

PART 1480 - ACQUISITIONS UNDER THE BUY INDIAN ACT

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Subpart 1480.1 - General

1480.101 Scope of part.

This part prescribes policies and procedures for the procurement of supplies and services from Indian economic enterprises under the Buy Indian Act, 25 U.S.C. 47, and this part.

1480.102 Buy Indian Act acquisition regulations.

(a) This part supplements Federal Acquisition Regulation (FAR) and Department of the Interior Acquisition Regulation (DIAR) requirements to satisfy the needs of Indian Affairs in implementing the Buy Indian Act.

(b) This part is under the direct oversight and control of the Chief Financial Officer, within the Office of the Assistant Secretary - Indian Affairs, Department of the Interior (CFO). The CFO is responsible for issuing and implementing this part.

(c) Acquisitions conducted under this part are subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Indian Affairs. The provisions of the FAR take precedence in all instances where there may be a conflict or discrepancy.

Subpart 1480.2 - Definitions

1480.201 Definitions.

The following words and terms are used as defined below unless a different definition is prescribed for a particular subpart or portion of a subpart.

Buy Indian Act means section 23 of the Act of June 25, 1910 (25 U.S.C. 47).

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c) and 25 U.S.C. 47 between an Indian economic enterprise and a Contracting Officer representing the Department of the Interior.

Challenge to representation means an accurate, complete and timely written objection by an interested party to an offeror's representation submitted in response to a solicitation under the Buy Indian Act.

Chief of the Contracting Office (CCO), unless otherwise specified by bureau/office regulation, means the senior GS-1102 within a contracting office. If the CCO is also the CO for an action requiring approval by the CCO, then approval shall be at a level above the CCO in accordance with bureau/office procedures.

Concern means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. It includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see FAR 19.101), it includes any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

Contracting Officer (CO) means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of the U.S. Government.

Covered construction means construction for road facilities on Indian-owned land; road facilities on an Indian reservation; road facilities that are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development; roads that provide access to intermodal termini, such as airports, harbors, or boat landings; bridges along these roads; planning and other needs and facilities associated with roads; and sidewalks along these roads.

Day means a calendar day.

Deviation means an exception to the requirement for use of the Buy Indian Act in fulfilling an acquisition requirement of Indian Affairs.

Fair market price means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined in accordance with FAR 19.202-6(a).

Governing body means the recognized entity empowered to exercise governmental authority over an Indian tribe.

Indian means a person who is a member of an Indian Tribe or Native as defined in the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat 688; 43 U.S.C. 1601).

Indian Affairs (IA) means all bureaus and offices under the Assistant Secretary - Indian Affairs.

Indian economic enterprise (IEE) 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:

- (1) At the time an offer is made in response to a written solicitation;
- (2) At the time of contract award; and
- (3) During the full term of the contract.

Indian land means land over which an Indian Tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971 (85 Stat. 688, 43 U.S.C. 1601), so long as the Native corporation qualifies as an IEE, as defined herein. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the Tribe as defined by the Secretary.

Indian small business economic enterprise (ISBEE) means an IEE that is also a small business concern established in accordance with the criteria and size standards of 13 CFR part 121.

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 (PL 92-203, 85 Stat. 688; 43 U.S.C. 1601).

Interested party means an IEE that is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual IA award of a particular contract set-aside pursuant the Buy Indian Act.

Product of Indian industry means anything produced by an IEE either through physical labor or by intellectual effort involving the use and application of its skills.

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 1480.8.

Reservation means 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, 43 U.S.C. 1601.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

Subcontractor means a concern to which a contractor subcontracts any work under the contract. The term includes subcontractors at any tier who perform work on the contract.

Work means the level of work effort by the prime contractor based on total direct project costs.

Subpart 1480.3 - Applicability

1480.301 Scope of part.

Except as provided in 1480.302 and 1480.401(b), this part applies to all acquisitions, including simplified acquisitions, made by IA and by any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act and 1480.401(d).

1480.302 Restrictions on use of the Buy Indian Act.

(a) IA must not use the authority of the Buy Indian Act and the procedures contained in this part to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized IA programs (or parts thereof) that are within the scope and intent of the Indian Self-Determination and

Education Assistance Act. IA must use the Buy Indian Act solely to award procurement contracts to IEEs.

(b) IA must not use the authority of this Act for construction contracts, as defined in FAR 36.102, unless the construction is covered construction, as defined in 1480.201.

Subpart 1480.4 - Policy

1480.401 Requirement to give preference to Indian economic enterprises.

(a) IA must use the negotiation authority of the Buy Indian Act, 25 U.S.C. 47, to give preference to Indians whenever the use of that authority is authorized and practicable. The Buy Indian Act provides that, so far as may be practicable, Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market at the discretion of the Secretary of the Interior. Thus, IA may use the Buy Indian Act to give preference to IEEs through set-asides when acquiring supplies, services, and covered construction to meet IA needs and requirements. IA must contract for covered construction in accordance with FAR Part 36.

(b) IA or any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act may not use the Buy Indian Act to give preference to IEEs through set-asides when acquiring construction that is not covered construction.

(c) The provisions of this section shall not apply to the awarding of contracts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) by the Department of the Interior.

1480.402 Delegations and responsibility.

(a) The Secretary has delegated authority under the Buy Indian Act to the Assistant Secretary - Indian Affairs. IA exercises this authority in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(b) The Secretary may delegate authority under the Buy Indian Act to a bureau or office within the Department of the Interior other than IA only in accordance with the Departmental Manual.

(c) As the head of the contracting activity, the CFO is responsible for ensuring that all IA acquisitions under the Buy Indian Act comply with the requirements of this part.

1480.403 Deviations.

(a) The following officials may authorize a deviation for an IA acquisition:

| For a proposed contract action . . . | The following official may authorize a deviation . . . |
|--|---|
| Exceeding \$25,000 but not exceeding \$550,000 | The CCO (or the IA Procurement Chief, absent a CCO). |
| Exceeding \$550,000 but not exceeding \$11.5 million | IA Competition Advocate. |

| For a proposed contract action . . . | The following official may authorize a deviation . . . |
|---|---|
| Exceeding \$11.5 million but not exceeding \$57 million | The head of the procuring activity, or a designee who is a civilian serving in a position in a grade above GS-15 under the General Schedule or in a comparable or higher position under another schedule. |
| Exceeding \$57 million | Department of the Interior Senior Procurement Executive. |

(b) Deviations may be authorized prior to issuing the solicitation when IA makes the following determinations and the appropriate official takes the following actions:

| Acquisition type | Basis for deviation | Necessary actions |
|---|---|--|
| In pursuit of a simplified or commercial item acquisition in accordance with FAR Parts 12 or 13 and DIAR 1413 | IA determines after a market survey that there is no reasonable expectation of obtaining offers that will be competitive in terms of market price, quality, and delivery from two or more responsible ISBEEs (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.003) | The official must: (1) Document the reasons for the deviation in the file; (2) Ascertain the availability of small business suppliers through market research; and (3) If appropriate, compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502-2. |
| In pursuit of all other acquisitions | IA determines that there is no reasonable expectation that offers will be received from two or more responsible IEEs at a reasonable and fair market price | The official must: (1) Provide a written determination in the contract file stating there is no reasonable expectation of receiving offers from two or more responsible IEEs and that award cannot be made at a reasonable and fair market price; and (2) Proceed with the acquisition using the order of precedence established in FAR 8.001. |

(c) Deviations may be authorized after issuing solicitations when IA makes the following determinations and the appropriate official takes the following actions:

| Acquisition type | Basis for deviation | Necessary actions |
|---|--|---|
| In pursuit of a simplified or commercial item acquisition in accordance with FAR Parts 12 or 13 and DIAR 1413 | Only one offer is received from a responsible ISBEE and the price is unreasonable or no offers are received from a responsible ISBEE | The official must: (1) Document the reasons for the deviation in the file; (2) Ascertain the availability of small business suppliers through market research; and (3) If appropriate, compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502-2. |
| In pursuit of all other acquisitions | The Indian tribe justifies a deviation under 1480.504-1(b)(2) | IA must proceed under PL 93-638. |

| Acquisition type | Basis for deviation | Necessary actions |
|------------------|---|---|
| | (1) All otherwise acceptable offers received from IEEs are unreasonable; (2) Only one offer is received from an IEE and the CO determines the price to be unreasonable; or (3) No responsive offers have been received from IEEs. | The official must: (1) Cancel the solicitation; (2) Reject all offers in writing in accordance with FAR 14.404-3; and (3) Complete the acquisition by either: (i) Using negotiation, provided the CO has obtained the approval required by FAR 14.404-1; or (ii) If negotiation with the offerors responding to the canceled solicitation is not authorized, the CO must proceed with a new acquisition using the order of precedence in FAR 8.001. |

(d) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected by a written determination by the CCO that a reasonable price cannot be negotiated.

Subpart 1480.5 - Procedures

1480.501 General.

All acquisitions made in accordance with this part, including simplified or commercial item acquisitions, must conform to all applicable requirements of the FAR and DIAR.

1480.502 Order of precedence for use of Government supply sources.

Acquisitions made under an authorized deviation from the Buy Indian Act regulation must be made in conformance with the order of precedence required by FAR 8.002.

1480.503 Commercial item or simplified acquisitions.

(a) Each acquisition of supplies, services, and covered construction that is subject to commercial item or simplified acquisition procedures in accordance with FAR Parts 12 or 13 and DIAR 1413 must be set aside exclusively for ISBEES. IA will use ISBEE commercial item(s) or simplified acquisition set-asides to accomplish this preference action.

(b) If the CO proceeds with an ISBEE commercial item or simplified acquisition set-aside and receives an offer at a reasonable price from only one such responsible economic enterprise (see FAR 19.502-2), the CO must make an award to that enterprise. If the CO proceeds with an ISBEE commercial item or simplified acquisition set-aside and receives an offer from only one responsible economic enterprise at a price that is not reasonable, the CO may negotiate with that enterprise to reach a reasonable price.

(c) Commercial item or simplified acquisitions under this section must conform to the competition and price reasonableness documentation requirements of FAR 12.209 for commercial item acquisitions and FAR 13.106 for simplified acquisitions.

(d) Clauses and Provisions.

(1) Insert the clause at DIAR 1452.226-70, Indian Preference, in accordance with DIAR 1426.7003(a).

(2) Insert the clause at DIAR 1452.226-71, Indian Preference Program, in accordance with DIAR 1426.7003(b).

(3) Insert the clause at 1452.280-1, NOTICE OF INDIAN SMALL BUSINESS ECONOMIC ENTERPRISE SET-ASIDE in accordance with 1480.503(a).

(4) Insert the clause at 1452.280-2, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE, in accordance with 1480.504-1(a).

(5) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(6) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

1480.504 Other than full and open competition.

1480.504-1 Set-asides for Indian economic enterprises.

(a) Each proposed procurement for supplies or services that has an anticipated dollar value in excess of the simplified acquisition threshold amount in FAR Part 13.003 must be set aside exclusively for IEEs, and referred to as an Indian Economic Enterprise Set-aside, when there is a reasonable expectation that offers will be received from two or more responsible IEEs, and award will be made at a reasonable price except when:

(1) The acquisition is for construction that is not covered construction, as described in 1480.401(b);

(2) A deviation has been obtained in accordance with 1480.403; or

(3) Use of other than full and open competition has been justified and approved in accordance with 1480.504-2.

(b) When acquiring services to be performed in whole or in part on Indian land under a tribe's jurisdiction, the CO must give written notice to the governing body or bodies of the applicable Indian tribe simultaneously with publication of the synopsis required by paragraph (c)(1) of this section. The notice must state IA's intent to solicit services or supplies using an IEE set-aside and provide the tribe with the opportunity to contract for the program within 15 calendar days from the date of the synopsis publication in the GPE.

(1) If the tribe does not oppose the set-aside intention or advise IA by the established deadline of its intent to contract, IA will proceed with the solicitation in accordance with FAR 5.2.

(2) If the tribe advises IA by the established deadline of its intent to contract, it must adequately justify a deviation for work on or near Indian land under its jurisdiction through a tribal resolution in accordance with Public Law 93-638.

(c) When using an IEE set-aside in accordance with this section, the CO must do the following:

(1) Synopsise the acquisition in the Governmentwide point of entry (GPE) as required by FAR Subpart 5.2, and identify it as an IEE set-aside.

(2) Use the Class Justification for Use of Other Than Full and Open Competition (JOFOC) in Acquisition of Supplies and Services from Indian Industry to meet the requirements of FAR 6.303.

(3) By separate memorandum to the file, document that the supplies or services to be acquired are

available from two or more responsible and IEEs; the anticipated cost to IA of the required supplies or services is determined to be reasonable; and the information in the JOFOC in Acquisition of Supplies and Services from Indian Industry is accurate and complete as it pertains to the proposed acquisition.

(4) Reject offers that fail to provide representation that they meet the definition of an IEE. The CO may also request the Office of the Inspector General (on Form DI-1902 as part of a normal pre-award audit) to:

(i) Assist in determining the eligibility of the low responsive and responsible offerors on Buy Indian Act awards; and

(ii) Determine whether the work will be performed by the labor force required under 1480.601.

(5) When using sealed bidding, determine that the price offered by the prospective contractor is considered to be reasonable and at a fair market price as required by FAR 14.408-2 before awarding a contract.

(6) When using competitive proposals, solicit proposals in accordance with FAR Subpart 15.2 and select sources in accordance with FAR Subpart 15.3 and DIAR Subpart 1415.6.

(7) When using competitive proposals or when negotiating modifications that impact the cost of a contract, conduct proposal analyses, including cost or price analyses in accordance with FAR Subpart 15.4, negotiate profit or fee in accordance with the procedures in FAR Subpart 15.4 and DIAR Subpart 1415.9, and prepare a negotiation memorandum in accordance with FAR 15.406-3 and DIAR 1415.808.

(8) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36 and DIAR Subpart 1436.6.

(d) This paragraph applies to solicitations that are not restricted to participation of IEEs.

(1) If an interested IEE is identified after a market survey has been performed and a solicitation has been issued, but before the date established for receipt of offers, the contracting office must provide a copy of the solicitation to this enterprise. In this case, the CO:

(i) Will not give preference under the Buy Indian Act to the IEE, and

(ii) May extend the date for receipt of offers when practical.

(2) If more than one IEE comes forward subsequent to the solicitation, but prior to the date established for receipt of offers, the CO may cancel the solicitation and re-compete it as an IEE set-aside.

(e) When only one offer is received from a responsible IEE in response to an acquisition set-aside under paragraph (a) of this section:

(1) If the offer is not at a reasonable and fair market price, then the CO may negotiate with that enterprise for a reasonable and fair market price.

(2) If the offer is at a reasonable and fair market price, the CO must:

(i) Make an award to that enterprise;

(ii) Document the reason only one offer was considered; and

(iii) Initiate action to increase competition in future solicitations.

(f) Provisions and Clauses.

(1) Insert the clause at DIAR 1452.226-70, Indian Preference, in accordance with DIAR 1426.7003(a).

(2) Insert the clause at DIAR 1452.226-71, Indian Preference Program, in accordance with DIAR 1426.7003(b).

(3) Insert the clause at 1452.280-2, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE, in accordance with 1480.504-1(a).

(4) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(5) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

(6) When applicable, Tribal employment preference requirements may be added to the requirements of the clause in accordance with DIAR 1426.7005.

1480.504-2 Other circumstances for use of other than full and open competition.

(a) Other circumstances may exist where the use of an IEE set-aside in accordance with 1480.401(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 and DIAR Subparts 1406.3 apply in justifying the use of the appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions must first be publicized in accordance with the requirements of FAR 5.2 and DIAR 1405.2.

(c) Justifications for use of other than full and open competition in accordance with this section must be approved in accordance with DIAR 1406. These approvals are required for a proposed contract, or for an out of scope modification to an existing contract.

1480.505 Debarment and suspension.

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406 and 9.407. IA must refer recommendations for debarment or suspension to the Director, Office of Acquisition and Property Management, Department of the Interior, in accordance with DIAR 1409.406 and 1409.407 through the IA Division of Acquisitions with the concurrence of the head of the contracting activity.

Subpart 1480.6 - Contract Requirements

1480.601 Subcontracting limitations.

(a) In contracts awarded under the Buy Indian Act and this part, the contractor must agree to perform the contract in accordance with FAR 52.219-14, Limitations on Subcontracting.

(b) The CO must also insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in all purchase orders and contracts for services, supplies, or covered construction and awarded to IEEs pursuant this part.

1480.602 Performance and payment bonds.

Solicitations requiring performance and payment bonds must conform to FAR Part 28 and authorize use of any of the types of security acceptable in accordance with FAR Subpart 28.2 or section 11 of Public Law

98-449, the Indian Financing Act Amendments of 1984. The CO may accept alternative forms of security in lieu of performance and payment bonds according to FAR 28.102 and 25 U.S.C. 47a, if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

Subpart 1480.7 - Contract Administration

1480.701 Contract administration requirements.

The CO and the CO's representative (see DIAR 1401.670) must monitor performance and progress to ensure contractor compliance with FAR Part 42 regarding all contract requirements. The CO must ensure contractor compliance with the following provisions of this part:

- (a) Qualification as an IEE as defined in 1480.201;
- (b) Maintenance of the subcontracting limitations required by the clause at 1452.280-3 when acquiring services, supplies, and covered construction; and
- (c) Enforcement of Indian preference requirements contained in DIAR 1426.7004.

Subpart 1480.8 - Representation by an Indian Economic Enterprise Offeror

1480.801 General.

(a) The CO must insert the provision at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in all solicitations regardless of dollar value that are set aside for IEEs in accordance this part.

(b) To be considered for an award under 1480.503 or 1480.504-1, an offeror must represent that it meets the definition of Indian economic enterprise in response to a specific solicitation set-aside in accordance with the Buy Indian Act and this part.

(c) The enterprise must meet the definition of Indian economic enterprise throughout the following time periods:

- (1) At the time an offer is made in response to a solicitation;
- (2) At the time of contract award; and
- (3) During the full term of the contract.

(d) If, after award, a contractor no longer meets the eligibility requirements in paragraph (b) of this section, the contractor must provide immediate, written notification to the CO. The notification must include:

- (1) Full disclosure of circumstances causing the contractor to lose eligibility status; and
- (2) A description of actions, if any, that must be taken to regain eligibility.

(e) Failure to provide immediate written notification required by paragraph (d) of this section means that:

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

(2) IA may consider termination for default if it is determined to be in the best interest of the government.

(f) The CO will accept an offeror's representation in a specific bid or proposal that it is an IEE unless another interested party challenges the IEE representation or the CO has reason to question the representation. Challenges of and questions concerning a specific representation must be referred to the CO or CCO in accordance with Subpart 1480.9.

(g) Participation in the Mentor-Protege 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 IEE ineligible for contracts awarded under the Buy Indian Act.

1480.802 Representation provision.

(a) IA contracting offices must provide copies of the IEE representation to any interested parties upon written request.

(b) The submission of a Solicitation Mailing List Application by an enterprise does not remove the requirement for it to provide representation as an IEE, as required by this part, if it wishes to be considered as an offeror for a specific solicitation. COs may determine the validity of the contents of the applicant's representation.

(c) Any false or misleading information submitted by an enterprise when submitting an offer in consideration for an award set aside under the Buy Indian Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance are subject to the penalties enumerated in 31 U.S.C. 3729 to 3731 and 18 U.S.C. 287.

1480.803 Representation process.

(a) Only IEEs may participate in acquisitions set aside in accordance with the Buy Indian Act and this part. IA procedure supports responsible IEEs and seeks to prevent circumvention or abuse of the Buy Indian Act.

(b) Eligibility is based on information furnished by the enterprise to an IA CO in the IEE representation at 1452.280-4 in response to a specific solicitation under the Buy Indian Act.

(c) The CO may ask the appropriate Regional Solicitor to review the enterprise's representation.

(d) The IEE representation does not relieve the CO of the obligation for determining contractor responsibility, as required by FAR Subpart 9.1.

Subpart 1480.9 - Challenges to Representation

1480.901 General.

(a) The CO can accept an offeror's written representation of being an IEE (as defined in 1480.201) only when it is submitted with an offer in response to a solicitation under the Buy Indian Act. Another interested party may challenge the representation of an offeror or contractor by filing a written challenge to the applicable CO in accordance with the procedures in 1480.902.

(b) After receipt of offers, the CO may question the representation of any offeror in a specific offer by filing a formal objection with the CCO.

1480.902 Receipt of challenge.

(a) An interested party must file any challenges against an offeror's representation with the local CO.

(b) The challenge must be in writing and must contain the basis for the challenge with accurate, complete, specific, and detailed evidence. The evidence must support the allegation that the offeror is either ineligible or fails to meet both the definitions of Indian and of Indian economic enterprise established in 1480.201. The CO will dismiss any challenge that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a challenge must be received by the CO no later than 10 days after the basis of challenge is known or should have been known, whichever is earlier.

(1) A challenge may be made orally if it is confirmed in writing within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(2) A challenge may be made in writing if it is delivered by hand, telefax, telegram, or letter postmarked within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(3) A CO's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely challenge, the CO must:

(1) Notify the challenger of the date it was received, and that the representation of the enterprise being challenged is under consideration by IA; and

(2) Furnish to the economic enterprise (whose representation is being challenged) a request to provide detailed information on its eligibility by certified mail, return receipt requested.

(e) Within 3 days after receiving a copy of the challenge and IA's request for detailed information, the challenged offeror must file with the CO a complete statement answering the allegations in the challenge, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the 3 days, or another period of time granted by the CO, IA may assume that the offeror does not intend to dispute the challenge and IA must not award to the challenged offeror.

(f) Within 10 days after receiving a challenge, the challenged offeror's response and other pertinent information, the CO must determine the representation status of the challenged offeror and notify the challenger and the challenged offeror of the decision by certified mail, return receipt requested, and make known the option to appeal the determination to the Office of Acquisition and Property Management, Department of the Interior (PAM).

(g) If the representation accompanying an offer is challenged and subsequently upheld by the PAM, the written notification of this action must state the reason(s). The PAM may review the economic enterprise for possible suspension or debarment recommendations.

1480.903 Award in the face of challenge.

(a) Award of a contract in the face of challenge may be made on the basis of the CO's written determination that the challenged offeror's representation is valid.

(1) This determination is final for IA unless it is appealed to the PAM, and the CO is notified of the appeal before award.

(2) If an award was made before the time the CO received notice of appeal, the contract must be presumed to be valid.

(b) After receiving a challenge involving an offeror being considered for award, the CO must not award the contract until the CO has determined the validity of the representation, or 10 days have expired since the CO received the challenge, whichever occurs first. Award must be made when the CO determines in writing that an award must be made to protect the public interest, or the supplies and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a timely challenge on representation is filed with the CO and received before award in response to a specific offer and solicitation, the CO must notify eligible offerors within one day that the award will be withheld and a time extension for acceptance is requested.

(d) If a challenge on representation is filed with the CO and received after award in response to a specific offer and solicitation, the CO need not suspend contract performance or terminate the awarded contract unless the CO believes that an award may be invalidated and a delay would prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no cost agreement will be sought.

1480.904 Challenge not timely.

If a CO receives an untimely filed challenge of a representation, the CO must notify the challenger that the challenge cannot be considered on the instant acquisition but will be considered in any future actions. However, the CO may question at any time, before or after award, the representation of an IEE.