



WHITE PAPER: Expand Use of the Buy Indian Act in Federal Contracting Fulfilling a 100-Year-Old Vision

NACA Policy: Grow the use of the Buy Indian Act within the Bureau of Indian Affairs (BIA) the Indian Health Services (IHS), and in relevant federal agencies when practical and possible. Federal contracting officers in user agencies should be educated about what Buy Indian is, and when and how it may be used.

Ask: NACA supports legislative and regulatory language to achieve these three outcomes:

- The Department of Interior (DOI) should expand its use of Buy Indian to other internal procurement offices beyond just BIA.
- IHS must establish a procurement policy to fully implement Buy Indian.
- Expand Buy Indian to other federal agencies, consistent and concurrent with the Administration's Buy American Executive Order.

Abstract: Established in 1910, the *Buy Indian Act* grants DOI and -- as amended -- IHS, the ability to set aside government procurement contracts for Indian-owned and controlled businesses. The Act charged BIA with establishing regulations to implement these provisions, and BIA delivered their regulation over 100 years later. DOI Acquisition Regulation (DIAR) 1480.401 directs the BIA to use the negotiated authority of the Act to give preference to Indians whenever the use of that authority is authorized and practicable. In 2014 the BIA spent just over 19% of its contracting dollars under Buy Indian; IHS spent only 0.34%. Clearly, 48 CFR 1452.226-70 mandates both agencies to use the Buy Indian set aside "to the maximum extent;" however, federal contracts data shows both federal agencies have fallen short of that mandate.

Background: Buy Indian regulations establish a uniform set of policies and procedures directing all BIA locations to set aside acquisitions for "Indian Economic Enterprises" (IEE). It also reduces the percentage of Indian ownership of an IEE from 100% to 51%. It allows IEEs to participate in the Department of Defense (DOD) Mentor Protégé Program, while protecting their eligibility for contracts awarded under the Buy Indian Act.

Additionally, the New Provisions Notice of Indian Small Business Economic Enterprise set-aside, is mandated to be inserted in each written solicitation offering supplies or services purchased as commercial items under Federal Acquisition Regulations (FAR) Part 12, and when using the simplified acquisition procedures in FAR Part 13. The New Clause Notice of IEE set-aside is to be included in all solicitations and contracts when IEE set-asides are included. The Clause Subcontracting limitations, expands the definitions of a contractor so that no subcontract shall be let to an other than responsible IEE for more than 50% of the subcontracted work.

Indian Preference is required in all SOL/Contracts-BIA and for other agencies when the work to be performed will directly benefit Alaskan Native and American Indians, when hiring Alaskan Native and American Indians, hiring Alaskan Natives and American Indian subcontractors, and opportunities that provide training. 48 CFR Parts 1401, 1452, and 1480 8 25 U.S. Code § 47, directs DOI in matters of the Employment of Indian labor and purchase of products of Indian industry; participation in Mentor-Protégé Program Indian Preference Program. 48 CFR 1452.226- 70 is required for contracts over \$50K, when performed on or near a reservation, in offering substantial opportunities for American Indian and

Alaska Native employment, training and subcontracting and contractor is required to establish a program.

The Buy Indian Act is *not* a race-based set aside; rather, it is based on the nation-to-nation relationship that has been established between the Federal government and Federally- recognized tribes and their citizens. In fact, Buy Indian reflects the authority used by the Department of Veteran Affairs (VA) to administer set-asides and sole-source contracts to Veteran-Owned Small Businesses.

It is not just BIA and IHS that have the authority to use Buy Indian. The Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Reclamation, Bureau of Safety and Environmental Enforcement, National Park Service, Office of Surface Mining Reclamation and Enforcement, U.S Fish and Wildlife Service, and the U.S. Geological Survey all have the same authorization under the DIAR. In addition to the 9 bureaus reporting to the BIA there are offices with Buy Indian authority including the Office of the Secretary; the Assistant Secretary for Policy, Management and Budget; the Solicitor's Office; and Office of the Inspector General.

Through dialog, education, policy development, and enforcement, the Buy Indian Act has the potential to become the economic driver that was intended for Indian Country. One such opportunity would be making simplified acquisitions through Buy Indian. Here's a case example provided by Wizipan Little Elk, CEO for REDCO and a NACA Board Member:

- The Rosebud BIA Agency Office has 11 office divisions. Our office products company has business in just one of the divisions. In 2016, REDCO received just over \$4,000 in office products orders from this division. All orders were by credit card, with our company stopping in to see if their office had any orders.
- Let's assume that each Rosebud BIA Agency division spends similarly for a total of \$44,000 (11 x \$4,000).
- There are 12 BIA Agency Offices in the Great Plains area, not including Education Line Offices or the central Regional Office. Let's assume these 12 buy similarly to their Rosebud Office; total obligations are \$528,000 (12 x \$44,000) under simplified acquisitions.
- This example includes only office supplies, and not other goods and services. Also, this example includes only BIA Agency Offices on reservation, and not other DOI offices or federal agencies in the region. We could comfortably predict that the BIA simplified acquisitions and micro purchase potential in the area exceeds \$1M.
- Assuming a conservative 7% margin, that's \$70,000 towards Rosebud Tribal Economic Development for the community.

Update: NACA continues to "beat the drum" about the underutilization of Buy Indian at all our speaking opportunities. Our voices are being heard, and IHS and DOI procurement have been collaborating with NACA on developing an IHS policy and increasing DOI use. Moreover, NACA has been actively lobbying for S. 1116 and its companion bill, which, in part, supports NACA's goal for Buy Indian.