

INDIAN AFFAIRS MANUAL

Part 13
Chapter 4

Indian Self-Determination
Awarding Official Standard of Conduct

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1.1 Purpose. Contracts and grants awarded and administered under the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975, as amended (Public Law (P.L.) 93-638) are Federal acquisition instruments. However, they are not traditional Federal acquisition instruments. This chapter establishes the procedures governing written and oral communications with Indian Self-Determination (SD) contractors and grantees, and prescribes a standard of conduct for all employees with regard to the administration and management of an Indian SD contract or grant.

1.2 Scope. Authority to award and administer SD contracts and grants to Indian tribes and tribal organizations is vested in Bureau of Indian Affairs (BIA) employees who are certified under the Awarding Official Certification System (AOCS). There are no exceptions.

1.3 Policy. Awarding Official (AO) duties and responsibilities are viewed as a professional discipline. Employees must meet established standards of knowledge, training, performance, and experience prior to designation and certification as AOs.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 U.S.C. §§450 et seq., ISDEAA of 1975, as amended
- 2) Public Law (P.L.) 104-156, Single Audit Act Amendments of 1996
- 3) 5 U.S.C. Appendix, Ethics in Government Act of 1978
- 4) 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch
- 5) 25 CFR, Chapter I, Subchapter M, ISDEAA Program
- 6) 25 CFR, Chapter V, Part 900, Contracts Under the ISDEAA
- 7) 43 CFR Part 20, Employee Responsibilities and Conduct

B. Guidance.

- 1) Cost Principles

25 CFR 900.45(e) requires each tribal organization to have a financial management system from which the Secretary can determine the reasonableness, allowability and

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allocability of SD contract costs based upon the terms of the contract and the tribal organization's applicable Office of Management and Budget (OMB) cost principles.

AOs are encouraged to negotiate the cost principles of 2 CFR 1402 into new ISDEAA awards. 2 CFR part 1402 contains the cost principles adopted by the Department for non-ISDEAA awards.

2) Audit Requirements

25 U.S.C. section 450c(f)(1) requires a tribal organization to submit the audit report required by the Single Audit Act, 31 U.S.C. section 7501 *et seq.*, for each fiscal year during which the tribal organization received or expended funds pursuant to a SD contract.

OMB has implemented the Single Audit Act through 2 CFR part 200 subpart F. Therefore, 2 CFR part 200 subpart F applies to all ISDEAA awards and annual funding agreements, as a matter of law. 2 CFR section 200.512(b)(2) applies to tribal organizations that enter into ISDEAA agreements, OMB has interpreted 2 CFR section 200.512(b)(2) to apply only to Indian tribes, as defined at 2 CFR 200.54.

C. Handbooks.

- 1) **Internal Agency Procedures Handbook for Non-Construction Contracting Under Title I of the ISDEAA.** This Handbook sets out the procedures to guide the actions of all agencies of the Department of the Interior and the Department of Health and Human Services to facilitate and enhance contracting with Indian tribes and tribal organizations.
- 2) **Awarding Official Certification System Handbook (AOC SH).** The Handbook provides procedures to implement a certification system for those persons designated and delegated authority to function as AOs for contracts, including construction contracts, awarded under the authority of the ISDEAA and all grants, except for those grants awarded under the authority of the Tribally Controlled Schools Act of 1988, as amended (P.L. 100-297).
- 3) **Delegation of Authority Handbook.** The Handbook provides procedures to implement the delegation of authority to Indian Affairs (IA) line officers to approve, decline, award, modify, and perform all other functions in the administration of contracts, including construction contracts under the ISDEAA and all grants, except for those grants awarded under the authority of P.L. 100-297.

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1.5 Responsibilities.

A. **AO** is responsible for:

- 1) Negotiating, awarding, administering, modifying, closeout, or terminating Indian SD contract and grants;
- 2) Issuing correspondence, conducting negotiations, and obligating the Federal Government in all SD contractual matters;
- 3) Designating in writing an AO Technical Representative (AOTR) or Subordinate AO Technical Representative (SAOTR) to assist in the contract administrative process;
- 4) Ensuring that no Indian SD contractual obligation shall be entered until requirements of law, Executive Orders, regulations, and other applicable procedures, including applicable clearances and approvals, have been met and that sufficient funds are available to finance the obligation;
- 5) Ensuring that Indian SD contractors receive fair and impartial treatment;
- 6) Requesting and considering the advice of specialists in audit, law, engineering, transportation, and other fields as appropriate;
- 7) Ensuring the performance of necessary actions for effective contracting, and ensuring compliance with the terms of the contract and safeguarding the interests of the United States in its contractual relationships;
- 8) Exercising sound and reasonable business judgment in order to perform these responsibilities.

1.6 Non-AOs Prohibited from Committing the Government. Actions that commit Federal funds to an Indian SD contract/grant or modify the terms of Indian SD contracts/grants shall be processed only through the proper administrative channels and shall be executed only by certified AOs.

- A. Except for the AO, no IA employee, regardless of position, title, or classification grade shall:
- 1) Influence or commit the government on Indian SD contractual actions;
 - 2) Give the appearance of incurring, amending, or terminating contractual

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obligations on behalf of IA by means of letter, memoranda, messages, or statements of any kind, written or oral, no matter how informal.

- B.** Any attempt by an employee other than an AO to change or to offer to alter the scope of a contract's terms or conditions in any way may constitute an action for which IA cannot be held accountable unless the authorized action is ratified by the Principal Deputy Assistant Secretary - Indian Affairs. Regardless of the ultimate ratification of an unauthorized act, a letter of reprimand will be placed in the Official Personnel Folder of an employee who commits an unauthorized act related to an Indian SD contract or grant.
- C.** An employee other than an AO who seeks to influence Indian SD contractual actions is subject to disciplinary action and may be required to personally reimburse the United States Treasury for any IA funds expended as a result of such actions.
 - 1) Commitments made by persons who do not possess Indian SD contract signatory authority are considered personal acts and the IA is not legally bound in any contracts by the signature of an unauthorized person.
 - 2) Any employee making an unauthorized commitment regarding a contract may be held personally liable by the contractor through civil collection proceedings.
- D.** Any employee who encourages a contractor to work in the absence of funds may be in violation of Federal Regulations and may be subject to criminal penalties.

1.7 Written Communications. Whenever possible, communications concerning contractual matters with Indian SD contractor or grantees, no matter how conducted, shall be finalized in writing.

1.8 Communications Reserved for AOs.

- A.** Based on decisions of the AO, only AOs shall issue written communication intended for dissemination to a P.L. 93-638 contractor that:
 - 1) Contractually commits IA;
 - 2) Interprets, waives, or changes, the provision of any contract document;
 - 3) Exercises any right under a contract;
 - 4) Proposes or affects any other contractual terms or provisions;

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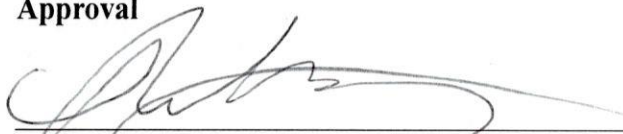
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- 5) Amends a contract; or
 - 6) Gives advance, informal, or formal notice of termination to a contractor or notice to suspend work.
- B.** The Office of the Solicitor (SOL) may communicate directly with current contractors concerning matters of form and legality of contracts/grants, legal aspects of claims, litigation, and other legal issues. A copy of each communication between the parties should be sent to the AO for inclusion in the contract file.
- C.** Whenever oral communications may affect the scope or provisions of a contract, the AO shall be party to the discussion. Whenever legal aspects of a contract are to be discussed, the SOL may be party to the discussion along with the AO. In the event that the AO or a representative from the SOL cannot be a party to a discussion that may affect the scope or provision of a contract, particularly in the case of telephone conversations, the IA employee holding the discussion shall provide either or both offices with a written summary of the discussion. The following is a statement that an IA employee may use verbatim or in paraphrase to inform Indian SD contractor or grantees of the limitation of authority regarding contractual matters:

"You are hereby notified that I do not have the authority to direct you in any way to alter your obligations or change the Statement of Work in your contract. Further, if the BIA, as a result of the information obtained from today's discussion desires to alter your contractual obligations or to change the contract's Statement of Work, changes will be issued in writing and signed by the AO. You should take no action on any change unless and until you receive a written change order or contract modification."

- 1.9 Standard of Conduct.** Indian SD contract and grant activities shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in IA-contractor/grantee relationships. While many Federal laws and regulations place restrictions on the actions of IA personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

Approval



Michael Black
Director, Bureau of Indian Affairs

1/27/16
Date