



Homeland
Security

TO: DHS Heads of the Contracting Activities (HCAs)

FROM: Department of Homeland Security, Office of the Chief Procurement Officer (OCPO), Director of Strategic Initiatives *Clare M. Spady*

SUBJ: GUIDANCE ON THE USE OF 8(a) FIRMS OWNED BY INDIAN TRIBES/ALASKA NATIVE CORPORATIONS

1. Introduction: The purpose of this alert is to provide guidance on the use of 8(a) firms owned by Indian Tribes and Alaska Native Corporations (ANC) for Department of Homeland Security (DHS) contracts. This alert also provides information about contract training requirements for the 8(a) Business Development (BD) Program, which includes Indian Tribes/ANCs, as mandated for Contracting Officers under the DHS and the Small Business Administration (SBA) Partnering Agreement (PA).

The guidance and training requirements outlined in this alert are a combined result of Government Accountability Office (GAO) recommendations from an audit on ANCs, the objectives of the DHS/SBA PA, and OCPO's recent analysis of several contracts utilizing the Federal Acquisition Regulation (FAR) 19.805-1(b) sole source award authority for Indian Tribes/ANCs. Specifically, use of the FAR 19.805-1(b) authority must be judicious with appropriate safeguards to ensure that the cost/price is fair and reasonable, that the Indian Tribe/ANC has the technical ability to perform the work, that the Indian Tribe /ANC will be performing the required percentage of the work, and that the award is in the best interests of the Government.

2. Background/Reference to Regulations and Agency Policies/Procedures:

A. In accordance with 13 CFR 124.506(b), "SBA may award a sole source 8(a) contract to a participant concern owned and controlled by an Indian Tribe or ANC where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement." This SBA rule is implemented by FAR 19.805-1(b) and the DHS/SBA PA.

B. DHS Contracting Officers are reminded of key requirements, considerations, and compliances which must be employed during acquisition planning, pre-award decisions, contract administration for Indian Tribe/ANC contracts awards:

- The price and/or cost analysis performed for the ANC award must be comparable to such analysis required for any sole source contract action of similar magnitude.
- The market research and cost/price analysis must provide clear and unambiguous support that the price is fair and reasonable. If this level of detail is

not obtainable, detailed cost information shall be obtained and reviewed. Consideration should be giving to auditing the costs, including the use of auditors from the Defense Contract Audit Agency (DCAA) through the DHS and DCAA Memorandum of Understanding (MOU).

- FAR Clause 52.219-14, "Limitations on Subcontracting", which requires the offeror to perform at least 50% of the services costs (except construction), 50% of the cost of manufacturing (other than procurement from a nonmanufacturer of such supplies), 15% of the general construction costs (not including the cost of materials) with its own personnel, and 25% of construction by special trade contractors (not including the cost of materials) with its own employees, must be included in each award. The DHS-DBA PA and our resulting FAR Class Deviation Number 06-02, Section 8(a) Awards requires that the FAR Clause 52.219-17, "Section 8(a) Award" not be used, but that, FAR 52.219-71, "Section 8(a) Direct Awards (Deviation) (November 2005)" be inserted for 8(a) contracts using the PA agreement. This FAR deviation establishes that the DHS contracting activity is responsible for administering the contract and the contractor agrees to adhere to the requirements of FAR Clause 52.219-14.
- In accordance with HSAM 3019.804-470 Repetitive acquisitions. Contracting Officers are reminded that with respect to existing Indian Tribe/ANCs, as with all 8(a)s, if reprocurement outside of the 8(a) Program is contemplated, approval must be received from the Director, OSDDBU, in accordance with Component procedures.

3. Effective Date: June 15, 2007

4. Expiration Date: This alert remains in effect until superseded or cancelled.

5. Acquisition Impact and Required Component Action:

A. To ensure effective compliance with the current DHS/SBA PA requirements, the FAR Limitation on Subcontracting clause, and the DHS FAR Class Deviation Number 06-02, DHS Contracting Officers should include a metric, such as a deliverable requirement in the contract that requires the 8(a) firms owned by Indian Tribe/ANC to provide a semi-annual self performance report that shows their percentages for the previous six months or perform periodic reviews with assistance from the DHS Component Small Business Specialist (SBS). Reports or review results should be retained in the contract files.

B. Contracting Officers should coordinate pertinent acquisition planning, market research or compliance reviews with the Component SBS, the DHS Office of Small and Disadvantaged Business Utilization (OSDBU), and the SBA, as appropriate.

C. HCAs should ensure 8(a) training is accomplished as required by the revised DHS/SBA PA. The current DHS/SBA PA requires that contracting staffs and SBSs participate in the 8(a) BD program contract training as offered by the SBA to ensure the

PA is applied as intended. Specific details about the FY 07 SBA sponsored 8(a) BD training schedule were recently provided to Component SBSs by a separate DHS Office of Small and Disadvantage Business Utilization (OSDBU) announcement. Component SBS should be contacted to make arrangements for enrolling personnel in the SBA sponsored training.

6. Additional Information: Direct questions or comments about this Alert to Kyle Groome at 202-447-5281 or email at Kyle.Groome@dhs.gov

7. Attachments: Links to the DHS documents are provided where referenced.

Distribution Instructions: Disseminate to the widest possible audience – DHS contracting activities.