



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
To consultation@bia.gov

June 25, 2021

Bryan Newland
Principal Deputy Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Principal Deputy Assistant Secretary Newland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of the Interior's (DOI's) proposed revisions to its Buy Indian Act regulations. DOI issued a Dear Tribal Leader Letter on May 14, 2021 to announce Tribal consultations on the proposed revisions on June 15 and 17, 2021. DOI's proposed revisions would increase contract preferences for Indian Small Business Economic Enterprises (ISBEEs) and Indian Economic Enterprises (IEEs), as well as updates on subcontracting to ensure consistency with Federal Acquisition Regulations. The proposed revisions would also update the process for deviating from the Buy Indian Act to ensure greater preference for IEEs. USET SPF supports these proposed revisions, which are necessary to update the Buy Indian Act regulations and fulfill the intent of the law. However, we have a few recommendations for DOI to increase accountability, communication, and evaluation on the implementation of the Buy Indian Act. Furthermore, there must be ongoing coordination between DOI and IHS to ensure consistent Buy Indian Act regulation revisions and implementation, as well as support for expansion of the Act's provisions across the whole of the federal government.

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.

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

Increase Accountability and Communication on Buy Indian Act Implementation

To improve the implementation of Buy Indian Act, we strongly recommend that DOI include a new section on internal accountability and communications in the next iteration of the proposed revisions. We believe that establishing efficient monitoring and compliance protocols, as well as communications standards will enhance the success of the Buy Indian Act in promoting economic growth for Tribal Nations. Contracting Officers at each Bureau of Indian Affairs (BIA) Regional Office should be required to collect, aggregate, and maintain accurate data to measure its progress in the implementation of the Buy Indian Act. Data collected should reflect outreach and coordination efforts with Tribal Nations, and status reports on anticipated, pending, and completed ISBEE and IEE solicitations. It should not include any additional data collection or reporting requirements for Tribal Nations. Contracting Officers at each BIA Regional Office should also be required to submit quarterly and annual reports to the Office of the Assistant Secretary – Indian Affairs on the status of completed solicitations, any deviation determinations, updates on current Buy Indian Act contracts, and information on any pending or planned solicitations.

Develop Ongoing Evaluation Mechanisms for Buy Indian Act Implementation

To ensure and improve the success of the Buy Indian Act, DOI should develop ongoing evaluation mechanisms to gather input from Tribal Nations on barriers to the Act's implementation in DOI's contracting policies and procedures. One such barrier is the "rule of two" on procurement decisions. This has been an issue that Tribal Nation businesses have repeatedly stated as a barrier to the Buy Indian Act program and one that could be resolved if DOI and other federal agencies considered the input of Tribal Nation businesses. DOI should hold annual Tribal Listening Sessions with each BIA Region to receive input on successes and challenges to the Buy Indian Act implementation. These sessions could inform DOI of potential updates required for its contracting policies and procedures, updates for internal DOI guidance, and if Tribal consultation is required to develop further updates to its Buy Indian Act regulations. These actions will ensure that Buy Indian Act regulations will receive timely revisions and provide a record of evidence if Congress must update the Buy Indian Act.

DOI Should Coordinate with its Federal Partners to Implement the Buy Indian Act

During recent Tribal consultations held by DOI on proposed updates to the Buy Indian Act regulations it was mentioned that the Department was coordinating with the Indian Health Service (IHS) on its proposed revisions. IHS initiated a Notice of Proposed Rulemaking (NPRM) to update its Buy Indian Act Regulations in November 2020 but extended the comment deadline due to Tribal Nation requests. USET SPF also voiced concern with the haste of IHS' attempts to implement its revised Buy Indian Act regulations by early 2021. With the transition to a new Presidential Administration, IHS revisited its NPRM and held Tribal consultations in early 2021 and set a new comment deadline of June 21, 2021. We submitted comments to IHS requesting a revised NPRM to reflect many of the proposals that DOI has put forward in this proceeding. We encourage DOI to also support this request and continue to coordinate with IHS to ensure consistency with implementing Buy Indian Act regulations. This is particularly important since the DOI revised regulations propose updated deviation approvals and thresholds, whereas the IHS November 2020 NPRM does not include such revisions. Furthermore, USET SPF recommends that IHS and DOI work collaboratively to support the expansion of the Buy Indian Act across the federal government. This support should extend to the work of the recently reestablished White House Council on Native American Affairs, where DOI and IHS have an opportunity to educate federal partners on the importance of implementing the Buy Indian Act to increase federal contracting opportunities for Tribal Nations and businesses.

Conclusion

We strongly believe that a meaningful commitment to improve the Buy Indian Act must take into consideration how it can enhance the development of qualified ISBEES and IEEs, as well as support Tribal

economies throughout Indian Country. Unfortunately, the Buy Indian Act has been severely underutilized and has generally lacked enforcement mechanisms necessary for its effective implementation to benefit Tribal Nations, businesses, and citizens. Proper implementation of the Buy Indian Act at DOI (and IHS) could be an agent for change by spurring further application of the Buy Indian Act program across the federal government. This action would support and strengthen federal contracting opportunities and awards to Tribally owned businesses. We look forward to continuing to work with DOI to improve the Buy Indian Act regulations in ways that support Tribal businesses and foster economic growth within our communities. 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director