

2021 Tribal Consultation Buy Indian Act Notice of Proposed Rulemaking (NPRM)

WELCOME & INTRODUCTION

JEFFREY JOHNSTON

IHS BUREAU CAREER MANAGER COR/PPM

JUNE 9, 2021



Consultation Agenda

- Welcome and Introductions
- Opening Remarks – IHS Acting Director, Elizabeth Fowler
- Overview – Buy Indian Act / Notice of Proposed Rulemaking
- Consultation / Open Discussion
- Closing Remarks



2021 Tribal Consultation Buy Indian Act Notice of Proposed Rulemaking (NPRM)

ELIZABETH FOWLER
IHS ACTING DIRECTOR

JUNE 9, 2021



2021 Tribal Consultation Buy Indian Act Notice of Proposed Rulemaking (NPRM)

SANTIAGO ALMARAZ
ACTING DIRECTOR
OFFICE OF MANAGEMENT SERVICES
JUNE 9, 2021



Agency Priorities

- **Renew and strengthen our partnerships with Tribes and Urban Indian Health Programs**
 - Uphold the Federal Government's obligation to promote healthy American Indian and Alaska Native people, communities, and cultures
- **Improve the quality of and access to care**
 - Our patients are our first priority. Quality health care reduces disparities and promises a future that assures excellence for our patients across the IHS system
- **Ensure that our work is transparent, accountable, fair, and inclusive**



Buy Indian Act Authority

- Passed into law on June 25, 1910 (25 U.S.C. 47)
- The Act authorizes the Secretary of the Interior, Bureau of Indian Affairs (BIA), to employ Indian labor and to purchase the products of Indian-owned and controlled firms without using the normal competitive process
- The Transfer Act of 1954 authorizes the IHS to use the Buy Indian act to carry out its health care responsibilities (25 U.S.C. 1633)
- The Act does not apply to contracts awarded under ISDEAA Public Law 93-638



Notice of Proposed Rule – Buy Indian Act

- This rule proposes to amend the current Health and Human Services Acquisition Regulations (HHSAR), codified at 48 CFR 326, Subpart 326.6
- This rule will supplement the Federal Acquisition Regulations (FAR) and formalizes an administrative procedure for all IHS acquisition activities and locations
- The rule is intended to establish Buy Indian Act acquisition policies and procedures for IHS consistent with the Buy Indian Act rule established by the Department of the Interior



Why the Buy Indian Act?

- The IHS considers all contract dollars to be set-aside for Native-owned and controlled firms which in turn, when awarded, the earned revenues may support economic sustainability and development in Indian Country
- The IHS awards and obligates approximately \$1 billion in commercial contract actions per year
- In fiscal year 2020, IHS awarded over \$43 million in set-aside commercial contract actions to Indian Economic Enterprises (IEE)



IHS Buy Indian Awards

Fiscal Year	Buy Indian Awards	Percentage
2020	\$43,278,106	4.4%
2019	\$35,622,222	3.5%
2018	\$20,683,708	2.4%
2017	\$19,523,077	2.3%
2016	\$5,248,050	0.5%
2015	\$3,240,238	0.3%



Definition

INDIAN ECONOMIC ENTERPRISE (IEE) - Any business activity owned by one or more Indians, Federally Recognized Indian Tribes, or Alaska Native Corporations provided that:

- The combined Indian, Federally Recognized Indian Tribe or Alaska Native Corporation ownership of the enterprise constitutes not less than 51%;
- The Indian, Federal Recognized Indian Tribes, or Alaska Native Corporations must, together, receive at least 51% of the earnings from the contract; and
- The management and daily business operations must be controlled by one or more individuals who are Indians



Set-aside for Indian Economic Enterprises

- IHS will give preference to IEEs through set-asides when acquiring supplies, general services, A&E services or covered construction
- Acquisition of supplies or services using either Commercial Item Procedures (FAR Part 12) or Simplified Acquisition Procedures (FAR Part 13), must be set-aside exclusively for Indian Small Business Economic Enterprises (ISBEE), which are IEEs that are also small business concerns
- Each acquisition must be set-aside exclusively for IEEs, with preference to ISBEEs, when there is a reasonable expectation that offers will be received from two or more responsible IEEs (or ISBEEs) and award will be made at a reasonable price.



Buy Indian Act Deviation

- Deviation is an exception to the requirement to use the Buy Indian Act

A deviation to the Buy Indian Act may occur if:

- The Contracting Officer determines after market research that there is no reasonable expectation of obtaining two or more ISBEE and/or IEE offers that will be competitive in terms of market prices, product quality, and delivery capability;
- Offers received in response to a Buy Indian set-aside are determined to be unacceptable upon price and/or technical evaluations
- No responses received to a Buy Indian Act Sources Sought Notice or Request for Information.
- No responsive offers to a Buy Indian set-aside are received from IEEs



Representation

To be considered for award an offeror must:

- **Certify that it meets the definition of “Indian Economic Enterprise” in response to a specific solicitation set-aside**
- **Identify the Federally Recognized Indian Tribe or Alaska Native Corporation upon which the offeror relies for its IEE status**
- **Representation must be made on the designated IHS Indian Economic Enterprise Representation form through which the offeror will self-certify eligibility**



Representation

The enterprise must meet the definition of “Indian Economic Enterprise throughout the following time periods:

- At the time an offer is made in response to a solicitation;
- At the time of contract award; and
- During the full term of the contract; and
- If a contractor loses eligibility during any of these times, the Contracting Officer may terminate the contract for default.



Challenges to Representation

- Interested parties can challenge the IEE Representation of an offer in response to a Buy Indian Act set-aside solicitation, Sources Sought Notice or Request for Information (RFI)
- The Contracting Officer will investigate the representation of an offeror in response to an interested party challenge or if the Contracting Officer has any other reason to question the representation.
- IHS will make awardees' Indian Economic Enterprise representations available via IHS public sites and/or other means



2021 Tribal Consultation Buy Indian Act Notice of Proposed Rulemaking

CONSULTATION / OPEN DISCUSSION

JUNE 9, 2021



Federal Register – NPRM Comments

The deadline for formal comments in response to the Buy Indian NPRM published to the Federal Register must be submitted to the official Docket ID

- Title: Acquisition Regulations; Buy Indian Act; Procedures for Contracting
- Agency: Department of Health and Human Services (HHS), Indian Health Service (IHS)
- Docket ID: O1-2012-0005
- Publish Date: April 21, 2021
- Comment Close Date: Monday, June 21, 2021
- Agency/CFR Title/CFR Part: HHS/IHS, CFR Title 48, CFR Part 326 & 352
- Federal Register Publication: <https://www.federalregister.gov/documents/2020/11/10/2020-24339/acquisition-regulations-buy-indian-act-procedures-for-contracting>



IHS Points of Contacts

HEAD OF CONTRACTING ACTIVITY, OFFICE OF MANAGEMENT SERVICES

Santiago Almaraz

Phone: 301-443-4872

Santiago.Almaraz@ihs.gov

ACTING DIRECTOR, DIVISION OF ACQUISITION POLICY

Ken Truesdale

Phone: 240-994-0732

Kenneth.Truesdale@ihs.gov

HHS / IHS SMALL BUSINESS SPECIALIST

Jonathan Ferguson

Jonathan.Ferguson@hhs.gov



