

Federal Contracting Support for Alaska Natives' Integration into the Market Economy

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Introduction

The SBA (Small Business Administration), according to current law, supports Alaska Native Corporations (ANCs) and American Indian tribal businesses in 8(a) contracts, as minority and economically disadvantaged businesses.¹ In compliance with statutory and administrative guidelines, 8(a) government contracts can be awarded to minority and economically disadvantaged businesses on a sole-source basis without requiring multiple competitive bids. In addition, federal legislation allows American Indian and ANC firms to bid on larger contracts than other 8(a) contractors, and also allows tribes and ANCs to operate multiple 8(a) firms.

A recent GAO (Government Accountability Office) report on ANCs and 8(a)² does not challenge the legislation or the eligibility of ANCs for 8(a) contracts, so long as they qualify as an ANC or non-profit and are more than 50% tribally owned.³ And some personnel in government agencies find working with ANC's in non-competitive contracts is often more efficient and effective than competitive contracting processes.⁴ Furthermore, government vendors often understand the government's purpose and intent of providing ANCs with contract opportunities that will encourage long term market enterprise and self-sufficiency within tribal communities.⁵ The Native American Contractor's Association encourages the SBA to give more attention to the market

¹ The law that grants contracting benefits to minority and economically disadvantaged businesses, popularly known as Section 8(a) of the Small Business Act is codified at 15 U.S.C. § 637(a). In 1988 and 1992, Congress enacted laws specifying that ANCs shall qualify as minority and economically disadvantaged businesses so long as the corporations remained majority owned and controlled by Alaska Natives. Likewise, subsidiaries and joint ventures involving ANCs qualify, so long as a majority of ownership and control remain with Alaska Natives. Pub. L. 100-241, § 15, Feb. 3, 1988, 101 Stat. 1788; Pub. L. 102-415, § 10, Oct. 14, 1992, 106 Stat. 2115. A similar provision affords a preference in defense contracting to ANCs. Section 8014(3) of the Fiscal Year 2000 Defense Appropriations Act, Pub. L. No. 106-79, enacted October 25, 1999, 113 Stat. 1212, 1234 .

² David E. Cooper, Alaska Native Corporations: Increased Use of Special 8(a) Provisions Calls for Tailored Oversight. Testimony Before the Committees on Government Reform and Small Business, House of Representatives (Washington, DC: US GAO, 2006),

³ <http://ezcertify.com/certificationfacts/8afact12.asp>. Federal courts have upheld the constitutionality of preferences for ANCs in government contracting, finding that the preferences do not constitute discrimination on the basis of race, but rather the expression of Congress's constitutional power over Indian affairs. See *AFGE v. United States*, 95 F. Supp. 2d 4 (D.D.C. 2002), *aff'd* 330 F.3d 513 (D.C. Cir. 2003). For an extended analysis of this issue, see Carole Goldberg, American Indians and "Preferential" Treatment, 49 UCLA L. Rev. 943 (2002).

⁴ See Jerry Reynolds, "Native 8a Program: The Other Economic Initiative Success Story," *Indian Country Today*, June 6, 2007, p. 2 (pointing out that because of increased procurement demands post -9/11, "Federal procurement contracts became bigger, and personnel cutbacks at the SBA, charged with overseeing the Native 8a program, meant procurement officers could put a premium on the quick, large and legal contracts Native 8a firms alone were eligible to execute.").

⁵ See *AFGE v. United States*, 95 F. Supp. 2d 4, 36 (D.D.C. 2002), *aff'd* 330 F.3d 513 (D.C. Cir. 2003), in which the Department of Defense argued that a contracting preference similar to 8(a) is justified because it "furthers the federal policy of Indian self-determination, the United States's trust responsibility, and the promotion of economic self-sufficiency among Native American communities."

enterprise goals of tribal communities,⁶ and the SBA has discussed the issue in reports over the last several years.⁷

Very recently, however, the House of Representatives Committee on Government Oversight and Reform has been questioning the desirability of ANCs' participation in 8(a) contracts.⁸ As part of a larger challenge to Administration use of no-bid contracts in the Iraq war and elsewhere, Congress has been considering measures that would curtail ANCs' share of 8(a) contracts.⁹ Whether ANCs' current 8(a) status is warranted, and should continue, is the subject of this paper.

Nature and Purpose of Alaska Native Corporations (ANCs)

ANCs were created by the Alaska Native Claims Settlement Act of 1971 (ANCSA) and have been modified numerous times by Congress,¹⁰ including an amendment in 1988 designating ANCs as minority business enterprises and Congressional language in 1992 designating ANCs as "economically disadvantaged" enterprises.¹¹ Through this legislation, ANCs and their qualifying subsidiaries have been enabled to qualify for federal contracting and subcontracting, including SBA 8(a) and Department of Defense Small and Disadvantaged Business programs.

The purpose of ANC status from the Alaska Native point of view is to assist ANCs in gaining competitive access and capabilities to successfully generate economic growth within the market economy. ANCSA created the ANCs as part of the land claim

⁶ GAO, Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight, GAO-06-399 (Washington, DC: April 2006), pp. 67-77.

⁷ GAO, Federal Procurement: Spending and Workforce Trends, GAO-03-443 (Washington, D.C.: April 30, 2003); GAO, Contract Management: Impact of Strategy to Mitigate Effects of Contract Bundling on Small Business is Uncertain, GAO-04-454 (Washington, D.C.: May 27, 2004); GAO, Small Business Contracting: Concerns About the Administration's Plan to Address Contract Bundling Issues, GAO-03-559T (Washington, D.C.: March 18, 2003); GAO, Reporting of Small Business Contract Awards Does Not Reflect Current Business Size, GAO-03-776R (Washington, D.C.: May 7, 2003); and GAO, Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations, GAO-05-201 (Washington, D.C.: April 29, 2005).

⁸ Prepared Remarks of Rep. Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, The Center for American Progress, Forum on a Return to Competitive Contracting, May 14, 2007, available at <http://oversight.house.gov/documents/20070515121402.pdf> (describing ANCs' participation as "a major procurement loophole").

⁹ Small Business Fairness in Contracting Act, H.R. 1873, 110th Cong. This bill, which passed the House on May 10, 2007, would lower the limit on 8(a) contracts as a whole, cap the contract amount on noncompetitive contracts, and prohibit "bundling" of multiple contracts in order to facilitate execution by larger firms.

¹⁰ Alaska Native Claims Settlement Act, 43 USC §1601 et seq.

¹¹ See note 1, above.

settlement for most of the present state of Alaska.¹² Alaska Natives gave up aboriginal title claims (surface and subsurface, as well as hunting and fishing rights) to most of the land of Alaska, constituting nearly 375 million acres. In exchange, the Natives received approximately 40 million acres (about 12% of the area of the state) and \$962.5 million, divided among over 200 village corporations and 12 (later 13) regional corporations. Each village was given an option to form a village for-profit corporation and most shareholders hold shares in both their local village and regional corporations. Village corporations received surface title to another 27.6 million acres, while the regional corporations got the subsurface rights to that same territory. Finally, regional corporations received full title to an additional 16 million acres.¹³ While the amount of the settlement may at first seem large, it looks less bountiful when considered in light of the per acre payment (\$3.00) and when compared with recent forms of Alaska assistance financed by oil revenues from state lands.¹⁴

The corporate entities established to receive settlement lands and funds were an experiment, intended as an alternative to putting the settlement in federal trust for tribes on reservations.¹⁵ Corporations were supposed to free Alaska Natives from oppressive and inefficient federal control, and ease their adjustment to a market economy. The corporate shares were to be alienable to non-Natives after 20 years, in 1991. Soon, however, Alaska Natives realized that the corporations would not achieve Congress's goal of establishing economically viable and protective corporate entities by 1991. Furthermore, Alaska Natives came to view the provisions for transferability of corporate shares as termination in disguise, and they began to work with Congress to restrict that possibility.¹⁶ The very same amendments to ANCSA that made ANCs eligible for 8(a) contracts are the amendments that protected settlement lands and funds from falling into non-Native hands.

Alaska Natives have lived on the land, and the loss of land seriously constrained access to land and subsistence life-style. The rights of Alaska Natives to use the land for their economy and subsistence has been in contention almost since passage of ANCSA, and federal authorities have had to reassume management of Alaska Native

¹² For a history of the Act, see Robert D. Arnold, *Alaska Native Land Claims* (Anchorage: Alaska Native Foundation, 1978); Donald Craig Mitchell, *Take My Land, Take My Life: The Story of Congress's Historic Settlement of Alaska's Native Land Claims, 1960–1971* (Fairbanks: University of Alaska Press, 2001).

¹³ Gigi Berardi, Natural Resource Policy, Unforgiving Geographies, and Persistent Poverty in Alaska Native Villages, 38 *Nat. Resources J.* 85, 93 (1998).

¹⁴ *Id.* at 96. Berardi points out that “consumers served by the Four Dam Pool hydroelectricity projects in Alaska have benefited from \$485 million in state grants and loans, equivalent to about \$16,000 per beneficiary.”

¹⁵ See Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission* (New York: Hill & Wang 1985); Arthur Lazarus, Jr. & W. Richard West, Jr., *The Alaska Native Claims Settlement Act: A Flawed Victory*, 40 *Law and Contemporary Problems* 132 (1976).

¹⁶ Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York, NY: W. W. Norton and Company, 2005), p. 239.

hunting and subsistence rights, since they were not protected under state law.¹⁷ In effect, most Alaska Natives have lost the right and access to make a living in the traditional subsistence economy of hunting and gathering. The forty million acres left to Alaska Natives by ANCSA are not enough, or appropriately positioned, to fully support a subsistence economy.¹⁸

Both Congress and Alaska Native leaders created the ANCs as a means by which Alaska Natives could control settlement funds and land in for-profit corporations that would enable direct participation in the market economy. Alaska Native leaders agreed to the corporations since they wanted to avoid the paternalism and control exerted by the Bureau of Indians Affairs (BIA). Both Congress and Alaska Native leaders believed that the bureaucratic administration of Indian land assets in the lower forty-eight states did not create conditions conducive to active market participation in the economy and constrained management and initiative. Recent court cases affirm that Congress did not intend to put remaining Alaska Native settlement lands in trust with the US government,¹⁹ and in principle, the land is fee simple, most under management of the ANCs. ANCSA invites Alaska Natives to enter the market economy, and to support Alaska villages and individuals through increasing integration into the US national market economy.

ANCs are organized along similar principles as most US corporations, with an elected board of directors and individual shareholders. However, Congress, in ANCSA and subsequent amendments, recognizes that ANCs are organized to promote the economic interests of Alaska Native villages and individuals. Most ANCs, through their boards, shareholders, and tribal leaders, work to engage the market system with the goal of maximizing the benefits to their shareholders, many of whom live in traditional villages and who share common traditional indigenous cultures, values, communities, and identities. Alaska Native villages retain many rights and obligations to self-government as they exercised from time immemorial. For most Alaska Natives, the ANCs are institutions for ensuring the economic, political, and cultural well-being of their communities. In this regard, the ownership of ANCs and their purposes are different from most private corporations in the US market place. The for-profit ANCs are designed to enable Alaska Natives to participate in the market economy, and follow

¹⁷ In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which affords Alaska Natives some protection for subsistence uses on public lands, this protection appearing in the form of a preference for “rural Alaska residents.” 16 U.S.C. § 3101 et seq. ANILCA allowed the state to regulate such uses if it could do so consistent with the federal preference; but the Alaska courts have invalidated every state effort to introduce a rural preference. Accordingly, since 1989, the United States has been regulating subsistence hunting and fishing on public lands in Alaska. See Nell Jessup Newton et al., *Cohen’s Handbook of Federal Indian Law* 354-360 (Newark, NJ: LexisNexis, 2005).

¹⁸ Wolfe, Robert J. *Subsistence in Alaska: A Year 2000 Update* (Juneau, AK: Alaska Department of Fish and Game, March 2000), p. 2.; Gigi Berardi, *Natural Resource Policy, Unforgiving Geographies, and Persistent Poverty in Alaska Native Villages*, 38 *Nat. Resources J.* 85, 96-100 (1998); The Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions Under U.S. Policies of Self-Determination* (New York, NY: Oxford University Press, 2007), pp. 327.

¹⁹ *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998).

shareholder interests, which for ANCs requires efforts to enhance community well being, support self-government, uphold language, and assist shareholders preserve their subsistence economy while opening new opportunities for market participation.²⁰ ANCs are like municipal utility corporations, that are serving the collective interests of the shareholder community, not only their individual finances. The ANCs administer land, assets, and moneys for the benefit of Alaska Native shareholders, who value their communities, lands, languages, and continued community organization.²¹ Alaska Natives are relatively new to competitive market-based economies, and have locations and limited resources that do not position them well for advantageous participation in markets.

ANCs, 8(a) Contracting, and the Road to Market Participation

A primary goal of US policy is that ANCs will help alleviate poverty and economic and social disadvantage among Alaska Natives.²² Alaska Natives continue to endure high rates of poverty, low per capita incomes, lower levels of education, many health problems, and many social problems such as high suicides (three times the rate of other Alaskans), high rates of crime, and incarceration.²³ These conditions are exacerbated by the decline of local subsistence economies, and loss of access to land and resources.

The path to participation in the market economy is not easy for any culture or community. Alaska Natives seek greater ability to manage their for-profit corporations in order to provide employment, management skills, experience with business partnerships and business opportunities for their shareholder-community members.

²⁰ As Berardi notes, "three of the regional corporations ... stress the ability of their shareholders to keep their cultural identity and subsistence lifestyle while participating in the wage economy on their own terms as Native corporation employees." Gigi Berardi, *Natural Resource Policy, Unforgiving Geographies, and Persistent Poverty in Alaska Native Villages*, 38 *Nat. Resources J.* 85, 102(1998).

²¹ For a discussion of contemporary form of American Indian economic organization see: Champagne, Duane "Tribal Capitalism and Native Capitalists: Multiple Pathways of Native Economy" *Social Change and Cultural Continuity Among Native Nations* (Lanham, MD: AltaMira Press, 2007), pp. 45-65; See also Hosmer, Brian and Colleen O'Neill *Native Pathways: American Indian Culture and Economic Development in the Twentieth Century* (Boulder, CO: University Press of Colorado, 2004); Smith, Dean Howard *Modern Tribal Development: Paths to Self-Sufficiency and Cultural Integrity in Indian Country* (Walnut Creek, CA: AltaMira Press, 2000).

²² "Wooch Yaayi" Woven Together Alaska Native Corporations, 2005 Economic Data. A Look at Thirteen Regional Corporations and Three Village Corporations (Anchorage, AK: ANCA Regional Corporation Presidents and CEOs, Inc., 2007), p.4.

²³ Scott Goldsmith, Jane Angvik, Lance Howe, Alexandra Hill, and Linda Leask *Status of Alaska Natives 2004* (Anchorage, AK: Institute for Social and Economic Research, University of Alaska, Anchorage, 2004), pp. 2-14, 3-2 to 3-39, 4-2 to 4-14, 5-2, 6-2 to 6-6; Alaska Native Policy Center, *Our Choices, Our Future: Analysis of the Status of Alaska Natives Report 2004* (Anchorage, AK: Alaska Native Policy Center, 2004); The Harvard Project on American Indian Economic Development, *Native Nations*, pp. 326-329.

Economic self-sufficiency is the goal of the ANCs and their shareholders.²⁴ This goal can be achieved only through active participation in the US and world economy. Most likely ANCs will need to be full participants and competitive players in the market place. Most ANCs may not have local advantages that will not enable them to succeed easily. Rights to the most lucrative oil and natural gas reserves in Alaska were not retained by Alaska Natives under the ANCSA. The main economic advantage of the Alaska region is not directly in the control of the Alaska Native communities, and therefore, ANCs must use other means and less advantageous resources to achieve a permanent foothold in the market economy.

How do ANCs benefit shareholders? As mentioned already, some primary concerns for ANCs are supporting village life and community, helping preserve language and culture, assisting in the transition to the market economy, protecting and sustaining the remnants of their subsistence economy, and promoting education, health, and the well being of shareholder-community members. Most US corporations are not so socially and culturally responsible or have shareholders who require their corporation to invest in the community and future of their shareholders. Most US corporate shareholders are individuals and are seeking to maximize their incomes. Although it is not a foreign concept for investors and beneficiaries of large funds, such as retirement funds or endowments, to insist that investments only go to enterprises that are ecologically sound, or tobacco free, or that are showing responsibility as corporate citizens, most corporations are not as thoroughly responsible for the well-being of their shareholders as are ANCs.

In the annual report for the 13 major ANCs and three village corporations for 2005, the corporations collectively had revenues of \$5.85 billion and assets of \$3.83 billion. The major ANCs paid \$88.7 million in dividends to shareholders. The corporations employed 3,380 Alaska Natives and employed 13,604 individuals in the state of Alaska. A total of \$8.97 million was given in charitable donations, most benefiting community organizations related to shareholders, and \$4.4 million was distributed in scholarships benefiting 3,228 students, mostly shareholders.²⁵ In 2005, shareholder equity for the 13 major ANCs grew 19.3 % to \$2.15 billion for a growth total of about a third of the original ANCSA payment of \$962.5 million. Revenues for ANCs have shown steady growth over the 1995-2005 period. The 13 major ANCs had total

²⁴ See Letter from Sheri Buretta, President, Association of ANCSA Regional Corporation Presidents/CEOs, in MALRUGNI YUULUNI: Walking In Two Worlds With One Spirit: Alaska Native Corporations Annual Economic Report Based on 2003 Financial Data (Association of ANCSA Regional Corporation Presidents/CEOs, 2005), available at <http://www.chugach-ak.com/pdf/7136ANCSA2005report.pdf>: "ANCs have become the main vessel for our people to compete in the marketplace. They are the economic engines charged with creating economic value and opportunities in our homelands, employing our people, and supporting social and cultural programs important to our people. ANCs also are engaged in the larger economic arena to capture new technologies, build greater capacities in management and labor, and transform the way we do business."

²⁵ "Wooch Yaayi" Woven Together, p.8; "ABMs Top 49s: Alaska's New Gold Standard for Business" *Alaska Business Monthly* (October 2006): 82-109; Alexandria J. McClanahan, Cindy Alfred, Jason Evans, and Michael Orr "Ch'elbuja-We Share It. 2005 Alaska Native Corporation Report; "The Trends 100 - Alaska's Largest Private Employers in 2006" *Alaska Economic Trends* (August 2006): 6-7.

revenues of about \$1 billion in 1995, about \$2.8 billion in 2001, and \$4.4 billion in 2005. From 1995 to 2005, the total assets of the 13 major ANCs grew from about \$1.6 billion in 1995 to \$3.24 billion in 2005. Net income has been variable from year to year among the 13 major ANCS, but collectively positive from 1995 to 2005, ranging on average in the \$120 million range, with a high of about \$460 million in 2001 and a low of about \$25 million in 2001. Net income for the major ANCs was \$361 million in 2005, an increase over \$125 million in 2004. In 2005, 18 ANC regional and village corporations were among the top 49 businesses in the state of Alaska. ANCs claimed seven of the top ten spots, and Arctic Slope Regional Corporation and Chugach Alaska Corporation were numbers one and two. The 18 largest ANCs accounted for 11,000 jobs in Alaska and for 34,000 jobs worldwide.²⁶

In 2005, ten regional ANCs and two village ANCs, Alutiiq and Chenega, were the most significant participants in government contracting. The twelve leading ANC government contractors provided dividend income to shareholders totaling \$33,663,803. Furthermore, the same twelve ANCs provided nearly \$5.5 million for cultural and social support to Native communities, and \$889,835 for non-Native social programs.²⁷ School programs, Elders Trust Funds, Potlatches and intern programs were supported with over \$7 million from the twelve ANCs, and Native Permanent Fund programs had funds valued at \$88.2 million in 2005. Government contracting through ANCs paid business payrolls in the State of Alaska totaling over \$413.5 million, and employed 9,750 in Alaska, of which 3,170 were Native employees. In 2005, Government contracting ANCs were operating in 49 states, 2 U.S. Territories, and the District of Columbia. In the same year, 2005, the twelve ANCs engaged in 871 government contracts, and retained 31,717 employees in the United States.²⁸ ANCs are responsible corporate citizens, both Native and non-Natives are benefiting from employment opportunities, business growth, and charitable contributions generated by the Alaska Native Corporations.

The thirteen original ANSCA regional corporations serve approximately 109,000 shareholders, and more generally the entire current population of 140,000 Alaska Natives, as well employing many non-Natives.²⁹ ANCs serve a significant number of disadvantaged shareholders, and both policy goals of promoting competitive market entry and generating self-sufficiency among minority and disadvantaged communities can be achieved through fostering the market opportunities for ANCs. The SBA's

²⁶ McClanahan, "Ch'elbuja-We Share It.: 6-7; GAO Report Highlights Successes & Challenges of Tribal Business Development Program. Press Release Native American Contractors Association, April 27, 2006.

²⁷ In the interest of full disclosure, several ANCs recently donated a total of \$25,000 to UCLA School of Law for scholarships directed toward students working on Native law and policy issues.

²⁸ The figures presented in this paragraph are based on self-disclosures by the ten regional ANCS and two village corporations that engages in most government contracts. All figures are from the year 2005. See Native American Contractors Association website on page 3: http://www.nativeamericancontractors.org/pdf/NACA-Pkt_040607.pdf ;Last visited on 8/29/07.

²⁹ "Alaska Native Regional Corporations" *Wikipedia*, [\[http://en.wikipedia.org/wiki/Alaska_Native_Regional_Corporations\]](http://en.wikipedia.org/wiki/Alaska_Native_Regional_Corporations)

promotion of development of small businesses, including American Indian and minority small business enterprises should remain a primary policy goal. Nevertheless, the long term advantages of competitive and profitable ANCs and other tribal businesses promise to fulfill not only business development goals for disadvantaged minority firms, but also helps fulfill the goals and intent of ANCSA as well as many agreements, policies, and legislative acts aimed at the well-being of Alaska Natives and American Indians.

In order to be competitive and enhance Alaska Native shareholder and corporate self sufficiency, ANCs must have the flexibility to hire talented staff and executive leadership, as well as have the ability to use partnerships and subcontracting tools any competitor business might use. This means that many employees and top managers will not always be Alaska Natives. Innovative executives with the social and cultural skills to navigate and serve the interests of Alaska Native corporate boards are rare and should be prized and compensated accordingly, if they are improving assets, profitability and the missions of serving and upholding Alaska Native cultural, self-determination, and economic goals. Similarly, ANCs must have the capability to form partnerships and subcontracts, in order to complete jobs and make profits. Most corporations resort to similar tools to complete tasks that are not within their current organizational capabilities. Recent criticisms about non-Alaska Native CEO hired by some ANCs and the practice of partnering up to 49% of certain 8(a) contracts will constrain ANCs in ways that will make them less competitive, and therefore less able to achieve their self-sufficiency economic, political, and cultural goals. All Small Business Administration and government contractors have the right to subcontract minority portions of government contracts, and ANCs should have the same opportunities.³⁰

While partnerships and non-Alaska Native managers may seem to constrain the benefits to shareholder-community members, ANCs are managed by boards and shareholders, who are elected to office to carry out the interests and values of the shareholder community. Unlike most US corporations, the ANCs are understood by their shareholders as instruments of economic development, asset management, and community preservation and cultural continuity. The ANCs are more than profit-making engines, but are the economic means to support preservation of land, equity, and entree into the market economy. The ANC shareholders are in control of their corporations, and see them as protectors of their heritages, as well as the means to engage in the globalized market economy of the 21st century and future.³¹ Without the capability to compete in markets, Alaska Native assets certainly would be lost, communities impoverished, and communities and cultures destroyed.

ANCs are a primary economic hope for Alaska Natives to gain self-sufficiency and economic stability that will enable their communities and cultures to flourish well

³⁰ Kimberly Palmer, "Congressmen Probe Contracts with Alaska Native Firms" Government Executive.Com, March 8, 2005 [<http://www.govexec.com/dailyfed/0305/030805k1.htm>].

³¹ Berger, Thomas *Village Journey: The Report of the Alaska Native Review Commission* (New York, NY: Hill and Wang, 1985).

into the future. ANC communities and shareholders have strong commitments to achieving their goals, and will not allow corporate managers to deter them from their goals.³² ANC boards nowadays are filled with community leaders, many with decades of experience with the market and cultural issues facing their corporations. Many ANC boards chose the path of not delegating their corporations and assets to managers unknown to them, and decided to learn how to navigate the corporate and market world by first hand experience. This was a risky path, and profit margins were sacrificed for many years to ensure Alaska Native control and to provide time for community leadership to gain valuable first hand experience. Now many board members have decades of experience, Alaska Natives act as CEOs and corporate managers, and many ANC boards are elected with Alaska Native business persons, lawyers, and individuals with business degrees. The ANC boards are entrusted with responsibilities to ensure community assets and long term economic goals are preserved. Alaska Natives are in control of their corporations, and they see them as more than profit-making engines, but as a critical institution for ensuring the future of their cultures and communities.³³ As one report by an association of ANC Presidents and CEOs has pointed out, "Many Alaska Native Corporation leaders have become sophisticated business managers, but they all retain their respect for the cultures and many of them continue to participate in subsistence activities. Jake Adams of Barrow serves as president and CEO of Arctic Slope Regional Corporation, and he is also a whaling captain."³⁴

A recent GAO report suggests that the SBA should exert greater oversight on 8(a) contracting to ANCs.³⁵ The report did not find any wrong doing by ANCs, but rather suggests that stronger oversight be created to avoid possible future abuses.³⁶

³² See Gigi Berardi, Natural Resource Policy, Unforgiving Geographies, and Persistent Poverty in Alaska Native Villages, 38 Nat. Resources J. 85, 101-102 (1998).

³³: For the importance of control over economic assets and management see: Stephen Cornell and Joseph P. Kalt "Sovereignty and Nation Building: The Development Challenge in Indian Country Today" *American Indian Culture and Research Journal* 22(Summer 1998): 187-214. For the role of culture in Native economic development, see Ron Trosper "Mind Sets and Economic Development on Indian Reservations" *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* ed. Stephen Cornell and Joseph P. Kalt (Los Angeles, CA: UCLA American Indian Studies Center, 1992), pp 303-333.

³⁴ Jake Adams is now retired as CEO of Arctic Slope Region Corporation. For the citation see: MALRUGNI YUULUNI: Walking In Two Worlds With One Spirit: Alaska Native Corporations Annual Economic Report Based on 2003 Financial Data (Association of ANCSA Regional Corporation Presidents/CEOs, 2005), available at <http://www.chugach-ak.com/pdf/7136ANCSA2005report.pdf>

³⁵ David E. Cooper, Alaska Native Corporations: Increased Use of Special 8(a) Provisions Calls for Tailored Oversight. Testimony Before the Committees on Government Reform and Small Business, House of Representatives (Washington, DC: US GAO, 2006), pp. 2-11; Peter Homer, "Congressional Probe of Alaska Native Corporations an Attack on Indian Country's Economic Future" *Indian Country Today* March 19, 2005; Jerry Mandel, "House Committees Probe Alaska Native Contracting Program" *Government Executive* June 21, 2006 (www.GovernmentExecutive.com).

³⁶ GAO, Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisition Approach. Report to Congressional Requesters, April 2006, page 93.

Comments by the SBA were less agreeable about the report's findings, but were agreeable about possibilities of increased monitoring of non-competitive contracts and expanding competitive contracting.³⁷

The SBA emphasizes that the ANC program helps fulfill Congressional intent to allocate 23% of government contracts to small businesses and five percent to minority and disadvantaged businesses. In recent years, ANCs incrementally have gained management capabilities that enable them to start competing and negotiating for government and 8(a) contracts. In 2000, ANCs were contracting about \$265 million through 8(a) programs and in 2004 contracting increased to \$1.1 billion. Non-competitive contracting with agencies of the US government totaled \$207 billion in 2006, and \$145 billion in 2005.³⁸ In 2005, all federal contracts awarded to ANCs and American Indian tribal businesses collectively totaled \$3.197 billion, which represented less than one percent (0.847%) of all government contracts.³⁹ Total small business procurement in 2005 totaled \$65 billion or 17.2% of total government contracts. In the same year, \$11 billion in government contracts were awarded to 8(a) firms, and \$1.9 billion or 17.2% was awarded to ANCs and tribal businesses. ANCs received \$1.5 billion in 8(a) contracts in 2005.⁴⁰ The gain to ANCs is not coming at great expense to other government contractors, especially when one considers that 8(a) contracts with ANCs benefit thousands of Alaska Native shareholders, not a single small business owner.

Conclusion

Alaska Natives ceded large parts of Alaska to the United States and possibly trillions of dollars of natural gas and oil reserves. In return, Alaska Natives retained some land and less than a billion dollars as assets to develop for-profit and non-profit regional corporations and associations. Market entry and eventual economic self-sufficiency of ANCs are primary goals of ANCSA and several subsequent Congressional amendments. ANC access to federal contracts helps fulfill Congressional mandates for government contracting aimed at providing training and market opportunities for minority and disadvantaged businesses. Alaska Native communities are in shareholder and board control of ANCs and are the primary beneficiaries of dividends, equity, and philanthropy generated by ANCs. The primary goals of ANCs are economic self-sufficiency, and community and cultural development and continuity of Alaska Native tribes and villages.⁴¹ In recent years, ANCs have made

³⁷ Havemann, Joel "Rise in Spending Tied to Contracts" *Los Angeles Times* Thursday June 28, 2007, p. A 20.

³⁸ "Wooch Yaayi" Woven Together, p. 10.

³⁹ Native American Contractor's Association (NACA) Annual Meeting 2006, Seattle, Washington. See [<http://www.alutiiq.com/pdf/8a-Program-Data.pdf>], last visited September 10, 2007.

⁴⁰ Native American Contractor's Association (NACA) Annual Meeting 2006, Seattle, Washington. See [<http://www.alutiiq.com/pdf/8a-Program-Data.pdf>], last visited September 10, 2007. Source: Eagle Eye.

⁴¹ Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York, NY: W. W. Norton and Company, 2005), pp. 231-240.

strides toward greater participation in the market and are in a better position to take advantage of federal government contracts and 8(a) programs. Collectively ANC and tribal contracts represent less than one percent of all government contracts. While a GAO report suggests greater SBA oversight and management of contracts granted to ANCs, the report does not find any wrong doing on the part of ANCs. Alaska Native communities and leadership most likely will welcome SBA oversight and guidance as long as it fosters corporate learning and enhancement of market-based competitive capabilities and the efficient use of taxpayer funds, as is the intent of Congress. The fostering of competitive and self-sufficient ANCs is in the interests of the United States, and Alaska Native communities. Competitive and self-sufficient ANCs will help alleviate economic and social disadvantages of Alaska Native communities, increase tax revenues, and reduce the costs of government support programs to Alaska Natives. Continued support and guidance from SBA programs will incubate market competitiveness among ANCs allow Alaska Native and Congressional goals of economic self-sufficiency and greater local self-government and cultural recovery more quickly and efficiently.