

Appendix T: GSA Fleet and Tribal Organizations

The following HHS policy guidance is provided to clarify matters regarding tribal organizations' use of GSA Fleet vehicles under the Indian Self-Determination and Education Assistance Act (ISDEAA) and/or FAR Part 51:

a. The GSA Order addressing eligibility to use GSA sources of supply, GSA Order ADM 4800.2E, dated January 1, 2000, in paragraph 7.d.(5), Tribes and Tribal Organizations states:

(5) Tribes and Tribal Organizations. As provided in section 102(13) of Pub. L. 103-413 (the Indian Self-Determination Act Amendments of 1994), a tribal organization, when carrying out a contract, grant or cooperative agreement under the Indian Self-Determination and Education Assistance Act, is deemed an executive agency for purposes of subsection 201(a) of the Property Act. (25 U.S.C. § 450j(k)). Additionally, if the self-determination contract contains a provision authorizing interagency motor pool vehicles and related services, as provided in section 103 of the Indian Self-Determination Act Amendments of 1994, the tribe or tribal organization is eligible to use GSA Fleet vehicles and related services, if available. (25 U.S.C. § 450l) (Authorization to use GSA sources of supply under the authority cited in this paragraph does not include purchases for resale unless the contract, grant, cooperative agreement, or funding agreement authorizes such activity. Information on the authority for resale must be provided to GSA, and based on that information, GSA must concur.)

b. Contracts, grants and cooperative agreements under the ISDEAA are agreements entered into between the tribe and the Department of Interior (Dol), typically with the Bureau of Indian Affairs (BIA), or the Department of Health and Human Services (HHS), typically through the Indian health Services (IHS).

c. The term "tribal organization," for purposes of the ISDEAA, controls with respect to any questions that may arise concerning whether a particular entity qualifies to use GSA Fleet motor vehicles under 25 U.S.C. § 450j(l).

d. Thus, whether a particular health organization, an Indian school, an Indian non-profit organization, etc. is authorized to use GSA sources of supply under this authority is contingent upon a determination that the entity is a "tribal organization" as defined in 25 U.S.C. § 450b(l), along with a determination that the tribal organization meets other requirements of the statute -- carrying out a contract, grant, cooperative agreement under

the ISDEAA. This is a determination that is typically made by The department of the Interior (DOI).

2. With respect to the FAR Part 51:

a. "[n]otwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 450f of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes. 25 U.S.C. § 450j(a)(1). Therefore, unless expressly stated, the FAR does not apply to contracts being carried out under the ISDEAA. Rather, FAR Part 51 would be only be applicable to contractors performing contracts outside the ISDEAA, and generally only those that are of a cost-reimbursement nature. Whether your contracts fall under the ISDEAA or are those covered by the FAR is something I suggest speaking with HHS counsel about.