

48 C.F.R. § ____ .101 Buy Indian Goods and Services regulation.

- (a) This chapter prescribes the National Indian Gaming Commission's (Commission) policies and procedures for the procurement of supplies and services from Indian economic enterprises, also known as the Buy Indian Goods and Services (BIGS) regulation.
- (b) This part supplements Federal Acquisition Regulation (FAR) requirements to satisfy the Commission's acquisition needs. All acquisitions made in accordance with this chapter, including simplified or commercial item acquisitions, must conform to all applicable requirements of the FAR, as well as internal policies, procedures or instructions issued by the Commission. The provisions of the FAR take precedence in all instances where there may be a conflict or discrepancy.

48 C.F.R. § ____ .102 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.

- BIGS contract means any contract involving activities covered by the Commission's Buy Indian Goods and Services regulation between an Indian economic enterprise and a Contracting Officer representing the Commission.
- 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 this chapter.
- 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.
- Day means a calendar day.
- Deviation means an exception to the requirement for use of this chapter in fulfilling an acquisition requirement of Commission.
- 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.
- 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:

- at the time an offer is made in response to a written solicitation;
 - at the time of contract award; and
 - during the full term of the contract.
- 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 any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as:
 - eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and
 - possessing powers of self-government.
 - Interested party means an IEE that is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual Commission award of a particular contract set-aside pursuant to this chapter.
 - 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 this chapter, in accordance with the procedures in section ____ .114 of this chapter.
 - Reservation means Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma.
 - 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.

48 C.F.R. § ____ .103 Authority to give preference to Indian economic enterprises.

- (a) The Commission exercises the authority in this chapter in accordance with the Indian Gaming Regulatory Act (25 U.S.C. 2706(b)(7)) to support of the Commission's mission and program activities and as a means of promoting tribal economic development, tribal self-sufficiency through increased employment opportunities, and strong tribal governments.
- (b) The Commission must use the negotiation authority under this chapter to give preference to Indians whenever the use of this authority is authorized and practicable. The Commission may use this chapter to give preference to IEEs through set-asides when acquiring supplies and services to meet Commission needs and requirements. The Commission must contract for construction in accordance with FAR Part 36.

(c) This chapter applies to all acquisitions, including simplified acquisitions, made by the Commission.

48 C.F.R. § ____ .104 Deviations.

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

For a proposed contract action ...	The following official may authorize a deviation ...
Exceeding \$25,000 but not exceeding \$11.5 million	The Commission Chief of Staff.

(b) Deviations may be authorized prior to issuing the solicitation when the Commission 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	The Commission 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	The Commission 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 the Commission 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	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

13		(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	<p>The Indian tribe justifies a deviation under subsection _____.107(b)(2)</p> <p>(1) All otherwise acceptable offers received from IEEs are unreasonable;</p> <p>(2) Only one offer is received from an IEE and the CO determines the price to be unreasonable; or</p> <p>(3) No responsive offers have been received from IEEs.</p>	<p>The official must:</p> <p>(1) cancel the solicitation;</p> <p>(2) reject all offers in writing in accordance with FAR 14.404-3; and</p> <p>(3) complete the acquisition by either:</p> <p>(i) using negotiation, provided the CO has obtained the approval required by FAR 14.404-1; or</p> <p>(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.</p>

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

48 C.F.R. § _____.105 Order of precedence for use of Government supply sources.

Acquisitions made under an authorized deviation from the Commission’s BIGS regulation must be made in conformance with the order of precedence required by FAR 8.002.

48 C.F.R. § _____.106 Commercial item or simplified acquisitions.

- (a) Each acquisition of supplies and services that is subject to commercial item or simplified acquisition procedures in accordance with FAR Parts 12 or 13 must be set aside exclusively for ISBEEs. The Commission 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) In accordance with subsection _____.106(a) of this chapter, 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

Under the National Indian Gaming Commission's Buy Indian Goods and Services regulation, offers are solicited only from Indian economic enterprises (section _____.113) 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)

- (2) In accordance with subsection _____.107(a) of this chapter, 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

(a) Definitions as used in this clause.

- Indian means a person who is a member of an Indian tribe.
- Indian Economic Enterprise means any business activity owned by one or more Indians or Indian tribes that is established for the purpose of profit, provided that:
 - (i) the combined Indian or Indian tribe ownership shall constitute not less than 51 percent of the enterprise;
 - (ii) the Indians or Indian tribes shall, together, receive at least a majority of the earnings from the contract; and
 - (iii) 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. 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 tribe means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as: eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and possessing powers of self-government.
- Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the National Indian Gaming Commission's (Commission) Buy Indian Goods and Services (BIGS) regulation.

- (b) General.
- (1) Under the Commission's BIGS regulation, offers are solicited only from Indian economic enterprises.
 - (2) The Commission 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 subsection ____ .110(b) of this chapter;
 - (2) a description of the source of human resources for the work to be performed by the offeror;
 - (3) 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;
 - (4) qualifications of the key personnel (if any) that will be assigned to the contract; and
 - (5) 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 Commission that it will comply, or has, complied fully with the requirements of this clause. It must do this before the Commission awards the contract under this chapter, and upon successful and timely completion of the contract, but before the 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 Commission to find an offer non-responsive and to reject it.
- (f) 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: (i) the economic enterprise may be declared ineligible for future contract awards under this part; and (ii) the Commission may consider termination for default if it is in the best interest of the government.

(End of clause)

- (3) In accordance with ____ .110(b) of this chapter, insert the following clause in each written solicitation or contract to provide supplies or services:

SUBCONTRACTING LIMITATIONS

- (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. It 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. 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 work subcontracted, no more than 50 percent may be subcontracted to a concern other than a responsible Indian economic enterprise.
- (c) Indian Preference. Regardless of the contract type for services or supplies, the contractor agrees to give preference to Indian organizations and Indian owned economic enterprises in awarding subcontracts under this contract in accordance with the National Indian Gaming Commission's (Commission) Buy Indian Goods and Services regulation.
- (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 Commission, 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 and services awarded under this contract.

(End of clause)

- (4) In accordance with _____.113(a) of this chapter, insert the following provision in each written solicitation for supplies or services:

INDIAN ECONOMIC ENTERPRISE REPRESENTATION

The offeror represents as part of its offer that it [] does [] does not meet the definition of Indian economic enterprise as defined in the National Indian Gaming Commission's Buy Indian Goods and Services regulation.

[End of provision]

- (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) a deviation has been obtained in accordance with section _____.104 of this chapter; or
 - (2) use of other than full and open competition has been justified and approved in accordance with section _____.108 of this chapter.
- (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 the Commission’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 Governmentwide point of entry (GPE).
- (1) If the tribe does not oppose the set-aside intention or advise the Commission by the established deadline of its intent to contract, the Commission will proceed with the solicitation in accordance with FAR 5.2.
 - (2) If the tribe advises the Commission 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.
- (c) When using an IEE set-aside in accordance with this section, the CO must do the following:
- (1) Synopsise the acquisition in the 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 the Commission 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 awards made under this chapter; and
 - (ii) determine whether the work will be performed by the labor force required under section _____.110 of this chapter.
 - (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.

- (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 prepare a negotiation memorandum in accordance with FAR 15.406–3.
 - (8) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36.
- (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 this chapter 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) In accordance with subsection ____ .107(a) of this chapter, 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

(a) Definitions as used in this clause.

- Indian means a person who is a member of an Indian tribe.
- Indian Economic Enterprise means any business activity owned by one or more Indians or Indian tribes that is established for the purpose of profit, provided that:
 - (i) the combined Indian or Indian tribe ownership shall constitute not less than 51 percent of the enterprise;
 - (ii) the Indians or Indian tribes shall, together, receive at least a majority of the earnings from the contract; and
 - (iii) 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. 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 tribe means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as: eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and possessing powers of self-government.
 - Representation means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the National Indian Gaming Commission's (Commission) Buy Indian Goods and Services (BIGS) regulation.
- (b) General.
 - (1) Under the Commission's BIGS regulation, offers are solicited only from Indian economic enterprises.
 - (2) The Commission 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 subsection ____ .110(b) of this chapter;
 - (2) a description of the source of human resources for the work to be performed by the offeror;
 - (3) 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;
 - (4) qualifications of the key personnel (if any) that will be assigned to the contract; and
 - (5) 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 Commission that it will comply, or has, complied fully with the requirements of this clause. It must do this before the Commission awards the contract under this part, and upon successful and timely completion of the contract, but before the 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 Commission to find an offer non-responsive and to reject it.
 - (f) 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: (i) the economic enterprise may be declared ineligible for future contract awards under this

part; and (ii) the Commission may consider termination for default if it is in the best interest of the government.

(End of clause)

- (2) In accordance with subsection _____.110(b) of this chapter, insert the following clause in each written solicitation or contract to provide supplies or services:

SUBCONTRACTING LIMITATIONS

(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. It 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. 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 work subcontracted, no more than 50 percent may be subcontracted to a concern other than a responsible Indian economic enterprise.

(c) Indian Preference. Regardless of the contract type for services or supplies, the contractor agrees to give preference to Indian organizations and Indian owned economic enterprises in awarding subcontracts under this contract in accordance with the National Indian Gaming Commission's (Commission) Buy Indian Goods and Services regulation.

(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 Commission, 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 and services awarded under this contract.

(End of clause)

- (3) In accordance with subsection _____.113(a) of this chapter, insert the following provision in each written solicitation for supplies or services:

INDIAN ECONOMIC ENTERPRISE REPRESENTATION

The offeror represents as part of its offer that it [] does [] does not meet the definition of Indian economic enterprise as defined in the National Indian Gaming Commission's Buy Indian Goods and Services regulation.

[End of provision]

48 C.F.R. § _____.108 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 subsection _____.103(b) of this part and FAR 6.302–5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 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.
- (c) Justifications for use of other than full and open competition in accordance with this section must be approved by the Commission's Chief of Staff. These approvals are required for a proposed contract, or for an out of scope modification to an existing contract.

48 C.F.R. § _____.109 Debarment and suspension.

Violation of the Commission's BIGS regulation by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406 and 9.407. The Commission must refer recommendations for debarment or suspension to the Commission's Chief of Staff, with the concurrence of the head of the contracting activity.

48 C.F.R. § _____.110 Subcontracting limitations.

- (a) In contracts awarded under 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 on SUBCONTRACTING LIMITATIONS, in all purchase orders and contracts for services or supplies and awarded to IEEs pursuant this chapter.

48 C.F.R. § _____.111 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. The CO may accept alternative forms of security in lieu of performance and payment bonds according to FAR 28.102, if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

48 C.F.R. § ____ .112 Contract administration requirements.

The CO and the CO's representative 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 ____ .102; and
- (b) maintenance of the subcontracting limitations required by the clause on SUBCONTRACTING LIMITATIONS when acquiring services and supplies.

48 C.F.R. § ____ .113 Indian Economic Enterprise solicitations.

- (a) The CO must insert the provision on INDIAN ECONOMIC ENTERPRISE REPRESENTATION in all solicitations regardless of dollar value that are set aside for IEEs in accordance with this chapter.
- (b) To be considered for an award under sections ____ .106 or ____ .107, an offeror must represent that it meets the definition of "Indian economic enterprise" in response to a specific solicitation set-aside in accordance with this chapter.
- (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) the Commission 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 in accordance with section ____ .117 of this chapter.
- (g) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 does not render an IEE ineligible for contracts awarded under this chapter.

48 C.F.R. § ____ .114 Representation provision.

- (a) The Commission's contracting officers 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 this chapter 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.

48 C.F.R. § ____ .115 Representation process.

- (a) Only IEEs may participate in acquisitions set aside in accordance with this chapter. Commission procedure supports responsible IEEs and seeks to prevent circumvention or abuse of the authority under this chapter.
- (b) Eligibility is based on information furnished by the enterprise to a Commission CO in the IEE representation in response to a specific solicitation under this chapter.
- (c) The CO may ask the appropriate Regional Solicitor, Office of the Solicitor, Department of Interior, 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.

48 C.F.R. § ____ .116 Challenges to Indian Economic Enterprise representation.

- (a) The CO can accept an offeror's written representation of being an IEE (as defined in ____ .102) only when it is submitted with an offer in response to a solicitation under this chapter. 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 section ____ .117.
- (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 Commission Chief of Staff.

48 C.F.R. § ____ .117 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 subsection ____ .102 of this chapter. 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 the Commission; 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 three days after receiving a copy of the challenge and the Commission'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 three days, or another period of time granted by the CO, the Commission may assume that the offeror does not intend to dispute the challenge and the Commission 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.

48 C.F.R. § ____ .118 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 the Commission 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.

48 C.F.R. § ____ .119 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.

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