

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.

(c) *Indian organization* means the governing body of any Indian Tribe, or entity established or recognized by such governing body, in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451).

(d) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and the ownership shall encompass active operation and control of the enterprise.

(e) *Indian reservation* includes 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 (85 Stat. 688, 43 U.S.C. 1601 *et seq.*)

(f) *On or near an Indian Reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The contracting activity shall conduct periodic reviews to ensure contractor compliance with the requirements of the clauses in 352.270-2 and 352.270-3. The Indian Tribe(s) concerned may assist in the conduct of these reviews.

(b) The Contracting Officer shall promptly investigate and resolve complaints of noncompliance with the requirements of the clauses in 352.270-2 and 352.270-3 that are filed in writing with the contracting activity.

370.205 Tribal preference requirements.

(a) When the contractor will perform work under a contract on an Indian reservation, the Contracting Officer may supplement the clause in 352.270-3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The contracting activity and the Tribe shall jointly develop supplemental requirements for the contract. Supple-

mental preference requirements shall represent a further implementation of the requirements of section 7(b) of Public Law 93-638 and require the approval of the affected program director and OGC-GLD, or a regional attorney, before the Contracting Officer adds them to a solicitation and resultant contract. Any supplemental preference requirements the Contracting Officer adds to the clause in 352.270-3 shall also be part of the solicitation and clearly identified, to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in this part shall preclude tribes from independently developing and enforcing their own Tribal preference requirements. Such independently developed Tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this 370.2, and shall not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

Subpart 370.3—Acquisitions Involving Human Subjects

370.300 Scope of subpart.

This subpart applies to all R & D activities involving human subjects conducted under contract—see 45 CFR 46.102(d) and (f).

370.301 Policy.

It is HHS policy that the Contracting Officer shall not award a contract involving human subjects until a prospective contractor has provided acceptable assurance that the activity will be subject to initial and continuing review by an appropriate Institutional Review Board (IRB) as described in HHS regulations at 45 CFR 46.103. The Contracting Officer shall require an applicable Federal-wide assurance (FWA), approved by the HHS Office for Human Research Protections (OHRP), of each contractor, subcontractor, or cooperating institution having responsibility for human subjects involved in performance of a contract. OHRP is responsible for negotiating assurances covering all HHS-supported or HHS-conducted activities involving