

**Statement of Joseph Valandra**

**Executive Director**

**Native American Contractors Association**

**Legislative Hearing on:**

**Native 8(a) Contracting: Emerging Issues**

**The Committee on Small Business Subcommittee on  
Investigations, Oversight, and Regulations**

**October 22, 2019**

## **Introduction**

The Native American Contractors Association (NACA) expresses our sincere appreciation to Chairwoman Chu and the Investigations, Oversight, and Regulations Subcommittee of the House Committee on Small Business for providing us this opportunity to share NACA's views, concerns, and recommendations related to the Small Business Administration's Business Development 8(a) program.

Established in 2003, and located in Washington, DC, NACA is a 501(c)6 trade association formed with the purpose of advocating on behalf of Community-owned Alaska Native Corporations ("ANC"), Native Hawaiian Organizations ("NHO"), and tribal corporations engaged in federal contracting. NACA's mission is to protect the rights of Native American communities to create economic development through government contracting, as a result of the unique nation-to-nation trust relationship between the federal government and Natives. This relationship is recognized in the Constitution and treaties. Our membership consists only of companies owned by Native American tribes, Alaska Native Corporations, and Native Hawaiian Organizations, all of which return their profits to enhance their communities and the lives of their community members. NACA members proudly serve our federal customers in all 50 states and internationally and simultaneously support Indian Country, touching the lives of hundreds of thousands of Native Americans, Alaska Natives, and Native Hawaiians.

Effective. Transformative. Powerful. These are not descriptions often associated with Federal Indian Policy. NACA is pleased to be able to say that the 8(a) program has become one of the most effective, transformative, and powerful economic development tools for both creating and diversifying economies all across Indian Country, from Alaska to Oklahoma, from Maine to California. The 8(a) program works.

The history of U.S. Government policy toward Native Americans has been long, disastrous, and shameful. The SBA 8(a) contracting program is one of the only federal programs that has been successful for Native American communities. It has helped

provide economic opportunity and increased investment in Native communities. This has resulted in improved sanitation, increased access to health care and education, and more up-to-date infrastructure. Our communities are still disadvantaged, and much more work needs to be done, but the program is working.

Congress should think long and hard before undertaking any changes to Small Business contracting rules that could in any way limit Native community involvement or access to contracting revenue. Any proposed changes to the program must involve extensive, meaningful consultation with impacted Native community leaders.

### **Background on the 8(a) Business Development Program and Native Communities**

The SBA Small Business Development Program under Section 8(a) of the Small Business Act was created to assist eligible small disadvantaged businesses in the economy through business development. This includes providing participating small businesses with training, technical assistance, and contracting opportunities in the form of set-aside and sole-source awards. The expansion of the Small Business Administration's mission to bring tribes, ANCs, and NHOs into the 8(a) program is a part of Federal Indian Policy. ANCs, tribally owned businesses, and NHOs participate in the Small Business Administration's Section 8(a) business development program as Community-owned entities representing disadvantaged communities. Recognizing the significant impact tribal enterprises have on tribal economies, in 1982 the Act was amended to permit tribal enterprises to enter negotiated sole-source contracts with federal agencies. As Community-owned Native organizations, Alaska Native Corporations (ANCs) were included in 1988, and Native Hawaiian Organizations (NHOs) in 2002. These provisions acknowledge the tremendous benefits Native 8(a) enterprises provide to entire communities of disadvantaged individuals, not just individual business owners. By creating provisions specific to Native Community-owned entities, the 8 (a) program recognizes the Federal government's trust relationship with Native peoples and the government-to-government relationship with tribes and ANCs. The program has allowed tribes, ANCs, and NHOs to compete successfully for federal contracts, directly and

indirectly creating jobs and economic opportunity in Native communities across the country, even in isolated, rural areas.

Native contractors that participate in the 8(a) business development program provide jobs and are integral to the growth of not only Native economies, but the U.S. economy as well. The 8(a) program is an effective tool for tribal communities to generate income for themselves and become more self-sufficient and independent. The result is a mutually beneficial outcome for Native communities and the U.S. taxpayer as profits from 8(a) contracts continue to fund much needed Native community programs that may have otherwise been financed by taxpayer dollars or may not have been funded at all.

It is evident that when qualified and capable entities participate in the U.S. Small Business Administration Business Development 8(a) program, economies improve, communities and participants become more self-sufficient, and valuable services and products are provided. Over the last decade, the SBA has continuously improved upon their assessment of 8(a) applicants to ensure that eligible tribes wishing to participate are federally or state recognized tribes. NACA takes pride in the fact that our member Native enterprises have transparent, accountable, and successful ethics and compliance programs. NACA ardently supports the 8(a) program and advocates following a process for participation that respects and adheres to the law as intended, so that Native communities can continue to grow and prosper under this compelling and necessary small business program.

### **Entire Communities benefit from the 8(a) program**

Communities participating in the SBA's 8(a) contracting program invest heavily in their communities. No other participants in the 8(a) program exist for the benefit of entire at-risk communities: the communities that own and control those companies. In GAO report 12-113 from March 2016, an appendix provided an example of an ANC-owned 8(a)'s benefit report submission. Unlike all other federal contractors, Community-owned Native entity participants in the 8(a) program must provide annual benefits reports. The report

listed employment, economic benefits, economic and community development, health, social and cultural support, lands management, and education and development as the six categories of benefits reported. Each tribe, ANC, or NHO determines what kind of benefits and reinvestments are best for the communities they serve. The board of directors for each Native Community-owned business must also decide whether they can distribute benefits based on the health and size of their businesses. Here are some examples of how NACA members benefit their communities.

## **Benefits**

### Business Profits Returned to Communities

Community-owned Native enterprises are mandated to return/reinvest part of their profits in their communities. As noted, these benefits are vital to the stability and survival of most Native communities. As you can imagine, the financial impacts are substantial for NACA member communities.

Examples of how the Native 8(a) small businesses benefit and enrich an entire community are too numerous to give a complete list.

### Job creation

While the SBA's 8(a) contracting program is an economic development program, not a jobs program, NACA member companies have created thousands of jobs, directly and indirectly, as a result of participation in the 8(a) program. The direct jobs created in contracting have allowed our members to provide career pathways in engineering, accounting, and sales. The range of jobs available in federal contracting is enormous and all of those possibilities are now accessible to our younger generation. Jobs indirectly created through investments made possible by profits from federal contracting have also dramatically increased. These jobs and income that would never have been possible without the 8(a) program. One can imagine the hugely positive multiplier effect on local economies.

### Investing in the Community

NACA businesses also assist their Native communities by providing resources to invest in youth (Head Start and early childhood education); education including Native language revitalization programs and scholarships for post- secondary education, vocational training, and job training programs; and Native history and cultural preservation. They also invest in infrastructure, housing, elder care, healthcare and other community priorities. None of this community investment would be possible without Native Community access to the SBA 8(a) program.

### **Legislative Recommendations**

NACA strongly supports the Small Business Act and related programs due to the hope and opportunity it brings to historically disadvantaged Native communities. The 8(a) small and disadvantaged business development program is functioning as Congress intended, by promoting the economic well- being of Native Americans. However, we believe that the reauthorization of the Small Business Act provides us an opportunity to strengthen and reinforce Congress's intent to empower Native communities to build strong Native economies. Below are recommendations we are asking the House Small Business Committee to consider when discussing the Small Business Act Reauthorization.

### **First and Foremost, Consider Indian Country and Do No Harm**

NACA requests that any legislation that may be proposed or considered by Congress and/or this Committee must strongly consider the impact to Indian Country and if found harmful be disregarded. In all cases Consultation with Indian Country must be pursued. Our members tend to have limited resources and exist in small and often isolated communities that cannot always keep abreast of legislative developments. This makes it imperative that members of this Committee always keep in mind how their efforts to modernize, streamline, and "improve" the Small Business set-aside programs, however well intended, may unintentionally negatively impact NACA member companies and the communities that rely on them. No other economically disadvantaged communities rely on the SBA program the way Native communities do.

For example, recent efforts in the House and Senate to update the SBA's contracting programs have not considered how those changes could impact the 8(a) program. One proposal, the Senate's version of the Small Business Reauthorization went so far as to give all contractors participating in the SBA disadvantaged programs the same contracting sole source capabilities as those of current 8(a) participants. It was justified as "parity," although this is not the case. While this may be good for certain contractors, this change would essentially end the 8(a) program as we know it for minorities and the disadvantaged. In a rush to lift up some disadvantaged individually-owned companies, other minority and disadvantaged contractors in the 8(a) program would be put at a disadvantage because they are only eligible to participate in the 8(a) program for 9 years, whereas some other individually-owned companies do not have any time limits.

NACA also opposes recent proposals to dramatically increase sole source contract sizes for many set asides, also in the name of supposed "parity." Again, although it is admirable to support individual entrepreneurs in these set-aside programs, supporting these individuals should not come at the cost of reducing opportunities for Native communities or dramatically increasing competition for federal contracts. NACA believes that maintaining the difference between individual and Community-owned entity participation in government contracting set asides is important to achieving two important mandates of the Small Business Administration: 1) support small business diversification through entrepreneurship and 2) support communities, particularly Native American communities, through business development. These goals can be achieved by keeping the different programs distinct, with clear objectives, and by keeping contract awards size appropriate. Contractors benefitting entire communities, like NACA members, should be eligible for larger contract awards. It is only fair.

### **Clarity in Legislative Proposals**

NACA opposes any legislative language that hides the true size of contracts by using terms only specialists understand. In particular, we are alarmed about legislative proposals that would increase individually owned small business contracting amounts to

levels that would blur the distinction between individually-owned and Community-owned companies. The language used suggests a reasonable increase in contracting awards. NACA supports a meaningful but reasonable increase in the current cap on awards but opposes elimination of option year amounts from the calculation of total contract value. By removing “including option years” from the language of the Small Business Act, the true total potential value of federal contracts is not clarified. Instead of an increase of contract sizes by 40-50%, as some language suggests, the true increase could be as much as 1000% over the life of the contract because “including option years” is removed from calculating the total contract award amount under the Small Business Act. Again, due to unclear language, the potential for harm and unintended consequences are greater. If it is the intent of the legislation to increase sole source contract awards for individuals from the current 4-7 million potential award cap to 35-50 million or more, the legislation should be clearly stated.

### **Additional Recommendations**

#### Increase Education and Funding for the SBA

To improve awareness of the SBA’s 8(a) program procurement policies, NACA supports the following to educate the contracting workforce on how to take advantage of qualified and capable Native and other small business contractors to meet their agency mission needs:

- Outline the procedures and processes involved in procuring required goods or services that are ideally met by utilizing the SBA’s 8(a) program. This can be accomplished through guidance distributed by federal agencies through memorandums and policy memos.
- Provide resources to contracting offices that are simple, easy to understand, and clear on how the SBA’s 8(a) program can be utilized. These could include, but are not limited to educational literature, information-sharing events, and stakeholder engagement.

- Assist in the development of webinar training for all new, incoming, contracting officers that, upon completion, will result in an 8(a)-contracting certification. This would be required for all new hires.
- Create opportunities for NACA to engage with federal agencies to provide training and elevate awareness of the importance of Native contracting to economic development and the factors that make this program unique from other small business programs.

### **Recommendations of the Section 809 Panel**

This Panel of contracting “experts in acquisition and procurement policy” was appointed pursuant to Section 809 of the FY2016 NDAA to make recommendations on improving Department of Defense contracting policy. For some reason, however, the panel members were heavily skewed toward experts who had served in government, military, or large contracting firms. Small business representation was very limited, and no representatives from the Small Business Administration were included. Nor were any representing Native Community-owned contractors.

Although the panel has met several times over the years, the Panel conducted very limited outreach to tribally owned contractors, Alaska Native Corporations, and Native Hawaiian Organization owned small businesses. Native Community-owned small businesses have an extensive experience in contracting with the Department of Defense, resulting in consistently high ratings from their DoD customers. None of this history was reflected in the panel’s recommendations.

Unsurprisingly, then, the panel’s recommendations included several items geared towards limiting or restricting small business contracting, and an overarching theme claiming that sound DoD acquisition policy and a strong war footing is somehow “inconsistent” with small business contracting. We strongly object to the panel’s makeup, its overall mindset, and many of its recommendations. We urge the Committee to reject

the panel's recommendations that relate to small business contracting as unwise and unfounded.

### **Category Management**

Category Management limits opportunities for Native Community-owned contractors and creates a non-competitive environment for federal contracting in general. This harms all small business contractors. Category Management mandates the transition to "Best-in-Class Awards" (BIC) as a vehicle for acquiring goods and services; this works against the Small Business Program as newer, less experienced small businesses are overlooked in favor of the larger, more experienced, traditional firms. We urge the Committee to reject any proposals to institute Category Management as federal acquisition policy.

### **Backlog in Processing Security Clearances**

In order to provide services to the federal government, contractors must be able to provide a skilled and qualified workforce. This includes the ability to obtain security clearances for both individuals and facilities. Obtaining these clearances is a major hurdle for not only Native 8(a) firms, but for all small businesses. The clearance process has statutorily established timeframes that are unable to be met as more investigations are needed. Increasing backlogs, wait times, and interagency duplication are major hurdles for small business contractors. We strongly support the set of contracting industry recommendations known simply as the "Four Ones:"

- One Application — one standardized and digitized application for all clearance determinations, updated continuously and stored securely, 8 to form the "permanent digital record" for the initial and any subsequent suitability, access, or clearance determinations.
- One Investigation — enabling a dynamic, ongoing examination of individual risk by implementing continuous evaluation.

- One Adjudication — streamlining and standardizing the overly complex adjudication system so that one agency's clearance decision is respected by other departments and agencies, promoting reciprocity and efficiency.
- One Clearance — recognized across the entire Government, transferable from department-to-department, agency-to-agency, and contract-to-contract.

Prioritization of high-value clearance processing must replace the current one-size-fits-all approach.

### **Conclusion**

It is evident that when qualified and capable entities or individuals participate in the U.S. Small Business Administration Business Development 8(a) program, economies improve, communities and participants become more self-sufficient, and valuable services and products begin to become more accessible to those who need them. NACA ardently supports SBA's 8(a) contracting program so that contracting companies owned by Native communities, and those owned by disadvantaged individuals, can continue to grow and prosper under this important and necessary small business program.

Thank you for granting NACA the opportunity to provide testimony on this important subject. The focus and effort afforded the SBA, Native Enterprises and the 8(a) Program is a crucial component of ensuring that Congress meets its unique obligation and interest in providing for the self-determination of Native Americans, along with other at-risk groups. NACA applauds the Committee's investment in ensuring that Native communities have the tools necessary to develop and grow their economies. Providing for the continued success of small business government contracting as an economic development tool is fundamental to this goal.