

BUY INDIAN ACT:

7 Steps to Transparency, Accountability & Economic Parity

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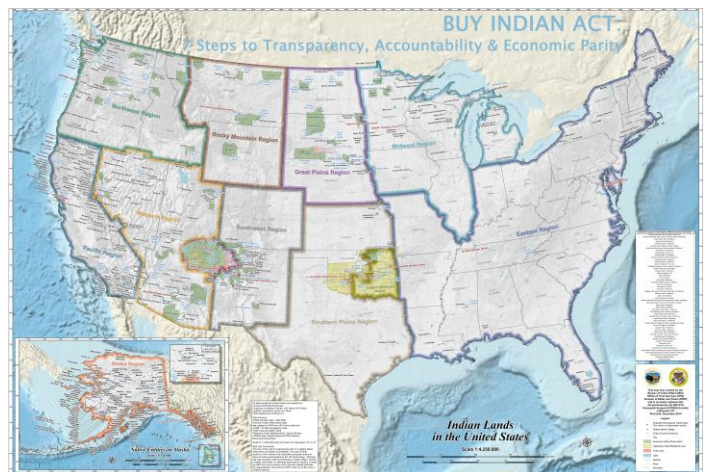
A White Paper for Tribal Leadership, Federal Agencies, Elected Officials, American Indian and Alaska Native Businesses and Professional Organizations serving Indian Economic Enterprises (IEEs).

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ABSTRACT

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.¹

Since 1965, the BIA had obtained services and supplies from American Indian sources through its Buy Indian Program and based on policy memoranda and acquisition. The Bureau had worked on developing Buy Indian Act regulations on an intermittent basis since the 1980s, but never published a final rule.

In 2010, Indian Affairs distributed a new draft of a proposed rule and held three tribal consultation sessions on it. In August 2012, Indian Affairs held four tribal consultation sessions on a proposed rule published that same month which incorporated input from previously published proposed rules and associated tribal consultation sessions.²

Why has the Interior Secretary been so lax in implementing the Act's provisions?

The US has a trust relationship with Native peoples why aren't other Federal agencies that are working in Indian Country using American Indian and Alaska Native owned businesses?

The Buy Indian Act, while targeted for Native businesses, is not unique to the Federal government. The Department of Veterans Affairs (VA) has Special Authority for Service-Disabled Veteran-Owned Small Business/Veteran-Owned Small Business (SDVOSB/VOSB) Set-aside and Sole Source Contracts.

Almost two years have passed since the Buy Indian Act's final rules were written and we are still no closer in taking American Indian business to the next level or achieving economic parity as the following facts indicate:

1. Performance reviews that result in bonuses and annual raises for BIA & IHS senior management, program and contract officers are not directly tied to the compliance and enforcement of the Buy Indian Act.

2. BIA has not completed written policies for their Program and Contracting Offices. *Indian Health Service (IHS) has not given any indication of how or when they plan to implement the Buy Indian Act.*

3. There is no standardized or required annual training established that directs both BIA and IHS program and contract officers in the implementation of the Buy Indian Act.

4. The Rule of Two and IEE set-asides are inconsistently followed as stated in the federal acquisition regulations.

Each proposed procurement for supplies or services that has an anticipated dollar value in excess of the simplified acquisition threshold amount in FAR Part 13.003 **must be set aside exclusively for Indian Economic Enterprises (IEEs)**, and referred to as an "Indian Economic Enterprise Set-aside," when there is a reasonable expectation that offers will be received from two or more responsible IEEs, and award will be made at a reasonable price.

When an agency has taken 103 years to write the implementation rules in the first place, it is only reasonable to request accountability and mandate uniform practices and policies that will ensure these new rules are carried out and enforced.

¹ Long-awaited rules require the BIA to "Buy Indian" - Paula Woessner, Federal Reserve Bank of Minneapolis, Community Dividend, October 2013

² Assistant Secretary Washburn Finalizes Procedures for Indian Affairs to Implement the Buy Indian Act - News Release June 6, 2013

- IHS spent \$660,412,124.00 in FY2014. A total of \$2,369,986.00 was on Buy Indian set-aside. Noted was the \$517,697,114.00 spent with no set-aside being used.
- BIA spent \$560,010,940.00 in FY 2014. A total of \$53,026,652.00 was on Buy Indian set-aside. Noted was the \$285,251,437.00 spent with no set-aside being used.

5. There is still no accountability on behalf of big business benefitting from government contracting that demonstrates proof of subcontracting with an ISBEE or IEE.

The Buy Indian Act if implemented is a powerful tool with the potential to significantly impact the economic landscape of Indian Country.

6. Currently, there is no continuity in how and where individual contract officers access IEE business information and a misunderstanding of all things related to the use of the Set Aside Authority. There is no internal goal and the use of the Buy Indian Act authority is not clearly defined or understood.

The phrase **“at the discretion of”** is problematic.... It is lodged in both the 1910 and 2013 Buy Indian Acts. This significant phrase allows the Department of Interior to continue its legacy of practicing the freedom to decide what should be done in a particular situation.

“At the discretion of” leaves room for bureaucratic interpretation, and sends a top down message to program and contract officers in how the Buy Indian Act will be implemented and enforced.

Along with treaties and congressional plenary power, the trust doctrine is one the foundational concepts underlying the relationship between Native nations and the federal government.³

The fate of American Indian and Alaska Native business should still not be in the hands of federal bureaucrats in an era of Native Self-Determination. Nor can they wait another 103 years for the Department of Interior and the Department of Health and Human Services to fulfill the Buy Indian Act’s goals and provisions.

Every modern administration since 1971 has developed and championed “Indian Policy” to meet the Nation’s obligations to American Indians and Alaska Native communities. Self-Determination set in motion powerful forces. The events that have followed are significant.

Full implementation of the Buy Indian Act of 1910 with our recommendations will be the next step in the process of significant economic development of our American Indian and Alaska Native communities on par with other areas and most certainly with other social economic goals.

Now is the time to grow Indian business and move it to next level! To do this, it is imperative that a collective voice be leveraged to guarantee the Buy Indian Act is implemented and enforced

We understand that every journey starts with the first step. Our first step toward economic parity for American Indian & Alaska Native starts now.

³ Uneven Ground: American Indian Sovereignty and Federal Law
– David E. Wilkins and K. Tsianina Lomawaima

BUY INDIAN ACT HISTORY

The Buy Indian Act is one of the oldest Indian Preference laws on the books. Its authority was established June 25, 1910 under 25 U.S.C. 47.⁴ The Act applies to the BIA and IHS.

The Buy Indian Act of 1910

Required agents of the federal government to **consider** purchasing necessary goods and services from Indian sources – just as they might from any other population source. Whether or not Indian goods and services would actually be purchased remained at the **discretion** of the sitting U.S. Secretary of the Interior.

In other words, although the title suggested a preference from tribally affiliated sources, none was mandated.⁵

Even the words “*consider*” and “*preference*” implied choice and left the Act open for interpretation and failed to meet its trust responsibility and ensure economic parity.

Buy Indian Act Authority

Applies to DIRECT contracts let by the BIA and IHS Agencies. It does not apply to contracts awarded under P.L. 93-638⁶ Self-Determination contracts. Under these contracts, tribal policies and procedures apply.

Buy Indian Act States:

“So far as may be practicable, Indian labor shall be employed and purchases of the products and services of Indian industry may be made in open market in the discretion of the Secretary of the Interior”

The purpose of the Buy Indian Act was to empower American Indian & Alaska Native people to enter the mainstream of American society.

Prior to the passage of the Buy Indian Act in 1910, the Federal Indian policy focused on turning American Indians & Alaska Natives into farmers and ranchers and merchants.

The Buy Indian Act may be the one good thing to come out of that policy. –Kay Bills

Regulations

It established uniform policies and procedures for **all** BIA locations to set aside acquisitions for “Indian Economic Enterprises” (IEE).⁷

It reduces 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 and not lose their eligibility for contracts awarded under the Buy Indian Act.⁸

New Provisions

Notice of Indian Small Business Economic Enterprise set-aside – 1452.280-1 will be inserted in each written solicitation of offers to provide supplies or services when purchasing commercial items under FAR Part 12 or when using simplified acquisition procedures under FAR Part 13.

New Clause

Notice of Indian Economic Enterprise (IEE) set-aside - 1452.289-2 will be included in **all** solicitations and contracts involving IEE set-asides.

Clause

Subcontracting limitations – 1482.208-3 defines a contractor shall not subcontract to other than responsible IEE more than 50% of the subcontracted work.

Indian Preference (1984) 48 CFR 1452.226-70⁹ is required in **all** SOL/Contracts-BIA and for other agencies when work to be performed is specifically for the benefit of American Indian and Alaska Natives, when American Indians and Alaska Natives are hired, when used to hire American Indian and Alaska Native subcontractors and in providing opportunities for training.

⁴ <https://www.law.cornell.edu/uscode/text/25/47>

⁵ Congress Whispers, Reservation Nations Endure: A CENTURY OF PUBLIC ACTS OF AGGRESSION, CONFUSION & RESOLUTION – B. Lee Wilson

⁶ <http://www.bia.gov/cs/groups/mywcsp/documents/collection/idc017334.pdf>

⁷ Department of Interior, Office of the Secretary, 48 CFR Parts 1401, 1452, and 1480

⁸ 25 U.S. Code § 47 - Employment of Indian labor and purchase of products of Indian industry; participation in Mentor-Protégé Program

⁹ <https://www.law.cornell.edu/cfr/text/48/1452.226-70>

Indian Preference Program (1984) 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.

WHERE IS THE ACCOUNTABILITY?

What happened with the “Rule of Two?”

FAR 19.502-2

The Buy Indian Act set aside process and procedures for Contracting Officers are clearly defined in Federal Acquisition Regulations (FAR) and are similar to the *Vets First* program embraced by the Department of Veteran Affairs. The Buy Indian Act use of the "Rule of Two" and other regulations are safeguards against fraud, waste and abuse.

In FY 2014 reports in the Federal Procurement Data System (FPDS) BIA used one offer as the source approximately 44% of the time for approximately \$249,420,000.

In FY 2014 reports in the Federal Procurement Data System (FPDS) IHS used one offer as the source approximately 36% of the time for approximately \$259,000,000.

For acquisitions over \$150K –are to be set-aside for small business, when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns, and the award can be made at a fair market price.

Simplified Acquisition Procurement

The general rule is that Simplified Purchases under \$150,000 are reserved exclusively for competition among small business concerns and must be set aside for small businesses.

If a requirement is over \$15,000, the preferred method of acquisition is to seek competition from no less than three different vendors and the solicitation must be posted in a public location for a minimum of 10 days; a

reasonable period of time is sufficient for the acquisition of commercial items. (Indian Health Service Website)

Micro-Purchases

A Micro-Purchase is an acquisition of supplies or services, the aggregate of which does not exceed \$3,000; \$2,000 for construction subject to the Davis-Bacon Act; or, \$2,500 for services subject to the Service Contract Act.

Micro-Purchases are not subject to the same competition and set-aside rules as simplified acquisitions and contracts.

GSA Schedule

There is a different set of acquisition rules that govern the use of GSA Schedule Contracts. No public posting or synopsis of the requirement is necessary in FedBizOpps. The government must follow the rules of [FAR part 8.4](#).

The agency must review/consider at least 3 schedule contracts through GSA Advantage, or by reviewing the catalogs or pricelists of at least 3 schedule contractors.

The set aside process for Contracting Officers are clearly defined in Federal Acquisition Regulations (FAR) and is similar to the *Vets First* program embraced by the Department of Veteran Affairs. The Buy Indian Act use of the "Rule of Two" and other regulations are safeguards against fraud, waste and abuse.

If the Buy Indian Act says *you shall* why do we not?

Each proposed procurement for supplies or services that has an anticipated dollar value in excess of the simplified acquisition threshold amount in FAR Part 13.003 must be set aside exclusively for IEEs, and

referred to as an “Indian Economic Enterprise Set-aside,” when there is a reasonable expectation that offers will be received from two or more responsible IEEs, and the award will be made at a reasonable price.

Then why do we see non IEE business in such huge numbers?

Indian Affairs determines after a market survey that there is no reasonable expectation of obtaining offers that will be competitive in terms of market price, quality, and delivery from **two or more responsible Indian Small Business Economic Enterprises (ISBEs)** or at least from one such enterprise, if the purchase does not exceed the dollar threshold.

The Rule of Two as written in the Buy Indian Act simply means if the procurement officer can find at least two small ISBEE businesses that can compete for the available contract then it shall be considered an ISBEE small business contract. The available contract must be awarded through a fair market price to the federal government and not inflated because the awardee is an ISBEE.

If the contracting officer cannot find two qualified ISBEs then they shall look for two IEE that are qualified. Each step is documented in the procedures for the Buy Indian Act.

Many program officers and contracting officers are unaware of the growth of American Indian & Alaska Native businesses in the last 20 years. Additionally, they are not held accountable for any specific goals for American Indian & Alaska Native businesses.

A circumvention of this "Rule of Two" is perceived in several ways. When contract procurements are on a "short fuse" of a few days; unclear requirements; poor forecasts of opportunities and no clearly defined method for American Indian & Alaska Native businesses' to locate opportunities especially of those below the \$25,000 level the pattern continues. It is a "hunt and peck" activity which can be overcome with the use of technology.

Development of a "One Place-One Face" website for all targeted procurements over \$3000 would be welcomed. Further, the FedBizOps must add "Buy Indian" to the search criteria on par with other social

economic entities. FPDS already has it as a data element.

Are other Federal Agencies using the Buy Indian Act or could they?

Except as provided in FAR 1480.302 and FAR 1480.401(b), this part applies to all acquisitions, including simplified acquisitions, made by Indian Affairs and by any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act and FAR 1480.401

It is not hard to understand that most of the agencies within the Department of Interior should be held responsible for goals as well. These agencies already have the authority to use the Buy Indian Act and need to set goals. Many were given the authority in the 1990's but have failed to use the authority when working with American Indian & Alaska Native communities.

A number of other federal agencies work with American Indian & Alaska Native communities. The US Army Corps of Engineers; Federal Emergency Management Agency; Mineral Management; US Park Service and the Departments of Agriculture and Defense are but a few of the agencies whose activities and procedures impact Native communities.

Bottom Line Outcome:

Many ISBEE are also veteran owned; women-owned and minority owned businesses. All businesses located on Indian land are also HubZone businesses. They can be counted toward social economic goals as well.

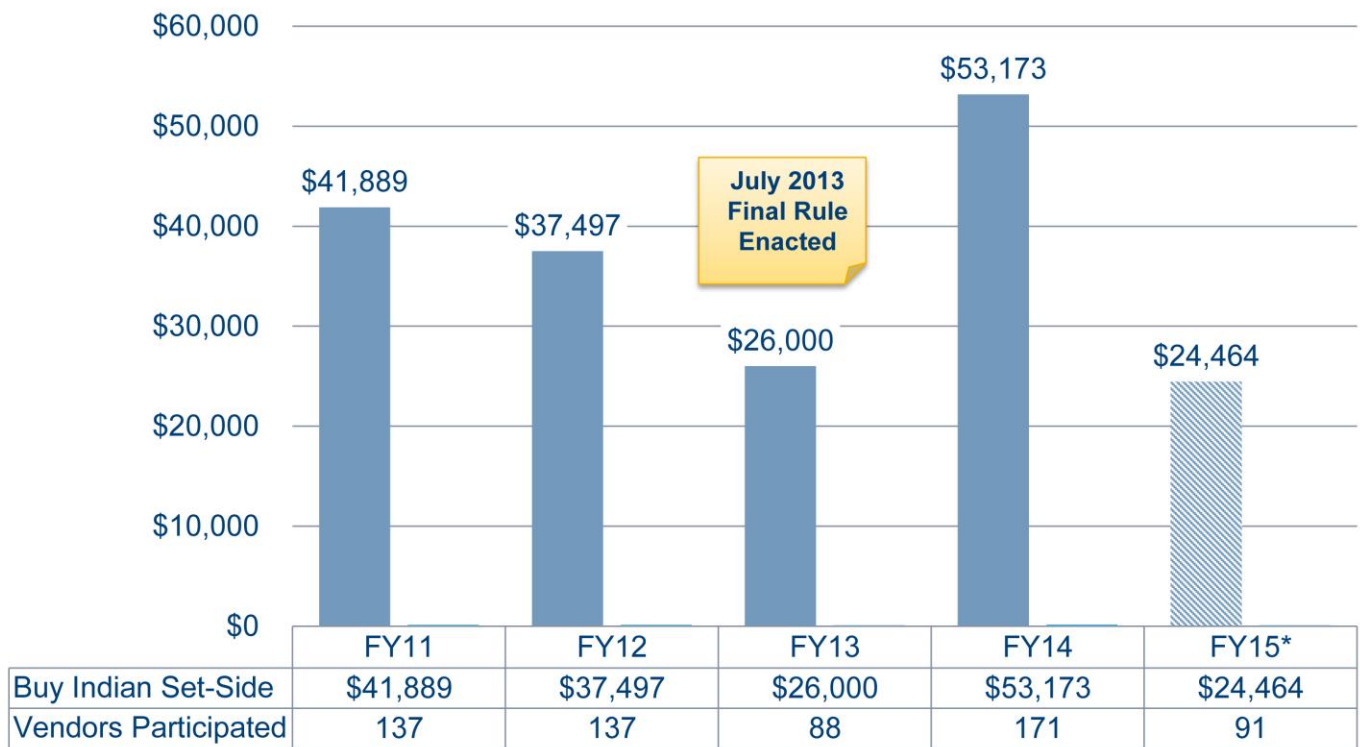
Implementing and documenting the degree with which agencies use all the set aside authorities and tracking the use of the Buy Indian Set Aside Authority will be critical if we are to elevate American Indian and Alaskan Native businesses to the level comparable with other sectors in the US.

HOW THE BIA & IHS USED ITS SET-ASIDE AUTHORITY IN FY 2011 – FY 2015

KEY FINDING 1:

The following slides contain data for Federal prime contract obligations indicated with any Buy Indian Set-aside reported to FPDS. FPDS data is reported through April 17, 2015.

Buy Indian Spending (\$K)

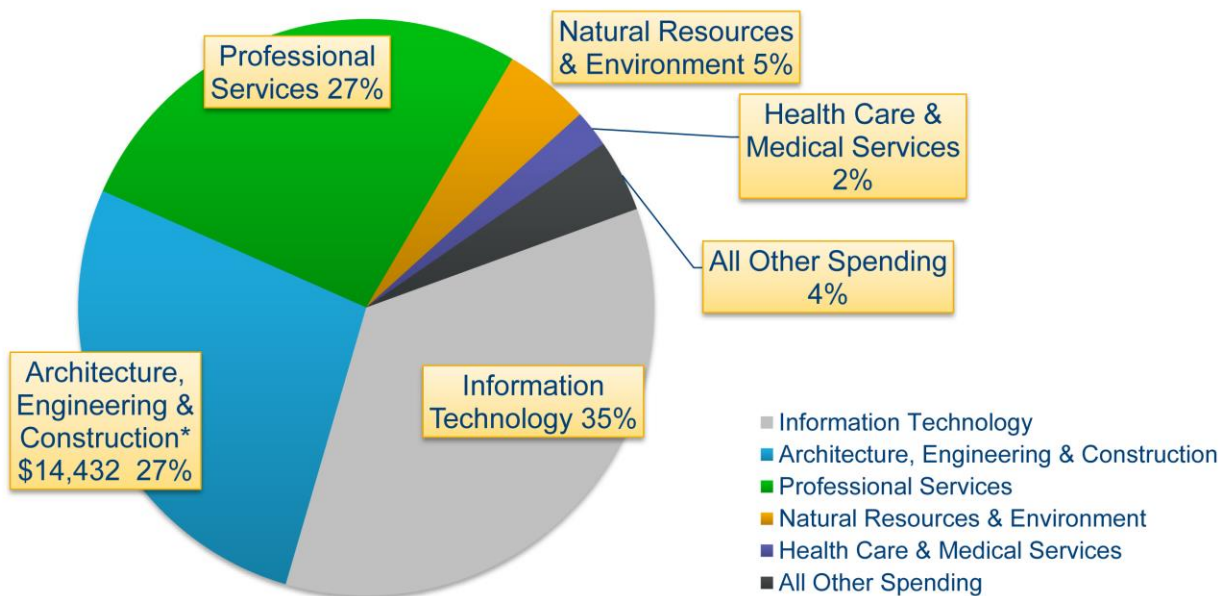


Sources: GovWinIQ analysis of FPDS contract data. FY15 FPDS data reported through April 17, 2015

KEY FINDING 2:

The following slides contain data for Federal prime contract obligations indicated with any Buy Indian Set-aside reported to FPDS. FPDS data is reported through April 17, 2015.

Buy Indian Set-Aside Categories Trend FY14 (\$K)



*Under Architecture, Engineering & Construction Category: Bureau of Indian Affairs (BIA) has determined that it may **not** use Buy Indian set-asides for other categories of public works including buildings, sewers, water mains, and similar items.

Source: GovWinIQ analysis; FPDS data reported through April 17, 2015

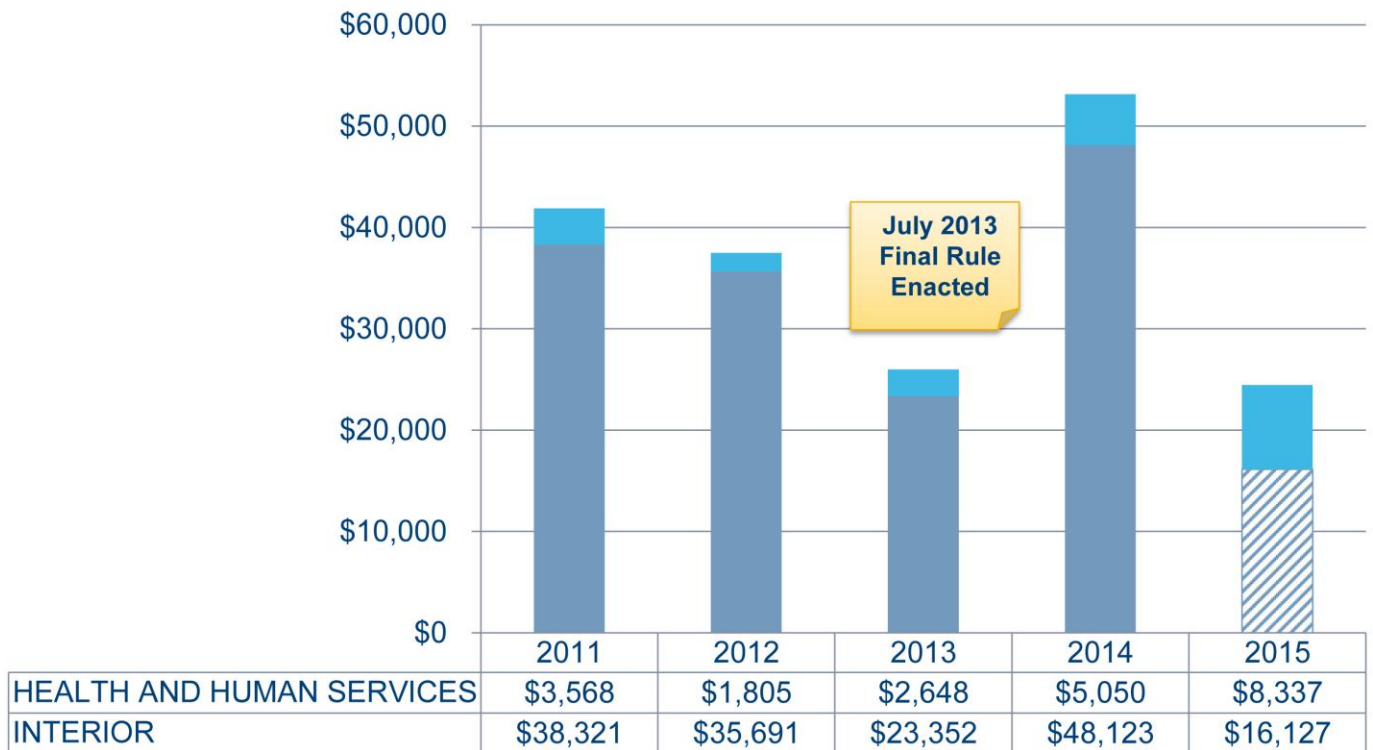
BUY INDIAN SPENDING BY DEPARTMENTS FY 2011 – FY 2105

KEY FINDING 3:

The following slides contain data for Federal prime contract obligations indicated with any Buy Indian Set-aside reported to FPDS. FPDS data is reported through April 17, 2015.

Buy Indian Spend by Department (\$K)

Buy Indian Spend by Department (\$K)



Sources: GovWinIQ analysis of FPDS contract data. FY15 FPDS data reported through April 17, 2015

KEY FINDING 4:

The following slides contain data for Federal prime contract obligations indicated with any Buy Indian Set-aside reported to FPDS. FPDS data is reported through April 17, 2015.

Buy Indian Spend by Agency (\$K)

Department	Agency	FY11	FY12	FY13	FY14	FY15*	Grand Total
INTERIOR	BUREAU OF INDIAN AFFAIRS	\$38,284	\$31,926	\$17,517	\$37,984	\$12,691	\$138,402
	US GEOLOGICAL SURVEY	\$8	\$3,732	\$5,832	\$10,136	\$3,437	\$23,145
	BUREAU OF LAND MANAGEMENT	\$30	\$4	(\$0)			\$34
	OFFICE OF POLICY, MANAGEMENT AND BUDGET		\$30				\$30
	NATIONAL PARK SERVICE				\$3		\$3
	BUREAU OF RECLAMATION	(\$1)		\$3	(\$0)		\$1
INTERIOR Total		\$38,321	\$35,691	\$23,352	\$48,123	\$16,127	\$161,615
HEALTH AND HUMAN SERVICES	INDIAN HEALTH SERVICE	\$3,532	\$1,770	\$2,648	\$2,370	\$2,532	\$12,853
	CENTERS FOR DISEASE CONTROL AND PREVENTION				\$2,400	\$5,805	\$8,204
	PROGRAM SUPPORT CENTER				\$268		\$268
	HEALTH RESOURCES AND SERVICES ADMINISTRATION	\$35	\$35				\$70
	NATIONAL INSTITUTES OF HEALTH				\$12		\$12
HHS Total		\$3,568	\$1,805	\$2,648	\$5,050	\$8,337	\$21,408
Grand Total		\$41,889	\$37,497	\$26,000	\$53,173	\$24,464	\$183,023

Sources: GovWinIQ analysis of FPDS contract data. FPDS data reported through April 17, 2015.

It is important to note a few things when looking at the spending data:

- **Timeliness of reporting to FPDS.** The timeliness with which agencies report their spending data to FPDS varies significantly from agency to agency. For example, some agencies report their spending data to FPDS as it is recorded in their procurement systems, while others report it periodically in batches.
- **Agencies change their data for past months.** Agencies may make changes to their data months, and in some cases years, after the data was reported to correct actions that were reported previously. In general, spending data is substantially complete 3-4 months after the spending obligations occurred.

7 STEPS TO TRANSPARENCY, ACCOUNTABILITY & ECONOMIC PARITY

The following crucial steps to transparency and accountability must include the voices of Indigenous peoples.

The Native Self-Determination Era has proven to be a dynamic period for Native businesses and the rest of Indian Country. A great deal of progress has been made since 1910 and the future is more promising still. Native businesses are located in all 50 states and significantly contribute to consumer, entrepreneurial, productive, fiscal, human, global and political capital locally, regionally, nationally and internationally!

Today, many Native individuals hold positions as lobbyists, law and policy makers, and elected officials, in tribal, local, state and federal governments. Political intelligence coupled with technology, enables around-the-globe collaboration for quick engagement to inspire collective action and support for the implementation and enforcement of the Buy Indian Act!

Through technology we have the ability to galvanize around an issue and quickly circulate a message throughout Indian Country, and also gain vital exposure to call attention to the Buy Indian Act.

We now live in a digital age and have access to the procuring behavior of any federal agency, through the Federal Procurement Data System-Next Generation (FPDS-NG). We can now follow the two key agencies (BIA & IHS) and track their ISBEE and IEE set asides and hold them accountable to a new performance standard!

The goal of this White Paper is to create a *Call to Action* that engages Tribal Leadership, American Indian and Alaska Native businesses and Professional Service Organizations to leverage a collective voice directed toward federal agencies and elected officials in order to guarantee the Buy Indian Act is implemented and enforced.

STEP ONE:

Align BIA & IHS Performance Plans, Bonuses and Annual Raises to the Implementation and Enforcement of the Buy Indian Acts Set Aside Authority with a goal of not less than 30% for ISBEE and 25% for IEE businesses owned and controlled by American Indian & Alaska Natives.

Who is responsible for compelling compliance within these two agencies that ensures senior management, acquisition staff, program and contract officers are following the rules and regulations of the Buy Indian Act?

Background

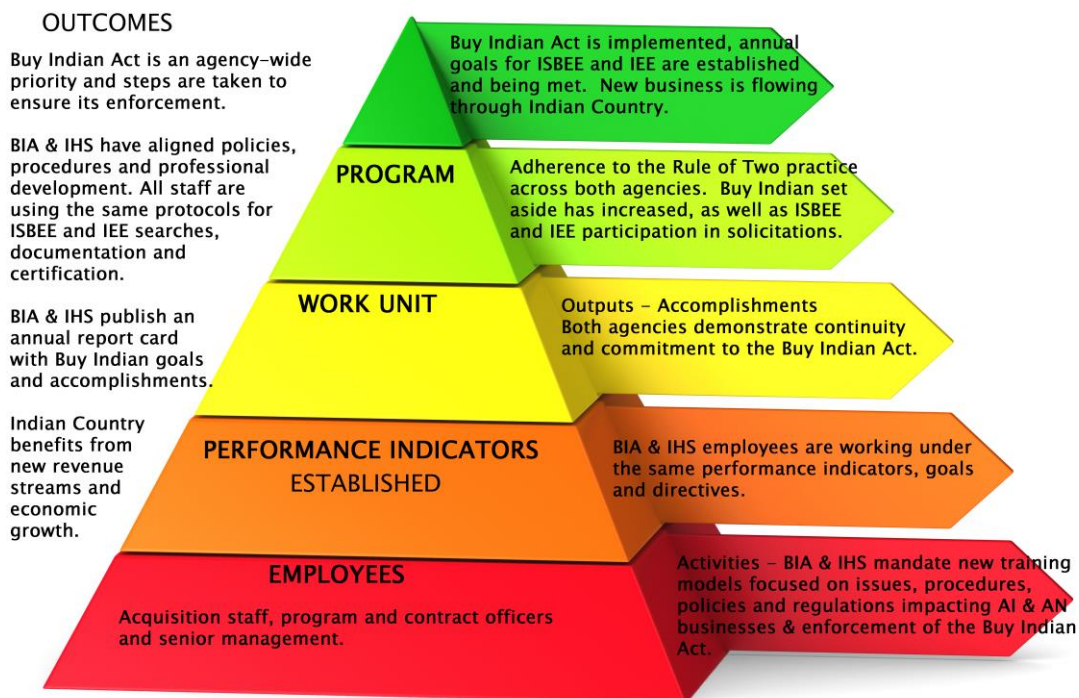
The Interior Secretary, Interior's Chief Financial Officer, Health and Human Services Secretary and Indian Health Service's Chief Financial Officer have the power and authority to enforce compliance and align performance plans, bonuses and annual raises to the successful implementation and enforcement of the Buy Indian Act.

The US Office of Personnel Management – Workforce Compensation and Performance Service handbook entitled; "A Handbook for Measuring Employee Performance" outlines measures for planning work and setting expectations, monitoring performance, developing the capacity to perform, scheduling periodic rating of performance and rewarding good performance.

Following the handbook in Chapter Two – Distinguishing Activities from Accomplishments, we have adapted the Performance Pyramid on page twelve to reflect "Growing New Economies in Indian Country through the Buy Indian Act."

It outlines measurements and attainable goals and milestones, and calls for ongoing capacity building and developing performance indicators, including published report cards and finally rewarding good performance.

Growing New Economies in Indian Country through the Buy Indian Act



STEP TWO:

Engage American Indian and Alaska Native businesses to provide recommendations for clearly communicated and uniform documentation procedures dealing with certification of ISBEE and IEE issues to address waste, fraud and abuse.

Private sector managers worry about creating added value, i.e. a product or service that can be sold competitively to the public. This requires the ability and skill to change, evolve, adapt and improve constantly.

Government is frequently quite different.

The Buy Indian Act went into effect July 8, 2013 and there is still very little to no continuity or uniformity in its implementation, let alone its enforcement.

American Indian and Alaska Native business have a vested interest in contributing to the development of policy and uniform documentation procedures that will ensure implementation and enforcement of the Buy Indian Act.

Background

BIA has not completed writing policies for their Program and Contracting Offices. *Indian Health Service (IHS) has not given any indication of how or when they plan to implement the Buy Indian Act.*

If American Indian and Alaska Native businesses do not work, they not only lose money but their livelihood may also be compromised.

When a private company competes and is awarded a government contract, it must perform. If it doesn't, the contract is lost, and frequently the business is liable to return proceeds earned to the point of contract termination. Furthermore, the business loses its good standing and may be shunned insofar as future contract awards are awarded.

It is imperative the same expectation of performance is placed upon these two agencies! In order to guarantee the development of new policy, transparency, a checklist and uniform documentation, a team of American Indian and Alaska Native business leaders must be at the consultation and policy-making table.

STEP THREE:

The Interior Secretary should encourage other Federal Agencies working primarily in American Indian & Alaska Native communities to utilize the Buy Indian Act where requested.

Since the US has a trust relationship with Native peoples why aren't other federal agencies working in and touching Indian Country expected to obtain goods and services from American Indian and Alaska Native businesses?

Background

The Buy Indian Act, while targeted for Native businesses, is not unique to the Federal government. The Department of Veterans Affairs (VA) has Special Authority for Service-Disabled Veteran-Owned Small Business/Veteran-Owned Small Business (SDVOSB/VOSB) Set-aside and Sole Source Contracts.

48 CFR 1452.226-70 - Indian Preference.

As prescribed in 1426.7003(a), insert the following clause in solicitations issued and contracts awarded by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Public Law 93-638 ([25 U.S.C. 450 et seq.](#) and [25 U.S.C. 455 et seq.](#), respectively); a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

The Interior Secretary has the authority to allow other Federal Agencies to utilize the Buy Indian Act.

A number of other federal agencies work with American Indian & Alaska Native communities. The US Army Corps of Engineers; US Geological Survey; Federal Emergency Management Agency; Mineral Management; US Park Service and the Departments of Agriculture and Defense are but a few who impact on a regular basis American Indian & Alaska Native communities. Nothing prohibits them from asking for and being granted the authority.

STEP FOUR:

Assure contract officer's adherence to the Rule of Two practice across both agencies especially in the area of Simplified Acquisitions Procedures and GSA schedules. Petition the FedBizOps to add a search element; "Buy Indian Set-Aside" to the system.

Why are the Rule of Two and IEE set-asides inconsistently followed by these two agencies as stated in the federal acquisition regulations?

Background

In FY2014 IHS spent \$660,412,124.00. A total of \$2,369,986.00 was on Buy Indian set-aside. It is noted that IHS spent \$517,697,114.00 with no set-aside being used.

In FY 2014 BIA spent \$560,010,940.00. A total of \$53,026,652.00 was on Buy Indian set-aside. It is noted that BIA spent \$285,251,437.00 with no set-aside being used.

Development of a "One Place-One Face" website for all targeted procurements over \$3000 would be welcomed. Furthermore, the FedBizOps must add "Buy Indian" to the search criteria on par with other social economic entities. FPDS already has it as a data element.

Buy Indian Act mitigates the *strategic sourcing*, reverse auctions and GSA ideas that destroyed a number of small American Indian & Alaska Native businesses in the past. Several industries, such as office and medical supplies are anxious to stabilize their businesses.

Now is the time to expand for accountability, adherence and transparency across both agencies!

STEP FIVE:

BIA and IHS develop and distribute a Buy Indian Act report annually by December 31st of each year reporting their agency spending and including Individual Subcontracting Reports (ISR) and Summary Subcontracting reports (SSR) of prime contracts addressing the impact of contract bundling on American Indian & Alaska Native small businesses. (Far 19.7-Small Business Subcontracting Program) including but not limited to:

- How many offers each procurement over \$3,000 received?
- How much each agency spent with IEEs versus non- IEEs;
- How each agency used and met its authority of the Buy Indian Set-Aside and other social economic goals.

Would an annual Buy Indian Act report lead to transparency and accountability within the two agencies? We believe it would.

Who within the two agencies are mandating proof that large businesses benefitting from government contracts are using ISBEs and IEEs as their small business partners?

Background

Currently, this report does not exist. It would remove the barrier and agency interpretation of the language ***“at the discretion of”*** and send a top down message to senior management, program and contract officers alike that the Buy Indian Act will be implemented and enforced.

It would also provide an excellent tool for service organizations working with American Indian and Alaska Native start-ups and existing business to measure IEE industry growth.

The BIA and IHS has the power to enforce this with their large suppliers and mandate proof that IEEs are included as a small business partner with these large firms benefitting from BIA and IHS contract awards.

A report such as this would restore confidence in Indian Country. Additionally, this tool would provide a benchmark for setting annual budgets, goals and set-asides.

STEP SIX:

That BIA and IHS demonstrate a commitment to small business utilization through regular training of acquisition staff to include program officers, contracting staff, and senior management personnel on issues, procedures, policies and regulations impacting American Indian & Alaska Native businesses.

How do program and contract officers identify American Indian and Alaska Native businesses when looking to procure goods and services?

Background

Agency program and contract officers are not using the same search engines when accessing IEE business information.

This results in missed business opportunities for IEEs.

The more commonly used search engines are the Small Business Dynamic Search (SBDS), which does include a check box to identify as an American Indian or Alaska Native business while the General Services Administration (GSA) does not include a filter to identify Indian Economic Enterprise.

Furthermore, there are Small Business Advocates within the two agencies that are creating their own database of IEEs, this also results in missed business opportunities for IEEs because the data is incomplete and notice of such database has not been announced nationally.

By not having access to uniform data on IEEs, it impedes the contract officer's ability to conduct market research and determine whether to establish a set-aside based on whether the Government will receive at least two reasonable, responsive offers.

Modern technology can go a long way toward solving this problem.

STEP SEVEN:

Require BIA and IHS flow down and monitor all the Buy Indian Act contract clauses to American Indian & Alaska Native compacts and contracts.

Why do the federal agencies not flow down the Buy Indian Act clauses in their contracts with tribes and prime contractors? Normally, flow down of government-mandated clauses is standard procedures for federal agencies. Who is providing oversight on these clauses?

Background

A flow down clause is a contract provision by which the parties incorporate the terms of the general contract between the owner and the general contractor into the lower tier agreement. It may also be referred to as a pass-through or conduit clause.

Such provisions state that the subcontractor is bound to the contractor in the same manner as the contractor is bound to the owner in the prime contract. Flow-down provisions help to ensure that the subcontractor's obligations to the contractor mirror the contractor's obligations to the owner.

These requirements can be excellent measures of “past performance” for future contracts and task orders. Other federal agencies are now using this as a benchmark in contracting. We understand the government to government relationship of working with the Tribes, but language is a powerful tool and can be included. Setting standards for review of the “tribal procurement” systems is an excellent start.

Examples of government mandated clauses:

FAR 52.219-8	Utilization of Small Business Concerns
FAR 52.222-21	Prohibition of Segregated Facilities
FAR 52.222-26	Equal Opportunity
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, if subcontract exceeds \$100,000
FAR 52.222-36	Affirmative Action for Workers with Disabilities, if subcontract exceeds \$10,000
FAR 52.222-41	Service Contract Act of 1965
FAR 52.222-50	Combating Trafficking in Persons
FAR 52.222-54	Employment Eligibility Verification, if subcontract exceeds \$3,000

CONCLUSION

The Buy Indian Act **does not** *cost the government anything to implement*. It is the law of the land and does *not* impact the spending of those agencies that work with American Indian & Alaska Native programs. The metrics are already in the Federal Procurement Data System.

The Buy Indian Act, while targeted for Native businesses, is not unique to the Federal government. The Department of Veterans Affairs (VA) has Special Authority for Service-Disabled Veteran-Owned Small Business/Veteran-Owned Small Business (SDVOSB/VOSB) Set-aside and Sole Source Contracts.

We, American Indian & Alaska Native businesses understand the compliance metrics show a trend toward improvement. Additionally, the public's ability to track progress has greatly improved oversight and accountability. Despite this progress, all Federal agencies, and especially BIA and IHS face ongoing challenges.

BIA and IHS officials attribute the lack of progress to acquisition workforce shortages, turnover, and the difficulty in obtaining needed information. We agree. However, we also see agencies that are failing to meet even the most basic of needs of Indigenous peoples. Native businesses are ready to be part of the solution and are anxious to help address the continuing problems that bedevil their position in the American political economy.

This is a remarkable time to be in business and to be serving in a leadership role. The risks, fears of change, possibilities of disruption or the realities of creative destruction and nondestructive creation are all facts of our business lives and they provide an opportune backdrop for us to create—to innovate. Innovation is driving all our businesses. While traditional tools of business are still available to us, critical new skills are needed now. Boundaries are changing and we want BIA and IHS to move forward without the burdens of the past.

The Buy Indian Act can be a powerful economic engine. It has the ability, when implemented by dedicated individuals to empower American Indian & Alaska Native entrepreneurs to use their potential to significantly impact the economic landscape of Indian Country. But it will take strong leadership within this administration to move forward. Join with us in this collaboration to ensure a different and more positive future for all of Indian Country.

This White Paper calls for transparency, accountability, and economic parity and has laid out important steps to achieve these measures and to finally and successfully implement the Buy Indian Act.

Respectfully submitted,

June 8, 2015

THANK YOU

FOR MORE INFORMATION CONTACT:

Pamela Standing
info@mniba.org
218-850-8364

EXHIBIT A

June 1, 2015

TO THE INTERIOR SECRETARY AND INTERIOR CFO, HEALTH AND HUMAN SERVICES SECRETARY, INDIAN HEALTH SERVICE CFO AND SENATE COMMITTEE ON INDIAN AFFAIRS:

We, the undersigned Indian tribal nations, tribal corporations, American Indian and Alaska Native businesses, trade associations and state and local American Indian and/or chambers of commerce, write in strong support of the steps outlined in the white paper entitled; "BUY INDIAN ACT – Seven Steps to Transparency, Accountability and Economic Parity."

On 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.¹⁰

Almost two years have passed since the Buy Indian Act's final rules were written and we are still no closer in taking American Indian and Alaska Native business to the next level or achieving economic parity.

We are calling for the immediate attention of the Interior Secretary, Interior CFO, Health & Human Services Secretary, Indian Health Service CFO and Senate Committee on Indian Affairs to address the following:

1. Align BIA and IHS performance plans, bonuses and annual raises to the successful implementation and enforcement of the Buy Indian Act's set aside authority with a goal of 30% for ISBEE and 25% for IEE business owned and controlled by American Indian and Alaska Natives.
2. American Indian and Alaska Native business are at the table to provide clearly communicated recommendations for procedures and policies that ensure implementation and enforcement of the Buy Indian Act.
3. Other Federal agencies working in Indian Country are utilizing the Buy Indian Act.
4. BIA/IHS Contract officers adhere to the Rule of Two practice, especially in the area of Simplified Acquisition and GSA schedules.
5. BIA and IHS develop and distribute a Buy Indian Act report annually, showing progress and goals.
6. BIA and IHS demonstrate a commitment to small business through regular training of acquisition, program, contracting staff and senior management.
7. BIA and IHS are required to flow down and monitor all Buy Indian Act contract clauses to American Indian and Alaska Native compacts and contracts

The Buy Indian Act can be a powerful economic engine. It has the ability, when implemented by dedicated individuals to empower American Indian & Alaska Native entrepreneurs to use their potential to significantly impact the economic landscape of Indian Country.

The undersigned groups strongly support this and recognize it will take strong leadership within this administration to move forward. We urge you to support this request, and not wait another 103 years to implement and enforce the Buy Indian Act.

Sincerely,

¹⁰ Long-awaited rules require the BIA to "buy Indian" - Paula Woessner, Federal Reserve Bank of Minneapolis, Community Dividend, October 2013

EXHIBIT B

June 1, 2015

TO THE HONORABLE MEMBERS OF THE UNITED STATES SENATE AND CONGRESS:

We, the undersigned Indian tribal nations, tribal corporations, Native businesses, trade associations and state and local American Indian and/or chambers of commerce, write in strong support of the steps outlined in the white paper entitled; "BUY INDIAN ACT – Seven Steps to Transparency, Accountability and Economic Parity."

On 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.¹¹

Almost two years have passed since the Buy Indian Act's final rules were written and we are still no closer in taking American Indian and Alaska Native business to the next level or achieving economic parity.

We are calling for the immediate attention of the Interior Secretary, Interior CFO, Health & Human Services Secretary, Indian Health Service CFO, and members of Senate Committee on Indian Affairs to address the following:

1. Align BIA and IHS performance plans, bonuses and annual raises to the successful implementation and enforcement of the Buy Indian Act's set aside authority with a goal of 30% for ISBEE and 25% for IEE business owned and controlled by American Indian and Alaska Natives.
2. American Indian and Alaska Native business are at the table to provide clearly communicated recommendations for procedures and policies that ensure implementation and enforcement of the Buy Indian Act.
3. Other Federal agencies working in Indian Country are utilizing the Buy Indian Act.
4. BIA/IHS Contract officers adhere to the Rule of Two practice, especially in the area of Simplified Acquisition and GSA schedules.
5. BIA and IHS develop and distribute a Buy Indian Act report annually, showing progress and goals.
6. BIA and IHS demonstrate a commitment to small business through regular training of acquisition, program, contracting staff and senior management.
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Sincerely,

¹¹ Long-awaited rules require the BIA to "buy Indian" - Paula Woessner, Federal Reserve Bank of Minneapolis, Community Dividend, October 2013

EXHIBIT C

Who is responsible to implement the Buy Indian Act at the Department of Interior?



Ms. Sally Jewell
DOI Secretary
Department of the Interior
1849 C Street, N.W.
Washington DC 20240
(202) 208-3100

Who is responsible to implement the Buy Indian Act at the Department of Health and Human Services?



Ms. Sylvia Mathews Burwell
HHS Secretary
200 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: (877) 696-6775

AND

Mr. Kenneth Cannon
Acting Chief Financial Officer
Indian Health Service
200 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: (877) 696-6775

Who is responsible to implement the Buy Indian Act at the Bureau of Indian Affairs?



The Chief Financial Officer, within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior.

Mr. Thomas D. Thompson, CFO
Bureau of Indian Affairs
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Telephone: (202) 208-7163
Fax: (202) 208-5320

EXHIBIT D

United States Senate Committee on Indian Affairs

Contact

Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington DC 20510
Phone: 202-224-2251
Majority Fax: 202-224-5429
Minority Fax: 202-228-2589

Committee Members

John Barrasso, Chairman, WY (R)
John Tester, Vice-Chairman, MT (D)
John McCain, Member, AZ (R)
Maria Cantwell, Member, WA (D)
Lisa Murkowski, Member, AK (R)
Tom Udall, Member, NM (D)
John Hoeven, Member, ND (R)
Al Franken, Member, MN (D)
Steve Daines, Member, MT (R)
Brian Schatz, Member, HI (D)
Michael Crapo, Member, ID (R)
Heidi Heitkamp, Member, ND (D)
Jerry Moran, Member, KS (R)
James Lankford, Member, OK (R)