

**§ 36.221**

**42 CFR Ch. I (10–1–99 Edition)**

**§ 36.221 Indian preference in training and employment.**

Contracts awarded under authority of the Act shall incorporate the following clause, which is also set forth in 41 CFR 3–4.6013 and 3–4.6014.

INDIAN PREFERENCE IN TRAINING AND  
EMPLOYMENT

(a) The contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion or sex and, to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion or sex that are not fully qualified to perform under the contract. The contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

**§ 36.222 Indemnity and insurance.**

Contracts awarded under authority of the Act shall incorporate the following clause, which is also set forth in 41 CFR 3–4.6013 and 3–4.6014.

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below.

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workmen's compensation insurance as required by laws of the State.

(2) Owner's, landlord's and tenant's bodily injury liability insurance with limits of not less than \$50,000 for each person and \$500,000 for each accident.

(3) Property damage liability insurance with limits not less than \$25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than \$50,000 for each person, and \$500,000 for each accident and property damage liability insurance with a limit of not less than \$5,000 for each accident.

(5) Food products liability insurance with limits of not less than \$50,000 for each person and \$500,000 for each accident.

(6) Professional malpractice insurance where medical, dental or other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower

the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

**§ 36.223 Exemption from bonds.**

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors, other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in carrying out the contract the use of each person. Whenever the total amount payable by the terms of the contract is not more than \$1,000,000 the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than \$1,000,000 but not more than \$5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than \$5,000,000 the payment bond shall be \$2,500,000.

**§ 36.224 Construction and architect-engineering contracts.**

The special provisions, procedures, and requirements applicable to construction and architect-engineering service contracts are set forth in § 3-4.6008 of 41 CFR.

**§ 36.225 Performance of personal services.**

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with

the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

**§ 36.226 Advance payments.**

Contracts awarded under the authority of the Act shall incorporate the following clause, which is also set forth in 41 CFR 3-4.6013 and 3-4.6014.

(a) *Amount of advance.* At the request of the contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the officer administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) to the financial necessity therefore; (2) in an amount which together, as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) of this section; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) of this section. No part of the funds in the Special Bank Account shall be mingled with other funds of the contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent"). Until