

New Rules to 1910 Buy Indian Act Give Indian-owned Businesses Additional Procurement Opportunities

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More than a century after its passage, an act of legislation with the potential to transform the federal government's purchasing practices in Indian Country finally has the force of law.

Effective July 8, 2013, the U.S. Department of the Interior adopted final rules that require the Bureau of Indian Affairs (BIA) to give preference to Indian-owned or -controlled businesses in matters of procurement. The rules are the long-awaited last step in implementing the Buy Indian Act, a law signed on June 25, 1910. Although the act has been on the books since then, it was unenforceable until now because there were no rules adopted for implementing it. Rule writing didn't begin in earnest until 1982 and then proceeded in fits and starts over the ensuing 30 years. It is now, at long last, completed.

"It's a new day in Indian Country," said Kay Bills, a member of the Osage Nation who keeps a close watch on federal procurement. Bills serves as executive director of MAGIC (Mid America Government Industry Coalition), a trade association that serves the Midwest. "The Department of Interior spends billions of dollars a year. BIA has hundreds of millions as part of that budget. If we can move even a percentage of that money to our Indian communities and business people, it'll be a good thing."

The Buy Indian Act rules authorize the Secretary of the Interior to set aside procurement contracts for Indian economic enterprises (IEEs), which are defined as for-profit businesses that are at least 51 percent Indian-owned. The tribes or individual Indians that own the IEEs must manage the contract, receive the majority of earnings from it, and control the business's daily operations. The Indian owners of IEEs must self-certify that they are members of a federally-recognized Indian tribe or Alaska Native village, and there are stiff penalties for misrepresentation.

Under the rules, the BIA must give Indian businesses first preference in procurement matters by seeking contract offers from at least two IEEs and then selecting one of them, so long as it is of a "reasonable and fair market price." The BIA may deviate from the rules only in specific circumstances, such as when no offers are received from any IEEs or when only one offer is received and it is not reasonable. Subcontracting is permitted, but at least 50 percent of the subcontracted work must go to IEEs.

The rules apply to the procurement of supplies and services, with one big exception: construction. However, the construction of roads, bridges, and sidewalks that are located on Indian land or are necessary to provide Indian communities with access to vital resources and services is covered.

As a matter of internal policy, the BIA has encouraged its offices and programs to "buy Indian" since 1965, but the practice wasn't mandatory and thus often wasn't followed. The absence of a mandate created a "frustrating" contracting environment, according to Lance Morgan, a member of the Winnebago Tribe of Nebraska who serves as president and chief executive officer of Ho-Chunk, Inc., the tribe's economic development corporation.

"There was no consistency," he said. "Some people at the BIA were great about following Buy Indian, but some weren't. At one time, the BIA maybe could have blamed that on the fact that there weren't many Indian-owned

businesses around to award contracts to. But that's not the case anymore. The Indian business sector has been growing tremendously over the last couple of decades.”

The text of the final rules includes a relatively modest initial estimate of the dollar amounts involved: a total of approximately \$45 million in procurement contracts awarded each year to about 200 IEEs. But the potential economic impact could be much greater, because the rules authorize the Secretary of the Interior to delegate the buy-Indian mandate to other agencies in the department, such as the National Park Service and Bureau of Land Management. And now that there are finally clear rules on the books, Indian business advocates like Bills and Morgan are hopeful that Indian-related offices and agencies that are part of other cabinet-level departments will opt to follow them.

Of course, in practice, the rules will have little effect unless IEEs become aware of federal contracting opportunities and then make their presence known by bidding for them. Bills sees responsibility on both sides.

“It's a two-way street,” she said. “Indian businesses have to do their part in pursuing the contracts, but it's also going to take outreach from the federal government entities. They're going to have to empower their acquisition community to really work this law.”

Business associations and chambers of commerce within Indian Country could have an important role to play in educating their members about the Buy Indian Act rules and promoting the work of IEEs. The Ninth Federal Reserve District might have a leg up in that regard, since there are active Indian Business Alliances (IBAs) in Minnesota, Montana, North Dakota, and South Dakota that are positioned to encourage and support Indian entrepreneurs. For more on the IBAs, visit www.minneapolisfed.org/indiancountry/#alliances.

This article appeared in the [Federal Reserve Bank of Minneapolis' website](#).