



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
to [regulations.gov](https://www.regulations.gov)

June 21, 2021

Elizabeth Fowler
Acting Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

Re: RIN 0917-AA18, Notice of Proposed Rulemaking – Acquisition Regulations; Buy Indian Act; Procedures for Contracting

Dear Acting Director Fowler,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Notice of Proposed Rulemaking (NPRM) to implement the Buy Indian Act into Indian Health Service (IHS) contracting policies and procedures. This NPRM was initially published in the Federal Register on November 10, 2020 and has since experienced several Tribal consultations and comment deadline extensions. USET SPF sent a letter to IHS on November 20, 2020 expressing concern with the agency hosting a Tribal consultation while the NPRM was in clearance, but prior to it being made available for review. We were pleased that IHS responded to Tribal concerns regarding the haste of these activities by extending the comment deadline and hosting two additional Tribal consultations in 2021. However, USET SPF still has some concerns regarding the NPRM, especially since the Department of the Interior (DOI) is in the process of updating its own regulations for implementing 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

Increase Accountability and Communication on Buy Indian Act Implementation

To improve the implementation of Buy Indian Act, we strongly recommend that IHS include a new section on internal accountability and communications in the next iteration of this proposed rule. 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 IHS Area 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 Indian Small Business Economic Enterprise (ISBEE) and Indian Economic Enterprise (IEE) solicitations. It should not include any additional data collection or reporting requirements for Tribal Nations. Contracting Officers at each IHS Area Office should also be required to submit quarterly and annual reports to IHS Headquarters on the status of completed solicitations, any deviation determinations, updates on current Buy Indian Act contracts, and information on any pending or planned solicitations.

Develop Ongoing Evaluation Mechanisms for Buy Indian Act Implementation

To ensure and improve the success of the Buy Indian Act, IHS should develop ongoing evaluation mechanisms to gather input from Tribal Nations on barriers to the Act's implementation in IHS' 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 IHS and other federal agencies considered the input of Tribal Nation businesses. IHS should hold annual Tribal Listening Sessions with each IHS Area to receive input on successes and challenges to the Buy Indian Act implementation. These sessions could inform IHS of potential updates required for its contracting policies and procedures, updates for internal IHS guidance, and if Tribal consultation is required to develop further updates to its Buy Indian Act regulations.

IHS Should Coordinate with its Federal Partners to Implement the Buy Indian Act

DOI recently held Tribal consultations on proposed updates to its Buy Indian Act regulations on June 15, and 17, 2021. During these consultations, DOI stated that the draft revisions to its Buy Indian Act regulations would eliminate barriers to IEEs from competing on certain construction contracts; expand the ability for IEEs to subcontract work; clarify preferences for IEEs; and ensure greater preference to IEEs when a deviation from the Buy Indian Act is necessary. Additionally, DOI stated during the June 17th consultation that IHS was informed of DOI's draft revisions and will incorporate proposed changes to ensure consistent compliance with the Buy Indian Act. USET SPF recommends that IHS issue an update to its NPRM to reflect DOI's current draft under consideration. Although DOI is still considering its proposed changes, IHS has the opportunity to ensure consistency with implementing the Buy Indian Act regulations. Furthermore, USET SPF recommends that IHS and DOI agencies work collaboratively to update the Buy Indian Act regulations to ensure that there is no further confusion regarding Tribal Nation business participation in the program.

Conclusion

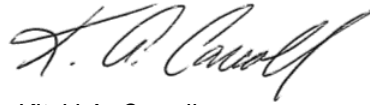
We strongly believe that a meaningful commitment to improve the Buy Indian Act must take into consideration how it can enhance the development of qualified ISBEEs and IEEs in Indian Country. Unfortunately, the Buy Indian Act has been severely underutilized and has generally lacked enforcement mechanisms necessary for its effective implementation to benefit Tribal Nations, businesses, and citizens. Proper implementation of the Buy Indian Act at 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 IHS 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,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read "K. A. Carroll", written in a cursive style.

Kitcki A. Carroll
Executive Director