326.603-1 Requirement to give preference to Indian Economic Enterprises.

(a) Except as provided by 25 U.S.C. 1633, IHS must use the negotiation authority of the Buy Indian Act to give preference to IEEs whenever the use of that authority is practicable. Thus, IHS may use the Buy Indian Act to give preference to IEEs through set-asides when acquiring supplies, general services, A&E services, or construction to meet IHS needs and requirements. The Buy Indian Act does not apply when mandatory government sources are available, as required by FAR 8.002.

(b) Contract awards under the authority of the Buy Indian Act can be pursued via the acquisition procedures prescribed in this HHSAR subpart in conjunction with the procedures from FAR part 12, 13, 14, 15 and/or 16.

(c) The CO will give priority to ISBEEs for all purchases, regardless of dollar value, by utilizing ISBEE set-aside to the maximum extent possible. COs when prioritizing ISBEEs may consider either:

(1) A set-aside for ISBEEs; or

(2) A sole source award to an ISBEE, as authorized under the FAR.

(d) If the CO determines after market research that there is no reasonable expectation of obtaining offers from two or more ISBEEs that will be competitive in terms of market price, product quality, and delivery capability, the CO may consider either:

(1) A set-aside for IEEs; or

(2) A sole source award to an IEE, as authorized under the FAR.

(e) If the CO determines after market research that there is no reasonable expectation of obtaining two or more offers that will be competitive in terms of market price, product quality, and delivery capability, from ISBEEs and/or IEEs, then the CO shall follow the Deviation process under HHSAR 326.603-3.

(f) Price analysis technique(s) provided in FAR 15.404-1(b) shall be used in determination of price fair and reasonableness when only one offer is received from a responsible ISBEE or IEE in response to an acquisition set-aside under paragraph (d)

(1) or (e)

(1) of this section:

(1) If the offer meets the technical capability requirements and is not at a reasonable and fair market price, then the CO may negotiate with that enterprise for a reasonable and fair market price, as authorized under the FAR.

(2) If the offer meets the technical capability requirements and is at a reasonable and fair market price, then the CO must:

(i) Make an award to that enterprise;

(ii) Document the reason only one offer was considered; and

(iii) Initiate action to increase competition in future solicitations.

(g) If the offers received in response to an acquisition set-aside under paragraph (c) or (d) of this section are determined to be unreasonable or otherwise unacceptable upon price and/or technical evaluations, then the CO must follow the Deviation process under HHSAR 326.603-3. The CO must document in the deviation determination the reasons why the IEE offeror(s) were not reasonable or otherwise unacceptable.

(1) If a deviation determination is approved, the CO must cancel the current ISBEE or IEE set-aside solicitation and inform all offerors in writing.

(2) If a deviation determination is approved, the CO must identify, based on current available market research, an alternate set-aside or procurement method.

(3) When the solicitation of the same requirement is posted, the CO must inform all previous offerors in writing of the solicitation number.

(h) With respect to construction, the provisions of 25 U.S.C. 1633 shall apply. Under 25 U.S.C. 1633, IHS may give a preference to an IEE unless the agency finds, after considering the evaluation criteria listed in 25 U.S.C. 1633, that the project to be contracted for will not be satisfactory or cannot be properly completed or maintained under the proposed contract.

Parent topic: Subpart 326.6 - Acquisitions Under the Buy Indian Act