



USET

SOVEREIGNTY PROTECTION FUND

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December 13, 2021

Christopher Bell
Senior Small Business Specialist
Office of Small and Disadvantaged Small Business
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

**RE: Notice of Proposed Rulemaking – Acquisition Regulations; Buy Indian Act;
Procedures for Contracting, RIN 1090-AB21**

Dear Mr. Bell,

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. On December 1, 2021, DOI held a Tribal consultation on a Notice of Proposed Rulemaking (NPRM) to revise regulations implementing the Buy Indian Act. DOI's proposed revisions would increase contract preferences for Indian Small Business Economic Enterprises (ISBEs) and Indian Economic Enterprises (IEEs), as well as updates on subcontracting to ensure consistency with Federal Acquisition Regulations (FAR). While these proposed revisions to the Buy Indian Act regulations support Tribal Nation businesses, we have a few recommendations for DOI to increase accountability, communication, and evaluation on the implementation of the Buy Indian Act.

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

USET SPF supports DOI's proposed revisions in the NPRM, which are necessary to update the Buy Indian Act regulations to fulfill the intent of the law. These proposed revisions would give maximum preference to SBEEs and IEEs and eliminate restrictions that prevent construction contracts from being set-aside for SBEEs or IEEs. We also support the proposed regulations that would ensure consistency with the FAR and allow IEEs to subcontract work on contracts up to 75% for construction by special trade contractors and 85% for general construction. However, as DOI moves forward with revising its Buy Indian Act regulations, there must be ongoing coordination with the Indian Health Service (IHS) to ensure consistent Buy Indian Act regulation revisions and implementation. The following recommendations should be adopted and implemented by DOI to ensure the success of the Buy Indian Act to support Tribal governments and businesses.

Increase Accountability and Communication on Buy Indian Act Implementation

To improve the implementation of Buy Indian Act regulations, we strongly recommend that DOI develop a new section on internal accountability and communications. 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 SBEE and IEE solicitations. These data collection efforts should not include or require any additional data collection or reporting requirements for Tribal Nations and our businesses. 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 (AS-IA) on the status of completed solicitations, any deviation determinations, updates on current Buy Indian Act contracts, and information on any pending or planned solicitations. These reports should also be made available on AS-IA's website for Tribal Nations and businesses to review regarding the engagement of DOI on implementing the Buy Indian Act regulations. Additionally, AS-IA should coordinate with the Office of Small and Disadvantaged Business Utilization to ensure that Tribal Nations and citizens are aware of the economic opportunities the federal government offers as part of its trust and treaty obligations.

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 when 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 and Increase Federal Procurement Opportunities

During Tribal consultations held by DOI in June 2021 on proposed draft 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. We submitted [comments](#) to IHS on June 21, 2021 requesting a revised NPRM to reflect many of the proposals that DOI put forward in its proposed draft updates issued earlier this year.

IHS has yet to issue a revised NPRM or further rulemaking on proposed revisions to its Buy Indian Act regulations. We strongly encourage DOI to coordinate with IHS to ensure consistency with implementing Buy Indian Act regulations. This is particularly important, since the proposed 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 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 across the federal government to increase federal contracting opportunities for Tribal Nations and businesses.

Additionally, on December 2, 2021 the Biden Administration announced reforms to increase equity for underserved small business owners in federal procurement procedures. Although this federal procurement initiative is focused on increasing opportunities for small disadvantaged businesses and “minority-owned” businesses, the Administration should also provide increased federal procurement opportunities to Tribal Nations, Tribal businesses, and individual Indian-owned businesses. DOI, IHS, and the White House Council on Native American Affairs should be involved in consulting with Tribal Nations to determine methods that federal procurement opportunities could be increased for Tribal Nations and our 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,



Kirk Francis
President



Kitcki A. Carroll
Executive Director