



July 2015

BUY INDIAN ACT

Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices

GAO Highlights

Highlights of [GAO-15-588](#), a report to congressional requesters

Why GAO Did This Study

The Buy Indian Act of 1910 and agencies' implementing regulations allow Interior's BIA and the Department of Health and Human Services' IHS to award federal contracts to Indian-owned businesses without using the standard competitive process. Among other requirements, eligible firms must be at least 51 percent Indian-owned and give preference to Indians in employment, training, and subcontracting.

GAO was asked to review the implementation of the Buy Indian Act. This report identifies (1) the policies and procedures at BIA and IHS to implement the Act; and (2) the funds obligated by BIA and IHS using the Buy Indian Act procurement authority.

GAO reviewed the Buy Indian Act, the Federal Acquisition Regulation, and agency policies and regulations. GAO also analyzed data from the Federal Procurement Data System-Next Generation on BIA and IHS's contract obligations under the Act between fiscal years 2010 and 2014 and met with agency officials.

What GAO Recommends

GAO recommends, among other things, that Interior and Health and Human Services enhance their oversight of execution of the Act at regional offices by collecting additional data on key requirements and including Buy Indian Act contracts in procurement reviews. Interior and Health and Human Services agreed with GAO's recommendations.

View [GAO-15-588](#). For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

July 2015

BUY INDIAN ACT

Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices

What GAO Found

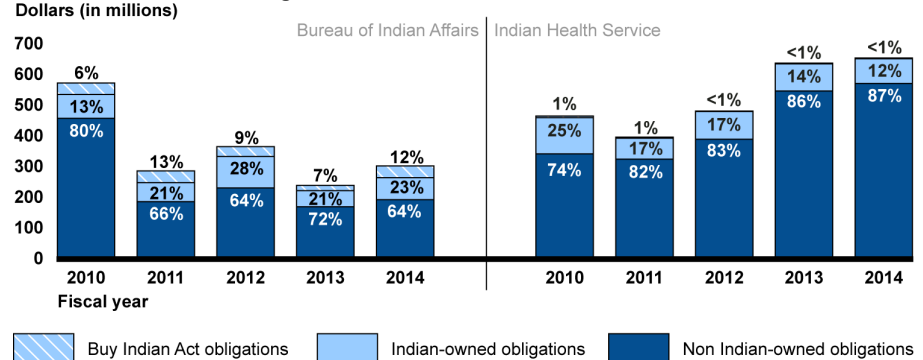
The Department of the Interior's (Interior) Bureau of Indian Affairs (BIA) and the Department of Health and Human Services' Indian Health Service (IHS) have requirements in place to implement the Buy Indian Act. Through supplements to the Federal Acquisition Regulation, both BIA and IHS have policies and procedures to implement key requirements:

- **Indian-owned status.** Eligible firms must be 51 percent Indian-owned. The agencies rely on firms to self certify that they are Indian-owned and interested parties may challenge a firm's self-certification.
- **Indian preference.** The agencies require that contractors give preference to Indians in employment and training opportunities, and use a contract clause to implement this requirement.
- **Subcontracting.** The agencies require contractors to give preference to Indian firms in the award of any subcontracts.

However, BIA and IHS have limited insight into implementation of the Buy Indian Act at their regional offices, where the contracts are generally awarded. For example, officials at both agencies' headquarters had little knowledge as to how often challenges to self-certifications of Indian-owned status occur on contracts awarded at the regional offices. Neither agency collects data from regional offices on use of the Buy Indian Act, and neither agency includes a specific review of Buy Indian Act contracts in its regular procurement review process. Therefore, the agencies may be missing opportunities to maximize the intended benefits of the Act in terms of growth and development of Indian firms.

Use of the Buy Indian Act comprises a small percentage of the two agencies' annual contract obligations. However, these agencies also award contracts to Indian-owned firms using other authorities, thus increasing the percentage of obligations awarded to Indian-owned firms.

Total Annual Contract Obligations



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-15-588

Note: Numbers may not add to 100 percent due to rounding.

Contents

Letter		1
	Background	3
	Both BIA and IHS Have Buy Indian Act Policies in Place, but Insight into Implementation by Regional Offices is Limited	6
	A Small Percentage of BIA and IHS Obligations Go Towards Acquiring Various Goods and Services through the Act	12
	Conclusions	19
	Recommendations for Executive Action	20
	Agency Comments and Our Evaluation	20
Appendix I	Comments from the Department of the Interior	22
Appendix II	Comments from the Department of Health and Human Services	24
Appendix III	GAO Contact and Staff Acknowledgments	27
Figures		
	Figure 1: Bureau of Indian Affairs Regional Offices	4
	Figure 2: Indian Health Service Area Offices	5
	Figure 3: Bureau of Indian Affairs Total Annual Contract Obligations	14
	Figure 4: Indian Health Service Total Annual Contract Obligations	15
	Figure 5: Bureau of Indian Affairs Buy Indian Act Annual Contract Obligations by Office	16
	Figure 6: Indian Health Service Buy Indian Act Annual Contract Obligations by Office	17
	Figure 7: Bureau of Indian Affairs Goods and Services Purchased Using the Buy Indian Act, Fiscal Years 2010-2014	18
	Figure 8: Indian Health Service Goods and Services Purchased Using the Buy Indian Act, Fiscal Years 2010-2014	19

Abbreviations

BIA	Bureau of Indian Affairs
FPDS-NG	Federal Procurement Data System-Next Generation
HHS	Department of Health and Human Services
IHS	Indian Health Service
Interior	Department of the Interior

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



July 9, 2015

The Honorable John Barrasso
Chairman
The Honorable Jon Tester
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable Tom Udall
United States Senate

Because of its unique legal and political relationship with Indian tribes, the federal government has a number of programs and authorities to support and expand the economic development of tribal entities and their individual members. One of these, the Buy Indian Act, allows for the award of federal contracts to Indian-owned businesses without using the standard competitive process.¹ Specifically, the Buy Indian Act and implementing regulations authorize the Department of the Interior's (Interior) Bureau of Indian Affairs (BIA) and the Department of Health and Human Services' (HHS) Indian Health Service (IHS) to set aside, or reserve, a particular procurement for competition among Indian-owned firms. This helps to promote the growth and development of Indian industries.

You asked us to review the implementation of the Buy Indian Act. This report identifies (1) the policies and procedures in place at BIA and IHS to implement the Buy Indian Act and help ensure contractors comply with key requirements involving eligibility, use of subcontractors, and other issues; and (2) the amount of funds obligated by BIA and IHS using the Buy Indian Act procurement authority and the types of goods and services procured.

To identify policies and procedures related to implementation of the Buy Indian Act, we reviewed the Buy Indian Act and relevant sections of the

¹ Section 23 of the Act of June 25, 1910, 36 Stat. 861, known as the Buy Indian Act (25 U.S.C. § 47).

Federal Acquisition Regulation. We also obtained and reviewed policies and procedures on implementation of the Buy Indian Act from BIA and IHS, including each agency's supplement to the Federal Acquisition Regulation, relevant agency policy manuals, and policy memorandums.

To determine the use of the Buy Indian Act by BIA and IHS and the types of goods and services procured, we gathered data on contract obligations under the Buy Indian Act between fiscal years 2010 and 2014—the five most recent years for which data were available—using the Federal Procurement Data System-Next Generation (FPDS-NG).² To provide perspective on contracts awarded to Indian-owned firms more broadly, we analyzed FPDS-NG data on contracts awarded to Indian-owned firms outside the Buy Indian Act authority during the same five-year period.³ To assess the reliability of these data we discussed the FPDS-NG data with officials at both BIA and IHS who have direct knowledge of the source information that FPDS-NG is based upon. Additionally, we compared information provided by BIA and IHS to data we had retrieved from FPDS-NG. We determined that the data were sufficiently reliable for the purposes of this report. To understand how both agencies use the Buy Indian Act we met with procurement officials from BIA's Office of Acquisition and Property Management as well as IHS's Office of Management Services, Division of Acquisition Policy.

We conducted this performance audit from February 2015 to July 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

² FPDS-NG is the government's central repository for contracting data.

³ For purposes of this analysis, we selected all contracts marked in FPDS-NG as awarded to Native American entities, as defined in the System for Award Management User Guide (the official U.S. government system that consolidated the capabilities of several federal procurement systems). In FPDS-NG Native American entities include: Alaskan Native Corporation owned, Native Hawaiian Organization owned, tribally owned, American Indian owned, or a federally recognized Indian Tribe.

Background

The Buy Indian Act of 1910 authorizes the Secretary of the Interior to employ Indian labor and to purchase the products of Indian-owned firms without using the normal competitive process. As implemented, Interior's BIA may use the Buy Indian Act procurement authority. In addition, effective in 1955, Congress transferred authority over functions relating to the maintenance and operation of hospitals and health facilities for Indians, and the conservation of the health of Indians from Interior to HHS—formerly the Department of Health, Education, and Welfare.⁴ As a result, HHS' IHS may use the Buy Indian Act procurement authority for acquisitions in connection with those functions. BIA and IHS may use the Buy Indian Act to give preference to Indian-owned businesses when acquiring supplies and services to meet agency needs and requirements. The Buy Indian Act itself is brief and contains little detail. The key to implementing the Act is in both agencies' regulations. The two agencies have broad discretion over whether and how to utilize the Buy Indian Act and have issued agency regulations governing their use of the authority.

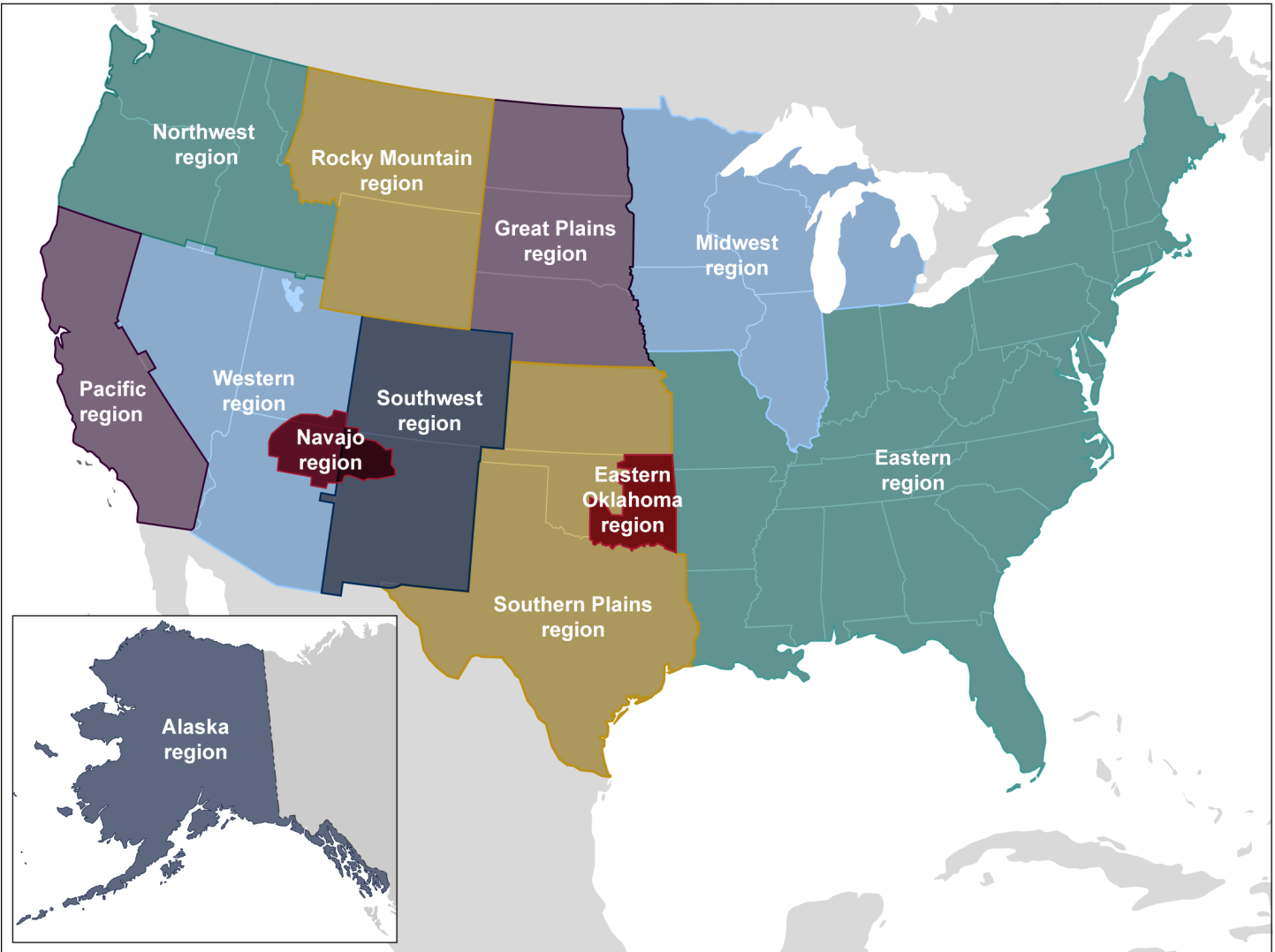
BIA provides services to approximately 1.9 million American Indians and Alaska Natives to enhance quality of life, promote economic opportunity, and carry out the responsibility to protect and improve the trust assets of American Indians and Alaska Natives. IHS is responsible for providing health care for American Indians and Alaska Natives. To provide for these services, both agencies contract for a variety of items and services such as administrative and custodial services, maintenance projects, and office supplies.

BIA and IHS are divided into twelve largely similar geographic areas across the United States, which they refer to as regional offices and area offices respectively.⁵ Each BIA and IHS regional office is led by a regional director. BIA and IHS headquarters set policies and oversee the regional offices. Each regional office employs contracting officers responsible for awarding contracts, including Buy Indian Act contracts. Each agency also awards some contracts through their headquarters offices. See figures 1 and 2 below for information on the regional structure of each of the agencies.

⁴ The Act of Aug. 5, 1954, 68 Stat. 674. The Act took effect July 1, 1955.

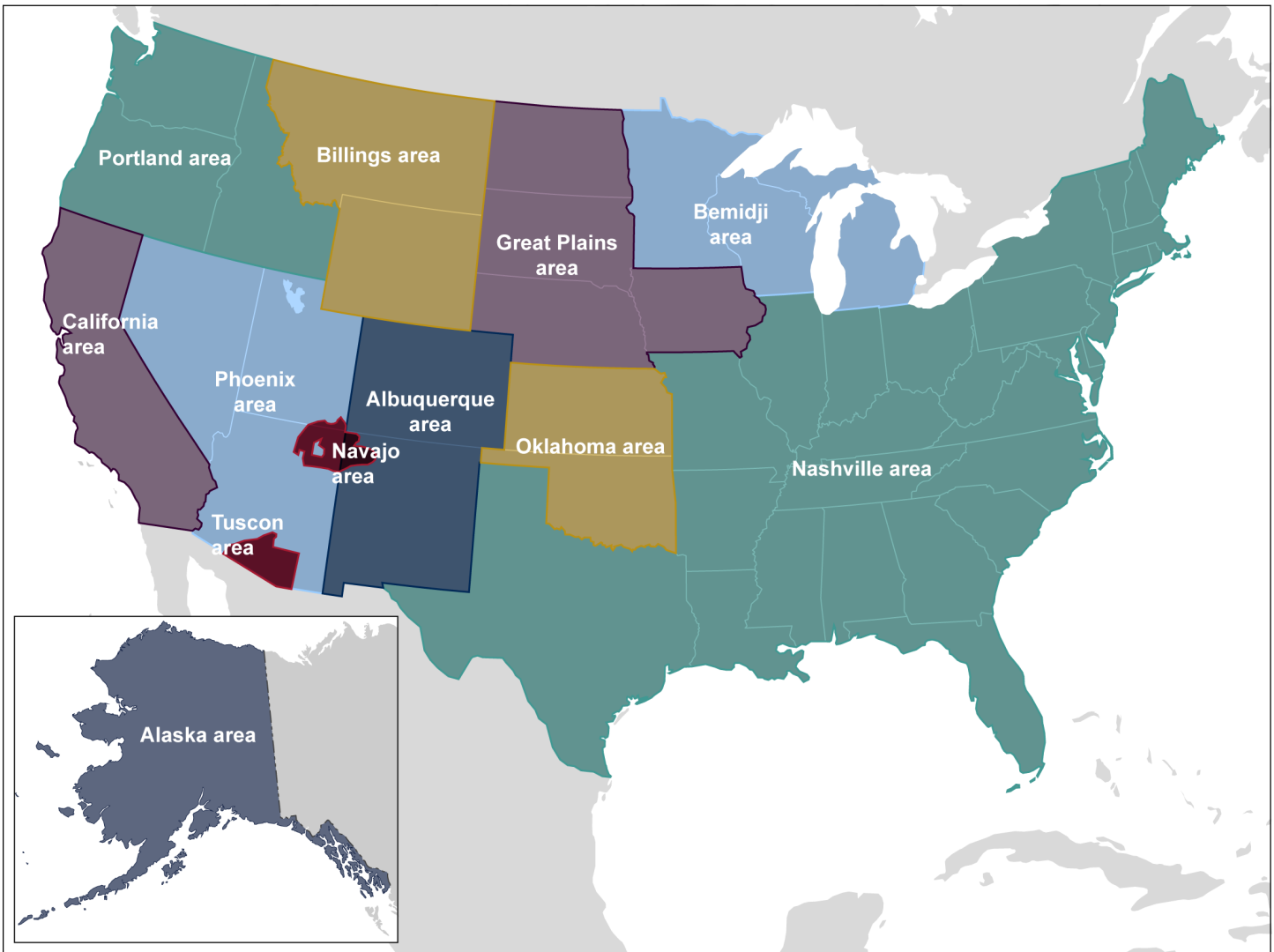
⁵ For purposes of this report, when we talk about the regional and area offices collectively we refer to them as "regional offices."

Figure 1: Bureau of Indian Affairs Regional Offices



Source: Bureau of Indian Affairs. | GAO-15-588

Figure 2: Indian Health Service Area Offices



Source: Indian Health Service. | GAO-15-588

The set-aside program under the Buy Indian Act differs from other government set-aside programs. For example, only two agencies are authorized to use the Buy Indian Act—it is not a federal government-wide authority. Also, Buy Indian Act set-asides are not limited to small businesses. And while the Small Business Administration negotiates with federal agencies to establish goals for contracting with various categories of small businesses, the Buy Indian Act does not have any of these goals associated with it.

Both BIA and IHS Have Buy Indian Act Policies in Place, but Insight into Implementation by Regional Offices is Limited

BIA and IHS have policies and procedures in place to implement the Buy Indian Act and to help ensure contractors' compliance with key requirements. However, both agencies' headquarters have limited insight into implementation of the Act at regional offices. BIA and IHS both implement the Buy Indian Act authority through a combination of regulations, agency policy, and guidance. BIA officials told us they prioritize the use of the Buy Indian Act over other set-aside authorities. Conversely, IHS officials reported prioritizing awards through other set-asides over the use of the Act so as to meet federally mandated small business goals. However, these priorities are not documented in regulations or policies. Both agencies have regulations to help ensure contractors comply with key requirements, such as maintaining the minimum proportion of Indian ownership, not subcontracting more than half of the contracted work to other than Indian firms, and providing a preference to Indians in employment, training, and subcontracting. Although these regulations are in place, headquarters officials at both agencies reported limited insight into implementation of these regulations at their regional offices because they do not collect data concerning the Buy Indian Act from regional offices, nor does either agency have a specific review of Buy Indian Act contracts included in its regular procurement review process.

BIA and IHS Have Regulations and Policy in Place, But Prioritization of the Act is Not Sufficiently Documented

Both Agencies Have Regulations and Policies in Place to Implement the Buy Indian Act

Both agencies have regulations and policies in place to implement the Buy Indian Act, codified in formal rules and agency guidance.

- In 2013, Interior finalized regulations implementing the Buy Indian Act in the Department of the Interior Acquisition Regulation, over 30 years after they had been initially promulgated.⁶ The rule solidified the processes to be used for implementation and provided a consistent policy to be used throughout BIA. BIA began promulgation of the

⁶ 78 Fed. Reg. 34,273 (June 7, 2013); 48 C.F.R. part 1480.

regulations back in October 1982 with proposed rules published in the Federal Register. BIA made additional efforts to establish regulations over the next 30 years until the final regulation took effect in 2013. BIA officials could not identify a specific reason as to why finalization of the regulations took so long. Prior to issuing a rule, BIA issued an internal policy manual to govern the program and provided guidance to its employees through a series of policy memoranda. BIA cited creating a more uniform process and applying it more consistently as the main reasons for pursuing a formal regulation.

- HHS, which at the time was the Department of Health, Education, and Welfare, enacted Buy Indian Act regulations in 1975.⁷ A modified version of these regulations was later incorporated into the Department of Health and Human Services Acquisition Regulation.⁸ IHS also issued the Indian Health Manual to provide additional guidance to its employees regarding the IHS procurement process, including specific policies regarding the Buy Indian Act. The chapter of the Indian Health Manual that contains requirements related to the Buy Indian Act is currently under revision.

BIA and IHS define the term “Indian” in their regulations somewhat differently. BIA regulations define “Indian” as a person who is a member of an Indian Tribe, or “Native” as defined in the Alaska Native Claims Settlement Act.⁹ IHS, however, defines “Indian” as a member of any tribe, pueblo, band, group, village, or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals recognized by the Secretary of the Interior or the Secretary of HHS.¹⁰

Both agencies’ implementing regulations impose key requirements on contractors. First, both agencies require eligible firms to be 51 percent

⁷ 40 Fed. Reg. 4913 (Feb. 3, 1975).

⁸ 48 C.F.R. subpart 370.5.

⁹ 48 C.F.R. § 1480.201. BIA defines an “Indian Tribe” as a tribe or other recognized group that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act. The Alaska Native Claims Settlement Act, Pub. L. No. 92-203, was enacted on December 18, 1971 to, among other things, resolve aboriginal land claims.

¹⁰ 48 C.F.R. § 370.502(b).

BIA and IHS Priorities Are Not Sufficiently Documented in Agency Policy

Indian-owned. Second, firms awarded a contract under the Buy Indian Act must give preference to Indians in employment and training opportunities under the contract, and to Indian firms in the award of any subcontracts. Third, firms awarded a contract under the Buy Indian Act must not subcontract more than 50 percent of the work to other than Indian firms.

BIA officials stated contracting officers must consider the Buy Indian Act first when awarding every contract, and if they are unable to award a contract using the Buy Indian Act, they must provide justification as to why not. However, this policy is not currently documented. According to BIA officials, policy documentation was recently rescinded because it was confusing and not fully in-line with the intent to award Buy Indian first. BIA is working on revising its policy on the use of the Buy Indian Act. Officials were uncertain exactly when the new guidance would be issued.

At IHS, use of the Buy Indian Act versus other set-aside programs is unclear and also not sufficiently documented. IHS officials told us that, because of difficulties meeting small business goals, the agency prioritizes awarding contracts to vendors that help the agency meet its federally mandated small business goals, and that awarding contracts under the Buy Indian Act is secondary to those goals. They also stated that since June 2005, there has been an effort within the agency to encourage Indian-owned firms to seek status under set-asides other than the Buy Indian Act, such as women-owned or veteran-owned small businesses. IHS was unable to provide documentation related to this practice, and was only able to produce a 1995 policy that, contrary to what we were told, indicated that the Buy Indian Act takes precedence over other set-asides.

The lack of documented policy at BIA and IHS is not consistent with federal internal control standards, which provide that formally documented policies and procedures help to ensure that staff performs activities consistently across an agency.¹¹ Without documented policies in place BIA and IHS are at risk for inconsistent application of the Buy Indian Act across the agency.

¹¹ GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

BIA and IHS Regulations Include Mechanisms to Help Ensure Contractor Compliance with Key Requirements

Both agencies' regulations provide for mechanisms to help enforce key requirements of the Buy Indian Act as implemented. Specifically, both agencies' regulations require that firms awarded a contract under the Buy Indian Act be at least 51 percent Indian owned, provide a preference to Indians in employment, training, and subcontracting, and not subcontract more than 50 percent of the work to other than Indian firms.¹² These key requirements are implemented through mechanisms such as self-certification procedures and, in some cases, specific contract clauses.

Both BIA and IHS Rely on Self-Certification of Indian-Owned Status

Both agencies rely on firms to self-certify their status as Indian-owned. BIA requires firms to represent their Indian-owned status by checking a box when submitting a proposal for a contract that indicates that they meet the relevant regulatory definitions.¹³ Additionally, contract clauses are included in all BIA Buy Indian Act contracts that require firms to report any change in Indian-owned status. According to IHS officials, bidders on IHS Buy Indian Act contracts must submit a certificate of degree of Indian blood or other form of tribal membership documentation as part of an application packet in order to be considered eligible for a Buy Indian contract. According to agency officials at both BIA and IHS, under self-certification, contracting officers may request more information from a bidding firm to confirm its Indian-owned status, though officials report this is rarely done. At BIA, the contracting officer may ask an attorney in the appropriate regional office to review a firm's representation. In addition, after receipt of offers, the contracting officer may question the representation of any bidder by filing a formal objection with the chief of the contracting office.

Both agencies have processes to address challenges to self-certifications, though the processes differ slightly between them. Under the procedures laid out in BIA's 2013 regulations, an interested party is permitted to challenge an offeror's Indian-owned status.¹⁴ Under this process, the contracting officer provides the first layer of determination, but an appeals process allows the challenge to proceed to Interior's Office of Acquisition and Property Management. Bidders still retain their bid protest rights under the Federal Acquisition Regulation in addition to

¹² 48 C.F.R. §§ 1480.201, 1480.504(f), 1480.601; 48 C.F.R. § 370.503(a), (d), (e).

¹³ See 48 C.F.R. § 1452.280-4 for the Indian economic enterprise representation provision included in Buy Indian solicitations.

¹⁴ 48 C.F.R. § 1480.902.

Indian Preference Requirement
and Subcontracting Limitations
Are Implemented Through
Contract Clauses

the Buy Indian Act specific challenge process at BIA. IHS handles challenges according to the protest procedures set out in the Federal Acquisition Regulation. To deter intentional misrepresentations of Indian-owned status, both agencies rely on the suspension and debarment process, and prosecution under the federal false statement statute.¹⁵

Both agencies' regulations require firms that are awarded a contract under the Buy Indian Act to give preference to Indians in employment, training, and subcontracting. Contracts awarded under the Buy Indian Act, and all resulting subcontracts, are required to contain the Indian Preference Clause, which specifically requires the contractor to provide a preference to Indians in employment, training, and subcontracting opportunities under the contract. The clause further requires the contractor to maintain sufficient records indicating compliance.

Agency officials at both BIA and IHS told us they have regulations limiting subcontracting with other than Indian-owned firms to no more than 50 percent of the work, although only BIA implements this requirement through the inclusion of a contract clause. Violations of contract clauses can have serious consequences such as contract termination. This approach is similar to how limitations on subcontracting might be handled for some small business contracts. For example, when awarding an 8(a) contract, the Federal Acquisition Regulation directs contracting officers to include the Limitations on Subcontracting clause, under which the contractor agrees that the 8(a) firm will perform a certain percentage of the work.¹⁶

According to BIA and IHS officials, neither agency employs systematic monitoring or compliance protocols—such as systematic reporting on specific Buy Indian requirements—to ensure that contractors comply with key requirements and contract clauses beyond regular contracting officer oversight. The Buy Indian Act is not necessarily unique in this regard. The Small Business Administration's women-owned small business and

¹⁵ 18 U.S.C. § 1001. For some of our work in the suspension and debarment area, see GAO, *Federal Contracts and Grants: Agencies Have Taken Steps to Improve Suspension and Debarment Programs*, [GAO-14-513](#) (Washington, D.C.: May 21, 2014).

¹⁶ The 8(a) program is one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals. For some of our work in this area see GAO, *Federal Contracting: Monitoring and Oversight of Tribal 8(a) Firms Need Attention*, [GAO-12-84](#) (Washington, D.C.: Jan. 31, 2012).

economically disadvantaged women-owned small business programs generally rely on self-certification and oversight by the contracting officer as well.¹⁷

Certain contracts or types of work involve more stringent, and more specific, monitoring requirements. For example, for contracts over \$50,000, BIA requires contractors to appoint a liaison officer in charge of keeping records for its Indian preference program and to issue semi-annual reports. IHS monitors compliance in a similar fashion, requiring a liaison officer for non-construction contracts equal to or over \$50,000 and construction contracts equal to or over \$100,000.

BIA and IHS Headquarters Officials have Limited Insight into Implementation of the Act at the Regional Offices

Federal internal control standards state that, for an entity to run and control its operations, it must have relevant, reliable, and timely communications, and that information is needed throughout the agency to achieve all of its objectives. The standards further state that operating information is needed to determine whether an agency is complying with various laws and regulations.¹⁸ We found that BIA and IHS headquarters officials have limited insight into the Buy Indian Act implementation in the regional offices. Specifically, both BIA's and IHS's headquarters-level procurement managers stated that they had little knowledge about challenges to a firm's self-certification of Indian-owned status that might have occurred in the regional offices. When asked about how frequently challenges occurred or how they were resolved, BIA and IHS officials told us they would have to consult with regional offices to provide this information. Also, officials at both agencies told us they do not aggregate data relating to challenges. More broadly, these officials reported they do not require regional offices to collect, retain, or aggregate data about compliance with Buy Indian requirements in a systematic fashion.¹⁹

¹⁷ For some of our work in this area see GAO, *Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed*, [GAO-15-54](#) (Washington, D.C.: Oct. 8, 2014).

¹⁸ [GAO/AIMD-00-21.3.1](#).

¹⁹ In the case of IHS, our finding is consistent with our prior work where we identified deficiencies in data collection efforts between the area offices and headquarters. We recommended that IHS take a number of steps to improve the collection of data from its area offices, and the agency generally agreed with our recommendations. See GAO, *Indian Health Service: Increased Oversight Needed to Ensure Accuracy of Data Used for Estimating Contract Health Service Need*, [GAO-11-767](#) (Washington, D.C.: Sept. 23, 2011).

Given this lack of insight, it is difficult for BIA and IHS officials to know whether the Buy Indian Act is being consistently applied among the regions, or for the agencies to determine the extent to which mechanisms to implement key requirements are working as intended.

Both agencies also identified a specific process in place for reviewing procurements awarded at their regional offices, but these reviews have not historically included an examination of contracts awarded using the Buy Indian Act. For example, Interior requires BIA to conduct bi-annual acquisition reviews at each of its regional offices, but officials told us these reviews have not previously examined the use of the Buy Indian Act in particular. Following a series of informal, region-by-region reviews starting in mid-2015, BIA plans to include Buy Indian Act requirements in future formal acquisition reviews. Similarly, IHS officials reported that they recently completed a periodic procurement management review of contracts awarded at its regional offices, but officials stated they were not aware of any reviews, past or planned, specifically focused on the use of the Buy Indian Act. By not reviewing Buy Indian Act contracts as part of the procurement review process, both agencies are missing opportunities to ensure effective oversight of these contract awards.

A Small Percentage of BIA and IHS Obligations Go Towards Acquiring Various Goods and Services through the Act

Use of the Buy Indian Act comprises a small percentage of BIA and IHS contract obligations. However, both agencies also award contracts to Indian-owned firms using other authorities, thus increasing the percentage of obligations awarded to Indian-owned firms. During the period covered by our review, both agencies awarded contracts using the Buy Indian Act authority to more than 300 different Indian-owned firms. The types of goods and services purchased under the Act varied, and included maintenance, medical, custodial, administrative support, and office supplies.

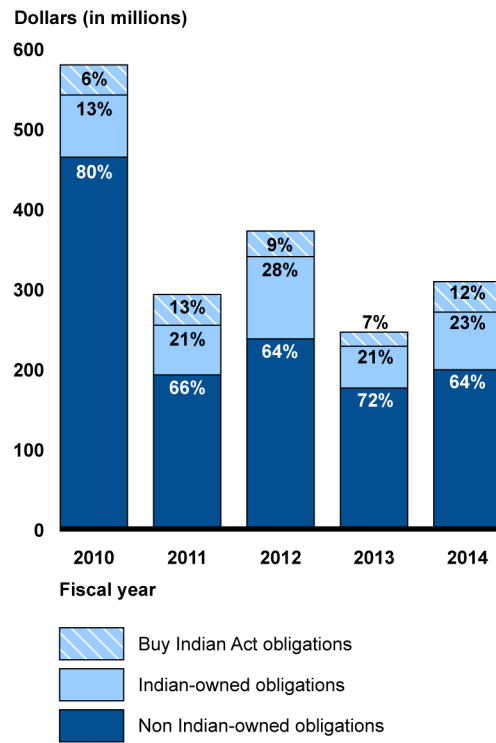
Use of Buy Indian Act Represents a Small Percentage of Both Agencies' Contract Obligations

Use of the Buy Indian Act represents a small percentage of both BIA's and IHS's annual contract obligations. However, both agencies can and do use other procurement authorities to award contracts to Indian-owned firms,²⁰ thus increasing the overall percentage of contracts awarded to such firms.²¹ Officials from both agencies noted that it would be difficult to have all contract obligations be set aside for award under the Buy Indian Act, noting that some requirements, such as those for utilities, may not be suitable for award using the Act. Figures 3 and 4 show the annual percentage of obligations under the Buy Indian Act, Indian-owned obligations awarded through other procurement authorities, and non Indian-owned obligations for BIA and IHS respectively.

²⁰ For example, the agencies can award a contract to an Indian-owned firm that is also certified as a women-owned small business using the women-owned small business set-aside procurement authority. 48 C.F.R. §§ 19.1500; 19.1505.

²¹ As previously noted, when we refer to Indian-owned in terms of FPDS-NG data we are referring to Native American entities which as defined in the System for Award Management User Guide (the official U.S. government system that consolidated the capabilities of several federal procurement systems) include: Alaskan Native Corporation owned, Native Hawaiian Organization owned, tribally owned, American Indian owned, or a federally recognized Indian Tribe. Note that this may differ from BIA and IHS definitions of Indian-owned.

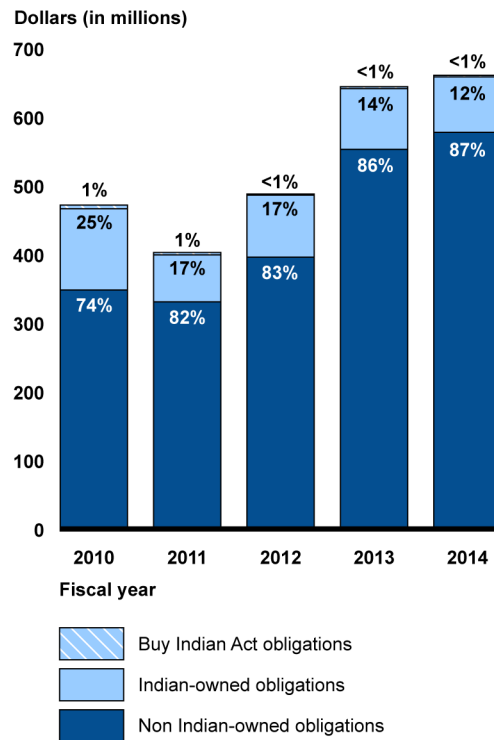
Figure 3: Bureau of Indian Affairs Total Annual Contract Obligations



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-15-588

Note: Numbers may not add to 100 percent due to rounding.

Figure 4: Indian Health Service Total Annual Contract Obligations



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-15-588

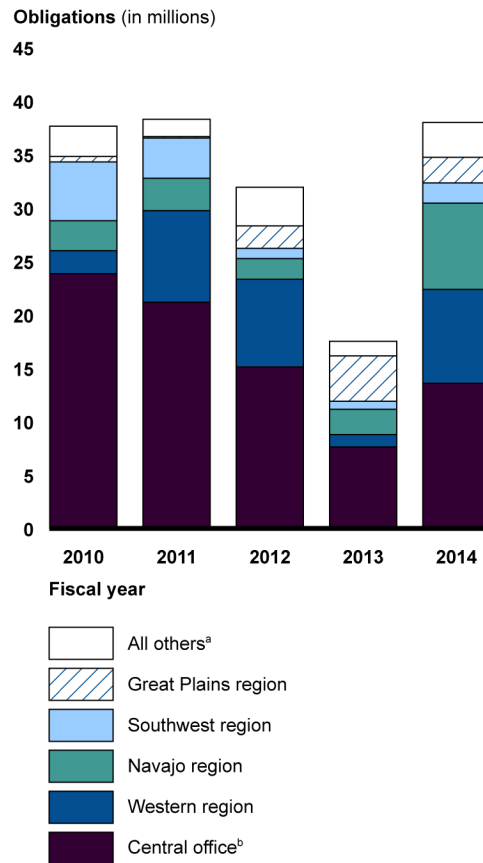
Note: Numbers may not add to 100 percent due to rounding.

We also found that BIA and IHS were awarding contracts using the Buy Indian Act authority to a number of different Indian-owned firms. Specifically, in fiscal years 2010 through 2014, BIA awarded 732 contracts to 269 vendors and IHS awarded 131 contracts to 84 vendors.

Use of the Buy Indian Act at both agencies' offices varies. Based on data from FPDS-NG from fiscal years 2010 through 2014, most of the agencies' offices awarded contracts under the Buy Indian Act, although some used it more than others. For example at BIA, while almost half of the total Buy Indian Act obligations across this time frame were awarded by the agency's central office, a headquarters office, these obligations decreased from about two-thirds of the agency's Buy Indian Act obligations in 2010 to about one-third in 2014. Other offices with relatively high percentages of use included the Navajo and Western regional offices. At IHS the majority of the Buy Indian Act obligations were awarded through its Albuquerque, Phoenix, and California area offices.

See figures 5 and 6 for more details about the offices' contract obligations using the Act.

Figure 5: Bureau of Indian Affairs Buy Indian Act Annual Contract Obligations by Office

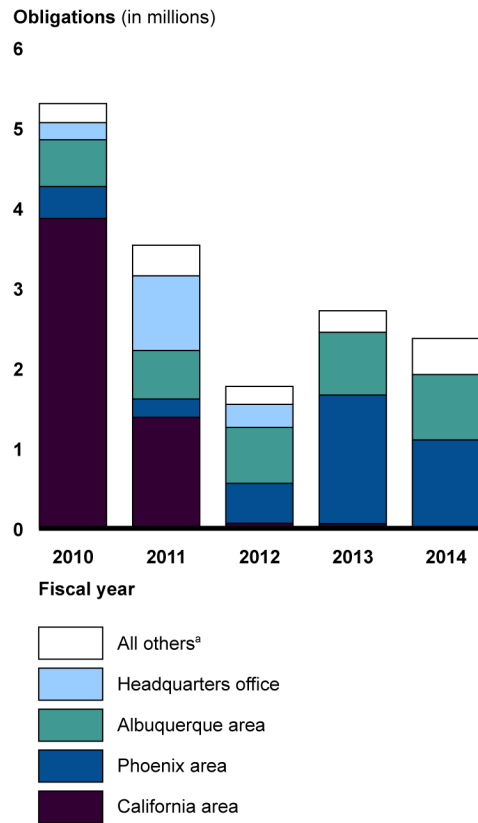


Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-15-588

^a "All others" refers to the BIA offices in the Southern Plains, Eastern, Rocky Mountain, Eastern Oklahoma, Mid-West, Northwest, Pacific, and Alaska Regions.

^b Central office is a headquarters office.

Figure 6: Indian Health Service Buy Indian Act Annual Contract Obligations by Office



Source: GAO analysis of Federal Procurement Data System-Next Generation data. | GAO-15-588

^a “All others” refers to IHS areas including the Billings, Navajo, Oklahoma, Bemidji, Great Plains, and Nashville areas.

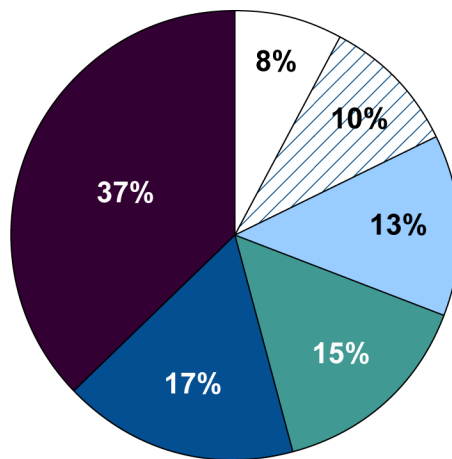
Types of Goods and Services Purchased Under the Buy Indian Act Vary







BIA and IHS have used the Buy Indian Act to purchase a variety of goods and services in areas such as maintenance, medical, custodial, administrative support, and office supplies.²² At BIA, the types of goods and services purchased are more varied, with architecture and

²² Under BIA regulations the Buy Indian Act may only be used for “covered construction” as defined under the regulation. We did not examine the contracts to determine what type of construction was being completed under the construction contracts included in this data.

engineering related goods and services being the most common (see figure 7). Based on our analysis, IHS primarily uses the Buy Indian Act to purchase goods and services in three areas: professional and administrative support services, medically related goods and services, and custodial or housekeeping goods and services (see figure 8).

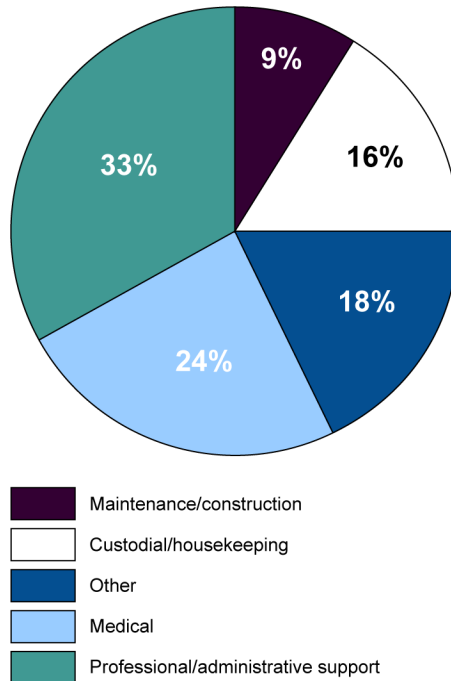
Figure 7: Bureau of Indian Affairs Goods and Services Purchased Using the Buy Indian Act, Fiscal Years 2010-2014



-  Custodial/housekeeping
-  Information technology
-  Office furniture/supplies
-  Professional/administrative support
-  Other
-  Architecture/engineering/maintenance/construction

Source: GAO analysis of Federal Procurement Data System- Next Generation data. | GAO-15-588

Figure 8: Indian Health Service Goods and Services Purchased Using the Buy Indian Act, Fiscal Years 2010-2014



Source: GAO analysis of Federal Procurement Data System- Next Generation data. | GAO-15-588

Conclusions

The use of the Buy Indian Act is intended to promote growth and development of Indian industries and, like any set-aside program, is important in helping these businesses in the marketplace. Interior and HHS issued regulations and other guidance to guide implementation of the Act, but reported differing priorities in terms of use of the Act. While it is within each agency's discretion to establish these priorities, it is important that these priorities be clearly documented. Both agencies lack current documentation of these stated priorities. Without clear and documented guidance on their priorities, BIA and IHS are at risk of inconsistent implementation. We also found that BIA and IHS have limited insight into how key requirements, such as self certification and potential challenges to those certifications, are being implemented at their regional offices where the contracts are being awarded. Both agencies would benefit from collecting data on use of the Buy Indian Act from regional offices as well as including a review of contracts awarded using the Act in their oversight reviews. Without knowledge of how the regions are implementing requirements related to the Act, both agencies may be

missing opportunities to improve use of the Act. Information about the number of challenges, for instance, or detailed reporting on how contractors are meeting their Indian preference requirements, could point to issues in need of attention. Conversely, such information might also highlight regional innovations that, if implemented more broadly, could improve the use of the Buy Indian Act across each agency. Such information could help ensure that both agencies are maximizing the benefits intended in terms of the growth and development of Indian industries.

Recommendations for Executive Action

To ensure consistent implementation of the Buy Indian Act procurement authority across the agencies and to enhance oversight of implementation of the Act at regional offices, we recommend that the Secretaries of the Interior and Health and Human Services direct the Bureau of Indian Affairs and Indian Health Service respectively, to take the following three actions:

- (1) clarify and codify their policies related to the priority for use of the Buy Indian Act, including whether the Buy Indian Act should be used before other set-aside programs;
- (2) collect data on regional offices' implementation of key requirements, such as challenges to self-certification; and
- (3) include Buy Indian Act contracts as a part of their regular procurement review process.

Agency Comments and Our Evaluation

We provided a draft of this report to Interior and HHS for review and comment. Both agencies concurred with our recommendations and identified actions they are taking or plan to take to address the recommendations. HHS also provided technical comments which we incorporated as appropriate.

Interior indicated it is in the process of updating policy that will more clearly define the priority of the use of the Buy Indian Act authority. Interior also indicated it would develop policy and procedure requirements for collecting data bureau-wide—including from all Indian Affairs offices that initiate procurement actions—on the Act's key requirements, including self-certification, verification, and validation. Additionally, Interior indicated it plans to incorporate information related to Buy Indian Act contracts into its checklist for its annual reviews.

HHS plans to clarify and codify policies related to the priority for use of the Buy Indian Act in the Indian Health Manual. HHS also plans to conduct a review of contracts awarded under the Buy Indian Act as part of its internal procurement oversight reviews and to require all acquisition offices to conduct regular Buy Indian Act procurement reviews. Additionally, HHS stated it plans to continue oversight to ensure that contractors comply with key requirements and that the agency will collect data on contracts defined in FPDS-NG as American Indian/Alaska Native owned, but did not specify the extent to which data would be collected on the regional offices' implementation of key requirements. As HHS implements our recommendations, we continue to emphasize the importance of oversight and data collection at the regional office level and encourage HHS to take the necessary steps in collecting data from these offices. Interior and HHS's written comments are reprinted in appendix I and appendix II, respectively.

We are sending copies of this report to interested congressional committees; the Secretary of the Interior; and the Secretary of Health and Human Services. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions about this report, please call me at (202) 512-4841. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix III.



William T. Woods
Director
Acquisition and Sourcing Management

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

JUN 25 2015

Dear Mr. Woods:

Thank you for the opportunity to review and provide comments on the draft report entitled, *BUY INDIAN ACT: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices* (GAO-15-588). The Office of the Assistant Secretary – Indian Affairs (AS-IA), Office of the Deputy Assistant Secretary – Indian Affairs (Management), Office of the Chief Financial Officer (CFO), which oversees the policy and procedures for procurement for the Bureau of Indian Affairs, the Bureau of Indian Education, and the Headquarters office itself, reviewed the report and concurs with the recommendations to strengthen existing policy and procedures.

In accordance with the intent of the Buy Indian Act and input received during tribal consultations, the regulations incorporate the policy decisions of the AS-IA to promote growth and development of Indian industries. Indian Affairs (IA) must give preference to Indians whenever the use of that authority is authorized and practicable. The percentage of Indian ownership of business enterprises was reduced from a mandatory 100 percent to minimum 51 percent. Development of permanent procedures is still occurring and addressing feedback on our interim guidance.

Denoted below are IA's responses to the recommendations in the draft report.

GAO Recommendation for Executive Action: To ensure consistent implementation of the Buy Indian Act procurement authority across the agencies and to enhance oversight of implementation of the Act at regional offices, we recommend that the Secretaries of the Interior... direct the Bureau of Indian Affairs... to take the following three actions:

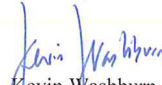
- (1) Clarify and codify their policies related to the priority for use of the Buy Indian Act, including whether the Buy Indian Act should be used before other set-aside programs;
- (2) Collect data on regional offices' implementation of key requirements, such as challenges to self-certification; and
- (3) Include Buy Indian Act contracts as a part of their regular procurement review process.

IA Response:

- (1) The IA CFO is in the process of updating policy that will more clearly define the priority use of the authority on all procurement solicitations.
- (2) The IA will also include policy and procedure requirements for collecting data bureau-wide (BIA, BIE, and AS-IA) on the Act's key requirements, including self-certification, verification, and validation. Even though the Department of the Interior Acquisition Regulation (DIAR) Part 1480 *Acquisitions under the Buy Indian Act* is comprehensive to the applicability of the Act, it is currently silent on the collection of data from all IA offices initiating procurement action(s).
- (3) The IA will incorporate into its checklist for its annual reviews the updated policy for determination of the use of the Act in solicitations and the verification and validation documentation on file illustrating compliance with ownership and management as required by the Act.

Thank you for the opportunity to review the draft report and for providing recommendations on how we may better implement the goals of the Buy Indian Act. If you have any questions, please contact Ms. Andrea Kadish, Chief of Staff to the Deputy Assistant Secretary – Indian Affairs (Management) at (202) 208-3375 or Mr. Michael Oliva, Director of Internal Evaluation and Assessment at (703) 390-6537.

Sincerely,



Kevin Washburn
Assistant Secretary – Indian Affairs

Appendix II: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

JUN 3 0 2015

William T. Woods
Director, Acquisition and Sourcing
Management
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Woods:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*Buy Indian Act: Bureau of Indian Affairs and Indian Health Services Need Greater Insight into Implementation of Regional Offices*" (GAO-15-588).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in black ink that reads "Jim R. Esquea".

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED: BUY INDIAN ACT: BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICES NEED GREATER INSIGHT INTO IMPLEMENTATION OF REGIONAL OFFICES (GAO-15-588)

The Department appreciates the opportunity to review and comment on this draft report.

GAO Recommendation

To ensure consistent implementation of the Buy Indian Act procurement authority across the agencies and to enhance oversight of implementation of the Act at regional offices, we recommend that the Secretaries of the Interior and Health and Human Services direct the Bureau of Indian Affairs and Indian Health Service respectively, to take the following three actions:

- *Clarify and codify their policies related to the priority for use of the Buy Indian Act, including whether the Buy Indian Act should be used before other set-aside programs;*
- *Collect data on regional offices' implementation of key requirements, such as challenges to self-certification; and*
- *Include Buy Indian Act contracts as a part of their regular procurement review process.*

HHS Response

HHS **concurs** with GAO's recommendation.

The Health and Human Services Acquisition Regulations (HHSAR) proposed rule (Federal Register Vol. 80, No. 40 Monday, March 2, 2015) has updated the language/policy to reflect the following as stated below:

"This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. This subpart applies only to acquisitions made by or on behalf of Indian Health Service (IHS)."

326.601 Policy.

(a) IHS shall utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever authorized and practicable. The Buy Indian Act, 25 U.S.C. 47, prescribes the application of the advertising requirements of 41 U.S.C. 6101 to the acquisition of Indian supplies. As specified in 25 U.S.C. 47, the Buy Indian Act provides that, so far as practicable, the Government shall employ Indian labor and, at the discretion of the Secretary of the Interior, purchase products of Indian industry (including, but not limited to printing, notwithstanding any other law) from the open market.

(b) Due to the transfer of authority from the Department of the Interior to HHS, the Secretary of HHS may use the Buy Indian Act to acquire products of Indian industry in connection with the maintenance and operation of Indian hospital and health facilities, and for the overall conservation of Indian health. This authority is exclusively delegated to IHS and is not available for use by any other HHS component (unless that component makes an acquisition on behalf of IHS). However, the Buy Indian Act itself does not exempt IHS from meeting the statutorily mandated small business goals.

**Appendix II: Comments from the Department
of Health and Human Services**

(c) Subsequent legislation, particularly Pub. L. 94-437 and Pub. L. 96-537, emphasize using the Buy Indian Act negotiation authority.

As a result, IHS plans to:

(1) Conduct a review of contracts awarded under the Buy Indian Act as part of our internal procurement oversight reviews; IHS will collaborate with HHS and IHS policy in the implementation of an acquisition alert to require all acquisition offices to conduct regular Buy Indian Act procurements reviews.

(2) Broadly standardize implementation and reporting mechanisms with revisions of the Acquisition Management section of the Indian Health Manual; specifically clarify and codify policies related to the priority for use of the Buy Indian Act.

(3) In collaboration with Office of Small and Disadvantaged Business Utilization, IHS will require weekly updates from the Small Business Representative on contracts that are defined in the Federal Procurement Data System as American Indian/Alaska Native owned.

(4) Continue oversight to ensure that contractors comply with key requirements such as (1) maintaining the proportion of Indian ownership, (2) not subcontracting more than half the work to other than Indian firms, and (3) providing a preference to Indians in employment, training, and subcontracting.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact:

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff

Acknowledgments:

In addition to the contact named above, Janet McKelvey, Assistant Director; Julie C. Hadley, Analyst-in-Charge; Matthew J. Ambrose, Danielle R. Greene, Kristine R. Hassinger, Julia M. Kennon, Jeffery D. Malcolm, and Roxanna T. Sun made key contributions to this report.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

