



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
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June 14, 2021

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

Re: 1076-AF63, Proposed Rule on the Indian Business Incubators Program

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 a proposed rule for the Indian Business Incubators Program (IBIP) administered by the Office of Indian Energy and Economic Development (IEED) at the Department of the Interior. This proposed rule would establish regulations on IBIP program eligibility, application procedures, and how IEED would administer the program and evaluate applications to determine program awards. These proposed regulations intend to implement the directives of the Native American Business Incubators Program Act (P.L. 116-174), which was signed into law on October 20, 2020. USET SPF supported passage of the Native American Business Incubators Program Act to authorize the IBIP as an opportunity to strengthen economic development for Tribal Nations and Native American people. However, USET SPF has several concerns and recommendations as IEED implements P.L. 116-174, including IBIP grant matching requirements, service area eligibility, and business incubator physical space requirements.

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).

Concern with Program Matching Requirements and Support for Waivers of Matching Requirement

Under P.L. 116-174, eligible Tribal Nations, Tribal Colleges and Universities, or Tribal non-profit organizations providing business, financial, and technical assistance must provide a 25 percent non-federal matching contribution to access a three-year grant award from the IBIP. Additionally, IBIP awardees seeking a three-year IBIP grant renewal must provide a 33 percent non-federal matching contribution. However, under P.L. 116-174 the Secretary of the Interior may waive the non-federal contribution matching requirement to an eligible applicant if the Secretary determines that the proposed business incubator will provide quality business incubation services, and that the applicant serving one or more Tribal Nations is unlikely to receive business incubation services due to remoteness or “other reasons” that inhibit the provision of business and entrepreneurial development.

USET SPF encourages IEED to work with Tribal Nations and the Secretary of the Interior to ensure Tribal requests for waivers of IBIP non-federal matching requirements are provided thorough, comprehensive, and appropriate consideration. Tribal Nations and our Tribal businesses and entrepreneurs will continue to address and recover from the economic ramifications of the COVID-19 pandemic for years to come. Since CARES Act or American Rescue Plan Act COVID-19 relief funds cannot be leveraged to fulfill IBIP matching requirements, IEED and the Secretary of the Interior should defer to Tribal Nations and other eligible Tribal applicants when considering waivers of IBIP matching requirements. As Indian Country begins COVID-19 recovery efforts, we further urge BIA and IEED to consider a broader waiver of the matching requirement in support of these efforts and its obligations to Tribal Nations.

IBIP Grant Awards Should be Equitable and Regionally Representative

Tribal Nations and individual Tribal citizen businesses and entrepreneurs engage in a diverse array of economic development in Indian Country. Implementation of IBIP and the award of program funds should account for the participation of as many Tribal Nations and types of Tribal businesses as possible. Additionally, in examining and measuring IBIP awardee impact, IEED should consider program impacts beyond strict financial impact within our communities. IBIP awards should also consider measurable metrics on job creation and services that enhance community well-being. These should be determined by Tribal Nations and Tribal applicants as they are the best suited for understanding and addressing community priorities that IBIP funds could be used to support.

Furthermore, the award of IBIP funds should be done in a manner that equitably distributes funds and is regionally representative of Indian Country. While we unequivocally support and defer to our member Tribal Nations in the development of their incubator programs, we urge IEED to ensure that regionally-focused programs are not precluded in the final rule, such as those formed by Tribal consortia or a program headquartered on Tribal lands incubating the businesses of other Tribal Nations. Award of IBIP funds should also consider other socio-economic factors, such as the size and the location of eligible Tribal Nations and businesses. Tribal Nations with a small population or small land base should have the opportunity for equitable participation in and benefit from the program. Finally, under the final rule, Tribal Nations should have the authority to determine whether to incubate only those businesses within their jurisdictional boundaries in order to grow their local economies or include those of Native entrepreneurs that may be located away from Tribal homelands.

IBIP Grant Awards Should Consider Innovative and Virtual Options in Lieu of Physical Workspace

The IBIP proposed rule includes a requirement for program funds to be used to provide a physical workspace and facilities for Native businesses and entrepreneurs participating in a business incubator. IEED should defer to Tribal Nations and Tribal applicants regarding the use of a physical space since compliance with this requirement could lead to a reduction in the amount of IBIP awarded funds used to

accomplish the mandates of business and entrepreneur development in Indian Country. Furthermore, Tribal Nations are still dealing with the impacts of the COVID-19 pandemic and may still have active stay-at-home orders or other requirements in place for limited building occupancy. Tribal Nations should not be limited to physical space requirements and should be able to include social distancing best practices when providing incubator services. IEED should exercise its waiver authority to account for these physical space limitations due to the COVID-19 pandemic. IEED should also accommodate small land base Tribal Nations by accepting innovative IBIP proposals that offer solutions to the limitations to physical space requirements.

Furthermore, Section 4(e)(3) of P.L. 116-174 includes provisions requiring eligible applicants to leverage technology to the maximum extent possible to provide Native businesses and Native entrepreneurs with access to the internet and other connectivity tools needed to access incubator services. IEED should interpret this provision of the law to support applicant use of IBIP funds to provide incubator services to Tribal citizens that cannot access the physical location of an incubator facility due to remoteness, COVID-19 restrictions within their communities, and other barriers identified by Tribal Nations and Tribal applicants.

Conclusion

As Indian Country moves forward to recover and “build back better” from the COVID-19 pandemic, IBIP and other federal programs must address the challenges and barriers to economic development in Indian Country in accordance with trust and treaty obligations. Incubator programs and services should focus on providing both financial and community growth for our Tribal Nations, businesses, and entrepreneurs. Therefore, it is essential that incubator services should not rely on a strict economic growth indicator, but rather beneficial impacts to quality of life and job creation. USET SPF looks forward to working with IEED and other federal partners to ensure that Tribal Nations have all the necessary resources to support economic development in Indian Country. 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