

1 BIA TRIBAL CONSULTATION GROUP

2 FAIRBANKS, ALASKA

3 OCTOBER 19, 2010

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1 FAIRBANKS, ALASKA; TUESDAY, OCTOBER 19, 2010;

2 9:28 A.M.

3 CO-CHAIR JOHNSON-PATA: Good morning, everyone.

4 We're glad that you were all able to make it here today. It
5 was a wonderful surprise being able to land last night and to
6 have fresh snow for some of us who came from Hawaii to get here
7 from the meetings that they had out there, but first of all,
8 I'd like to introduce myself. I'm Jacqueline Johnson-Pata, the
9 Executive Director of the National Congress of American Indians
10 in Washington, D.C., and we have been working with Sarah Lukin
11 at NACA and Julie Kitka with AFN to work with the
12 Administration, as you can see, we have the Administration well
13 recognized here.

14 MS. PRATTE: Should we move to that side because it
15 seems a little stacked on this end?

16 CO-CHAIR JOHNSON-PATA: Whatever you need to do. To
17 work on bringing together the consultation (sic), the 811
18 consultations and we've been very pleased with their
19 responsiveness and their willingness to partner and as many of
20 you know, we've had a couple of other sessions, the first one
21 in Washington, D.C., and which was, I thought, a good initial
22 start.

23 We heard from Tribal leaders at that particular
24 consultation session around the value of the program,
25 particularly, and how important the ability to be able to

1 continue to participate in the program (indiscernible -
2 speaking softly) and of course, any recommendations they had,
3 any particular provisions and from there, the traveling team
4 went to Albuquerque and were able to participate in another
5 consultation. I wasn't there. (Indiscernible - speaking
6 softly) was there and they were well represented.

7 Through this effort, putting together and organizing
8 the agenda and scheduling, I really want to be able to thank
9 Dan Gordon and Susan and their team for working with us through
10 teleconferences through OMB and DOD and everyone who has
11 supported SBA to make sure SBA was also here and it has been
12 very helpful for us to be able to have that kind of candid
13 dialog and talk about the value of consultation, the importance
14 of being able to get the right kind of information and be able
15 to set the stage so that they're actually extracting and then
16 put forward questions for you of things that maybe you would
17 want to hear about and to be able to have an environment where
18 there's dialog going back and forth.

19 So we're encouraging you to do today, as you do your
20 statements, and I know there are those who have prepared
21 statements, I didn't check, but you do have the list back
22 there, which (indiscernible - speaking softly) and we'll do the
23 prepared statements, but I know that there will be a chance for
24 us to have conversation, real conversation with questions being
25 asked and I hope that you stay throughout the day to be able to

1 participate in that ongoing dialog and as I -- I know that as
2 we move forward, I think that this sets a tone and a framework
3 so as we move forward in the implementation of regulatory
4 recommendations that we will be able to continue to engage in
5 this dialog as we move forward throughout that time.

6 So the agenda is set so that we have -- the agenda is
7 set so that we actually have some time to hear some briefing
8 from our representatives from the Administration, so that
9 everybody can get on the same page about where we are and with
10 the latest information.

11 Then, we would like to go through and I'll be calling
12 up folks to come up here to be presenting based upon this list
13 and then we'll have a couple at a time up here and then we'll
14 have their conversations and then we'll call up a few more and
15 then we'll get into the rest of the conversation, the rest of
16 the agenda as a dialog and I understand we'll be taking a break
17 about every 60 minutes, just a small break and we're hoping --
18 our plan is to break at noon for lunch and we'll continue to be
19 here as long as is necessary today to be able to make sure that
20 we thoroughly receive the messages from you that are important
21 for this consultation session. So with that, I'd like to, once
22 again, thank you for all being here and introduce Dan Gordon,
23 who is going to take the meeting on the road show. Thanks.

24 MR. GORDON: Thank you very much. Can everybody hear
25 okay? We are delighted to be here for this consultation. It

1 is a special treat for us to be in Alaska far away from the
2 weather of Washington. Although, I was saying to Ms. Pata
3 beforehand, in Washington, when they talk about a snow flurry
4 in the forecast, it means you might see a flake or two. When I
5 came out and looked at my car this morning, I said, those were
6 some snow flurries. Washington, D.C. would have shut down with
7 that amount of snow. Different places, different approaches, I
8 guess.

9 I will introduce my colleagues here on the -- from
10 the federal agencies, but I want to say right away that our
11 main goal today is to get a chance to hear from you and talk
12 with you, so that we, on the federal official side, are going
13 to be very brief in our remarks to be sure that everybody
14 that's here, everybody who comes, gets a chance to speak and
15 give us your input as we prepare the regulation to implement
16 what we call Section 811.

17 I hope everybody got the handouts. If you didn't,
18 there are more copies on the table. There are two sheets of
19 paper, each one of which has two sides printed. So all total,
20 there are four pages. The fourth page is actually the full
21 text of Section 811. So when we're talking about it, you may
22 want to look at that. The third page includes the address for
23 sending in written comments and the deadline. We very much
24 welcome written comments.

25 As Ms. Pata said, we already conducted two Tribal

1 consultation sessions, one in Washington, D.C., where she and I
2 chaired this together and one in Albuquerque, where we also had
3 the opportunity to hear from other Tribal representatives.
4 This is the third and final of the series of sessions here in
5 Fairbanks.

6 Let me introduce my colleagues on this side of the
7 table, actually all of my federal colleagues. We're balancing
8 on that side of the table as well. As I said, I'm Dan Gordon.
9 I'm from the Office of Management and Budget in the Executive
10 Office of the President. I'm the Administrator for Federal
11 procurement policy. That is a political appointment. I used
12 to work at GAO, the Government Accountability Office, the
13 Office of the General Counsel for some 17 years. I was
14 appointed by the Administration to this position as
15 Administrator at the beginning of October of last year,
16 confirmed by the Senate on November 21st. So I've been in the
17 job, essentially, since Thanksgiving of last year. I also
18 serve by virtue of the position as Administrator, as Chair of
19 the Federal Acquisition Regulatory Council that you'll be
20 hearing much about today, The FAR Council.

21 (Phone rings)

22 MR. GORDON: If it's a phone call from my mom, tell
23 her I'll call back later. The FAR Council that we'll be
24 talking about today and the FAR Council has one of three
25 agencies in addition to the Chair from OMB, it has the

1 Department of Defense, DOD, the General Services
2 Administration, GSA, as well as NASA (sic). The NASA
3 representative was not able to join us today, but I am
4 delighted that the other two agencies are represented. Linda
5 Neilson from the Department of Defense is here. Ed Loeb from
6 GSA is with us.

7 In addition, we're very pleased to have
8 representatives from the Small Business Administration, as I'm
9 sure everybody in this room knows SBA plays an extremely
10 important and (indiscernible - speaking softly) role in the
11 area that we're going to be talking about and in particular,
12 the 8(a) Program. We have Darryl Hairston from SBA and on this
13 side of the table, we have Clara Pratte. Thank you all for
14 being here and you'll be hearing from each of us in the course
15 of the morning.

16 I should also point out that Susan Treslow from our
17 office in the purple jacket here (sic), Susan has played an
18 incredibly important role, both in terms of the substance, but
19 also the logistics to make things happen, which has been very
20 helpful to all of us.

21 With that, let me, with your permission, turn to the
22 next agenda item. I realize that mainly and perhaps, every
23 single person in this room knows a lot about the federal
24 acquisition process, but we thought it still might be helpful
25 in terms of context to give a very brief overview just to

1 explain the process that we're going through and the context
2 that this process is within in terms of what the Administration
3 is doing right now with respect to the federal procurement
4 process.

5 We have a number of initiatives underway to improve
6 the federal procurement process and I want to talk very briefly
7 about each of those. I would tell you that I think it's of
8 note that the President, when he was barely six weeks in
9 office, issued a memorandum on government contracting. I, at
10 least, am not aware of any prior President turning to the
11 procurement process so early in his administration and in such
12 a high profile way as the President's memorandum, which was
13 dated March 4th of 2009. It is available on the web and if
14 anybody wants to track it down, we're happy to get you the web
15 link for that.

16 I want to talk a little bit about that memorandum and
17 then I want to say very briefly a little bit about the
18 President's interagency task force on small business
19 contracting. We're implementing the task force recommendations
20 right now and there are some things that I thought are worth
21 mentioning again as context and then, I'm going to be asking --
22 Darryl from SBA is going to talk a little bit about what the
23 Administration is doing to strengthen the 8(a) business
24 development program.

25 So first, a few words about the President's March

1 2009 memorandum; the key points in the memorandum, which is
2 itself fairly short, the President talks about the need to
3 strengthen the federal acquisition workforce. That's true,
4 both in terms of numbers, we simply don't have enough people
5 running our procurement, running our contracts, to administrate
6 our contracts, but it's also true in terms of training, an
7 issue that I should mention came up again and again in the
8 prior rounds of these consultations, concern that our federal
9 employees need more training. So that is the number one
10 priority mentioned by the President in his March 2009
11 memorandum on government contracting.

12 A second priority the President wrote about was the
13 need to clarify what work may be contracted out and what work
14 in inherently governmental and needs to be done by federal
15 employees. The President's memorandum talks about the
16 distinction between those two; work that can be contracted out
17 and work that must not be contracted out having become blurred
18 and he directed us in OMB to provide clarity on that.

19 The President's memorandum also talks about the need
20 for guidance on the use of sole-source contracts, talks about
21 the need to maximize competition in the appropriate context,
22 talks about concern that cost reimbursement contracts are
23 sometimes used when they're not justified.

24 We, the Administration, are taking a number of steps
25 and have already taken a number of steps over the past year and

1 a half to implement the President's direction in the March 2009
2 memorandum. For example, the President's 2011 budget, which is
3 in front of Congress right now and working its way through the
4 appropriations process includes an unprecedented 158 million
5 dollars to strengthen the civilian agencies' acquisition
6 workforce.

7 DOD, as Linda could explain it to people and hear
8 more about it, DOD has its own funding mechanism to strengthen
9 its acquisition workforce and they're making their own progress
10 there. In addition to that budget, which is as I say, working
11 its way through the appropriations process right now, we have
12 been working on ways to strengthen training for our federal
13 employees, both at the Federal Acquisition Institute and other
14 training facilities.

15 We are particularly focused on training with respect
16 to contract administration, contract performance, to be assured
17 that after we award a contract, our people on the federal side
18 continue to watch what's going on with the contractor and be
19 sure that the government gets what's promised in terms of
20 schedule, costs, equality of what we're -- what the company
21 committed to.

22 With respect to work that's inherently governmental
23 or otherwise shouldn't be done by contractors, we issued a
24 draft policy letter in March of this year called Work Reserved
25 for Federal Employees and we'll be finalizing that policy

1 letter in the next couple of months.

2 We've also called in agencies to draft and submit to
3 us at OMB savings plans and steps that they're going to take to
4 reduce the risk of high risk contracts, so both saving money
5 and finding ways to increase competition, reduce the use of
6 cost reimbursement and time and materials contracts in
7 particular and we can talk about more of those initiatives, if
8 you'd like.

9 I'm going to switch gears now and move from the
10 President's March 2009 memorandum and the steps we've taken to
11 implement it, to this year's interagency task force on small
12 business contracting that the President directed be
13 established. The President directed that in April. We were
14 required to submit a report and recommendation to the President
15 by the end of August and we met that deadline.

16 It was co-chaired by the Department of Commerce, the
17 Small Business Administration and OMB. I had the privilege of
18 being very actively involved, although my colleagues here, were
19 also very actively involved in that. The report, which is
20 public, and the recommendations, which are also public, include
21 a whole series of steps designed to reduce barriers to small
22 businesses participating in the Federal Government marketplace.

23 They're designed to strengthen and clarify the rules
24 and the policies, so that, for example, with respect to set
25 asides and orders under umbrella contracts that we often call

1 ask and delivery order contracts, we want to have clear rules
2 about when those orders can be set aside from (sic) small
3 businesses, when they're required to be set aside for small
4 businesses.

5 I should mention that the task force had a public
6 meeting, solicited public comments, both at that meeting and in
7 writing, got many comments, which were helpful to us in putting
8 together the report. We're also, and it talks about the need
9 to improve outreach to small businesses, to ensure that small
10 businesses have access to the information they need, the
11 assistance they need to break into the federal marketplace and
12 the agencies now under the leadership of SBA, but with active
13 support from other agencies like OMB, are working to implement
14 those recommendations and quickly. We need to do more. That
15 is the President's direction, to be sure that our small
16 businesses are getting their fair share of the federal contract
17 dollars.

18 With that, if I may, I am going to turn to our
19 colleagues to have, let's see, first, we are going to turn to
20 Darryl, if we could, and have you explain a little bit about
21 what is on the way with SBA to strengthen the 8(a) Program.
22 I'm going to give you this mic. Thank you.

23 MR. HAIRSTON: Well, good morning, and I'm also
24 pleased to be in Fairbanks. I'd never made it past Anchorage.
25 So this is (indiscernible - room noise) for me, but I'm

1 relatively new at this job. I think I've been in this position
2 now for about four weeks, but to allay your fears, I was
3 working in this program in 1978, when the original bill passed
4 and was also working in this program at the time the Alaska
5 Native Corporations were brought into the program. So I don't
6 know if that makes you more fearful or allays your fears, but
7 at any rate, I am really pleased to be here and have the
8 opportunity to hear your input on the implementation of Section
9 811.

10 I was not in the program at the time we went through
11 the extensive outreach on our proposed regulations and I do
12 know that many of you had an opportunity to have an input into
13 those regulations and the input into those regulations was very
14 robust and I would like to say that your input into the
15 implementation of 811 is similarly important. So I hope that
16 you will take the opportunity to provide the input, either here
17 today or in writing, as Mr. Gordon mentioned.

18 Our regulations now are currently going through the
19 final internal process in the agency. We'll be finalizing
20 those regulations very shortly. They'll go to OMB for final
21 clearance. OMB will have up to 90 days to do that final
22 clearance, but we're still on track to have the regulations
23 effective in the early part of the calendar year.

24 The new regulations are primarily focused on three
25 areas; 1) is to clarify a lot of things that were in the

1 existing regs that were not clear or confusing, 2) to implement
2 some statutory provisions that have been sort of laying out
3 there, but had not been put into regulation, and 3) is to
4 provide some changes to the oversight and administration of the
5 program to ensure that we strengthen the program and that the
6 program benefits are flowing to the intended recipients.

7 So with that, one important -- one important note
8 related to strengthening program is the recent passage of the
9 President's job bill, which legislated the issue of parity,
10 which I know was big one everyone's list, so that in and of
11 itself is a good thing for this program, as well as the other
12 socioeconomic programs. So I'm looking forward to working with
13 you and I'm looking forward to your comments today. Thank you.

14 MR. GORDON: Darryl, thank you very much. Next,
15 we're going to turn, if we could, to our colleague Linda
16 Neilson from DOD, who is going to set out the framework for the
17 regulatory process. Linda.

18 MS. NEILSON: Thank you. Can everyone hear me?
19 Okay. I'm Linda Neilson. I chair one of the two councils that
20 put the pen to paper and draft the acquisition regulations, the
21 DAR Council, Defense Acquisition Regulations Council. My
22 colleague, Ed Loeb, chairs the Civilian Agency Acquisition
23 Council. We do our work and we combine our efforts under the
24 guidance and leadership of OFPE, Mr. Gordon's Office of Federal
25 Procurement Policy. We generate the acquisition regulations of

1 FAR.

2 In a large part, the FAR serves the purpose of
3 providing uniform guidance, a blueprint, if you will, for the
4 contracting officers that allows them, provides them with the
5 tools necessary to write statutorily compliant contracts that
6 implement the various pieces of legislation that are, in fact,
7 our marching orders, if you will, our guidance from Congress.
8 We translate them into the regulations speaking to the
9 contracting officers.

10 I've referred to it in the past as creating a
11 tapestry and that has created some chuckles, but if you think
12 about it, there are a lot of pieces of legislation each year
13 that are enacted that have to do with acquisition and we
14 implement them regularly and when we implement new regulation,
15 it gets a little tricky because we have to make sure we don't
16 unintentionally create inconsistencies with legislation that
17 has not gone away, but may have been passed last year or the
18 year before and it is already in the regulations. So I call it
19 weaving a tapestry without breaking any of the threads. I
20 don't know whether that helps or not in terms of understanding
21 what we're about.

22 We have our processes spelled out for us in the
23 Office of Federal Procurement Policy Act and this provides a
24 process by which we obtain public comment and by which we work
25 with the public comments and resolve them and then publish

1 regulations that have effect. So that's sort of a general
2 guideline.

3 The Office of Federal Procurement policy provides us
4 with guidance so that we are consistent with the President's
5 agenda and helps us with any disagreements that we may have
6 between the two councils, the Civilian Agency Council and the
7 Defense Council, that may come up or may arise on differences
8 in interpretation and that sort of thing. We don't like to be
9 told what to do. So we try to resolve all of our differences
10 ourselves, but on occasion, we need help and we all hold hands
11 and resolve our differences together.

12 Generally speaking, we are able to do this in a
13 fairly timely manner, but we strain under the various
14 requirements that require 60 days here, 90 days there. It adds
15 up and so we like to think that it's a process where we squeeze
16 out what efficiencies we can and to achieve timeliness and
17 deliberate efficiently. Is that a good way of putting it?
18 (Indiscernible - speaking softly) processing whenever possible.

19 That's really the top level view of the regulation
20 writing process that the Council is engaged in and I'll leave
21 it at that, unless anyone requires in the course of the
22 discussion any further detail.

23 MR. GORDON: Thanks very much. I appreciate it. It
24 is, again, I realize you all probably know or are very familiar
25 with it, but it bears underscoring that the FAR Council that we

1 serve on doesn't write statutes. We can't change the statutes.
2 The statutes come to us from Congress with the President's
3 signature and then we need to implement those statutes and it's
4 at that process of writing the regulation that implements the
5 statutes, that's the process that's about to begin after these
6 consultations and that's the process about which we're seeking
7 your input.

8 What should the regulation, the FAR provision that
9 implements Congress' statute actually say? The details of what
10 it should say are a particular interest to us and your input on
11 those details will be particularly helpful to us.

12 Let me lay out a couple of more bits of framework and
13 then, I think we're going to stop our side so that we can
14 devote, as I said to you, the bulk of our time today to
15 listening to comments that people in this room can share with
16 us.

17 A couple of points of framework; 1) is to talk about
18 the rules that require competition and that authorize
19 uncompleted (sic) contracts. I want to talk a little bit about
20 that. My colleague, Ed Loeb, from GSA will talk a bit about
21 what the justification and approval process means, the J&A
22 process is especially important because it's mentioned
23 specifically in Section 811. We want to be sure that there's a
24 shared understanding of that and then I want to talk a little
25 bit about 811, itself, the key provisions, the key open

1 questions and at that point, we're going to stop our speaking
2 and start our listening.

3 All right, a little bit about the legal framework for
4 competition and the exceptions to the competition rules; it is
5 fair to say and some will say it's a great understatement to
6 say that the federal acquisition system is complicated. It is
7 very complicated. When you start making generalizations,
8 you'll run into trouble. If you say, for example, well, the
9 system calls for full and open competition. It's true, but
10 it's not entirely true.

11 You can almost think of the competition requirements
12 in our federal acquisition system as running along a kind of
13 spectrum. There are situations.....

14 (Loud room noise.)

15 MR. GORDON: That would be the spectrum
16 (indiscernible - speaking softly) leaning down from heaven.
17 There are situations where there has to be full and open
18 competition, unrestrictive to all businesses, at least all
19 responsible businesses, using the term (indiscernible -
20 speaking softly), but there are many situations in which
21 various degrees of limits can be placed on competition in a
22 fully legal way.

23 To take something from the opposite end of the
24 spectrum, after the earthquake in Haiti in January of this
25 year, I remember having conversations with our colleagues at

1 the United States Agency for International Development, the
2 USAID and they were saying, we need to get emergency supplies
3 and services to Haiti. We assume that it's okay to do that on
4 a sole-source basis and the answer was (indiscernible -
5 speaking softly).

6 Our statutory framework lets us do sole-source
7 contracts where there is urgency, but to give you a
8 counterpoint, and to add to the complexity of it, even in that
9 context, I said -- I remember saying to our colleagues from the
10 USAID, how long is the contract for, because if the logic is
11 it's urgent and the answer to my question is how long the
12 contract is for, is five years, we have a contradiction. You
13 can expect an urgent contract to be of fairly short duration.
14 Again, just another example of the complexity about the rules
15 for competition and exceptions for competition.

16 There are also situations where there's no
17 competition rules at all. The best example are very small
18 purchases, purchases under \$3,000 that we call micro purchases.
19 No requirements to do any kind of competition and then there
20 are these situations that are in the middle, if you will, of
21 our spectrum. Situations where you do have competition, but
22 you limit the competition.

23 Examples, that I'm sure everybody in this room are
24 very familiar with, are set asides. If you do a set aside for
25 small businesses, you are, in fact, conducting a competition,

1 but large businesses are not allowed to participate in that
2 competition. So it's both restrictive, non-competed, if you
3 will, but also competed, and similarly, again, as I'm sure you
4 are familiar with, we can do set asides that are limited to
5 subsets of small businesses, (indiscernible - speaking softly)
6 companies or companies owned -- small businesses owned by
7 service disabled Vets and again, just to be sure that everybody
8 is provided with the legal framework, as you know I'm sure,
9 8(a) firms can receive sole-source contracts normally up to a
10 dollar threshold of 3.5 million dollars or 5.5 million dollars,
11 depending what's being purchased and the exception are the
12 Tribal organizations, the Native Hawaiian organizations, the
13 Alaska Native corporations, which can receive sole-source
14 contracts above the 3.5 or 5.5 million dollars. As to those
15 groups, the sole-source dollar limitation does not apply.

16 With that, I'm going to change gears and ask our
17 colleague, Ed Loeb, to talk about the justification and
18 approval process and then I'll come back and close out our
19 segment by talking a bit more about Section 811 in particular.
20 Mr. Loeb.

21 MR. LOEB: Thank you, Dan. Good morning, it's nice
22 to be here. In terms of the justification and approval process
23 or what we call the J&A process, it's fairly detailed. It's
24 covered in the federal acquisition regulation 6.3. So in the
25 interest of, you know, brevity, I'm not going to go through

1 everything, just kind of try to discuss some of the high
2 points.

3 A J&A document is a contracting document, which
4 details the rationale for not obtaining competition for non-
5 competitive contract awards and the contracting officer cannot
6 mince negotiations unless they justify in writing the reasons,
7 certify the accuracy and completeness of the justification and
8 obtain necessary approvals and that depends on the dollar
9 value, which I'll talk about in a couple of minutes.

10 In terms of when is a justification and approval
11 required, and it's a statutory requirement which details seven
12 rationale (sic). One is if there's only one responsible
13 source. Another is unusual and compelling urgency. Authority
14 and industrial mobilization, engineering development or
15 research capability or for expert services, international
16 agreement that could be a treaty, authorize or required by
17 statute. That's one of the things we're talking about today,
18 national security, and then the last one is public interest,
19 and this one can be used only if one of the other six is not
20 relevant.

21 When is a J&A not required? Well, if you have full
22 and open competition, there's no need for a J&A, situations
23 when FAR Part Six does not apply and that basically is what Dan
24 mentioned about simplify acquisition procedures, the dollar
25 value is small, where it's expressly authorized by statute,

1 again, that's what we're talking about today, contract
2 modifications that have been priced in the initial award and
3 orders placed under definite quantity as in delivery order
4 contracts.

5 The other time when a J&A is not required is when you
6 provide for full and open competition after (indiscernible -
7 speaking softly) of sources and the set aside program is an
8 example of this. There's also set asides for emergencies.

9 When we talk about a J&A, there are very specific elements that
10 must be contained and I'm going to skip most of the details,
11 but it must identify the statutory authority to be other than
12 full and open competition. That was what I just indicated, one
13 of those seven exceptions.

14 The other thing that must be contained is a
15 demonstration that the contractors' unique qualifications or
16 nature of the acquisition requires use of the authority,
17 explain the effort made to ensure that offers are solicited
18 from as many potential sources as practical and determination
19 by the contracting officer that the stated cost of the
20 procurement to the government is fair and reasonable.

21 Another element of the justification is what actions
22 that the agencies claim to take to remove the obstacles or the
23 barriers to obtaining competition and then the contracting
24 officer must certify that the information included in the J&A
25 is accurate to the best of the contracting officers' knowledge

1 and belief.

2 When we get into the issue of approval for the J&A,
3 depending on the dollar value, there are different officials
4 that must be involved. If it's less than \$650,000, that can be
5 done by the contracting officer. Then there are different
6 levels the agency competition advocates, the head of the
7 procuring agency and if it's above 62.5 million dollars, it has
8 to be done by the senior procurement executive of the agency.

9 One last thing about J&As, is the purpose for the J&A
10 in terms of notification is we want to have transparency and
11 publicize the fact that a sole-source or a limited source
12 action was taken. So the requirements are that the J&A must be
13 published in the Fed Biz Ops, which is publically available and
14 is a government point of entry for contracting opportunities
15 and there is a period of time which it must stay there, which
16 is 30 days and there are some exceptions for national security
17 and things of that nature, but the purpose is so people know
18 what is being done and they tend to look at this and see if
19 there is anything further to look at and that pretty much is
20 what I.....

21 MR. GORDON: Thank you very much. I appreciate it.
22 I'm going to talk a little bit about Section 811 and it may be
23 helpful if you actually have a look and follow along. This is
24 the fourth page, the back of the second sheet that got handed
25 out. If anybody doesn't have a copy, as I said, we do have

1 extra copies made aside and Suzy (indiscernible - speaking
2 softly) is happy to give you a copy.

3 I think as we're looking at the detail of the text,
4 it's very short and there are some parts that I think we can
5 help decipher that must be mysterious to people that don't live
6 deep, deep inside the beltway and I will try to make this as
7 clear as I can, but again, your questions as we go through the
8 discussion sections are very welcome.

9 Everybody has this one here? First of all, why is it
10 called Section 811? Every year we have a National Defense
11 Authorization Act, NDAA, that gets passed or at least almost
12 every year it gets passed. Actually, we functioned without
13 one, but there is almost always a National Defense
14 Authorization Act.

15 It is a part of the whole appropriations process. So
16 that for DOD, as for every other agency, like OMB, GSA and SBA,
17 there is an appropriations act and an authorization act, at
18 least in theory. They don't -- again, we don't always have
19 authorization acts. For reasons that I don't know, but maybe
20 somebody else knows better than I, the
21 NDAA became a vehicle many years ago for government-wide
22 provisions.

23 That's why you have sitting in a defense bill a provision
24 that applies across the entire Federal Government and again,
25 for reasons that I don't know, but it is certainly true, it is

1 the 800-series of your bill, Title 8, I guess it's called, of
2 the bill that always gets the acquisition provisions.

3 So that for example, all of my colleagues here are
4 very familiar with Section 803. It is something, by now it is
5 probably five years old and it is very important in terms of
6 the way certain things happened in the acquisition system years
7 ago. It was Section 803 of that year's National Defense
8 Authorization Act.

9 Last year's NDAA included Section 811, that's the
10 provision we're talking about again, notwithstanding the fact
11 that it's in a defense bill, it applies government-wide, which
12 is perfectly normal.

13 If you scan down the page, you're going to see three
14 sections. I'm going to say a little bit about each one and
15 then I'm going to go back to the top. The first one is In
16 General. Although it's called In General, in fact, this is
17 very important. This is the essence of what the bill is doing.
18 We'll get back to it in a second.

19 The second Section (f), a subsection, I guess,
20 Elements of Justification, this goes to the J&A issue that Ed
21 Loeb framed for us and what's most notable here, and we will
22 come back and look at it, is that the requirements for these
23 J&As are different and shorter than the requirements for the
24 J&As that Ed Loeb talked about, an issue that we're happy to
25 hear your input on.

1 The third, classic Washington, is a series of
2 indecipherable, incomprehensible definitions. Don't you love
3 it when something is labeled a definition and the one thing it
4 doesn't make clear is what it's saying, unless you've got a
5 lawyer next to you to walk you through it. Let me do that in
6 brief.

7 In the definitions, number one, covered procurement
8 is essentially saying 8(a) contracts. Although, it does it in
9 a very obscure way. Among other things, the reason there's a
10 capital A and a capital B under the definition of covered
11 procurement is that in our complicated procurement system there
12 are -- there is a separate place for our laws where we talk
13 about defense procurements. That's in Title 10 of the United
14 States Code.

15 That's why Capital A is there and Capital B is
16 talking about civilian agencies, procurements which happen to
17 be located in Title 41 of the U.S. Code. None of that matters.
18 What's worth remembering is that the covered procurements refer
19 to 8(a) contracts.

20 Number two, the head of the agency, we really don't
21 need to worry about. That part is clear and is parallel to
22 what Ed Loeb was talking about in terms of who has to approve
23 the justification for sole-source and number three, again, we
24 don't need to worry about the appropriate official.

25 Now, I want to go back to the top, In General. Not

1 later than 180 days after the date of the enactment of this
2 Act, we discovered that in an earlier consultation session
3 there was some confusion about this. People thought that meant
4 that there had to be 180 days notice before there could be a
5 sole-source contract. That is not the case.

6 What this is saying is somewhat different. This is
7 telling the FAR council, that's us, that the regulation
8 implementing Section 811 has to be completed within,
9 essentially six months of the date that the bill was passed.
10 Well, the bill was enacted in October 2009. You won't be
11 surprised or I hope shocked to hear that the 180 days has gone
12 by and we have not completed this process.

13 That happens, unfortunately, more than it should, but
14 just to give you a flavor for what causes the slowness, it's
15 not only because the issues are complicated or because we want
16 to hold Tribal consultations, it can also be because of
17 intervening events. To give you an example of what Linda
18 Nielson was referring to, Congress passed an Iran Sanctions Act
19 a few months ago and said we need to implement regulations
20 within, I think it was 90 days.

21 MS. NIELSON: Very quickly.

22 MR. GORDON: What was it?

23 MS. NIELSON: Very quickly.

24 MR. GORDON: Very quickly, so we had to stop what we
25 were doing and focus on the Iran Sanctions Act. We will

1 implement regulations on Section 811, but it will not be within
2 180 days of enactment. The federal acquisition regulations
3 shall be revised. That is exactly what the FAR Council does.
4 We change the FAR. That is the FAR that we're referring to
5 here and the statute tells us that the revisions to the FAR are
6 to provide that the head of an agency may not award sole-source
7 contracts and head of an agency (sic), actually you don't need
8 "the" word, but here it simply means an agency shall not award
9 a sole-source contract in a covered procurement.

10 We know from the bottom that means an 8(a) contract
11 for an amount exceeding 20 million dollars, unless, and here
12 are the three conditions. If there is to be a sole-source
13 contract to an 8(a) contractor above 20 million dollars, the
14 three conditions are; 1) there has to be a justification in
15 writing, that's number one here, 2) it has to be approved by
16 the appropriate official, and 3) it has to be public. Those
17 are the three conditions.

18 Then in B, you are told at what justification, and
19 again, in our slang we tend to call it, what that J&A has to
20 include. The justification has to include the five elements
21 that are listed there and I will quickly point out that the
22 fifth one is a very general provision. It's a little bit
23 surprising that it says, the justification shall include (sic).
24 If you jump to number five, you'll see that it says such other
25 matters that the agency head shall specify, a very general one,

1 but the first four are worth going over briefly and I'm sure
2 that many of you will want to comment on them.

3 The first one says you have to describe the needs of
4 the agency for the goods and services being procured,
5 essentially. The second one says you need to specify the
6 statutory provision you're relying on. You can't do a sole-
7 source without having a statutory basis and you need to specify
8 that justice and the J&As that Ed Loeb talked about.

9 Number three is one where we're particularly
10 interested in your input, a determination that the use of a
11 sole-source contract is in the best interest of the agency
12 concerned and number four, a determination that the anticipated
13 cost of the contract will be fair and reasonable. Number four,
14 I should tell you, is consistent with the federal approach.
15 The Federal Government is prohibited by law from entering into
16 a contract unless the price is fair and reasonable and number
17 four echoes that requirement.

18 With that, Madam Co-Chair, I think we're going to
19 wrap up our side and tell you that, not only are we delighted
20 to be here, but we're delighted to be here especially at the
21 time of the convention, which is quite a treat for us and we're
22 hoping that we'll even get a chance to enjoy some of the
23 activities of the AFN Convention, which are an honor for us to
24 be present for. The mic is yours. I'm going to turn my mic
25 off. Thank you.

1 CO-CHAIR JOHNSON-PATA: Yes, thank you, and you know,
2 I remember the very first time that they did this presentation
3 in Washington, D.C., and even though they said, everybody in
4 the room knows it, it actually is just a wonderful, very
5 concise refresher and I like the fact that you are so concise,
6 particularly, like you know, the important information that
7 Linda and Ed shared that I remember I was just making notes to
8 myself again and the first time, I really want a copy of their
9 PowerPoint notes because we could use them for other things
10 because it was just so succinct and I really appreciate that.

11 For those of you who signed in, and I recognize a lot
12 of people that I personally know in this audience who haven't
13 signed it, I'm urging you to sign in. It's a good record of
14 who attended and secondly, there are a lot of folks who signed
15 in who didn't say one way or another if you wish to speak. So
16 I'm letting you know right now, you can change your mind at any
17 time.

18 We found in the very first session that I had only a
19 few people who wished to speak and after a little bit of urging
20 almost quite a few did and so we will continue to do that. So
21 if you didn't sign in and you wish to speak and you want to
22 make sure that I know it, either let me know, raise your hand,
23 slip me a note or go over and sign in on the other sheet of
24 paper that's over there.

25 I'm going to start with the folks who absolutely said

1 coming to this meeting that they wanted to speak and then I'm
2 going to start urging you after that. Also, I want to remind
3 folks that if you look at the back of the Agenda once again,
4 here are some of the questions. I know some of you who have
5 prepared remarks, but you may want to speak to some of these
6 questions and so this is a good little sheet for you to go off
7 of if you want to give some unprepared remarks for today's
8 session.

9 So today, the order for the first three speakers that
10 are the first three yeses -- we're going to start with Clyde
11 Gooden. He is from Nana Corporation. Clyde, I see him over
12 there, and then we're going to go to Sarah Lukin from NACA and
13 then Ron Perry right after and so I could have the first two
14 speakers just come up here and I'm going to let you use this
15 microphone. You can sit right here and we have a microphone
16 for you. I hope that works.

17 MR. GOODEN: So this is not karaoke, right?

18 CO-CHAIR JOHNSON-PATA: No, but if you'd like to
19 entertain us, you may.

20 MR. GOODEN: Well, I wanted to thank everybody for
21 coming up to my hometown to visit with us. It is a great time
22 of the year to be here. Come in January and you'll see another
23 side of Alaska. I do encourage you to do that. Can everybody
24 hear me? Do I need the mic? Can I do away with the mic?

25 CO-CHAIRMAN JOHNSON-PATA: No, the transcriber needs

1 the mic, sorry.

2 MR. GOODEN: Okay, bleep out any of my language I
3 might slip in here, sorry. My name is Clyde Gooden. I
4 represent Nana Regional Corporation and Nana Development
5 Corporation. Nana Development is the business arm of our
6 regional corporation. We are owned by over 12,000 Alaskan
7 Eskimos. I am proud to say that I am one of those shareholders
8 as well.

9 Again, I wanted to thank you for coming to Fairbanks
10 to discuss these issues that we have in here and more
11 importantly, it's exciting for me because it is my hometown. I
12 was born and raised here. It's also where I was raised and got
13 my business background.

14 I started my career early on in Fairbanks working.
15 My family was quite poor back then. So I started with a paper
16 route and it wasn't long before all of the collection that I
17 made with the paper route -- I stole the money. I spent it. I
18 had a ball with it. Every candy store around town, I was
19 there.

20 So I was fired by the publisher of the paper, C.W.
21 Stanton. I don't know if guys know him, but he did me a favor.
22 He didn't just throw me out with the wash. He wanted to train
23 me, to mentor me in business. So he brought me into the "News
24 Miner". He gave me direction under his wife -- wow. She
25 really worked my tail off and I paid off that debt, the money

1 that I stole. He saw something in me that was -- I didn't know
2 was there. It was about my ability to look at opportunities,
3 to understand some thoughts of business.

4 I was blessed to stay with the "News Miner" for over
5 10 years. I was elevated to a number of positions within the
6 organization and I have to say that without that mentoring that
7 C.W. gave me, I wouldn't be where I am today.

8 In that same way, I think the SBA Program is doing
9 that for the Native people in the small businesses across the
10 country. It is providing a hand-up, not a hand-out. 811,
11 however, may have some chilling effects on people like us and
12 that's partly what I want to talk about today. I think we all
13 understand that 811 came in the middle of the night.

14 It came in on a rider that had no comment, had no
15 time for us and members of Congress to talk about it, to
16 understand the intent of it. So it had some concerns for us
17 and that's why we're here today, and again, I thank you for
18 being here.

19 According to Eagle Eye, some of the statistics that
20 they threw out were quite amazing to us and less than three
21 percent of all of the federal contracts are in the 8(a) arena
22 and Section 811 applies to the Native businesses that are
23 carrying less than 1/3 of that. So quite honestly, the
24 question that comes to mind is; why would we be under scrutiny
25 for less than one percent of all of the federal procurement?

1 Regardless of the process leading to this enactment,
2 I understand the process of today's consultation is to discuss
3 the right path to implement the law. At the onset, however, I
4 must share with you I believe it should be repealed. I think
5 this provision is confusing and currently being misunderstood
6 and misapplied by the professionals who do not understand the
7 difference between justification and approval and a cap.

8 In addition, these professionals will continue to do
9 so until clarification is provided. Through the intent of
10 Section 811 is a requirement that justification and
11 authorization on sole-source contracts are over 20 million.
12 Many contracting officers today perceive this as a cap on sole-
13 source awards. There's no clarity about whether the 20 million
14 limit is for the life of the contract or just one year. For
15 those Native contractors participating in the 8(a) Program,
16 this adds another layer of oversight.

17 Had Section 811 been part of the regular legislative
18 process, some of these problems might not have been -- or might
19 have been avoided, my apologies, but instead, this section was
20 slipped in without debating of the Congress members, let alone,
21 public comment.

22 It will increase -- I'm sorry, it will decrease
23 opportunities for Native companies to do work with the Federal
24 Government, thus limiting a mechanism that helps the Small
25 Business Administration and the Federal Government meet the

1 small business goals. If Section 811 is not repealed, we
2 propose the following specific clarification for the FAR
3 Council to address in this regulation; clarify that the 20
4 million threshold for justification and authorization applies
5 only to the base year of the contract.

6 We understand from our interactions with members of
7 Congress that the original intent was for the base year. This
8 would be an appropriate level. Make clear that the elements
9 for justification and authorization of Section 811 are the five
10 elements set forth in statute Section 811(b).

11 Make clear that the determination of the best
12 interest of the government's use of sole-source awards is
13 directly related to the government's statutory requirement to
14 meet small business goals. Clarify that Section 811 is not a
15 cap on sole-source awards, but a requirement for justification
16 and authorization.

17 I take great pride in working for Nana. Our
18 corporation has learned a lot since doing federal contracting
19 work, but I would also like to point out that it has not come
20 easy. There was a tremendous learning curve on our side on
21 understanding with working with federal customers. There was a
22 considerable investment on our side and it took some time
23 before we started to see that return.

24 We do consider the Native 8(a) Program a successful
25 program. It has worked well for us and much needs to be done

1 to improve the program by use of Native enterprises and
2 oversight by the government. We are currently awaiting the new
3 program regulations from the SBA and believe that these new
4 regulations will be a major step forward.

5 For example, we advocate for greater parity among the
6 three Native Americans, the Tribes, Native Hawaiians and Alaska
7 Native Corporations. Participation in the 8(a) Program has
8 provided Nana the opportunity to grow and learn. It has led to
9 a successful education and mentoring of many of our
10 shareholders.

11 Our mission is to improve the quality of life of our
12 people by maximizing their economic growth, protecting our
13 lands, and promoting healthy communities. 8(a) is helping us
14 do that. The tangible benefits include the large part of the
15 8(a) revenues.

16 Here are some of the statistics that I'd like to
17 share with you. In both 2008 and 2009, more than 100% of our
18 consolidated net income was set aside or distributed to our
19 shareholders. In 2008, alone, it included 32.5 million, which
20 was set aside to fund an endowment that earnings from would pay
21 for ongoing dividends to our shareholders over the age of 65.

22 In 2009, Nana paid over 44 million in wages to our
23 shareholders. Also in 2009, we contributed \$640,000 to our
24 education fund for our shareholders and today, we employ more
25 than 1,100 of our own shareholders.

1 Through our work in federal contracting, we have
2 learned skills as a company. We have earned the respect of our
3 clients. We have been able to use our profits for the direct
4 benefit of our shareholders and to strengthen our corporation.
5 The financial success from our participation in the government
6 contracting has enabled Nana to further diversify into other
7 business lines.

8 Because of the nature of government contracting, with
9 the work taking place around the world, many of our
10 shareholders choose not to travel outside of Alaska, their
11 home. It's these other business lines that have been able to
12 allow us to employ our shareholders and give them new training.

13 The income that we've gained from, and the knowledge
14 that we've gained from our government contracting has helped us
15 continue to grow our business entities. It allowed us to look
16 at diversification, other than government contracting. We do a
17 lot of commercial endeavors right now and it's allowed us to
18 employ a lot of our people, but you know, we're also concerned
19 about the new organization that is coming into the government
20 contracting. They have yet to have a chance at some of these
21 opportunities that we have had.

22 I'd like to share with you a couple of examples that
23 Nana has done with its success. We've taken our revenues and
24 we've created a multimillion-dollar facility in the North
25 Slope. If you've not been to the North Slope, it is the

1 location where I believe six percent of the world's oil comes
2 from. It comes across the land.

3 We see great opportunities in the commercial arena.
4 The revenues that we've gained here in the government
5 contracting allowed us to build a large facility out there that
6 we could continue to expand our relationship with the oil and
7 gas business in Alaska and create more jobs for our people.

8 In our hometown, our hub, Kotzebue, it's a community
9 of about 4,000 people. We were asked by our shareholders to
10 build a new hotel. So we have under construction the Nullagvik
11 Hotel and hopefully, over the next couple of years, we'll have
12 it completed and it's all being paid cash (sic). We will not
13 be in (indiscernible - speaking softly) opportunity and again,
14 through our contracting agency we've been able to do that.

15 We've also opened a hotel in Anchorage, the
16 Springhill Hotel, which is close to the Native Hospital where a
17 number of our folks from around the state come and visit and
18 we've also included in that hotel, some transportation to get
19 our people back and forth.

20 Some of the factors that our government partners have
21 to consider is the best value to them and to other government
22 managers. Sometime the best value is expedience, as well as
23 supporting small business goals. Excuse me. President Obama
24 has said that small businesses are the heart of the economy and
25 OMB (indiscernible - speaking softly) for the economic

1 recovery.

2 When considering the use of sole-source contracts,
3 agencies should ask themselves if the contractors are, in fact,
4 small business. Native 8(a) contractors are small business and
5 we provide benefits to our shareholders, which are a community,
6 not an individual person.

7 Past performance is a critical indicator for a
8 contractor's ability to perform on future work. We should be
9 judged by whether or not our work created value to our
10 customers by providing that best value. While an initial sole-
11 source award may help us get established and build a reputation
12 for solid work and a fair market value, ultimately, we know
13 that we have to compete for the work.

14 One of the things that we have realized is it's best
15 value to the customer to provide them quality service as well,
16 but one of our companies won a sole-source award at West Point
17 and we realized early on what our customer wanted. We stood up
18 for everything that supported everything that they needed and
19 we did learn a lot and today, we're still at West Point. We're
20 not competing on an open market and it is our past performance
21 in those projects that have allowed us to continue to win that
22 area.

23 The FAR Council has a difficult mandate for it to
24 write regulations that implement the section of statute that is
25 unclear. I would like to put forward that while every process

1 can always be improved, the government has been well-served in
2 the current system. We welcome clarifications, enhancements
3 that will develop as part of a Tribal consultation process more
4 information and education to us.

5 With that said, I have sat across the table from
6 government procurement officers. These professionals
7 understand procurement law, regulation, market focus, sole-
8 source prices are negotiated and not dictated and every
9 contractor undergoes a comprehensive review to ensure the
10 government receives a fair and reasonable price.

11 As part of the government's general focus on
12 improving contracting across the board, we welcome the
13 government's commitment to ensuring that there are adequate
14 members of contracting personnel from enhancing their -- and
15 enhancing their training generally. For Native 8(a) to
16 continue to meet objectives set forth in law, training for
17 contractor officers is extremely important.

18 As individuals go through our corporations and
19 through membership organizations, such as the Native American
20 Contractors Association, National Congress of American Indians
21 and the National Center for American Indian Enterprise and
22 Development, we work closely with the Small Business
23 Administration to improve the 8(a) Program.

24 We believe that once the new SBA 8(a) regulations are
25 published, there should be a government-wide effort to ensure

1 that the contracting officers understand the program and the
2 new regulations.

3 In closing, let me say that Native 8(a) contracting
4 is working. Few other federal programs have been set up to
5 help Native Americans have this degree of success. Without
6 clear regulatory guidance, Section 811 has the potential to
7 stop the progress that we've already achieved. I'd like to
8 thank you for coming to Fairbanks. It's wonderful to have you
9 here. I look forward to seeing the draft regulations and more
10 importantly, we look forward to having some input as it comes
11 down. Thank you.

12 CO-CHAIR JOHNSON-PATA: Thank you, Clyde. I
13 appreciate your comments. I know that generally (indiscernible
14 - speaking softly) and those who have written statements, you
15 can also submit those and you have the guidelines for
16 submitting those written statements. Sarah.

17 MS. LUKIN: (Speaking Native language). Hello. For
18 those of you who may not know me, my name is Sarah Lukin. I'm
19 Alutiiq from the Native Village of Port Lions, which is a
20 remote community located in the Gulf of Alaska.

21 I'm an enrolled Tribal member of the Native Village
22 of Afognak, the Native Village of Port Lions and Alaska Native
23 shareholder of Koniag, Incorporated and Afognak Native
24 Corporation, but I live and work in Washington, D.C. today,
25 where I serve as the Executive Director of the Native American

1 Contractors Association or NACA.

2 NACA is a national labor organization that advocates
3 for the rights of Tribes, Alaska Native corporations and Native
4 Hawaiian organizations in government contracting and in
5 particular, their participation in the SBA 8(a) Program.
6 Currently, NACA's membership consists of about 48% Tribal
7 enterprises, 49% Alaska Native corporations and three percent
8 NHOs.

9 Collectively, NACA's members perform government
10 contracts in all 50 states, several U.S. Territories and
11 foreign countries, employing thousands and bringing the
12 benefits back to their approximately 475,000 Tribal members,
13 Alaska Native shareholders and Native Hawaiian members.

14 I'd like to take a moment to thank the FAR (speaking
15 Native language) for your willingness to hold this series of
16 Tribal consultations and engage the Native enterprises in a
17 dialog prior to the drafting of a regulation that will
18 dramatically affect the future of our Native enterprises and
19 our Native economies and I would be remiss if I didn't
20 acknowledge the SBA team, who has been at each of the FAR
21 Council Tribal consultations to support Native enterprises
22 throughout this process. (Speaking Native language). Thank
23 you very much.

24 Participation by ANCs, Tribes and NHOs in the 8(a)
25 Program did not occur on a whim. There is a long history tied

1 to Federal Indian policy on why we enjoy the special rights
2 under the 8(a) Program that we do. Today, I'm going to be
3 sharing a bit of that history, along with recommendations on
4 the implementation of Section 811 to put Native 8(a) into
5 context as the FAR Council looks to implement Section 811.

6 In the 1960's, the Federal Government began to look
7 closely at Alaska and Alaska Native people after it was
8 discovered that Alaska held within its boundaries billions of
9 barrels of oil that America desperately wanted to develop.
10 Before development could occur, the Federal Government had to
11 settle the land claims of thousands of Alaska Native people.
12 In 1971, after years of negotiation.....

13 (Loud noise.)

14 MS. LUKIN: Am I holding this too close?

15 THE COURT REPORTER: No. I don't know what the
16 problem is.

17 MS. LUKIN: In 1971, after years of negotiations, the
18 Alaska Native Claims Settlement Act or ANCSA was passed by
19 Congress and signed into law. It was the only settlement of
20 its kind between Native peoples and the Federal Government.
21 Under this settlement, Alaska Natives forfeited aboriginal
22 title to 88% of our traditional lands.

23 Congress designated Alaska Natives lifetime owners or
24 shareholders of community-owned corporations, Alaska Native
25 Corporations and promised economic development opportunities to

1 help our people succeed. For generations, our Native people
2 have suffered in third-world living conditions, faced racism,
3 chronic social ills, off the charts in comparison with other
4 Americans, like devastatingly high suicide rates, teen
5 pregnancy, drug and alcohol abuse and lack to basic
6 infrastructure that other Americans have enjoyed and it is
7 because of this.....

8 (Loud noise.)

9 MS. LUKIN: And it is because of this that it became
10 clear in the 1980's, through countless academic reports,
11 studies, Congressional investigations and hearings that Alaska
12 Natives still faced severe socioeconomic issues and that there
13 were settlement defects in ANCSA that required amendments to
14 better help address the socioeconomic needs of Alaska Native
15 people.

16 In response to this, Congress amended ANCSA twice to
17 include Native 8(a). First, to provide that ANCs would be
18 considered minority business enterprises and second, to make it
19 clear that these entities would be considered economically
20 disadvantaged. This was consistent with the Indian Commerce
21 Clause of the United State Constitution, numerous federal laws
22 and Supreme Court decisions all clearly showing that Federal
23 Government has unique obligations to Native Americans to foster
24 economic development.

25 Clearly, Congress included Tribes, ANCs and NHOs in

1 the 8(a) Program as part of fulfilling their obligation to
2 Native people. Considering that the ability to pursue sole-
3 source contracts through the 8(a) Program is an integral part
4 of Federal Indian policy and ANCSA, we question what is going
5 to be provided to Alaska Natives in exchange for any
6 restrictions to Native participation in the 8(a) Program.

7 Remember, we gave up 88% of our traditional lands
8 worth trillions of dollars. What more must we surrender at the
9 whims of a few misguided members of Congress or shifts in
10 Administration priorities?

11 Section 811 was slipped into the National Defense
12 Authorization Act or NDAA for fiscal year 2010. A must pass
13 defense bill, but it had government-wide application. Congress
14 did not intend Section 811 to be a cap on sole-source contracts
15 for Native-owned 8(a) enterprises. Such legislation would be
16 unfair and would unjustly penalize Native enterprises that had
17 properly used these tools as passed into law by Congress to
18 further the economic self-sufficiency of our Native
19 communities. Capping sole-source contracts would be
20 inconsistent with decades of federal Indian policy.

21 Since the passage of Section 811, NACA has pounded
22 the halls of Congress urging for its repeal because we knew
23 Native enterprises would experience a chilling effect. Not
24 surprisingly, we have seen several Native enterprise contract
25 negotiations stalled or stopped altogether as contracting

1 officers raised concern over Section 811, calling it a 20-
2 million-dollar cap on Native 8(a), and Section 811 isn't even
3 implemented yet.

4 During the recent New Mexico Tribal Consultations,
5 the FAR Council noted that it will be several months and
6 upwards of a year before Section 811 is implemented. We are
7 truly grateful that the FAR Council is following the
8 appropriate process to ensure proper implementation of Section
9 811, and while we wait for the finalization of the FAR
10 regulations on Section 811, NACA urges the OMB and FAR Council
11 to immediately send a memorandum to government agencies clearly
12 explaining that Section 811 has not yet been implemented and
13 contracting with Native 8(a)'s should be held at the status quo
14 until directed by the FAR Council through regulation.

15 NACA has advocated for clarification that the 20-
16 million-dollar threshold in Section 811 applies only to the
17 base year or annual amount of the contract. I keep hearing
18 concern over this approach. Folks say that this has never been
19 done before and with no precedent, it isn't feasible.

20 I will note that Section 843 of NDAA, FY2008 included
21 a parenthetical expression, "including all options" when
22 establishing certain restrictions on the award of the task or
23 delivery order contract in an amount estimated to exceed 100
24 million, again, Section 843 of NDAA, 2008.

25 Notably, Congress admitted options in its 20-million-

1 dollar threshold figure under Section 811. Had Congress
2 intended agencies to include options in the calculation of the
3 20-million-dollar threshold, it would have included specific
4 language indicating so.

5 Much concern has been raised over sole-source
6 contracting in recent years. Most of that concern has been
7 regarding the cost to the government and the value to the
8 American tax payer. Additional training for contracting
9 officers, reporting and oversight will address these concerns.
10 In recent months, we have seen increased transparency in the
11 contracting process and NACA applauds that, but we caution the
12 "all or nothing approach" to contracting reform and we strongly
13 oppose disproportionate and irrational reforms to Native 8(a)
14 to address sole source contracting when combined ANC, Tribal
15 and NHO sole-source contracting represents 8/10th of one
16 percent of the federal contracting pie.

17 Sole-source contracting has its place and its
18 purpose. It provides contracting officers with an optional,
19 yet effective and cost saving tool. These contract actions
20 provide many benefits to agencies, including lower
21 administrative costs, efficiency in awarding urgent contracts,
22 and allow for agencies to negotiate directly with awardees to
23 receive the best value.

24 Under competitive contracts, the scope of work is not
25 negotiated. So contract changes often occur when circumstances

1 arise that were not considered by the original contract,
2 raising the price to the government substantially. In the
3 competitive process, offers of G&A or general and
4 administrative costs are not negotiated and contractors often
5 build in larger margins to protect themselves from unforeseen
6 contingencies.

7 Sole-source contracts, on the other hand, require
8 careful negotiations between the Federal Government and the
9 contractor as to price and scope of work to ensure the
10 government gets exactly what it needs and wants at a negotiated
11 price that results in the best value to the tax payers. The
12 entire sole-source process is documented and scrutinized by the
13 Defense Contract Agency and I'll note that I, actually, have
14 several members who have an office dedicated in their building
15 just for the DCAA, because the DCAA visits so frequently.

16 For every procurement, including sole-source
17 contracts, the contracting officer must certify that the
18 government receives fair and reasonable value and that the
19 final contract is in the best interest of the government.
20 Agencies do not enter into these contracts lightly, especially
21 given the government's budgetary restrictions.

22 At any point in the negotiation process, the Federal
23 Government can walk away from the table if it feels fair and
24 reasonable value is not achieved. In other words, if the
25 government is ultimately dissatisfied with how the negotiations

1 are proceeding, they have the benefit of learning the process
2 and then retreating to a competitive bid process.

3 (Speaking Native language). Thank you for the
4 opportunity to provide some history, recommendations on the
5 implementation of Section 811 and prospective on Native
6 participation in government contracting. In addition to the
7 recommendations I provided today, NACA has also submitted
8 formal written comments, oral comments of the D.C. and New
9 Mexico Tribal Consultations and I will note for the FAR
10 Council, we do intend to submit additional written comments
11 prior to the November 1st deadline. (Speaking Native
12 language). Thank you very much for your time.

13 CO-CHAIR JOHNSON-PATA: Thank you, Sarah, and I still
14 think it's helpful to have NACA (indiscernible - room noise) at
15 each of these conversations and it sets the tone and it shares
16 the information for those who weren't able to attend the other
17 sessions.

18 Right now, before we go to break, which is what's
19 next on the schedule, I just want to check in with our
20 Administration folks to see if they have any comments or
21 questions of the two speakers and if not, we will go to our
22 break and after break, we will start back up and I -- how long
23 do we want to take a break for? Let's take a 10-minute break
24 this time and then we'll adjust and then after that, we will
25 start off with the next two speakers, which is going to be Ron

1 Perry and Geri Simon. Any comments?

2 MR. GORDON: I'm not sure that I have any questions.
3 Although, I do want to say that hearing from both of you was
4 very helpful to us and Mr. Gooden, if I would point out that I
5 also had a paper route. My paper route didn't end any better
6 than yours. I could tell you embarrassing stories about that,
7 but from our point of view, it is very helpful to hear about
8 the context in terms of impact of the 8(a) Program on your
9 shareholders. It is important for us to hear about the
10 successes that you have seen and it is useful for us to hear
11 your concerns about the potential impact, including unintended
12 impact of Section 811 as well as your recommendations for the
13 way the FAR provisions should actually read.

14 Obviously, we're not here to decide those issues, but
15 hearing your views on each one of the issues, whether it's the
16 best interest or the meaning of the 20 million dollars, each
17 one of those, it is very helpful for us to hear and we very
18 much appreciate the time you both take in making those
19 presentations. Do any of my colleagues want to say anything?
20 In that case, we'll thank you for your presentations.

21 CO-CHAIR JOHNSON-PATA: So we're going to take a 10-
22 minute break right now and during the break, I would encourage
23 those who have now decided that they would like to make a
24 statement to come and let me know so I can get that down or if
25 you haven't signed in, please feel free to jump in and sign in.

1 (Indiscernible - speaking softly) I'm looking at you there and
2 Janice (sp) and others in the room that I know that I still
3 don't see your names on here and then we'll see after the
4 break. Thanks.

5 (Off record 10:23 a.m.)

6 (On record 10:36 a.m.)

7 CO-CHAIR JOHNSON-PATA: I did get some other folks to
8 sign the list, feel free to sign in if you haven't signed in
9 yet today and if you would like to speak, make sure that you
10 put that on the information here and others of you in the hall,
11 we'd like to go ahead and get started. If you could please
12 come back in? We would appreciate that. Geri, Geri Simon.

13 UNIDENTIFIED SPEAKER: She's attempting to get her
14 (indiscernible - too far from microphone).

15 CO-CHAIR JOHNSON-PATA: Okay. Geri Simon and Ron
16 Perry, do you want to do yours now or Ron?

17 MR. PERRY: What?

18 CO-CHAIR JOHNSON-PATA: Did you want to do yours now
19 or did you want to.....

20 MR. PERRY: Later.

21 CO-CHAIR JOHNSON-PATA: You want to wait until a
22 little bit later.

23 MR. PERRY: Yes.

24 CO-CHAIR JOHNSON-PATA: And we'll be a little easy on
25 the (indiscernible - speaking softly).

1 MR. PERRY: All right, I'm used to that.

2 CO-CHAIR JOHNSON-PATA: Okay. So I'm going to have
3 Geri Simon and then Lucille Mayer, and yes, and please, if you
4 guys would introduce yourselves for the record, I appreciate
5 that, thanks.

6 MR. GORDON: If that mic causes trouble, I'm going to
7 give you mine.

8 MS. SIMON: Yeah (affirmative), it' blinking, so.

9 CO-CHAIR JOHNSON-PATA: Is it?

10 MS. SIMON: It's speeding.

11 MR. GORDON: Why don't you just take mine?

12 MS. SIMON: Good morning, all. My name is Geri
13 Simon. I am here on behalf of Tyonek Native Corporation, where
14 I serve as the general counsel. While I'm not a shareholder of
15 Tyonek, I am a shareholder of the K'oyitl'ots'ina, Limited,
16 which is based here in Anchorage or Fairbanks, I'm sorry.

17 My Village is about an hour and ten-minute flight
18 northwest of here right on the Arctic Circle, center of the
19 state, but I had the opportunity to work for Tyonek in
20 Anchorage for the past three years. Tyonek is a Village
21 corporation created under ANCSA. It is in the Southcentral
22 region of the state.

23 It's about 45 miles from Anchorage and about a half
24 and hour flight on a 207. So it's just right across the water
25 there. There are no roads. You can take an ice road in the

1 winter, take your chances with that, if they build an ice road.
2 Otherwise, it's -- people have to fly in or barge the materials
3 in.

4 Tyonek started with the original enrollment of about
5 302 shareholders. Since then, they've opened the enrollment
6 process to allow additional shareholders in. Now, up to about
7 750 shareholders. Shareholders of Tyonek live in Anchorage, in
8 Tyonek, the Village, itself, and in the Kenai Peninsula area.

9 The enrollment and addition of the shareholders have
10 instilled pride in the beneficiaries of Tyonek and they've also
11 tied the kids to something bigger than themselves, the
12 community. Tyonek started the SBA program in 1998 and have
13 since grown to about 12 different subsidiary companies, not all
14 are 8(a) certified. Our companies are in 11 different states
15 and we employ approximately 900 people across the United
16 States.

17 Thank you for allowing me to deliver my comments to
18 you. I want to echo the comments of others that we appreciate
19 you coming up here, especially in October and listening to some
20 of the comments that we have to offer. Are you picking up the
21 static?

22 THE COURT REPORTER: No. What happened is she walked
23 away with the other microphone and they're out there and I can
24 hear them talking. If you could go let them know that we're
25 picking up whatever they're saying out there, that would be

1 great. Thank you.

2 UNIDENTIFIED SPEAKER: Ask them to speak a little
3 louder, please.

4 MR. GORDON: We're listening to what they're saying.

5 THE COURT REPORTER: I'm listening to you, though,
6 just speak louder.

7 MS. SIMON: Sure. Under the 8(a) Program -- has
8 brought many benefits to Tyonek, the community and the
9 beneficiaries, the shareholders. We have, first, some of the
10 successes, the management experience for the shareholder Board
11 of Directors. In the past three years, we've added a full-time
12 working President of the Board and Chairman, most recently.
13 Both of the members are gaining valuable leadership experience
14 in, not only corporate development, but managing a bigger
15 program on behalf of their shareholders.

16 As a side note, most of you have seen the "Washington
17 Post" articles commenting on the different leadership or
18 beneficiaries financially of ANCs who are not part of the
19 corporation. We, at Tyonek, are proud to say that our
20 leadership, executive management team and head of our
21 subsidiaries are either Alaska Native, American Indian or
22 married into families of Native Americans.

23 We have created 21 shareholder jobs in the Anchorage
24 home office with three additional internships in land, IT and
25 administration. Those internships are based in Anchorage and

1 in Huntsville, Alabama where our manufacturing line of business
2 is located.

3 The internships that we have created have allowed us
4 to hire these folks, some of them full-time permanent (sic) and
5 have gained them a foothold, if not with TNC, with other
6 businesses in Anchorage and in other places. TNC Board of
7 Directors are very proud of that accomplishment because it does
8 show that, again, the corporation is there for the community,
9 benefit of the community.

10 TNC has increased its annual scholarship funds to
11 over \$100,000 and the Board was able to create, like many other
12 larger ANCs, create a non-profit foundation. Just recently,
13 our Board of Directors at its quarterly meeting, again added
14 another \$25,000 to the endowment fund and also \$25,000 to the
15 operational fund for the Tyonek Foundation.

16 TNC has issued over 1.5 million dollars in dividends
17 since its beginning and again, yesterday, it had adopted a
18 resolution to pay a 60-dollar a share dividend to its
19 shareholders, which will be paid out in early December.

20 Shareholders use these funds to purchase snow
21 machines, vehicles, either for Anchorage or for in the Village,
22 fuel, food and other valuable goods and services and since the
23 dividend comes out in December, they all use it for Christmas
24 presents.

25 TNC has created an insurance program for its

1 shareholders. The Board of Directors I sit upon do not have
2 this type of benefit, but I really applaud Tyonek for offering
3 it. As many of you know, funeral costs are very high,
4 especially in rural Alaska where, not only do you have to
5 purchase everything in an urban setting like Anchorage or
6 Fairbanks, but you have to ship the body and then all of the
7 food and other materials that you need for the memorial
8 potlatch. So the shareholder insurance program that we have to
9 offer, there's help with that. In addition to us paying the
10 basic, about \$80,000 a year to the program, shareholders can
11 also purchase into the program so they can have a higher
12 funeral benefit.

13 TNC on a daily basis, sometimes weekly basis, will
14 make contributions to the community, to the Native Village, to
15 the youth and youth organized group called Open Arms for the
16 annual (speaking Native language) day for the Open Arms
17 gathering where the youth plan a weekend to honor the elders in
18 the community.

19 We also provide them air fare and hotel costs to the
20 Native Youth Olympics, to the Alaska Federation of Natives here
21 in Fairbanks and to other school field trips. These benefits
22 are not made only in the Village, but also in Anchorage so that
23 we do provide a greater benefit to all and in addition, for the
24 past three years, TNC has been a major donor to the Alaska
25 Federation of Natives Convention. Again, this past month,

1 we've contributed another \$25,000 to support the efforts of
2 AFN.

3 We have also contributed to the Project Grab Program,
4 which is a school-based program that helps the kids in the
5 community see more than just getting out of and finishing high
6 school. It helps them develop a life plan, whether that be
7 college, whether that be a training program, but it helps them
8 develop skills to last longer than just through the school
9 year.

10 One of the other benefits that we've been able to
11 gain from the 8(a) Program is that there are about 18 billion
12 dollars worth of energy projects in an around Tyonek lands.
13 While none of the projects are on Tyonek lands themselves, we
14 have the road and we have the port, so basically, folks have to
15 come through us, but we've been able to build the corporation
16 up strong enough so that we can actually sit at the table and
17 deal with the big companies and they listen to us.

18 So, at one point, I have to tell you a little side
19 story, at one point, well, the elders had told management be
20 prepared for folks who are going to come to the door. You have
21 to be in a strong enough position to say no, I mean financially
22 and in the leadership. About probably about six or seven years
23 ago, now, six or seven years ago, one of the folks that came to
24 the door and knocked on the door was the Chinese Government and
25 there is a big, huge coal deposit right near Tyonek lands.

1 They came and asked, looked at the area and said, this is, you
2 know, this is a great resource.

3 Two questions; where are all the people, meaning
4 people to work at the mine. The other is, how soon can you
5 move your Village, and the Village, the corporation was strong
6 enough financially and in the leadership capacity to say no.
7 This isn't where we want to go, but that's been one of the
8 benefits to Tyonek from the 8(a) Program.

9 With that said, those are the benefits that I can
10 cite to you from our numbers approach and from some practical
11 front line work. In terms of the comments on Section 811, I do
12 know -- I see there's enough lawyers in the room, besides
13 myself who have all of the technical comments written down. I
14 do want to make a couple of notes though.

15 One is that the cap, what is referred to as the cap,
16 has been treated as such. We have our folks, our manufacturing
17 line of business, our leadership there have met with
18 procurement officers who treat the 20 million dollars as a cap.
19 There's no J&A included. It's a cap. They've turned away
20 contracts and contract opportunities.

21 The other is that the sole-source J&A of 20 million
22 dollars does not allow for a differentiation between service
23 contracts and manufacturing contracts. As you know,
24 participants in the program can receive sole-source contracts
25 up to a ceiling of three million, 3.5 for goods and services

1 and 5.5 for manufacturing.

2 TNC does have a manufacturing line of business. We
3 are requesting that if a cap of sorts is put into place that
4 the FAR Council consider placing a higher cap on the
5 manufacturing line of business. As for our Services Division,
6 sole-source awards are far and few between anymore. Most of
7 the contracts we compete for are full and open and with this
8 latest round of -- with Section 811, it's even made it even
9 more obvious that folks are just not willing to go down the
10 road of sole-sourced contracts.

11 Under the elements of the justification and approval
12 of sole-sourced awards, one of the definitions under (3) is in
13 the best interest of the agency. We would request that be
14 broadly defined to include the advancement of Federal Indian
15 policy. Right now, it's kind of subjective, but we would
16 really encourage you to make it broad enough so that it does
17 allow for that.

18 I think Sarah made a real good case with the history
19 of what we, as Alaska Natives and American Indians gave up in
20 order to be a part of the United States and part of the
21 economic development programs. So we would appreciate that if
22 you are going to go down that road.

23 Thank you for allowing us to be heard. We appreciate
24 your efforts and look forward to seeing an improvement of the
25 regulations that will allow us and other Alaska Native 8(a),

1 Tribal 8(a)'s and Native Hawaiian Organizations to continue to
2 succeed in the program.

3 I will submit more detailed comments later before the
4 deadline. I'm done. If you have any questions during that
5 time, please feel free to call me. Thank you.

6 CO-CHAIR JOHNSON-PATA: Thank you, Geri. Lucille.

7 MS. MAYER: Good morning. Welcome to Alaska,
8 specifically at this time when AFN and the broader group of the
9 ANCSA people and Native people are here in this community. My
10 name is Lucille Mayer. I am a member of the Board of Directors
11 of Olgoonik Corporation, the Village Corporation of Wainwright,
12 Alaska.

13 Our Board is pleased to have this opportunity to
14 answer some of the Council's questions regarding Section 811 of
15 the National Defense Authorization Act and offer a brief
16 overview of Olgoonik Corporation and the Village of Wainwright,
17 and I have here with me some of my colleagues.

18 Our remote community is located on the shores of the
19 Chukchi Sea, 180 miles north of the Arctic Circle. We are not
20 connected to any road or rail system and the great majority of
21 our supplies and fuel is delivered by barge during the brief
22 three-month open water season each summer.

23 Travel in and out of the Village is by small aircraft
24 from Barrow. A look at the map of Alaska Arctic coastline will
25 show you how isolated our Village is. Like the majority of

1 other Alaskan Villages, the remoteness is a major barrier to
2 economic growth.

3 The Olgoonik Corporation has been in existence since
4 1973, created as part of the Alaska Native Claims Settlement
5 Act. During the mid-1990's, we created a construction and
6 environmental company to work in Wainwright and other North
7 Slope communities. Because of the local nature of the work,
8 projects and profits were small.

9 To expand our capabilities, Olgoonik Corporation
10 Board of Directors decided to enter the world of federal
11 contracting in 1999. We began with an investment of 1.3
12 billion (ph) dollars, which was the Corporation's total liquid
13 assets. Our goal was to build profitable and sustainable
14 operations beyond the North Slope that benefits our
15 shareholders.

16 Between 1999 and 2000, we formed four companies and
17 enrolled them in the 8(a) Program. Each one key sole-source
18 contracts that helped them -- being critical, large-scale
19 experience leading to successful graduation from the program
20 (sic). These companies continue stable operations today.

21 In 2007, Olgoonik expanded the scope of their work by
22 adding three new, which were successfully pursuing business
23 under the SBA 8(a) Program (sic). Like many Native
24 organizations, Olgoonik believes the unlimited sole-source
25 preference of the ANC 8(a) Program is vital to helping us

1 compete, win and deliver quality services to federal agencies.

2 Eliminating the important business advantage reduces
3 us to the role of minority subcontractors for large
4 corporations. This creates significant barriers to economic
5 growth. We understand the role of the FAR Council is to
6 implement Section 811 and we appreciate the fact that you want
7 opinions from those of us most impacted by this regulation.

8 During this and other sessions, we have heard about
9 the loss of important opportunities, key awards being delayed
10 and contracting officers not willing to discuss the potential
11 sole-source opportunities. Rather than focus on similar points
12 already made by others, we at Olgoonik, would like to answer
13 some of your questions.

14 Let me begin with experience; because of the work we
15 gained from the sole-source contracts, Olgoonik companies have
16 built important competitive capabilities. The knowledge gained
17 from those contracts have resulted to recent competitive
18 efforts. These include major domestic construction and
19 construction management contracts for the Air Force, Army, and
20 National Institute of Health, as well as an international
21 construction contract for the Department of State.

22 You should know that these are multiple award
23 contracts. That means we compete on each and every task order
24 day in, day out. This would not have been possible without the
25 skills we developed from sole-source contracts.

1 We ask about your -- you ask about our opinion on a
2 20-million-dollar limit. We believe it needs to be clarified
3 so that the contracting officers do not think it's a cap on
4 sole-source awards. Like other Native organizations, Olgoonik
5 is already seeing this misunderstanding having a negative
6 impact on the sole-source award process.

7 Regarding justification and approval issues, we
8 support the needs for clarification that better defines what
9 the statement, other matters means. If there are issues that
10 can impact the evaluation, they should be open, stated, not
11 hinted at.

12 You also asked for comments on the types of research
13 contracting officers should be conducting. The FAR regulations
14 provide adequate research steps, if they are followed.
15 However, we find shortcuts are often used. To be truly
16 representative, research much clearly indicate that a company
17 has the ability of performing the contract at a fair and
18 reasonable cost.

19 Market research also demands that contracting
20 officers understand all small and disadvantaged programs as
21 well as Section 811. We recommend specific training in areas
22 such as, existing regulations, effective evaluation of past
23 performance, and the determination of FAR market value.

24 Olgoonik's involvement in the SBA 8(a) Program has a
25 short history, just 11 years. A decade ago, we were an

1 unprofitable Village Corporation with few prospects for
2 economic advancements. Today, our shareholders and employees
3 are enjoying important benefits. These benefits come in many
4 forms that impact the community through jobs, training,
5 scholarship, dividends, infrastructure development and income
6 retention program to support teacher growth.

7 We sincerely hope the success we have realized from
8 the 8(a) Program and the unlimited sole-source preference
9 remains in place to help all Native American organizations take
10 advantage of economic opportunities in federal contracting.
11 Thank you for your time and your interest in learning about our
12 concerns regarding 811. Thank you.

13 MR. GORDON: Thank you.

14 CO-CHAIR JOHNSON-PATA: Thank you very much. Are
15 there any comments or questions? Remarkable stories of
16 communities of Alaska. I really appreciate both of you sharing
17 that information and it's a good thing it snowed too, on top of
18 it. The next two speakers that we have signed up, we have Ray,
19 are you going to -- are you ready?

20 MR. TANSY: Roy.

21 CO-CHAIR JOHNSON-PATA: Roy, sorry. Why did I say
22 Ray? My fault, my fault. I was like Roy and then the next
23 one, Derik and after that, we'll have Janice and back to you,
24 Ron.

25 MR. FREDERIKSON: Well, I guess I'm going first.

1 Thank you very much. My name is Derik Frederikson. I am
2 General Manager of Sealaska Environmental Services. We are a
3 Native company. We've been in the 8(a) Program since 2003. I
4 come from Metlakatla, Alaska. It's a small Indian community in
5 Southeast Alaska. My grandmother was born there in 1920, and I
6 am a Tribal member, shareholder of Sealaska Corporation, which
7 is the regional Native corporation for Southeast Alaska.

8 You know, I wanted to talk a little bit -- I think a
9 couple of the points that some of the previous speakers, I
10 won't hit on them (sic), but I want to relay some of the
11 personal stories that we've had at Sealaska Environmental
12 Services and how important the 8(a) Program has been, not only
13 to our company, but I think to Sealaska in general.

14 I started with Sealaska Corporation in 1997. I was
15 an intern and for the next two years, I worked with the
16 corporation as a forester out in our lands. We have about
17 300,000 acres of commercial forest land in Southeast Alaska and
18 I developed an insight into our company and our line of
19 business and subsequent to that, I received six total
20 scholarships from Sealaska Corporation for my schooling and
21 just to clarify it, that wasn't six for undergrad. It was four
22 for undergrad, two for grad school, so -- but that said, when I
23 returned back to the corporation in 2002, we had some
24 discussions about how to diversify our lines of business and
25 after discussions with our CEO, he landed me a pretty big

1 charge at that time and I started up Sealaska Environmental
2 Services and our success started off fairly quickly and it can
3 be directly attributable to two sole-source awards that we
4 received within the first year of use being in existence.

5 We received a 20-million-dollar contract with the
6 Department of Defense to do long-term monitoring with the Naval
7 facilities' engineering command in the Puget Sound area and
8 then we also received a 30-million-dollar contract to do
9 environmental remediation for Naval facilities' engineering
10 command too, as well, but this was in the Southwest region and
11 at that time, you know, the differences between most small
12 business contracts and a sole-source contract for 20 million
13 dollars might not seem intuitive right off the bat, but I think
14 a lot of people in this room that do federal contracting and
15 understand the differences in contracts, will realize that most
16 of the small sole-source contracts, and if I take off my hat as
17 General Manager of SES and I put it on and I'm an enterprise
18 owner and I own my own 8(a) enterprise, at the 3.5 million or
19 the 5.5-million-dollar size, the scope of work that would be
20 sole-sourced to me is dramatically different at 3.5 million and
21 4.5 million than what would be sole-sourced to me as an Alaska
22 Native corporation, to use my particular example.

23 For instance, in the environmental field, most work
24 that is on a sole-source basis tends to be fairly simple tasks,
25 digging and hauling, debris removal, but because of the sole-

1 source contracts that we received, in particular, I'll use our
2 long-term monitoring contract as an example, right off the
3 bat, we had a jurisdiction that included primarily most of
4 Washington, but also Alaska.

5 We're operating on most of the Naval installations in
6 the state of Washington, as well as up here in Alaska. We're
7 in Barrow, Point McIntyre. We're on -- and then as well in
8 Adak, and the complexities of those tasks helped us in our
9 footing to get a hold of, not only just hiring laborers and
10 folks of that nature, but we have several professional
11 engineers on our staff, several licensed geologists and that
12 gave us a firm foothold to compete against several other small
13 businesses, but very quickly, right off through those first
14 couple of years, we stopped viewing other small business as our
15 competition and for us, we've always known that we were
16 graduate successfully from this 8(a) Program.

17 We've got two years. We'll graduate in 2012, when we
18 quickly set our sites on competing against large businesses in
19 the full and open environment. We've only received one
20 additional sole-source contract since that time and it was for
21 six million. We did go in on a competitive deal we contracted
22 that was for 700 million dollars. We went up against 16 other
23 contractors and we did win a spot on that. That's a multiple
24 award task board of contract and we compete against two other
25 entities on a task board by task board basis.

1 So I think we've proven that we can do more complex
2 tasks and it really set the stage by getting those first two
3 sole-source contracts and just to be clear, if you guys want to
4 give us another sole-source or know of anybody, we'll take it,
5 but with that said, I don't think we're at the point anymore
6 where we absolutely rely, but it is an option and I know that
7 in our existence as a company, we would not have achieved the
8 success that we've been able to achieve without those sole-
9 source contracts.

10 Our cost reimbursable contract with the Department of
11 Energy, we're about three months away from inviting DCA. We're
12 going through our own internal audit right now to get them to
13 come and audit our cost reimbursable accounting system and for
14 us, we feel that is absolutely necessary on our next step of
15 evolution to be able to go out and compete on the full and open
16 market and many small businesses would not be able to do that,
17 even after seven years, especially with a limitation and I echo
18 the comments of the previous speakers that when you read,
19 especially Section A of Section 811 (a), you know, it does come
20 across potentially that it is a cap and in fact, we have,
21 personally, in discussions with contracting officers within
22 NAFAC (ph), they've told us they are not going to award a sole-
23 source contract even above a single award entity limited at 3.5
24 and 5.5 million and then our sister company has also
25 encountered the 20-million-cap at Army Corps of Engineers at

1 both the LA District and at the Portland District. So I think
2 that there needs to be some greater clarification and
3 especially in regards to the first Section A.

4 The only other comment that I just really wanted to
5 speak to was that often times, you know, at the policy level
6 and what we're talking about right here and how to -- what the
7 intent of that policy is and how that moves down the line to
8 actual execution in reality, there's a fairly large disconnect
9 there and I think, Dan, you spoke at the beginning to the
10 President's initiative to hire more procurement staff within
11 the United States and I applaud that effort and I think more
12 needs to be done in that regard because often times we hear
13 back from our business opportunity specialist at SBA that the
14 contracting officers that we have just talked to are now
15 calling SBA to get further clarification because they don't
16 really understand the programs that they are in charge of. So
17 that's it for me. Again, thank you. I just wanted to provide
18 some real-time comments.

19 MR. GORDON: Very helpful, thank you.

20 MR. FREDERIKSON: It's hard to give this up. I think
21 most Natives would agree.

22 MR. TANSY: Good morning, my name is Roy Tansy, Jr.
23 I am the Chief Operating Officer for Ahtna, Incorporated, one
24 of the original 13 regional corporations, but the smallest
25 original corporation. I want to begin by introducing myself

1 also in the Ahtna way, which is a little bit of an introduction
2 of my family and it begins with my father who is Roy Tansy,
3 Sr., who is the Big Sky Clan of the Athabascan Ahtna Indians
4 and my mother, who is Tlingit, who is Raven Dog Salmon from
5 Klawock (ph) and we are matriarchal, just as well as Sealaska
6 and so we follow our mother's Clan. So I am Raven Dog Salmon,
7 but kind of a mix and my father's side, his father is Jake
8 Tansy and he was Udzisyu, which is the Caribou Clan and on my
9 mom's side, her father was Upper Woodmark (sp), which is
10 (speaking Tlingit) the Tlingit Eagle Clan. So that's who I am
11 and now you guys can introduce yourselves.

12 You know, I wasn't planning to come up and talk
13 today, but you know, 20 minutes ago there was a few discussions
14 about talking about the benefits, not specifically to the 811,
15 Section 811, but talk about the benefits of the 8(a) Program
16 and I felt there was a need to come up and talk a little bit
17 about how the 8(a) Program has really changed the lives of the
18 Ahtna people.

19 I would not be here today if it wasn't for the 8(a)
20 Program. There's not doubt about it. The 8(a) Program has
21 been something that Ahtna has been involved with since 1996.
22 We partnered with another minority business in Anchorage and
23 they really held our hand in establishing our first 8(a)
24 company, Ahtna Development Corporation, which is around still
25 today.

1 By 2000, we had five -- I'm sorry, four 8(a)
2 companies. In 2005, we had five 8(a) companies and today, we
3 have four 8(a) companies. So we really limited ourselves as
4 much as we could with the 8(a) Program, but we kind of like
5 that stability and ability to utilize the program to diversify
6 our investments.

7 Coming from the Ahtna region, I'll give you a little
8 bit of background of the Ahtna people. The Ahtna people have
9 been in the Copper River region, which is south of here, but
10 it's not too far south, but north of the Cordova/Valdez area,
11 Chugach area. So we're kind of like in the middle, but again,
12 it's the smallest region.

13 The people there began to get established about 7,000
14 years ago. They migrated in groups of about 20 or 40 people
15 and their main source of resource there was the Copper River
16 salmon. You might have heard of the Copper River salmon. It's
17 a very unique and special commodity to the world today.

18 The other unique area has been the copper mine of
19 Kennecott, which in 1908 through 1938 was 30 years of the
20 world's largest copper mine. A lot of our shareholders were
21 very involved in helping the people that did the exploration
22 for that copper mine and during the production when they built
23 the rail going all the way down to Cordova. So we were
24 definitely heavily impacted by the first settlers that came to
25 Alaska.

1 Mining also started up on the Denali Highway, where
2 my father was born, back in the early 1900's and continued all
3 the way through gold mining until about 1995. So there was a
4 long time of actual mining going on in the Copper Region.

5 Of course, in 1971, we had the ANCSA legislation and
6 Ahtna was entitled to 1.77 million acres of land. To date, we
7 have received 1.52 million acres. So we still have an
8 entitlement that ANCSA's promise has yet to fulfill, but we're
9 still working with the BLM, working to try and get a lot of
10 that still (indiscernible - speaking softly).

11 So Ahtna also was a beneficiary of money that was
12 given out. There was 500 million dollars that was given out
13 through the oil companies and then there was the rest, 400 and
14 some odd million given out through the Federal Government for
15 the settlement. Ahtna received about 13.3 million for that
16 settlement.

17 In 1980, the Ahtna Region was comprised of eight
18 Villages, in 1980, seven of the Villages merged with Ahtna and
19 so we actually also oversee seven of our Villages surface
20 lands, as well as their subsurface lands as a regional
21 corporation and these Village corporations actually are not
22 eligible today to actually start up Village corporations and go
23 out into the program. So they kind of put their interests
24 under Ahtna, the regional corporation and so out of the region
25 we really only have two entities that are actually eligible for

1 the 8(a) Program. The eighth Village, which is Chitna and
2 Ahtna Regional Corporation.

3 So we do have a very vested interest in the 8(a)
4 Program, trying to preserve it, trying to maximize it and it's
5 been something that has, again, really changed the lives of the
6 Ahtna people. Ahtna is the smallest regional corporation,
7 originally established, there were 1,197 shareholders, which is
8 not much compared to some of the other bigger regional
9 corporations, but we have been heavily impacted by the roads
10 and development in the state and taken a lot of advantage of
11 that.

12 So the regional corporation has through management,
13 four out of the seven managers, including the President and
14 myself are shareholders and the bar (ph) subsidiary Presidents,
15 five out of the eight subsidiary Presidents are shareholders
16 and so we've been real hands-on. Our subsidiary Boards are all
17 shareholders. The management of the Corporation is to have the
18 shareholders (sic).

19 So it's something that we take pride in and out of
20 the nearly 400 employees that work in the state of Alaska for
21 Ahtna, Incorporated, 1/3 of all of those employees are Ahtna
22 shareholders, which is pretty incredible based on the fact that
23 we don't have that many shareholder pool (sic) to really pull
24 from, but we've been real fortunate to have been able to
25 nurture and bring along a lot of young shareholders and that

1 goes to a lot of the benefits that we provide.

2 We do provide a lot of benefits in regards to land
3 protection, scholarships, death benefits, cultural and
4 traditional preservation and one of the bigger things that
5 really doesn't impact a lot of the other companies, but it does
6 really impact us quite a bit, has been subsistence (sic).

7 We are heavily impacted. Like I said, earlier about
8 the road system and we are heavily impacted by Fairbanks, the
9 Anchorage, the Mat-Su Valley in regards to limited amount of
10 resources that we have, the region for hunting (indiscernible -
11 room noise) and so we really spend a lot of money on trying to
12 preserve those rights and look out for our shareholders as well
13 in preserving their ancestral heritage and that is a big part
14 of what goes on in operations.

15 We send a lot of our elder shareholders to testify at
16 hearings and we gather a lot of data on (indiscernible -
17 speaking softly) to the impacts that currently happen within
18 the region and it's just something that we would not be able to
19 fund without the 8(a) Program.

20 Now, I mentioned earlier that I would not be here
21 today if it wasn't for the 8(a) Program. I really got to go
22 back to a story that happened a few years back. I actually
23 started on a I was just coming out of high school that --
24 spend time at our subsidiaries and that kind of -- sister
25 corporation and the non-profit side and at one point, I ended

1 up on the Board of Directors and at the time I was on the Board
2 of Directors, we were going through some very bad, tough times
3 and the previous management that had gotten into some poor
4 decisions, as well as purchasing of companies that were, you
5 know, not well-purchased. We were on the verge of bankruptcy
6 and also looking at a very large piece of litigation that was
7 against us and we were able to handle all of the past deeds,
8 but the litigations was going to put us over the edge and
9 through the 8(a) Program in 2004, through a Department of
10 Energy Contract awarded to Sealaska, we were able to secure a
11 sole-source contract through the Department of Energy that our
12 financial institution deemed that as a base of collateral to
13 extend a line of credit that gave us the opportunity to get a
14 loan and pay the litigation off.

15 Now, we put ourselves on the a five-year payback, but
16 we actually paid off that 9.2-million-dollar loan in actually
17 three years and we utilized that sole-source contract until it
18 ended and competitively rebid the extension, which eventually,
19 we were also awarded on that and it was a very, very big
20 success for the Ahtna people. We preserved our name and stayed
21 out of bankruptcy and we really learned a tough, but valuable
22 lesson in (indiscernible - speaking softly) and I really wish I
23 had prepared something.

24 I will put something on paper for the Committee, but
25 I just wanted to mention that there are so many things that

1 actually are involved with 8(a) and the regional corporations.
2 I wish I had all day to talk about them. I'm sure the rest of
3 the people can talk about them, but the impact that it's had is
4 just unmeasurable at this point. There are just so many things
5 that it touches within our region and gives us the ability to
6 go out there and do things for development sake and not limit
7 ourselves and what resources we have to do other business. I
8 want to thank you.

9 MR. GORDON: Thank you.

10 CO-CHAIR JOHNSON-PATA: Thank you. Thank you, both.
11 I think it's great and I thank both of you guys and I'm sure
12 you will be submitting something in writing, but it's just a
13 really good time to have this more face-to-face and to be able
14 to really hear a spirit that sometime we don't -- aren't able
15 to put into writing in our very technical documents that get
16 reviewed by others. So I appreciate you both taking the time
17 to share your story.

18 Just a little time check here with our transcriber.
19 I know we promised to have a break every hour and we're at
20 11:23. Do we need to take five-minute break? We have two more
21 presenters.

22 THE COURT REPORTER: I think it'll be okay and then
23 we'll take a break at lunch. That's fine.

24 CO-CHAIR JOHNSON-PATA: Yeah (affirmative), that's
25 what I -- so let's go ahead with the next two, which is, of

1 course, Janice Hotch and Ron Perry and then we'll plan on
2 taking our lunch break after that.

3 MS. HOTCH: Hello, I'm Janice Hotch and I work for
4 Sealaska. I've been with Sealaska since 1998. I am a Tribal
5 member shareholder. I am Tlingit and Tsimshian Indian.

6 So I'll just tell you a little bit about Sealaska.
7 You've heard from Derik. He's the General Manager of one of
8 our 8(a) firms. Sealaska is the Alaska Native regional
9 corporation for Southeast formed through the Alaska Native
10 Claims Settlement Act and we represent the economic social and
11 cultural interests of 20,000 Tribal member shareholders for
12 Tlingit, Haida and Tsimshian.

13 Sealaska currently has seven 8(a) firms certified to
14 participate in the SBA 8(a) Program. In addition, Sealaska
15 subsidiaries participate in government contracting outside of
16 the 8(a) Program as small, disadvantaged businesses. In terms
17 of our employment numbers, at Sealaska Corporate, we have 80%
18 shareholder hire, at Sealaska Environmental Services, we have
19 about a 25% shareholder hiring. I know that specifically the
20 other 8(a) firms, we strive to hire shareholders and the
21 majority of our firms are managed by shareholders. It's a very
22 important point I needed to make.

23 So the 8(a) Program is valuable to Sealaska and its
24 members and it has assisted Sealaska subsidiaries to
25 participate in government contracting and build capacity and

1 increase its shareholder employment opportunities. Section 811
2 significantly impacts the ability of Native-owned 8(a) firms to
3 participate in the 8(a) Program.

4 We're disappointed that this section flew through
5 Congress in the added defense authorization process with little
6 to no input from those most affected by its enactment. While
7 we understand it is not within the GSA's authority to remove or
8 amend Section 811, we would like to state on the public record
9 that this targeted piece of legislation should be strongly
10 reconsidered by Congress.

11 The rules should clarify that it covers only sole-
12 source contracts for amounts exceeding 20 million for the base
13 year of the contract. We also feel that this never should have
14 been developed without more consultation with those Native-
15 owned 8(a)'s impacted.

16 The J&A requirements should be limited to only those
17 five identified in Section 8. The rules should clarify and
18 define when a termination of the use of a sole-source contract
19 is in the best interest of the agency. We agree with NACA's
20 proposed recommendation, which by the way, Sealaska is a member
21 of the Native American Contractors Association. So we agree
22 with NACA's proposed recommendation of similar language that
23 would -- an agency, when making it's best interest
24 determination, consider how using a Native-owned 8(a) firm
25 would help the agency meet its small business goals.

1 The rules should clearly define in consultation with
2 Native 8(a) firms what other matters the agency can include as
3 part as the J&A requirements. This gives each agency a
4 significant amount of authority, but also creates a likelihood
5 for inconsistency in J&A requirements agency by agency (sic).

6 The rules should clarify that Section 811 is not an
7 overall cap on sole-source awards, but merely a requirement to
8 be applied for J&A sole-source awards in excess of 20 million.
9 So I think what you've heard today, and you've heard from
10 representatives from the North, representatives from the
11 Interior and now from Southeast that this is being considered a
12 cap.

13 Section 811 is being considered a cap and we're very
14 concerned about that and I know one of the questions was, you
15 know, how do we, you know, do you have any suggestions for
16 training our folks, and I would say, take the training that you
17 provide now, multiply it exponentially to get the word out that
18 this is not a cap. I just want to say, gunalcheesh, thank you
19 for coming. Thank you for taking the time to listen and I hope
20 you'll be able to enjoy some of the Traditional dancing that's
21 going to be during (speaking Tlingit) and I think one of the
22 better dance groups is the Wainwright group, me, personally,
23 that's what I think. So I hope you're able to participate in
24 that. So thank you.

25 MR. GORDON: Thank you very much.

1 UNIDENTIFIED SPEAKER: Okay, I've got five years' of
2 college. I can do this. Maybe not.

3 CO-CHAIR JOHNSON-PATA: Well, if not, you can get
4 Derik to help you because he has six.

5 MR. PERRY: Hi, I'm Ron Perry. I represent a couple
6 of different organizations. I'm the President of the National
7 8(a) Association and I'm here today representing the Village of
8 Salamatof and their 8(a) company Teya Technologies. I've got a
9 couple of concerns, a couple issues and I think these are going
10 to be directed at you as questions because these are some tough
11 issues.

12 You have heard during all of these consultations how
13 wonderful this program is. It is tough to deny that, putting
14 kids through college, taking care of our elders, putting
15 infrastructure in Villages and creating jobs and you've seen
16 all of the other side. You guys are right down there where you
17 guys are getting the "Washington Post" like the rest of us do
18 and you're getting the blog, you know, so you're formulating
19 all of these other opinions. So there's those types of things.

20 I'm reading off of this because I didn't write this
21 down. I sent it to myself. So I believe that batteries are
22 better than brains. So I've got some questions here and some
23 statements. How many Tribes and other Native entities are
24 unaware of the effects that this will have, the decisions that
25 are being made by you guys or helping being crafted by you guys

1 for years to come? We've got -- was there enough outreach in
2 this consultation hearing? Was there enough outreach? Was
3 there enough education moving forward with this?

4 The consultations were all held in the same month.
5 The ruling came out and things move sometimes fairly quickly.
6 There's a lot of Indians and there's a lot of them, the last
7 time I checked and there's not a very -- most Indians, except
8 for a few of us Tlingits, are kind of quiet. You know, did we
9 get to everybody that we needed to get to? That's kind of a
10 concern, something to think about, you know, did a lot of
11 people understand this?

12 I was just in a conference in Las Vegas and half of
13 the group was concerned about gaming, but they were taking a
14 look because of their gaming industries are taking some hits
15 because of the economy and so they're looking into the federal
16 8(a) Program. They don't know there are changes going on and I
17 stood up and had to tell them, hey, there's some stuff going
18 on.

19 Are you guys aware of this? Did you educate
20 yourselves on this? Did anyone outreach and touch you guys,
21 and they said, you know, the answer was no. So it's kind of a
22 concern as far as, you know, are we making some decisions or
23 eventually making some decisions that we're going to take a
24 look back 20 years from now and potentially regret? So just a
25 thought (sic).

1 Why did you focus on a set aside community and are
2 the other contractors under the same scrutiny? I don't know if
3 you want to answer that. You can, if you want, because that's
4 kind of a concern because it takes a look at -- it looks like
5 to be a tiny bit on the one-sided (sic), you know, a little
6 lopsided on this, and you know, grant it, you're sitting in a
7 very warm, friendly group. I think I know probably about --
8 well, about 100% of the people in the room for the most part
9 and so this is, you know, we're playing in our home field, but
10 when we go into another state and sit in another -- trust me,
11 I've sat in some hostile audiences before because of
12 preferences and because of the successes, but by the time you
13 get all said and done and everybody is in a win/win situation,
14 you walk away feeling pretty good about this.

15 So my concern for what some of the things that we're
16 seeing is this a one-sided deal? Is this, you know, the big
17 guys and the medium-sized guys and other groups, are they
18 coming under the same scrutiny as we are? Just a question,
19 which you can answer if you want to.

20 CO-CHAIR JOHNSON-PATA: And you can do it now, if you
21 want or you can wait. Whatever works for you, Ron. If you
22 want to finish your remarks and then let them answer
23 collectively or answer as you make the comments?

24 MR. PERRY: You could do it at the end, if you want.

25 CO-CHAIR JOHNSON-PATA: Okay, let's gather your

1 comments.

2 MR. PERRY: Last November, the President committed to
3 helping Native Americans. He said that American Indians would
4 have access to the American dream. Isn't this 811 counter to
5 that? Isn't it counter to the statement made by the President
6 in November that this is the American dream?

7 Is it the Administration's stance that competition is
8 good over set aside business and isn't this (indiscernible -
9 mumbling) counter to the 8(a) Program? So kind of just a
10 question there as well, you know, more of a competition
11 question, but keeping in mind that these programs are
12 distinctly different, that we are distinctly different as
13 minority groups and indigenous people of the United States.

14 This is just -- I have to reiterate because I want to
15 be the last person to ask you one more time and to clarify the
16 20-million-dollar thing as a base or whatever. Additional
17 questions; how will the contracting officers be trained in this
18 new legislation and these answers (sic)?

19 That's a huge concern. You've heard it time and time
20 again. I think we all spend more time educating people on the
21 program itself and then explaining to them where we're at in
22 the rules and then if it changes again, explaining to them yet
23 again and you've heard the terms, chilling effect. You've
24 heard the term, cap. You've heard the terms, you know, some
25 people say, dismantling the program.

1 Well, we need some clarification in those and then we
2 should try to do it, unlike that third paragraph on that thing
3 where you have to have a lawyer, not that I don't like lawyers.
4 There's a whole bunch of them in here. Now, we agree with the
5 lawyers, but it should be in English. I'm a Tlingit. So that
6 we can make sure that when we're talking to people about this
7 that they understand these rules, that you know, when we go and
8 explain it to somebody and somebody says, no that's my
9 understanding of it.

10 Well, here's the regulations. Here's the laws and
11 here it is in English and there isn't a bunch of these Subpart
12 A and Subpart B and Subpart whatever. I think that would
13 probably go a long way. This kind of goes back to accumulation
14 of everybody's stories. You know, is there a complete
15 understanding of how we got to this point? I mean, we are
16 different. ANCSA is different. How the legislation was added
17 to the Alaska Native Claims Settlement Act is different. How
18 we're supporting ourselves is differently (sic) than a
19 reservation system in the Lower 48 states.

20 The changes that the Lower 48 states are going
21 through, the Tribes down there, you know, you've got 20% of
22 them are successful in gaming. You've got a number of places
23 that have got these casinos. Everybody thinks that those are
24 the rich Indians. Well, they're not. People weren't spending
25 money. People are buying food right now.

1 Here's an opportunity for them, the Lower 48 Tribes
2 aren't in this program now, to become successful in this
3 program. We're very close and near and dear to this because
4 we've been doing it and understand it -- we understand it and
5 it works, but how about the people that don't understand it?

6 How about the people that haven't even had a chance
7 for this to work yet, and how about those grand kids and those
8 children that we're not putting through college to take over
9 these next steps, do they even know this tool is available
10 and/or will this tool be available by the time they have the
11 ability to take advantage of it and help themselves and the
12 next generations? Those are the kinds of questions you have to
13 ask.

14 Where these (indiscernible - mumbling) limiting the
15 tools to help us do this is something that needs to be -- that
16 needs more review and more discussion. I hope we have your
17 support in making these -- in making sure that we leave no
18 stone unturned. Thank you for your time and understanding of
19 these important opportunities. Now, do you want to answer all
20 of those questions?

21 MR. GORDON: Thanks very much. I appreciated both of
22 your comments.

23 (Cell phone ringing.)

24 THE COURT REPORTER: Somebody's cell phone is
25 ringing. I don't know where it's coming from.

1 UNIDENTIFIED SPEAKER: A little mood music, okay.

2 MR. GORDON: Let me offer a few thoughts and then
3 I'll open the floor if my colleagues want to add some thoughts.
4 First of all, Ms. Hotch, in terms of what you raised, we
5 appreciated the points, noted them down and I very much
6 appreciated your presentation today.

7 Mr. Perry, in terms of your questions, let me address
8 some of them. I won't get to every single one and you're
9 welcome to come back if there's one I didn't get to.

10 MR. PERRY: (Indiscernible - mumbling).

11 MR. GORDON: But it is -- it will be useful to us all
12 that you did what I'm sure you're intending to do and that is
13 to submit a written statement. That will be helpful to us.
14 The reason I'm not going to answer some of the questions is
15 that the things we've talked about, the importance of training
16 our contracting officers -- very important (sic). We are
17 struggling with the prudent training in many, many areas,
18 including these areas.

19 We are looking for ways to improve training and we
20 have not done a good enough job. We have not invested enough
21 in our contracting officers and contract specialists over the
22 past 15 years and it is not a partisan issue. It is,
23 unfortunately, a bipartisan failure of our government to invest
24 in the (indiscernible - speaking softly), but let me turn to
25 some of your questions and the first one resonated with a point

1 that we've heard from other speakers today and we've heard at
2 other of the consultation sessions and that is, why are we
3 being targeted? We're such a tiny, tiny part of the federal
4 procurement spending.

5 I appreciate the point. The Federal Government spent
6 in the last fiscal year -- well, actually, the last fiscal year
7 for which we have data, which is fiscal '09, something like 560
8 billion dollars for procurement of goods and services and you
9 will rightly point out that the share that went to the Native
10 corporations, the Native Hawaiian organizations and the ANCs is
11 very small, very legitimate point.

12 I can assure you that from our point of view, the
13 reason we're doing this is not to target any particular group.
14 Number one, in terms of the FAR Council, we're doing it because
15 we have a statute we have to implement. That really ends the
16 discussion from our point of view. We don't get to say, you,
17 Congress, shouldn't have done that.

18 So that's easy, but in terms of the Administration,
19 let me clarify, they are -- we, in the Administration, are
20 promoting contracting opportunities for small business,
21 including all subcategories of small business, which obviously
22 includes the ANCs.

23 So that in terms of the Administration policy, we are
24 supportive of those. The fact that we are also supportive of
25 competition is not inconsistent because as I said in my initial

1 remarks, our system has areas where competition is called for
2 and we have areas where sole-source contracts are called for
3 and where set asides are called for.

4 So that saying that we need to have more competition
5 where it's appropriate doesn't mean that ANC shouldn't be
6 getting sole-source contracts. There is no inconsistency in
7 our position in the Administration, but let me -- you may find
8 this a small comfort, but let me tell you some of the other
9 contracting entities that are nervous that they're being
10 targeted.

11 The very big corporations are feeling great concern
12 these days, mostly because of what we're doing government-wide
13 and in particular, because of what the Department of Defense is
14 doing and the Department of Defense talks about their
15 efficiency initiative to save 100 billion dollars over the next
16 five years.

17 I've heard from many in the industry and part of my
18 job is to be out there listening, not only here in lovely
19 Fairbanks, but also in places that are less lovely, in
20 conference rooms in the Washington area where I hear from the
21 large businesses that they are very concerned that the
22 Government is focused -- is targeting them to squeeze the
23 profits out of Northrop Grumman and Boeing and Lockheed and the
24 other companies.

25 Their representatives tell me that they are having --

1 they have no choice, but to lay off staff and they have been
2 announcing, as I think you all may have heard in the press,
3 many of the large corporations are downsizing because they feel
4 that the Federal Government is going to be cutting back on its
5 investments.

6 Let me give you another category of groups that are
7 very concerned. IT companies are very concerned that the
8 Federal Government is very focused on the IT projects that are
9 not going well and I can assure you that we are very focused on
10 IT projects that are not going well. My colleague, Vivek
11 Kundra, is the country's Chief Information Officer, has worked
12 with his team of the (indiscernible - mumbling) in the offices
13 next to me in OMB next to the White House.

14 They have targeted, if you will, a group of about two
15 dozen IT projects where there are significant problems with the
16 systems going over budget, beyond schedule or underperforming
17 and we are focused on each one of those. It is true that the
18 corporations that have those contracts feel that they're being
19 targeted.

20 We are focused on squeezing savings. Our federal
21 procurement spend increased from 2001 to 2008 by more than
22 100%. We spent on procurement much more than double in 2008
23 than we spent in 2001. That is not sustainable. We, as a
24 country, have to spend less on contracts. We cannot continue
25 spending on contracts and as a result, we have contractors that

1 are telling us, why are you targeting us?

2 We have concern that we are overly reliant on
3 contractors for services in particular, especially in critical
4 areas like IT and acquisition and we are focused on cutting
5 back our dependance on those contractors. I don't the ANCs are
6 a least bit affected by that effort, but there are lots of
7 contractors, including small businesses, that are being
8 affected and we listen to them.

9 We need to balance our concerns. It is -- you are
10 happily not in a situation where the Administration is saying
11 ANCs are our focus. That is not the case at all. We are
12 talking about the ANCs today because we have a statute
13 requiring our talks, but in fact, the Administration
14 initiatives are focused on the large business.

15 They're focused on contractors that are providing
16 services in critical functions, such as acquisition and in
17 areas where we're overly relying on those contractors. They
18 are focused -- we are focused on squeezing efficiencies so that
19 it is useful, I think, to look at the whole picture and see
20 where we, as an Administration, are pushing and where we're
21 not.

22 I can give you many, many more examples that have, I
23 think no relevance to ANCs, but where we are pushing very hard
24 to be sure that contractors are providing the best value that
25 we (indiscernible - speaking softly).

1 In terms of the outreach to prepare for these
2 sessions, we worked with various Native American groups to see
3 to it that the outreach was as extensive as they deemed
4 appropriate. We defer to their judgment and I think that they
5 did a very good job of doing a very extensive outreach, but the
6 good news is, the process of listening isn't over.

7 When we all finish this process, we'll be providing a
8 proposed regulation and at that point, everyone, including
9 obviously, ANCs and other Tribal organizations will be welcome
10 to submit comments on the proposed regulation before we get to
11 the final regulation. So even if groups haven't heard yet, it
12 is not too late to get input, both for the November 1st
13 deadline and then after we issue the proposed regulation.

14 I hope that addressed most of the points. Again, I
15 was scribbling down a whole series of other examples I could
16 give you where contractors from various sectors and various
17 backgrounds feel that they're being targeted by the
18 Administration and I can assure you, we don't target
19 contractors. We don't target groups.

20 We're focused on specific problems. We're focused on
21 increasing transparency, which requires companies to give us
22 more information, for example, about their subcontractors and
23 we have lots of resistance to that, but the President is really
24 committed to increasing transparency, even though there is
25 resistance to it.

1 We are aware of folks in -- on increasing the
2 efficiency on our procuring process (sic), even though in some
3 segments, we have had resistance. That's not true of
4 (indiscernible - speaking softly) that's not true for the ANC,
5 but for lots of areas where we've had significant resistance to
6 our efficiency tries, but we have got to be more efficient.
7 Okay.

8 CO-CHAIR JOHNSON-PATA: Thank you. So with that, I
9 think we are ready for, and once again, for your presentation.
10 Did you have another comment?

11 MR. PERRY: Yeah (affirmative), thank you, just a
12 comment because we're mainly -- but maybe you can or can't
13 speak to this when we're talking about competition and sole-
14 sourcing, an example being Boeing, a Missouri-based company or
15 Senator McCaskill getting those sole-source contracts in the
16 billions. Doesn't -- is that not alarming to anyone else where
17 they can receive, you know, four, five, ten times what the
18 entire 8(a) community gets? Is that -- is there any comment on
19 those sole-source contracts to say, of Boeing, and you know,
20 (indiscernible - mumbling), I mean is there -- you can't help,
21 but think that there's something there.

22 MR. GORDON: We are very concerned. The
23 Administration is on record as having -- as opposing the
24 earmark process in which Congress says this amount of money
25 shall go, effectively, to this contractor for this project.

1 That is not a healthy way for us to be -- decide who
2 contractors are.

3 The earmark process is a congressional prerogative.
4 Congress is, obviously, allowed to do it under the
5 Constitution, but it is a significant challenge and we have
6 worked with the congressional leadership to reduce the number
7 of earmarks. So those sole-source contracts that are
8 designated by Congress are a challenge.

9 Other than those, of course, you can only do a sole-
10 source contract where it is justified under the law, under the
11 provisions that my colleague, Ed Loeb, from GSA was talking
12 about, but it is true that Congress has the right under the
13 Constitution to pass a law saying the Company ABC shall get a
14 contract for 100 million dollars to do X.

15 We are against it. We don't think it's helpful to
16 the contractor's process, but if the question is; does it,
17 nonetheless, exist? The answer is; yes, that does exist.

18 MR. PERRY: I'm done.

19 CO-CHAIR JOHNSON-PATA: All right, with that, we're
20 going to go ahead and take a lunch break and it is the -- get
21 the sense of the group here, how long you want that to be,
22 whether or not you're looking for an hour or less, that's your
23 options, an hour or more, an hour or less. So anybody have any
24 preferences?

25 THE COURT REPORTER: Well, I would suggest if we have

1 to leave the hotel to go somewhere, it will take a little
2 longer. I don't know if there is a restaurant in here.

3 CO-CHAIR JOHNSON-PATA: Do they have a restaurant
4 here? They don't.

5 THE COURT REPORTER: So people have to call cabs and
6 it just kind of.....

7 CO-CHAIR JOHNSON-PATA: So we will have to take a
8 little longer then?

9 THE COURT REPORTER: Probably, yeah (affirmative).

10 CO-CHAIR JOHNSON-PATA: So we'll do an hour-and-a-
11 half. So we'll come back here at 1:30 and reconvene at 1:30,
12 and at that point, be prepared in your lunch hour, you might
13 want to have little conversations (sic). We would like to
14 focus on the dialog and engage, particularly around questions
15 one through four of the 811. Thank you.

16 (Off record 11:50 a.m.)

17 (On record 1:36 p.m.)

18 CO-CHAIR JOHNSON-PATA: So if we could get everybody
19 gathered back together again, we'd like to go ahead and get
20 started for the afternoon session and I'm going to ask one more
21 time before we get into just more of an open dialog around
22 questions, and the specific questions I was hoping that we
23 would focus on are really the questions around 811.

24 There's four questions on the back of the agenda
25 sheet, but before we get there, I just want to make sure I

1 checked to see if there is anybody else, other than Jessica,
2 who would like to make a statement to begin this afternoon
3 session. Anybody else? Okay, will that, we're going to go
4 ahead with Jessica Graham. She will be our first afternoon
5 statement and then we'll get into the questions. Thank you.

6 Yes, and also, because it's the afternoon in the snow
7 with the nice weather outside and we didn't have anything for
8 you this morning, actually, our federal officials provided you
9 a snack and it's over there. It's doughnuts. We're expecting
10 them to be gone by the end of the day and these were not
11 appropriated funds and no contracts either.

12 MR. GORDON: They're set aside doughnuts.

13 CO-CHAIR JOHNSON-PATA: Well, that was good value.

14 MR. GORDON: The best of value (indiscernible -
15 speaking softly).

16 MS. GRAHAM: Good afternoon. Thank you for being
17 here. My name is Jessica Graham. I'm the Executive Vice
18 President for Administration and General Counsel of Afognak
19 Native Corporation, A-f-o-g-n-a-k. I wasn't planning on
20 testifying, but there were a couple of points that came up in
21 some of our private discussions and as I have been listening to
22 the testimony -- that I think are worth kind of reiterating to
23 the Council and I hope that it will spur some discussion in the
24 group as we lead into the dialog part. So bear with me that
25 these are scribbled notes.

1 I want to first reiterate a point that Sarah made in
2 her NACA testimony, which frankly, I think is a very important
3 point, but it speaks to the notion that the 20-million-dollar
4 number that's used in Section 811 does not include option years
5 and I have heard that they're -- some people on the Hill say,
6 yes, it does and some people on the Hill say, no, it doesn't,
7 but I can tell you that we can point to several very specific
8 examples and Sarah referenced one of them where when Congress
9 intended for a number like that to include option years, they
10 specifically include the term, includes option years and the
11 reference that Sarah gave was in the 2008 Defense Authorization
12 Bill.

13 If you look at the Small Business Act, it talks about
14 the caps for individually owned small businesses. It
15 specifically refers to -- it includes option years. If you
16 look at TINA, the Truth in Negotiations Act, it specifically
17 references options years and when you look at the cost
18 accounting standards, it specifically includes options years.

19 So there's a pretty familiar principle with statutory
20 construction that says, Congress knows how to use it, use that
21 term, if they want to use it. They didn't use it here. So I -
22 - to me, that's a pretty black and white item and just because
23 some staffer or Senator Levin doesn't think that's the case,
24 doesn't make that the case.

25 So the second point I wanted to make is that I really

1 want to urge you that it's, I mean, it's just incumbent upon
2 you to define in the regulation what constitutes the best
3 interest of the government and I have to tell you, you've heard
4 scores of testimony about how Native participation in 8(a)
5 really represents a fundamental tenet of federal Indian policy
6 and there is lots of support for that.

7 Anything that supports Native corporations and Tribal
8 enterprises is in the best interest of the government, in my
9 opinion and I will offer that if you can lay out in the
10 regulations some of these very specific examples that fall into
11 that category, you will avoid contracting officer paralysis,
12 which will come because nobody will want to say in a document
13 this is or is not in the best interest of the government and
14 you will avoid a fair amount of litigation that could follow
15 when some of these best interest findings start to get
16 published and other entities start to note, well, maybe I want
17 to fight about whether that's in the best interest or not
18 because the part of Section 811 that nobody's really talking
19 about is that section that talks about how you have to start
20 publishing these J&As so the whole world is going to see what a
21 contracting officer concludes is in the best interest of the
22 government and as all of that becomes public, and I think it
23 will be, what, FAR 5.202, that opens the door for competitors
24 to come in and dispute whether or not that's a valid interest
25 finding and you can define it as the FAR Council to make sure

1 that this does not get interpreted as a cap or you can leave it
2 to a whole lot of litigation that's going to follow and an
3 effective cap that will come into being because the contracting
4 officers won't know what to do and to that end, I will offer
5 there's a couple of things that should be considered or that
6 can be used by contracting officers and that you could put in
7 the regulation.

8 For example, meeting small business goals of an
9 agency is in the best interest of the government and if a sole-
10 source of 20 million dollars or more helps the agency meet the
11 goal, then I believe that is in the best interest of the
12 government.

13 I think anything, any action, including a sole-source
14 like this that is consistent with the business development
15 purposes of the 8(a) Program should be considered in the best
16 interest of the government. I think building the government's
17 industrial base by supporting and building new contractors is
18 obviously in the best interest of the government and sometimes
19 that comes in the form of helping a contractor get their foot
20 in the door, helping them get a security clearance, helping
21 them build past performance.

22 All of those things help the contractor, but also
23 help the government and finally, I offer, and I'm sort of going
24 off on a whim on this, but as you probably know, the Small
25 Business Administration is -- they're in the process of

1 rewriting their regulations and some of the provisions that
2 have gotten a lot of attention relate to a notion that the SBA
3 will require Tribal enterprises to submit information about
4 shareholder benefits, sort of are the benefits flowing to the
5 intended recipients and how Native enterprises are going to
6 make that reporting is unclear at this point, but I will offer
7 that anything that a Native enterprise submits to SBA to meet
8 that require should be considered per se evidence and be
9 allowed to be submitted to a contracting officer to prove that
10 they are meeting the business development purposes and
11 therefore, the contract is in the best interest of the
12 government and I talk a little fast, so -- and that's really
13 all I have to say, so.

14 MR. GORDON: Great.

15 CO-CHAIR JOHNSON-PATA: Thank you very much and feel
16 free to continue to engage during the question period. It was
17 very helpful. Anybody else who wants to submit a statement?
18 If not, what I'd like us to do is kind of turn back over to
19 having more of an open dialog and just to let you know, for
20 those of you who didn't participate in any of the other
21 sessions, and I can't speak to the Albuquerque session, but in
22 the D.C. session, when we got to the questions and started
23 going through the -- getting engaged in the dialog, a lot more
24 voices came in and chimed in.

25 So I'm expecting that that's going to be the way that

1 we're going to be proceeding along these lines here. So feel
2 free, because this is really the time, and they are here to
3 listen, but we really want to be able to have a consultation
4 that's back and forth. So it's not just speaking, listening,
5 commenting, you know, listening, but we're really engaging to
6 have some good dialog about solutions to be able to address
7 some of these concerns and we were able to work back and forth
8 with the Administration to give us suggestions on how to design
9 or to write these questions so that they would be thought-
10 provoking, but still be able to address their concerns
11 specifically that they were looking for and so if you look at
12 the questions in the back on the agenda, the first two, I think
13 we've heard a lot from the Tribal folks and the representatives
14 this morning speaking to their stories and practices, but
15 certainly, if you need to reiterate a point because it helps
16 you speak to another comment, feel free to go back to those
17 points, but I'd like to get to these 811 questions. So the
18 first question is;

19 (Whereupon a portion of Tribal Consultation -
20 Discussion Questions was read as follows:)

21 "What steps should agencies take to determine whether use
22 of a sole-source contract over 20 million under the Section 811
23 authority is in the best interest of the government? What
24 factors are most important to consider in making a
25 determination?"

1 (Whereupon the reading of a portion of Tribal
2 Consultation - Discussion Questions was concluded.)

3 CO-CHAIR JOHNSON-PATA: Anybody want to speak to that
4 question? I'll let Sarah open because I know she does.

5 MS. LUKIN: Thanks, Jackie.

6 CO-CHAIR JOHNSON-PATA: And also, just so you know,
7 you don't have to come up here. We've got this microphone that
8 we can roam around and Susan is going to be very helpful and
9 anybody else can -- Jeanine's very helpful in helping us make
10 sure we get microphones to you. So don't feel like you have to
11 come up here. I really want this to be more open conversation.

12 MS. LUKIN: I don't mind standing up here, though,
13 because I have many a times, right, guys? I talked about this
14 during the Albuquerque Tribal Consultation and so I ask you to
15 bear with me as I restate much of what you've already heard,
16 but it's important that I share NACA's position on this,
17 particularly since many of the individuals in the room today
18 are our membership. So I thank you for that.

19 In reviewing Section 811 and existing regulations,
20 NACA recommends that the justification process for a Native
21 enterprise only include the five elements listed in Section
22 811, not the 12 in preexisting justifications in the FAR, plus
23 the five in Section 811, and I wanted to provide a bit more
24 detail on elements three, four and five in Section 811 under
25 the justification process.

1 In looking at element three, when determining that
2 the use of a sole-source contract is in the best interest of
3 the agency concerned, NACA recommends the agency consider how
4 an award to a Tribe, ANC or NHOAA will allow it to meet the
5 agency's small business goals.

6 Element four under the 8(a) Program, agencies are
7 already required to ensure that every 8(a) contract is at fair
8 market price as outlined in FAR 19.807, which provides specific
9 guidelines for small business awards. NACA does recommend that
10 element four of the Section 811 regulation define fair and
11 reasonable to be the same as fair market price in FAR 19.807.

12 Regarding element five, NACA recommends such other
13 matters as the head of the agency concerned shall specify for
14 purposes of Section 811 be limited to those factors outlined in
15 Section 19.804-1, Title 49 of the FAR, which explains the steps
16 agencies must take when setting aside a contract for the 8(a)
17 Program. This is especially appropriate given that this is a
18 government-wide provision and such clear direction and
19 implementation will ensure uniformity in the 8(a) award process
20 and decrease uncertainties within the J&A process for both
21 Native enterprises and agencies.

22 Lastly, we do -- I will stress again that NACA does
23 recommend that the head of agency requirement under element
24 five be delegated as is done with other government contracting
25 G&Es. So thank you. That's all I have, Jackie.

1 MR. GORDON: Thank you.

2 CO-CHAIR JOHNSON-PATA: Other people, any other
3 comments on that particular question? We can go back to it
4 too. I'm just trying to get through them. Anybody else wish
5 to speak? Moving -- the next question is;

6 (Whereupon a portion of Tribal Consultation -
7 Discussion Questions was read as follows:)

8 "How should past performance be used in making contracting
9 decisions? How should the agency ensure new firms are given
10 consideration?"

11 (Whereupon the reading of a portion of Tribal
12 Consultation - Discussion Questions was concluded.)

13 CO-CHAIR JOHNSON-PATA: And I think a couple of
14 people mentioned this in their comments here today, you know,
15 looking at particularly those who have had past performance,
16 but also making sure that's not a barrier for those who are
17 just starting up and so any comments or recommendations,
18 suggestions that you would like to enlighten our panel with?
19 Go ahead, sure.

20 MR. GORDON: Can I sit here for a minute? I'll
21 testify to myself.

22 CO-CHAIR JOHNSON-PATA: Yeah (affirmative), go ahead.
23 Okay, you testify.

24 MR. GORDON: Mr. Gordon (sic), what I think -- let me
25 just echo a couple of points to be sure that we've heard them

1 correctly. On the first issue of the best interest, what I
2 heard a number of you say was not only that there should be
3 reference to issues, such as meeting the small business goals
4 and the commitment to the Native organizations, but I also
5 heard you say that -- a number of people say that you thought
6 that the FAR, itself, should include those references, that
7 it's not just a matter, if you will, in policy.

8 The contracting officer should think about those
9 issues as part of the best interest determination, but I heard
10 a number of people say, if I understood correctly, that you
11 thought the FAR, itself, should detail what a best interest
12 determination might include and that distinction, I think is
13 worth making because it's not an obvious one.

14 Some people might say, the best interest should be
15 about A, B and C, but it's very different to say that A, B and
16 C should actually be named by the FAR. The sense that I was
17 getting from the speakers earlier today was that the FAR,
18 itself, should include them and then, with respect to best --
19 with past performance, a couple of thoughts I thought it might
20 be useful to share with you, actually by statute, agencies are
21 required to consider past performance in evaluations, which
22 isn't directly relevant to Section 811, but when they do
23 consider past performance, again by statute, they're not
24 allowed to hold the lack of past performance against a company
25 and that is very important.

1 That is a congressional measure to protect small
2 businesses who are new entrants to the Federal Government
3 marketplace. So that if past performance were mentioned in
4 either of the FAR or in other guidance, there would always --
5 it would always be with the understanding that if there is a
6 small business that lacks past performance, that you're not
7 allowed to hold that against them in the assessment.

8 CO-CHAIR JOHNSON-PATA: Comments, anybody? Yes, go
9 ahead, Dusty.

10 MR. KASER: I've got a comment on that. Do I need a
11 microphone?

12 CO-CHAIR JOHNSON-PATA: You need it just because of
13 the transcriber, here. It just makes it a lot easier.

14 THE COURT REPORTER: And could you state your name
15 for the record, please?

16 MR. KASER: My name is Dusty Kaser. I'm with Afognak
17 Native Corporation and I think what I heard you do, Dan, is tie
18 together the fact that, and I hope I'm wrong here, it sounded
19 like you were tying together that fact that under past
20 performance or lack thereof is understood to be used or it's in
21 statute to not be used against somebody and I think from that
22 and your discussion of past performance, it sounded like you
23 were saying that the FAR, it's not appropriate to put in
24 specific examples of what would be used as a best interest
25 determination for the government.

1 So I misread that. So it is okay for you folks to
2 write into the regulations what would be in the best interest
3 of the government, what a contracting officer could use to
4 justify a sole source and the reason that we believe that is so
5 important is because if I'm a contracting officer and I'm using
6 the one justification that might apply here, which is number
7 seven on the list, which is -- it doesn't appear anywhere else.

8
9 So if you want to justify something that doesn't
10 appear anywhere else, you use this one, but to have some
11 guidelines as to what's acceptable, if I'm a contracting
12 officer, I would never use that. I wouldn't even consider it
13 and without some guidelines for those contracting officers,
14 that effectively makes this a cap and I think that's kind of
15 the point that we were making is that without you folks laying
16 this stuff out, this becomes a cap.

17 MR. GORDON: I understand. I appreciate your point
18 and this is part of the dialog and I wish we had a better mic
19 set up and we're using the mics primarily for the sake of the
20 Reporter because in the room we could actually talk without
21 mics.

22 A couple of points; 1) I don't want to create any
23 false expectations when you hear me echo what I think that I'm
24 saying (sic) it's to get confirmation that I, at least, have
25 understood you correctly. It doesn't mean that we're going to

1 go back and say we have to put this language into the FAR.

2 What we're hearing is your view and I want to be sure
3 I understood your view. We will eventually have to sit and
4 draft a proposed regulation and it may be consistent with your
5 view on this point or on that point. It may be inconsistent.
6 That's why you get another opportunity to see the proposed
7 regulation and say, we like what you did here, but we dislike -
8 - we disagree with what you did there.

9 So I don't want you to think that when you hear me
10 echo something you say, it means that we've adopted it. It
11 just means that I've understood what you've said.

12 Let me say a couple of words about the cap.
13 Contracting officers just by what -- they sometimes seem like
14 perfectly ordinary human beings just like us and it is
15 certainly understandable that if you tell a contracting officer
16 that she or he can do a sole-source contract without a
17 justification and approval that appears much easier than saying
18 that you have to prepare a justification and approval.

19 I suspect that is one of the reasons that many of you
20 have heard contracting officers say, well, now, there's a cap.
21 Now there's a cap is sort of shorthand by saying that (sic).
22 They may understand that they're allowed to do a J&A under 811,
23 but they may think that it's going to be more difficult and
24 it's not worth the hassle.

25 There's sort of a grey area between something being

1 permitted and something being prohibit where it's in between.
2 You can do it, but you're going to have to jump through a bunch
3 of hoops. I appreciate that point.

4 The past performance, I think is really -- maybe we
5 didn't need to have a question about past performance here, but
6 it's an issue that we thought people may want to address, so we
7 mentioned it. Whether past performance would be something that
8 would be mentioned in a best interest determination, I just
9 don't know.

10 It's conceivable that you would say, one reason I
11 think it's in the best interest to make a sole-source award to
12 Company X is that they've got a really good track record, okay.
13 That is not surprising. It's certainly true in the other world
14 of sole-source contracting that Ed Loeb talked about this
15 morning, when you do a sole-source award based on the company
16 being the only company that can do the work, the only available
17 source.

18 You're certainly going to be writing up the fact that
19 they have the capability. They have the track record and
20 therefore, the government thinks that they are -- not only that
21 they can do the work, but that they are the only entity that
22 can do the work. Did I answer your point?

23 MR. KASER: (Shakes head in the affirmative).

24 CO-CHAIR JOHNSON-PATA: But now, I have to make a
25 comment. Well, and my comment goes back just once again to

1 making sure on the justifications that they do seem seamless,
2 you know, if we're going to have to have justifications over
3 the 20 million, then we don't want contracting officers
4 feeling, you know, first of all, having the impression of the
5 cap, but also to see -- feel like there is extra scrutiny or
6 extra review that's being done that's outside of what normally
7 is being done for other justifications, which means the
8 approval process, making sure that the approval process,
9 decision making and oversight hasn't generated too far up the
10 ladder compared to any other contracting or any other similarly
11 kind of situated contracting.

12 I think that's going to be real important and I think
13 that's what we're reiterating over and over again. I just
14 wanted to make sure that everybody feels like this is just the
15 normal course of work and it's not because Native contractors
16 are being penalized for any other kinds of scrutiny that's out
17 there. So I had to say that because Dusty had to say a comment
18 (sic).

19 MS. LUKIN: Sarah Lukin again. I'm going to say a
20 comment again, and Dan, I talked a lot with my members about,
21 you know, whether or not we should clearly define issues like
22 best interest to the agency and other matters and
23 overwhelmingly, the feedback I keep getting from them is that
24 we really do need to be specific in the FAR and clearly define
25 that.

1 Particularly because this is a government-wide
2 provision and what find often is people don't understand the
3 8(a) and so when you go into an agency, a potential customer
4 and you're explaining to them how they can -- you have to
5 really teach them and explain to them how to utilize the
6 program, that it is available and you have to sit down with the
7 FAR and show (indiscernible - room noise) the FAR and so we are
8 concerned that if we are at a point where contracting officers
9 have too much leeway in that justification and approval
10 process, you know, we would just rather have it clearly defined
11 and then everybody knows the rules. We all play by the rules.
12 We all do it the same way, okay.

13 Regarding past performance, I represent -- we
14 represent the whole industry and as such, we have those that
15 are extremely experienced in the 8(a) Program and government
16 contracting and those just starting out.

17 I would agree with you that past performance is
18 appropriate to consider, but we would not want that to hurt the
19 start-up Native 8(a)'s and I'm very worried about that. They
20 have a hard enough time getting business. We don't need to
21 limit their opportunities even more.

22 MR. GORDON: I understand. My colleagues should feel
23 very free to chime in, but let me say a little bit more about
24 the best interest determination. I don't know what we're going
25 to end up writing. I don't want you to think that we've

1 already drafted it and we're just pretending. We have not
2 drafted it. We're listening.

3 You can imagine all sorts of compromise solutions.
4 Let me give you an example. This is not something that I'm
5 endorsing, but I just want to give you a feel for what a FAR
6 rule might say. You can imagine the FAR rule saying that the
7 J&A has to include -- it will, the FAR rule will almost
8 certainly per the statutory language saying there has to be a
9 best interest determination and it's part of the J&A.

10 You can imagine it saying something like the best
11 interest determination may be based on American policies toward
12 Native corporations and Native organizations. It may be based
13 on the agency's need to meet the small business goals or on
14 other factors deemed appropriate.

15 So that you could, in fact, have a compromise where
16 you, both included some of the factors that people here have
17 raised and gave the agency a possibility to do a best interest
18 determination that included other factors. So that -- I'm not
19 sure that this is entirely an either/or situation. There could
20 well be some leeway in between.

21 CO-CHAIR JOHNSON-PATA: All right, any other
22 comments? The next question.....

23 UNIDENTIFIED SPEAKER: There's one there.

24 CO-CHAIR JOHNSON-PATA: Go ahead.

25 MS. SIMON: One additional point on that, Geri Simon

1 with Tyonek Native Corporation, is that as you mentioned
2 earlier, you're bringing on many new folks, who not only
3 (indiscernible - mumbling) help enforce the Section 811 and
4 with those folks, it take a while to come up to speed, not only
5 with the program, but on the benefits and the reasons why ANCs
6 and others are specifically included in the legislation.

7 So it -- by putting these specific exceptions in for,
8 I don't know if you want to call them exceptions, but
9 definitions, it will all help all the newly hired folks to
10 understand and it'll be easier for them to then take a look and
11 make sure that it is in the best interest. That's all I have
12 to say.

13 MR. GORDON: Again, have I said enough times that I'm
14 not committing us to anything? I'm just -- I want you to get a
15 feel for what possibilities we'll have to think about as we go
16 through this. In the requirement in 811 that the J&A say what
17 statutory basis (sic) for sole-sources being relied on, you can
18 imagine the FAR saying, this may be the provision that today
19 allows sole-source contracts above 3.5 million or above 5.5
20 million dollars for the Tribal organizations because I think
21 there is a risk that contracting officers may think that the
22 point of 811 was in a sense to repeal, to take away the ability
23 to do sole-source contracts above 3.5 or 5.5 million dollars
24 and it might make sense for the FAR Council to consider
25 explicitly saying the statutory basis for the sole-source award

1 could be the statutory provision that says that Tribal
2 organizations can get sole-source contracts of any amount.

3 MR. KASER: That would be great.

4 MR. GORDON: I don't think anybody in the room would
5 be against the idea. I want to point out that those are the
6 sorts of issues that we're going to work our way through.
7 Again, I should emphasize the point that Linda Nielson made.
8 We view the FAR as the handbook for contracting officers. I
9 know that everybody outside the government uses it as well.
10 Everybody relies on it. Everybody litigates about what's in
11 there, but from our point of view, the primary initial basic
12 purpose of the FAR is to help contracting officers figure out
13 what the rules are.

14 We don't expect contracting officers to be looking up
15 statutes. We don't expect them to be looking elsewhere. We
16 always think that the FAR should tell them all they need to
17 know about how to handle a situation, so that there's some
18 logic in being more explicit in the FAR.

19 One of the things that I'm always tempted to do
20 because of my legal background is to put things in the preamble
21 of the federal register notice. Lawyers love having things in
22 the preamble of the federal register notice. The problem is,
23 the preamble doesn't end up in the FAR.

24 So if you want the contracting officer to see it, it
25 doesn't do much good to put it in the preamble. You need to

1 put in the FAR itself and these are the sorts of issues we are
2 going to be wrestling our way through and our tapestry-maker
3 has a comment.

4 MS. NIELSON: The designated weaver. I just wanted
5 to mention also, as well, just a little bit of conversation
6 about the fact that on the government side, we are hiring
7 additional contracting officers. As we write the FAR, we're
8 very conscious of the fact that they are providing the
9 operator's manual, a blueprint, whatever you want to think of
10 it as, the cookbook, for a younger, less-experienced workforce
11 than we traditionally have had.

12 So we are trying to be especially clear and
13 especially succinct in our guidance for them because this is
14 where they will look for their guidance. So I just wanted to
15 reassure you that we take very much to heart as we're writing
16 the rules and providing the manual for them.

17 CO-CHAIR JOHNSON-PATA: Okay, with that, the next
18 comment that I was hoping that we could get some input in is
19 the question;

20 (Whereupon a portion of Tribal Consultation -
21 Discussion Questions was read as follows:)

22 "Under what circumstances might the government be better
23 served seeking some form of competition rather than making a
24 sole-source award? What forms of competition should be
25 considered? How might this consideration be captured in a

1 written determination?"

2 (Whereupon the reading of a portion of Tribal
3 Consultation - Discussion Questions was concluded.)

4 CO-CHAIR JOHNSON-PATA: And I open it up. I want to
5 say that some thoughts that came out from some other
6 consultations, just to open up the floor, were a thought about
7 in the research, you find that there are multiple Native
8 companies in the same -- with the same mixed (ph) code for the
9 -- where there could be a small competition and whether or not
10 that would be something people would be interested in keeping
11 it in a smaller scope.

12 Somebody else brought up something around some
13 regionalization of competition. I'm not sure how that would
14 actually be structured, but some regionalization, just throwing
15 out some things out there for -- trying to get you guys to
16 engage on this topic. Ideas, comments? Sarah, did you hear
17 anything different in the Albuquerque session?

18 MS. LUKIN: Nobody likes this question.

19 CO-CHAIR JOHNSON-PATA: I know.

20 UNIDENTIFIED SPEAKER: Next question.

21 MS. LUKIN: No, in fact, nobody addressed this, if I
22 recall correctly in the Albuquerque consultation and I think in
23 D.C. when this question was brought up, I again raised our
24 8/10th of one percent of sole-source contracting dollars, and
25 you know, in talking with some of our membership about this

1 question, the feedback I got was really -- the issue is not
2 about establishing a strict rule when competition is better
3 than sole-source, but rather the issue is reinvigorating the
4 contracting officers to use sound judgment when making a
5 determination on whether a contract should be sole-source over
6 a full and open.

7 CO-CHAIR JOHNSON-PATA: Right, and I think even in
8 the D.C. comments when people talked this question, they were
9 talking about any competition, clearly would be over the 20-
10 million-dollar mark, so when they were talking about that (sic)
11 and anyway, no comments? With that, we'll move to the next
12 question and this has to do deal with training.

13 (Whereupon a portion of Tribal Consultation -
14 Discussion Questions was read as follows:)

15 "How should an agency ensure contracting officers are
16 trained about the intent, purpose and effective use of the
17 Native contracting program? What points should agency training
18 materials emphasize about Section 811, in particular or the
19 Native contracting authority more generally?"

20 (Whereupon the reading of a portion of Tribal
21 Consultation - Discussion Questions was concluded.)

22 CO-CHAIR JOHNSON-PATA: And once again, several of
23 you brought up in your comments, the importance of training.
24 Certainly, Dan has spoken numerous times today about how
25 important it is and what a great priority it is given the

1 President's memo and that what (indiscernible - room noise)
2 does anybody have any specific recommendations, other than the
3 FAR should have specific guidance that can be interpreted by
4 any new contracting officer.

5 One other thing I'll bring up is we also have made,
6 NACA and NCAI have made recommendations, and you know, DOD has
7 already agreed that at their annual contracting training that
8 they would have a specific session for their contracting
9 officers on the Native contracting provisions and so we're
10 looking forward to assisting them in whatever way we can for
11 that event, those regular events. Anybody have any other
12 suggestions that you would like to incorporate or share,
13 recommendations? Yes.

14 MS. SIMON: Again, one other area I think that we get
15 -- one other area that our subsidiaries do get a lot of
16 interaction is that the industry days, the regional industry
17 days, that we're able to participate as ANCs or other Native
18 8(a) Programs, that would be very helpful.

19 MR. GORDON: Great suggestion. Thank you.

20 CO-CHAIR JOHNSON-PATA: Okay, generally, just opening
21 it up, any other thoughts about anything related to 811 that
22 you didn't hear said by somebody else and you're just dying to
23 make sure it's on the record. Yes.

24 MR. EVANS: I'll take one of the next ones right
25 here. The problem I've been hearing.....

1 CO-CHAIR JOHNSON-PATA: Your name, please, first
2 name.

3 MR. EVANS: Let me start off first -- you're probably
4 going to hear what other folks said earlier. So I'm going to
5 try to nail the hammer on it (sic) or nail it down.

6 CO-CHAIR JOHNSON-PATA: Okay.

7 UNIDENTIFIED SPEAKER: State your name, please.

8 MR. EVANS: Yeah (affirmative), okay. I'd like to
9 welcome the FAR Council here today and say thank you for
10 holding Tribal consultations throughout the country. In the
11 past, for comment on ANC rule change and up here in Alaska
12 (sic), we either had to travel a considerable extent or did not
13 participate. We appreciate you being here today.

14 My name is Richard Evans and I'm a Chair of NTVI
15 Federal, Incorporated, a corporation that's literally owned by
16 down by (indiscernible - speaking softly) corporation, the
17 Alaska Native Corporation of (indiscernible - speaking softly)
18 and you've got (indiscernible - speaking softly) as a holding
19 company that owns seven companies, two of which are certified
20 8(a) firms.

21 I was appointed to the (indiscernible - speaking
22 softly) as its Chair in August 2002. As Chairman, I
23 participate in the governance and the government of the company
24 and do their planning section of their marketing called for
25 federal agencies (sic).

1 In the past 30 years, I have been involved in my
2 Village corporation (indiscernible - speaking softly) as a
3 Board member and also have held the office of President. As a
4 Village corporation (indiscernible - speaking softly) you've
5 got to have much to work with and (indiscernible - speaking
6 softly) represented 174 shareholders received under the Alaska
7 Native Claims Settlement Act about a million dollars and
8 (indiscernible - speaking softly) acres of trees, which are
9 (indiscernible - speaking softly) upper valley.

10 We invested considerably and virtually all of the
11 income we generated was used to administer the corporation,
12 paying for attorneys, our Board meeting, annual meeting,
13 publishing the annual report document we (indiscernible -
14 speaking softly) they could, but (indiscernible - speaking
15 softly) at the end of 2002, that year our first subsidiary
16 received an 8(a) certification was \$930,000. 30 years after
17 the ANCSA banning (indiscernible - speaking softly) it was
18 pretty much in the same place (indiscernible - speaking softly)
19 of a vast majority of Village corporations in the state of
20 Alaska.

21 They are no better off than they were 40 years ago
22 and many are worse off. Those folks that point at the fact and
23 say, this is proof that the 8(a) Program does not work, need to
24 look instead at that Village corporations that have been in the
25 8(a) Program for a few years and who, like (indiscernible -

1 speaking softly) have provided value for their shareholders
2 while providing value to the Federal Government.

3 There are only a handful of us, but there have been
4 many, many more, maybe 150 more of those corporations that are
5 out there just waiting to get -- able to participate in the
6 program. Through the 8(a) ANC Program, valuable (indiscernible
7 - speaking softly) net worth has grown from the 930,000 at the
8 end of 2002, to over 7.2 million dollars.

9 Over the past five years, Baan O Yeel Kon has
10 distributed almost \$900,000 to its shareholders. For the
11 typical shareholder that holds 100 shares, that would be over
12 \$5,000. Baan O Yeel Kon's dividend has passed strained with
13 2,000 -- one or two technical shareholders, we expect this
14 spring to be around \$3,000 (sic).

15 If dividends are the yardstick for a fairer share
16 (indiscernible - speaking softly) subsist for ANCSA, it is only
17 the Village corporations like Baan O Yeel Kon that can make it
18 happen. The regional corporations simply have too many
19 shareholders. Although, my regional corporation made 17
20 million in 2009, they had 1.7 million shares. That's 10
21 dollars per share (indiscernible - speaking softly) earn 142
22 dollars per share.

23 We have provided management opportunities to our
24 shareholders. We have provided internship opportunities for
25 our youth in Alaska and Maryland (ph). We have set aside funds

1 and are in the process of setting up a scholarship program for
2 our shareholders.

3 In summary, the 8(a) ANC Program has worked for Baan
4 O Yeel Kon, its shareholders, employees, customers,
5 subcontractors, vendors and regulators and communities. Our
6 shareholders, employees, subcontractor and vendors are real
7 people with real families, real dollars, real sense. This
8 change will have very negative impact on them all.

9 There have been occurrences of program abuse and
10 greed of a few Alaska Native corporations. It saddens me to
11 see how these few occurrences are being viewed by ANC
12 competitors, large government contractors to halt a program
13 that is just starting to have positive impact on the lives of
14 those (indiscernible - speaking softly) shareholders across the
15 state.

16 I think you would be interested to know that a CEO
17 and a shareholder, who was the General Manager of one of our
18 8(a) subsidiaries was interviewed extensively over the phone
19 and in person by the "Washington Post" this past spring. They
20 were told that they were to be part of a story on Alaska Native
21 corporations that will be published in the fall of 2010.

22 (Indiscernible - room noise) were taken to reimburse
23 financially and a follow-up shoot took place another day.

24 The "Washington Post" did not disclose one reference
25 to our company in their two-day story. The "Washington Post"

1 also did not report the news that day that Boeing based on the
2 Senator McCaskill of Missouri received an 11.9-billion-dollar
3 sole-source contract. That is more than twice the amount of
4 2009 contract awarded to Alaska Native corporations. I'll let
5 you form your own conclusion.

6 To that -- but my remarks finally (sic), let me
7 address the regulations under the discussion to implement
8 Section 811. Section 811 looks fairly clear and
9 straightforward. I don't agree with it, but I understand it is
10 the law. It is confusing and arbitrary and should be repealed.

11 I hear that a repeal is unlikely. So I have two
12 suggestions for the FAR Council to consider during the course
13 of writing the regulation to implement the law. There are two
14 items that the SBA (indiscernible - speaking softly) and we
15 strongly support them.

16 First, we do not characterize Section 811 as a 20-
17 million-dollar cap on sole-source awards to ANC, Tribal or
18 Native Hawaiian 8(a) firms, rather similarly require the
19 justification and approval process for a sole-source 8(a) award
20 in excess of 20 million.

21 Second, please write the regulation so that contract
22 value be defined as the value of the base year only in the base
23 year plus option year contract. This should cover both
24 (indiscernible - speaking softly) licence to hunt contracts and
25 professional services agreement with the base year, but no

1 commitment to extend upon that term. In each case, only the
2 committed dollars should count. We support the SBA position on
3 this. We clearly want to thank the Council once again for
4 coming to Fairbanks and listening to us. Thank you.

5 CO-CHAIR JOHNSON-PATA: Thank you. Is there any
6 other -- yes.

7 MS. FERGUSON: My name is April Ferguson. I am with
8 Bristol Bay Native Corporation and Bristol Bay Native
9 Corporation will be submitting written comments and so I won't
10 address any of the technical questions here today. I did want
11 to say thank you very much for coming this far. You may think
12 that Fairbanks -- you've ended up at the end of the world and
13 what did you do to deserve Fairbanks, Alaska?

14 Well, I grew up here and it's a wonderful community
15 and I apologize for being late for the proceedings today.
16 Something very unique and wonderful is happening in Fairbanks
17 right now. It's the Alaska Federation of Natives Conference.
18 There's probably over 1,000 attendees and I don't know if
19 you'll be here through Thursday or Friday and I really wish you
20 could stay, if you're not, because we'll have representative
21 dance groups from around the state.

22 This is a big state. There are vast cultural and
23 geographic differences here and we are well-represented, and I
24 don't know. Are the crafts, arts and crafts open?

25 UNIDENTIFIED SPEAKER: It starts Thursday.

1 MS. FERGUSON: Thursday. Well, you will really
2 (indiscernible - speaking softly) out there and at the arts and
3 crafts fair and it'll be huge. They exhibit unique items you
4 will find nowhere else in the world, handmade in the
5 traditional manner snowshoes that people make here. You're
6 going to see whale boning and ivory, original ivory art that
7 you will never find in a store.

8 So I'm very sorry that we can't share all of that
9 with you because part of your coming here is to get to know us
10 and I have sat on the other side of the desk like that and
11 listening all day long in a respectful and open manner is very
12 hard and wearing. I realize that.

13 I want to leave you, though, with a little bit about
14 who Bristol Bay is. We, and I always cringe because I know
15 Chugach and everybody else who is here, but we are the red
16 salmon capital of the world, commercial fishing (indiscernible
17 - room noise) strongholds a part in this (indiscernible -
18 speaking softly) and one thing that I do want to tie into all
19 of this because Jackie alluded to it earlier is the question,
20 or maybe Sarah, the question of benefits and what precarious
21 road this is to go down and what intangible benefits could mean
22 and first, I would like to say our Directors, we have a Board
23 of Directors of 12, who are elected by our shareholder body
24 (sic).

25 Our shareholders make very clear to our Board of

1 Directors, who are in absolute control of our corporation, what
2 their priorities are. Our shareholders have told our Board
3 very clearly that a priority is protecting our land, our land
4 base.

5 So it is wonderful that we get dividends and it is
6 wonderful that we have education and scholarship funds, but
7 protecting our land use and managing our land program is an
8 essential component and maybe not a clearly defined, somewhat
9 intangible benefit that is incumbent upon us to administer in,
10 I want to say, in a traditional manner.

11 We are charged with responsible development and we
12 are charged with protecting subsistence, which is the
13 traditional way of hunting and fishing and gathering. When we
14 were established as corporations, we were, right off the bat,
15 as a for profit, given the responsibility to manage over three
16 million acres of land. That means our responsibility is to
17 husband, care for, be a custodian for that land.

18 Every single expenditure that we make in advocating,
19 protecting, is again, an intangible benefit that being able to
20 participate in these government contracting programs as we
21 learn to do business in also -- you know, address the needs of
22 our shareholders is part and parcel. They are tied together,
23 but it is, I guess, a benefit that is sometimes hard to
24 translate in the sense of trying to explain it to a
25 congressional community in a two-minute synopsis really what it

1 is that we are charged to do and anyway, I just wanted to thank
2 you for coming and for listening and I do hope you get outside
3 and (indiscernible - speaking softly).

4 MR. GORDON: Thank you.

5 CO-CHAIR JOHNSON-PATA: Thank you. So with that, I
6 think that we're ready to close this session today. We have
7 another -- go ahead.

8 MR. HARRIS: (Speaking Native language). This is a
9 greeting you would have received when the oceans were totally a
10 complete six inches lower than they are right now. It is a
11 greeting that acknowledges you as (speaking Native language)
12 grandchildren of our ancestors and we acknowledge that and
13 thank you for coming to visit. We hope you come to visit the
14 rest of Alaska, grant it, it may take the rest of your life,
15 but know that you are welcome.

16 THE COURT REPORTER: Could you state your name?

17 MR. HARRIS: My name is Tom. I did state my name,
18 (speaking Native language).

19 THE COURT REPORTER: I couldn't understand that,
20 though.

21 MR. HARRIS: Well, I expect that. I'm known as Tom
22 Harris.

23 THE COURT REPORTER: Thank you.

24 MR. HARRIS: And I have the privilege of and honor of
25 being a member of the Tlingit Nation, who is working for our

1 grandparents, the Denai Nation. I'm employed as the Chief
2 Executive Officer of Tyonek Native Corporation. As you heard,
3 we are land owners as a result of the Alaska Native Claim
4 Settlement Act and in fact, we are the nation's largest land
5 owner as a group.

6 I am pleased to hear and see that today, the
7 Secretary of Agriculture and the President have announced the
8 settlement of the claims against the Department of Agriculture
9 for Native Americans and that, along with the settlement for
10 African Americans. We understand is going to be moving through
11 Congress. We hope and pray.

12 Please note that USDA has yet to have one proper
13 meeting with the land owners of Alaska, not a single proper
14 meeting has been held and we are waiting to have those
15 conversations so that we can have all of our lands as
16 productive as the rest of the nation.

17 Please know as a result of that, today, Alaska is the
18 least productive wildlife state in the nation. Let me restate
19 that. We have documented and Alaska is the least productive
20 wildlife state in the nation. In fact, more wildlife was
21 harvested within 55 miles of Washington, D.C., than was
22 harvested in Alaska all of last year. That statement was true
23 the year before, the year before, the year before and the year
24 before.

25 That means our communities have to ship in food at

1 \$16 a pound. That makes one moose worth 12, \$14,000 for a
2 household that has a median home income of \$20,000. That's
3 quite a big chunk when you don't get that moose.

4 I'm saying all of this to say, we greatly appreciate
5 the 8(a) Program. It is helping us to become more inter-
6 dependant (sic). We do not choose to be the United States
7 Government's dependants. That's not what our (indiscernible -
8 speaking softly) for and we know that it's not your intent. So
9 in order for us to be inter-dependant, we must contribute to
10 society and we are contributing in this way and we are grateful
11 for that opportunity.

12 We are also aware that our lands are important to the
13 United States and we are also aware that the largest --
14 Lucile's between Lucile's Village and Tyonek's Village, we
15 have influence over half of the coal on the North American
16 continent. That coal is important, especially in this day of
17 coal (indiscernible - speaking softly). We are looking forward
18 to being very adamant contributors to the United States'
19 economy.

20 You also need to be aware that the largest gold
21 deposit, the largest coal deposit, the largest molybdenum
22 deposit in North America also goes through these lands and we
23 are also looking forward to those being developing, taking an
24 environmentally sensitive action so that we can buy back much
25 of that foreign debt that's out there with (indiscernible -

1 speaking softly) of the Village of Tyonek, 5,000 jobs are going
2 to be created in the next 10 years and we know that because
3 we've had more visitors from foreign countries than we have our
4 own. To our Village of 200 people, that's a lot.

5 We are very patriotic. We value our elders and
6 especially those who are veterans and as a result of the 8(a)
7 Program, we now have (indiscernible - speaking softly) that are
8 becoming more productive so that we can welcome wounded
9 warriors. We're celebrating our sixth year welcoming wounded
10 warriors to our (indiscernible - speaking softly) so that they
11 can come in a safe environment, have a greater degree of
12 success than they would on (indiscernible - speaking softly)
13 and with that, we don't know if that fits into one of the boxes
14 you have to check, but they are part of our success and we
15 celebrate welcoming them back and helping them understand that
16 they're not coming back as dependants. They're coming back as
17 inter-dependants with us, serving our community as a whole.

18 So of all of the things we celebrate, we celebrate
19 your visit with us today and I want you to know that I'm
20 originally from the Village of Kitschk-hin. Today you know
21 that as Ketchikan. There were seven Tlingits. Do you have
22 your map of Alaska with you? I carry mine with me all the time
23 and I find it very helpful. In fact, my Alaska map is so
24 important to me that during the pledge of allegiance, I place
25 it over my heart. We're (indiscernible - speaking softly).

1 Our relatives up north say we're so far south, we have the
2 right to say y'all. So y'all come visit us some time soon.
3 Gunalcheesh (speaking Native language.)

4 CO-CHAIR JOHNSON-PATA: Gunalcheesh, Tom and April
5 for your comments because a good closing comments.....

6 MS. PRATTE: Jackie, before we wrap up, I just wanted
7 to.....

8 CO-CHAIR JOHNSON-PATA: Sure, go ahead.

9 MS. PRATTE: Well, thank you very much for everybody
10 for coming, taking time out of your schedules and I did want to
11 say that it is an honor to serve the Alaska Native, Native
12 Hawaiian, and American Indian populations at the Small Business
13 Administration also in my appointed position and I really want
14 to thank the FAR and the OMB for not only doing these
15 consultations, but really being true to the spirit of Executive
16 Order 13175 to engage in meaningful consultation and dialog
17 with Native Nations on policies that affect their populations
18 specifically.

19 I've been in a unique position and I really have the
20 privilege and the honor of seeing firsthand the effects of
21 Native 8(a) across the country from the rural Pueblos in New
22 Mexico to (indiscernible - speaking softly) to most recently in
23 Hawaii, and I just wanted to share a really brief, brief
24 experience that we had in Hawaii and understand that we, at the
25 agency, know the difficulty in tracking benefits that we've

1 discussed so far in detail.

2 In Hawaii, it's Ke Kama Pono and it's a safe house
3 that's funded through Native 8(a) dollars from a Native
4 Hawaiian organization and it's an alternative to incarceration
5 for juveniles, juvenile offenders, 13 to 17 years old that
6 range from burglary to assault to whatever and along with the
7 Native Hawaiian community, it's possible through government
8 contracting through Native 8(a), they're able to rehabilitate
9 these youths to become productive members of society as opposed
10 to putting them into a regular incarceration where recidivism
11 is so very high and the Native Hawaiian organization gets
12 involved in providing support, monetary support and so it's
13 stories like that I get to see and I'm so glad that you're here
14 to share those stories with our other federal counterparts
15 about how important the community development aspect is of
16 these programs and how we do appreciate your tax payer dollars
17 too and keep us funded and to allow us to do all of this
18 outreach that we've done. So I just want to say (speaking
19 Native language) thank you and we're an Athabascan speaking
20 Tribe, the Navaho as well.

21 CO-CHAIR JOHNSON-PATA: Thank you, Clara. Before we
22 leave, Dan is going to have some final comments, but I just
23 wanted to be able to once again, also thank the federal
24 partners, as well as you for being able to be here today and to
25 participate with the comments and try to take some general

1 notes and hoping they'll be helpful for us. The more
2 information and the more times that we hear from you, it helps
3 Sarah and I and others try to be able to put together scripts
4 for the future. We really appreciate all of the stories that
5 you shared. They are very, very helpful.

6 The settlement that Tom, for those of you who weren't
7 on your Blackberries the whole time, the settlement that Tom
8 spoke about today is the Keepseagle settlement is the ranchers
9 and farmers and it's been something that we've been trying to
10 get resolved for a long time, but I just wanted to also let you
11 know that the USDA worked very hard and in fact, our own Mary
12 McNeil was a part of the Civil Rights Divisions that was part
13 of having that happen. So we're -- hopefully, that will move
14 forward with the other settlements as they go forward and I
15 also want to thank all of the Tlingits, this is my sign, no,
16 all of the Tlingits that we've mentioned today. I was
17 surprised how many -- I wanted to keep track of how many
18 Tlingits were around. So with that, gunalcheesh, and Dan, here
19 you go.

20 MR. GORDON: Thank you very much. First of all,
21 thank you for doing a wonderful job chairing the session with
22 us. We very much appreciate that. I want to thank you on
23 behalf of all a my colleagues who came here from the FAR
24 Council. As I've said before and I've said it more than once,
25 I can't tell you today what the proposed regulation is going to

1 look like.

2 When you read it, there may be things in it that you
3 don't like at all, things you don't agree with. There may be
4 things that you very much agree with. We'll welcome your
5 comments on that, but right now, what I want to do is thank you
6 all for giving us an extraordinary, extraordinary experience
7 here. We will never forget the session with you here in
8 Fairbanks, I can promise you.

9 It has been -- it was promised to us that it would be
10 an amazing experience and it has indeed been an amazing
11 experience. We were in a shop yesterday looking at Alaska-made
12 handcrafts and talking to the proprietor and hearing her
13 stories, walking around the streets of Fairbanks yesterday and
14 talking with people, hearing their stories. It is for us a
15 wonderfully enriching experience and in a much more relevant
16 way in terms of Section 8 working, I guess.

17 Hearing your stories about the benefits of the 8(a)
18 Program has brought to your Villages, the very concrete
19 benefits, whether it's the scholarships, the assistance in
20 terms of employment, job opportunities, especially for young
21 people, it is very important that we got that enrichment that
22 you brought to us here. Thank you for sharing the stories.
23 Thank you for being here today. We're very grateful to you for
24 your participation in this Tribal consultation.

25 END OF PROCEEDINGS

C E R T I F I C A T E

UNITED STATES OF AMERICA)

) ss.

STATE OF ALASKA)

I, Sunny Morrison, CSR #75757, do hereby certify:

That the foregoing pages numbered 2 through 130 contain a true, accurate and complete transcript of the BIA Tribal Consultation Group taken before me, on October 19, 2010, and transcribed by me, to the best of my knowledge and ability.

Sunny Morrison, CSR #7575

My Commission Expires: 2/29/2012