

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

Attachment Resolution to Solicitation CFR PART 900

UNITED STATES
AGENCY TRIBAL NATIONS
Law 93-638
Indian Self-Determination
And
Education Assistance Act,
as Amended
Regulations



Final Rule

DEPARTMENT OF THE INTERIOR

Commissioner of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN
SERVICES

Indian Health Service

25 CFR PART 900

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(a) Congressional policy.

WHEREAS, (1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of educational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities. and

WHEREAS, (2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities. and

WHEREAS, (3) Congress has declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being. and

WHEREAS, (4) Congress has declared that the programs, functions, services, or activities that are contracted and funded under this Act shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the Department that carries out such functions. Contracting of the administrative functions described herein shall not be construed to limit or reduce in any way the funding for any program, function, service, or activity serving any other tribe under the Act or any other law. The Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another Indian tribe or tribal organization under this Act. and

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

WHEREAS, (5) Congress has further declared that each provision of the Act and each provision of contracts entered into there under shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding and the related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under the Act, including all related administrative functions, from the Federal government to the contractor. and

WHEREAS, (6) Congress has declared that one of the primary goals of the 1994 amendments to the Act was to minimize the reporting requirements applicable to Tribal Contractors and to eliminate excessive and burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act. and

WHEREAS, (7) Congress has declared that there not be any threshold issues which would avoid the declination, contract review, approval, and appeal process. and

WHEREAS, (8) Congress has declared that all self-determination contract proposals must be supported by the resolution of an Indian tribe(s). and

WHEREAS, (9) Congress has declared that to the extent that programs, functions, services, and activities carried out by tribes and tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under Section 106(a) of the Act, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

HEREIN RESOLVE RESOLUTION NUMBER 25 CFR PART 900 [AAC]
A13180

Type of Tribal Organization	Applicable OMB cost circular
Tribal Government...University and Revocation Projects, Programs	A-87, "Cost Principles for State, Local and Indian Tribal Governments." To be added
Tribal Federal non-profit other than (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular as not subject to that circular private	A-122, Cost principles for Non-Profit Organizations." Upon the project to be negotiated, and allocated to serve the Contract. To be added
Tribal Educational institution Law Enforcement, Cultural, Industrial, Research, Child welfare, and Energy Innovations	A-21, "Cost Principles for Educational Institutions." Should be determined on Single or multiple projection as for Master plan, To be added

Section 107 also has been amended by adding a new subsection (b), requiring the Contractor and Secretary to employ the negotiated rulemaking process.

INTRODUCTORY MATERIAL UNDER:

Subpart "A ."--

- THE COURSE IN COLLABORATE INTEREST-BASED NEGOTIATIONS
- OMB-A87 COST PRINCIPLES FOR STATE, LACAL AND INDIAN TRIBES GOVERNMENT
- OMB-A-122 COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS
- OMB-A-121 COST PRINCIPLES COST PRINCIPLES EDUCUTION INSTITUTIONS 25 CFR PART 900

SECTION; 107 SUBSECTION

(b) Contractor Policies.

(1) It is the policy of the Contractor to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, functions, services and activities, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians. The Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal autonomy and flexibility in the administration of such programs.

(2) It is the policy of the Contractor to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Departments' programs administered for the benefit of Indians by providing information on such programs, functions and activities and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Contractor to provide a uniform and consistent set of rules for contracts under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.

(4) The Contractor recognizes that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When an Indian tribe contracts, there is a transfer of the responsibility with the associated funding. The Indian Tribal is accountable for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract with respect to use of the funds and the satisfactory performance of the programs, functions, services and activities funded under the contract. The Contactor will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(5) The Contractor recognizes that tribal decisions to contract or not to contract are equal expressions of self-determination.

(6) The Contactor shall maintain consultation with tribal governments and tribal organizations in the Contractor budget process relating to programs, functions, services and activities subject to the Act. In addition, on an annual basis, the Contactor shall consult with Secretary, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(7) The Contractor is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of Tribal Governments and extending the applicability of this policy to all operational components within the Agency and Department. By fully extending Indian Self-Determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians under section 102(a)(1) (A) through (D) and for the benefit of Indians because of their status as Indians under section 102(a)(1)(E), it is the Contractor intent to support and assist Indian tribes in the development of strong and stable Tribal Governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Contractor to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality

(8) It is the policy of the Contractor that the contractibility of programs under this Act should be encouraged. In this regard, Federal laws and regulations should be interpreted in a manner that will facilitate the inclusion of those programs or portions of those programs that are for the benefit of Indians under section 102(a)(1) (A) through (D) of the Act, and that are for the benefit of Indians because of their status of Indians under section 102(a)(1)(E) of the Act.

(9) It is the Contractor policy that no later than upon receipt of a contract proposal under the Act (or written notice of an Indian tribe or tribal organization's intention to contract), the Contractor and Secretary

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

shall commence planning such administrative actions, including but not limited to transfers or reductions in force, transfers of property, and transfers of contractible functions, as may be necessary to ensure a timely transfer of responsibilities and funding to Indian tribes and tribal organizations.

(10) It is the policy of the Contractor to make available to Indian tribes and tribal organizations all administrative functions that may lawfully be contracted under the Act, employing methodologies consistent with the methodology employed with respect to such functions under titles III and IV of the Act.

(11) The Contractor's commitment to Indian self-determination requires that these regulations be liberally construed for the benefit of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-determination and, further, that any ambiguities herein be construed in favor of the Indian tribe or tribal organization so as to facilitate and enable the transfer of services, programs, functions, and activities, or portions thereof, authorized by the Act.

Sec. 900.4 Effect on existing Tribal Rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian tribe(s) or individual Indians. The Contractor and Secretary shall act in good faith in upholding this trust responsibility;

(c) Mandating an Indian tribe to apply for a contract(s) or grant(s) as described in the Act; or

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(d) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

Sec. 900.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

Except as specifically provided in the Act, or as specified in Subpart J, an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Contractor, or otherwise required by law.

A number of comments recommended that the statement that tribal records are exempt from disclosure under the Freedom of Information Act (Sec. 900.2(d)) be further explained to include annual audit reports prepared by tribal contractors and tribal records archived by the Federal government. The suggestion regarding archived tribal records has been adopted. However, section 7502(f) of the Single Audit Act of 1984, 31 U.S.C. 7502(f), and OMB Circular No. A-128, Audits of State and Local Governments, subparagraph 13(e), state that single audit reports shall be available for public inspection within 30 days after the completion of the audit. Therefore, these audit reports are available for public inspection.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

Subpart B -- Definitions

Sec. 900.6 Definitions.

Unless otherwise provided in this Part:

Act means Secs. 1 through 9, and Title I of the Indian Self-Determination and Education Assistance Act of 1975, Law 93-638, as amended.

Annual funding agreement means a document that represents the negotiated agreement of the Contractor and Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian tribe or tribal organization under the Act.

Appeal means a request by an Indian Tribe or Tribal organization for an administrative review of U.S. Tribal nations Agency decision.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. Pursuant to the Act, this person can be any Federal official, including but not limited to, Contracting officers.

IA means of Indian Affairs of the Department of the Interior.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Contract appeals board means the Interior Board of Contract Appeals.

Sub-Contractor means an Indian tribe or tribal organization to which a contract has been awarded.

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

Department(s) means of the Department of Defense Health Care Agencies, Human Services (HHS) and the Department of the Interior (DOI), or all Three.

IHS means the Indian Health Service of the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, Rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal Agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one contract objective or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved.

Initial contract proposal means a proposal for programs, functions, services, or activities that the Secretary is authorized to perform but which the Indian tribe or tribal organization is not now carrying out.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances thereto.

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in Subpart P.

Retrocession means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

Secretary means Contractor and Secretary of Health and Human Services (HHS) or the Secretary of the Interior (DOI), or both (and their respective delegates)

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Trust resources means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

Subpart C -- Contract Proposal Contents

Sec. 900.7 What technical assistance is available to assist in preparing an initial contract proposal?

The Contractor and Secretary shall, upon request of an Indian tribe or tribal organization and subject to the availability of appropriations, provide technical assistance on a non-reimbursable basis to such Indian tribe or tribal organization to develop a new contract proposal or to provide for the assumption by the Indian tribe or tribal organization of any program, service, function, or activity (or portion thereof) that is contractible under the Act. The Contractor or Secretary may also make a grant to an Indian tribe or tribal organization for the purpose of obtaining technical assistance, as provided in section 103 of the Act. An Indian tribe or tribal organization may also request reimbursement for pre-award costs for obtaining technical assistance under sections 106(a) (2) and (5) of the Act.

Sec. 900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

(b) If the tribal organization is not an Indian tribe, the proposal must also include:

(1) The full name(s) of the Indian tribe(s) with which the tribal organization that will be affiliated to the United States.

(c) The full name(s) of the Indian tribe(s) proposed to be served.

(d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference to that resolution.

(e) The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.

(f) The date of submission of the proposal.

(g) A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including:

(1) A description of the geographical service area, if applicable, to be served.

(2) The estimated number of Indian people who will receive the benefits or services under the proposed contract.

(3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

(4) A description of the proposed program standards;

(5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.

(6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted,

(7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in Subpart F, subject to any waiver that may have been granted under Subpart K.

(h) The amount of funds requested, including:

(1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization's share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional, or national level.

(2) An identification of the amount of direct contract support costs, including one-time start-up or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);

(ii) Equipment;

(iii) Materials and supplies;

(iv) Travel;

(v) Subcontracts; and

(vi) Other appropriate items of cost.

(3) An identification of funds the Indian tribe or tribal organization requests to recover for indirect contract support costs. This funding request must include either:

(i) a copy of the most recent negotiated indirect cost rate agreement; or

(ii) an estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount and time period covered or to be covered; and

(5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.

(i) The proposed starting date and term of the contract.

(j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.

(k) The extent of any planned use of Federal personnel and Federal resources.

(l) Any proposed waiver(s) of the regulations in this part; and

(m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.

Sec. 900.9 May the Contractor and Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in Sec. 900.8?

No.

Sec. 900.10 How does an Indian tribe or tribal organization secure a list of all Federal property currently in use in carrying out the programs, functions, services, or activities that benefit the Indian tribe or tribal organization to assist in negotiating a contract?

The Indian tribe or tribal organization submits a written request to the Contractor or Secretary. The Contractor shall provide the requested information, including the condition of the property, within 60 days.

Sec. 900.11 What should an Indian tribe or tribal organization that is proposing a contract do about specifying the Federal property that the Indian tribe or tribal organization may wish to use in carrying out the contract?

The Indian tribe or tribal organization is encouraged to provide the Contractor, as early as possible, with:

(a) A list of the following Federal property intended for use under the contract:

- (1) Equipment;
- (2) Furnishings;
- (3) Facilities; and
- (4) Other real and personal property.

(b) A statement of how the Indian tribe or tribal organization will obtain each item by transfer of title under Sec. 105(f)(2) of the Act and section 1(b)(8) of the model agreement set forth in section 108(c) of the Act, through a temporary use permit, similar arrangement, or otherwise; and

(c) Where equipment is to be shared by contracted and non-contracted programs, services, functions, or activities, a proposal outlining proposed equipment sharing or other arrangements.

Sec. 900.12 Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, an Indian tribe or tribal organization should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least 90 days before the expiration date of the contract or existing annual funding agreement. The proposal shall provide funding information in the same detail and format as the original proposal and may also identify any significant proposed changes.

Sec. 900.13 Does the contract proposal become part of the final contract?

Yes , as long as the Contractor agree.

Subpart D -- Review and Approval of Contract Proposals

Sec. 900.14 What does this subpart cover?

This Subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

Sec. 900.15 What shall the Contractor do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

(a) Within two days notify the Contractor in writing that the proposal has been received;

(b) Within 15 days notify the Contractor in writing of any missing items required by Sec. 900.8 and request that the items be submitted within 15 days of receipt of the notification; and

(c) Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

Sec. 900.16 How long does the Contractor and Secretary have to review and approve the proposal and award the contract, or decline a proposal?

The Contractor and Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

Sec. 900.17 Can the statutory 90-day period be extended?

Yes, by the Contractor or with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

Sec. 900.18 What happens if a proposal is not declined within 90 days after it is received by the Contractor and Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under Sec. 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to Section 106(a) of the Act.

Sec. 900.19 What happens when a proposal is approved?

Upon approval the Contractor and Secretary shall award the contract and add to the contract the full amount of funds to which the contractor is entitled under section 106(a) of the Act.

Standards for Financial Management Systems

Sec. 900.42 What are the general financial management system standards that apply to an Indian tribe carrying out a self-determination contract?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

Sec. 900.43 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

Sec. 900.44 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a self-determination contract and the Act; and

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the self-determination contract.

Sec. 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) **Financial reports.** The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) **Accounting records.** The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) **Internal controls.** The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) **Budget controls.** The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract.

(e) **Allowable costs.** The financial management system shall be sufficient to determine the reasonableness, allow ability, and accountability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

Indian tribe or tribal organization and the Contractor. Agreements between an Indian tribe or tribal organization and the Contractor currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

(f) Source documentation. The financial management system shall contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) Cash management. The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

Sec. 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Contractor and Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding Agreement.

Procurement Management System Standards

Sec. 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this Subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

Sec. 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
OMB n2700-0042

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for "major procurement transactions."

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

Sec. 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

- (a) Be in writing;
- (b) Identify the interested parties, their authorities, and the purposes of the contract;
- (c) State the work to be performed under the contract;
- (d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and
- (e) Be subject to sections 7 (b) and (c) of the Act.

Sec. 900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts

Sincerely

Chief Geronimo

Indian Self-Determination and Education Assistance Act Regulations
& Indian Tribe Energy Self-Determination Act - 25 CFR Part 900
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