



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
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December 20, 2024

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Haaland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the proposal to adopt a “General Applicability Public Interest Waiver to Indian Tribes” (Proposed Waiver) to provide a five-year waiver of the requirements of Section 70914 of the Build America, Buy America Act (BABAA) authorized by the Infrastructure Investment and Jobs Act. The Proposed Waiver was developed by the Department of the Interior in coordination with the Departments of Agriculture, Commerce, Education, Energy, Housing and Urban Development, Environmental Protection Agency, and the Federal Emergency Management Agency (the agencies). The agencies have determined that the proposed five-year waiver is in the public interest of Tribal Nations, Tribal organizations, and Tribal entities. USET SPF supports the five-year Proposed Waiver to the BABAA requirement to purchase iron, steel, manufactured products, or construction materials produced or manufactured in the United States for federal financial assistance obligated to Tribal Nations for infrastructure projects. While USET SPF strongly supports the agencies’ decision to propose the five-year waiver, we firmly believe that all Tribal Nations should be exempt from BABAA requirements indefinitely. This would be consistent with the federal government’s stated commitment to uphold and abide by the directives of Executive Orders 13175 and 14112.

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), 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 Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Introduction

The agencies' Proposed Waiver applies to awards and subawards to Tribal Nations at or below \$2.5 million and exempts these awards from BABAA requirements—provided that such awards do not exceed \$2.5 million, or \$2.5 million for the life of the award. In addition, if projects are co-funded with federal financial assistance awarded to Tribal and non-Tribal recipients, then non-Tribal entities are eligible for coverage under the terms of the Proposed Waiver if the award or subaward will be used to co-fund a project with Tribal recipients eligible for coverage under the Proposed Waiver. These actions support the efforts of Tribal Nations and Tribal entities seeking to establish essential partnerships with non-Tribal entities to construct, upgrade, and maintain critical infrastructure projects. Further, the Proposed Waiver ensures that Tribal recipients of federal financial assistance will be permitted to purchase non-BABAA compliant manufactured products regardless of the federal financial assistance amount obligated to Tribal Nations between the effective date of the “Final Waiver” and September 30, 2026. This will ensure that Tribal Nations can continue to pursue infrastructure project proposals and construction activities without being inundated with BABAA purchasing and manufacturing requirements.

USET SPF Support for Finalization of the Proposed Waiver

Adoption of the five-year Proposed Waiver is a necessary step forward to fulfilling the federal government's trust and treaty obligations to Tribal Nations to support our inherent sovereignty and self-determination to address our infrastructure priorities, as well as acknowledging our unique circumstances. Since publication of [M-22-11](#), “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”, by the Office of Management and Budget (OMB) on April 18, 2022, agencies have considered whether public interest waivers to BABAA requirements may be needed to avoid undue increases in the time and cost of a project. USET SPF appreciates that DOI and other federal agencies have utilized the April 2022 OMB Memorandum for Heads of Executive Departments and Agencies to issue public interest waivers for Tribal Nations in separate actions prior to the development of this Proposed Waiver.

Since all of these previous public interest waivers have expired—with the exception of the U.S. Department of Education's waiver—USET SPF fully supports the adoption of a “Final Waiver” by the agencies that will guarantee that Tribal infrastructure projects can proceed unabated by the strict and burdensome BABAA requirements for the next five years. Adoption of the five-year Proposed Waiver is a necessary step forward to fulfilling the federal government's trust and treaty obligations to Tribal Nations to support our inherent sovereignty and self-determination to address our infrastructure priorities, as well as acknowledging our unique circumstances. This action would also be consistent with upholding Sec. 6 of Executive Order 13175, which encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. This action would also comply with Sec. 5 of Executive Order 14112, which directs federal agencies to design, revise, and provide waivers for federal funding and support programs for Tribal Nations to increase accessibility, equity, and flexibility.

Tribal Nations Should be Exempt from the Requirements of the Build America, Buy America Act Indefinitely

While we fully express our support and appreciation for the agencies' Proposed Waiver, we again remind the Administration of its commitment to upholding Executive Orders (EO) 13175 and 14112 and that through this commitment all federal agencies should waive the BABAA purchasing requirements for Tribal Nations indefinitely. Although the adoption of a five-year waiver is absolutely a necessary short-term solution, federal agencies adopting a permanent BABAA waiver will ensure that rising inflation costs and continuing issues with the national supply chain—issues which will continue into the foreseeable future—do not disproportionately affect Tribal Nations. Programs and services for Tribal Nations to address our infrastructure priorities have consistently represented a small percentage of the federal budget, yet the

federal government has neglected its trust and treaty obligations to fully fund these essential programs and services. It is due to this failure that Tribal Nations continue to deal with dilapidated, and in some cases non-existent, critical infrastructure in our communities. Requiring Tribal Nations to comply with BABAA only stifles our Nation rebuilding efforts by delaying the necessary investment required to address our infrastructure priorities and improve the public health and well-being of our communities.

Further, many Tribal Nations consistently contend with burdensome administrative requirements to amend infrastructure project proposals in the instance a project is delayed or goes over budget due to external circumstances, such as dealing with non-Native vendors for the purchase of supplies or services or land use restriction and approval requirements. Tribal Nations already have limited access to a wide variety of capital, products, supplies, and personnel, and enforcing BABAA purchasing requirements further exacerbates this issue. Therefore, we strongly recommend that, moving forward, the agencies waive the BABAA requirements indefinitely for Tribal Nations, Tribal organizations, and Tribally operated entities—consistent with Sec. 6 of EO 13175 and Sec. 5 of EO 14112— from the requirements of BABAA to purchase products and supplies made in the United States for federally funded infrastructure projects.

Conclusion

The decision proposed by the agencies to provide a five-year waiver of BABAA requirements for Tribal Nations acknowledges that we continue to experience some of the greatest economic disparities among all populations, especially in areas of critical infrastructure largely due to the federal government's failure to uphold its trust and treaty obligations and fully fund programs and services for Tribal Nations. Similarly, funding for this obligation remains grossly inadequate and is a barely discernable and decreasing percentage of department and agency budgets. This chronic underfunding of federal programs has thwarted our efforts to effectively pursue Nation rebuilding and left our infrastructure in a state of severe disrepair due to the neglect of the federal government to provide the necessary dollars, or its failure to properly maintain this infrastructure on Tribal lands. In other instances, Tribal Nations have been overlooked entirely for the necessary dollars required for the critical infrastructure necessary to sustain our communities. As Tribal Nations exercise our inherent sovereignty and self-determination to pursue efforts in Nation rebuilding and the construction and maintenance of this vital infrastructure, the BABAA requirements place an unnecessary burden on Tribal Nations.

As a matter of Nation rebuilding, Tribal Nations must not be subject to restrictive purchasing requirements under BABAA, especially if those supplies or services significantly exceed market value. As the United States continues to contend with the economic stress of inflation, Tribal Nations must have the flexibility to purchase supplies and services outside of the BABAA requirements so that we may effectively and efficiently pursue efforts in Nation rebuilding and address critical infrastructure issues. We look forward to continued engagement with the agencies on this critically important matter and anticipate a general waiver of BABAA requirements for Tribal Nations indefinitely. 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