

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

Release No. 272

March 9, 2000

SUBJECT: Delegation Series
Part 205 General Delegations
Chapter 1 Buy Indian Act

EXPLANATION OF MATERIAL TRANSMITTED:

This release validates the accuracy of the Buy Indian Act that assigns the delegation of authority to the Director to use the Buy Indian Act as a procurement authority. The authority and definition paragraphs have been revised.



Director

FILING INSTRUCTION:

REMOVE:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
205	1	7	214

INSERT:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
205	1	7	272

OPR: Procurement and Support Services Division
Office of Administration and Budget

DEPARTMENT OF THE INTERIOR
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Delegation Series

Part 205 General Delegations

Chapter 1 Buy Indian Act

205.1.1

1. Purpose. To provide the Minerals Management Service policy, responsibilities, and procedures to implement Secretary's Order No. 3155 authorizing the Director to use the Buy Indian Act to procure supplies and services for the use or benefit of Indian Economic Enterprises in support of the Royalty Management Program.
2. Scope. This policy applies to all contracts and small purchases awarded to Indian Economic Enterprises using the Buy Indian Act as authority.
3. Authority.
 - A. 25 U.S.C. 47, Employment of Indian labor and purchase of products of Indian industry;
 - B. 41 U.S. Code 253(c)(5), Competition Requirements;
 - C. 218 DM 5, Buy Indian Act; and
 - D. 218 DM 8, General Administrative Delegation.
4. Definitions. See Appendix 1.
5. Policy. The policy of the MMS is to permit limited open market purchases of products and services from Indian Economic Enterprises to support the Royalty Management Program when:
 - A. the products and services will be produced by or performed by Indian Economic Enterprises and will be for the use or benefit of Indians; and
 - B. it is determined that there are one or more eligible Indian Economic Enterprises which are capable of competing for required products or services.
6. Responsibilities.
 - A. The Associate Director for Royalty Management is responsible for the review and the approval, in consultation with the Deputy Director, of all Indian benefit or use determinations for procurement actions exceeding \$100,000.

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- B. The Deputy Associate Director for Royalty Management is responsible for the review and approval, in consultation with the Associate Director for Royalty Management, of all Indian benefit or use determinations within their program areas of responsibility not exceeding \$100,000.

- C. The Chief of the Contracting Office (Chief, Procurement and Support Services Division) will (1) provide the necessary advice and guidance to ensure that this authority is properly implemented and (2) resolve and render all decisions associated with challenged eligibility determinations for actions exceeding \$100,000.

- D. Contracting Officers, when using the Buy Indian Act as a procurement authority, are responsible for:
 - (1) ensuring that all the existing acquisition regulations are followed;
 - (2) obtaining a list of eligible Indian Economic Enterprises from Contracting Officers at the Bureau of Indian Affairs and other sources;
 - (3) initiating negotiations, determining that the prospective awardee is eligible to receive the award under the Buy Indian Act, and referring any challenges to an offeror's eligibility to the Chief of the Contracting Office; and
 - (4) ensuring that the contract price is fair and reasonable prior to awarding the contract or signing the purchase order. In cases where the proposed contract price is not fair and reasonable, obtain the approval to proceed with a full and open competitive action from the Administrative Service Center Manager for actions not exceeding \$100,000 and the Chief of the Contracting Office for actions exceeding \$100,000.

- 7. Procedures. The following procedures shall be forwarded when awarding contracts and purchase orders under the Buy Indian Act:
 - A. All contracts and purchase orders awarded shall be in compliance with the Federal Acquisition Regulation, the Department of the Interior Acquisition Regulations, and all pertinent bureau policies and procedures.

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205.1.7.B

- B. The Buy Indian Act cannot be used as authority for awarding a noncompetitive contract based on the receipt of a proposal from an Indian Economic Enterprise. All procurement actions will be competed only among Indian-owned businesses unless otherwise justified under Part 6 of the Federal Acquisition Regulation.
- C. The Contracting Officer shall not issue a solicitation or initiate any action in anticipation of an award without receiving an Indian benefit or use determination signed by the appropriate designated Royalty Management Official. The determination shall include a discussion of the following points: the purpose of the contract, how the Indians will use the products or services, or what benefit they will receive from the products or services.
- D. All solicitations issued using this authority will require the offeror to certify, prior to contract award, that at least 51 percent of the contract costs will be expended through the use of Indian employees or Indian Economic Enterprises. These provisions will also be required to be included in all first tier subcontracts, vendors agreements, and subagreements entered into by the contractor, its subsidiaries, agents, assignees, or successors in interest.
- E. The Contracting Officer shall require the prospective contractor to sign a Representation Declaration of Eligibility (Appendix 1) and include it with any proposal. In no event will a Contracting Officer initiate negotiations without the receipt of the representation.
- F. Any person who knowingly and willfully omits, falsifies, or otherwise misrepresents any fact or matter material to any determination or representation required by this policy shall be subject to all applicable sanctions and laws.

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REPRESENTATION DECLARATION OF ELIGIBILITY
BUY INDIAN ACT (25 U.S.C. 47)

1. A. Instruction. Offerors requesting participation under the Buy Indian Act (25 U.S.C. 47) are to prepare their Representation Declaration of Eligibility (Representation Declaration) as prescribed therein. The Representation Declaration is to be submitted to the cognizant Contracting Officer by the offeror in responding to a specific bureau solicitation under the act.

B. Procedures.

1. The Buy Indian Act authorizes the Secretary of the Interior to contract with eligible Indian Economic Enterprises for the procurement of supplies and services.
2. To be eligible for awards by the Minerals Management Service under the Buy Indian Act, Indian Economic Enterprises must meet the eligibility and self-certification requirements as defined herein. Offerors applying for awards under the act's authority must do so only in an offer responding to a specific bureau solicitation under the act. The completed and signed Representation Declaration is to be returned with your offer to the bureau contract office issuing the solicitation.

II. The offeror represents and certifies as part of its offer that it ___ is, ___ is not (check one) an eligible Indian Economic Enterprise.

As used in this provision, the offeror meets the following definitions:

- A. "Eligible" means that the majority owner of an Indian Economic Enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian Economic Enterprise" in this Representation Declaration.
1. the MMS reserves the right to determine the nature, composition, and qualifications of any and all entities, organizations, firms, or associations applying for certification as eligible for Indian preference, and
 2. to acquire the necessary proof to substantiate that any such entity, organization, firm, or association is actually Indian-owned and controlled otherwise in compliance with the requirements of this manual chapter.

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- B. "Indian" means a person who is a member of an Indian tribe, as defined herein.
- C. "Indian Economic Enterprise" means any business entity (whether organized for profit or not) which (1) is at least 51 percent owned by one or more Indian(s) or (an) Indian tribe(s); and (2) one or more of those owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings which accrue to such Indian person(s). The requirement cited herein must exist when an offer is made to a solicitation at the time of award and during the term of the contract.
- D. "Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.
- E. "Owned" means ownership of a commercial, industrial, or other economic entity, firm, or organization demonstrated by 51 percent or greater share in the profits and losses of the economic entity, firm, or organization. It also means the power to direct or cause the direction of the management and day-to-day operations, as well as major decisions on matters of management and policy. If there is a provision that gives a non-Indian owner a greater share of the profits in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, each owner's proportionate share of gross revenue from a project will be used to determine profit for the purpose of certification under this manual chapter.
- III. This Representation Declaration is to be completed and submitted only in your offer in response to a specific MMS solicitation issued under the Buy Indian Act. Mail or deliver your offer by the required deadline to the MMS Contract Office that issued the solicitation. If you have any questions, please contact that bureau contract office.
- A. I understand that any intentional false statement in this Representation Declaration, or willful misrepresentation relative thereto, is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).
- B. I understand that the provisions of the False Claims Act (31 U.S.C. 3729-3731) establish civil liability for false claims and provide for a civil penalty of \$2,000 per false claim and double the damages suffered by the government.

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C. I understand that I will include in all first tier subcontracts, vendor agreements, and subagreements a certification requiring the subcontractor or vendor to certify that at least 51 percent of any subcontract costs under a vendor agreement will be expended through the use of Indian employees or Indian Economic Enterprises.

D. I have read and understand the above statements. I certify that the information provided in this declaration is true, accurate, and complete to the best of my knowledge and belief.

E. Indian Economic Enterprise Signature.

Firm name: _____ By: _____
(Typed name of majority owner)

Address of firm, include zip code: _____ By: _____
(Signature of majority owner)

Area code and telephone number of firm:

_____ Date: _____