

ELIGIBILITY

§ 1000.122 What non-BIA programs are eligible for inclusion in an annual funding agreement?

Programs authorized by sections 403(b)(2) and 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will publish annually a list of these programs in accordance with section 405(c)(4).

§ 1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93-638.

§ 1000.124 What programs are included under Section 403(b)(2) of the Act?

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93-638.

§ 1000.125 What programs are included under Section 403(c)?

Department of the Interior programs of special geographic, historical, or cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in AFAs under section 403(c).

§ 1000.126 What does "special geographic, historical or cultural" mean?

(a) *Geographic* generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country," as defined by 18 U.S.C. 1151. In addition, "geographic" includes:

- (1) Lands of former reservations;
- (2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);
- (3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
- (4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular his-

tory that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

- (1) Sacred and medicinal sites;
- (2) Gathering of medicines or materials such as grasses for basket weaving; or
- (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

§ 1000.127 Under Section 403(b)(2), when must programs be awarded non-competitively?

Programs eligible for contracts under Pub. L. 93-638 must be awarded non-competitively.

§ 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

§ 1000.129 Are there any programs that may not be included in an AFA?

Yes, section 403(k) of the Act excludes from the program:

- (a) Inherently Federal functions; and
- (b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium, except as provided in §1000.134.

§ 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?

No, the Act favors the inclusion of a wide range of programs.