

INDIAN AFFAIRS MANUAL

Part 22

Acquisition Management

Chapter 8

Buy Indian Act Compliance

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1.1 Purpose. This chapter establishes the policy and procedures to ensure compliance with the Buy Indian Act (25 U.S.C. 47), and to ensure that the acquisition actions made to Indian Economic Enterprises (IEEs) are maximized to the fullest extent allowed by the Act. Increasing the number of acquisition actions awarded to IEEs will strengthen Indian Affairs' (IA) commitment to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives.

1.2 Scope. This policy applies to all acquisitions, including simplified acquisitions and those below the micro-purchase threshold, made by IA, which includes the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), Bureau of Trust Funds Administration (BTFA), and the offices of the Assistant Secretary - Indian Affairs (AS-IA).

1.3 Policy. All acquisitions made by IA must be made under the Buy Indian Act authority whenever the use of that authority is authorized and practicable.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 U.S.C. 47, Employment of Indian labor and purchase of products of Indian industry; participation in Mentor-Protégé Program
- 2) 48 CFR 1401-1452 - Department of the Interior Acquisition Regulation (DIAR)
- 3) 48 CFR 1480, Acquisitions under the Buy Indian Act
- 4) Federal Acquisition Regulation (FAR) Part 8, Required Sources of Supplies and Services
- 5) FAR Part 19, Small Business Programs

B. Guidance.

- 1) Department of the Interior (DOI) Acquisition, Arts, and Asset Policy (DOI-AAAP-0011), Buy Indian Set-Aside and Indian Small Business Economic Enterprise Prime and Subcontract Goal Setting
- 2) DOI-AAAP-0043 – Small Business Acquisition Screening Procedures
- 3) DOI-AAAP-0145 – Conducting Market Research

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1.5 Responsibilities.

- A. **DOI Senior Procurement Executive (SPE)** is the Director, Office of Acquisition and Property Management (PAM), and is responsible for signing and approving Buy Indian Act Deviations exceeding \$57 million.
- B. **Bureau Procurement Executive (BPE), IA** is the Chief Financial Officer for IA, and responsible for overseeing acquisition management program for IA, and ensuring the program is in compliance with all applicable laws, regulations, policies, and procedures. The BPE is responsible for reviewing Buy Indian Act Deviations exceeding \$57 million after the IA Head of the Contracting Activity (HCA) has reviewed the Deviation but before submitting to the SPE for approval.
- C. **HCA** is responsible for the overall management of IA's contracting activity. This includes establishing acquisition policy, guidance, and oversight of all acquisition activities within IA. The HCA is responsible for signing and approving Buy Indian Act Deviations exceeding \$13.5 million but not exceeding \$57 million.
- D. **Competition Advocate** is responsible for promoting the acquisition of commercial products and services while also promoting full and open competition with a priority given to IEEs; and responsible for signing and approving Buy Indian Act Deviations exceeding \$700,000 but not exceeding \$13.5 million.
- E. **Chief of the Contracting Office (CCO)** is responsible for providing oversight to all IA (including regional) Contract Specialists and Contracting Officers (COs) under their authority to ensure that IA policies are adhered to. The CCO (or one level above the CO) is responsible for signing and approving Buy Indian Act Deviations exceeding \$25,000 but not exceeding \$700,000.
- F. **CO** is the individual with the authority to enter into, administer, and terminate contracts. The CO is responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, safeguarding the interests of the United States in its contractual relationships, and ensuring adherence and application of this policy. The CO is responsible for signing and approving Buy Indian Act Deviations up to \$25,000.

1.6 Definitions.

- A. **Deviation** means an exception to the requirement to use the Buy Indian Act in fulfilling an acquisition requirement subject to the Buy Indian Act.

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- B. Indian** means a person who is an enrolled member of a Federally Recognized Indian Tribe.
- C. Indian Economic Enterprise (IEE)** means any business activity owned by one or more Indians or Federally Recognized Indian Tribes provided that:
- 1) The combined Indian or Federally Recognized Indian Tribe ownership of the enterprise constitutes not less than 51 percent;
 - 2) The Indians or Federally Recognized Indian Tribes must, together, receive at least 51 percent of the earnings from the contract; and
 - 3) The management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. The Indian individual(s) must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. Management may be provided by:
 - a) Committees, teams, or Boards of Directors which are controlled by one or more members of a Tribe, or;
 - b) Non-Tribal members if the enterprise can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how Tribal members will develop managerial skills sufficient to manage the enterprise or similar enterprises in the future.

1.7 Standards, Requirements, and Procedures.

A. IEE Representation.

- 1) For all acquisitions made under the Buy Indian Act, COs must ensure that DIAR provision 1452.280-4, which pertains to IEE representation, is included in the solicitation.
- 2) COs are also required to incorporate the [IA IEE Representation Form](#) into all solicitations that involve IEE or Indian Small Business Economic Enterprise (ISBEE) set-aside procedures.
- 3) Upon receiving the IEE Representation Form with a proposal, the CO must verify, before awarding the contract, that the "Name of Federally Recognized Tribal

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Entity" is listed in the Federal Register under "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs."

- 4) If an IEE fails to include the representation form with their proposal, the CO may, at their discretion, reach out to the vendor to request the form or other documentation that verifies the IEE status as specified in DIAR provision 1452.280-4. If the IEE does not provide the required form or sufficient evidence, the CO may deem the IEE non-compliant with the solicitation and exclude them from further consideration.

B. Deviations.

- 1) The Deviation Process outlined in DIAR 1480.403, Deviations, must be followed by all responsible individuals identified in DIAR 1480.403. For purchase card transactions, signature authorization is not required, but documentation should be created that identifies the rationale/substantiation for deviating from this policy.
- 2) All IEE solicitations must be solicited for a minimum of five business days prior to issuing a Buy Indian Act Deviation, unless justified in writing and approved one level above the CO.
- 3) COs must obtain a control number from the IA Buy Indian Act Deviation Log for each action requiring a deviation from the Buy Indian Act.
- 4) The CO must include the control number on the Buy Indian Act Deviation form (available online at: <https://www.bia.gov/policy-forms/online-forms/specific-forms-and-guidance>). The approved Buy Indian Act Deviation and all supporting documentation must be included in the official contract file.
- 5) Approvals and signatures must be obtained in the order of acquisition authority identified in the table below. For example, for a requirement valued at \$15M, the final approver is the HCA, but the Deviation must first be reviewed and approved by all other levels below (CO, CCO, IA Competition Advocate).

For a proposed contract action	The following official may authorize a deviation
Up to \$25,000	CO
Exceeding \$25,000 but not exceeding \$700,000	One level above the CO or CCO (or the IA Competition Advocate, absent a CCO)

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Exceeding \$700,000 but not exceeding \$13.5 million	IA Competition Advocate
Exceeding \$13.5 million but not exceeding \$57 million	HCA or a designee who is a civilian serving in a position in a grade above GS-15 under the General Schedule or in a comparable or higher position under another schedule
Exceeding \$57 million	DOI SPE

- 6) If a Deviation for an IA acquisition is approved, the acquisition must prioritize sources of supplies and services in accordance with FAR Part 8, Required Sources of Supplies and Services and FAR Part 19 - Small Business Programs as applicable.

C. Reporting Requirements.

Tracking and reporting of Buy Indian Act Deviations and Challenges to Representation (DIAR 1480.9) facilitates IA's efforts to monitor compliance with the Buy Indian Act.

- 1) COs must record all Deviation requests in the Buy Indian Act Deviation Log required in Section 1.7B.
- 2) Any challenges by an IEE or other interested party requesting that IA authenticate another vendor's IEE categorization or credentials must be reported to the HCA immediately after receiving the challenge and before any subsequent contract action.
- 3) IA will compile a Buy Indian Act Spend Report on a quarterly basis and publish it on www.BIA.gov to ensure public awareness and accountability in complying with the Buy Indian Act

D. Annual Review for Compliance.

IA incorporates the Buy Indian Act into its DOI mandated annual testing of internal controls. For each contract file tested for internal controls, there is also a documented review for compliance with the Buy Indian Act. Any findings from the review will be reported to the responsible IA CCO and the supervisor of the bureau/regional office.

E. Biennial Report to Congress.

The Secretary of the Interior reports its Buy Indian Act compliance to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House

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of Representatives on a biennial basis. IA provides the contents of the report as specified in 25 U.S.C. § 47(d).

Approval

JASON FREIHAGE

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Jason Freihage
Deputy Assistant Secretary – Management

Date