

cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in AFAs under section 403(c).

**§ 1000.126 What does “special geographic, historical or cultural” mean?**

(a) *Geographic* generally refers to all lands presently “on or near” an Indian reservation, and all other lands within “Indian country,” as defined by 18 U.S.C. 1151. In addition, “geographic” includes:

- (1) Lands of former reservations;
- (2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);
- (3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
- (4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

- (1) Sacred and medicinal sites;
- (2) Gathering of medicines or materials such as grasses for basket weaving; or
- (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

**§ 1000.127 Under Section 403(b)(2), when must programs be awarded non-competitively?**

Programs eligible for contracts under Pub. L. 93-638 must be awarded non-competitively.

**§ 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?**

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered

by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

**§ 1000.129 Are there any programs that may not be included in an AFA?**

Yes, section 403(k) of the Act excludes from the program:

- (a) Inherently Federal functions; and
- (b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium, except as provided in § 1000.134.

**§ 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?**

No, the Act favors the inclusion of a wide range of programs.

**§ 1000.131 Will Tribes/Consortia participate in the Secretary’s determination of what is to be included on the annual list of available programs?**

Yes, the Secretary must consult each year with Tribes/Consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in AFAs.

**§ 1000.132 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?**

(a) On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating self-governance Tribe/Consortium the previous year’s list of available programs in accordance with section 405(c)(4) of the Act. The list must include:

- (1) All of the Secretary’s proposed additions and revisions for the coming year with an explanation; and
- (2) Programmatic targets and an initial point of contact for each bureau.

(b) The Tribes/Consortia receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary’s proposed revisions and to provide additions and revisions of their own for the Secretary to consider.

(c) The Secretary will carefully consider these comments before publishing