January XX, 2020

Erica Antonson, Branch Chief

Food Distribution Division, Food and Nutrition Service

U.S. Department of Agriculture

1320 Braddock Place

Alexandria, VA 22314

RE: Comments on Request for Information: Self-Determination Demonstration Project for Tribes that Administer the Food Distribution Program on Indian Reservations - FNS-2019-0054-0001

Dear Branch Chief Antonson:

On behalf of [Name of Tribe or Tribal-serving organization], I am writing to submit a comment on Doc. No. FNS-2019-0054-0001 regarding the Request for Information: Self-Determination Demonstration Project for Tribes that Administer Food Distribution Program on Indian Reservations. I would like to thank U.S. Department of Agriculture (USDA) - Food and Nutrition Service (FNS) for the opportunity to provide valuable input on this important new self-determination demonstration program for food procurement in the Food Distribution Program on Indian Reservations (FDPIR) created in Section 4003(b) of the Agriculture Act of 2018, Public Law 115-334 (2018 Farm Bill).

Its inclusion in the 2018 Farm Bill shows not only the desire of moving towards moving more programs that serve Indian Country through Public Law 93-638 Tribal Self-Determination and Self-Governance, but the possibilities for partnerships between Tribes, Inter-Tribal Organizations (ITOs), and USDA in providing effective and efficient customer service to FDPIR program participants through 638 Self-Determination.

Below, we outline our responses to the four questions contained in the Request for Information along with additional information and concerns that should be addressed working in consultation and close communications with Tribal leadership, the Tribal Leaders Working Group, and ITOs.

1. What process should be used to determine which Tribal Organizations should be selected to participate in this demonstration project given that project funds are limited?
   * USDA should use the regulations articulated at 25 C.F.R. 900 et seq., to guide in developing this process. These regulations cover self-determination contract application and approval process for 638 contracts administered through the Department of Health & Human Services (HHS) and the Department of the Interior (DOI). Further, additional regulations at 25 C.F.R. 1000 et seq., which address Annual Funding Agreements, can also provide additional guidance.
     + To best facilitate application submission, USDA should follow a submission process similar to the one utilized by DOI and HHS self-determination contract provisions, as well as following the specific information that must be included in self-determination contract applications for DOI/HHS programs found in 25 C.F.R. 900.8. We encourage the Department to use that list in developing an application form for Tribal organizations for this demonstration project.
     + The self-determination contract application provision referenced above requires applicant Tribal organizations, per 25 C.F.R. 900.8 (g), to include as part of an application “A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform...”. There follows a brief listing of what must be included in this short description by the applicant. The Department should especially consider adopting this particular piece of the regulation in its application as is with no modifications. Specifically, we encourage the Department to refrain from requiring applicants to identify which specific foods they will be procuring and which specific foods in the food package they will be replacing under the contract. As the USDA understands after years of procuring food for this program, the nature of available domestically produced foods on the market is subject to change, sometimes with little advance notice to the purchaser. Therefore, tying a Tribal organization applicant to the purchase or procurement of a specific food product months in advance of purchase will not allow for Tribal organizations to be responsive to the realities of the market. Likewise, requiring a Tribal organization to identify a specific food in the food package they will replace months in advance is impossible, as neither the Department nor the Tribal organization will be able to know with certainty that this food item will be available in the food package during the contracted period. Therefore, USDA should simply adopt the application format found in 25 C.F.R. 900.8 for this demonstration project.
     + The only additional pieces of information we foresee being relevant to add to the provision referenced above are: (1) a guarantee by the Tribal organization applicant that they will procure domestically produced foods for this demonstration project; and (2) a brief description of the available agricultural commodities that the applicant has determined may be available to source. This description should not need to include specific names of vendors, but should rather provide an overview of what foods are readily attainable for a Tribal organization to source. This may be geographically limited or not; that will be determined by each applicant as to what foods they know they may source. This description may be supplemented by general Census of Agriculture data, however, recognizing that Census collection on Tribal lands is still undercounted, other sources of data should be permissible, including information and data gathered by the Tribal organization either for the purposes of the application or otherwise.
     + It is important to note that while we view the regulations referenced in this comment as helpful in guiding the Department, we are not suggesting that the Department *must* follow *all* aspects of current Indian Self-Determination Education Assistance Act (ISDEAA) regulations articulated in 25 C.F.R. 900 et seq. since the scope of those regulations is plainly limited to either DHHS or DOI by 25 C.F.R. 900.2. While these regulations may be a guide for USDA in this space, we support the view that the Department has substantial flexibility with this demonstration project to develop a process that utilizes self-determination contracts to promote Tribal sovereignty and enable Tribal organizations to procure food products in a way that is both timely, culturally appropriate, and supports the function of the FDPIR program. We strongly encourage USDA to utilize that flexibility here to its fullest extent.
2. What, if any, additional criteria should be established for a Tribal organization to be considered eligible to participate in this demonstration project?
   * The 2018 Farm Bill is specific in articulating top-line criteria in Section 4003(b)(4) that USDA must use to determine which organizations will be eligible to participate in this demonstration project. We urge the Department to *not* add any additional criteria at this time. Adding additional criteria beyond what Congress has already required will be burdensome, not only to Tribal organizations, but to USDA as well. Additional criteria would take more time for the Department to develop and would extend the time needed to develop regulations and review applications upon submission.
   * We specifically urge USDA to not requirement that all Tribally procured foods must come from vendors who are Vendor Certified through the USDA Agricultural Marketing Service process, or in the case of fresh fruits and vegetables, who are Prime Vendors through the existing Department of Defense Fresh program process. Of the many opportunities this demonstration project represents for Tribal Nations, the potential for economic development and job creation through agricultural enterprise for Tribal communities is one that is hugely significant. It is highly likely that Tribal Nations procuring food pursuant to a self-determination contract under this demonstration project will be doing so for a small geographic area, not the entire nation, and further the Tribal organizations will likely be procuring foods that are fresh and/or traditional foods produced by smaller local and/or Tribal vendors. These agricultural operations are typically smaller—we know from the most recent Census of Agriculture that the majority of American Indian/Alaska Native owned farming operations are less than 180 acres in size and make less than $5000 per calendar year—which makes the paperwork-intensive USDA-AMS Vendor Certification Process incredibly arduous and often not a feasible business expense. Adding burdensome requirements for food vendors to this demonstration project would severely undercut the economic development and local job creation potential of this demonstration project. Tribal Nations manage multimillion-dollar healthcare institutions providing life-saving care to thousands of people pursuant to self-determination contracts right now, and are certainly capable of developing and maintaining their own internal procurement processes and certification systems for food vendors as a matter of Tribal law and policy. We therefore strongly urge USDA to refrain from developing and implementing such criteria for this project.
3. What factors should be considered in determining whether a Tribal Organizations has the capacity to purchase agricultural foods for this demonstration project?
   * Per the 2018 Farm Bill, Section 4003(b)(4), capacity in this context merely means an applicant demonstrates that they can: (1) domestically produced; (2) supplant, not supplement, existing food package items; and (3) be of similar or higher nutritional value than the food it replaces.
   * Although there are a variety of factors USDA might use to determine capacity for the purposes of this demonstration project, the simplest measure to determine capacity as defined by the Farm Bill is the availability of agricultural commodities to the applicant. As suggested above in response to Question 1, each applicant should be responsible, as part of the brief description of the PSAF’s they propose under the contract, to provide a brief summary of potential agricultural commodities they know are readily attainable for that organization.
   * Recognizing that there may be many applicants who can easily establish capacity, we encourage the Department to give weight to applications that: (1) identify potential vendors that they have worked with successfully in the past in some capacity, even if not related to FDPIR; and (2) identify examples of categories of foods they intend to source (e.g., fresh fruits and vegetables, grains, etc.) based on what they have determined is readily available, recognizing that identifying specific foods in the application is untenable as discussed above.
   * Regardless of what they ultimately are, all factors the Department decides to utilize in making these determinations should be publicly available so that there is maximum transparency in this process. We also encourage the Department, once these factors are determined, to include an explanation of scoring based on those factors in an informational webinar when the application process for this demonstration project finally opens.
4. Are there any specific criteria that should be given priority in the selection process?
   * Tribal leaders and the National Association of FDPIR Board have encouraged USDA over multiple Tribal consultations to consider funding a variety of Tribal organizations for this project, with the understanding that funds are limited. Tribal leaders have encouraged USDA to consider dividing funds to ensure that Tribal organizations funded are diverse in terms of size, both geographically and in overall number of participants.
   * One of the highest priorities identified by Tribal leaders and NAFDPIR for the food package has been the inclusion of more traditional foods in the food package, especially traditional foods that are sourced in a way that ensures the foods received by a particular FDPIR site are culturally relevant for that Tribe. This project offers an opportunity to source traditional foods in that way. Where possible, applicants who have identified traditional foods as available to be sourced for procurement should be given priority.
   * Similarly, local procurement of fresh fruits and vegetables, especially when Tribally grown, has also been a priority item for inclusion in the food package. Where possible, applicants demonstrating availability of fresh fruits and vegetables for the procurement project should also be given priority.

Regardless of the process the Department adopts for this opportunity, we urge USDA to be flexible and work with Tribal Nations throughout the life of this demonstration project to ensure that the process is workable. To that end, we encourage USDA to do three things:

* During the demonstration project roll-out, engage in government-to-government consultation with Tribal leadership specifically about the 638 process.
* Once awards have been made pursuant to this demonstration project, schedule monthly phone calls between each participating Tribal Nation/ITO, the appropriate FNS Regional Office staff, national FNS staff, and Office of Tribal Relations staff. The purpose of these phone calls will be to ensure that the process established by USDA is working, and provide an opportunity for the participating Tribe/ITO to raise issues and problem-solve in partnership with USDA. This also avoids the issue that happened in a prior demonstration project for FDPIR, the Regional Vendor Pilot Demonstration Project, where there was little regular communication between stakeholders and issues were not resolved in a timely manner, resulting in the premature end of the program. Regular communication between all relevant parties is a must for success.
* Finally, we urge USDA to formally revisit the process it adopts in consultation with Tribes for this demonstration project one calendar year after the first awards are made and issue another Request for Information at that time soliciting feedback and comments on the process that was adopted and any issues that should be formally changed.

This is an exciting opportunity for Tribal Nations and for USDA to work together to support food security and economic development in Indian Country. We appreciate the ongoing consultation between and dialogue between FNS with Tribal Nations, Tribal leaders, and ITOs, and are looking forward to continuing to work together to ensure the successful implementation of the 638 FDPIR demonstration project.

Sincerely,

[Signature]