p>14 Three, sole source contract in the agency's best 15 interest. 811(b)(3) requires a determination to be 16 made that the use of a sole source contractor is in the 17 best interest of the agency involved. Since 811 does 18 not specify how that determination should be made, the 19 National Center agrees with NACA'S recommendation that 20 they have the following subsection E, under FAR 6.302-5 21 with the additional language underlying -- the 22 additional language being, "and shall give positive 23 consideration to the goals of the 8(a) business 24 development program."</p> <p>25 The National Center has worked 40 years for</p> <p style="text-align: right;">Page 68</p>
<p>1 6.302-5 to clarify the J&A element and Section 811 2 implementing regulations. Although, the National 3 Center offers slightly different proposed language -- 4 as we'll provide, but I'll just go over briefly -- a 5 new paragraph should be added as follows, under sub .3: 6 Contracts subject to the justification and 7 approval requirements set forth in Section 811 of the 8 National Defense Authorization Act of FY 2010 public 9 law, 111-84123 -- no, that's the part we forgot to 10 strike out.</p> <p>11 In addition, the National Center agrees with 12 NACA'S recommendations to add new subsection D to FAR 13 6.302-5 as follows:</p> <p>14 The justification approvals required for sole 15 source contracts under Section 811 of the National 16 Defense Authorization Act, 2010, shall be developed 17 prior to contract award and be limited to the following 18 elements. One, a description of the needs of the 19 agency concerned for the matters covered by contract.</p> <p>20 Two, a specification of the statutory provisions 21 providing the exemption from the requirement to use 22 competitive procedures in entering into the contract, 23 including, but not limited to, the Small Business Act.</p> <p>24 Three, a determination that the use of a sole 25 source contracts in the best interest of the agency</p> <p style="text-align: right;">Page 67</p>	<p>1 Native American contractors clients be capable of 2 bidders, awardees, and performers of federal contract. 3 In order to meet these objectives, these clients must 4 be prepared to serve in the best interest of the 5 agencies that will award the contract. The National 6 Center agrees, once again, with NACA's recommendation 7 that our best interest determination under 811(b)(3) 8 should be based at how award to a Native 8(a) 9 enterprises will allow the agency to meet its small 10 business goals.</p> <p>11 This determination will further federal small 12 business policies, objectives, including congress's 13 declaration of development and growth in small 14 businesses as a national priority; congress's 15 articulation of the federal government's policies to 16 aid counsel and assist small businesses; to ensure that 17 a fair proportion of the federal contracts for goods 18 and services are placed with small businesses; the 19 FAR's articulation of such policies by requiring 20 executive agencies to provide maximum practical 21 opportunities to small businesses, including small 22 disadvantaged business, such as 8(a) contractors and 23 federal acquisitions of goods and services; congress's 24 establishment of goals for award of federal contracts 25 to small businesses and small disadvantaged businesses.</p> <p style="text-align: right;">Page 69</p>

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<p>1 As congress and the Obama administration wish to 2 expand small businesses participating in the federal 3 procurement market, the best interest of an agency can 4 be served through awards to Native 8(a) enterprises. 5 Equally important, especially for those complications, 6 are the new articulations of federal Indian policy that 7 underpin the Small Business Act provision, authorizing 8 8(a) certification of native enterprises and awards a 9 sole source contract above the competitive thresholds 10 applied to individual owned 8(a) companies. 11 These federal Indian policy articulations 12 include congressional recognition of the obligation of 13 the United States to respond to the strong expression 14 of the Indian people for self-determination by assuring 15 maximum Indian participation in the direction of 16 educational, as well as other federal services to 17 Indian communities; congress's declaration of its 18 commitment to the maintenance of the federal 19 government's unique and continued relationship, and 20 responsibility to individual Indian tribes and to the 21 Indian people as a whole, for an establishment of 22 meaningful Indian self-determination policy; the 23 Congress's declaration of it's policy to help develop 24 and utilize Indian resources, both physical and human, 25 to appoint where the Indians will fully exercise</p> <p style="text-align: right;">Page 70</p>	<p>1 awards and also among contracting officers and approval 2 officials endeavoring to determine whether the sole 3 source awards meets the requirement of 811 and 4 particular other matters specified by the agency head. 5 In order to avoid such confusion, the National 6 Center recommends deleting 811(b)(5). Alternatively, 7 we would agree with NACA to add a new subsection after 8 FAR 6.302-5, along with slight modifications to the 9 other suggested language, as we've provided in our 10 written comments. 11 In considering such other matters, under 12 subsection (b)(5) of the section, the agency shall 13 consider only section 19.804-1 of title 48 CFR, and 14 need not provide more than a statement confirming that 15 these requirements of Section 19.804-1 have been met. 16 By referring agency heads of departments to part 17 19-804-1, determinations be more consistent than those 18 of other agencies; more importantly, they be consistent 19 with factors of the agencies that require some value 20 before recommending a contract for the 8(a) program 21 initially, and, therefore, would result in more uniform 22 decisions, facilitate federal procurement personnel 23 training, and simplify the reviewing oversight activity 24 by federal procurement officials. 25 In conclusion, the National Center urges the</p> <p style="text-align: right;">Page 72</p>
<p>1 responsibility for the utilization and management of 2 their own resources, and where they will enjoy a 3 standard of living for their own productive efforts 4 comparable to them enjoyed by non-Indians in the 5 neighboring communities. 6 As each federal agency is a component of the 7 federal government, therefore is obligated to honor the 8 federal trust relationship with Indian tribes, the 9 determination used, a sole source contract to a Native 10 8(a) enterprise is in the best interest of the agency 11 and is part of its trust obligation to promote Indian 12 self-determination. 13 Four, delete other matters or specify exactly 14 what matters agencies should consider. The National 15 Center believes that open-ended aspect of 811(b)(5) 16 suggests that the head of an agency is authorized to 17 specify other matters as misleading, and, therefore, 18 counter-productive. As noted earlier, 811 has not 19 authorized any additional substantial requirements -- 20 excuse me. Leaving open other matters can lead to 21 arbitrary decisions that one agency head might decide 22 to include one set of additional factors not specified 23 in 811, and another agency head might determine very 24 different factors. Such discrepancies would cause 25 confusion among both Native 8(a) enterprises seeking</p> <p style="text-align: right;">Page 71</p>	<p>1 above clear, before mentioned clarifications and 2 proposed and final regulations implementing Section 811 3 so as to ensure that the new rules will not result in 4 discouraging contracting officers to consider awarding 5 Native 8(a) enterprise sole source awards exceeding a 6 value of 20 million in the basing of the contract; and 7 then over whether Section 811, should it alter the 8 longstanding exemption of 8(a) sole source contracts 9 for J&A requirement, or whether the appropriate 10 threshold amount of 20 million was appropriate. 11 The bottom line is that Section 811 provides a 12 process to review, not discourage, sole source awards 13 to native enterprises under the 8(a) program, using 14 streamlined J&As, as clarified in the additional 15 provisions that we recommend in these comments. 16 The National Center, as a whole, thanks everyone 17 here in advance for considering these comments and will 18 be providing a final written comment to reflect this 19 discussion. 20 MR. GARCIA: Thank you so much. 21 THE COURT: Thank you. 22 MR. GARCIA: I was thinking about a -- I 23 listen to a lot of talks, and I did a little survey to 24 see how many times speakers would say, "In conclusion." 25 And the award goes to one of the secretaries out in</p> <p style="text-align: right;">Page 73</p>

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<p>1 D.C., and he said it 27 times. "In conclusion," and 2 then he went on. "In conclusion . . . and finally," he 3 had like five final conclusions. So you said three of 4 them. You're okay. Thank you. 5 Next is John Baily, and on deck will be Ron 6 Solimon, and then David -- Dave Melton will be the 7 last. So we'd like to get one round, at least, before 8 noon, and then if we want to go into discussion, we can 9 do that right after lunch. 10 Okay. John. 11 MR. BAILY: Thank you for your time. My 12 name is John Baily with Tewa, Inc., with the Isleta del 13 Sur pueblo in El Paso, Texas. Our comments are along 14 the lines of, one, we also believe that Section 811 15 should be repealed in whole. We -- if that is not 16 going to happen, we definitely want to stress that the 17 \$20 million is a base -- a base year and not a contract 18 cap. 19 As our pueblo is just entering the 8(a) program, 20 this is our opportunity to grow an economy and grow a 21 business that allows our tribal members to participate 22 to grow their own business as subcontractors to this 23 government contracting business. And it also takes the 24 dependency of casino or gaming out of the mix, and we 25 can develop another business entity, other than just</p> <p style="text-align: right;">Page 74</p>	<p>1 At the very beginning of that program, you've 2 capped us at 20 million. And if that's a 20 million 3 total contract cap, you know, that's over a five-year 4 period, that's what -- I lost my mouth all of a 5 sudden -- that's \$4 million a year that's capped. 6 That's all I can earn on those contracts. That 7 definitely hurts my ability to develop training, to 8 develop a business, to develop a staff, to develop 9 other opportunities for tribal members to learn how to 10 bid contracts. It's going to very much effect the 8(a) 11 program in years five, six, seven, and eight, when I'm 12 required to bid programs, if I don't have the ability 13 to build that war chest and build a process early on by 14 getting direct awards. And this 811 has really put a 15 damper on contracting officers willing to discuss 16 direct awards with Native Americans. 17 The other problem I have is that we continue to 18 talk about 20 million. And that's a revenue number. 19 As all of us in this room realize, the profitability on 20 \$20 million is not that great, especially when you have 21 owners of -- 1,600 owners, and you're trying to 22 distribute that back to your pueblo to help them 23 economically. By putting a cap on 20 million, you 24 start taking your revenue number down. You start 25 building it down to a profitability number; that's a</p> <p style="text-align: right;">Page 76</p>
<p>1 gaming on the Indian reservations. So we're very 2 interested in making sure that the \$20 million is not a 3 cap. 4 It is currently seen as a cap. In talking to 5 contracting officers, they see it as a cap, and they're 6 not willing to go above \$20 million, even to have a 7 discussion or a J&A on it, because they don't want to 8 have that process. They don't want to find out what's 9 going on. 10 My concern with this whole process is, the SBA 11 program, the 8(a) privately-owned Native American, 12 Alaska native 8(a) program is a nine-year program. In 13 that nine years, there are certain hurdles we have to 14 hit in order to stay within that program and that seems 15 to be forgotten as we discuss the FAR acquisitions, the 16 811, is that in nine years, we graduate from that 17 program. 18 As we get into our fifth year and through the 19 seventh year, there's a portion of our revenue that has 20 to be earned in competitive 8(a)s or competitive 21 business. So to put a cap on the tribally-owned Alaska 22 native business in the very beginning, it hurts us as 23 we try to get into and grow our capacity to bid those 24 contracts later on in our 8(a) program and when we 25 graduate the 8(a) program.</p> <p style="text-align: right;">Page 75</p>	<p>1 small number for 1,600 people to try to meet, with the 2 intent of the SBA and the 8(a) program was to better 3 the lives of the economy of our tribal members. That's 4 what we keep hearing is that it doesn't get all the way 5 down there. When you start capping us, it doesn't. 6 There's not a whole lot of money that gets all the way 7 back. 8 So I would really stress to repeal 811. If not, 9 please make sure that people understand this is not a 10 cap, it's a guideline, and that it's a base year 11 guideline. And that's my comments. Thank you. 12 MR. GARCIA: Thank you, John. Next is 13 Mr. Solimon, and then Dave Melton will follow. 14 Microphone? 15 MR. SOLIMON: I probably don't need this, 16 but I'll go ahead and use it. 17 You know, actually, I take great pleasure in 18 being a part of this today, to serve as a host and to 19 serve as somebody that has a number of years of 20 experience in defense contracting, establishing, 21 helping our tribe at Laguna to really develop job 22 opportunities for our people following our 30-year 23 tenure in the uranium mining industry, where we were 24 the first supplier to the Atomic Energy Commission way 25 in the past.</p> <p style="text-align: right;">Page 77</p>

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1 We mined for 30 years and then found ourselves
2 in an economic recession, similar to what we're
3 experiencing now. But after 30 years of mining, it
4 became apparent that we needed to find some alternative
5 development, so we looked at defense contracting. We
6 looked at federal procurement overall and discovered
7 that trying to use the Buy Indian statute, that there
8 was really no one that understood how to implement it.
9 And this was, gosh, many years ago now. And that may
10 still be the case, as far as I can tell, in terms of
11 peopling looking at: How do we implement it?
12 So then we looked at the US Small Business
13 Administration and the 8(a) program as a way to qualify
14 or tribally-owned company to do business. And to make
15 a long story short, there was no admissibility
16 requirements that we could meet as a tribally-owned
17 concern. So then we had to kind of pave our own way.
18 We had to create a pontoon bridge between the SBA and
19 the US Department of Defense. And I'm saying that
20 metaphorically. So we had an MOU that started this
21 whole process of the 8(a) program. So that led to me
22 being -- testifying before congress.
23 And when I say I feel really good about this,
24 because I used to be the only guy there, I mean, the
25 only person testifying before congress, talking about

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1 the 8(a) program, the need for tribally-owned concerns
2 and admissibility to the program.
3 And when the congress asked me -- and I was the
4 only guy negotiating this -- what timeframe would work
5 for tribally-owned concerns to be a part of the
6 program, my response for them was 15 years, because I
7 thought five-year start up, five-year transition,
8 five-year transition out of the program, and that a
9 tribally-owned concern could mature. And so I was the
10 only one there, like I say, and so you'll have to
11 forgive me for agreeing to nine years, ultimately.
12 Because under the pueblo pressure that existed at that
13 time, that's all I was able to achieve on behalf of all
14 of us. And when they asked me, "Well, how many tribal
15 organizations, tribally-owned entities do you think
16 would fall behind your efforts here on behalf of the
17 Laguna Pueblo?" My guess was 75, and I just kind of
18 tossed that out there.
19 So you got to understand -- and maybe you can
20 understand and relate to me feeling good about having
21 so many individuals now and tribally-owned concerns,
22 companies. Some of my -- from my own pueblo, people
23 here now pursuing business under the 8(a) program. I
24 feel great about that, and I feel great that we have
25 NACA, the Native American Contract Association, The

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1 National Center for American Indian Enterprise, The
2 National Congress of American Indians, and some other
3 organizations all cooperating to represent the interest
4 of tribally-owned Alaska Native concern, native
5 Hawaiian organizations. It feels really good.
6 So I'm not going to really expound on anything
7 that Eric presented on our behalf, except to say that,
8 you know, I'm just very pleased to be able to be in
9 this situation, still advocating, you know, after all
10 these years. And that's probably the way it will be.
11 We had a small opportunity, when President
12 Obama, as the senator from Illinois, came to meet with
13 tribal leaders here in October, a couple of years ago.
14 He chose the -- the Indian Pueblo Cultural Center to
15 meet tribal leaders, Alaska native leaders, Hawaiian
16 leaders from all over the country here in our pottery
17 room, right here at this facility. So I'm proud to say
18 that my staff and I were vetted from top to bottom, and
19 we passed. We didn't have to kick anyone out from that
20 particular occasion. But we knew that there would be
21 opportunity, and we all were really looking at being on
22 the -- just on the cusp of probably some major federal
23 regulatory changes.
24 And so we asked him, if anything -- and I
25 remember Chairman, in his capacity as president of the

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1 National Congress, to make sure that the tribes were
2 consulted. You know, he emphasized that over and over
3 many years to the previous administration, and that
4 didn't happen. I mean, but during this administration,
5 we're seeing that happen. So we do appreciate it.
6 So on behalf of the National Center for American
7 Indian Enterprise Development and all the organizations
8 that it represents -- it's not a member organization,
9 as Sarah's organization is, but we do cooperate with
10 them. And as you can see from our reenforcement and
11 the statements that Sarah -- and the position that
12 she's taken on behalf of her membership, we work
13 together and we work together with the National
14 Congress of American Indians economic development
15 committee, Dante and other staff members there, to make
16 sure that the interests of Native American businesses
17 really are protected and that they continue to be
18 fostered by any kind of experience base that we have;
19 to offer comments to the FAR council and any others, or
20 to go before congress or whatever is it we need to do.
21 So I appreciate the opportunity to be a part of this
22 and to be your host.
23 Thank you very much.
24 MR. GARCIA: You were number 6. So number 7
25 is Dave Melton. You have the floor, and you'll lead us

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1 into lunch.
2 MR. MILTON: My comments are short.
3 Hopefully, they're sweet; but I know they're short.
4 And they're off the cuff.
5 Thank you, Ron, for inviting me to be here. My
6 experience is that I am an 8(a) company at the moment,
7 private, Native American. I am a second generation
8 8(a). I have ten years' experience working for a
9 tribal 8(a) at Laguna Industries, and I call myself an
10 alumni of that entity, where we were taught how to run
11 big businesses, a defense contractor. Prior to that, I
12 worked ten years in the uranium mines, so you turn off
13 the light and my stomach will glow.
14 On the downside, a lot of our fellow employees
15 are no longer with us, because of the sacrifices they
16 made for our country. The way I see this, this 811,
17 from a legal contracting mechanism, current readings of
18 the FAR allowed for 8(a) contracting to Native 8(a)s
19 above 20 million; therefore, it's already been shown to
20 not only be in the best interest of the government, but
21 also of the awarded contractor.
22 And as a citizen, the way I see it, under our
23 current fiscal hardships, i.e., the recession, the
24 additional cost to the taxpayers, Section 811 is
25 unacceptable. The additional cost of a new

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1 bureaucratic regulation is counter-productive to the
2 need to be streamlining the cost of the contractor.
3 That's only on the government's side.
4 If you look on the contractor's side, you're
5 looking at increasing the cost of his overheads, which
6 is going to make him even less competitive than before.
7 If you look at the 180 day delay, just think of the
8 cost of that. That's crazy.
9 And the way that -- an analysis of the current
10 8(a) sole source contracts reveals it to be one of the
11 highest performing contracting relationships ever, and
12 we can show you those numbers. These folks have those
13 numbers. When we add in the economic development, the
14 political aspects of this success, there is no
15 economic, political or contractual reason to add
16 bureaucratic red tape to a successfully performing
17 program.
18 If you need to revisit the reasons why the
19 current native -- current Native 8(a) contracting
20 program was created in the first place, come with us to
21 our local tribes, and you'll see some of the highest
22 unemployment in the country, regularly exceeding 20 to
23 50 percent. If you need to be reminded why Ron and
24 other tribal leaders took these steps in the first
25 place and that the political leadership at the time

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1 agreed that the creation of this tribal entity program
2 not only served the needs of the government, but also
3 the needs of the citizens, we can show you those
4 examples, and they're right around us.
5 If that was to occur in any other locale, there
6 would be outrage being screamed. But our native people
7 are strong. We carry our burdens a little more
8 quietly. We are not -- so therefore, we are not done
9 using or needing the current 8(a) regs. Even with its,
10 seemingly, list of preferences, bringing work to Indian
11 country is still a struggle. So my bottom line is
12 leave it alone. Thank you.
13 MR. GARCIA: Thank you. As a member of
14 Ohkay Owingeh and part of the tribal council, I also
15 have authority to speak on behalf of my tribe, so I
16 will do so now. I think absolutely, Mr. Melton, you
17 hit the nail on the head, that there are reasons why
18 you shouldn't change legislation, statutes, or even
19 rules and regulations. Now, there are also reasons why
20 you should change, maybe, the legislation, but more so
21 some of these things can be corrected by virtue of
22 administrative decisions, rather than complicated
23 legislation and statutes and rules and regs that
24 complicate things and creates another level of
25 bureaucracy, if you will.

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1 And I'm just considering, if things went as they
2 are written right now, how many of the agency
3 contracting officers would conclude that this is the
4 way it should go? And I don't think there would be any
5 consistency from all of the agencies or departments. I
6 think everyone draws their own conclusion. But at the
7 risk of going overboard, they probably aren't going to
8 make those kinds of decisions, because they are not at
9 the right executive level, if you will, of employment.
10 So it causes more delay.
11 So as you move through, you've already seen some
12 detriment to some organizations because of the ill
13 interpretation. And so whatever drove this legislation
14 is something that maybe we ought to look at and say,
15 "There are ways to correct the situations that caused
16 somebody to think that changing the entire legislation
17 is going to correct it."
18 And you've seen that time after time. DWI laws
19 is a prime example. Law after law after law, and yet,
20 we have not cornered, and we have not harnessed that
21 problem of DWI. It's the source, if you will. And the
22 same thing here is that if you look at it from a
23 comprehensive approach and comprehensive level, there
24 are solutions, but they don't require a legislation.
25 So if we could go back and repeal this and go

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1 with what was already existing, the current SBA policy.
2 And whatnot, and all of the federal agencies that are
3 participating, but more importantly, the tribes that
4 are participating on behalf of their -- and the
5 entities, the ANCs, the corporations, the tribal
6 organizations that are participating on behalf of those
7 tribes, on behalf of their people, that's really what
8 it's about. And so burdening, to another level, is not
9 the answer. It might be for somebody, but it's not for
10 Indian Country.
11 And so for Indian Country, we ought to look at
12 moving forward with better solutions and the
13 consultation part. I'm glad that there's consultation
14 going on. But I've always said consultation needs to
15 happen before there is a law set in place, not after
16 the fact, because we run into these problems time and
17 time and time again.
18 And so I've never been involved in so many
19 consultations as I have in the past year and a half.
20 But it's a good thing. It's a good thing. And so I
21 think when we look in the future, look to the vision
22 part of it, we ought to consider how the laws are --
23 and how they are proposed. So there's some problems.
24 Geez, get to the problem.
25 And I remember when President Obama was

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1 campaigning here, one of the things that I relayed to
2 President Obama is that I knew he was a change agent.
3 I'm a change agent, and so I know a lot of things, what
4 are required to make changes. So a little word of
5 advice, one little statement I made was-- and I called
6 him President before he was President. I took that
7 risk, and luckily it turned out to -- and I said,
8 "President . . ." And he laughed at me.
9 And he said, "What did you want to say,
10 Mr. President?" -- is what he called me, because I was
11 president of NCI.
12 And I said, "Mr. President, just this little
13 word of advice," that I told him. "I know you're a
14 change agent, and I'm a change agent. Change would be
15 easy if it weren't for all the people. And think about
16 that."
17 That's where the bureaucracy set in. We could
18 make a lot of changes, good changes, if we set our
19 minds to it. But the bureaucracy and the status quo
20 and the passive approach to running, sometimes
21 businesses, sometimes tribal government, but many times
22 federal government, will get us into deep you know
23 what. And I think the way we get out of it is we write
24 another law, another statute, another order, or
25 whatever, and we think that's going to fix it.

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1 But in the end, what do we stand to gain?
2 That's the question. What do we stand to gain by
3 moving forward with what's in place right now, if there
4 are more hindrances from the people that it is supposed
5 to provide another level of opportunity for, in this
6 case the tribes, and it's a small percentage? I think
7 it's not even like 30 percent of them involved, all of
8 the grants and all of the funding that goes out, we're
9 not even close to that.
10 So who's going to get those grants? The grants
11 that are going to go out are the big companies that
12 already exist that are already taking greater than
13 70 percent of the funding for the contracts. And so
14 we're trying to vie for a small piece of that. And
15 this, in my eyes, is more of a hindrance than a
16 resolution or a resolve from our efforts.
17 And those are the comments on behalf of Ohkay
18 Owingeh, but as well for the All Indian Pueblo Council,
19 representing 20 pueblos, 19 in New Mexico. Now, I call
20 them my brothers in Isleta del Sur of New Mexico, too,
21 because they didn't put the boundary, somebody else put
22 the boundary, but in my mind, they're still in
23 New Mexico. We're still in the Land of Enchantment;
24 they're still in the Land of Enchantment. So maybe
25 that's what we're going to do next is move the boundary

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1 so that they're all in New Mexico.
2 Thank you for allowing me the time -- and how
3 much lunchtime do we have? An hour? I'll turn to the
4 audience, is an hour fine? And then we come back and
5 we begin on some discussion, because there's some
6 people that want to also go into discussion rather than
7 make statements. If that's -- in order, we'll do so.
8 And there's a really great restaurant here, and try the
9 beans and green chili.
10 MR. SOLIMON: Thank you for that commercial.
11 MR. GARCIA: We'll come back at 1 o'clock.
12 It's an hour and 15 minutes.
13 (Recess taken from 11:47 a.m. to 1:13 p.m.
14 and the hearing continued as follows:)
15 MR. GARCIA: Well, good afternoon, everyone.
16 We lost a few bodies, but that's okay. Earlier we gave
17 out a set of questions that was intended to maybe stir
18 up a little bit of a discussion. So it's open for
19 discussion at this point in time, so we need someone to
20 get us started.
21 David, do you want to get us started?
22 Joe? You got any comment? Why don't you go for
23 it.
24 MR. TENORIO: I was just telling folks here
25 that I'm new to the matter, so I'm learning as I go

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1 along. I really don't have much of anything to say.
2 MR. GARCIA: Okay. Just say, "I agree. I
3 don't agree."
4 Okay. I lost my set of questions. I have them
5 somewhere -- you should have the discussion questions.
6 Number one, what do you consider a successful federal
7 contracting program for named participants? Number
8 two, what are examples of a successful -- we've got a
9 success story. That may -- 8(a), I think, somewhere
10 expanded upon this morning, but there may be other --
11 also, there may be some negative thing that we may
12 start to see or start to find. And so we can talk
13 about that.
14 I have one particular thing in mind, and that is
15 that \$20 million, you know, it's already been mentioned
16 earlier, but that may be a hang up more so with
17 contracting officers. If they don't get
18 clarification -- I mean, everybody that is a
19 contracting officer should have a little cheat sheet
20 that says, "This is the explanation. This is exactly
21 what it means." And it shouldn't be a long, drawn out
22 document. And I say, don't let an attorney draw it up.
23 Let an everyday worker draw it up, so it will be in
24 precise, concise form, less than a page. And other
25 clarifications like that, I think, needs to happen.

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1 But it needs to be consistent throughout the
2 departments and throughout the funding agencies.
3 So that's a start for discussion. It's open.
4 Anyone, please, if you have anything to say, go for it.
5 MR. ROMERO: First of all, my name is
6 Robert Romero, and I'm with San Ildefonso Pueblo, a
7 small pueblo who just started getting their 8(a). We
8 have a company that's called "Tewa Broadband" that the
9 government is real interested in, because we actually
10 got a grant for \$2 million for Internet service in the
11 rural areas.
12 But really, I guess my comment is, in listening
13 to everyone, I mean, we hear congress, and we hear the
14 President say, "Invest in America," and yet, I don't
15 see them investing in the indigenous people of this
16 country. I mean, to look at the 811 and think that
17 someone could even think that this is such a -- maybe a
18 handout -- it seems like to me. Someone must think of
19 it as a handout -- it really is boggling in my mind,
20 especially in looking at us in 2010.
21 We have pueblos that have been successful, yes.
22 But we have more pueblos and tribes that are not
23 successful. And if we're going to invest in the people
24 that really create the jobs, which is the small
25 business -- businesses, then how can we -- how can we

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1 grow that if we have this type of legislation?
2 And I mean, this has already happened, this is
3 like after the horse has been let out of the corral.
4 So now what we're trying to do is how are we going to
5 be able to corral that horse back and try to put the
6 energies back into the people that are really working
7 hard to do something to better their people, you know,
8 because our people just don't have the resources.
9 And so here we are, you tell us get an -- go get
10 your 8(a). We'll help you, and we want you to -- we
11 want to invest in you. I mean, we hear a lot about
12 SBA. And then we look at legislation like this that
13 basically says, "We'll help you, but we'll take it away
14 from you."
15 Having worked -- having worked for a government
16 contractor for over 35 years, I know, firsthand, that a
17 lot of the contract administrators tend to interpret,
18 themselves, what the letter of -- the intent was when
19 legislation is written. And so I have to concur and
20 agree with a lot of the people here: We need to be
21 specific so that they don't -- because when you leave
22 it to somebody to make a decision, inevitably, they're
23 going to be conservative. And when you're
24 conservative, you're not allowing -- or you're putting
25 up obstacles for the success of the tribal people.

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1 Contracted administrators will read, "Well, I
2 interpret it this way." I think we need to not allow
3 those administrators to interpret. I think they need
4 to be -- they need to be told specifically what that
5 means. Because when we allow any of us to read
6 something and do the interpretation, if we take this --
7 we probably are all in agreement with this, but if we
8 took this to a different audience, I bet you the
9 interpretation would be much more different than the
10 interpretation we have.
11 Because we live with the reality every day. We
12 struggle with that reality every day. We want to be a
13 part of America. We don't want to be a part of America
14 when we're needed. We want to consistently move in a
15 direction that we can all be a part of the success of
16 this great country, because we are the fabric of the
17 country. There's people here that are not, maybe,
18 natives, but have that belief and have lived with
19 natives that can sense the urgency of being able to
20 help a people that has been suppressed. And I -- I
21 want to do that. But I want to send a message to
22 Washington that if you're going to represent the people
23 of America, we are the indigenous people of this
24 America, and we must be looked at, upon, with respect,
25 with dignity, and we must be able to have a trust that

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1 you're going to be sensitive to the needs of the
2 people.
3 I just wanted to say that because I could not
4 understand how a congress that represents the people of
5 America can do this to the native people and the people
6 that are so much of the fabric of this country. Thank
7 you.
8 MR. GARCIA: Thank you.
9 MR. GORDON: Let me say a few words at this
10 point, if I could, Mr. Chairman.
11 MR. GARCIA: Okay.
12 MR. GORDON: I very much appreciated the
13 points that you were just making, and I wanted to say a
14 few words about it. Obviously, the FAR council, you
15 all understand, is not in a position to repeal the law.
16 Everybody here understands that. I think you all have
17 a lot of knowledge and understanding of the federal
18 acquisition, frankly, that you've learned through your
19 encounters with it.
20 It is very helpful and important for us to hear
21 from you. One of the points that I'm taking away from
22 this morning's discussion resonated with what you were
23 just saying, and that is many of the speakers this
24 morning talked about the need to be specific. Because
25 as the FAR council thinks about implementing the

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1 statute in the FAR, itself, one of the options is
2 simply to reproduce the language of 811 and put it into
3 the FAR. Another option is to elaborate the language.
4 And what I was hearing from a number of the speakers
5 this morning, is I think you said now to be specific,
6 and not to use general language. I heard that in
7 particular this morning with respect to the best
8 interests issue and the preference for many of the
9 speakers that there be explicit language.
10 And that was true with respect to a number of
11 the provisions of 811. It is helpful for us to hear
12 your views. I think it would also help us to hear more
13 as we put in the discussion questions, to hear some of
14 the successes that the 8(a) program has brought to your
15 communities. If any of the people here around the
16 table want to share any of the benefits that they've
17 gotten from the 8(a) program, I think it would help us
18 on the FAR council to hear about how important that
19 program is for you.
20 MR. GARCIA: Thank you. Discussion?
21 MR. NEMO: My name is David Nemo, again. I
22 am chief of staff and general council for Chickasaw
23 Nation Industries, and we're a holding company that has
24 a number of 8(a) firms. We're, perhaps, one of the
25 larger in the lower 48, and we have certainly -- our

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1 tribe has seen benefit from the 8(a) program.
2 I am not native. I'm one of those who -- I get
3 up every morning, because it is exciting for me to help
4 a people. I enjoy that. My wife is a tribal member of
5 the Chickasaw Nation, so my boys are. They receive
6 benefits from educational support, clothing allowances.
7 I mean, the tribe has been wonderful in the services
8 that it provides all of its members, including my
9 family. So we experience that.
10 Now, how does our company contribute to that
11 effort? We are not a dividend-issuing tribe. We
12 provide service to our members. We feel like we can --
13 the tribe feels like it can do more for its membership
14 if it builds hospitals. We just built a 75 bed, state
15 of the art hospital for our members. We have senior
16 citizen centers. We have nutrition centers, a
17 wonderful tribal set of benefits that we feel like we
18 can do more for our tribe than a dividend that might
19 pay \$500.
20 We have 35 to 37,000 members in our tribe. So
21 it gets diluted pretty fast, no matter how successful
22 our business is, you can try to distribute that
23 individually. So we thought it would be better with
24 services, lots of healthcare, lots of education
25 services.

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1 We do, right now -- I think our annual revenue
2 of all of our 8(a) firms combined is going to be about
3 \$250,000,000, so we have a pretty large presence in
4 contracting. I can tell you, we self-perform. We have
5 no contracts. We have not joint ventured with a
6 Lockheed Martin or a Boeing or anybody else larger than
7 us, to deliver services; however, it is a generational
8 program. It's not something that happens -- it's going
9 to really yield the greatest benefits for our tribal
10 members in an eight-year period or a nine-year period,
11 or in our instance, I think we've been in the program,
12 total, about ten years.
13 But what we are doing is creating white collar
14 jobs for tribal members, many of whom have to go get
15 educated to qualify for those jobs. So it takes time
16 to create an economy, create a business, to provide
17 dividends to the tribe who can then use it to educate
18 individuals and pull them, then, into our compass. So
19 we're creating a business opportunity to be there once
20 the tribal members gain the education they need.
21 They'll have a job waiting for them, and we certainly
22 give preference to our tribal members for those jobs.
23 So right now, today, you all know government
24 contracting better than I do. What you do oftentimes
25 is you convert a workforce that's already sitting in a

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<p>1 government facility to your employees, and what you do 2 is project manage them. You oversee them, you work 3 through the statement of work. And so those are the 4 jobs that we end up creating for our tribal members. 5 They come in at a project management level. We 6 train them up. Our structure is subsidiary in nature, 7 so we move them to an LLC manager over time, and then 8 to an operational sort of divisional type manager, and 9 then ultimately the goal would be -- their career path 10 would be to the chief executive officer. So that's not 11 something that you do in a day. 12 And the frustration, I think, that all of us 13 around the table feel is that this program has been 14 good, but we're -- and I understand what you said. You 15 guys can't change the statute. That's not your job. 16 You just have to implement what you've been given, and 17 we understand that. So you're hearing a lot of 18 frustration here, unfortunately. But you chose to come 19 out here, so you're going to hear it, I guess. 20 But we feel a little bit like this program is 21 really just taking off. Many of the tribes -- hey, I 22 get calls every day, "We want to learn how to do it the 23 way you all did it." Because we do self-perform. We 24 are doing it the way I think the program is designed to 25 be, and we've done it successfully. So a lot of people</p> <p style="text-align: right;">Page 98</p>	<p>1 continue to survive, that's my goal, that you do that. 2 You know, we all know that you can't change the law, 3 but we also know that you can write regs that make it 4 tighter or looser, and I guess we're just hoping that 5 you recognize from our hearts and our passion that we 6 need you to write it in a way that helps support Native 7 American. 8 Because in the end, we're doing good work. I 9 can tell you, my margins are not creating an excessive 10 cost to the taxpayer. I'm a taxpayer, too. More 11 Native Americans, by percentages, fight in our wars 12 than any other population group. My nephew was blown 13 up, so we want to support the Department of Defense. 14 And those are our kids. So we're going to do good 15 work. And we're going to do it fairly, and we're going 16 to do it appropriately, and I believe we always have. 17 I have not heard an anecdote of where we've failed or 18 we're not giving the government a good bargain for it's 19 money. 20 Let us continue to be citizens, as Robert said, 21 of this country, to participate, to help you, because 22 we want to support this country in every way possible. 23 And I think we are. And at the same time, we're nation 24 building our own people who have been in poverty for 25 years. So help us out as best you can, and you can</p> <p style="text-align: right;">Page 100</p>
<p>1 are wanting to do it, but we're just now getting there. 2 And yet, what looks to be a hopeful program for the 3 future of Native America is being nipped in the bud 4 here, in some ways. 5 Now, will this 811 destroy the program? 6 Probably not. I think we can all end up managing to 7 smaller bites of the apple as we work into government 8 contracting. But I think it is going to drive us to 9 compete more with the non-tribally owned small 10 businesses than we do today. And I've always made the 11 argument that we're fighting for work from Boeing and 12 EDS and Lockheed Martin and folks like that. We're not 13 taking work from mom and pop, because they can't reach 14 the same level of work that we can reach in our 15 program. But this sort of change is going to push us 16 to start competing with the smaller firms, and that's 17 not a good move. 18 But I can understand where the large government 19 contractors might be pressing congress to get us out of 20 their way; but unfortunately, it's putting us competing 21 with small businesses, more traditional small 22 businesses that aren't -- that's not the best policy 23 approach, in my opinion. It's not going to help us. 24 To the extent that you can, as authors of 25 regulation, to find words that help this program</p> <p style="text-align: right;">Page 99</p>	<p>1 count on us. 2 I'm impressed by -- I'm not native. I'm married 3 to a tribal member, but I am not native. And I have 4 sat here this morning and thought about how much policy 5 has turned against Native America and how kind and 6 thoughtful and supportive all of the native folks that 7 have spoken today are. You know, they could be really 8 mad, but they're not. They want to be a teammate. 9 They want to be a partner. They want to make this 10 work. And I applaud all of you for what has to be a 11 rich cultural reality in your lives. And I thank you 12 for being leaders of the thought in this country. And 13 I think together we can all make it work. I just hope 14 that you do -- help us continue to help our tribe, and 15 we'll help you help this country. 16 MR. GARCIA: Thank you. 17 MR. GORDON: Thank you. 18 MR. GARCIA: The floor is open. 19 MS. PANTEAH: I wanted to kind of respond to 20 you saying that -- how the 8(a) has kind of benefitted 21 Indian Country. 22 MR. GARCIA: Could you identify yourself? 23 MS. PANTEAH: I'm Darlene Panteah. I'm from 24 the Pueblo of Zuni, and I'm the CEO of the Intertribal 25 Information Technology Company. And I was just sitting</p> <p style="text-align: right;">Page 101</p>

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1 here trying to see, okay, where shall I start? And I
2 decided to kind of start where I began.
3 I'm from the Zuni tribe. Our tribe suffers a
4 62 percent unemployment rate. And in 2002, our then
5 governor and tribal council saw a need, saying that,
6 you know, with the big high unemployment rate, a lot of
7 our young people were leaving, you know, the
8 reservation; whereas, I know when I was growing up, I
9 was told, you know, go get an education, come back,
10 work for your people, which I did. I went to New
11 Mexico State, I graduated, and went back, you know, to
12 really nothing, you know. There was no jobs. And so
13 that's what our governor and tribal council saw at that
14 time.
15 And then, of course, you know, Zuni is a very
16 close-knit community. We still practice our
17 traditions, our culture, our ways like all the other
18 pueblos here. Because of the remoteness we have been
19 able to maintain that. We still have our language, and
20 we follow a traditional calendar. And so our leaders
21 saw at the time that, you know, well if our young
22 people are leaving the reservation, who's going to
23 maintain our culture? And so that's kind of why we
24 wanted to -- we went and we applied for 8(a)
25 certification with one of our tribal enterprises called

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1 the Zuni Cultural Resource Enterprise.
2 We created an IT division, and I went through --
3 I was the one who prepared the paperwork to get it
4 certified. It was probably that thick (indicating).
5 But anyway, we got certified, and then we waited.
6 Okay. What do we do now, once we get certified? And
7 we, of course, had communications with our business
8 opportunity specialists and they said, "Well, maybe you
9 might consider this, consider that." And then we got
10 to talking to other native companies, and they were
11 also experiencing the same thing, you know. Okay.
12 We're 8(a) certified, but how do we get our foot in the
13 door to secure federal contracts? And so -- you know,
14 that latitude, you know, communicating with other
15 tribes.
16 So in 2000, just before 9/11, Tex Sal (phonetic
17 spelling) was the chairman of the three affiliated
18 tribes in North Dakota, and that's Malcolm Owikity
19 (phonetic spelling) was the governor at that time.
20 They had a roundtable with Senator Inoya, and that's
21 where we told them of our, you know, difficulty in
22 securing contracts. So the senator kind of listened to
23 us and he said, "Okay. Well, maybe bring us
24 something."
25 So what we did was we got together after that

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1 roundtable, and then we went back May of 2002. And in
2 the meantime, we did our research, and we found out
3 that there is a lot of technical manuals in the
4 Department of Defense that need to be digitized. And
5 we were told that when -- in times of war, when they
6 deploy for war, they have to take five feet of manuals
7 so that there's any machinery, or whatever that, you
8 know, breaks in the field, they have to refer to those.
9 So what we wanted to do was we wanted to help, you
10 know, America, you know, increase military readiness by
11 digitizing those manuals so that, at that time, they
12 could only carry a CD-ROM. I know, it's been --
13 technology has advanced to now. But that's, you know,
14 the one reason.
15 And then second of all, what we wanted to do was
16 that we wanted to create jobs on the reservations, on
17 the Alaska native villages, and then the native
18 Hawaiian homelands. So we sold this idea to the
19 Senator Inoya. We had a meeting with him in May of
20 2002. He listened to us. And those were the two main
21 things that we spoke of.
22 And then the gentleman here, about American
23 Indians serving in the military, we also shared that
24 with him. And so he kind of asked us, "Well, how much
25 are you -- how much are you asking?" And at that time,

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1 we said the 40 million. And during that time, we had
2 about ten tribes, and we were representing the three
3 indigenous people, which was the American Indian, the
4 Alaska native, and then the native Hawaiian. So he
5 kind of just sat back, and we were all like sitting on
6 the tip of our chairs, you know, to see what his answer
7 would be. So he comes back, and he says, "No problem."
8 So by the time that it went through all the
9 committees, everything, we got 34 million that fiscal
10 year, '03. And that's when our five-year Native
11 American document conversion program started. And I
12 was the CEO for -- in Zuni, for the Zuni Technologists,
13 Inc., that we had emerged as a new tribal enterprise to
14 take care of this, being a subcontractor.
15 And at that time, as I said, there was ten
16 tribal representations and Alaska and native Hawaiian.
17 And once we got the contract, the Department of Defense
18 said that we cannot deal with all you ten tribes, so we
19 just need one to interface with, so that's why the
20 company that I work for now, the Intertribal
21 Information Technology Company, was born. And we went
22 through the 8(a) certification and we got it. So as I
23 stated earlier, we're in our seventh year.
24 But just to kind of go back in Zuni, when I was
25 there as a CEO, most of these people that we hired,

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1 they were on TANF programs, you know, government
2 programs. The young people, I think, our average age
3 when we hired people was like, you know, 21 years old,
4 but they were very computer literate. You know, we
5 needed those kind of people.
6 And a lot of them, they already had families,
7 they already had kids. They had never worked before.
8 But we trained them. We trained them in computers.
9 You know, some of those didn't even know how to turn on
10 a computer. So we did a lot of training. We did what
11 they call "train the trainer." We want -- train and
12 then kind of get the statement of work from the
13 government, see what we needed to do, and then train
14 our people.
15 So every time that, you know, people would come
16 to work for us, we had an orientation, and we told them
17 that this is very important work. Because if you make
18 a mistake, it could be -- it could mean life or death
19 for our service people out there. I said, "So you
20 really need to pay attention." We had a 99.99 accuracy
21 rate, and we delivered a quality product.
22 Just recently we received a report card from the
23 government called a CPAR. I didn't know that they
24 issued those. But we really got some good ratings.
25 And so as part -- in Zuni, as part of saying

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1 thank you -- because a lot of these families, they come
2 from extended families. They have grandmas, they have
3 grandpas taking care of the kids while the mother, the
4 dad goes to work for us. So it was during, like,
5 Christmas-time that I said thank you to people like
6 their grandmas, grandpas, mothers. I invited them to
7 our Christmas dinner, and we bought gifts for the kids.
8 And that was because we were able to become proficient,
9 so we could realize a profit. So it went back into
10 them, and we could buy more computers, upgrade our
11 software, upgrade our facility.
12 We started with five people, and at our peak in
13 2006, we had as much as 70 people. And you can just
14 imagine employing 70 people in Zuni is a real big
15 thing. And right now, I work here in Albuquerque. And
16 then when I go home, some of those people are not
17 working anymore, because we're kind of coming to a
18 close. And they ask me all the time, "When are we
19 going to get work? When are we going to go back to
20 work?" And it got to the point where I hated to go
21 home, because I knew that somebody would be asking me
22 that.
23 But I think that what I'm trying to convey is
24 that this 8(a) does really bring a lot of benefits to
25 the, I guess, what you can call the grassroots

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1 communities such as Zuni, and I know that it has
2 brought a lot of benefits to the other native
3 communities, and I just wanted to kind of share that
4 with you. And because of the 8(a), we -- under the
5 Native American document conversion program, we have
6 created 11 companies that were never before, companies
7 in North Dakota, South Dakota, Oklahoma, Montana,
8 Wyoming, New Mexico, Alaska, and in Hawaii. And they
9 have managed to, you know, acquire the management
10 capability to be subcontractors of a DOD contract.
11 And for IITC, we have had our share of lessons
12 learned. I'm pretty sure there's a learning curve, and
13 we have had our share of lessons learned. But right
14 now, we feel that we possess the capability to manage a
15 real big contract. And in each of those states where
16 our facilities are located, we have created a labor
17 pool, you know, a skilled labor. We have stimulated
18 the economy. We have acquired facilities; we have
19 computers; we have software.
20 And I guess, bottom line is that we know that
21 we're only as good as our last job. So we have -- our
22 primary focus has been to do a quality product, which
23 we have been. And to that end, you know, we have
24 received that CPAR, which was a real good report. And
25 we plan on continuing, because it's -- when you go

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1 home, and you see that high unemployment rate, and you
2 see people on social programs, you know, it's not a
3 good thing. It's not good for our people, you know,
4 and their self-esteem. And as the gentleman said, we
5 just want to live the American dream, too, you know,
6 and given the opportunity, you know, we can do anything
7 that the mainstream can.
8 And that's what I always used to tell my workers
9 that come in the first time, that, you know -- because
10 I said that Indians are stereotypes, you know. They
11 look to us as, you know, lazy people, as drunks. And I
12 said, "That's not so." I said, "We can prove them
13 wrong. We can do a quality product." And so we live
14 up to that 99.99 accuracy rate. So I just wanted to
15 communicate that to you and thank you.
16 MR. GORDON: Thank you.
17 MR. GARCIA: Thank you so much. I really
18 appreciate that. Discussion points, comments, gripes?
19 Recommendations? Solutions?
20 MR. MELTON: I have one comment that maybe
21 the folks don't know. Dave Melton and president and
22 CEO of Sacred Power. One of the things that I have
23 observed over time, 20-plus years of working in --
24 actually, more than that. '73 to now, working on --
25 20 years of working on a reservation, and ten years

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1 doing my own thing as an entrepreneur. When I was
2 working for the tribal 8(a) -- and you've heard it
3 mentioned several times -- we focus on job creation.
4 Okay. So we think that our critics that put this law
5 forth and was erroneously passed don't operate in the
6 same economic world that we do. Those 8(a) owners,
7 entrepreneurs are not worried about job creation at
8 all.
9 They have one motive, which is the
10 entrepreneurial motive: that's profit, as any small
11 business or any business is trying to maximize. So
12 with governmental ownership, with the charter of
13 creating as many jobs as you can for our poor
14 community -- because jobs create the self-esteem,
15 create the pride, create the ability to go and take
16 care of yourself, that's a total different charter than
17 an entrepreneurial company that's saying, "I need to
18 make profit. I need to track investment. I want to
19 grow. I have an exit strategy" -- that's another
20 issue. We usually don't have exit strategies. More or
21 less, they're forced upon us.
22 And it's sad to report, I did mention -- I know
23 I'm an alumni of what -- I call myself an alumni,
24 because I say that's where I learned my craft, when I
25 was working for the tribally-owned company. And it's a

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1 craft of, you know, how do you do it? How do you run
2 this company, or how can you run a company? And it was
3 highly valuable. You know, there's the education and
4 school part, but it's the hands-on, every day, how do
5 you do it from -- how do you count nuts and bolts, to
6 how do you go present to the congressman trying to
7 lobby for money. You know, it runs the gamut. And
8 it's unfortunate that today our tribally-owned company
9 is no longer there.
10 And I look back, and I say, "Well, how did that
11 occur, and 20 years ago on the reservation, it was the
12 only game in town?" Like we mentioned, we had lots of
13 people working for the uranium mine. But after Three
14 Mile Island happened, everybody is out of work. So
15 everybody's leaving the reservation, and we're going to
16 lose our people, our culture, our identity. How can we
17 stop the flood? They're all going to move to
18 Albuquerque, or the big cities, bigger cities. We had
19 to do something. And all we had was a building and we
20 turned it into a multimillion-dollar business. But
21 charter was job creation.
22 But over time, casinos came on board, and other
23 economic entities, like travel centers and C stores and
24 gas stations and other diversification. But that
25 company never made the flip from -- and then so others

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1 were taking the burden off that entity for job creation
2 for the local community, and it never made the flip
3 from job creation to profit. It was too entrenched in
4 one mindset, which is job creation for the community.
5 That's an issue.
6 That's an issue that none of the other 8(a)s
7 across the country have to face. They go in there pure
8 profit, pure entrepreneurial from the get go. Not us,
9 not tribally-owned 8(a)s. They have to do both. They
10 have to do both. They have to take a lot of their
11 profit, and push it back up into payroll. That's
12 significant.
13 But you asked about success. And I'm not
14 bragging, but I did mention that I'm second generation,
15 and I wouldn't be here if it wasn't for the tribal 8(a)
16 program and for the experience that it gave me. Now we
17 have our own company, and we have 56 people that are
18 working for us, green manufacturing, green construction
19 jobs, renewable energy manufacturing. That's what the
20 administration wants. That's key. And we're deploying
21 that technology back to the reservation.
22 There's still 18,000 homes on Indian
23 reservations in this country, 80,000 Americans that
24 don't have access to electricity. We're trying to
25 knock them out one home at a time. And when we do get

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1 money from D.C., you know, we know we have a gold pot,
2 and we have to treat it, like, so carefully. And when
3 we do buy things, we buy things from other native
4 vendors, as much as we can. It says here --
5 We don't even shop them. We know you can do the
6 job, here it is, regardless of price. Because we know
7 they're in the same boat we are. We know where they
8 come from back home. It's a struggle. So we said,
9 "Okay. Let's multiply effect our own people." All
10 right?
11 And then we're hiring from the reservation.
12 People come in traveling 50 miles, one way. They're
13 desperate for jobs. So that's 100-mile round trip.
14 And I -- my heart goes out to them, because I know how
15 hard it is with gas prices these days. But they take
16 it home, and they're providing for their family.
17 They're not asking for a handout. They're taking care
18 of themselves. So that's to be proud of. I'm proud of
19 them.
20 So -- and we're also able to provide them
21 100 percent health plan. So we're trying to follow the
22 President's directives that says, "Okay. We've got to
23 insure the people that don't have insurance." So we
24 take care of that, at least with the employee, and keep
25 it out, and let the money go for other sustainable

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1 needs for the family.
2 And because we are not on the reservation, we
3 are a heavy taxpayer. So what comes into -- and then
4 we do it for our work, and then whatever profit we
5 make, you know, it's taxed. So sometimes I feel like,
6 what's the point? When I add it all up, okay, great
7 year. Okay. Give it to the tax man. Well, we just
8 gave it back to the government. Last year, I say --
9 the year before we bought Uncle Sam a Harley, last year
10 we bought him a Corvette. So that would have been nice
11 to have. But, you know, everybody said, "Well, that's
12 the privilege of being in this country." I know that.
13 But it also is a -- it's a hardship.
14 So if you want us to create the jobs at the
15 local level -- we know that the entrepreneurs are
16 creating 50 percent of this country's jobs. But you
17 have to realize that the 8(a) program, the way it was,
18 before it was erroneously fixed for the wrong reasons,
19 was working. It was working. And now you've made --
20 now you've made it a lot harder. You're going to add
21 overhead costs to the companies that have to wait
22 180 days. You're incurring more cost at the
23 bureaucratic level. For what purposes? What was the
24 real reason? I can't see it from my end. I don't.
25 MR. GORDON: What was the 180 days you

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1 mentioned? I didn't understand.
2 MR. MELTON: That's your waiting period when
3 you review a contract for approval. That's in your new
4 regulation. Supposedly you get a contract award, then
5 the agency has 180 days to approve it; is that correct?
6 MR. GORDON: There's a reference to 180 days
7 at the beginning of 811. Is that what you mean?
8 MR. MELTON: Yes.
9 MR. GARCIA: Yes.
10 MR. GORDON: This is slightly embarrassing.
11 That's a directive to us to amend the FAR in 180 days,
12 which we have not succeeded in doing. But leaving that
13 aside, I'm not aware of any delay of 180 days for the
14 award of 8(a) contracts.
15 MR. MELTON: My mistake.
16 MR. GORDON: No. Correct me if I'm wrong --
17 no, it's good news. I'm happy to bring a little bit of
18 good news. I don't think there's any such delay.
19 MR. MELTON: Okay. So if we can delay it
20 some more, then we're happy with that.
21 MR. GARCIA: So give me my contract.
22 MR. MELTON: So anyway.
23 MR. GORDON: Thank you. David, that was
24 very helpful.
25 MR. MELTON: I feel responsible now to try

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1 to talk to our legislators and get this repealed. So
2 don't get too set in your ways.
3 MR. GORDON: Thank you.
4 MR. GARCIA: Thank you, David.
5 MR. LEE: Steven Lee, NOVA Corporation.
6 We're a Navajo tribally-owned 8(a) small disadvantaged
7 business. We typically work in the IT services space,
8 primarily within DOD, Army, (inaudible). I've had the
9 pleasure for only being working for NOVA Corporation
10 for six months now. It's going on six months. And I
11 wanted to try to explain to you some of the challenges
12 that I have experienced, firsthand, in dealing in this
13 federal contract space.
14 So we find an opportunity that fits our core
15 competencies, and you know, they fit well. So then we
16 would then contact the contracting manager to talk
17 about that particular opportunity. And several things
18 happened when we talked to the contracting manager.
19 Sometimes there is a set aside, and sometimes there
20 isn't a set aside. We would explain to the contracting
21 manager that we have core competencies in the area of
22 requirement. We also have past performance codes that
23 marry them very well.
24 And getting the contracting officer to put a set
25 aside on is a challenge in itself. Very often, there

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1 is a project manager behind the contracting officer
2 that there is a perception that small businesses can't
3 fulfill the obligations of that particular requirement.
4 And that perception is either -- how can I say? --
5 carried over from the project manager to maybe the
6 contracting officer, or either the contracting officer
7 has a perception that small business can't fulfill the
8 obligations and particular requirements.
9 So we have a challenge, number one, in trying to
10 get a set aside put on a particular solicitation. And
11 that's number one. Educating the contracting officer
12 as well that they have the ability to put set asides,
13 you know, is another challenge. They don't seem to be
14 as educated as I would have expected the majority of
15 the contracting officers that I've dealt with in the
16 last several months to be as experienced and qualified
17 in the space that they're working in.
18 The other challenge you have is on the other
19 side of the fence. You have another company that
20 perhaps goes into talks to that contracting officer
21 after we've spoken to that contracting officer, and the
22 contracting officer may be thinking about putting a set
23 aside on there. And the other company may say, "Well,
24 you can't be an 8(a) set aside, because this is worth
25 \$20 million." So the contracting officer doesn't want

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1 to get in the middle of that mess, so he's not going to
2 put a set aside in there.
3 So having the language as loose as it is within
4 811 is a challenge. I mean, I'm not a lawyer, but I
5 would think the two words after 20 million, saying,
6 "per year," and three words after 100 million saying,
7 "per contract value," might tighten the language up
8 enough to not allow the contracting officers to
9 interpret it in a different way. So we have that
10 challenge.
11 The other thing that I've observed over the last
12 several months, which I find very interesting is -- and
13 I mentioned it earlier, is the lack of, let's say,
14 qualification or education of some of these contracting
15 officers. They're not experienced and don't know some
16 of the things that they can do. You mentioned early on
17 in the summit here that the new administration had put
18 over \$100 million into training a new staff. I'd like
19 to see some of that money going into training contract
20 officers of what they can or can't do.
21 Additionally, contracting officers are
22 responsible for handing out -- not hundreds of
23 thousands of dollars of contracts, but hundreds of
24 million, if not billions, of dollars worth of
25 contracting money. And there's no certification, no

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1 qualification, no exams that they have to pass, or
2 anything like that. You know, I'd like to see some of
3 that money put into, at least, education and/or
4 qualification that some of these contracting officers
5 have to pass in order to do that function. So anyway,
6 that's just my points. Thanks a lot.
7 MR. GORDON: May I say something?
8 MR. GARCIA: Go ahead.
9 MR. GORDON: Just for clarification,
10 although needless to say, your support for training is
11 something that resonates with us, because we're pushing
12 very hard. But I should tell you that there is a
13 fairly complicated certification process with three
14 levels of certification for our contracting officers.
15 We have much, much, much work to do, but we do actually
16 keep very close tabs on what percentage of them are at
17 which level of certification.
18 MR. GARCIA: Just a simple question. Do we
19 have data on how many contracting officers there are in
20 the system, when you combine all of the departments or
21 agencies that are part of the program? What's that
22 now?
23 AUDIENCE MEMBER: What was it last time?
24 Around 9,000?
25 MR. GORDON: Contracting officers,

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1 themselves, I'm going to let my colleagues -- I think
2 they're thinking. My recollection is that the DOD
3 figure is something in the order of 22,000.
4 MS. NIELSON: I was going to say around 20,
5 22.
6 MR. GORDON: And the civilian agencies is
7 roughly half that, I believe. So all told, you're
8 talking about somewhere upwards of 30,000 people.
9 You're not -- those are only the contracting officers.
10 That is to say that is the person that has the
11 authority to sign the contract. The people that you
12 often deal with are contract specialists, who are very
13 important. But they don't have authority to sign the
14 contract, and there are other support staff around.
15 MR. GARCIA: Still open. The floor is still
16 open.
17 MR. LOVATO: I'd just like to say, you
18 talked about success. I wanted to mention this,
19 because Tsay corporation, who is the prime contractor
20 at Los Alamos National Laboratory, we're a part of the
21 sub, and they have been very successful in helping us
22 understand government contracting and they're -- we're
23 being mentored by them. And I think that maybe one of
24 the things that we need to look at is the successful
25 tribes and pueblos that are in the vicinity of each

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1 other maybe should look to unite and come together.
2 Because if we don't all come together, and we're all
3 here in a nice form -- but I think we need to maybe
4 form our own voice. Because if we don't do that, I
5 don't think congress is going to listen to us.
6 And I appreciate what you're going through,
7 because I know it's not easy to listen to something
8 that you have to implement, when, like I said earlier,
9 the horse has already gotten out of the corral. It's
10 very difficult to corral that horse up. And I
11 appreciate you coming here to listen to us.
12 But I think for us, I think we need to find a
13 way to come to a forum where we can all join together
14 and unite in common cause to have a single voice that
15 can go to Washington.
16 Thank you, Mr. Garcia.
17 MR. GARCIA: Just to comment on that, I
18 think that's partly what some of the national
19 organizations are doing, and that would be National
20 Congress of American Indian and NACA is serving that
21 boat. But just to give a reality check is that, we're
22 on top of a lot of these legislative items. We're
23 constantly on the Hill. We're constantly monitoring
24 the language. But this particular piece passed at
25 midnight with no consultation, no discussion. It just

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<p>1 passed. And that's the way a lot of legislation occurs 2 in congress. 3 So as much as we want to be on top of 4 everything, we're doing a great job, I think, thus far, 5 but the odds are against us, because there's people out 6 there that are just doing specifically what they want 7 to do in proposing these kinds of languages. You know, 8 there are some congressional people that specifically 9 do that for whatever reason. But you know, it's really 10 our task. 11 But I think what Dave said, and what others have 12 said is that the system was working, the program was 13 working, so why does it have to all of a sudden go 14 through a drastic shift? And something caused it to 15 get there. That was my point. And that something is 16 something that, you know, that we -- if we put a finger 17 on it, will be on the lookout for other issues, because 18 there will be some others. And it's almost like every 19 time something that is legislated or passed that helps 20 the tribes, it's going well, and then all of a sudden, 21 you know, pull the rug. And then the failure comes 22 back to the tribe, you know, what the lady from Zuni 23 was talking about. 24 There are these efforts and endeavors for 25 tribes, tribally-owned entities, as well as</p> <p style="text-align: right;">Page 122</p>	<p>1 Section 811 and through the proposed regulations that 2 we know the SBA is going to be publishing before the 3 end of this calendar year. So I would say, and I will 4 argue -- and I will pound the table while I argue 5 this -- enough is enough. And you're absolutely right. 6 We have to stand and fight. And I'll be there with you 7 guys. So that's my Rah-Rah speech. 8 Now, I do have some questions. Sorry about 9 that. Dan, thank you for indulging me. You mentioned 10 training certifications, three levels, and I was 11 wondering if, within those three levels of training 12 certification, if any components of them are specific 13 to Native 8(a)? 14 MR. GORDON: May I? 15 MR. GARCIA: Go ahead. 16 MR. GORDON: I don't know the answer to the 17 question. I do know -- maybe one of my colleagues 18 does. But I do know that the interagency task force, 19 one of its recommendations is to improve the training 20 with respect to small business issues in general. And 21 I've made a note of the question, and I'm happy to 22 follow-up with you. I'm anxious to find out if there 23 is any training at this point. Again, if any of our 24 colleagues know, I'm happy to hear. 25 MS. TRUSLOW: There are currently two small</p> <p style="text-align: right;">Page 124</p>
<p>1 entrepreneur to move forward. But then things are put 2 in place, hindrances, if you will, stumbling blocks. 3 And many times we failed to jump that fence, because it 4 wasn't there before, and so we weren't looking out for 5 it. Now the fence is there, and we run right into it. 6 And it turned out to be an electric fence. 7 Somebody had their hand up. 8 MS. LUKIN: I have some more. Thank you, 9 Joe. I wanted to just jump off that -- it's like the 10 shortest microphone stand ever. 11 I wanted to jump off that and just say I 12 absolutely firmly believe that we will continue to face 13 intense media, legislative, and regulatory scrutiny, 14 particularly over the next year. So I ask you all to 15 be very diligent. And if you'd like information, 16 certainly I'd be happy to provide it to you. I have my 17 card, and I'd be happy to share that with you. 18 But as you look at the holistic picture, when it 19 comes to Native 8(a), the issues that we've heard over 20 the years, by congress and the media and folks within 21 the administration, you know, if your issue is fronts, 22 if it's benefits reporting, if it's subcontracting, if 23 it's, you know, sole source contracting and value to 24 the tax payer, every single one of those perceived 25 issues is dealt with through the implementation of</p> <p style="text-align: right;">Page 123</p>	<p>1 business classes, but they're not required training. 2 They're required for the small business representatives 3 for the agencies. And we're looking to beef up the 4 core classes with the small business training and 5 coordination interagency training task force. 6 MS. NIELSON: And if I could just elaborate 7 a little bit for Department of Defense, our training 8 covers all of the parts of the FAR. So in the basic 9 training that they get for levels 1 and 2, they do hit 10 upon part 19 and the 8(a) program. I don't know that 11 we have a separate course on 8(a). I don't believe 12 that we do. But it is a piece of the training that 13 they get. 14 MS. LUKIN: And we would certainly encourage 15 that, if we could move towards that. 16 One of the issues that we've really found within 17 government agencies and also within the SBA, is 18 consistency in -- in the SBA's case, in consistency in 19 processing 8(a) applications and providing guidance 20 throughout the existence of the exam, and with the 21 agencies consistency in understanding the FAR, and in 22 particular the Native 8(a), within the relevance to 23 the program. 24 In many years of discussions with the SBA about 25 this consistency issue, they actually just recently</p> <p style="text-align: right;">Page 125</p>

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1 held a nationwide training in Philadelphia, where they
2 brought their 8(a) application processors from around
3 the nation to one spot. And they literally ran through
4 case studies -- I mean, you guys can probably speak to
5 this much better than I did. But I think that this
6 sort of training is an exceptional example of how it
7 can be done properly to ensure that when, you know,
8 you're talking about Native 8(a) and how to do this
9 properly and transparency and oversight and what the
10 agency requirement is versus the SBA's requirement.
11 These are all issues that we've heard come up
12 over the years. We've certainly seen them in GAO
13 reports. So trainings to that matter would go a long
14 way in helping to address some of the perceived issues
15 within the program.
16 MR. GORDON: Okay. Thank you.
17 MR. GARCIA: It's five after 2:00, not that
18 it matters. The floor is still open, and if you're
19 winding down, maybe we can address some other issues,
20 if you have any from the agency.
21 You have the floor, sir.
22 MR. UPSHAW: Michael Upshaw for NOVA
23 Corporation. I'd like to pose a question to the FAR
24 council. What is your interpretation of the 200 -- or
25 the \$20 million threshold there? Are we talking about

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1 strictly for the way you read the statute? Is it
2 strictly a threshold for the J&A? That's my question.
3 MR. GARCIA: Go ahead.
4 MR. GORDON: I appreciate your asking the
5 questions. I think you all realize that we're not in a
6 position today to interpret the statute. That is
7 exactly why we're here. We're here to listen to
8 people's views. And what will be happening down the
9 road is a FAR team, a team of the different agencies
10 will eventually start drafting something. And in the
11 course of that process, they'll begin trying to
12 interpret some of the terms.
13 They will put together a draft FAR rule, which
14 will follow the process that Linda talked about this
15 morning. Eventually, there will be a proposed FAR
16 rule, which, obviously, will reflect interpretations,
17 proposed interpretations of all the different parts of
18 811.
19 At that point, the public, including everyone
20 here, will have an opportunity to comment on that
21 proposed rule to say whether they agree with the
22 different interpretations, or they disagree with the
23 interpretations. And only after those comments are
24 considered, the FAR council will promulgate a final
25 rule. But at this point, this afternoon, sitting in

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1 Albuquerque, it would not be appropriate for any of us
2 to say, "We, the FAR council, think that X in 811 means
3 something, or that it doesn't mean something else."
4 MR. UPSHAW: Another question that I have is
5 that, you know, listening to a lot of the
6 representatives here -- and I'm pretty sure you're
7 pretty well aware, hopefully, that -- you know, a lot
8 of the severe conditions on Indian nations as far as
9 the need for jobs, you know, there's huge, huge
10 unemployment rates. And also, I think you're aware of,
11 you know, the very clear, strong federal policies of
12 supporting Indian economic development and based on the
13 trust relationships and treaties and status of, you
14 know, the unique relationships between Indian nations
15 and the federal government. You know, that's a
16 prevailing and -- prevailing factor in interpreting any
17 kind of legislation dealing with Indian nations.
18 I'm just wondering, you know, is that something
19 that this legislation -- I mean, it talks about in
20 terms of agency interests. We don't see -- I think one
21 of the speakers here this morning said there's no
22 reference to the interest of the Indian nation and the
23 federal government policies based on those. I mean,
24 what is your view on -- or, you know, in terms of
25 interweaving that into the statute or the regulations?

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1 Is that also a comment that's going to be taken?
2 MR. GORDON: I appreciate your asking the
3 question. One of my lessons learned from this
4 morning's discussion was the concern on the part of, I
5 think, everyone that addressed the issue this morning,
6 that if the term "best interest" is left without
7 explanation or elaboration or guidance in the FAR rule,
8 I heard concern about at least two different things.
9 One, was that it would simply be inconsistent, and
10 every contracting office could handle best interest
11 differently. And two, the risk and the view of many of
12 the speakers this morning, I think every speaker who
13 addressed it, that best interest might be viewed very
14 narrowly. I think one speaker talked about reflecting
15 only the Department of Defense military type issues,
16 and not taking into account federal policy with respect
17 to the Indian nations and the tribal organizations.
18 So that what my takeaways this morning, from
19 this morning's session, was the strong view of the
20 speakers who addressed it, that best interests should
21 not be left just with those words in the regulation,
22 but recommendations from the speakers that the FAR
23 council should elaborate and say what best interests
24 means. And in particular, the speaker said that they
25 thought that it should explicitly talk about the

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1 nation's trust relations with the Indian nations and
2 the commitment in our Native American policies.
3 MR. TEEGARDEN: Again, Tom Teegarden here on
4 behalf of -- as a board member with NOVA Corporation.
5 And I haven't tracked with all the events of this
6 lately, but I just wanted to reflect on sort of the
7 broader parameters of what makes good public policy.
8 You know, this is all part of SBA. And tribes that are
9 doing business, we would like to be doing, I think,
10 LDA, large business, instead of small business.
11 And the reason some of the SBA rules were
12 modified to allow tribes to have higher caps -- to not
13 have caps on contracting, was recognizing that, you
14 know, tribes don't have, you know, a sole owner to take
15 care of. They might have 2,000 or 20,000, or in your
16 case of the Navajo Nation, over 200,000 members.
17 And whereas most governments have an economic
18 base within their borders to raise governmental income
19 through a tax base, because of the history we all know
20 very few tribes have that. And to try to provide for
21 governments to provide governmental services within
22 their borders, takes help. If you don't have a tax
23 base, it takes help. And that's where there's been,
24 you know, so much of the governmental responsibility.
25 And what's really a lot of continuation of

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1 internalistic-type policies.
2 And part of the changes that were made to the
3 SBA program with the 8(a) contracting were to present
4 tribes with the opportunity to participate in business
5 that would earn income that becomes, really,
6 governmental income out of more mainstream economic
7 type of activities, as opposed to a paternalistic or
8 welfare type of a system.
9 In this morning's session, I particularly like
10 the analogy that Mr. Baily gave. Because when he
11 talked about a \$20 million contract, you know, if
12 you're fortunate enough in today's economy to still be
13 able to run that and say you got a 10 percent profit,
14 \$2 million contract, well, you know, if you're Isleta
15 del Sur, that comes out to maybe not even \$1,000 a
16 tribal member. A lot of money for a lot of people who
17 don't have it. That's hardly a drop in the bucket, to
18 make systemic-type change, which is the intent behind
19 why a lot of these changes were brought about in the
20 first place.
21 If you're Navajo Nation, that comes down to --
22 what is it? Ten bucks a member? So we're not going to
23 change the Earth by these sort of artificial
24 limitations. And tribes want to be doing -- if you're
25 going to be doing business, and you got 20,000 members

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1 or 2,000, or 200,000, you want to be doing business
2 that is a proportionate in size that the income and the
3 value that comes out of that is proportionate to make
4 an impact on the needs of your people.
5 And so this sort of -- it feels like a very
6 arbitrary \$20 million cap, just takes that whole
7 opportunity that tribes have been doing miracles with
8 that, and many more are just learning the pathway, and
9 it just really slams that shut. And it turns it into
10 real crumbs, instead of, you know, baking bread, which
11 is what it's all about.
12 Now, some might say that the objective of the
13 Small Business Administration is really small business,
14 and we're stretching all of this. But you know, if you
15 get big contracts, and you're good at it and you get a
16 few, it doesn't take very long before you outgrow those
17 size limitations, and you're primary an ex-co. You
18 graduate before you even hit the nine-year thing.
19 So this isn't creating -- perpetuating a type of
20 wealth accumulation that is -- that is
21 disproportionate. If somebody becomes -- if a tribal
22 enterprise becomes successful at doing this, they
23 graduate from that. And then as they approach that,
24 the end of the nine-year period, the percentage of
25 revenue that has to come from non-8(a) sources

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1 continues to grow. And so if you meet those goals,
2 then you are increasing your dependence -- or
3 decreasing your dependence on an 8(a) and you're
4 becoming more of a mainstream player. And that's
5 exactly where we want to go. This \$20 million cap is
6 just very artificial.
7 And we were talking about earlier in the
8 conversation about sort of the discretion of
9 contracting officers and what they see as the best
10 interest of an agency. But the reason we're here is
11 because there was changes made to the 8(a) program a
12 number of years ago, which were made with the best
13 interest of tribes in mind. And that hasn't really
14 been part of the conversation. It seems like there's
15 this -- I'm not sure where all this is coming from, but
16 there's like this phantom sort of effort to try to
17 artificially put a lid on something that's really
18 working. As Mr. Melton said, if it's working, don't
19 fix what's not broke.
20 MR. MELTON: I'm going to give you a racing
21 analogy, as if tribes and other races -- other 8(a)
22 participants are in a race. And tribes and Native
23 8(a)s have traditionally been at the back of the race,
24 even laps down. Until recently. So maybe we're a
25 victim of our own success, because we have had

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1 billion-dollar successes. We have to admit that. So
2 some of the -- that wasn't because you handicapped the
3 others even more to help us win; that's because we got
4 smarter, are learning how to race faster and better.
5 That was due to our pit crew, so to speak, and our
6 knowledge on how to make the car run better. So
7 that's -- that's attributable to these folks, not
8 because somebody messed with the rules.
9 What you've done now, you've messed with the
10 rules. And that happens. Sometimes a Porsche will get
11 added extra weight, because the RX-8 is not winning, or
12 they'll add engine displacement to increase horsepower
13 over the year between races. The rules change from
14 race to race to keep the competition strong. We don't
15 want to be dominated by anyone, mark, brand, or in our
16 case, race. But we're not -- we're not there as far as
17 dominating the race with our people or our native race.
18 So it's kinds of understandable that people have
19 said, "You native people are winning, because of the
20 rules are stacked in your favor," but it's not. You
21 haven't changed the rules in many, many years until
22 just recently. And what's going to happen is we're
23 going to fall back to the back of the pack again, and
24 we're even going to get lapped again.
25 So now with the scarce resources today, for

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1 everybody, it's a bad time to be doing this. It's a
2 bad time to be doing this in our economic times. So as
3 you have change to the rules of the game for the race
4 of business, we will be lobbying to change the rules
5 again. And that's fair. If it was fair to change them
6 one time that benefitted somebody else, okay. But at
7 some point, we're going to be back again and say,
8 "Okay. Let's level it out again and keep things
9 competitive." So thank you.
10 MR. GARCIA: Thank you. A point that ought
11 to be made about -- if someone were to go back and do
12 some assessments on where the preservation started and
13 how we got to where we are in a time track, you might
14 look at what was happening in 2005/2006 time frame.
15 In 2006 was a magic point, because a GAO report
16 was submitted in 2006. Now, the 2006 report, whether
17 it was a false report or false conclusions because
18 there was a located data in the report, but that --
19 that report sparked the -- some of the issues that were
20 perceived issues that there was some funny things going
21 on with grants and contracts and all of that. And I
22 could see if the 8(a) tribe were, like, receiving
23 50 percent of the funds that were available. But we
24 were -- we were probably like 1 percent, right? 2
25 percent? And if there were some instances that should

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1 have been looked at it, they should have looked at
2 those instances, rather than just propose a law.
3 But I think what gained a lot of momentum is
4 that report. And from that report, congressional
5 people moved in and honed in on it, and said, "We've
6 got to change all of this stuff." And unfortunately,
7 the fact that 8(a) was working and that the tribes were
8 doing okay, that never entered their mind. It was
9 just, well, we've got to fix this. The fact that we
10 were involved, and we were the ones that were going to
11 be most impacted never entered their mind either. Or
12 maybe on the other hand, it may have entered their
13 minds, and they said, "well, this is one way to fix
14 this thing." And so the rest is history. So from 2006
15 up to this point, two pieces of the legislation passing
16 and finally the last one that this section ended up in.
17 But you know, there's some -- those are things
18 that we should really be concerned about. But I think
19 if we are in tune, we can head them off at the -- the
20 pass, if you will. But we -- I mean, that takes
21 effort; that takes money; that takes time. It takes
22 away from the progress that we were making in our
23 business and our efforts for working with our people
24 and improving their lives.
25 So I thought that might be a point of interest

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1 for everyone.
2 MS. LUKIN: Thank you. I actually intended
3 to ask you some questions. So I'm going to ask you
4 some questions really quick, Dan. And then
5 unfortunately, I just got a very devastating e-mail
6 that I'd like to share with the collective group.
7 Dan, you had indicated that after you complete
8 these tribal consultations, that you guys will go back
9 drafting a proposed rule, and then open it up for
10 public comments. Do you also intend to do a second
11 series of tribal consultations during that public
12 comment period?
13 MR. GORDON: We don't have plans for a
14 second round. But obviously all the tribal
15 organizations are welcome to submit comments in
16 response to the proposed regulation.
17 MS. LUKIN: So that would be a written
18 comment submission, then. Okay? Is that what that
19 would be? You're not going to have listening sessions.
20 And my second question for you is what should we
21 expect in a time line in the implementation for, 8(a)
22 811.
23 MR. GORDON: I hesitate to make a
24 prediction. The risk is that -- if you ask me, we
25 should do it fairly promptly after we've completed the

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1 tribal consultation, but the FAR council process is a
2 fairly slow one. As Linda explained this morning,
3 there's the two sub-councils that have to work through
4 it and then they go up to the full council. So it will
5 certainly not be 60 days after we finish the
6 consultations in Fairbanks. My guess, is that would be
7 a number of months.
8 Let me turn to my colleagues and ask if I'm
9 being either optimistic or pessimistic.
10 MS. TRUSLOW: Based on past experience, I'd
11 say you're right on. And a proposed rule is a proposed
12 rule.
13 MR. GARCIA: I'd say many months.
14 MS. TRUSLOW: It's not implementable at the
15 time as opposed to a interim rule or a final rule.
16 MR. GARCIA: But after all of that happens,
17 you still have to -- it has to be -- what do you call
18 it? Included in the Federal Register, right?
19 MS. TRUSLOW: Yes.
20 MR. GARCIA: And so the comment period, the
21 draft and the comment period, from that point on, there
22 will be some time -- I don't remember what time limits
23 there are for once it appears in the Federal Registers.
24 It's 30 to 60 days or 90, whatever.
25 MR. GORDON: It's normally 60 days.

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1 MR. GARCIA: And so -- if -- that included
2 in it, then we're looking at next year sometime for
3 sure, but --
4 MR. GORDON: Yes.
5 MR. GARCIA: I don't know, maybe midyear.
6 MS. TRUSLOW: So when the final rule comes
7 out, it should address all the questions that were
8 posed during the proposed rule and how they were
9 accepted or why they were not accepted.
10 MS. LUKIN: Okay. Thank you. I appreciate
11 that clarification of process.
12 Earlier, you had asked for success stories. And
13 it was such -- it was so exciting for me to hear each
14 of your stories. I truly value -- it helps me
15 understand those people that I advocate for every day
16 back in D.C.
17 But I wanted to tell you my story, because I'm
18 from a village of 250 people in the gulf of Alaska.
19 And we -- when I was growing up as a young Alaskan
20 native child, I had a couple of options: I'd stay at
21 home and take care of kids and have babies really
22 early, or I could do commercial fishing. Those were
23 the only options. Most people in our village in my
24 dad's age bracket didn't even graduate from high
25 school, let alone college. And my village corporation

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1 did timber development in our homeland for several
2 years, and it provided seasonal employment for our men.
3 So they were able to stay in the village and our
4 families were able to, you know, have a life in our
5 small community that's not connected to any other
6 community by road or anything. You know, you think
7 it's hard to get to New Mexico. Try to get to my
8 village. It could take two days just to get there.
9 And then the timber market waned and fishing
10 waned and we had nothing, our village corporation
11 realized that they could invest in government
12 contracting, and they did. And today they're one of
13 the most successful Native 8(a)s out there. And their
14 primary focus, when they looked at our people and our
15 native board of directors, tried to figure out how they
16 could help us, they decided to focus not on jobs but on
17 dividends. And the reason is that of our 800
18 shareholders, the vast majority of them were below the
19 US poverty line.
20 And so they paid out dividends to our people
21 every year, twice a year, and the annual average
22 dividend distribution to a shareholder is a little over
23 \$23,000. It, on average, represents half of your
24 yearly income. And it is because of that dividend that
25 they were able -- that our people were able to look at

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1 other opportunities, like college. I'm a first
2 generation college graduate, having a master's degree.
3 And it was because of those dividends and the
4 financial stability that they provided to our people
5 that they began to focus on things like cultural
6 preservation. When I was younger, we only had six
7 elders left that knew our dialect of Alutiiq language.
8 But our village corporation, directly from profits from
9 the 8(a) program, helped fund a language revitalization
10 program, and today, preschool children and people my
11 age are learning our language from our elders. Our
12 oldest elder just turned 100, and he's one of the few
13 that can speak our language.
14 So for us, that's success of the 8(a) program.
15 Success of the 8(a) program is that I can take my kids,
16 because I have private health insurance, to a doctor,
17 not to IHS -- no offense to IHS, I know they're back
18 there. You know, the fact that my kids, when I give --
19 you know that when I ask them about what they want to
20 do in the future, my nine-year-old boy says that he's
21 going to be the CEO of our village corporation. That
22 never ever would have been something that I would have
23 thought that I would have had the possibility of
24 attaining at 9. I want to see that ability happen for
25 every child in this room, for every Alaska native

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1 corporation. What an extraordinary opportunity to give
2 our children, as somebody said earlier, a chance at the
3 American dream.
4 And so while I sit here and I hear these
5 stories, an e-mail comes across my Blackberry just now.
6 And it's a story that was just published in the
7 Washington Post. Senator McCaskill has just announced
8 she will be releasing a piece of legislation next month
9 to remove Alaska native corporations from the 8(a)
10 corporation all together. I just got this, guys, so I
11 haven't had the chance to do the analysis of it and to
12 see the impact that it may have on tribes. But I
13 wanted you to be aware of that, that our struggles and
14 our fights in this program continue. Thank you.
15 MR. GORDON: Thank you. Chairman Garcia
16 said he will be right back. But I wanted to give
17 anyone else that wants to, to take this opportunity to
18 speak, the chance to do that.
19 MR. TREVAN: Thank you. And thank you for
20 giving me the opportunity this morning. And I really
21 appreciate hearing the passionate stories and Sarah's
22 story just right now on the impact the programs had on
23 her life, as well as her village life. And you know,
24 some tribes and villages have been recognized for quite
25 some time. Some are relatively new. Mine is one of

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1 the newer federally-recognized tribes, the
2 Match-e-be-nash-she-wish Band of Pottawatomis. We have
3 a smaller tribe, but we have a 60 percent -- and I
4 think everybody's heard the recurring theme over and
5 over, so I don't want to continue on with that.
6 And I appreciate all the comments. I don't have
7 any fancy NASCAR analogies like Mr. Melton -- but I
8 enjoyed them at lunch, though. But what I'm coming to
9 say is that with our native communities here, I think
10 everybody just wants to leave this meeting feeling
11 comfortable that in -- and I don't have a way to
12 quantify this, but in their gut is that there is a
13 communication, there is a partnership. And the first
14 step is to have the consultation, which we are having.
15 And the second is to look at the treaty
16 responsibilities, look at the trust responsibilities,
17 look at the executive order, the nation-to-nation
18 conversation that we're having here.
19 And I know when I say it that way, it brings it
20 from here to here. And without going into specifics,
21 I -- I mean, I can't speak for everybody, but I really
22 think that that's where people want to see that -- the
23 council be able to look at the treaty, the trusts, the
24 executive relationship, and says, "This is how we've
25 addressed it."

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1 And I apologize if this was brought up when I
2 was on my conference call, but I think if we take those
3 positive steps forward, a lot of these stories, a lot
4 of the impact, a lot of the future progress,
5 alleviating poverty, showing the benefits of the
6 program, are obviously going to be communicated through
7 the final passage.
8 So hey, that's what I want to say, is get more
9 of a -- I want to stay optimistic with this process.
10 This is why we're engaging this. We're recognizing the
11 unique relationship with our native communities, our
12 Alaskan natives, our Native Americans and being able to
13 have that respect and hold up to here that we're doing
14 this on a nation-to-nation level.
15 So I really appreciate this, and, you know,
16 anything I can do to help to bring our 43,000 native
17 businesses that we work with together over the 400
18 tribes we work with, I would be more than happy to do
19 that. But I really appreciate all the comments. But I
20 think that's -- I know that's what I want to hear. I
21 want to have this feeling that we're doing this in
22 partnership.
23 MR. GORDON: Thank you.
24 MR. GARCIA: Everybody still awake? You
25 remind me of my math professor, going over differential

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1 equations. And he says -- he would do a problem, and
2 he would say, "You all understand?" We would be
3 sitting there (indicating). No comment.
4 Anyway, are we close to the end here? I want to
5 relay my thank you to everybody that has taken part.
6 And I think a lot of points were made. And I
7 appreciate you being here, providing us this
8 opportunity. But I think as many have said, we must
9 work together to ensure that we don't, you know, let
10 one person or one group of people or organization fall
11 apart by imposing other rules and regs that really
12 don't need to be in there. And that being the case,
13 we're still going to work on amending or repealing and
14 other things.
15 And as others have said, you know, there will be
16 other rules and there will be other legislation. And
17 the more we are kept abreast ourselves -- and if we can
18 pat them off, as I said before. So let us continue to
19 work together in the spirit of this country, because
20 we're all in the same country, so we ought to be
21 helping each other. The federal government and the
22 tribal government, and more importantly people, the
23 people of the land, the people of our tribe, the people
24 of the cities, the people of the states, the people of
25 the United States of America. And that's what it's

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