FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 2011

Via first class mail and electronic mail
Email: tpotter@capdale.com

Trevor Potter, Esq.
Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005

RE: MUR 6403
Arctic Slope Regional Corporation, *et al.*

Dear Mr. Potter:

On October 28, 2010, the Federal Election Commission notified your clients, Arctic Slope Regional Corporation, Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Limited, Koniag, Inc., and Sealaska Corporation, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

On November 1, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Limited, Koniag, Inc., and Sealaska Corporation violated 2 U.S.C. § 441c(a)(1). In addition, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegations that Arctic Slope Regional Corporation violated 2 U.S.C. § 441c(a)(1), pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's decision, is enclosed for your information.

If you have any questions, please contact Christine C. Gallagher the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analyses (2)

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Arctic Slope Regional Corporation **MUR 6403**

I. BACKGROUND

This matter was generated by a complaint filed with the Federal Election Commission by the Joe Miller for U.S. Senate campaign, by Linda Johnson, Member. *See* 2 U.S.C. § 437g(a)(1). Complainant alleges that Arctic Slope Regional Corporation ("Arctic Slope") is a government contractor that knowingly and willfully violated 2 U.S.C. § 441c(a)(1) by making contributions to Alaskans Standing Together and Barbara Donatelli, in her official capacity as treasurer ("AST"), a political action committee that made independent expenditures to influence the 2010 U.S. Senate general election in Alaska. Arctic Slope denies the allegations, stating that (1) the contributions made to AST were permissible because it is not a government contractor as defined by Federal Election Campaign Act of 1971, as amended ("the Act"), and the Commission's regulations; (2) Arctic Slope was exercising its First Amendment speech rights when it made independent expenditures by contributing to AST, an independent-expenditure-only political committee; and (3) in the context of independent spending, the Act at 2 U.S.C. § 441c and the Commission's regulation at 11 C.F.R. § 115.2, which prohibit government contractors' contributions, are contrary to *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) ("*Citizens United*"), and *SpeechNow.org. v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010) ("*SpeechNow*").

For the reasons set forth below, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegations that Arctic Slope Regional Corporation violated 441c(a)(1). *Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

AST, an independent-expenditure-only political committee, registered with the Commission on September 23, 2010. According to AST's Statement of Organization, it is a political action committee that supports/opposes more than one Federal candidate and is not a separate segregated fund or party committee. AST's disclosure reports filed with the Commission show that in 2010, it made independent expenditures that supported Alaska Senator Lisa Murkowski and opposed Joe Miller's candidacy in Alaska's 2010 U.S. Senate general election. Joe Miller won the Republican nomination for Alaska's 2010 Senate seat in the primary election, but lost the general election to incumbent Republican Senator Lisa Murkowski, who ran as a write-in candidate. The complaint alleges that AST is a "front group" for Senator Murkowski, and that Arctic Slope, which made contributions to AST, obtained federal contracts through "earmarks" from Senator Murkowski.

Arctic Slope is an Alaska Native Corporation ("ANC") because it was formed pursuant to the Alaska Native Claims Settlement Act of 1971, a federal law that extinguished aboriginal claims within the state of Alaska. The Commission has opined that ANCs are not "organized by authority of any law of Congress" for purposes of 2 U.S.C. § 441b(a)'s prohibitions. *See* Advisory Opinion 1982-28 (Sealaska). Arctic Slope wholly owns subsidiaries that are federal government contractors.

Arctic Slope made a $140,000 contribution to AST on September 30, 2010, and another $60,000 contribution to AST on October 27, 2010. Arctic Slope has a lease agreement with the federal government to supply office space. Specifically, Arctic Slope

has leased office space to the Transportation Security Administration ("TSA") since 2006 and receives $2,400 each month, or $28,800 annually, directly from the federal government. According to the lease agreement, Arctic Slope leased approximately 800 square feet of office space in Barrow, Alaska, to the United States for a period of time beginning October 1, 2006, for a term of 5 years. Under the terms of the lease agreement, Arctic Slope agreed to provide various services and utilities as part of the rental of the space, including heat, electricity, water, snow removal, toilet supplies, janitorial services and supplies, elevator service, window washing, carpet cleaning, initial and replacement lamps, tubes and ballasts, and painting.

Arctic Slope contends that the rental is *de minimis*, the lease is a last resort for TSA, and that it primarily benefits the public. It maintains that the proceeds from this lease arrangement represent 0.0015% of Arctic Slope's gross revenue for 2009. According to Arctic Slope, this lease agreement with the federal government was not discovered by the personnel who decided to make the contribution to AST because the lease was listed under another entity's name in Arctic Slope's records, the person who was primarily responsible for responding to the government's requests concerning the lease is no longer employed by Arctic Slope, and the lease is an isolated arrangement as Arctic Slope does not market itself as a lessor to federal government entities. Arctic Slope submitted an affidavit from a corporate officer stating that, other than this lease, Arctic Slope is not a government contractor, it represents the business interests of the Iñupiat Eskimos, and it had approximately $1.128 billion in revenue during fiscal year 2009 that was attributable to activities and operations of Arctic Slope and its subsidiaries that are not related to federal government contracting. The businesses of Arctic Slope

and its subsidiaries include energy services, construction, petroleum refining, aerospace, and tourism operations.

In addition, Arctic Slope argues that it is not a government contractor as defined by the Act or the Commission regulations because leases are not types of contractual agreements covered under the statutory or regulatory definitions. Arctic Slope contends that while the Commission opined in Advisory Opinion 1984-53 (National Association of Realtors), that leases equate to sales for purposes of 2 U.S.C. § 441c, the Commission did so "without attempt to account for the exclusion of leases from the test or for possible relevant distinctions between leases and sales." Therefore, Arctic Slope argues that AO 1984-53 should not be applied to its lease agreement with the federal government.

Last, Arctic Slope argues that it was exercising its First Amendment speech rights when it made its two contributions to AST for the purpose of making independent expenditures. Arctic Slope relies on *Citizens United* to support its argument that because its underlying activities are incapable of causing corruption or the appearance of corruption, anti-corruption aims are not a "compelling interest" sufficient to validate 2 U.S.C. § 441c(a)'s ban on independent speech. Therefore, Arctic Slope argues that the prohibitions in 2 U.S.C. § 441c are not applicable to the facts of this matter.

B. Legal Analysis

The Act and the Commission's regulations prohibit government contractors from making, directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee or candidate for public office or to any person for any

political purpose. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a) and (b).[1] A "federal contractor" is defined in terms of the substance of the contract and the source of funds for payment of performance of the contract. 2 U.S.C. § 441c; 11 C.F.R. § 115.1. With respect to the substance of the contract, it includes the rendering of personal services, the furnishing of materials, supplies, or equipment, or the selling of land or buildings. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(a)(1); *see* Advisory Opinion 1984-53 (National Association of Realtors) (lessor of land to federal agency is also considered a government contractor). The prohibition applies if payment to the contractor is to be made in whole or in part from funds appropriated by Congress. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(a)(2). The prohibition extends for the period of time between the earlier of the commencement of negotiations or when requests for proposals are sent out, and the later of the completion of performance or the termination of negotiations for such contract. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(b). The Act and the Commission's regulations further prohibit any person from knowingly soliciting any contributions from government contractors who are in negotiations for a federal government contract or during the performance of their contract. 2 U.S.C. § 441c(a)(2) and 11 C.F.R. § 115.2(c).

When determining whether a committee has received, or that an entity has made, a contribution in violation of 2 U.S.C. § 441c, the Commission looks first to whether the entity met the statutory and regulatory definition of government contractor at the time the contribution was made. *See* MUR 6300 (Gen X Strategies); MUR 5666 (MZM); MUR 5645 (Highmark); MUR 4901 (Rust Environmental); and MUR 4297 (Ortho

[1] The entities alleged to be government contractors in MUR 6403 are all corporations; the constitutionality of 2 U.S.C. § 441c as applied to individuals is currently the subject of litigation. *See Wagner v. FEC*, No. 11-CV-1841 (D. D.C. filed Oct. 19, 2011).

Pharmaceutical). In the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contractor subsidiaries, and that it had sufficient funds to make the contributions from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company. *See* Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) (the government contractor status of a tribal corporation, a distinct and separate legal entity from the tribe, does not prohibit the tribe from making contributions to federal candidates, political parties, and political committees as long as the tribe does not use revenues from tribal corporation to make contributions), *citing* Advisory Opinion 1999-32 (Tohono O'odham Nation) (the commercial activity of the Indian tribe's utility authority as a government contractor treated as separate from the tribe and its political activities).

Arctic Slope has a lease with the federal government to supply office space to a federal agency. Arctic Slope leases office space to TSA, provides various services, supplies, and utilities under that lease agreement, and receives $28,800 a year in direct payment from the federal government. Based on the available information, TSA makes the rental payments to Arctic Slope with funds appropriated by Congress. *See* 11 C.F.R. § 115.1(a)(2).

In AO 1984-53 (National Association of Realtors), the Commission concluded that a lessor of real property to the federal government would be covered by the prohibitions of 2 U.S.C. § 441c and, therefore, would be prohibited from making contributions to federal candidates and committees. 11 C.F.R. § 115.2. The Commission viewed the lease of real property as a contract for "selling any land or buildings" within

the meaning of 2 U.S.C. § 441c and 11 C.F.R. § 115.1(a)(1)(iii) because a lease of real property creates an estate in the tenant for a term of years, in effect, representing the sale of an interest in land or buildings, with the rent as the purchase price, and creates a continuing relationship between the lessor and lessee supporting the application of the statutory prohibition to a lease agreement. *See* AO 1984-53. In addition, the Commission noted that lease agreements usually contain explicit contractual provisions regarding repairs, furnishing of utilities, and other matters, and that such provisions can be viewed as contracts for the rendition of personal services or for the furnishing of material supplies, or equipment. *Id.*; 11 C.F.R. § 115.1(a)(1)(i) and (ii).

Arctic Slope's office space lease agreement with the federal government not only leases the rental space, but includes explicit provisions for Arctic Slope to make repairs, and provide utilities, supplies, and services, such as snow removal and janitorial services, to the federal agency renting the space.

Given these facts, Arctic Slope is a government contractor within the meaning of the Act and the Commission's regulations. *See* 2 U.S.C. § 441c(a)(1) and 11 C.F.R. § 115.1(a); *see also* AO 1984-53. The analysis in AO 1984-53 is sound, it has been a source of guidance for 27 years without any intervening precedent to the contrary, and it applies precisely to the facts of this matter. *See also* Advisory Opinion 2008-11 (Brown) (citing AO 1984-53 in analysis of 2 U.S.C. § 441c scenario). As a federal government contractor, Arctic Slope is prohibited from making contributions toward any "political party, committee or candidate for public office or to any person for any political purpose or use." 2 U.S.C. § 441c(a)(1).

However, even though Arctic Slope appears to meet the definition of government contractors under the Act and the Commission's regulations, given the unique facts in this matter, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegation as to Arctic Slope Regional Corporation. *Heckler v. Chaney*, 470 U.S. 821 (1985). Arctic Slope does not ordinarily enter into contracts with the federal government, the executive officer who made the decision to contribute to AST has averred he was not even aware of the existence of its lease arrangement until after the complaint was filed.[2] Arctic Slope did not seek the lease in question. Rather, Arctic Slope was approached by the TSA to lease certain office space only because the government had no other options in the area, and it appears that the lease arrangement primarily benefits the public.[3] Moreover, the amount paid by the federal government for the lease agreement is relatively small taking into consideration Arctic Slope's other income and assets.[4] Arctic Slope's lease arrangement, at a rate of $28,800 a year, represented only 0.0015% of Arctic Slope's gross revenue for 2009.[5]

Therefore, the Commission has determined to exercise its prosecutorial discretion and dismiss the allegation that Arctic Slope Regional Corporation violated 2 U.S.C. § 441c(a)(1). *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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[2] Arctic Slope Response at 2-3; Kristin Mellinger Affidavit at ¶¶ 6,7; Clay Contrades Affidavit at ¶¶ 2,4.

[3] Arctic Slope Response at 2-3; Kristin Mellinger Affidavit at ¶ 7; Clay Contrades Affidavit at ¶¶ 2, 4.

[4] Arctic Slope Response at 3; Kristin Mellinger Affidavit at ¶ 7.

[5] *Id.*

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Aleut Corporation **MUR 6403**
Bering Straits Native Corporation
Bristol Bay Native Corporation
Calista Corporation
Chugach Alaska Corporation
Cook Inlet Region, Inc.
Doyon, Limited
Koniag, Inc.
Sealaska Corporation

I. BACKGROUND

This matter was generated by a complaint filed with the Federal Election Commission by the Joe Miller for U.S. Senate campaign, by Linda Johnson, Member. *See* 2 U.S.C. § 437g(a)(1). Complainant alleges that Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Limited, Koniag, Inc., and Sealaska Corporation, are government contractors that knowingly and willfully violated 2 U.S.C. § 441c(a)(1) by making contributions to Alaskans Standing Together and Barbara Donatelli, in her official capacity as treasurer ("AST"), a political action committee that made independent expenditures to influence the 2010 U.S. Senate general election in Alaska. The Respondent corporations deny the allegations, stating that (1) the contributions made to AST were permissible because they are not government contractors as defined by the Act and the Commission's regulations; (2) they were exercising their First Amendment speech rights when they made independent expenditures by contributing to AST, an independent-expenditure-only political committee; and (3) in the context of independent spending, the Act at 2 U.S.C. § 441c and the Commission's regulation at 11 C.F.R. § 115.2, which prohibit government contractors' contributions, are contrary to *Citizens United v. Federal*

Election Commission, 130 S. Ct. 876 (2010) ("*Citizens United*"), and *SpeechNow.org. v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010) ("*SpeechNow*").

For the reasons set forth below, the Commission has determined to find no reason to believe that Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Limited, Koniag, Inc., and Scalaska Corporation ("Respondents") violated 2 U.S.C. § 441c(a)(1) because the available information shows that these companies are not government contractors.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

AST, an independent-expenditure-only political committee, registered with the Commission on September 23, 2010. According to AST's Statement of Organization, it is a political action committee that supports/opposes more than one Federal candidate and is not a separate segregated fund or party committee. AST's disclosure reports filed with the Commission show that in 2010, it made independent expenditures that supported Alaska Senator Lisa Murkowski and opposed Joe Miller's candidacy in Alaska's 2010 U.S. Senate general election. Joe Miller won the Republican nomination for Alaska's 2010 Senate seat in the primary election, but lost the general election to incumbent Republican Senator Lisa Murkowski, who ran as a write-in candidate. The complaint alleges that AST is a "front group" for Senator Murkowski, and that Respondents made contributions to AST obtained federal contracts through "earmarks" from Senator Murkowski.

Respondents are collectively known as Alaska Native Corporations ("ANCs") because they were formed pursuant to the Alaska Native Claims Settlement Act of 1971, a federal law that extinguished aboriginal claims within the State of Alaska. The Commission has opined that ANCs are not "organized by authority of any law of Congress" for purposes of 2 U.S.C. § 441b(a)'s prohibitions. *See* Advisory Opinion 1982-28 (Sealaska). Each is a parent company that wholly owns a number of subsidiaries, some of which are federal government contractors.

These nine parent companies filed a joint response ("Aleut, *et al.* Response") denying that any of them met the statutory and regulatory definitions of government contractor at the time they made their respective donations to AST, and stating that these entities do not hold Federal government contracts. Generally, each of these ANCs represents the business interests of their respective shareholders; their subsidiaries engage in various business activities including communications, construction, aerospace, petroleum, engineering, and tourism. They further argue that their contributions to AST were permissible, even though some of their respective subsidiaries are government contractors, because as parent companies, they are separate and distinct legal entities from their government contractor subsidiaries, and they are able to demonstrate that their revenue is sufficiently large to make these donations from non-subsidiary income.[1]

The Aleut *et al.* Response alternatively argues that 2 U.S.C. § 441c(a) is unconstitutional to the extent it is read to restrict these respondents' contributions for the purpose of funding independent expenditures, based on language in *Citizens United*, 130

[1] In addition, both Koniag and Sealaska receive public grants that serve public purposes and do not directly benefit the U.S. government. Koniag also receives funds for a conservation easement, as part of the Exxon Valdez Oil Spill Trustee Council's habitat restoration efforts.

S.Ct. at 910, that independent expenditures do not "lead to, or create the appearance of, *quid pro quo* corruption" regardless of the speaker's identity, and in the related holding in *SpeechNow*.

B. Legal Analysis

The Act and the Commission's regulations prohibit government contractors from making, directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee or candidate for public office or to any person for any political purpose. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a) and (b).[2] A "federal contractor" is defined in terms of the substance of the contract and the source of funds for payment of performance of the contract. 2 U.S.C. § 441c; 11 C.F.R. § 115.1. With respect to the substance of the contract, it includes the rendering of personal services, the furnishing of materials, supplies, or equipment, or the selling of land or buildings. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(a)(1); *see* Advisory Opinion 1984-53 (National Association of Realtors) (lessor of land to federal agency is also considered a government contractor). The prohibition applies if payment to the contractor is to be made in whole or in part from funds appropriated by Congress. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(a)(2). The prohibition extends for the period of time between the earlier of the commencement of negotiations or when requests for proposals are sent out, and the later of the completion of performance or the termination of negotiations for such contract. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(b). The Act and the Commission's

[2] The entities alleged to be government contractors in MUR 6403 are all corporations; the constitutionality of 2 U.S.C. § 441c as applied to individuals is currently the subject of litigation. *See Wagner v. FEC*, No. 11-CV-1841 (D. D.C. filed Oct. 19, 2011).

regulations further prohibit any person from knowingly soliciting any contributions from government contractors who are in negotiations for a federal government contract or during the performance of their contract. 2 U.S.C. § 441c(a)(2) and 11 C.F.R. § 115.2(c).

When determining whether a committee has received, or that an entity has made, a contribution in violation of 2 U.S.C. § 441c, the Commission looks first to whether the entity met the statutory and regulatory definition of government contractor at the time the contribution was made. *See* MUR 6300 (Gen X Strategies); MUR 5666 (MZM); MUR 5645 (Highmark); MUR 4901 (Rust Environmental); and MUR 4297 (Ortho Pharmaceutical). In the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contractor subsidiaries, and that it had sufficient funds to make the contributions from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company. *See* Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) (the government contractor status of a tribal corporation, a distinct and separate legal entity from the tribe, does not prohibit the tribe from making contributions to federal candidates, political parties, and political committees as long as the tribe does not use revenues from tribal corporation to make contributions), *citing* Advisory Opinion 1999-32 (Tohono O'odham Nation) (the commercial activity of the Indian tribe's utility authority as a government contractor treated as separate from the tribe and its political activities).

Based on the available information, including affidavits from corporate officers, it appears that Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc.,

Doyon, Ltd., Koniag, Inc., and Sealaska Corporation have sufficiently demonstrated that as parent companies without contracts with the federal government, they are not government contractors, and therefore their contributions to AST were permissible. Although they each have subsidiaries that hold federal contracts, those subsidiaries are separate and distinct legal entities from them, and the parent companies have sufficiently demonstrated that they made their contributions to AST with revenue from sources other than the federal-contract-holding subsidiaries. Therefore, they are not government contractors as defined by the Act and the Commission's regulations. 2 U.S.C. § 441c; 11 C.F.R. § 115.1; *see* AO 2005-01 (Mississippi Band of Choctaw Indians) *citing* AO 1999-32 (Tohono O'odham Nation). Further, the parent company ANCs' contributions to AST do not violate the Act's prohibition on corporate contributions in connection with federal elections, 2 U.S.C. § 441b(a), because the contributions to AST, an independent-expenditure-only political action committee, were made for the purpose of making independent expenditures. *See Citizens United,* 130 S. Ct. at 913; AO 2010-11 (Commonsense Ten) at 3.[3]

Therefore, there is no reason to believe that Aleut Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Ltd., Koniag, Inc., and Sealaska Corporation violated 2 U.S.C. § 441c(a)(1).

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[3] As a final note, it appears that Koniag and Sealaska's receipt of the public grants do not make them government contractors. The public grants that Koniag and Sealaska receive from the federal government, *see* footnote 1, *supra,* appear to be outside of the definition of a federal contract as set forth by the Act and the Commission's regulations. 11 C.F.R. § 115.1(c); *see* AO 1993-12 (Mississippi Band of Choctaw Indians) (federal grant for public service activity, which does not directly benefit the U.S. Government, is not a "contract" as defined by 11 C.F.R. § 115.1; note that the part of the opinion's analysis concerning procurement contracts between tribal enterprises and the federal government is superseded by AO 1999-32 (Tohono O'odham Nation).