

**PART 1452— SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**~~1452.226-70 Indian Preference.~~**

~~As prescribed in 1426.7003(a), insert the following clause in solicitations issued and contracts awarded by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Public Law 93-638 (25 U.S.C. 450 et seq. and 25 U.S.C. 455 et seq., respectively); a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the~~

~~benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.~~

~~Indian Preference—Department of the Interior (APR 1984)~~

~~(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.~~

~~(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on the job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.~~

~~(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."~~

~~(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.~~

~~(e) As used in this clause:~~

~~(1) "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 within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.~~

~~(2) "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); and~~

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~~(3) “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.~~

~~(4) “Indian Tribe” means an Indian Tribe, 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. 668; 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.~~

~~(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.~~

~~(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.~~

~~(End of clause)~~

~~1452.226-71—Indian Preference Program.~~

~~As prescribed in 1426.7003(b), insert the following clause in all solicitations and contracts awarded by the contracting activity that may exceed \$50,000, contain the clause at 1452.226-70, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity not exceeding \$50,000 that contain the clause at 1452.226-70 and which, in the opinion of the Contracting Officer, offer substantial opportunities for Indian employment, training, and subcontracting.~~

~~Indian Preference Program — Department of the Interior (APR 1984)~~

~~(a) In addition to the requirements of the clause of this contract entitled “Indian Preference — Department of the Interior,” the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall—~~

~~(1) Designate a liaison officer who will:~~

~~(i) Maintain liaison with the Government and Tribe(s) on Indian preference matters;~~

~~(ii) Supervise compliance with the provisions of this clause; and~~

~~(iii) Administer the Contractor's Indian preference program.~~

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~~(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.~~

~~(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.~~

~~(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including—~~

~~(i) A clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms;~~

~~(ii) A statement indicating the preference will be given to Indian organizations and Indian owned economic enterprises in accordance with Section 7(b) of Public Law 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b));~~

~~(iii) Definitions for the terms "Indian organization" and "Indian owned economic enterprise" as prescribed under the "Indian Preference—Department of the Interior" clause of this contract;~~

~~(iv) A representation to be completed by the bidder or offeror that it is an Indian organization or Indian owned economic enterprise; and~~

~~(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-~~

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~~owned economic enterprises, no responsible bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of this contract. If one or more responsible bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.~~

~~(5) Maintain written records under this contract which indicate:~~

~~(i) The names and addresses of all Indians seeking employment for each employment position available under this contract;~~

~~(ii) The number and types of positions filled by Indians and non-Indians, and the name, address and position of each Indian employed under this contract;~~

~~(iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;~~

~~(iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;~~

~~(v) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and~~

~~(vi) The names and addresses of all Indian organizations and Indian-owned economic enterprises contacted, and receiving subcontract awards under this contract.~~

~~(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises and all other firms.~~

~~(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.~~

~~(b) For purpose of this clause, the following definitions of terms shall apply:~~

~~(1) The terms "Indian," "Indian Tribe," "Indian Organization, and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."~~

~~(2) “Indian reservation” includes Indian reservations, public domain Indian allotments, former Indian reservations on 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.).~~

~~(3) “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 be expected to commute to and from in the course of a work day.~~

~~(e) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.~~

~~(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.~~

~~(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.~~

~~(End of clause)~~

## Subpart 1452.2 Texts of Provisions and Clauses

### 1452.280-1 Notice of Indian Small Business Economic Enterprise set-aside.

As prescribed in 1480.503~~(d)(3e)(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.~~, general services, A-E services, or construction. 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 (~~JUL 2013~~OCT 2019)

Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian Economic Enterprises (Subpart 1480.8) that are also small business concerns. -Any acquisition resulting from this solicitation will be from such a concern. -Offers received from enterprises that are not both Indian Economic Enterprises and small business concerns will not be considered and will be rejected.

(End of provision)

**1452.280-2 Notice of Indian Economic Enterprise set-aside.**

—As prescribed in 1480.503~~(d)(4)~~ and 1480.504-1~~(f)(5)(e)(2)~~, insert the following clause in solicitations and contracts involving Indian Economic Enterprise set-asides.- If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

Notice of Indian Economic Enterprise Set-aside (~~JUL 2013~~OCT 2019)

—(a) -Definitions as used in this clause.

~~Indian means a person who is a member of an Indian Tribe or “Native” as defined in the Alaska Native Claims Settlement Act (PL~~ANC~~SA) means Public Law 92-203; (December 18, 1971), 85 Stat. 688; , codified at 43 U.S.C. 1601; -1629h.~~

~~Alaska Native Corporation means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Group Corporation as those terms are defined by ANCSA.~~

~~Indian means a person who is an enrolled member of a Federally Recognized Indian Tribe.~~

~~Indian Economic Enterprise means any business activity owned by one or more Indians or, Federally Recognized Indian Tribes, or Alaska Native Corporations that is established for the purpose of profit, provided that:~~

(i) ~~the~~The combined Indian ~~or, Federally Recognized Indian Tribe, or Alaska Native Corporation~~ ownership of the enterprise shall constitute not less than 51 percent ~~of the enterprise;~~;

(ii) ~~the~~The Indians ~~or, Federally Recognized Indian Tribes, or Alaska Native Corporations~~ shall, together, receive at least ~~a majority~~51 percent of the earnings from the contract; and

(iii) ~~the~~The management and daily business operations of an Indian Economic Enterprise must be controlled by one or more individuals who are ~~members of an Indian Tribe- 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:~~

—The enterprise must meet the requirements of (i) through (iii) 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.

*Federally Recognized Indian Tribe* means (a) an Indian Tribe, band, nation, or other recognized group or community ~~which that~~ is found on the List of Federally Recognized Tribes; or (b) any Alaska Native village or Native group, as those terms are defined in ANCSA, and that are listed on the List of Federally Recognized Tribes.

*List of Federally Recognized Tribes* means a tribal entity recognized ~~as by and~~ eligible for the special programs ~~and services provided by the United States to Indians because from the~~ Bureau of Indian Affairs by virtue of their status as Indians, including any Alaska Native village, regional or village corporation established under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688; 43 Indian Tribes. A full list of these entities are published annually in the Federal Register pursuant to Section 104 of Pub. L. 103-454, codified at 25 U.S.C. 1604)-5131.

*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.

- \_\_\_\_\_ (b) -General.

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

\_\_\_\_\_ (2) ~~BIAThe Contracting Officer (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 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 Program" 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) ~~(2)~~ Qualifications of the key personnel (if any) that will be assigned to the contract; ~~and~~

~~\_\_\_\_\_ (7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation.~~

\_\_\_\_\_



(d) Required Assurance. -The offeror must provide written assurance to the ~~Indian Affairs~~CO that ~~it they are and~~ will ~~comply, or has, complied fully~~remain in compliance with the requirements of this clause.- It must do this before ~~Indian Affairs~~the CO awards the Buy Indian contract, and upon successful and timely completion of the contract, but before the ~~Indian Affairs Contracting Officer (CO)~~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 ~~Indian Affairs~~the CO to find an offer non-responsive and ~~to~~ 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 ~~E~~economic ~~E~~enterprise ineligible for contracts awarded under the Buy Indian Act.

——(2)- If a contractor no longer meets the definition of an Indian ~~E~~economic ~~E~~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) Indian Affairs may consider termination for default if it is in the best interest of the government.~~

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

(End of clause)

### 1452.280-3 ~~Subcontracting~~ Indian Economic Enterprise subcontracting limitations.

——A contractor shall not subcontract more than the subcontract limitations specified under FAR 52.219-14 to other than responsible Indian ~~E~~economic ~~E~~enterprises ~~more than 50 percent of the subcontracted work~~ when ~~the prime contract was awarded~~receiving an award under the Buy Indian Act.- For this purpose, work to be performed does not include the provision of materials, supplies, or equipment. -As prescribed in 1480.~~601(b)~~503(e)(3), insert the following clause in each written solicitation or contract to provide supplies, general services, A-E services, or ~~covered~~ construction:

#### Indian Economic Enterprise Subcontracting Limitations (~~JUL 2013~~OCT 2019)

——(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, materials 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 or not it is organized for profit or not, and any foreign business entity, i.e., any entity located outside in the United States and/or 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. It 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 in allocating what percentage of work to subcontract. ~~Of The contractor shall not subcontract work exceeding the work subcontracted, no more than 50 percent may be subcontracted~~ subcontract limitations in FAR 52.219-14 to a concern other than a responsible Indian ~~economic enterprise~~ Economic Enterprise.

~~(e) Indian Preference. Regardless of the contract type for services, supplies, or covered construction, 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.~~

———(c) Any work that an IEE subcontractor does not perform with its own employees shall be considered subcontracted work for the purpose of calculating percentages of subcontract work in accordance with FAR 52.219-14 Limitations on Subcontracting.

(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, 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, general services, A-E services, and construction awarded under this contract.

~~(End of clause)~~

#### 1452.280-4 Indian Economic Enterprise representation.

———As prescribed in 1480.801(a)503(e)(4), insert the following provision in each written solicitation for supplies, services, A-E, or ~~covered~~ construction:

Indian Economic Enterprise Representation (~~JUL 2013~~OCT 2019)

(a) The offeror represents as part of its offer that it [ ] does [ ] does not meet the definition of Indian ~~economic enterprise~~Economic Enterprise (IEE) as defined in DIAR 1480.201-  
~~End and that it intends to meet the definition of an IEE throughout the performance of the contract. The offeror must notify the contracting officer immediately in writing if there is any ownership change affecting compliance with this representation.~~

(b) The offeror certifies that the ownership requirements defined by DIAR 1480.201 are met through the following Federally Recognized Indian Tribes or Alaska Native Corporations:

[insert name of the Federally Recognized Indian Tribe or Alaska Native Corporation]

If ownership of the IEE is comprised of more than one owner please insert “multiple” and list owners as an attachment to the offeror’s proposal.

(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.

(End of provision)}