



JAN 14 2022

Dear Tribal Leader:

I am writing to announce a final rule supplementing acquisition regulations, specifically procedures for contracting, under the Buy Indian Act of 1910 (Buy Indian Act) at 25 U.S.C. § 47, which provides the Indian Health Service (IHS or Agency) with authority to set-aside procurement contracts for Indian-owned and controlled businesses. The final rule supplements the Federal Acquisition Regulations and the Department of Health and Human Services Acquisition Regulations (48 C.F.R. Parts 326 and 352) to ensure that preference is given to Indian labor and industry when determining set-asides for IHS solicitations under the authority of the Buy Indian Act.

On November 2, 2020, the IHS initiated Tribal Consultation on the Department of Health and Human Services Acquisition Regulations associated with implementing the Buy Indian Act, which will be used to update IHS contracting policy and procedures. The IHS sought input through written comments and virtual Tribal Consultation sessions on current challenges that Indian-owned and Indian-controlled businesses encounter when pursuing IHS commercial contract awards and strategic approaches to maximize contracting under this authority.

In concert with Tribal Consultation, IHS published a proposed rule in the *Federal Register* of November 10, 2020 (85 Fed. Reg. 71596), entitled “Acquisition Regulations; Buy Indian Act; Procedures for Contracting” with a 60-day comment period. The IHS received comments from Tribes and Tribal entities requesting an extension of the comment period due to the encompassing of the holiday season during the original comment period, as well as the disproportionately high impact of the pandemic on Indian Country. The commenters felt both of these events delayed stakeholders from being able to perform a complete and full review of the proposed rule and provide comments within the initial 60-day comment period. The IHS concluded that it was reasonable to reopen and extend the comment period for an additional 60 days to allow any interested persons to submit comments on the proposed rule. On April 21, 2021, the IHS reopened and extended the comment period for 60 days with written or electronic comments on the proposed rule due by June 21, 2021.

I would like to thank Tribal leaders and representatives who participated in any of the four Tribal Consultations and provided comment during the established *Federal Register* comment period. Your recommendations and invaluable feedback on this final rule will allow the continued growth of commercial contract dollars awarded to Native-owned businesses and support and advance economic sustainability and development in Indian Country.

The final rule responds to longstanding recommendations from Tribes and Tribal Organizations for the Agency to enforce Buy Indian Act authority when carrying out Federal procurement activities. This final rule will also allow us to address recommendations for improvement detailed in a report by the United States Government Accountability Office (GAO) entitled, “Buy Indian Act, Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices” (GAO-15-588), located online at <https://www.gao.gov/assets/680/671291.pdf>.

The final rule with public comments and responses is published in the Federal Register of January 13, 2022, and is located at <https://www.federalregister.gov/documents/2022/01/13/2021-28156/acquisition-regulations-buy-indian-act-procedures-for-contracting>.

If you have any questions regarding the final rule, please contact Mr. Santiago Almaraz, Director, Office of Management Services, IHS, by e-mail at santiago.almaraz@ihs.gov.

Thank you for your support and partnership to assist us to make improvement to acquisition policies and procedures for the IHS. I look forward to your feedback as we implement this rule.

Sincerely,

/Elizabeth A. Fowler/
Acting Deputy Director