

ALERT

Senator McCaskill Introduces Amendment That Would Eliminate Contracting Privileges for Alaska Native Corporations

April 4, 2011

On March 30, 2011, Senator Claire McCaskill (D-MO) introduced an amendment to the 2011 Small Business Innovation Research/Small Business Technology Transfer Reauthorization Act (S. 493) that seeks to limit the government contracting preferences currently given to Alaska Native Corporations (ANCs). The amendment is identical to independent legislation that Senator McCaskill introduced in November, 2010 (S.3959). See Proposed Bill Would Eliminate Contracting Privileges for Alaska Native Corporations (Nov. 19, 2010). Rep. Bennie Thompson (D-MS) has introduced companion legislation in the House. As Chairman of the Subcommittee on Contracting Oversight, Senator McCaskill has been a vocal critic of the special contracting privileges afforded to ANCs under the Small Business Administration's (SBA) 8(a) Business Development Program.

The amendment would remove several exemptions for ANCs from the normal 8(a) program rules, including:

- Eliminating the ability of ANCs to receive sole-source contracts exceeding the caps placed on other 8(a) participants (\$4 million for services or \$6.5 million for goods);
- In combination with a new interim rule, 76 FR 14559, requiring agency contracting officers to provide written justification when awarding sole-source ANC contracts in excess of \$20 million;
- Removing the automatic designation of ANCs as both socially and economically disadvantaged businesses, and requiring ANCs to establish their disadvantaged status under the typical

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8(a) program;

- Requiring ANCs to include all affiliates and subsidiaries in their 8(a) size determination;
- Limiting ANCs that participate in the 8(a) program to owning a majority interest in one 8(a) subsidiary only;
- Requiring ANCs that participate in the 8(a) program to be managed by individuals who qualify as socially and economically disadvantaged.

Senator McCaskill's amendment and the 2011 Small Business Innovation Research/Small Business Technology Transfer Reauthorization Act are currently being debated by the Senate and could be up for a vote as early as this week. Wiley Rein will continue to evaluate the proposed amendment and monitor its developments.

*Not admitted to the District of Columbia Bar, supervised by principals of the firm.