



USET

SOVEREIGNTY PROTECTION FUND

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July 15, 2024

Cara Whitehead
Director
Office of Grants Management
Department of the Interior
1849 C St. NW
Washington, DC 20240

Dear Director Whitehead,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultations held by the Department of the Interior (DOI) on its financial assistance programs and the Build America, Buy America Act (BABA). Included in the Infrastructure Investment and Jobs Act, BABA requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under federal financial assistance awards be produced in the United States. On September 1, 2023, DOI issued a one-year general applicability waiver of the BABA requirements for financial assistance agreements awarded to federally recognized Tribal Nations in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200. We appreciate that DOI issued this one-year general applicability waiver of the BABA requirements. However, USET SPF firmly believes that all Tribal Nations should be exempt from BABA 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. Our comments emphasize that DOI must waive the BABA requirements for Tribal Nations so that we may exercise our inherent sovereignty and self-determination to pursue Nation rebuilding.

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

Because there is Strength in Unity

The Federal Government has Consistently Neglected its Infrastructure Obligations to Tribal Nations

Tribal Nations continue to experience some of the greatest disparities among all populations, especially in areas of critical infrastructure due to the federal government's failure to uphold its trust and treaty obligations and fully fund programs and services for Tribal Nations. Funding of 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. A key component of this process is the rebuilding of our critical infrastructure. In many instances, when Tribal Nations have existing infrastructure, it is usually 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 federal facilities, roads, etc., on Tribal lands. In other instances, Tribal Nations have been overlooked entirely for the necessary dollars required for the critical infrastructure essential 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 BABA requirements would only place an unnecessary burden on Tribal Nations.

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

According to the Memorandum for Heads of Executive Departments and Agencies issued by the Office of Management and Budget (OMB) on April 18, 2022, agencies may consider whether public interest waivers to BABA requirements may be needed to avoid undue increases in the time and cost of a project. USET SPF appreciates that DOI utilized this waiver for Tribal Nations. However, to truly support Tribal Nation rebuilding from the centuries of neglect in infrastructure funding, the federal government must be obligated to grant BABA waivers to Tribal Nations. 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. However, with some notable exceptions, this section does not appear to be actively implemented across the federal government. Further, Sec. 5 of the recent [Executive Order 14112](#) directs federal agencies to design, revise, and provide waivers for federal funding and support programs for Tribal Nations to increase accessibility, equity, and flexibility.

The Biden Administration has stated its commitment to upholding Executive Order (E.O.) 13175 and 14112 and through this commitment it should waive the BABA purchasing requirements for Tribal Nations indefinitely. This action will ensure that rising inflation costs and continuing issues with the national supply chain do not disproportionately affect Tribal Nations. Programs and services for Tribal Nations 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 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 BABA will only stifle our Nation rebuilding efforts.

In addition to addressing the centuries of neglect in fully funding Tribal Nation services, waiving the BABA requirements for Tribal Nations also benefit federal agencies since they won't have to submit specific budget line items for Tribal programs to OMB. Application of BABA purchasing requirements is likely to undermine the overall goals of advancing Tribal Nation sovereignty, self-determination, and infrastructure deployment on our lands. While Tribal Nations may purchase a product or supply consistent with the requirements of BABA if they are widely available and affordable, we should not be subject to these requirements if they would delay an infrastructure project or go over established budgets for a project, especially if we are utilizing federal dollars for such projects. Many Tribal Nations contend with burdensome administrative requirements to amend 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. Tribal Nations already have limited access to a wide variety of products, supplies, and personnel, and enforcing BABA purchasing requirements would further exacerbate this issue. Therefore, we strongly recommend that DOI waive the BABA requirements indefinitely for Tribal Nations and Tribally operated enterprises—consistent with Sec. 6 of E.O. 13175 and Sec. 5 of E.O. 14112— from the requirements of BABA to purchase products and supplies made in the United States for federally funded infrastructure projects.

Conclusion

For too long the federal government has failed to uphold its trust and treaty obligations and fully fund Tribal programs and services. Due to this neglect, Tribal Nations have had to supplement federal dollars to support these programs and services for our citizens. This also applies to the construction, maintenance, and renovation of critical infrastructure to support our communities. As a matter of Nation rebuilding, Tribal Nations must not be subject to restrictive purchasing requirements under BABA, 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 BABA requirements so that we may effectively and efficiently pursue efforts in Nation rebuilding. We look forward to continued engagement with DOI on this critically important matter and anticipate a general waiver of BABA requirements for 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director