



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2018 SPF:019

URGING CLARIFICATION THAT TRIBALLY OWNED FIRMS QUALIFY FOR THE DOT DISADVANTAGED BUSINESS PROGRAM

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federal-recognized Indian Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nations, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** the United States Department of Transportation (DOT) distributes substantial funds each year to finance construction projects initiated by state and local governments, public transit and airport agencies; and
- WHEREAS,** Congress authorized the Disadvantaged Business Enterprise (DBE) program to remedy ongoing discrimination and the continuing effects of past discrimination in federally-assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide, and has reauthorized the program several times, most recently in P.L. 114-94, December 4, 2015; and
- WHEREAS,** some member Tribal Nations of USET SPF wish to increase Tribal self-sufficiency, develop Tribal resources, improve Tribal economies, and create employment opportunities for Tribal citizens by participating in the DOT's DBE program through Tribally-owned business enterprises; and
- WHEREAS,** DOT enacted regulations, found at 49 CFR 23 (for airport concessionaires) and 49 CFR 26 (for all other projects), intended to ensure that bona fide small firms, owned and controlled by socially and economically disadvantaged individuals and entities, are certified to participate as DBEs in DOT federally assisted programs; and
- WHEREAS,** a primary goal of 49 CFR Part 26 is to help remove barriers for the participation of DBEs in DOT-funded projects; and
- WHEREAS,** 49 CFR 26.73(h) allows for a firm that is owned by a Tribal Nation to be eligible for certification to participate in the DBE program; and
- WHEREAS,** states administering DOT-funded contracts under the DBE program have interpreted 49 CFR 26.73(h) to mean that even if a Tribal Nation is certified by the Small Business Administration (SBA) as a socially and economically disadvantaged entity, and even if the SBA certifies a Tribally-owned business as eligible to participate in SBA 8(a) programs, such Tribally-owned businesses will not qualify for the DOT's DBE program if the individual who controls the entity's day-to-day operations is not himself or herself socially and economically disadvantaged (even if the individual is a Tribal citizen); and

- WHEREAS,** the states' requirement that individual managers of Tribally-owned businesses be socially and economically disadvantaged individuals drastically reduces the pool of potential managers for Tribal businesses, curtails Tribal Nations' ability to ensure that management of their operations is handled by the most qualified candidates, and defeats the purposes of ending discrimination against Tribally-owned businesses and enabling Tribal Nations to achieve self-sufficiency; and
- WHEREAS,** the requirement that the individuals who control a Tribally-owned entity's day-to-day operations themselves be socially and economically disadvantaged, which applies to entities owned by Tribal Nations and Native Hawaiian organizations, does not necessarily apply to Alaska Native Corporations (ANCs) which, under 49 CFR 26.73(i), may qualify as DBEs under certain circumstances even if the individuals with day-to-day control are not socially and economically disadvantaged, as long as the ANC-owned entity qualifies for SBA 8(a) programs; and
- WHEREAS,** the current state of affairs inhibits Tribal Nations from achieving optimal management of their wholly-owned business enterprises, defeats the purposes of the DBE program, and creates inequality among Tribal Nations and Alaska Native Corporations; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** the USET SPF Board of Directors calls upon the United States Department of Transportation to immediately engage with USET SPF and its member Tribal Nations, and all other affected Tribal Nations nationwide, in consultation regarding the qualifications of Tribally-owned entities for the DBE program; and be it further
- RESOLVED** the USET SPF Board of Directors calls upon the United States Department of Transportation to draft a policy and rule amending 49 CFR 26.73(h) by deleting its last sentence and clarifying that the Disadvantaged Business Enterprise status of a business which is owned by an eligible Tribal Nation (or by a wholly owned business entity of such Tribal Nation) will be based solely on the social and economic disadvantage of the Tribal Nation as the owner, and not on the status of any individual manager of that business, provided the owner Tribal Nation has control over the individual manager and his/her actions (either directly or through a board of directors); and be it further
- RESOLVED** the USET SPF Board of Directors urges the United States Department of Transportation to enable businesses owned by federally-recognized Tribal Nations to qualify for Disadvantaged Business Enterprise status based upon their certification to participate in the Small Business Administration's 8(a) program without regard to the personal characteristics of the individual(s) managing the entity's day-to-day operations; and be it finally
- RESOLVED** the USET SPF Board of Directors calls upon the Assistant Secretary for Indian Affairs, or his equivalent within the Department of Interior, in recognition of his delegated authority

Because there is Strength in Unity

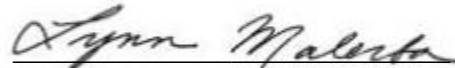
and trust responsibility, to urge the United States Department of Transportation to expedite final guidance and a new final rule on the social and economic certification requirements for Tribal Nations desiring to participate in the Department of Transportation's Disadvantaged Business Enterprise Program.

CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 8, 2018.



Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund