

## Subpart 26.1 - Indian Incentive Program

**Parent topic:** [Part 26 - Other Socioeconomic Programs](#)

### 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 that 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 constitutes not less than 51 percent of the enterprise.

*Indian tribe* means any *Indian tribe*, band, 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*, that 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.

### 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*.

## 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: *Acquisition* Management Director

12220 Sunrise Valley Drive

Reston, VA 20191.

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.

## **26.104 Contract clause.**

*Contracting officers* in civilian agencies may insert the clause at [52.226-1](#), Utilization of *Indian Organizations* and *Indian-Owned Economic Enterprises*, in *solicitations* and contracts if-

(a) In the opinion of the *contracting officer*, subcontracting possibilities exist for *Indian organizations* or *Indian-owned economic enterprises*; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at [52.226-1](#).