





Self-Determination

Contracting 101



Public Law 93-638, as amended

- To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.
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Effect on Existing Tribal Rights



Contracting does not:

- ❖ Affect or diminish Sovereign Immunity
- ❖ Terminate, waive or reduce the trust responsibility of the United States
- ❖ Mandate or require a Tribe to apply for a contract
- ❖ Impede awards from other federal agencies

Contract Proposal

Tribe submits contract proposal in accordance with 25 CFR 900.8

Initial Contract Proposal Elements:

- ▶ Tribe's full name, address and telephone number
- ▶ If the tribal organization is not an Indian tribe, the proposal must also include:
 - * Copy of organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).
 - * The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.
 - * The full name(s) of the Indian tribe(s) proposed to be served.
 - * Authorizing resolution from the Indian tribe(s) to be served.
- ▶ **Authorizing resolution**



AUTHORIZING RESOLUTION

- ▶ *The authorizing Tribal resolution should explicitly state the Tribe's intent to contract the Program, Function, Service or Activity (PFSA) under Public Law 93-638.*

SAMPLE LANGUAGE:

- ▶ WHEREAS, tribal governments are eligible to contract with the Department of Interior, Bureau of Indian Affairs. The XYZ tribe requests to contract with the Bureau of Indian Affairs under Public Law 93-638, Indian Self-Determination and Education Assistance Act (ISDEAA) for the [program/project].
- ▶ NOW THEREFORE BE IT RESOLVED, that the XYZ Tribe fully supports (re) contracting for the [program/project] funds for fiscal years *2018, 2019 and 2020*.
- ▶ BE IT FURTHER RESOLVED, that the XYZ Tribe authorizes it's (Chairman, President, Chief) or Vice-Chair, Treasurer, or designee to negotiate and execute the contract and subsequent modifications with the Bureau of Indian Affairs. This resolution is effective for three consecutive years.



Contract Proposal Continued:

- ▶ Name, title, and signature of the authorized representative of Tribe submitting the contract proposal.
- ▶ Date of submission of the proposal.
- ▶ Brief statement of programs, functions, services, or activities (PFSA) proposed to be performed
 - ▶ Description of geographic area
 - ▶ Estimated number of Indian people who will receive the benefits or services
 - ▶ Description of the proposed program standards;
 - ▶ Identification of the program reports, data and financial reports, including frequency.
 - ▶ Description of any proposed redesign of the programs, services, functions, or activities to be contracted,
 - ▶ Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and
 - ▶ Statement that the Indian tribe will meet the minimum procurement, property and financial management standards

(25 CFR 900 Subpart F)

Contract Proposal Continued:

- ▶ Amount of funds requested
- ▶ Budget:
 - ▶ Personnel (differentiating between salary and fringe benefits);
 - ▶ Equipment;
 - ▶ Materials and supplies;
 - ▶ Travel;
 - ▶ Subcontracts; and
 - ▶ Other appropriate items of cost.
- ▶ Identification of funds for indirect contract support costs: include most recent negotiated, approved indirect cost rate agreement.
- ▶ Proposed starting date and term of the contract.
- ▶ Any proposed waiver(s) of the regulations in this part; and
- ▶ Statement that the Indian tribe will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.



Re- Contracting:

25 CFR 900.12

- ▶ Tribe should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least *90 days* **prior** to the expiration date of the contract or existing annual funding agreement.

- ▶ BUDGET

- ▶ Including Position Descriptions If Salaries

- ▶ PROPOSED CHANGES TO STATEMENT OF WORK (SOW)



BIA Receipt of Contract Proposal

- ▶ Upon receipt of a proposal, the Secretary shall:
 - ❑ Within two days notify the Tribe in writing that the proposal has been received;
 - ❑ Within 15 days notify the applicant 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
 - ❑ Review the proposal to determine whether there are declination issues

25 CFR 900.15



Review of Contract Proposal

25 CFR 900.16:

- ▶ Within 90 days after receipt of a proposal, review and approve the proposal and award the contract or decline the proposal.
- ▶ At any time during the review period the proposal may be approved and awarded.

25 CFR 900.18:


A proposal that is not declined within 90 days (or within any agreed extension under Sec. 900.17) is deemed approved.

Declination Criteria:

Declination may only be for five specific reasons:

1. The service to be provided to the Indian beneficiaries of the particular program/function to be contracted will not be satisfactory;
2. Adequate protection of trust resources is not assured;
3. The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
4. The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or
5. The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

► **25 CFR 900.22
(Subpart E)**



Decision – Approval or Declination of Contract Proposal within *90 days*

Approve

- ▶ Issue approval letter
- ▶ Prepare contract documents
- ▶ Provide to Tribe for review and signature
- ▶ Award contract and Obligate Funds

Decline

- ▶ Issue declination letter
- ▶ Provide documents relied upon to make declination decision within 20 days
- ▶ Tribe may appeal decision:
 - Informal conference
 - Formal Appeal
 - Federal Court



Contract Documents:

- ▶ SF -26

Award Document (Bi-lateral Agreement)

- ▶ Section 108 (Model Contract)

Terms, conditions and provisions of contract; verbatim from Public Law 93-638

- ▶ Authorizing Tribal Resolution

Tribe's intent to contract under PL 93-638

- ▶ Annual Funding Agreement (AFA)

Agreement that represents the negotiated agreement and funds on an annual basis, identifies programs, functions, services or activities

Post Award Activities:

PERFORMANCE:

- ▶ Perform activities as outlined in the AFA – Statement of Work

REPORTING:

- ▶ Financial Reports (SF-425) **25 CFR 990.45**
- ▶ Annual Narrative **25 USC 5305**
- ▶ Program Specific Reports **25 CFR 900.65**
 - ▶ Submit to Awarding Official
 - ▶ cc: AOTR

MONITORING:

1. Administrative – Management Systems (25 CFR Part 900 and 2 CFR Part 200)
 - Financial
 - Property
 - Procurement
2. Program – Statement of Work, Program Standards and Regulations, Policies & Procedures

AUDIT:

Annual Single Audit - Threshold – Expenditure of \$750,000 of federal funds




Annual Narrative Report

- ▶ **Annual Narrative Report**. Provide a brief annual narrative report for each program. This report shall be submitted within ninety (90) days after the end of each Federal fiscal year and upon contract completion. The report shall include, but not be limited to, the following:
 - (a) **Narrative Section**. Discuss progress toward accomplishment of the goals and objectives envisioned in the contract, comment on problems encountered, etc.
 - (b) **Statistical Section**. Include any and all statistical information as may be required to support the Narrative Section.
 - (c) **Financial Section**. Report on funding issues, total funds expended, balance remaining, and status of payments. Comment on funding problems, budgeting problems, etc.



Entitlements under Public Law 93-638

- ▶ Acquire Excess Property or GSA
 - ▶ Use of funds for match
 - ▶ Advance payments
 - ▶ Protection Federal Torts Claims Act (FTCA)
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Modifications:

Contract Amendment SF-30:

- ▶ Change to contract
- ▶ Increases/Decreases of Funding
- ▶ Change to Statement of Work
- ▶ Budget Revisions
- ▶ Position Description
- ▶ Term Extensions

Fully executed contract modification provides authority to proceed with changes issued in the modification



Term Extensions

**** If term is expired, no authority to continue activities under the contract or expend funds.**

To request to extend the contract period, submit a request on tribal letterhead, signed by the tribal including the following:

- ▶ Contract number and program
- ▶ New period of performance end date
- ▶ Status of project completion
- ▶ If applicable, proposed changes to the Statement of Work
- ▶ If applicable, proposed revised Budget
- ▶ Barriers or issues encountered
- ▶ Any other pertinent information



Closeouts

- ▶ **All reports submitted:**
 - SF-425 Federal Financial Report; including Final
 - Annual Narratives
 - Program Reports
 - Single Audit Report and Findings resolved
- ▶ Financial reports Reconciled
- ▶ All payments made
- ▶ Equipment with current value of \$5,000 or greater identified/addressed
- ▶ DI-137 - Release of Claims form
- ▶ Close-out letter sent to Tribe



MIDWEST REGION SELF-DETERMINATION STAFF

Midwest Regional Office

- ❖ Michelle Corbine, Awarding Official
- ❖ Danielle Minor, Self-Determination Specialist

Great Lakes Agency

- ❖ Jody Zordan, Self-Determination Specialist
- ❖ Lynn Warren – Self-Determination Specialist

Michigan Agency

- ❖ Pauline Cardinal-Mitchell, Self-Determination Specialist