

Written Testimony  
Ho-Chunk Inc.  
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House Small Business Subcommittee on Investigations, Oversight & Regulations

Oversight Hearing “Native 8(a) Contracting: Emerging Issues”

October 22, 2019  
10:00 a.m.

Good morning Chairwoman Chu, Ranking Member Spano and members of the Subcommittee. Thank you for the opportunity to provide testimony on emerging issues in Native 8(a) contracting. I am Annette Hamilton, Vice President and Chief Operating Officer of Ho-Chunk Inc., a tribally-owned corporation of the Winnebago Tribe of Nebraska.

The designation of Indian tribes as socially disadvantaged for purposes of the 8(a) program arose due to the high levels of unemployment across Indian Country, often in excess of 60%. Like other governments, tribal governments are responsible for the health and welfare of their tribal citizens. But relocation to remote areas of the Country, along with failed federal policies, led to disparate treatment of tribal governments and their citizens in areas such as healthcare, education, homeownership, and left few opportunities for economic development. Acknowledging the need to create entrepreneurship and economic development opportunities for tribal governments and their citizens, tribes were included in the 8(a) program to spur economic opportunity and Ho-Chunk, Inc. believes 8(a) has been one of the most successful and consistent federal programs aimed at creating economic opportunities and affecting generational change in Indian Country.

As described in the following testimony, the role of 8(a) corporations in Native Communities differs from other contracting entities. Native 8(a) corporations are in business to enhance the economic and social conditions of the tribes who own the corporations – not just a single owner or small number of owners. That is why protecting the current Native 8(a) program and current programs aimed at encouraging contracting with (8a) corporations is so important. It is the role of both Congress and the Administration to ensure that a fair proportion of federal contracting is awarded to small businesses, however, there are several pending administrative and policy issues that are having a direct impact on the future of Native 8(a) contracting.

Background of 8(a) Contracting:

In 1953, Congress passed the Small Business Act, creating the Small Business Administration (SBA). The charter of the SBA stated that SBA would ensure small businesses a fair proportion of government contracts and sales of surplus property. Congress created the 8(a) Business Development Program so the SBA could help small companies owned and operated by socially and economically disadvantaged persons develop their businesses. The overall goal of the 8(a) Program is to provide firms with the tools to thrive in the competitive business market.

One of the business development tools of the 8(a) program is the award of Federal contracts. To help provide a level playing field for small businesses owned by socially and economically disadvantaged

people or entities, the government limits competition for certain contracts to businesses that participate in the 8(a) Program. Under the program, SBA acts as a prime contractor and enters into contracts with other Federal Government departments and agencies. In its role as a prime contractor, SBA awards subcontracts for their performance by certified companies.

In 1986, Indian tribes, as owner-groups, became eligible for the 8(a) program when Congress passed legislation providing that firms owned by Indian tribes were to be deemed socially disadvantaged for 8(a) Program purposes. During the 1980s, other owner-groups became eligible for the Program, including Community Development Corporations (CDCs), Alaska Native Corporations (ANCs), and Native Hawaiian Organizations (NHOs).

There are several exceptions to the 8(a) program rules for entity-owned participants based on the acknowledged lack of economic resources and access to capital for tribes and the other community-based organizations. These few exceptions to federal regulations allow entity-owned companies to provide revenue to their tribes that is used for health care, infrastructure for very rural communities, education, housing, language and cultural retention and revitalization, and other important tribal initiatives.

The 8(a) Business Development Program certification and participation is governed by regulations contained in 13 CFR 124. These regulations are primarily the same for both individual and tribally-owned corporations, with some exceptions for “group” or entity-owned firms. All 8(a) companies, including tribally-owned, must meet strict certification qualifications, are restricted to nine years in the Program, must be small, must report on their progress in the program annually, and must meet the limitations on subcontracting, among other CFR and FAR contracting rules.

The primary exceptions for entity-owned firms are the ability for tribes to own multiple firms in the 8(a) program and the exemption from competitive thresholds for sole source awards. These few exceptions to the Program allow entity-owned firms to provide profits to benefit communities, sometimes numbering in the hundreds of thousands of tribal citizens, as opposed to individually-owned firms that provide benefits to only the owner.

Entity-owned firms, however, are the only 8(a) Participants that have a regulatory requirement that they must report on the benefits they provide to their communities during each required annual update. In addition to the requirements of an individual applicant, tribally owned firms must submit documentation with their applications that they are included on the official Bureau of Indian Affairs list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska. Tribes must also show that the applicant companies are owned and controlled by the tribe. If a non-tribal person is managing the 8(a) company, the tribe must retain control of the company and have a management plan in place that shows how the tribe is mentoring and developing tribal members to manage its companies in the future.

#### The Winnebago Tribe:

The Winnebago Tribe’s history is similar to the history of many tribes in the United States. Originally, a Woodlands tribe, the Winnebagos (traditionally know as Ho-Chunk), lived on lands in what is present day Kentucky. Through a series of removals, the Winnebago Tribe – those who survived – were required to purchase a small reservation in what is now northeast Nebraska. By

1913, however, two-thirds of the reservation was lost due to the Dawes Act which divided up parcels of land which was ultimately taken out of tribal jurisdiction and became individually-owned parcels. It wasn't until the 1970s, following hundreds of years of federal policies of assimilation and termination, that the federal government ushered in the era of self-determination where self-governance and governmental decision-making were seen as critical tools to reverse decades of failed federal policies for tribes.

The self-determination policy led to enactment of laws and programs designed to allow tribal governments to develop their economies. The Indian Gaming Regulatory Act, enacted in 1988 was part of that movement. However, while gaming is successful for some tribes – primarily those located close to urban centers – it was not the answer for many tribes, such as the Winnebago Tribe of Nebraska. Understanding that gaming would not sufficiently provide for the long-term economic well-being of the tribe and its citizens, nor would it create the next generations of entrepreneurs, the Winnebago leadership used the modest gaming income from its casino and started Ho-Chunk, Inc. in 1994.

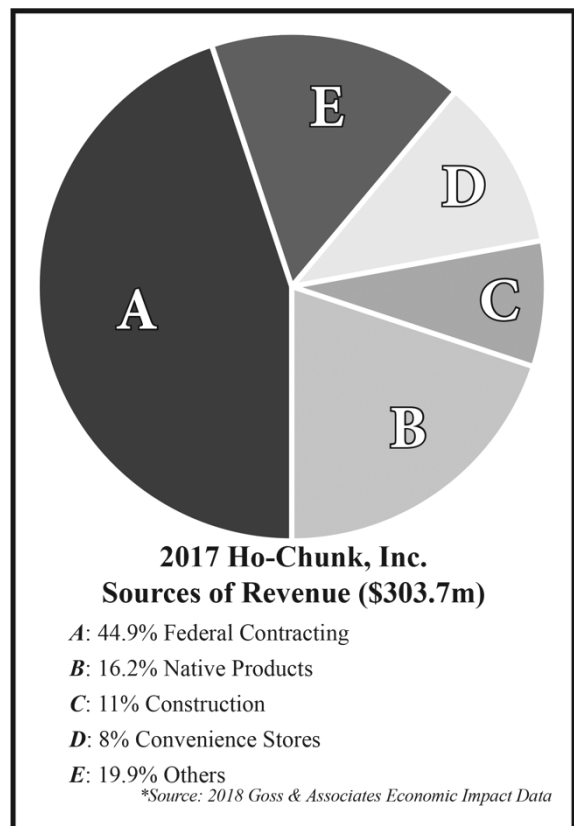
Ho-Chunk, Inc.'s History:

When Ho-Chunk, Inc. started in 1994 with one employee on the Winnebago Indian Reservation, there was no business infrastructure nor human resources to start an economy from scratch. The only available opportunity was to market tobacco on the reservation and to other Tribes around the country, in addition to retailing discounted gasoline on the reservation. These were simple business models possible without complex infrastructure nor major capital investment.

The businesses provided much-needed employment and revenue directly funding community development, scholarships, internships and educational endowments. However, Tribal leaders and Ho-Chunk, Inc. management knew the organization would need to diversify beyond these industries for long-term success because of volatility from jurisdictional and tax issues.

In the early 2000s, a new economic pathway emerged when tribes started successfully participating in the Small Business Administration 8(a) Business Development Program. Ho-Chunk, Inc. started its first contracting division with five employees within All Native Systems. Today, Ho-Chunk, Inc. has over 1,200 employees and three federal contracting divisions – All Native Group, Flatwater Group and HCI Construction Group – that have grown into prime contractors, successfully leveraging past performance to expand into new contracting arenas.

The Ho-Chunk, Inc. contracting divisions each have subdivisions actively participating in the SBA 8(a)



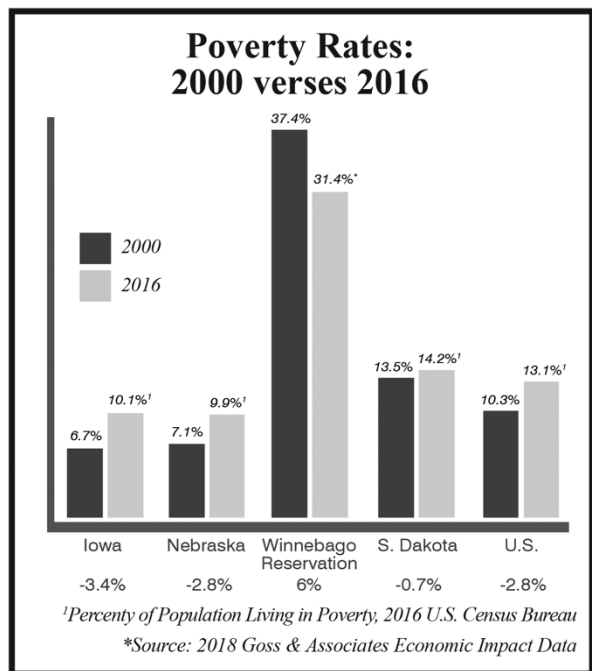
program. A number of these companies hold notable certifications that enable the organization to provide key services to partner government agencies, including: HUBZone Certification, Buy Indian Programs, ISO 9001:2015, and CMMI-SVC Maturity Level 3 appraised.

SBA 8(a) contracting is a significant driver of the company’s direct and indirect employment, and a key financial driver of programs, investments and partnerships that are creating economic sustainability and self-sufficiency for the Winnebago Tribe. Significant socio-economic growth factors include employment, household income, home ownership and education. As a result, more Tribal members are emerging from poverty at a greater rate than ever before, proving the 8(a) program is working as intended and has begun to create an economic foundation for the Winnebago Tribe and its citizens.

Ho-Chunk, Inc.’s Tribal Economic Impact

Ho-Chunk, Inc. commissioned an independent study in 2018 from Goss & Associates Economic Solutions of Omaha, Nebraska. The study reported these findings for the Winnebago Indian Reservation. Ho-Chunk, Inc.’s work in SBA 8(a) contracting is a major driver of the Tribe’s social and economic progress, including:

- Household income on the reservation grew 83% from 2000 to 2016, rapidly outpacing the national average and surrounding states of Iowa, Nebraska and South Dakota.
- The number of people living in poverty decreased 6% from 2000 to 2016, however the poverty rate still remains at a staggering 31.4% on the Winnebago Reservation compared with 10% to 14% nationally and in surrounding areas.
- Home ownership increased 8.4% from 2000 to 2016, and median home values climbed 24% from 2011 to 2016.
- Enrollment in the Winnebago Public School District grew 43% since 2001.
- Adults with a bachelor’s degree or higher on the reservation increased 70% since 2011.



Ho-Chunk, Inc. has also grown into one of the largest regional businesses because of 8(a) contracting work and is a major economic driver for the greater tri-state area of Nebraska, Iowa and South Dakota.

The Goss & Associates study includes local, regional and national economic impacts from the organization’s work in SBA 8(a) contracting. The economic impacts from SBA 8(a) contracting listed below were compiled using input-output multipliers, including sales, earnings, and job impacts, in addition to estimating the impacts on yearly state and local tax collections.

## Ho-Chunk, Inc.'s SBA 8(a) Contracting Regional Economic Impact (2013 to 2017)

- \$224 million for Sioux City (Iowa) Tri-State Metropolitan Statistical Area
- \$114.6 million for the State of Nebraska
- \$69.3 million for the State of Iowa
- \$26.1 million for the State of South Dakota
- \$13.9 million for the Winnebago Indian Reservation
- \$1.58 billion in output for all other states
- Ho-Chunk, Inc.'s SBA 8(a) contracting work has also significantly contributed to state and local taxes, with recent impacts of \$16 million to \$18 million in annual tax revenue.

*Source: 2018 study by Goss & Associates Economic Solutions of Omaha, Nebraska.*

Ho-Chunk, Inc. has not only benefitted the Winnebago Reservation and local governments, the company has hosted hundreds of visits from tribes across Indian Country, freely sharing business knowledge and its approach to social and economic advancement. Ho-Chunk, Inc.'s approach is now considered a standard in modern tribal economic development and self-determination.

### About Ho-Chunk, Inc.'s Federal Contracting Divisions

*All Native Group* - All Native Group is the company's largest division, comprised of a network of small businesses that support the critical missions of various U.S. government customers. As a tribally-owned and operated government services provider, ANG specializes in information technology (IT), telecommunications, health, logistics, specialized training and other professional services in the government sector. ANG supports a breadth of government agencies including the Department of Defense, Department of State, Department of Labor, Department of the Interior, Commerce Department, General Services Administration, U.S. Strategic Command, Defense Threat Reduction Agency, NASA, Department of Homeland Security and the U.S. Navy, Air Force and Army. ANG has support offices in Fairfax, Virginia and recently opened its newest satellite office in Colorado Springs, Colorado. In addition to providing a range of government services, ANG offers training and job opportunities for Native Americans in the government sector,

As a sampling of some of their accomplishments, last year the company was selected to provide information technology and cyber security support for the U.S. Army's Network Enterprise Technology Command supporting the command's operations around the globe. ANG was also contracted to provide support to the Defense Health Agency (DHA), Solutions Delivery Division (SDD) to establish effective cybersecurity for a variety of systems under the DHA umbrella. The opening of All Native Group's Colorado office is the latest move for the company as it expands its reach and expertise in the government IT and cybersecurity space.

*Flatwater Group* - Our Flatwater Group is a collection of companies that provide a range of products and services for government and commercial clients. Business lines include professional services, business technology solutions, interior furnishing and design, healthcare solutions, metal products, transportation and logistics.

The Flatwater Group supports a range of government clients, including Department of the Interior, Defense Logistics Agency, Department of Commerce, Department of the Treasury, the Department of Health and Human Services and numerous others.

Through SBA 8(a) contracting work, The Flatwater Group is also helping other tribes create jobs, revenue and economic opportunity. An example is current work with the Department of Energy and Mineral Development. The U.S. government recognized a Flatwater Group mineral geologists for creating a new type of adobe brick at a project site in New Mexico. The sustainable building material is made from natural materials found and manufactured in Jemez Pueblo, a Native American settlement.

That is one of many examples how the Flatwater Group's work helps creates jobs, revenue and opportunity in the Winnebago community and across Indian Country.

*HCI Construction Group* - HCI Construction Group is made up of several companies that work in construction, building and construction management. The group specializes in commercial/industrial construction, residential housing design and development, building renovation, concrete projects, and design-build expertise. HCCG has extensive experience in the construction of publicly-funded projects for local, state, and federal government agencies. Public agencies have found HCCG to be responsive to their needs, accountable and fair.

The group started in 2001 as a general construction company with the goal of helping diversify Ho-Chunk, Inc. by competing for SBA 8(a) construction contracts and utilizing HUBZone advantages. The company also helps Ho-Chunk, Inc. keep dollars in the Tribal economy by doing construction on Ho-Chunk, Inc. developments and other projects in the Tribal and surrounding communities. HCI Construction earned its SBA 8(a) designation in 2002 and graduated from the program in 2011. In that time, the group completed several SBA 8(a) and HUBZone projects in addition to establishing itself as a major general contractor in Sioux City, Iowa and the surrounding tri-state region of Nebraska, Iowa and South Dakota.

Ho-Chunk Builders was established in 2005. HCB received its SBA 8(a) designation in 2010 and graduated in 2019. The company's initial focus was civil contracting and it completed several projects for the USACE. In recent years, the company shifted to general contracting and has completed projects for numerous federal government agencies.

HCCG is known for its experience in delivering planning and design management, cost and schedule control, quality assurance, thorough reporting and record-keeping, in addition to an outstanding worker safety record.

Past performance includes National Parks Service, General Service Administration (GSA), Indian Health Services (IHS), Bureau of Indian Affairs (BIA), Iowa Air National Guard (IANG), Nebraska Air National Guard (NANG), and Offutt Air Force Base near Omaha, Nebraska.

In the Winnebago community, HCCG's impact is visible. The company has and continues to contribute significant work toward the Tribe's housing priority, including the Ho-Chunk Village expansion. The group is working with the Winnebago Housing and Development Commission on a new elder housing complex and is providing design and building services for a new school building at the St. Augustine Indian Mission. HCCG is also working with the Winnebago Tribe of Nebraska for construction of new facilities, including Winnebago Transit building and a new halfway house.

*Excellence in Contracting* – The work of Ho-Chunk, Inc. and its subsidiaries has been consistently recognized for excellence in operations and honored for its work in federal government contracting. Just last week the U.S. Department of State recognized All Native Group with the Secretary’s award for Excellence in Small Business Contracting. Other significant awards include recognition as the Minority Business Development Agency Advocate of the Year from the Department of Commerce, the Small Business Prime Contractor of the Year from the U.S. Department of State, and the SBA’s Minority Small Business Person of the Year was awarded to CEO Lance Morgan.

These awards are indicative of the high standards, accomplishments and capacity of Ho-Chunk, Inc. to receive and carry out contracts that meet the needs of the federal government – both domestically and internationally – and highlight how this type of business can succeed and thrive in Indian Country. All with the goal and mission of improving the lives of tribal citizens and providing tribal governments with the tools they need to strive for self-sufficiency.

#### Policy Issues:

*SBA Systems:* The SBA has modernized the 8(a) application and annual reporting process through the SBA.Certify system. The system was designed for an individual applicant and not entity-owned applicants. The Administration has tried to address the system deficiencies through training and some workarounds, however, the additional documentation required for entity-owned firms is difficult to fit into the system as it is currently designed. Ho-Chunk, Inc.’s experience has shown that the SBA analysts also have a difficult time finding submitted documentation in the system. There is a lack of communication ~~within~~ between the SBA and applicant companies regarding the submitted applications, and a lack of transparency in the system.

Ho-Chunk, Inc., recommends that the SBA make available to all 8(a) applicants the information that the SBA district offices can see in the system. An SBA Business Opportunity Specialist (BOS) can view the application and see where it is in the review process. HCI would request that SBA make this same view available to any and all applicants.

The incompatible system and lack of transparency make it difficult for every 8(a) applicant to work within system as currently structured. Many applications are delayed, and then requests for additional information are received, further delaying the application process which impacts 8(a) applicants business planning capabilities.

*Category Management:* While category management was initially implemented with the intent of providing federal agencies with a more streamlined federal acquisition process intended to increase efficiencies, it has instead had significant unintended consequences on contracts available to small businesses. Category management procurement policies have suppressed the competitive environment, sequestering contracts that were formerly accessible by 8(a) small businesses.

A major issue is that category management is used to remove small business contracts from the jurisdiction of the Small Business Administration without notice or justification. This is not only contrary to regulation, but puts 8(a) companies at a disadvantage. For instance, the All Native Group lost a contract due to category management. All Native Group had developed a strong record of performance on the contract and it took almost a year to determine the contract had been

swept up into category management and awarded to one of the major contracting companies, despite past performance and specialization on the project. The adverse effects of this incident are two-fold; first, All Native Group lost a contract that provided revenues to the Winnebago Tribe to improve conditions on the Reservation, and second, if that contract comes up again, All Native Group will have lost its ability to show past performance to compete for that contract.

This is happening across agencies and is further exacerbated because the Small Business Administration is not part of the governing council on category management and, therefore, cannot advocate when small businesses will be harmed by category management policies. Ho-Chunk, Inc. recommends that any acquisition for a contract to be awarded under the procedures of section 8(a), (including an acquisition for commercial items) shall 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. In addition, once a contract has been awarded under section 8(a), 8(m), 15(a), 15(j), 31, or 36 (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.

*Section 809 Panel Suggested Changes to Small Business Programs:* The section 809 panel (“panel”) was established in the fiscal year 2016 National Defense Authorization Act with the mission of providing recommendations to “allow the Department of Defense to adapt and deliver capability at market speeds, while ensuring that the Department of Defense remains true to its commitment to promote competition, provide transparency in its actions, and maintain the integrity of the defense acquisition system. The panel began its work in 2016 and concluded in July of 2019 with a report outlining 98 recommendations aimed at changing the overall structure and operations of defense acquisition.

Ho-Chunk, Inc. supports the purpose of the Section 809 Panel which is to streamline the DoD acquisition process. However, contrary to the recommended make-up of the panel, small business was not included in the panel and, more importantly for Ho-Chunk, Inc.’s purposes, there was no tribally-owned entity included as a participant on the panel which would have countered some of the false narratives seen throughout the report as it relates to small business.

It is Ho-Chunk, Inc.’s view that streamlining the acquisition process should not be accomplished by shutting small businesses out of the Defense market. Right now, large businesses garner the greatest majority of the defense market, and the proposed recommendations in the report would not provide the same assurances to small businesses for a seat at the table that the FAR Part 19 process does. The indisputable fact is that small business set aside programs help small businesses grow. The Panel report actually points to the real issue with the DoD procurement process, which is “complexity and slowness in the acquisition process, an uncoordinated outreach process, a lack of clear entry into the defense market, and contract compliance requirements”, not the FAR Part 19 small business set aside programs.

If implemented, the recommendations contained in the section 809 panel report would have a significant impact on small business and Ho-Chunk Inc., would be adversely affected due to the large number of contracts the corporation performs for DoD. Ho-Chunk, Inc. requests tribal consultations prior to implementation of the recommendations contained in the section 809 report.



*Sole Source Contract Proposed Changes:* In recent years, there has been legislation introduced that would “level the playing field” for all 8(a) companies, effectively erasing the sole source designation specific to Native 8(a)s. While Ho-Chunk Inc. remains supportive of other companies that are individually owned, the sole source benefits to Native (8a) should be maintained. Tribally-owned corporations have a responsibility to an entire community and one that has been economically and socially disadvantaged for generations, while individually-owned companies add to the profits of an individual, family or small group of owners. Ho-Chunk, Inc. is willing to discuss solutions to outdated thresholds and caps that would lift up all 8(a) companies without unintentionally harming Native 8(a) companies.

*Indian Community Economic Enhancement Act of 2019/Buy Indian Act:* Ho-Chunk, Inc. supports the goals of the current legislation in Congress – H.R. 1937 and S. 212 that would amend the Native American Business Development Act to create incentives for community investment and development, require additional analysis and reporting of the current Native American economic development programs, and require coordination between the Secretaries of Commerce, Interior and Treasury to develop initiatives encouraging investment in Indian communities.

Of particular interest to Ho-Chunk Inc. and other Native 8(a) companies, this legislation would expand the Buy Indian Act by including the Department of Health and Human Services, along with the Department of the Interior and require greater oversight over implementation of the Act in both agencies.

Ho-Chunk, Inc. supports enactment of this legislation during this Session of Congress.

#### Conclusion:

The Native 8(a) program at the Small Business Administration has been one of the most successful economic opportunities for Tribes. In many cases, this program is the only economic opportunity available – especially for tribes who are in rural areas. However, the program has not yet fulfilled its mission to ensure that tribal governments are self-sufficient.

Ho-Chunk Inc. through its government contracting businesses and other subsidiaries has been able to create jobs for tribal members and members of the local community, has raised the median household income of Reservation residents and has started to reverse hundreds of years of poverty on the Reservation. But the work is not done. While the gains have been great, Ho-Chunk Inc. has only had 25 years to undo over a hundred years of disparate treatment of tribes which has impacted the health, educational opportunities, and entrepreneurial opportunities for Winnebago Tribal citizens.

The 8(a) program at the Small Administration is a model of self-determination, allowing tribal governments to determine what type of businesses best suit the needs of their citizens and how to enter a market that is local, national and international. The program must be protected and encouraged to grow to take into account the capacity and infrastructure that tribally-owned entities now have so the gains of the corporations can be returned to the tribal governments and citizens.