

## Department of the Interior

## 1480.401

been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the Tribe as defined by the Secretary.

*Indian small business economic enterprise (ISBEE)* means an IEE that is also a small business concern established in accordance with the criteria and size standards of 13 CFR part 121.

*Indian Tribe* means an Indian Tribe, band, nation, or other recognized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688; 43 U.S.C. 1601).

*Interested party* means an IEE that is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual IA award of a particular contract set-aside pursuant the Buy Indian Act.

*Product of Indian industry* means anything produced by an IEE either through physical labor or by intellectual effort involving the use and application of its skills.

*Representation* means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 1480.8.

*Reservation* means Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601.

*Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

*Subcontractor* means a concern to which a contractor subcontracts any work under the contract. The term in-

cludes subcontractors at any tier who perform work on the contract.

*Work* means the level of work effort by the prime contractor based on total direct project costs.

### Subpart 1480.3—Applicability

#### 1480.301 Scope of part.

Except as provided in 1480.302 and 1480.401(b), this part applies to all acquisitions, including simplified acquisitions, made by IA and by any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act and 1480.401(d).

#### 1480.302 Restrictions on use of the Buy Indian Act.

(a) IA must not use the authority of the Buy Indian Act and the procedures contained in this part to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized IA programs (or parts thereof) that are within the scope and intent of the Indian Self-Determination and Education Assistance Act. IA must use the Buy Indian Act solely to award procurement contracts to IEEs.

(b) IA must not use the authority of this Act for construction contracts, as defined in FAR 36.102, unless the construction is covered construction, as defined in 1480.201.

### Subpart 1480.4—Policy

#### 1480.401 Requirement to give preference to Indian economic enterprises.

(a) IA must use the negotiation authority of the Buy Indian Act, 25 U.S.C. 47, to give preference to Indians whenever the use of that authority is authorized and practicable. The Buy Indian Act provides that, “so far as may be practicable, Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market at the discretion of the Secretary of the Interior.” Thus, IA may use the Buy Indian Act to give preference to IEEs through set-asides when acquiring supplies, services, and covered construction to meet IA needs

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and requirements. IA must contract for covered construction in accordance with FAR Part 36.

(b) IA or any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act may not use the Buy Indian Act to give preference to IEEs through set-asides when acquiring construction that is not covered construction.

(c) The provisions of this section shall not apply to the awarding of contracts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) by the Department of the Interior.

**1480.402 Delegations and responsibility.**

(a) The Secretary has delegated authority under the Buy Indian Act to

the Assistant Secretary—Indian Affairs. IA exercises this authority in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(b) The Secretary may delegate authority under the Buy Indian Act to a bureau or office within the Department of the Interior other than IA only in accordance with the Departmental Manual.

(c) As the head of the contracting activity, the CFO is responsible for ensuring that all IA acquisitions under the Buy Indian Act comply with the requirements of this part.

**1480.403 Deviations.**

(a) The following officials may authorize a deviation for an IA acquisition:

For a proposed contract action . . . .	The following official may authorize a deviation . . . .
Exceeding \$25,000 but not exceeding \$550,000.	The CCO (or the IA Procurement Chief, absent a CCO).
Exceeding \$550,000 but not exceeding \$11.5 million.	IA Competition Advocate.
Exceeding \$11.5 million but not exceeding \$57 million.	The head of the procuring activity, or a designee who is a civilian serving in a position in a grade above GS–15 under the General Schedule or in a comparable or higher position under another schedule.
Exceeding \$57 million . . . . .	Department of the Interior Senior Procurement Executive.

(b) Deviations may be authorized prior to issuing the solicitation when IA makes the following determinations

and the appropriate official takes the following actions:

Acquisition type	Basis for deviation	Necessary actions
In pursuit of a simplified or commercial item acquisition in accordance with FAR Parts 12 or 13 and DIAR 1413.	IA determines after a market survey that there is no reasonable expectation of obtaining offers that will be competitive in terms of market price, quality, and delivery from two or more responsible ISBEs (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.003).	The official must: (1) Document the reasons for the deviation in the file; (2) Ascertain the availability of small business suppliers through market research; and (3) If appropriate, compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502–2.
In pursuit of all other acquisitions.	IA determines that there is no reasonable expectation that offers will be received from two or more responsible IEEs at a reasonable and fair market price.	The official must: (1) Provide a written determination in the contract file stating there is no reasonable expectation of receiving offers from two or more responsible IEEs and that award cannot be made at a reasonable and fair market price; and (2) Proceed with the acquisition using the order of precedence established in FAR 8.001.

(c) Deviations may be authorized after issuing solicitations when IA makes the following determinations

and the appropriate official takes the following actions: