Subpart 326.5—Indian Preference in Employment, Training, and Subcontracting Opportunities

Parent topic: PART 326—OTHER SOCIOECONOMIC PROGRAMS

326.501 Statutory requirements.

Any contract or subcontract pursuant to subchapter II, chapter 14, title 25 of the United States Code, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall, to the greatest extent feasible, comply with section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b) which provides preferences and opportunities for training and employment in connection with the administration of such contracts, and preference in the award of subcontracts in connection with the administration of such contracts to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of title 25, United States Code.

326.502 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Indian* means a person who is a member of an Indian tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual provide evidence within 30 days from the tribe concerned that the person is a member of the tribe.

(b) *Indian tribe* means an Indian tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601), which the United States recognizes as eligible for special programs and services because of its status as Indian.

(c) *Indian organization* means the governing body of any Indian tribe, or entity established or recognized by such governing body, in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451).

(d) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and the ownership shall encompass active operation and control of the enterprise.

(e) *Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*).

(f) *On or near an Indian reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably commute to and from in the course of a work day.

326.503 Compliance enforcement.

The contracting officer shall promptly investigate and resolve written complaints of noncompliance with the requirements of the clauses at 352.226-1, Indian Preference and 352.226-2, Indian Preference Program filed with the contracting activity.

326.504 Tribal preference requirements.

(a) When the contractor will perform work under a contract on an Indian reservation, the contracting officer may supplement the clause at 352.226-2, Indian Preference Program by adding specific Indian preference requirements of the tribe on whose reservation the contractor will work. The contracting activity and the tribe shall jointly develop supplemental requirements for the contract. Supplemental preference requirements shall represent a further implementation of the requirements of section 7(b) of Public Law 93-638 and require the approval of the affected program director and the appropriate legal office, or a regional attorney, before the contracting officer adds them to a solicitation and resultant contract. Any supplemental preference requirements the contracting officer adds to the clause at 352.226-2, Indian Preference Program shall also clearly identify in the solicitation the additional requirements.

(b) Nothing in this part shall preclude tribes from independently developing and enforcing their own tribal preference requirements. Such independently-developed tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this subpart, and shall not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

326.505 Applicability.

The contracting officer shall insert the clause at 352.226-1, Indian Preference, and the clause at 352.226-2, Indian Preference Program, in contracts to implement section 7(b) of Public Law 93-638 for all Department of Health and Human Services (HHS) activities. Contracting activities shall use the clauses as follows, except for those exempted solicitations and contracts issued and or awarded pursuant to Title I of Public Law 93-638 (25 U.S.C. 450 *et seq.*):

(a) The contracting officer shall insert the clause at 352.226-1, Indian Preference, in solicitations, contracts, and orders when—

(1) The award is (or will be) pursuant to an act specifically authorizing such awards with Indian organizations; or

(2) The work is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The contracting officer shall insert the clause at 352.226-2, Indian Preference Program, in solicitations, contracts, and orders when—

(1) The dollar amount of the acquisition is expected to equal or exceed $650,000 for non-construction work or $1.5 million for construction work;

(2) The solicitation, contract, or order includes the Indian Preference clause; and

(3) The contracting officer makes the determination, prior to solicitation, that performance will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the contracting officer may insert the Indian Preference Program clause in solicitations, contracts, and orders below the $650,000 or $1.5 million level for non-construction or construction contracts, respectively, but which meet the requirements of paragraphs (b)(2) and (3) of this section, and in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training, and subcontracting.