

Tribe. The Contracting Officer may require bonds of private business entities that are joint ventures with, or subcontractors of, an Indian Tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian Tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act 25 U.S.C. 450e, which requires that preference be given to Indians in employment, training, and subcontracting. The Contracting Officer shall include the Indian Preference clause specified in 352.270-2 in all Buy Indian solicitations and resultant contracts. The Contracting Officer shall use the Indian Preference Program clause specified in 352.270-3 as prescribed in 370.202(b). The Contracting Officer shall follow all requirements specified in subpart 370.2 which are applicable to a Buy Indian acquisition (e.g., sections 370.204 and 370.205).

(e) *Subcontracting.* A contractor shall not subcontract to other than Indian firms more than 50 percent of the work under a prime contract awarded pursuant to the Buy Indian Act. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* The Contracting Officer shall include a determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a) in all contracts awarded under the Buy Indian Act for over \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian Tribe. The Contracting Officer shall include the wage rate determination in contracts with private business entities, even if they are owned by an Indian Tribe or a member of an Indian Tribe and in connection with joint ventures with, or subcontractors of, an Indian Tribe or a public nonprofit organi-

zation serving as a governmental instrumentality of an Indian Tribe.

#### **370.504 Competition.**

(a) Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian concerns to the maximum extent practicable. When the Contracting Officer determines that competition is not practicable, a JOFOC is required in accordance with 306.303.

(b) The Contracting Officer shall: synopsise and publicize solicitations in FedBizOpps and provide copies of the synopses to the Tribal office of the Indian Tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopses shall state that the acquisitions are restricted to Indian firms under the Buy Indian Act.

#### **370.505 Responsibility determinations.**

(a) The Contracting Officer may award a contract under the Buy Indian Act only if the Contracting Officer determines that the project or function to be contracted is likely to be: satisfactorily performed under that contract; and properly completed or maintained under that contract.

(b) The Contracting Officer shall make the determination specified in paragraph (a) of this section in writing prior to the award of a contract. The determination shall reflect an analysis of the standards set forth in *FAR9.104-1*.

### **Subpart 370.6—Conference Funding and Sponsorship**

#### **370.600 Policy.**

It is HHS policy that the conferences it funds or sponsors shall: be consistent with HHS missions, objectives, and policies; represent an efficient and effective use of taxpayer funds; and be able to withstand public scrutiny.

#### **370.601 Funding and sponsorship.**

Funding a conference through an HHS contract does not automatically imply HHS (OPDIV/STAFFDIV) conference sponsorship, unless the conference is funded entirely by HHS.

Also, HHS staff attendance or participation at a conference does not imply HHS conference sponsorship. Accordingly, for other than conference contracts funded entirely by HHS, prior to a contractor claiming HHS conference sponsorship, the contractor must provide to the Contracting Officer a written request for permission to claim HHS as the conference sponsor—see 370.602. The OPDIV/STAFFDIV head, or designee, shall approve such requests.

**370.602 Contract clause.**

To ensure that a contractor:

(a) Properly requests approval to claim HHS as the conference sponsor, where HHS is not the sole provider of conference funding; and

(b) Includes an appropriate Federal funding disclosure and content disclaimer statement on conference materials, the Contracting Officer shall include the clause in 352.270–7, Conference Sponsorship Request and Conference Materials Disclaimer, in solicitations, contracts, and orders that provide funding, in whole or in part, to support a conference.

**Subpart 370.7—Acquisitions Under the Leadership Act**

**370.700 Scope of subpart.**

This subpart sets forth the acquisition requirements regarding implementation of HIV/AIDS programs under the President’s Emergency Plan for AIDS Relief under the Leadership Act of 2003, and under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Emergency Plan reauthorization legislation), which was signed by the President on July 30, 2008.

**370.701 Contract clause.**

The Contracting Officer shall insert the clause in 352.270–8, Prostitution and

Related Activities, in solicitations, contracts, and orders, and in existing contracts and orders (whenever they are modified to extend the period of performance or add funds, including any options that may be exercised): in connection with the implementation of HIV/AIDS programs under the President’s Emergency Plan for AIDS Relief; or where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003. (*Note: See 370.702 and 352.270–9 for the “Non-discrimination for Conscience” provision that must also be included in applicable solicitations.*) In resolving any issues/complaints that offerors/contractors may raise about meeting the requirements specified in the clause, the Contracting Officer shall consult with the Office of Global Health Affairs, Office of the General Counsel, the Project Officer, and other HHS officials, as appropriate.

**370.702 Solicitation provision.**

The Contracting Officer shall insert the provision in 352.270–9, Non-discrimination for Conscience, in solicitations valued at more than the micro-purchase threshold: in connection with the implementation of HIV/AIDS programs under the President’s Emergency Plan for AIDS Relief; or where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003. (*Note: See 370.701 and 352.270–8 for the “Prostitution and Related Activities” clause that must also be included in applicable solicitations, contracts, and orders.*) In resolving any issues/complaints that offerors may raise about meeting the requirements specified in the provision, the Contracting Officer shall consult with the Office of Global Health Affairs, Office of the General Counsel, the Project Officer, and other HHS officials, as appropriate.