

Health and Human Services

370.503

Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Public Law 94-437 and Public Law 96-537.

370.502 Definitions.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making determinations may take into account the determination of the tribe with which affiliation is claimed.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Public Law 94-437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see 370.503(a)).

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

370.503 Requirements.

(a) *Indian ownership.* The degree of Indian ownership of an Indian firm

shall be at least 51 percent during the period covered by a Buy Indian contract.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a-270f) and FAR part 28. In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act 25 U.S.C. 450e, which requires that preference be given to Indians in employment, training, and subcontracting. The Indian Preference clause set forth in 352.270-2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270-3 shall be used as specified in 370.202(b). All requirements set forth in subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed