

**Food Distribution Program on Indian Reservations (FDPIR):
Demonstration Project for Tribal Organizations
Tribal Consultation Meeting
October 28, 2020
2:00 p.m. – 4:00 p.m. Eastern
Conference Call**

I. Introductions

- Opening Prayer
- Introduction of USDA Food and Nutrition Service (FNS) Leadership, Office of Tribal Relations (OTR) Leadership, and Tribal Leadership
 - FNS: Administrator Pam Miller
 - OTR: Director Diane Cullo
 - Tribal: Vice-Chair Stella Kay and Councilman Perry Martinez
- Opening Remarks
- Discussion of new Co-Chairs
 - Vice-Chair Stella Kay and Councilman Perry Martinez will serve as the new Co-Chairs of the FDPIR Consultation Work Group

II. FDPIR Self-Determination Demonstration Project

A. 2018 Farm Bill Provision – Background

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- Section 4003(b) of the Agriculture Improvement Act of 2018 (P.L. 115-334; the 2018 Farm Bill) directed USDA to establish a demonstration project for one or more Tribal Organization(s) within FDPIR to enter into self-determination contracts to purchase USDA Foods for their FDPIR program.
 - The specific requirements for the demonstration project under Section 4003(b) of the 2018 Farm Bill include:
 - Consultation: FNS must consult with Tribes and with the Department of Interior (DOI) on the process and criteria under which a Tribal Organization may participate in the demonstration project criteria.
 - Criteria: FNS must develop criteria for who can participate in the demonstration project. The statute requires FNS to pick tribes that successfully administer FDPIR, have the capacity to purchase agricultural commodities for the FDPIR program, and meet any other criteria determined by the Secretary after consultation with the Secretary of Interior and Indian Tribes to participate in the demonstration project.
 - Procurement: After FNS selects Tribal Organizations to participate in the demonstration project, those Tribal Organizations would be required to purchase agricultural commodities that are domestically produced.
 - Under the Farm Bill, the foods must replace, not supplement, the type of USDA Foods in the existing FDPIR food package and be of similar or higher nutritional value as the food(s) replaced in the existing food package.

- Food selected for procurement under this demonstration project must also be subject to any other criteria as determined by USDA, in consultation with DOI and Indian Tribes.
- **Reporting:** FNS is required to submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, describing the activities carried out under the demonstration project during the preceding year.
- Funding:** FNS received \$3,000,000 in FY 2020 appropriations to carry out this demonstration project.

B. Review of Revised Criteria for FDPIR Self-Determination Demonstration Project

- FNS presented the main revisions to the criteria. Revisions were considered based on feedback received from Tribal leaders during and following the last consultation held on July 15, 2020.
 1. Revision 1: Limitation on number of Tribal Organizations that could be selected
 - FNS initially placed a limit on how many contracts could be awarded under this demonstration project. The limit was set at up to five (5) Tribal Organizations. In July, tribal leaders requested this limit be removed. FNS made this change as requested. The revised language is as follows:
 - FNS seeks to award contracts of up to \$1.5 million (based on the enacted level of appropriations for this purpose) to at least two eligible Tribal Organizations that meet the criteria.
 2. Revision 2: Participation of tribes administered by a State Agency
 - FNS received a follow-up question after the July 15, 2020 consultation from the State of Nevada, which administers FDPIR. Nevada State agency staff asked if State agencies that administer FDPIR on behalf of Tribes are eligible to participate in the demonstration project. FNS conferred with the Office of General Counsel (OGC) and determined that a State agency cannot participate because the Farm Bill provision specifically says that only Tribal Organizations may participate. However, a Tribal Organization that has an agreement with a State agency to operate FDPIR would be eligible. The revised language is as follows:
 - Tribal Organization must operate FDPIR at the time a contract proposal is due, either in direct agreement with FNS or in agreement with a State Agency. The contract agreement will be between FNS and the Tribal Organization that administers all or part of FDPIR.
 3. Revision 3: Tribal Resolution requirement
 - Tribal leaders previously requested FNS remove the requirement that a Tribal Resolution is obtained in order to participate in this demonstration project. FNS conferred with OGC and determined that a Tribal Resolution is required. The Farm Bill defines self-determination contracts per section 4 of the Indian Self-Determination and Education Assistance Act (ISDEAA), which requires a Tribal Resolution to enter into 638 contracts.

- FNS must retain this requirement. To address this concern, FNS adjusted the language in the criteria to allow for more time for a Tribal Organization to obtain a Tribal Resolution. Instead of requiring a Tribal Resolution to be submitted at the same time as the initial contract proposal, the Tribal Organization may submit a statement affirming that a Tribal Resolution has been requested of the Tribal Council and that it will be submitted prior to contract negotiations. The revised language is as follows:
 - Prior to contract negotiations, a Tribal Organization must provide a Tribal Resolution to enter into a 638-contract denoting authorization to participate in this demonstration project; and
 - An authorizing resolution from the Tribal Council or a statement affirming resolution has been requested to Tribal Council and will be submitted prior to contract negotiations.
4. Revision 4: Eligibility of traditional foods
- During the July 15, 2020 consultation, Tribal leaders raised concerns that the criteria language, as proposed, did not allow for all traditional foods to be eligible to be replaced with another food as part of this demonstration project. FNS revised the criteria to allow for all foods currently offered as part of the FDPIR food package to be eligible to be part of this demonstration project, including foods offered intermittently like traditional foods. The revised language is as follows:
 - All foods currently offered by USDA for the FDPIR program, including foods offered intermittently (e.g., traditional , bonus, and Trade Mitigation Program foods), are eligible to be supplanted if proposed by the Tribal Organization as long as the food meets the criteria under this section.
5. Revision 5: Assessment of nutritional value
- The Farm Bill requires that a food selected by a Tribal Organization to replace an existing food in the FDPIR food package be of similar or higher nutritional value than the food it is replacing. Tribal leaders asked how FNS would assess nutritional value. FNS previously shared information on household fact sheets on USDA Foods but heard concerns that those fact sheets do not provide enough nutritional facts. FNS will review what resources may be made available.
6. Revision 6: Qualified vendor
- Tribal leaders asked that the term qualified vendor be defined in the original criteria. FNS revised the language to offer further clarification that a vendor, under this demonstration project, is one that sells food commercially and offers food that is 100 percent domestically produced. The term “qualified” was removed in order to avoid confusion. The revised language is as follows:
 - Letter(s) of Support from vendor(s) which will supply the food(s). Letter(s) should certify that vendor(s):
 - Sells food(s) commercially; and
 - Offers food(s) that are 100 percent U.S. domestically produced

C. Comment & Questions Received

During the consultation meeting, Tribal leaders shared support for the revisions and shared additional comments and questions on the overall criteria. Tribal leaders shared the following:

- Under the requirement to supplant and replace a food, can part of a meat product that is not part of the food package, but which is used for medicinal purposes qualify?
 - FNS shared that the demonstration project is intended to supplant a food for another food. While it is allowable to replace FDPIR bison meat, for example, with meat from a different part of the bison or with meat from a different animal, it would not be allowable to replace bison meat with something that is not a food.
- Tribal leaders support the removal of limiting the number of contracts but raised a concern that only two contracts would be funded and requested that more than two be considered to include small, medium and large Tribal Organizations.
 - FNS clarified that more than two Tribal Organizations could be funded. The number of contracts will depend on the quality and budget amounts of proposals received.
- Tribal leaders expressed concern on the timeframe to expend the funds provided under this demonstration project.
 - FNS clarified that the requirement to federally obligate the funds is September 30, 2021. Tribal organizations will have a longer timeframe to expend the funds.
- Tribal leaders asked for the timeframe of when this opportunity will be released and how long Tribal Organizations will have to submit proposals.
 - FNS shared that it is working to publish a Federal Register notice by the end of calendar year 2020. The due date for proposals will be 60 days after the date of publication.
- Tribal leaders asked whether there is flexibility regarding the minimum 6-month distribution timeframe and if that requirement could be removed.
 - FNS shared that the 6-month distribution can be across consecutive or non-consecutive months. The timeframe can be further reviewed under contract negotiations. For example, a Tribal Organization can submit a proposal across a two-year period. FNS is requiring a minimum of 6-month across the contract period in order to learn more about how Tribal procurement can work for FDPIR.
- Tribal leaders asked how long it would take FNS to review submitted proposals.
 - FNS does not have a set timeframe and shared that it would depend on the number of proposals received.
- Tribal leaders asked if a large Tribal Organization with 10,000 FDPIR participants could participate in the demonstration project but only provide the selected food to a limited segment of their caseload.

- FNS shared that the criteria does require for the selected food to be made available to a Tribal Organization's entire caseload. The selected food would be replacing another food that is currently made available to all participants for each Tribal Organization's FDPIR program as part of the federal benefit. For this demonstration, the selected food would need to be available in sufficient quantities to support a Tribal Organization's entire FDPIR caseload.
- Tribal leaders asked what other parts of USDA and what other federal agencies FNS is working with on this demonstration project?
 - FNS shared that it is working with OTR and the Department of Interior's Bureau of Indian Affairs (BIA).
- Tribal leaders asked specific questions about whether there will be an appeals process and if this opportunity would be limited to certain types of vendors.
 - FNS shared that at this time, there is not an appeals process planned. In terms of vendors, the criteria describe describes the minimum requirements for vendors. Tribal Organization must procure foods from a vendor or vendors that provide the selected food commercially and can ensure that the selected food is 100 percent domestically sourced.
- Tribal leaders asked for nutrition data to assess how a supplanted food and its replacement would be assessed for similar or higher nutritional value as required by the Farm Bill.
 - FNS previously shared household information fact sheets on USDA Foods but heard concerns that those fact sheets do not provide enough nutritional facts. FNS will review what resources may be made available.
- Tribal leaders asked to clarify the definition of a qualified vendor in the criteria.
 - FNS shared that a vendor for purposes of this demonstration project would be one that sells food commercially and sources the selected food 100 percent domestically. FNS confirmed that the term "qualified" was removed from the criteria.
- Tribal leaders asked for more information on the definition of a commercial vendor and what standards, such as State inspection standards, a vendor must follow to qualify.
 - FNS indicated that a commercial vendor is one that currently sells food to the public and meets food safety requirements set by applicable Tribal, Local, State, or Federal authorities.
 - The requirements that need to be followed depends on the type of food and location where the food is grown, harvested, and processed relative to the where the food is sold. A food grown and sold locally, or within the bounds of reservation, may only need to follow local or Tribal requirements. The Tribal Organization will need to check with their food regulatory authority, which may be a health department, about what the requirements are for the specific food of interest.

- Tribal leaders asked how selected foods would be determined to be compatible/eligible/ineligible. Who makes the determination?
 - FNS shared that a Tribal Organization should provide justification for their selected food(s), including nutritional information, in their proposal. Proposals will be reviewed by a federal panel.
- A legal representative for Tribal Organizations asked for clarification regarding references made during the discussion to contracts following federal procurement rules. Under the Indian Self-Determination and Education Assistance Act, 638-contracts do not need to follow federal procurement rules.
 - FNS will follow what the law requires under the Indian Self-Determination and Education Assistance Act, as required by the Farm Bill, and will provide follow-up information to clarify requirements in the federal register notice.
- Tribal leaders shared support for releasing the formal announcement of this demonstration project to the eligible public (FDPIR Tribal Organizations) before the end of the calendar year.

D. General Updates

- Tribal leaders requested that FNS review hazard pay and unemployment pay received by current FDPIR participants and if such pay can be excluded from income for FDPIR eligibility. Many participants that receive this pay are now over-income and no longer eligible to the program.
 - As a follow-up, FNS determined that existing regulatory and statutory requirements for FDPIR do not provide an exclusion for hazard pay or unemployment wages. Both types of incomes must be counted as part of FDPIR eligibility.

III. Closing Prayer

IV. Adjourn

Next Steps: Requested Follow-Up Items

- **Tribal Leaders / NAFDPIR**
 - No follow up required.
- **USDA**
 - FNS will move forward with publishing a federal notice requesting contract proposals for this demonstration project. The federal notice will be shared with the FDPIR community upon publication. Technical assistance webinars will also be provided once the federal notice is published.

ENCLOSURES:

- **List of Attendees**

July 2020 FDPIR Sign-In Sheet

Note: Registration was done via a virtual service which only captured participant names. FNS and OTR have organized the lists as best it can but apologizes if somebody is in the wrong section.

Tribal Consulting Officials

Name	Title	Tribe
Amber Torres	Chairman	Walker River Paiute
Claudeen Tallwood	Program Manager	Navajo Nation
Electa Hare-Redcorn	Agriculture Research Developer	Pawnee Nation
Gary Besaw	Chairman	Menominee Indian Tribe of Wisconsin
Jerry Tonubbee	Director, Food Distribution	Choctaw Nation
Judy Parker	Administrator	Chickasaw Nation
Martina Beaulieu	Administrative Officer	Red Lake Band of Chippewa Indians
Perry Martinez	Chairman	Pueblo of San Ildefonso
Roxanna Newsom	Director	Chickasaw Nation
Stella Kay	Vice Chair	Little Traverse Bay Bands of Odawa Indians
Susan Roy	Food Distribution Program Manager	Leech Lake Band of Ojibwe
Todd Enlow	Chief of Staff	Cherokee Nation

USDA Consulting Officials

Name	Title	Agency
Diane Cullo	Director	Office of Tribal Relations

Diane Kriviski	Deputy Administrator for Supplemental Nutrition and Safety Programs	Food and Nutrition Service
Pam Miller	Administrator	Food and Nutrition Service

Other Attendees

Name
Adam McCreary
Amanda Swope
Ashley Fox
Ashton Marton
Ava John
Barbara Lopez
Becky Chandler
Blake Jackson
Brandon Moyle
Brandon Wifneski
Brian Howard
Carly Hotvedt
Cheryl Kennedy
Chris Roper
Christina Riley
Chuck Hoskin
Colby Duren
Daniel Cornelius
Diana Limbachur
Elizabeth Dawson
Eric Meredith
Erica Antonson
Erin Parker
Ethan Green
Frank Dunn
Janell Walker
Jay Spaan
Jeanette Hannah
Jeff Harris
Jen Falck
Jeremy Arnette
Jim Kemble
Joel Anderson
Julia Wakeford

Julie Skolmowski
Katherine Young
Katie Clifford
Katie Delrosario
Kayla Gebeck
Kenneth Lahaye
Kiley Larson
Kim Teehee
Kipcki Carroll
Kyle Key
Latisha Savoy
Laura Castro
Lea Zeise
Leslie Bolden
Linda Powell
Linda Cronin
Marilyn King
Marlene Wakefield
Mary Greene Trottier
Matt Jaffe
Matthew Martin
Melissa Anderson
Melissa Gower
Mia Hubbard
Michael Ladd
Michelle Clarkson
Monica Lacka
Natasha Seaforth
Olivia Chan
Penny O'Brien
Rachel Schoenian
Rena White
Richard Bumpers
Riley James
Samia Hamdan
Shawn Partridge
Shenique Bridges
Sonya Begay
Tamara Johnson
Tara Koster
Timothy English
Tony Nertoli
Tracy Fox

Trish Solis
Vista Fletcher
Willie Taylor