



## **JOINT OVERSIGHT RECOMMENDATIONS ON SMALL BUSINESS CONTRACTING COMPLIANCE APRIL 2008**

NCAI, NACA, and NCAIED are deeply committed to developing and promoting effective tools for Native American community-based contracting companies to effect compliance with all of the SBA requirements for the 8(a) program and other federal contracting requirements, both in the spirit of the law and letter of the rules.

To this end, our three organizations drafted recommendations for 8(a) program improvements designed to enhance accountability, improve transparency, and complement SBA's limited resources to engage in more efficient and effective management and oversight of the program.

As part of our ongoing efforts, NACA developed and adopted a best practices guide that emphasizes rigorous compliance with SBA program regulations and requirements. As additional aspects of our joint commitment, we will expand on best practices initiatives by: (a) Implementing best practices through multiple levels of training; (b) Developing an education package for parent board oversight and governance; (c) Facilitating the development and implementation of Ethics Compliance Programs; and; (d) Continuing to conduct regular seminars on all aspects of 8(a) and small business contracting and compliance with all federal contracting requirements.

On specific issues, we will work with SBA and other interested parties to:

- 1) Improve transparency/accountability in the disclosure of ownership agreements. Our organizations have already recommended more transparency on ownership in our previous administrative recommendations we submitted to the SBA (ANC GAO Report Comments April 2006 and SBA Consultation November 11, 2007). We will also explore whether a confirmation of ownership and the status of ownership agreements may be required in the annual audited financial statements, or whether a confirmation may be required from the management of the parent Tribe or Alaska Native Corporation.
- 2) Improve transparency/accountability in disclosures provided on the individual compensation worksheet in SBA Form 1450. We recommend that SBA issue clear and consistent directives on the application of this and other sections of the standard 8(a) Participation Agreement to Alaska Native Corporations and tribal companies. We will work with SBA in developing guidance for completion of the Participation Agreement by 8(a) companies of Tribes and Alaska Native Corporations.

- 3) Recommendations on changes to FAR Part 3.4 to clarify the qualifications of a bona fide sales agency. The ability to utilize bona fide sales agents is often crucial for effective business development by any government contractor, not just 8(a) companies and small businesses. The current version of the FAR does not provide guidance or specific factors for contractors to consider when evaluating agents, nor does it establish a ceiling or guidelines as to what fees are considered reasonable. In general, we believe the following principles provide a starting point: (1) Agreements with bona fide agents should be in writing, established for a reasonable term, and contain appropriate representations and warranties against gratuities, conflicts of interest, and compliance with the Procurement Integrity Act; (2) Agents should demonstrate adequate knowledge of a contractor's business services and products, as well as other industry qualifications demonstrating their qualifications to act on behalf of the contractor, and; (3) Compensation paid under the Agreement should not be exorbitant or inequitable, when compared to the services performed or to customary fees for similar services related to commercial businesses.