PART 26—OTHER SOCIOECONOMIC PROGRAMS

NOTE: This part has been created to facilitate promulgation of additional FAR and agency level socioeconomic coverage which properly fall under FAR Subchapter D—Socioeconomic Programs, but neither implements nor supplements existing FAR Parts 19, 20, or 22 through 25.

Subpart 26.1—Indian Incentive Program

26.100   Scope of subpart.
This subpart implements 25 U.S.C. 1544, which provides an incentive to prime contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors.

26.101   Definitions.
As used in this subpart—

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"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 own-ership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

26.102   Policy.
Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

26.103   Procedures.
(a) Contracting officers and prime contractors, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the contracting officer has independent reason to question that status.

(b) In the event of a challenge to the representation of a subcontractor, the contracting officer shall refer the matter to the—

> U.S. Department of the Interior
> Bureau of Indian Affairs (BIA)
> Attn: Chief, Division of Contracting and Grants
>   Administration
> 1849 C Street, NW
> MS-2626-MIB
> Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the contracting officer.

(c) The BIA will acknowledge receipt of the request from the contracting officer within 5 working days. Within 45 additional working days, BIA will advise the contracting officer, in writing, of its determination.

(d) The contracting officer will notify the prime contractor upon receipt of a challenge.

(1) To be considered timely, a challenge shall—

(i) Be in writing;

(ii) Identify the basis for the challenge;

(iii) Provide detailed evidence supporting the claim; and

(iv) Be filed with and received by the contracting officer prior to award of the subcontract in question.

(2) If the notification of a challenge is received by the prime contractor prior to award, it shall withhold award of the subcontract pending the determination by BIA, unless the prime contractor determines, and the contracting officer agrees, that award must be made in order to permit timely performance of the prime contract.

(3) Challenges received after award of the subcontract shall be referred to BIA, but the BIA determination shall have prospective application only.

(e) If the BIA determination is not received within the prescribed time period, the contracting officer and the prime contractor may rely on the representation of the subcontractor.

(f) Subject to the terms and conditions of the contract and the availability of funds, contracting officers shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting officers shall seek funding in accordance with agency procedures.

26.104   Contract clause.

Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226-1.

Subpart 26.2—Disaster or Emergency Assistance Activities

26.200   Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302-5).

26.201   Policy.

(a) When contracting under this subpart for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*).

Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions

26.300   Scope of subpart.

(a) This subpart implements Executive Order 12928 of September 16, 1994, which promotes participation of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

26.301   [Reserved]

26.302   General policy.

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

26.303   Data collection and reporting requirements.

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive order.

26.304   Solicitation provision.

Insert the provision at 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions. For DoD, NASA, and Coast Guard acquisitions, also insert the provision in solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

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