

clause. The COTR shall request the responsible organization to review, and determine the adequacy of, the contractor's plan, and respond to the COTR, in writing, within 10 working days of receiving the request from the COTR.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b), requires:

“Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).”

370.202 Applicability.

The Indian Preference clause set forth in 352.270–2 and the Indian Preference Program clause set forth in 352.270–3 implement section 7(b) of Public Law 93–638 for all HHS activities. Contracting activities shall use the clauses as follows, except that solicitations issued and contracts awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 *et seq.*) are exempted:

(a) The Contracting Officer shall insert the clause in 352.270–2, Indian Preference, in solicitations, contracts, and orders when—

(1) The award is (or will be) made pursuant to an act specifically authorizing such awards with Indian organizations; or

(2) The work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Contracting Officer shall insert the clause in 352.270–3, Indian Preference Program, in solicitations, contracts, and orders when—

(1) The dollar amount of the acquisition is expected to equal or exceed \$50,000 for nonconstruction work or \$100,000 for construction work;

(2) The Indian Preference clause is included in the solicitation, contract, or order; and

(3) The Contracting Officer makes the determination, prior to solicitation, that performance will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Contracting Officer may insert the Indian Preference Program clause in solicitations, contracts, and orders below the \$50,000 or \$100,000 level for nonconstruction or construction contracts, respectively, but which meet the requirements of paragraphs (b)(2) and (3) of this section 370.202, and, in the opinion of the Contracting Officer, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this Subpart 370.2, the following definitions shall apply:

(a) *Indian* means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within 30 days from the Tribe concerned that the person is a member of the Tribe.

(b) *Indian Tribe* means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.