



Self-Governance Communication & Education Tribal Consortium

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February 8, 2019

The Honorable Brenda Burman
Commissioner
Bureau of Reclamation
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Comments on the Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (P.L. 93-638)

Dear Commissioner Burman:

On behalf of the Self-Governance Communication and Education Tribal Consortium (SGCETC), a non-profit tribal consortium representing the interests of the 370 Tribal Nations that elected to use Self-Governance for the delivery of Federal services and resources to their communities, we thank you for the opportunity to review a draft of the Bureau of Reclamation's (Reclamation) Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) (referred to as "Handbook" in this letter). We are providing the following recommendations and comments, which are intended to be constructive, for your consideration.

Recommendation 1: Collaborate with key offices within DOI in order to reduce the administrative burden placed on Tribal Nations

In reviewing the participants included on the steering committee responsible for developing the Handbook we noticed that key offices within the Department of the Interior, such as the Office of Self-Governance, were not included in the development of the document. We are concerned that the lack of internal collaboration within the Department of the Interior (DOI) may result in differing processes and requirements that create an administrative burden on Tribal Nations that elect to use Self-Determination or Self-Governance across DOI bureaus and agencies. As such, we encourage Reclamation to seek input from the Office of Self-Governance and officials within BIA that implement Self-Determination.

Recommendation 2: Emphasize that agreements under ISDEAA are NOT procurement contracts and Federal contracting laws are generally not relevant

The Handbook notes that agreements entered into under ISDEAA are "not traditional procurement contracts." We encourage Reclamation to further emphasize that this means Federal contracting laws (including the FAR) generally do not apply to ISDEAA agreements. We

have found that this is an area of confusion for some Federal officials given that agreements entered into under Title I are referred to as “contracts.”

Recommendation 3: Clearly distinguish between Title I and Title IV in the Handbook and ensure “best practices” align with Self-Governance principles

Self-Determination contracting (Title I) and Self-Governance Compacting (Title IV) are significantly different. In some sections of the Handbook, Reclamation clearly identifies this difference and notes when a statement pertains to Title I or Title IV. However, other sections of the handbook are less clear and we encourage Reclamation to clarify whether requirements and “best practices” pertain to contracts pursued under Title I or agreements pursued under Title IV.

Title I (Self-Determination) is more restrictive than Title IV (Self-Governance) and Tribal Nations with existing Self-Governance agreements have already demonstrated significant governmental capacity in the delivery and management of Federal resources. Reclamation should consider if the Handbook acknowledges the extensive capacity of many Tribal Nations and the undeniable success of Tribal Nations administering Federal programs, activities, and resources to their communities and citizens. In some cases, we believe Reclamation’s “best practices” may place additional burdens on Tribal governments without justification. For instance, Reclamation states that one reason for a post-award review to be triggered is to mitigate performance, reporting or financial management concerns. This seems like a broad and subjective standard to include in an agreement to “mitigate” issues that may not exist. We again encourage Reclamation to collaborate with the Office of Self-Governance to ensure that the Handbook aligns with the principles of Self-Governance.

Furthermore, we believe Reclamation should not require or encourage Tribes to adhere to Reclamation’s guidelines and standards. One of the factors that has contributed to the success of Self-Governance is that Tribal Nations administer the delivery of Federal resources under their own guidelines and policies in a manner that is best for their local communities. Requiring, or even encouraging, Tribal governments to operate under Reclamation’s regulations and policies is inconsistent with the key principles that have made Self-Governance a success for more than 30 years.

Recommendation 4: Develop a “best practice” that calls for sharing key information with Tribal governments prior to the pre-award meeting

Reclamation’s Handbook identifies the collection and review of information on Tribal Management systems prior to the pre-award meeting as a best practice. We concur that negotiations and meetings between the Federal and Tribal governments can benefit from sharing information in a timely manner prior to discussions. However, we did not see a “best practice” in the Handbook that calls for Reclamation to provide Tribal Nations with key information prior to the pre-award meeting.

We believe this recommendation is important to include in the Handbook, particularly because the GAO recently reported to Congress that another bureau within DOI, the Bureau of Indian Affairs (BIA), does not consistently provide Tribal governments with key information prior to

negotiations.¹ Without access to key information prior to entering into negotiations, tribal leaders are at a disadvantage in making sound decisions regarding the feasibility of taking over the administration of federal programs. Again, we encourage Reclamation to include a “best practice” that calls for the bureau to provide Tribal governments with requested information prior to the pre-award meeting so that Tribal leaders have time to review and consider this information.

Recommendation 5: Develop a “best practice” that ensures consistency and transparency identifying Inherently Federal Functions

Reclamation states on page 38 of the Handbook that “Negotiations shall include a discussion with the Tribe on funding necessary to be retained by Reclamation to perform project oversight and inherently Federal functions. The basis and justification for these retained funds shall be shared with the Tribe.” We appreciate that Reclamation identified the need to share the basis and justification for retaining funds with the Tribe but we encourage Reclamation to ensure consistency and transparency in determining inherently Federal functions by sharing all determinations of inherent Federal functions with all Tribal Nations prior to negotiations. GAO recently reported to Congress that providing tribes with documentation on activities and functions previously determined to be inherently federal and the basis for making these determinations can increase transparency and helps to facilitate self-determination and self-governance.² We believe that including such a process as a “best practice” will prove beneficial for both Tribal governments and Reclamation—as it also helps to assure determinations are made consistently across the bureau.

Recommendation 6: Training and continuing education should identify opportunities to enhance cultural understanding and building effective relationships

Reclamation states on page 20 of the Handbook that “Bureaus with authority to award these contracts and agreements must establish supplementary procedures to delegate authority and establish minimum training, experience, and continuing education requirements.” We encourage Reclamation to require AOs to seek external training opportunities that increase knowledge of cultural skills needed to effectively work with Tribal Nations.

Several organizations offer training and workshops throughout the year that can provide AOs with the opportunity to enhance cultural awareness. For instance, SGCETC routinely offers training and educational resources to Federal agencies and we hold an annual Self-Governance conference, in coordination with DOI and Indian Health Service, that includes numerous workshops and sessions focused on the implementation of Self-Governance. We are happy to work with your office to identify additional training opportunities that we believe could help the bureau with this recommendation.

Reclamation did not include Tribal officials in drafting the Handbook

We are concerned that Reclamation did not include Tribal representation on the steering committee. The U.S. Government Accountability Office (GAO) has identified in numerous

¹U.S. GAO. *Indian Programs: Interior Should Address Factors Hindering Tribal Administration of Federal Programs*. GAO-19-87 (Washington, D.C.: Jan. 3, 2019).

²GAO-19-87.

reports to Congress that involvement by and active participation with all relevant stakeholders is a leading practice for Federal agencies and increases the likelihood of success for organizational change. As you know, Tribal Nations and the United States have a government-to-government relationship. This Handbook is an extension of that relationship and the steering committee should include Tribal participation. Numerous Tribal Nations have agreements with non-BIA agencies, including Reclamation, and we believe Tribal officials with decades of Self-Determination and Self-Governance experience can provide significant contributions in developing this Handbook that are crucial to help assure success in its implementation.

Thank you again for the opportunity to comment on Reclamation's draft handbook and we hope you will consider our recommendations as you move forward completing this document. If you would like to discuss any of the comments and recommendations further, please contact Jay Spaan, Executive Director, SGCETC, at 918-370-4258 or by email at jays@tribalselfgov.org.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO, Jamestown S'Klallam Tribe and
Board Chairman, SGCETC

cc: Self-Governance Advisory Committee
Title IV Tribal Task Force