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contracts for sanctioned EU end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary—

(i) In the public interest;

(ii) To avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(iii) Because there would be or are an insufficient number of potential or actual bidders to assure the procurement of services, articles, materials or supplies of requisite quality at competitive prices.

(2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade Representative within 30 days after contract award.

(3) A copy of the notification required in paragraph (c)(2) of this section shall be sent to the United States Trade Representative.

[58 FR 31142, May 28, 1993, as amended at 60 FR 67517, Dec. 29, 1995; 62 FR 64930, Dec. 9, 1997; 63 FR 34076, June 22, 1998]

25.1003 Contract clauses.

Except as provided in 25.1002(b) and (c)—

(a) Insert the clause at 52.225–18, European Union Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than $186,000.

(b) Insert the clause at 52.225–19, European Union Sanction for Services, in solicitations and contracts for—

(1) Services with an estimated acquisition value less than $186,000; and

(2) All services listed in FAR 25.1002(a)(3)(ii).

[60 FR 67517, Dec. 29, 1995, as amended at 63 FR 34076, June 22, 1998]

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Subpart 26.1—Indian Incentive Program

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 56 FR 41737, Aug. 22, 1991, unless otherwise noted.

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 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 which 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 ownership shall constitute not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, 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, which 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.

[56 FR 41737, Aug. 22, 1991, as amended at 61 FR 39210, July 26, 1996]

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.

[61 FR 39211, July 26, 1996]

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.

[56 FR 41737, Aug. 22, 1991, as amended at 57 FR 20377, May 12, 1992; 61 FR 39211, July 26, 1996; 62 FR 40236, July 25, 1997; 64 FR 10532, Mar. 4, 1999]

26.104 Contract clause.

(a) Contracting officers in the Department of Defense shall insert the clause at 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at