

3.6.5-1 Indian Organizations and Indian Owned Economic Enterprise Subcontracting
(February 2003)

(a) This clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause titled, "Small Business and Small Disadvantaged Business Subcontracting Plan."

(b) Definitions.

(1) As used in this clause, "Indian organization" means the governing body of any Indian tribe (as defined by 25 U.S.C. 1452(c)) or entity established or recognized by the governing body for the purposes of 25 U.S.C., chapter 17.

(2) "Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises the (25 U.S.C. 1544) maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contractor may rely on the written representation of the Indian organization or Indian-owned economic enterprise.

(2) If the cost of subcontracting with an Indian organization or Indian-owned economic enterprise exceeds the cost of acquiring the supplies or services from a non-Indian source, the Contractor may request an adjustment to the following: (i) The estimated cost of a cost-type contract; (ii) The target cost of a cost-plus-incentive-fee prime contract; (iii) The target cost and ceiling price of a fixed-price incentive prime contract; or (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be the lesser of--

(i) The difference between the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise and the corresponding estimated cost, target cost or firm-fixed-price which would have been included in a subcontract with the otherwise low, non-Indian offeror; or

(ii) Five percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer shall decide the amount of the adjustment and modify the contract accordingly. The Contracting Officer's decision is final and not subject to the "Contract Disputes" clause of this contract.

(End of clause)

PRESCRIPTION

Use when applicable to contracts that contain the clause "Small Business and Small Disadvantaged Business - Subcontracting Plan."