

UNITED SOUTHEASTERN TRIBES, INC.  
USET RESOLUTION NO. 74-27

BIA "Tribal Contracting Guidelines"

WHEREAS, the Bureau of Indian Affairs' Division of Contracting Services has issued a proposed set of guidelines on the contracting of BIA program operations to Indian tribes, and

WHEREAS, the Mississippi Band of Choctaw Indians, a member tribe of USET, Inc., has developed a position paper on the proposed guidelines reflecting its experiences in the contracting of BIA programs, and


WHEREAS, the other member tribes of USET, Inc., have had similar experiences in the contracting of BIA programs, and agree with the positions expressed in the position paper;

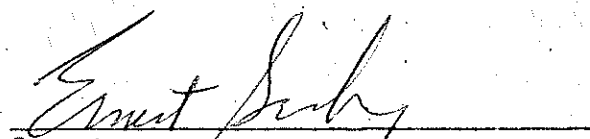
NOW THEREFORE BE IT RESOLVED, that United Southeastern Tribes, Inc., does hereby endorse the position taken by the Mississippi Band of Choctaw Indians in the "Position Paper on the Bureau of Indian Affairs' Proposed 'Tribal Contracting Guidelines,'" and

RESOLVED further that the Executive Director of USET is directed to forward copies of the position paper and this resolution to the Commissioner of Indian Affairs, and other appropriate officials, and appropriate Indian organizations, including NCAI and NTCA.

CERTIFICATION

This is to certify that at a meeting of the Executive Committee, Board of Directors of the United Southeastern Tribes, Inc., properly convened and held in New Iberia, La. on November 13-15, 1974, the above resolution was duly adopted.

  
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President  
United Southeastern Tribes, Inc.

  
\_\_\_\_\_  
Secretary  
United Southeastern Tribes, Inc.

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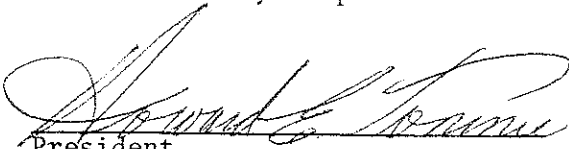
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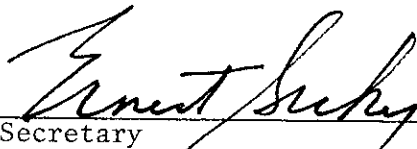
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MISSISSIPPI BAND OF CHOCTAW INDIANS

POSITION PAPER ON THE BUREAU OF INDIAN AFFAIRS' PROPOSED  
"TRIBAL CONTRACTING GUIDELINES"

October 11, 1974

This Mississippi Band of Choctaw Indians believes that the establishment of guidelines for the contracting of BIA programs by Indian tribes, pursuant to the policy of Indian Self-Determination, is long overdue. The draft guidelines prepared by the BIA Division of Contracting Services should have been issued in 1970 when the policy was announced.

An excellent example of the effect of this delay is continued on Page 2 of the proposed guidelines: "All tribes will have been offered the opportunity to contract with the Bureau . . . by the time these guidelines are issued." In fact, all tribes were eligible to contract after the issuance of the President's Message of July, 1970 under the Buy-Indian Act of 1910. And the failure of the Bureau to inform tribes of the opportunity or set guidelines has denied many tribes time for strategic planning in this area and has delayed implementation of the policy of self-determination.

It has been our experience over the last four years, without such guidelines, that the BIA contracting process has been filled with inconsistency, unfairness and contradiction.

We have been told (in a House Interior Committee report on the Interior Appropriations Bill) that the Bureau has "allocated specific funds to be used by the tribes in managing . . . contracts" and that the reduction-in-force of 1,000 Bureau employees would result in a savings of \$155 million that would be passed on to tribes in the form of administrative or overhead costs. Yet when negotiations were held with Bureau officials these funds were not

to be found. We have been told that the Bureau will honor a tribe's established indirect cost rate, yet when negotiations have taken place, Bureau officials have refused to provide these indirect costs at the rate established. We have been told (in the President's Message) that the contracting of programs will not result in financial disadvantages to tribes, yet we have seen our contracts gutted by the removal of the severance pay and accrued annual leave of current Bureau employees from tribally-contracted budgets.

This position paper attempts to set forth the specific improvements that could be made to the proposed guidelines. It is unclear whether the guidelines are intended to set policies or procedures for contracting, or both. If they are intended to set forth procedures of contracting, they should be set forth in much greater detail in order to assure tribes a clear way to contract and avoid a continuation of the inconsistencies and contradictions encountered in the past.

#### Indirect Cost

One of the most important limitations on contracting might be overcome in Section VI, number 2 on page 11 of the guidelines, which states in part "The cost of (a tribal) administrative unit would be allowable in accordance with regulations governing overhead costs." Regulations "governing overhead costs" should provide for acceptance of established indirect cost rates, and should be included in documents describing contracting procedures. Indirect cost rates negotiated between tribes and Federal agencies other than the Bureau should be honored by the BIA.

Our experience has shown, however, that the Bureau has not been willing to grant indirect costs to tribes in this manner. An Interior Department audit of the Choctaw Tribal Work Experience and Training Program in October, 1973, directed the Bureau to forward indirect

costs to the tribe at the (then) established rate of 12 per cent which amounted to some \$25 thousand. The Bureau refused to comply. Yet there were certainly precedents in this area, at least when the Bureau was contracting with non-Indian entities. In the Radio Corporation of America's contract with the Bureau to operate a pre-employment training project on the Choctaw reservation in the mid-60's (which was a failure), BIA not only provided 8.2 per cent "G & A" (general and administrative costs), but also an 11.9 per cent "profit". Both of these items were figured on the total direct costs of the project, in a program whose total funding reached nearly \$4 million over a three-year period.

Ten years after this, the tribe was forced to suspend negotiations on contracting the Social Services program of the Choctaw Agency because the Bureau would not provide any administrative costs to cover operations of this \$800,000-a-year program. Bureau officials told us that, despite the BIA position that those funds would be provided through a "r.i.f.", they simply did not exist. Administrative costs for the Choctaw Agency, of course, are represented at the Area Office level, in the writing of checks, management of personnel, and purchasing in Albuquerque, and in the Administration line item in the Agency's budget. Bureau officials simply do not seem to understand that the functions these costs reflect must be performed by tribes when they contract Bureau programs, just as they are now performed by the Bureau at the National and agency level.

#### Review of the Plan of Operation

The procedures set out in paragraph 3 on page 2 would be time-consuming, create extra paper work, and would make it difficult for tribes to maintain real communication on the progress of the proposed contract. In fact, this procedure may allow Bureau employees who

services or maintain any standards that the Bureau itself is not required to provide or maintain.

#### State Standards

The requirement, spelled out on page five of the draft, that education programs must meet or exceed state standards, raises the general question of tribal self-determination and control. We see no reason why recognized tribes, which have no relationship with states in the first place, should not be able to establish their own minimum standards. The situation on a reservation is usually quite different than in the remainder of a state, and tribes should, therefore, be allowed to consider standards and conditions on a reservation as well as tribal customs and traditions, etc., in the establishment of tribal standards for tribal programs. Although it is desirable that tribes maintain state standards, or better, it is their option to make this determination. All in all, it is program quality, not adherence to artificial standards that is important.

Further, there is the question of whether the Bureau itself is maintaining these standards. Our experience is that the Choctaw School system is in constant trouble with the State Department of Education over standards, and the Choctaw schools have been put on probation several times.

#### BIA Involvement with Supplementary Education Projects

Although it is incumbent upon tribes to make agreements with the Bureau to assure the smooth functioning of educational projects under contracts between a tribe and a non-BIA funding source (the Office of Education, for example), it should not be the responsibility of the Bureau to insure that the project is carried out as approved, as the draft provides on page 6.

oppose contracting to undermine a tribe's intent to contract. As more tribes take advantage of contracting, the paper work will mount, and a streamlined procedure will be needed. Direct submission of applications to the Contracting Office, with time limits set for BIA review, would help.

It is provided on Page 2 that the "Contracting Office will obtain a technical review and evaluation from appropriate program staff" and that "prior to approval of any contract with a tribe that may affect terms and conditions of Bureau employment" the Contracting Office should meet with labor organizations representing employees affected. We believe it would be valuable to include in this section a statement to the effect that BIA will insure that the approval or disapproval of a proposed contract will not be dependent in any way on the effect of the contract on the "terms and conditions of Bureau employment", or the opinions of labor organizations. Current Bureau employees whom tribes do not wish to employ under contracts often serve as rather vocal lobbyists against tribal contracting. Neither the opinions of labor organizations nor the efforts of individual Bureau employees affected should interfere with the approval, the scheduling of review, or the terms of a contract.

In addition, the Bureau should establish a system, and describe it in this section, for renumeration of employees terminated as a result of tribal contracting, from sources other than contract funds without expense to the tribe. This would be in accordance with generally accepted accounting principles and standards requiring the accrual of these expenses throughout a budget period.

The Bureau should also add to these guidelines an assurance that tribes contracting BIA programs will not be required to provide any

### Direct Employment

Although AVT is mentioned on page six, the Direct Employment program has been omitted. All direct elements of this program, also, should be eligible for contract. Job training programs are among the most important to the Indian people, and BIA should facilitate the merger of all reservation employment programs into a comprehensive system. This is especially important now that many tribes have become prime sponsors of Department of Labor programs under the Comprehensive Employment and Training Act.

### Social Services Eligibility

The provision, on page seven, that grants to eligible recipients may be made by tribes "on approval of a request supported by names and amounts" is inimical to the policy of self-determination and the idea of contracting. Bureau officials may examine program records to monitor compliance, but they should not be given the power to make major program-operations decisions of this sort.

### "Trust Responsibility"

Although the Federal government's specific trust responsibilities have not been clearly defined in legislation or regulation, all programs should be contractable with the exception of Forestry, Realty (as it pertains to leasing), and other areas pertaining to lands trust, in negotiation between BIA and the contracting tribe, until such time as "trust responsibility" is clearly defined in legislation.

### Conclusion

One general note to conclude, about the allocation of "specific funds to be used by tribes in managing contracts," the Bureau should stop its pussyfooting around on the matter of contracting and should



examine its circular arguments on how BIA staff "attrition" in programs to be contracted will provide administrative costs to contracting tribes. While we consider the Bureau's concern with its problem of over-employment to be a valid one, there is no way a "r.i.f." can supply tribes with administrative costs when BIA currently pays for these costs outside of the budget of the program to be contracted. The Bureau should make a request to the Congress for earmarked monies to assist tribes managing Bureau programs and to provide the payment for negotiated indirect cost rates. This should include assisting tribes without approved indirect cost rates in negotiating these rates.