



USET

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November 7, 2023

Pamela Williams
Assistant Administrator
Grant Programs Directorate
Federal Emergency Management Agency
U.S. Department of Homeland Security
300 7th St SW
Washington, DC 20024

RE: USET SPF Comments on Simplifying FEMA Preparedness Grants, Notice and Request for Information, Docket ID No. FEMA-2023-0024

Dear Assistant Administrator Williams,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of Homeland Security (DHS), Federal Emergency Management Agency's (FEMA) Notice and Request for Information (RFI) on simplifying and streamlining its preparedness grant process. This RFI was initiated in response to the release of the DHS Secretary's 2023 department-wide priorities on January 25, 2023, which included a priority to improve management and administration of grant programs by simplifying application processes, improving customer service, and ensuring greater accessibility and equity for under resourced populations. While we are not simply an 'under resourced population,' we appreciate FEMA's effort to consult with Tribal Nations on this RFI since the process of applying for, administering, and reporting on awarded DHS preparedness grants has remained a complex and burdensome process. USET SPF continues to advocate for direct funding to Tribal Nations with no cost-matching requirements for all DHS programs.

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

⁽¹⁾ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Tribal Nations Must Receive Direct Funding Allocations and Parity with State Governments for All DHS Grant Programs

Tribal Nations and Tribal emergency management organizations have consistently had limited access to direct funding from DHS since current funding mechanisms require Tribal Nations and our emergency management organizations to seek these funds through state governments. While USET SPF generally does not support the award and allocation of federal funds through grant-making processes, especially those that are structured under a competitive grant model, the current structure of grant-making at DHS must be altered to ensure Tribal Nations receive direct assistance. State governments should not be allowed to dictate whether Tribal Nations receive DHS grants, funds, and services. DHS and its agencies have solemn moral and legally binding trust and treaty obligations to Tribal Nations to provide for and support Tribal Nation efforts to protect our homelands, sacred sites, cultural, natural, and environmental resources, and the public health and safety of our communities, as well as to promote and protect Tribal Nation sovereignty and self-governance.

Current emergency management funding mechanisms and grant eligibility guidelines disregard Tribal sovereignty and self-determination and are not consistent with the December 2016 FEMA Tribal Policy, [FP 305-111-1](#), which states that, “Tribal governments are not political subdivisions of states, but are to be recognized by the United States as distinct sovereigns.” There continues to remain glaring funding disparities and eligibility restrictions for Tribal Nations, as compared to states, across an array of DHS grant programs, to include, but not limited to: Hazard Mitigation Assistance Grants, Pre-disaster Mitigation Grants, Preparedness Grants, Assistance to Firefighters Grants and Emergency Management Performance Grants and the Tribal Homeland Security Grant Program.

In recent years, DHS, and FEMA in particular, has increasingly consulted with Tribal Nations to update and revise guidance documents and programmatic regulations to eliminate barriers for Tribal Nation access to critical DHS funds. USET SPF strongly urges DHS to effectively standardize these practices and regularly consult, identify, and eliminate both procedural and current eligibility impediments by working directly with Tribal governments to facilitate greater access to Homeland Security grant programs. DHS must ensure that its funding allocation methodologies address the stark funding disparities between Tribal Nations and other units of government by providing equitable and baseline funding to Tribal Nations, eliminating competitive grant cycles, and advocating for contracting and compacting authorities similar to the Indian self-determination programs (ISDEAA, P.L. 93-638) administered by the Bureau of Indian Affairs and the Indian Health Service.

USET SPF has called for these actions via several policy communications, including through [USET SPF Resolution No. 2019 SPF:021](#), “Calling Upon Congress and the Department of Homeland Security to Ensure Necessary Funding and Flexibility for Tribal Nations’ Homeland Security and Emergency Management Departments”, and, [USET SPF Resolution No. 2020 SPF:008](#), “Calling on Congress and the Department of Homeland Security to Allow All Federally Recognized Tribes Access to the Tribal Homeland Security Grant.” DHS must offer the full complement of agency programs to provide greater access and equitable, baseline funding to Tribal Nations across those agency programs. Tribal Nations must receive direct funds to build, sustain, and improve our capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards and disaster situations.

In addition, the federal government must move beyond the grant- and competitive models to determine disaster relief awards to Tribal Nations. In addition to competing with state and local governments and other

non-governmental entities, these processes and practices unjustly force Tribal Nations to compete with each other for critical disaster response and relief dollars. These actions do not uphold the federal government's moral and legal obligations to Tribal Nations, which were firmly established by the U.S. Constitution, treaties, statutes, Executive Orders, and decisions rendered by the federal judiciary.

Federal Cost-Matching Requirements Do Not Uphold DHS's Trust and Treaty Obligations to Tribal Nations

The federal government's trust and treaty obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force— in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity as payment on debt to Tribal Nations. Certain FEMA Public Assistance (PA) programs have non-federal cost-matching requirements, which unjustly and inappropriately asserts financial burdens on Tribal Nations to obtain these federal resources. Non-federal match requirements are based on a concept that non-federal governments must invest their own resources to receive federal assistance from DHS, which abrogates DHS's trust and treaty obligations to Tribal Nations.

Many Tribal Nations avoid seeking federal assistance in response to emergencies or disasters because of significantly burdensome processes imposed by FEMA under non-federal match requirements. These burdensome processes became further evident during the COVID-19 Public Health Emergency. Tribal Nations seeking emergency declarations under the Stafford Act experienced unnecessary and burdensome unfunded mandates and requirements from FEMA and prevented a majority of Tribal Nations from seeking federal assistance authorized under the Act. The COVID-19 pandemic further highlighted undeniable truths that Tribal Nations remain the furthest behind among the U.S. family of governments in response and recovery to disaster efforts due to the lack of support in developing levels of preparedness, as well as burdensome and unnecessary requirements to identify a Tribal disaster. Further, it was determined that the FEMA review process for major disaster or emergency declaration requests under the Stafford Act is not transparent, which makes it almost impossible for Tribal Nations to successfully appeal FEMA's decision if our declaration request is denied.

In response, USET SPF adopted [USET SPF Resolution No. 2021 SPF:001](#), "Urging the Removal of Stafford Act Non-Federal Match requirements and Streamlining of Tribal Emergency Declaration Requests." While [USET SPF Resolution No. 2021 SPF:001](#) calls upon Congress to maintain the Stafford Act's Tribal provisions and to specifically add language waiving any non-federal match requirements for Tribal Nations, it also urges DHS and FEMA to immediately eliminate any agency-imposed non-federal match requirement.

Further, it is important to note that the Stafford Act does not require an automatic non-federal match and allows FEMA the discretion to waive the non-federal match up to 25 percent. Yet, despite this discretion, FEMA consistently applies the maximum 25 percent non-federal match to Tribal emergency or major disaster declarations. DHS and FEMA must immediately establish a policy to forward any and all Tribal emergency or major disaster declaration requests without cumbersome administrative requirements or any other complex application processes imposed, and to submit these requests to the President with a recommendation of the FEMA Administrator within 10-working days and forward a copy of the recommendation to the submitting Tribal Nation. USET SPF reiterates its [comments](#) submitted to FEMA on September 15, 2023 in response to Tribal consultations to improve its 2017 Tribal Declarations Guidance. In our comments we stressed the persistent issues of requiring Tribal Nations to provide a cost-share to receive FEMA PA, meet a dollar damage threshold to obtain PA, the overly burdensome application requirements, and the necessity to ensure uniform common practices across all FEMA regions.

DHS and FEMA Must Establish a Tribal Resiliency Program

DHS exists as the primary federal department responsible for all funds appropriated by Congress to support the National Preparedness Goal. This Goal is to ensure that all communities, including Tribal Nations and citizens, are prepared for all types of disasters and emergencies to create a secure and resilient nation. However, while Congress has provided consistent funding to state and local governments for over 50 years to develop and sustain core homeland security and emergency services capabilities and capacities, Tribal Nations have consistently been left out of these funding authorizations. Since 2003, Congress has allocated over \$55 billion in homeland security grant funds to state and local governments, which averages \$3.2 billion per year, while Tribal Nations have only been allocated just over \$95 million (\$5.5 million per year average) in federal homeland security funding during the same period.

As a direct result of the federal government's ongoing investments, state and local governments are better prepared and have the capacity to navigate complex FEMA processes and policies to access billions in emergency relief funds. Unlike these other units of government, Tribal Nations have been continuously left behind, if not outright excluded, in securing DHS funding to meet core homeland security and emergency services capabilities and capacities. For these reasons, USET SPF's member Tribal Nations adopted [USET SPF Resolution No. 2023 SPF:011](#), "Support for the Establishment of a Tribal Resiliency Program at the Department of Homeland Security," which urges Congress to appropriate a minimum of \$206.64 million to establish a Tribal Resiliency Continuity Program that is non-competitive, has no federal cost share, and has a streamlined award process to empower all Tribal Nations to build core homeland security and emergency services capabilities and capacities. In accordance with trust and treaty obligations, DHS and FEMA must join us in supporting these efforts and underscore to Congress the necessity of establishing this Tribal Resiliency Program to appropriately prepare Tribal Nations for future emergency and disaster response scenarios.

Conclusion

An essential foundation of federal trust and treaty obligations to Tribal Nations is the duty to ensure that we receive the appropriate resources and assistance when responding to and recovering from a disaster or emergency event. For these reasons, DHS and FEMA must ensure that Tribal Nations are empowered to pursue our efforts in Nation rebuilding and prepare for increasing natural disasters and emergencies due to climate change. FEMA must take all actions necessary to fully support and provide services to Tribal Nations by reevaluating it reviews Tribal Nation declaration requests and how Public Assistance and other FEMA resources are awarded to Tribal Nations. We appreciate FEMA's decision to gather feedback from Tribal Nations on ways to improve, simplify, and streamline its preparedness grant programs to better serve and protect our communities and citizens. We look forward to continued dialogue with you on these important issues and FEMA's efforts to better streamline and consolidate the delivery of disaster and emergency relief funds, training, and technical assistance to 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
Executive Director