

BUREAU OF INDIAN AFFAIRS MIDWEST REGION



REGIONAL INDIAN SELF-DETERMINATION IMPLEMENTATION PLAN

Procedures for the Implementation of Delegation of
Authority, Public Law 93-638, the Indian Self-
Determination and Education Assistance Act,
as amended

February 2015

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1. GENERAL

1.1 Purpose. The purpose of this Plan is to establish procedural requirements to implement the delegation of authority to the Midwest Region to approve, decline, award, modify, and perform all other functions on the administration of non-procurement, non-construction and construction contracts, and to make determinations and findings in respect thereto, under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended. This Plan does not pertain to Title IV-Tribal Self-Governance Program of the Act.

1.2 Policy. It is the Policy of the Midwest Region, Bureau of Indian Affairs to provide for the maximum service delivery in the processing of Public Law 93-638 contracts submitted by the following Tribes and Tribal Organizations within the Region's jurisdiction, while ensuring full compliance with all applicable laws, regulations, and policies to ensure sound management control and business decisions:

AAFF50410T	Mille Lacs Band of Chippewa
AAFF51490T	Sac & Fox Tribe of the Mississippi in Iowa
AAFF52409T	Red Lake Band of Chippewa
AAFF53400T	Minnesota Chippewa Tribe
AAFF53404T	Bois Forte Band (Nett Lake)
AAFF53405T	Fond du Lac Reservation Business Community
AAFF53406T	Grand Portage Reservation Business Community
AAFF53407T	Leech Lake Reservation Business Community
AAFF53408T	White Earth Reservation Business Community
AAFF57401T	Upper Sioux Indian Community
AAFF57402T	Lower Sioux Indian Community
AAFF57403T	Prairie Island Indian Community
AAFF57411T	Shakopee Mdewakanton Sioux Community
AAFF55430T	Bad River Band of Chippewa Indians
AAFF55431T	Lac Courte Oreilles Chippewa Indians
AAFF55432T	Lac du Flambeau Band of Chippewa Indians
AAFF55433T	Oneida Tribe of Indians of Wisconsin
AAFF55434T	Forest County Potawatomi Community
AAFF55435T	Red Cliff Band of Chippewa Indians
AAFF55436T	St. Croix Band of Chippewa Indians
AAFF55437T	Sokaogon Chippewa Community
AAFF55438T	Stockbridge-Munsee Mohican Community
AAFF55439T	Ho-Chunk Nation
AAFF58440T	Menominee Indian Tribe of Wisconsin
AAFF60468T	Grand Traverse Band Ottawa/Chippewa Indians
AAFF60469T	Sault Ste. Marie Tribe of Chippewa Indians
AAFF60470T	Bay Mills Indian Community
AAFF60471T	Hannahville Indian Community

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AAFF60472T	Saginaw Chippewa Indian Tribe
AAFF60475T	Keweenaw Bay Indian Community
AAFF60478T	Nottawaseppi Huron Band of the Potawatomi
AAFF60479T	Lac Vieux Desert Band of Chippewa Indians
AAFF60480T	Pokagon Band of Pottawatomi Indians
AAFF60482T	Little River Band of Ottawa Indians
AAFF60483T	Little Traverse Bay Band of Odawa
AAFF60484T	Match-E-Be-Nash-She-Wish Band of Potawatomi of Michigan
	Great Lakes Indian Fish & Wildlife Commission
	1854 Treaty Authority
	Chippewa Ottawa Resource Authority
	Inter-Tribal Council of Michigan

1.3 Scope. This Plan shall be used to implement the authorities delegated in 10 BIAM and its related Midwest Regional Office Addenda. The procedures contained herein satisfy the requirements of the Midwest Regional Office Implementation Plan developed in accordance with 13 BIAM Supplement 2 Release No. 122.

The Midwest Region will administer all Public Law 93-638 contracts/grants as residual functions. Self-Determination staff will provide timely and appropriate coordination of contracting activities to the Midwest Region and Agencies, Minneapolis Area Bureau of Indian Education (BIE) and District VII Office of Justice Services.

The Bureau of Indian Affairs, Midwest Region through the Regional Director has delegated the authority to approve and decline contracts to the Great Lakes and Michigan Agency Superintendents. The authority to award Public Law 93-638 contracts is not delegated to the Agencies. The Awarding Official is stationed at the Midwest Regional Office.

1.4 Authority. Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended, and promulgated regulations cited in 25 CFR Part 900. Funds are appropriated pursuant to the Snyder Act of November 2, 1921, (25 U.S.C. 13), and Acts subsequent thereto.

1.5 Effective Date. This Implementation Plan shall be effective on the date signed by the Regional Director and the Bureau of Indian Affairs Director. Its provisions shall remain in effect until it is amended, superseded, or revoked by the Regional Director and the Bureau of Indian Affairs Director.

APPROVED: Diane K. Rosen
Acting Regional Director – Midwest Region

Date: 2/5/15

APPROVED: [Signature]
BIA Director

Date: 2/6/2015

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2. PROCESSES AND PROCEDURES

2.1 Designation of Key Officials – Separation of Duties. The following officials are designated to provide for distinct separation of key duties and responsibilities in authorizing, processing, recording, and reviewing transactions involved in the contract approval and award process.

A. Approving Official. The Approving Official shall be: the Midwest Regional Director, Great Lakes Agency Superintendent and the Michigan Agency Superintendent for Bureau of Indian Affairs programs under the jurisdiction of the respective office; the Bureau of Indian Education (BIE) Line Officer for Education programs; and District VII Office of Justice Services (OJS) Special Agent in Charge (SAC) for Law Enforcement and Corrections programs. The responsibilities and duties of the Approving Official include, but are not limited to:

- (1) Ensure that within two days of the receipt of a proposal, the applicant is notified in writing that the proposal has been received.
- (2) Ensure the contract application is reviewed to determine that all items required by 25 CFR Part 900, Subpart C, 900.8 and/or 900.12 have been submitted.
- (3) Ensure that within 15 days the applicant is notified in writing of any missing items required by 25 CFR Part 900, Subpart C – 900.8 or 900.12 and request that the items be submitted within 15 days of receipt of the notification.
- (4) Ensure the proposal is reviewed to determine whether there are declination issues under Section 102(a)(2) of the Act and 25 CFR Part 900, Subpart E. If declination issues exist, ensure technical assistance is provided to overcome the stated objections in accordance with Section 102(b) of the Act, and 25 CFR Part 900, Subpart E.
- (5) Determine the applicable funding level for the contract in accordance with Section 106(a) of the Act.
- (6) Ensure that within 90 days after receipt, the proposal is reviewed, approved, and awarded or is declined in compliance with Section 102 of the Act and 25 CFR Part 900, Subpart E.
- (7) Ensure compliance with appropriation law and use of appropriated funds.
- (8) Ensure the timely and effective transfer of Federal Government contracted responsibilities and funding to the tribal government.
- (9) Ensure the timely and effective return of Federal Government responsibilities in accordance with 25 CFR Part 900, Subpart P in the event of retrocession and reassumption.

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B. Awarding Official. The Awarding Official shall be the Regional Self-Determination Officer/Advisor. The Awarding Official duties and responsibilities is not delegated to the Great Lakes or Michigan Agency, all contracts will be awarded by the Awarding Official at the Midwest Regional Office.

The Awarding Official designation is delegated by the Director, Bureau of Indian Affairs for those staff that meet the qualifications for Awarding Official Certification as identified in 13 IAM 3. The delegated authority is for non-procurement non-construction and construction contracts entered into under the Act. The authority of such delegation is stated in the memorandum of delegation of authority to award and modify non-procurement, non-construction and construction contracts under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 b (j)), as amended.

The responsibilities and duties of the Awarding Official include, but are not limited to:

- (1) Negotiate, award, modify and administer Self-Determination contracts within 90 days of receipt of the proposal.
- (2) Ensures compliance with all appropriate laws, rules, regulations, policies, and procedures.
- (3) Executes the obligation of the contract.
 - (a) Fund availability and accounting information is contained on the approved Purchase Requisition (PR). The FBMS Entry Document (FED) is attached to the PR and data between the forms are verified.
 - (b) The Awarding Official is role mapped in FBMS/PRISM as FA_AGO. The FA_AGO releases award/modification upon receipt of fully executed bi-lateral signed contract documents (SF26/SF30).
- (4) Ensures the transactions are properly documented by maintaining the official contract file.
- (5) Complements the technical knowledge of program officials with expertise in business and other administrative areas, such as adequacy of the tribal organization's plans to accomplish contract objectives and to comply with program requirements, evaluation of the quality of tribal organization's performance and availability of funds.
- (6) Issues correspondence involving business management aspects of contracts.
- (7) Exercises contracting authority as otherwise established in law, regulations, policy, manuals, handbooks, and this Implementation Plan.
- (8) Implements applicable policies and procedures with efficiency and necessary training.

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- (9) Provides assistance, consultation, and training to program officials and tribes/tribal organizations.
- (10) Represents the Federal Government on contract management matters before the public, in litigation, and in administrative appeals.
- (11) Reviews and evaluates business management aspects of applications to assure compliance with applicable regulations and policies.
- (12) Negotiates cost-schedule, Federal Government oversight and review, and administration of fiscal terms and awards.
- (13) Prepares, issues, and tracks awards; certifies that all legal, regulatory and policy requirements are met, and certifies that award amounts are accurate and appropriate.
- (14) Tracks, reviews and analyzes post award actions; identifies and resolves management and administrative problems that arise during performance.
- (15) Advises the tribe/tribal organization of any violation of the contract terms and provisions and promptly brings the matter to the attention of the Approving Official if the tribe/tribal organization fails or is unable to correct or stop the violation.
- (16) Reviews any proposed modifications initiated by the tribe/tribal organization and furnishes recommendations regarding their costs, need, etc.
- (17) Ensures contract funds are used for the purpose intended, ensures cash on hand is not excessive and ensures that accounting and appropriation data are correct.
- (18) Ensures tribe/tribal organization is registered in the System for Awards Management (SAM) and the Automated Standard Application for Payments (ASAP).
- (19) Conducts on-site monitoring reviews of tribal management systems (25 CFR 900 Subpart F) and prepares reports of the review results within 90 days. Assist the Awarding Official Technical Representative (AOTR) in reviewing progress of contract. If applicable, assists Tribe prepare corrective action plan.
- (20) Serves as accountable property officer and ensures that all accountable real and personal property purchased with contract funds or provided as Federal Government furnished property are accounted for, tagged, and inventoried annually, as well as ensure that laws, regulations, departmental and Bureau directives are followed in the excess and disposal processes. Ensures the authorized Property Officer acquires proper certification of annual inventories, utilization and disposal procedures for excess real and personal property according to applicable laws and regulations. Certification of Federal Government furnished property for tribal organization use and donation of excess property in the performance of the contract.

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- (21) Acts as consultant to the tribal organization on management and administrative matters through site visits and other management assistance services; and initiates formal action when necessary to protect the Federal Government's interests.
- (22) Initiates independent audits, as warranted.
- (23) Ensures timely resolution of audits and the Single Audit Act, as well as ensures follow-up actions are taken.
- (24) Ensures financial and narrative reports are received in compliance P.L. 93-638 contract requirements.
- (25) Conducts final reviews of completed contracts, makes adjustments or appropriate disallowances, ensures proper disposition of property, and formal closeout of contracts.
- (26) Prepares and executes determination and findings.
- (27) Issues reassumption and/or retrocession letter and responsible for accomplishment of necessary actions for effective reassumption and/or retrocession of a contracted program, service, function or activity.
- (28) Designates a representative(s) to serve as the Awarding Official's Technical Representative (AOTR) or the Subordinate Awarding Official's Technical Representative (SAOTR).

C. Awarding Official's Technical Representative (AOTR). Designation(s) of Awarding Official's Technical Representative (AOTR) shall be specific to an individual, and not by position, and shall be appointed in writing by the Awarding Official. The Region or Agency Office program managers, including BIE and OJS, in most instances, shall be appointed as the AOTR. These appointed positions are an extremely important aspect of the contract management team that will be responsible for the successful administration and completion of all P.L. 93-638 contracts. Duties and responsibilities of the AOTR shall include, but are not limited to the following:

- (1) Become thoroughly familiar with the terms and conditions of the contract.
- (2) Understands and become familiar with respective program requirements: program, service, function, activity, regulatory requirements, program standards and appropriation restrictions.
- (3) Prepares a plan for monitoring the contract and submit it to the Awarding Official within 45 calendar days of receipt of the designation memorandum.
- (4) Recommends resolution of questions of fact with regard to quality and acceptability of work performed when determining compliance with the terms and provisions of the contract.

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- (5) Advises the Awarding Official of any violation by the tribe/tribal organization of the contract terms and provisions. Promptly brings the matter to the attention of the Awarding Official if the tribe/tribal organization fails or is unable to correct or stop the violation.
- (6) Reviews any proposed modifications initiated by the tribe/tribal organization and furnishes recommendations regarding their cost, need, etc., to the Awarding Official.
- (7) Maintains a working contract file.
- (8) Submits semi-annual narrative reports to the Awarding Official on the status of designated contracts.
- (9) Reviews contract progress reports, Federal Financial Reports (SF-425), narrative reports and program reports as required by the contract. If the report is disapproved, notifies Awarding Official.
- (10) Ensures and tracks all accountable real and personal property purchased with contract funds or provided as Federal Government furnished property are accounted for, tagged, and inventoried annually, and ensures that laws, regulations, departmental and Bureau directives are followed in the excess and disposal processes.
- (11) Conducts on site monitoring reviews. Within 90 days, prepares report of review results. Report is provided to Awarding Official and tribe/tribal organization. If applicable, assists Tribe prepare corrective action plan.
- (12) The responsibilities as AOTR cannot be re-delegated during the appointee's absence. The appointee is not authorized to take any of the following actions:
 - (a) Enter into supplemental agreements.
 - (b) Suspend work or issue change orders (modifications).
 - (c) Grant extensions of time for any reason.
 - (d) Modify the terms and conditions or provisions of the contract.
 - (e) Commit the Federal Government in any manner.
 - (f) Terminate in whole or part the contractor's right to proceed with any part of the work covered by the contract.
 - (g) Make a final decision that is subject to appeal under the Contract Disputes Act.
 - (h) Ensure that the Awarding Official is included on all correspondence with the tribe/tribal organization.

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D. Budget Official. The Midwest Region Budget Analyst shall be responsible for ensuring the validity of funding authority and the availability of funding to prevent deficiency as defined by the Anti-Deficiency Act, 31 U.S.C. Section 1341. The Budget Analyst will provide guidance and technical assistance to program managers and Awarding Official with funding distribution and funding issues. The Regional Budget Analyst will provide a FBMS Entry Document (FED) to the respective program to verify funds availability and accounting string information.

2.2 Review and Approval of Contract Proposals. The Midwest Region 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 25 CFR Part 900, Subpart E. At any time during the review period, the Approving Official may approve the proposal and notify the Awarding Official to award the requested contract. Upon the approval by the Approving Official, the Awarding Official 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. A proposal that is not declined within 90 days (or extension as authorized under 25 CFR 900.17) is deemed approved and the Awarding Official shall award the contract or any amendment or renewal and add to the contract the full amount of funds pursuant to Section 106(a) of the Act. To ensure that action on the proposal is taken within the 90 day period, there is hereby established a 638 Review Committee. The membership of the 638 Review Committee and their responsibilities shall be as follows:

A. 638 Review Committee. The 638 Review Committee shall be responsible for conducting technical review of the contract proposal and shall make appropriate recommendations to the Approving Official to ensure sound decisions are made. The membership of 638 Review Committee shall consist of the Approving Official, respective program manager, AOTR, and Agency Self-Determination Specialist or Regional Self-Determination Officer/Advisor. Self-Determination staff shall serve as the Chairperson of the Committee. The responsibilities and duties of the 638 Review Committee includes, but is not limited to:

- (1) The Chairperson shall serve as the official recipient of all initial and renewal contract proposals.
- (2) The Chairperson shall within two days of the receipt of an initial or renewal contract proposal prepare a letter for the Approving Official's signature, notifying the applicant that the proposal has been received.
- (3) The Chairperson shall provide the proposal to the other members of the Committee. Within ten days of receipt of a contract proposal, the members of the Committee will review the proposal and notify the Chairperson of the following:
 - (a) Determine that the program plan and design of the tribal organization for the contract operation of the Bureau of Indian Affairs' program or portion of the program are consistent with the applicable part(s) of Title 25 CFR. If the tribal organization proposal contains a request for a waiver of any provisions of the appropriate regulations ensure that the requirements contained in Title 25 CFR Part 900, Subpart K are met. If it is determined that items required by 25 CFR

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tribe or tribal organization, and recommend approval or declination of the proposal to the Approving Official.

- (a) If the review of the Committee determines that the proposal meets all of the requirements contained in (A)(3)(a) through (c) above, and the tribe has overcome all stated declination issues, the Chairperson of the Review Committee shall prepare a letter for the Approving Official's signature. The proposal is provided to Self-Determination staff for preparation of contract documents and the Awarding Official will negotiate the terms and award the contract.

- (b) If the information requested under (A)(5) above was requested to overcome stated declination findings, and the review of the Committee recommends that all or a portion of the proposal be declined, the Chairperson of the Review Committee shall prepare a letter for the Approving Official's signature, advising the applicant:
 - (1) Of the objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority) one of the conditions set forth in 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and provide any documents relied upon in making the decision.

 - (2) Of the applicant's rights described in 900.31.

 - (3) That technical assistance is available to overcome the stated objections as described in 25 CFR, 900.30.

2.3 Subpart J Construction Contract. The Midwest Region will utilize Section 105(a)(3) to determine whether the requirement is a construction contract to the extent the application is: 1) Necessary to ensure that the contract may be carried out in a satisfactory manner; 2) Directly related to the construction activity; and 3) Not inconsistent with Public Law 93-638, as amended. Section 105(M) will be utilized as statutory requirements; technical assistance, pre-contract negotiation phase, fixed-price construction contracts. The Midwest Region will utilize 25 CFR 900, Subpart J – Construction as guidance to ensure compliance related to construction contracts. The Subpart J Construction contracts requirements differ from the Section 108 non-construction contracts. All authority for Construction contracts is at the Midwest Regional Office, no Approving authority is delegated to the Agencies.

2.4 Internal Controls. The Approving Official: Midwest Regional Director, Agency Superintendents, BIE Education Line Officer, District VII OJS Special Agent in Charge and the 638 Review Committee members designated shall ensure that:

A. Management Controls. Ensure that appropriate management controls are in place to protect against fraud, waste, mismanagement or misappropriation of federal funds.

B. Documentation. All transactions and other significant events are clearly documented and the documentation is readily available for examination.

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Part 900, Subpart K are missing, state the specific items and cite the specific regulatory requirement for the missing items.

- (b) If the proposal being reviewed is an initial contract proposal, determine that all items required by 25 CFR Part 900, Subpart C, 900.8 have been submitted. If it is determined that items required are missing, state the specific items and cite the specific regulatory requirement for the missing items.
 - (c) If the proposal being reviewed is a renewal contract proposal, determine that all items required by 25 CFR Part 900, Subpart C, 900.12 have been submitted. If it is determined that items required are missing, state the specific items and cite the specific regulatory requirement for the missing items.
 - (d) Determine whether there are declination issues under Title 25 CFR Part 900, Subpart E. If it is determined that declination issues exist, state specific objections, and provide with specificity what shall be required of the tribal organization to overcome the state objectives.
- (4) If the review of the Committee determines that the proposal meets all the requirements contained in (A)(3)(a) through (c) above, and pursuant to (A)(3)(d) above determines that no declination issues exist, the Chairperson of the Review Committee shall prepare a letter for the Approving Official's signature. The proposal is provided to Self-Determination staff for preparation of contract award documents and the Awarding Official will negotiate the terms and award the contract.
- (5) If the review of the Committee determines that the proposal is incomplete and does not meet all the requirements contained in (A)(3)(a) through (A)(3)(c) above, and/or that pursuant to (A)(3)(d) determines that declination issues exist, the Chairperson of the Review Committee shall within 15 days of the receipt of the proposal, prepare a letter for the Approving Official's signature notifying the applicant of the deficiencies and request that the required items be submitted within 15 days of the receipt of the notification. The notification to the applicant shall provide the following specific information and offer technical assistance to overcome the deficiencies.
- (a) A listing of all missing items required by Title 25 CFR Part 900, Subpart K, and/or Title 25 CFR Part 900, Subpart C, 900.8 or 900.12 with a citation of the specific regulatory requirement for each missing item.
 - (b) A listing of all declination issues found pursuant to Title 25 CFR Part 900, Subpart E with specific citations for each stated objection and shall provide with specificity what is required of the tribe or tribal organization to overcome each of the stated objections.
- (6) If the information requested under (A)(5) above is submitted by the applicant within the requested 15 days of the notification, the Chairperson of the Review Committee shall convene the Review Committee to review the additional documents submitted by the

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C. Recording of Transactions and Events. All transactions and other significant events are promptly recorded and properly classified.

D. Execution of Transactions and Events. All transactions and other significant events are authorized and executed only by persons acting within the scope of their authority.

E. Access to and Accountability for Resources. Access to resources and records is limited to authorized individuals.

2.5 Evaluation of Regional Performance.

A. Responsibility. The BIA Director and Regional Director are responsible for reviewing the Region's performance and implementing any corrective action to ensure compliancy with the delegate authority.

(1) **BIA Director.** The BIA Director shall be responsible for conducting management reviews of Regional performance under the delegated authority and shall prepare a report outlining findings and recommendations to the Regional Director. This review shall be conducted in accordance with the Midwest Regional Office specific implementation plan. Upon completion of the management review, the BIA Director shall prepare a summary report to the Director of Indian Services containing, at a minimum, a status of the delegation of authority.

(a) Such report shall include evaluation methodology, tribal input, successes and problems, as well as the Midwest Regional Office recommendation for permanency of programs for further Bureau of Indian Affairs implementation.

(b) The BIA Director or the designee of the BIA Director shall conduct an independent evaluation of the Midwest Region.

(c) The BIA Director shall provide 30 day advance notice to the Midwest Regional Director prior to conducting an management review of the Midwest Region Self-Determination Implementation Plan.

(2) **Regional Director.** The Regional Director shall be responsible for preparing and implementing a corrective action plan to ensure correction of deficiencies identified in the administrative management review, if warranted.

B. Factors. The scope of the management review shall include, but not be limited to an evaluation of the following factors:

(1) The application review and award process in compliance with 25 CFR Part 900.

(2) A random sample of contracts and actions for proper budget certification and fund authority.

(3) A random sample of personal property inventory for accountability.

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- (4) Proper separation of duties, internal controls, and independence of decision making.
- (5) Compliance with the designated duties and responsibilities by key officials, including budget finance officials.
- (6) Compliance by the tribal organization with the terms and conditions of the contracts awarded.
- (7) Maintenance of contract files in accordance with 19 BIAM, Supplement 14 as well as 16 IAM.
- (8) A review of the determination and findings of the Awarding Official.
- (9) Any matter which may pertain to waste, fraud, or abuse; and/or conflicts of interest.
- (10) Existence of any inappropriate influence on the Approving Official and/or Awarding Official.
- (11) Compliance with other applicable special approval and clearance requirements.
- (12) Adequacy of training and staffing.
- (13) Response and follow-up to audit findings.
- (14) Workload of the Awarding Official.
- (15) Tribal assessment of the Midwest Region's performance of the delegated authority.

2.6 Technical Assistance. The BIA Director shall be responsible for providing requested or recommended technical assistance to the Midwest Region.

2.7 Service Benefits. The Midwest Regional Director shall conduct an annual survey of services performed and benefits associated with the implementation of the delegated authority and report findings to the BIA Director in accordance with the Regional Office specific implementation plan.

2.8 Effective Date. This Implementation Plan shall be effective on the date signed by the Midwest Regional Director and the BIA Director. Its provisions shall remain in effect until it is amended, superseded, or revoked by the Midwest Regional Director and the BIA Director.