

# Overview of 2018 Non-BIA Federal Register Notice



Consultation Session

1:00 PM to 2:30 PM

Tuesday, April 25, 2017

Spokane Convention Center

334 W. Spokane Falls

Spokane, Washington 99201

# Annual Publication of Federal Register Notice



- Under 25 U.S.C. § 405(c), the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities (PSFAs) that are eligible for inclusion in Funding Agreements negotiated under the Self-Governance Program; and (2) programmatic targets for these Bureaus.

# Non-BIA Bureaus



- Non-BIA Bureaus include the Bureau of Land Management, Bureau of Reclamation, Office of Natural Resources Revenue, National Park Service, Fish and Wildlife Services, U.S. Geological Survey, and Office of the Special Trustee for American Indians

# Eligible Categories of Non-BIA Programs



- (1) Under 25 U.S.C. §403(b)(2), any non-BIA PSFA administered by Interior that is otherwise available to Indian Tribes or Indians can be administered by a Tribal Government through a Self-Governance Funding Agreement; and
- (2) Under 25 U.S.C. §403(c), the Secretary may include other PSFAs that are of special geographic, historical, or cultural significance to a self-governance tribe.

# Selection to Negotiate



- Pursuant to 25 CFR §1000.30, a Tribe may be selected to negotiate a Funding Agreement with a non-BIA Bureau under 25 U.S.C. §403(b)(2) without having or negotiating a Funding Agreement with the BIA under 25 U.S.C. §403(b)(1).

# Selection to Negotiate



- Pursuant to 25 CFR §1000.31, a Tribe may be selected to negotiate a Funding Agreement with special geographic, historical, or cultural significance at the same time that it negotiates a Funding Agreement with BIA under 25 U.S.C. §403(b)(1) and/or a non-BIA Bureau under 25 U.S.C. §403(b)(2).

# Geographic



- “Geographic” generally refers to all lands presently “on or near” an Indian Reservation, and all other lands within “Indian Country,” as defined by 18 U.S.C. 1151.
- In addition, “geographic” includes:
  - (1) Lands of former Reservations;

# Geographic



- (2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act;
- (3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
- (4) Lands and waters pertaining to Indian rights to natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

# Historical



- “Historical” generally relates to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

# Cultural



- “Cultural” refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:
  - (1) Sacred and medicinal sites;
  - (2) Gathering of medicines or materials such as grasses for basket weaving; or
  - (3) Other traditional activities, including, but not limited to subsistence hunting, fishing, and gathering.

# Non-Competitive Awards & Contracting Preference



- PSFAs eligible for Self-Governance Funding Agreements must be awarded non-competitively.
- There is contracting preference if there is a special geographic, historical, or cultural significance to the PSFA administered by the Bureau. The Bureau has discretion to include the PSFAs in a Funding Agreement on a non-competitive basis.

# Non-Competitive Awards & Contracting Preference



- Pursuant to 25 U.S.C. § 403(c), contracting preference for PSFAs administered by the Secretary with special geographic, historical, or cultural significance to the participating Self-Governance Tribe affords non-BIA Bureaus the discretion to include the PSFAs in a Funding Agreement on a non-competitive basis after the Tribe operates a Funding Agreement under 25 U.S.C. § 403(b)(2).

# PSFAs Not To Be Included in A Funding Agreement



- 25 U.S.C. §403(k) excludes from PSFAs:
  - (a) Inherently Federal Functions; and
  - (b) PSFAs where the statute establishing the existing PSFAs does not authorize the type of participation sought by the Tribe.

# PSFAs Not On Annual 25 U.S.C. § 405(c) List



- As specified in the 25 U.S.C. §405(c) annual list, a non-BIA Bureau may negotiate with a Tribe for PSFAs not specifically included on the list if they are eligible under 25 U.S.C. 403(b)(2) or 25 U.S.C. 403(c).
- Tribes with an interest in such potential Funding Agreements are encouraged to begin discussions with the appropriate non-BIA Bureau.

# Consultation Process



- On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating Self-Governance Tribe the previous year's list of available programs in accordance with 25 U.S.C. § 405(c). The list must include:
  - (1) All of the Secretary's proposed additions and revisions for the coming year with an explanation; and
  - (2) Programmatic targets and an initial point of contact for each Bureau.

# Consultation Process



- Tribes receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary's proposed revisions and to provide additions and revisions of their own for the Secretary to consider.
- The Secretary will carefully consider these comments before publishing the list.

# Consultation Process



- If the Secretary does not plan to include a Tribal suggestion or revision in the final published list, he/she must provide an explanation of his/her reasons if requested by a Tribe.
- On April 10, 2017, OSG Director Freeman sent a memorandum to existing self-governance tribes requesting that they review and comment on the draft 2018 non-BIA Federal Register Notice.
- Copies of the request and draft non-BIA Federal Register Notice were sent to tribal self-governance coordinators on April 10, 2017.

# Consultation Process



- Copies of the request and draft non-BIA Federal Register Notice were also posted on the OSG website (<http://64.58.34.34>) and Self-Governance Communication and Education Tribal Consortium website (<http://www.tribalselfgov.org>).

# Consultation Process



- Comments on the Draft 2018 non-BIA Federal Register Notice should be sent to the Office of Self-Governance, Room 355-G, 1951 Constitution Avenue, N.W., Washington, D.C. by Thursday, June 15, 2017.
- This time frame will allow the revised Federal Register Notice to be signed by the Honorable Secretary of the Interior Ryan Zinke and published before October 1, 2017.