



United South and Eastern Tribes, Inc.  
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**USET Resolution No. 2011:004**

**PROVIDING RECOMMENDATIONS FOR THE IMPLEMENTATION OF SECTION 811 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010**

**WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-five (25) federally recognized Tribes; and

**WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and

**WHEREAS,** the Small Business Association 8(a) program has provided important economic development opportunities for scores of Tribes across the Nation, including several USET Tribes; and

**WHEREAS,** the Federal Acquisition Regulatory Council (FAR Council) is conducting Tribal consultation regarding implementation of Section 811 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84 (Section 811), including a consultation in Washington, DC on October 5, 2010 where USET member Tribes testified in support of important clarifications; and

**WHEREAS,** Section 811 changed how Native-owned 8(a) firms could participate in the 8(a) program and, because of uncertainty over Section 811's implementation, at least one USET Tribe lost a contract worth \$30 million; and

**WHEREAS,** Section 811 raises a number of other concerns which need to be properly addressed in its implementing rule in a manner consistent with the Federal trust responsibility to Indian Tribes; and

**WHEREAS,** the Native American Contractors Association (NACA) represents and serves almost 40 Native-owned 8(a) firms and has provided recommendations to the FAR Council for the implementation of the Section 811 rule; and

**WHEREAS,** USET supports the recommendations of the NACA; therefore, be it

**RESOLVED** the USET Board of Directors urges the Federal Acquisition Regulatory Council to establish a rule that: (1) clarifies that Section 811 applies only to sole-source contracts for an amount exceeding \$20 million for the base year of the contract; (2) provides that Justification and Approval requirements for sole-source contracting under Section 811 shall not exceed the requirements of Section 811; (3) specifies that a determination over whether the use of a sole-source contract is in the "best interests" of the agency shall consider how an award to a Native-owned 8(a) will allow it to meet the agency's small business goals; (4) in considering "other matters" in making a Justification and Approval determination the Agency shall look to part 19.804 of Title 48; and (5) clarifies that Section 811 is not a cap on sole-source awards but simple a requirement for a streamlined Justification and Approval process for sole-source awards to Native-owned 8(a) firms.

**CERTIFICATION**

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Verona, NY, on Thursday, October 14, 2010.



Brian Patterson, President  
United South and Eastern Tribes, Inc.



Robert McGhee, Secretary  
United South and Eastern Tribes, Inc.

*“Because there is strength in Unity”*