



KAWERAK, INC.

REPRESENTING

Brevig Mission October 25, 2019

Sitaisaq

Council

Diomede

Iñaliq

Elim

Niviarcaurluq

Gambell

Sivuqaq

Golovin

Chinik

King Island

Ugiuvak

Koyuk

Kuuyuk

Mary's Igloo

Qawiaraq

Nome Eskimo

Sitnasuak Inuit

Savoonga

Sivungaq

Shaktoolik

Saktuliq

Shishmaref

Qikiqtaq

Solomon

Aᅇuutaq

St. Michael

Taciq

Stebbins

Tapraq

Teller

Tala

Unalakleet

Uᅇalaqᅇiq

Wales

Kinᅇgin

White Mountain

Iᅇaᅇuik /

Nutchirviq

U.S. Department of Transportation
Docket Operations
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Kawerak Comments Regarding Proposed DOT Self Governance Program Regulations 49 CFR 29, DOT-OST-2018-0104, RIN 2105-AE71

Dear Sir/Madam:

Kawerak, Inc. is a nonprofit corporation and tribal consortium authorized by 19 Bering Strait Region Tribes to administer certain programs of the BIA pursuant to P.L. 93-638 and to provide other programs and services in the region. Kawerak carries out transportation planning, design, construction and maintenance activities on behalf of its member tribes in a service area roughly the size of West Virginia. Kawerak has been a leader with tribal transportation efforts and advocacy for decades. Its Tribal Transportation Program has successfully constructed and improved infrastructure in this region for years in partnership with the Department of Transportation (DOT) through the Federal Highways Administration (FHWA) and our Program Agreement. Kawerak supported and advocated for the DOT Self Governance Program in the latest statutory FAST Act reauthorization, and was excited to see its inclusion.

Since then, Kawerak has invested significant time and resources in the negotiated rulemaking process to help develop the proposed regulations which are the subject of these comments and referenced above. Kawerak representatives have worked side by side with DOT representatives as members of the negotiated rulemaking committee and technical drafting team, for the last three years. We are very invested in this process because this new self governance program in DOT is very important to us, not just for the transportation program, but also as a matter of expanding tribal self governance and tribal sovereignty.

The proposed rule is, overall, a well written and agreed upon product of a close partnership between DOT and the tribes engaged in this negotiated rulemaking process. We agree with the result reflected in the Federal Register, and support our DOT partners and the proposed rule. We believe the proposed rule reflects self governance principles carried over from DOI and IHS self governance principles and regulations, and improves on some of these processes.

KAWERAK, INC.

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Advancing the capacity of our people and tribes for the benefit of the region.

The Preamble to the proposed rule includes four areas of disagreement: 1) whether to establish an Office of Self Governance in the DOT and create a self governance advisory committee, 2) whether tribes should be entitled to contract support costs as additional funding to the direct funding they receive under this program, 3) whether tribes should be able to receive lease payments for facilities a tribe makes available to the program, and 4) whether the DOT may require that a tribe exhaust administrative remedies for pre-award decisions, other than final offers, as a pre-condition to the tribe filing suit in Federal court. Kawerak strongly supports the tribal view reflected in the Preamble on these four disagreement items, for the reasons provided in the Preamble expressed by the tribes.

To the extent DOT is making an effort to identify those who will liaison with tribes internally for the DOTSGP, and express that they might at some point develop an Office of Self Governance, we support and appreciate those efforts. We believe though, that such an Office should be created and maintained now, not waiting until some time in the future, so that it is operational and a resource for tribes from the inception of the implementation of this program. Tribes need to have one office and staff within DOT that are not spread out in silos to assist and work with them as they consider what programs to take on.

We believe contract support costs and lease payments, and the provisions allowing tribes to receive these that are incorporated into Section 207, are not in conflict with the statute. We know from experience that without a separate pool of contract support funding to pay for administrative costs of running transportation programs, we will have to cannibalize program funding, and the result is less infrastructure developed for our region.

Though there are still four disagreement items, as mentioned in the Preamble, tribal and federal representatives came together and reached consensus on 25 major issue areas that now comprise the vast majority of the tentatively agreed upon provisions in the proposed rule. This is a major accomplishment and the fact that these sections of the proposed rule were accepted and left largely intact through the internal DOT vetting process, is a reflection of the good faith by DOT in this process. Kawerak appreciates the work and the product as reflected in the proposed rule.

Thank you for your consideration.

Sincerely,
KAWERAK, INC.



Melanie Bahnke
President

KAWERAK, INC.

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