352.226-5 Notice of Indian Economic Enterprise set-aside.

As prescribed in HHSAR 326.604-2(e)(2), the Contracting Officer shall insert the following clause:

Notice of Indian Economic Enterprise Set-Aside

(a) *Definitions as used in this clause:*

Alaska Native Claims Settlement Act (ANCSA) means Public Law 92-203 (December 18, 1971), 85 Stat. 688, codified at 43 U.S.C. 1601-1629h.

Indian means a person who is an enrolled member of an Indian Tribe or "Native" as defined in the Alaska Native Claims Settlement Act.

Indian Economic Enterprise means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit provided that: The combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise; the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(i) At the time an offer is made in response to a written solicitation;

(ii) At the time of the contract award; and

(iii) During the full term of the contract.

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (Pub. L. 92-203, 85 Stat. 688; 43 U.S.C. 1601).

Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 326.606.

(b) *General.*

(1) Under the Buy Indian Act, offers are solicited only from Indian Economic Enterprises.

(2) The CO will reject all offers received from ineligible enterprises.

(3) Any award resulting from this solicitation will be made to an Indian Economic Enterprise, as defined in paragraph (a) of this clause.

(c) *Required submissions.* In response to this solicitation, an offeror must also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the offeror over the contract term as required by section 352.226-6, Subcontracting Limitations clause; and

(2) Qualifications of the key personnel (if any) that will be assigned to the contract.

(d) Required assurance. The offeror must provide written assurance to the CO that the offeror is and will remain in compliance with the requirements of this clause. It must do this before the CO awards the Buy Indian Act contract and upon successful and timely completion of the contract, but before the CO accepts the work or product.

(e) Non-responsiveness. Failure to provide the information required by paragraphs (c) and (d) of this clause may cause the CO to find an offer non-responsive and reject it.

(f) Eligibility.

(1) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an Indian Economic Enterprise ineligible for contracts awarded under the Buy Indian Act.

(2) If a contractor no longer meets the definition of an Indian Economic Enterprise after award, the contractor must notify the CO immediately and in writing. The notification must include full disclosure of circumstances causing the contractor to lose eligibility status and a description of any actions that the contractor will take to regain eligibility. Failure to give the CO immediate written notification means that:

(i) The economic enterprise may be declared ineligible for future contract awards under this part; and

(ii) The CO may consider termination for default if it is in the best interest of the government.

(g) Representation. Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian Economic Enterprises (326.606). As required by HHSAR 352.226-7(b), offerors shall include a completed Indian Economic Enterprise Representation form in response to Sources Sought Notices, Request for Information (RFI) and as part of the proposal submission. The Indian Economic Enterprise Representation form, available on the IHS DAP public website (*www.IHS.gov/DAP*), shall be included in synopses, presolicitation notices, and solicitations for the acquisitions under the Buy Indian Act. Offers received from enterprises that are not Indian Economic Enterprises shall not be considered.

(End of clause)

Parent topic: Subpart 352.2—Texts of Provisions and Clauses