



Native American Contractors Association

*Protecting the rights of Indigenous Peoples to create economic development through government contracting*

May 18, 2020

The Honorable Marco Rubio  
Chairman  
Senate Small Business Committee  
US Senate  
Washington DC, 20515

The Honorable Ben Cardin  
Ranking Member  
Senate Small Business Committee  
US Senate  
Washington DC 20515

Re: Empowering Small Businesses to Respond to the COVID-19 pandemic

Dear Chairman Rubio & Ranking Member Cardin:

We are following up our March 17, 2020 letter to strongly encourage the inclusion of the following recommendations in the COVID-19 legislation now under consideration.

These proposals will provide additional flexibility to federal agencies as they continue working to efficiently respond to the COVID-19 pandemic without requiring additional appropriations. During this crisis federal agencies will need to utilize programs and policies that provide them with maximum flexibility and expedited procurement processes.

Tribally owned entities, Alaska Native Corporations, and Native Hawaiian Organizations (together referred to as “NACA Members”) as well as other small businesses provide necessary goods and services to federal agencies across a wide range of sectors. The participants in the SBA 8(a) program are an important part of the federal government’s overall response, while also allowing NACA Members to provide for their employees and communities.

The recommendations are drafted such that they can be utilized in future legislation. We are prepared to work with you to refine the proposals.

Recommendation #1:

**Amend procurement provisions for civilian federal agencies to reflect the changes contained in the 2020 NDAA by raising the justification and approval threshold on sole-source contracts awarded by civilian (non-DOD) federal agencies so as to not require J&A for sole-source contracts not exceeding \$100 million.**

Legislative Language

(a) MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT FOR SOLE-SOURCE CONTRACTS AWARDED BY FEDERAL GOVERNMENT AGENCIES.—

This Section specifically addresses and overrides the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, §811 (2009). (Public Law 111–84; 123) in respect to civilian agency contracts in that —

(1) no justification and approval is required under such section for a sole-source contracts awarded by all civilian (non-DOD) federal government agencies in a covered procurement for an amount not exceeding \$100,000,000; and

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(2) the appropriate official designated to approve the justification for a sole-source contract awarded by a civilian (non-DOD) federal government agency in a covered procurement exceeding \$100,000,000 is the head of the procuring activity (or the head of the procuring activity's delegate for that agency).

Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to reflect the changes above.

#### Recommendation #2:

#### **Mitigating the negative impacts of Category Management on Small Businesses by exempting U.S. Small Business Administration set-asides from category management.**

##### Legislative Language

MODIFICATION OF CATEGORY MANAGEMENT REQUIREMENTS FOR ALL CIVILIAN FEDERAL AGENCIES AND THE DEPARTMENT OF DEFENSE FOR CONTRACTS ELIGIBLE UNDER THE U.S. SMALL BUSINESS PROGRAMS INCLUDING SECTION 8(a) BUSINESS DEVELOPMENT PROGRAM.

This Section amends the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, §811 (2009). (Public Law 111–84; 123) in respect to civilian federal agencies and Department of Defense contracts in that —

(1) Any acquisition for a contract to be awarded under the procedures of the section 8(a) Business Development Program (including an acquisition for commercial items) shall:

(A) be exempt from the procedural requirements of agency-level or government wide guidance on category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation; and

(B) be disregarded when measuring attainment of any goal or benchmark established under agency-level or governmentwide guidance on category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation, unless considering the acquisition aids the achievement of such goal or benchmark.

(2) After a contract has been awarded under the section 8(a) Business Development Program (including an acquisition for commercial items), it shall not be removed and placed in category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation.

(3) In this subsection, the term “contract” includes a prime contract, a task order, a delivery order, a blanket purchase agreement, and a basic ordering agreement.

Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to reflect the changes above.



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Thank you for your attention to these recommendations. We look forward to working with you to ensure that NACA Members and all small business concerns and priorities are addressed as we respond to the COVID-19 pandemic.

Warmest Regards,

A handwritten signature in black ink, appearing to read "Joseph Valandra", is written over a thin horizontal line. The signature is fluid and cursive, with a prominent loop at the end.

Joseph Valandra  
Executive Director  
Native American Contractors Association