

For the reasons set out in the preamble, the Bureau of Indian Affairs proposes to amend title 48 of the Code of Federal Regulations by adding a new appendix A to chapter 14 as follows:

APPENDIX A - BUREAU OF INDIAN AFFAIRS

(Parts BIA 1401 to BIA 1479 and BIA 1480 to BIA 1499)

APPENDIX A - BUREAU OF INDIAN AFFAIRS

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AUTHORITY: 25 U.S.C. 47, as amended (36 Stat. 861), 41 U.S.C. 253(c)(5), and 5 U.S.C. 301.

SUBCHAPTER A - GENERAL

Part BIA 1401 Federal Acquisition Regulation System

Subpart BIA 1401.3 Agency Acquisition Regulations

BIA 1401.301 Policy.

A. The Bureau of Indian Affairs (BIA) Manual contains the BIA Acquisition Regulations (BIAAR). It is issued to establish uniform acquisition policies and procedures through BIA to implement or supplement the Federal Acquisition Regulation (FAR) and the Department of the Interior Acquisition Regulations (DIAR). The BIAAR is further supplemented by Handbooks, Acquisition Guidance Releases and the BIA's Guidelines on the Charge Card Program. The BIA Manual supplements, but does not change, the intent of higher level regulations. The regulations governing the implementation of the Buy Indian Act will be a part of the BIAAR and will also be printed in the BIA manual.

B. Releases in FAR format are prefixed with the number BIA 14, followed by the DIAR part, subpart, section, and subsection number of the material being implemented. See DIAR 1401.303 for an explanation of the numbering system. As an example, the subject "Mistakes in Bids" is covered in DIAR sections 1414.406 and 1414.406-3. At the subsection level, DIAR 1414.407-2 covers "Apparent Clerical Mistakes." In

implementing this subject, the official Bureau designation is BIA 1414.406-3. It is not necessary to implement each subsection of the DIAR. Therefore there are breaks in the numbers of the paragraphs of this Manual.

C. Supplementing. When it is necessary to supplement (i.e., add a subject not covered in DIAR), the part number with the "70" series added will be used.

SUBCHAPTERS B - G

(Reserved)

SUBCHAPTER H CLAUSES AND FORMS

Part BIA 1452 Solicitation Provisions and Contract Clauses

Subpart BIA 1452.1 Instructions for Using Provisions and Clauses

BIA 1452.200 Scope of subpart.

This subpart gives instructions for using subpart BIA Part 1452. All provisions and clauses in solicitations and contracts must be incorporated in full text.

Subpart BIA 1452.2 Texts of Provisions and Clauses

BIA 1452.280 Scope of subpart.

This subpart sets forth the texts of all BIAAR provisions and clauses (see DIAR 1452.2), and for each provision and clause, gives:

- (a) A cross reference to the location in the BIAAR that prescribes its use; and
- (b) Directions for including it in solicitations or contracts.

BIA 1452.280-1 Notice of Indian small business economic enterprise set-aside.

As prescribed in BIA 1480.503(b)(1), and in lieu of the requirements of FAR 19.508, insert the following provision in each written solicitation of offers to provide

supplies or services when purchasing commercial items under FAR Part 12 or using simplified acquisition procedures under FAR Part 13. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

NOTICE OF INDIAN SMALL BUSINESS ECONOMIC ENTERPRISE SET-ASIDE
(Current Date)

Under the Buy Indian Act, 25 U.S.C. 47, as amended, offers under this solicitation are solicited only from eligible Indian economic enterprises (Subpart BIA 1480.8) that also must be small business concerns. The offeror must represent that they meet the definition of Indian economic enterprise at the time of submission of its offer to a specific solicitation as evidence that it is eligible to be considered for award. Any acquisition resulting from this solicitation will be from such a concern. Offers received from enterprises that are not eligible Indian economic enterprises will not be considered and will be rejected.
(End of provision)

BIA 1452.280-2 Notice of Indian economic enterprise set-aside.

As prescribed in BIA 1480.504-1(b)(2), insert the following clause in solicitations and contracts involving Indian economic enterprise set-asides:

NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE (Current Date)

(a) Definitions as used in this clause.

Eligible means that the majority owner of an Indian economic enterprise meets the definition of "Indian" and the enterprise meets the definition of "Indian economic enterprise," as set forth below. 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.

Indian means a person who is a member of an Indian Tribe.

Indian 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.

The enterprise must meet these requirements throughout these 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 Tribe means an Indian Tribe, band, nation, or other recognized 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

(Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, as amended, in accordance with the procedures in BIA Subpart 1480.8.

(b) General.

(1) Under the Buy Indian Act, offers are solicited only from eligible Indian economic enterprises. Therefore, the offeror must represent that its enterprise is eligible to be considered for award. If selected for award, the offeror must:

(i) comply with the minimum 51 percent Indian ownership, daily business management, and, as applicable, majority earnings criteria;

(ii) comply with the preference requirements contained in subparagraphs (c)(3) and (c)(4) below during performance of the contract if award is made to the economic enterprise; and

(iii) provide the required percentage of the work/costs with its own resources, exclusive of manufactured or leased items or supplies or materials produced offsite, as required in BIA 1480.602.

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

(3) Any award resulting from this solicitation will be made to an eligible Indian economic enterprise, as defined in paragraph (a).

(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 BIA 1452.280-3, Subcontracting Limitations clause;

(2) A description of the source of human resources for the work to be performed by the offeror;

(3) A description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by DIAR 1452.226-70, Indian Preference, or DIAR 1452.226-71, Indian Preference Program, clause(s);

(4) A description of how subcontractors (if any) will be selected in compliance with the "Indian Preference" or "Indian Preference" clause(s);

(5) The names, addresses, and descriptions of work to be performed by Indian persons or economic enterprises being considered for subcontracts (if any) and the percentage of the total direct project work/costs they would be performing;

(6) Qualifications of the key personnel (if any) that will be assigned to the contract;

(7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation; and

(d) Required Assurance. The contractor must provide written assurance to the Bureau that it will comply, or has, complied fully with the requirements of this clause. It must do this before the Bureau awards a Buy Indian contract, as well

as, upon successful and timely completion of the contract, but before the Bureau Contracting Officer (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 Bureau to find an offer non-responsive and to reject it.

(f) Continued eligibility. If a contractor no longer meets the definition of an Indian economic enterprise after award, the contractor must notify the CO 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: (1) The economic enterprise may be declared ineligible for future contract awards under this part; and (2) The Bureau may consider termination for default if it is in the best interest of the government.

(End of clause)

BIA 1452.280-3 Subcontracting limitations.

A contractor shall not subcontract to other than Indian firms more than 50 percent of the work under a prime contract awarded pursuant to the Buy Indian Act. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment. As prescribed in BIA 1480.602(b), insert the following clause in each written solicitation or contracts to provide supplies, services, or construction authorized by BIA 1480.401(b):

SUBCONTRACTING LIMITATIONS (Current Date)

(a) Definitions as used in this clause.

(1) 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. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) 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.

(2) 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.

(3) 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.

(b) Required Percentages of work by the concern. The contractor must comply with FAR 52.219-14 Limitations on Subcontracting clause.

(c) Indian Preference. Regardless of the contract type for services, supplies, or construction authorized by BIA 1480.401(b), the contractor agrees to give preference to Indian organizations and Indian owned economic enterprises in awarding subcontracts under this contract in accordance with DIAR 1452.226-71, Indian Preference.

(d) Cooperation. The contractor must:

(1) Carry out the requirements of this clause to the fullest extent; and

(2) Cooperate in any study or survey that the CO, the Bureau of Indian Affairs, or its agents may conduct to verify the contractor's compliance with this clause.

(e) Incorporation in Subcontracts. The contractor must incorporate the substance of this clause, including this paragraph (e), in all subcontracts for supplies, services, and construction awarded under this contract.

(End of clause)

BIA 1452.280-4 Indian Economic Enterprise Representation.

As prescribed in BIA 1480.801(a), insert the following provision in each written solicitation for supplies, services, or construction authorized by BIA 1480.401(b):

INDIAN ECONOMIC ENTERPRISE REPRESENTATION

(Current Date)

The offeror represents as part of its offer that it [] does [] does not meet the definition of Indian economic enterprise as defined in BIA 1480.201.

[End of provision]

SUBCHAPTER I BUREAU OF INDIAN AFFAIRS SUPPLEMENT

Part BIA 1480 Acquisitions under the Buy Indian Act

Subpart BIA 1480.1 General

BIA 1480.101 Scope of part.

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

BIA 1480.102 Buy Indian Act acquisition regulations.

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

(b) Regulations issued under this part shall be codified in Department of the Interior (DOI) regulations at 48 CFR Chapter 14, Appendix A, Part BIA 1480, in accordance with DIAR 1401.303 and will conform to the requirements of FAR Subpart 1.3 and DIAR Subpart 1401.3.

(c) This part is issued under the authority of the Secretary of the Interior under 5 U.S.C. 301. The Secretary has re-delegated this authority to the Assistant Secretary Indian Affairs under part 209, Chapter 8, of the Departmental Manual (209 DM 8).

(d) This part is under the direct oversight and control of the Director, Office of Management and Administration, BIA, Department of the Interior. The Director is responsible for issuing and implementing this part.

(e) 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 Bureau of Indian Affairs. The provisions of the FAR takes precedence in all instances where there may be a conflict or discrepancy.

Subpart BIA 1480.2 Definitions

BIA 1480.201 Definitions as used in this part.

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.

Bureau central office means the Headquarters component located in Reston, Virginia that serves as staff resource to the Assistant Secretary- Indian Affairs. For

purposes of this part, the term refers specifically to the Office of Management and Administration, Division of Acquisition and Property Management.

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

Buy Indian Contract means any Bureau acquisition action (by contract, purchase order, charge card, delivery order, or modification) for the products of Indian industry and labor from an eligible Indian economic enterprise negotiated pursuant to the authority of the Buy Indian Act between an Indian firm and a CO representing BIA., subject to the construction limitations stated in BIA 1480.401(b).

Day means, unless otherwise specified, a calendar day.

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

Eligible means that the majority owner of an Indian economic enterprise meets the definition of "Indian" and the enterprise meets the definition of "Indian economic enterprise," as set forth below. 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.

Fair market price means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined under FAR 19.202-6(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 require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

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.

Further, such enterprise must meet the following requirements:

- (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 Indian economic enterprise, 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 Tribe means an Indian Tribe, band, nation, or other recognized 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 (Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

Mentor-Protégé Program

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

Protest of representation means an accurate, complete and timely written objection by an interested party to a proposed or actual Bureau award of a contract set-aside under the Act.

Representation means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, in accordance with the provisions in BIA Subpart 1480.8.

Tribal Governing Body means the Federally recognized entity empowered to exercise the governmental authority of a Tribe, defined herein.

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

Subpart BIA 1480.3 Applicability

BIA 1480.301 Scope of part.

Except as provided in BIA 1480.401(b), this part applies to all acquisitions, including simplified acquisitions, made by the BIA under 25 U.S.C. 47, as amended, and to acquisitions made by any other Bureau or Office of the Department of the Interior delegated the authority to make acquisitions under 25 U.S.C. 47, as amended and BIA 1480.401(d).

BIA 1480.302 Restrictions on use of the Buy Indian Act.

(a) The Bureau 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 Bureau programs (or parts thereof) that are within the scope and intent of the Indian Self-Determination and Education Assistance Act. The Bureau must use the Buy Indian Act solely to award procurement contracts to eligible Indian economic enterprises.

(b) The Bureau must not use the authority of this Act for construction contracts, as defined in FAR 36.102, except as allowed by BIA 1480.401(b).

Subpart BIA 1480.4 Policy

BIA 1480.401 General.

(a) Except as provided in paragraph (b) of this section, the Bureau must use the Buy Indian Act to give preference to eligible Indian economic enterprises through set-asides when acquiring supplies and services to meet Bureau needs and requirements.

(b) The Bureau must contract for construction under the provisions of FAR 36 or Public Law 93-638. The only exception to this requirement is construction of Indian reservation roads outside the state of Oklahoma, which is subject to the authority of this part and the Act.

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

(d) The Secretary may delegate authority under the Buy Indian Act to a bureau or office within the Department of the Interior other than the Bureau of Indian Affairs only by a Secretarial Order issued under Part 012, Chapter 1 of the Departmental Manual (012 DM 1).

(e) The Director, Office of Management and Administration, as the head of the contracting activity, is responsible for ensuring that all Indian Affairs acquisitions under the Buy Indian Act comply with the requirements of this part.

BIA 1480.402 Deviations.

(a) A Bureau (BIA) CO may authorize a deviation for an Indian Affairs acquisition when:

(1) In pursuit of a simplified or commercial item acquisition, it is determined after a market survey that there is no reasonable expectation of obtaining offers from two or more responsible, eligible Indian economic enterprises, which are small businesses;

(2) In pursuit of a simplified or commercial item acquisition, only one offer is received from a responsible, eligible small business economic enterprise and the price is unreasonable;

(3) In accordance with BIA 1480.504-1(c), there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises at reasonable prices; or

(4) A Tribe requests and adequately justifies a deviation for work on or near its own Indian land through a tribal resolution from its governing body or bodies.

(b) The Chief of the Contracting Office may authorize a deviation when:

(1) All otherwise acceptable offers received from eligible Indian economic enterprises are unreasonable;

(2) Only one offer is received from an eligible Indian Economic Enterprise and the CO determines the price to be unreasonable; or

(3) No responsive offers have been received from eligible Indian economic enterprises.

(c) The Assistant Secretary-Indian Affairs or the Director of the Bureau of Indian Affairs may authorize deviations from the requirements of this part when the action is in the best interests of the Government. The appropriate Regional Office Director must submit a CO's written request for deviation prior to the completion of the procurement action to the Bureau central office for review. The Bureau central office will process the request for approval.

Subpart BIA 1480.5 Procedures

BIA 1480.501 General.

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

BIA 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.

BIA 1480.503 Commercial item or simplified acquisitions.

(a) Subject to the limitations on construction in BIA 1480.401(b), each acquisition of supplies and services that is subject to commercial item or simplified acquisition procedures under FAR Parts 12 or 13 and DIAR 1413 must be set aside exclusively for eligible Indian economic enterprises that are also small business concerns under the criteria and size standards of 13 CFR 121. The Bureau will use Indian small business economic enterprise commercial item(s) or simplified acquisition set-asides to accomplish this preference action.

(b) Each written solicitation of offers under an Indian small business economic enterprise commercial item or simplified acquisition set-aside must contain the provision at BIA 1452.280-1, Notice of Indian small business economic enterprise commercial item or simplified acquisition set-aside. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

(c) If the CO determines 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, eligible Indian economic enterprises which are small business concerns (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.003), then the CO must proceed with an unrestricted small business set-aside as prescribed in FAR 19.502-2.

(d) If the CO proceeds with an Indian small business economic enterprise 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. However, if the CO does not receive a reasonably

priced offer from such an enterprise, the CO must cancel the set-aside and compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502-2.

(e) When proceeding under the circumstances in BIA 1480.402(b)(2) or (b)(3), the CO must ascertain the availability of small business suppliers by telephone or other means.

(f) If the purchase is to proceed in accordance with BIA 1480.402(b)(2) or (b)(3), the CO must document the reason(s) for such purchase in the file.

(g) 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.

(h) Clauses and Provisions.

(1) Insert the provision at BIA 1452.280-4, Indian economic enterprise representation, in each solicitation of offers or requests for quotations that is set-aside for Indian enterprises.

(2) Insert the clause at BIA 1452.280-3, Subcontracting Limitations, in purchase orders and contracts for services, supplies or construction authorized by BIA 1480.01(b) and awarded to eligible Indian economic enterprises.

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

BIA 1480.504 Other than full and open competition.

BIA 1480.504-1 Set-asides for eligible 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 eligible Indian economic enterprises, 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 enterprises and award will be made at a reasonable price except when:

(1) The acquisition is for construction, other than construction permitted by BIA 1480.401(b);

(2) An exception from use of the Buy Indian Act has been obtained in accordance with BIA 1480.402; or

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

(b) When using an Indian economic enterprise set-aside under 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 Indian economic enterprise 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, contained in the Appendix to this part, 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 eligible Indian economic enterprises; the anticipated cost to the Bureau of the required supplies or services is determined to be reasonable; and the information in the "Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from

Indian Industry” in the Appendix to this part 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 Indian Economic Enterprise. 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 BIA 1480.602.

(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.

(9) When acquiring services to be performed in whole or in part on Indian land, give written notice to the governing body or bodies of the applicable Indian Tribe or Tribes. The notice must be provided simultaneously with publication of the synopsis required by subparagraph (b)(1) of this section with information to the Tribe(s) of the Bureau's intent to contract under the authority of the Buy Indian Act. If the Tribe does not oppose the set-aside intention, or advise the Bureau of its intent to contract for the program within 15 calendar days from the date of publication in the GPE of the solicitation notice, the Bureau will proceed with the solicitation in accordance with FAR 5.2.

(c) When the CO determines that there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises and award cannot be made at a reasonable and fair market price, the CO must:

(1) Provide a written determination stating there is no reasonable expectation of receiving offers from two or more responsible, eligible Indian economic enterprises and that award cannot be made at a reasonable and fair market price.

(2) Place written documentation of the basis for the determination in the contract file; and

(3) Proceed with the acquisition using the order of precedence established in FAR 8.001.

(d) This paragraph applies to solicitations that are not restricted to participation of Indian economic enterprises. If an interested Indian economic enterprise 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:

(1) Will not give preference under the Buy Indian Act to the Indian economic enterprise, and

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

(e) When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable and fair market price in response to an acquisition set-aside under paragraph (a) of this subsection, the CO must:

(1) Make an award to that enterprise;

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

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

(f) This paragraph applies to bids made in response to an acquisition set-aside under BIA 1480.504-1(a). The CCO must cancel the solicitation and reject all offers in writing under any of the following circumstances:

(1) All otherwise acceptable offers received from eligible Indian economic enterprises are unreasonable;

(2) Only one offer is received from an eligible Indian economic enterprise and the CO determines the price to be unreasonable; or

(3) No responsive offers have been received from eligible Indian economic enterprises.

(g) When the CCO cancels a solicitation under paragraph (f) of this section, the office must complete the acquisition following the procedures in this paragraph. The

contracting office must notify offerors of their rejection under FAR 14.404-3 and must then complete the acquisition by either:

(1) Using negotiation provided the CO has obtained approval as required by FAR 14.404-1; or

(2) 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.

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

(i) Provisions and Clauses.

(1) Insert the provision at BIA 1452.280-4, Indian Economic Enterprise Representation, in accordance with BIA 1480.801(a).

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

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

(4) Insert the clause at BIA 1452.280-2, Notice of Indian economic enterprise set-aside, in accordance with BIA 1480.504-1(b)(2).

(5) Insert the clause at BIA 1452.280-3, Subcontracting Limitations, as prescribed in BIA 1480.602(b);

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

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

(a) Other circumstances may exist where the use of an Indian Economic Enterprise set-aside under BIA 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 under other than full and open competition 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 under this section (other than the Class Justification in the Appendix to this part) must be approved in accordance with BIA 1406. These approvals are required for a proposed contract, or for a modification increasing the scope of work of an existing contract.

BIA 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. The Bureau must refer recommendations for debarment or suspension to the Director, Office of Acquisition and Property Management (PAM), Department of the Interior, under DIAR 1409.406 and 1409.407 through the Division of Acquisition and Property Management (central office) and concurred in by the Head of the Contracting Activity.

Subpart BIA 1480.6 Contract Requirements

BIA 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 BIA 1452.280-3, Subcontracting Limitations, in all purchase orders and contracts for services, supplies, or construction authorized by BIA 1480.401(b) and awarded to eligible Indian economic enterprises under this part.

BIA 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 under FAR Subpart 28.2 or under section 11 of Public Law 98-449, the Indian Financing Act Amendment 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 BIA 1480.7 Contract Administration

BIA 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 Part 42 of the FAR regarding all contract requirements. The CO must ensure contractor compliance with the following provisions of this part:

(a) Maintenance of the minimum 51 percent Indian ownership, daily business management, and, as applicable, majority earnings criteria of subparagraph (b)(1) of the clause at BIA 1452.280-2;

(b) Maintenance of the subcontracting limitations required by the clause at BIA 1452.280-3 when acquiring services, supplies, and construction authorized under BIA 1480.401(b); and

(c) Enforcement of Indian preference requirements contained in DIAR 1426.7004, as prescribed by BIA 1480.601.

Subpart BIA 1480.8 Representation by an Indian Economic Enterprise Offeror
BIA 1480.801 General.

(a) The CO must insert the provision at BIA 1452.280-4, Indian economic enterprise representation, in all solicitations regardless of dollar value, set aside for Indian economic enterprises under this part.

(b) To be considered for an award under an acquisition set-aside under BIA 1480.503 or BIA 1480.504-1, an offeror must:

(1) Represent that it meets the definitions of "Indian economic enterprise" (as defined in BIA 1480.201) and only in response to a specific solicitation set-aside under the Act and this part.

(c) The enterprise must meet the requirements of paragraph (b) of this section:

(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) The Bureau 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 eligible Indian economic enterprise unless another interested party challenges the economic enterprise representation or the CO has reason to question the representation. Challenges of and questions concerning a specific Representation Declaration must be referred to the CO or CCO in accordance with BIA Subpart 1480.9.

(g) The CO must maintain files compiled from submissions by eligible Indian economic enterprises of the Solicitation Mailing List Application (SF 129); the SF 254 and SF 255, as applicable; and the Indian economic enterprise representation submitted.

BIA 1480.802 Representation provision.

(a) Bureau contracting offices must provide copies of the Indian economic enterprise representation to any interested parties.

(b) The submission of a Solicitation Mailing List Application by an enterprise does not remove the requirement for it to provide representation as an Indian economic enterprise also 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 under the Act authority are subject to the penalties of 31 U.S.C. 3729 to 3731 and 18 U.S.C. 287.

BIA 1480.803 Declaration process.

(a) Only eligible Indian economic enterprises may participate in acquisitions set-aside under the Act and this part. Bureau procedure supports responsible Indian economic enterprises and seeks to prevent circumvention or abuse of the Buy Indian Act.

(b) Eligibility is based on information furnished by the economic enterprise to a Bureau CO on the Indian economic enterprise representation provision at BIA 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 Indian economic enterprise's representation.

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

Subpart BIA 1480.9 Protests of Representation Declaration

BIA 1480.901 General.

(a) The contracting office can accept an offeror's written representation declaration of being an eligible Indian economic enterprise (as defined in BIA 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 declaration status of an offeror or contractor by filing a written protest to the applicable CO in accordance with the procedures in BIA 1480.902.

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

BIA 1480.902 Receipt of protest.

(a) An interested party must file any protests against the Representation Declaration of an offeror with the local CO.

(b) The protest must be in writing and must contain the basis for the protest with accurate, complete, specific and detailed evidence. The evidence must support the allegation that the offeror is neither eligible nor does not meet both the definitions of "Indian" and of "Indian economic enterprise" cited in BIA 1480.201. The CO will dismiss any protest that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a protest must be received by the CO not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

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

(2) A protest 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 protest 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 protest, the CO must:

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

(2) Furnish to the economic enterprise (whose representation declaration 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 protest and the Bureau's request for detailed information, the challenged offeror must file with the CO a completed statement answering the allegations in the protest, 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, the Bureau may assume that the offeror does not intend to challenge the protest and the Bureau must not award to the challenged offeror.

(f) Within 10 days after receiving a protest, the challenged offeror's response and other pertinent information, the CO must determine the representation declaration status of the challenged business concern and notify the protestor and the challenged offeror of the decision by certified mail, return receipt requested, and make known the option to appeal the determination to the PAM.

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

BIA 1480.903 Award in the face of protest.

(a) Award of a contract in the face of protest may be made on the basis of the written determination by the CO. This determination is final for the Bureau unless it is appealed to the PAM, and the CO is notified of the appeal before award. 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 protest 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 protest, 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 protest on representation declaration 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 protest on representation declaration 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.

BIA 1480.904 Protest not timely.

If a CO receives an untimely filed GAO protest of a representation declaration, the CO must notify the protestor that the protest 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 declaration status of an Indian economic enterprise.