



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
to consultation@ihs.gov*

November 20, 2020

RADM Michael D. Weahkee
Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

Dear RADM Weahkee,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment regarding two Tribal consultations held by the Indian Health Service (IHS) on November 9, and 16, 2020. The purpose of these consultations was to receive input and guidance on implementing the Buy Indian Act of 1910 regulations in IHS contracting policies and procedures. While these consultations sought to identify challenges that Tribal Nations and organizations experience when pursuing Buy Indian contracts, the IHS Buy Indian Act proposed regulations were published in the Federal Register in the middle of the consultation period on November 10th. In light of this, USET SPF is concerned that the Administration plans to move forward with these changes in the absence of meaningful Tribal guidance and input.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-Tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Further Tribal Consultation is Necessary on the IHS Proposed Buy Indian Act Regulations

While IHS has held two Tribal consultations on the implementation of the Buy Indian Act regulations, it has become clear that the proposed regulations were already in process prior to these discussions, as the Notice of Proposed Rulemaking (NPRM) was published immediately after the first consultation was held. It remains unclear what purpose the consultations thus far have served, if not to provide advice and guidance

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

in advance of the NPRM. The NPRM must not be finalized without significant, meaningful consultation. USET SPF notes that during the second consultation, IHS staff indicated that there would be the possibility of further consultations, even after the proposed regulation comment deadline. With this in mind, we urge that IHS schedule regional Tribal consultations with each IHS Area Office to ensure that Tribal Nations across the country can provide meaningful input on how the proposed regulations benefit or disadvantage our Nations and citizens. Holding these regional consultations will ensure that the diverse voice of Indian Country will be able to address regional healthcare delivery challenges and participation in the Buy Indian Act procurement policies and procedures.

USET SPF also reminds IHS that ahead of any Tribal consultation there needs to be further transparency and advanced communication, particularly before engaging in formal rulemaking. These consultation times and dates were rushed, as the Dear Tribal Leader Letter was issued on November 2, 2020 – just a week before the first scheduled consultation, with the NPRM issued soon after. Items published in the Federal Register can often be delayed, but this seems to be a systemic issue for federal agencies attempting to uphold their trust and treaty obligations to Tribal Nations. Federal agencies can do better, and should do better, to uphold their obligations to Tribal Nations and their citizens. This includes the obligation to seek substantive Tribal guidance ahead of federal action. The haste of these consultations, issuance of proposed regulations, and the desire to publish a final rule by early 2021 is alarming and cause for concern, given the lack of transparency and advanced notice.

In the spirit of transparency, it would also be helpful to know how IHS is collecting data on potential economic impact the Buy Indian Act regulations could have on Indian Country. During the second consultation call on November 16th it was mentioned that IHS had submitted economic impact information to the Office of Management and Budget. However, this information is not readily accessible on IHS' website. Having access to this data would assist in understanding the overall estimated dollar increase and impact for Indian Country.

Conclusion

While we agree that the federal government must improve its enforcement of the provisions within the Buy Indian Act, hastily implementing these regulations could have adverse effects for Tribal Nations. While IHS has stated that it is working with the Bureau of Indian Affairs (BIA) to develop its own Buy Indian Act regulations, this is also problematic since BIA has yet to finalize its own proposed revisions to regulations. IHS must act on the consultation recommendations outlined in this letter prior to finalizing any Buy Indian Act regulations, and the final rule must incorporate the advice and guidance of Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll