

BUREAU OF INDIAN AFFAIRS
SOUTHWEST 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

Indian Affairs User
January, 2015

**PROCEDURES FOR THE IMPLEMENTATION OF DELEGATED
PUBLIC LAW 93-638 AUTHORITY
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1. GENERAL

1.1 Purpose. The purpose of this manual is to establish procedural requirements to implement the delegation of authority to the Southwest 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 manual does not pertain to Title IV-Tribal Self-Governance Program of the Act.

This implementation plan does not pertain to:

Title IV-Tribal Self-Governance Agreements
Government to Government – G2G Contracts

1.2 Policy. It is the Policy of the Southwest 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/Tribal Organizations who are within the Region’s jurisdiction, while ensuring full compliance with all applicable laws, regulations, and policies to ensure sound management control and business decisions.

AAMM20703T	Pueblo of Acoma	AAMM25716T	Pueblo of Santa Clara**
AAMM20704T	Pueblo of Cochiti	AAMM25718T	Pueblo of Taos**
AAMM20705T	Pueblo of Isleta	AAMM25719T	Pueblo of Tesuque
AAMM20706T	Pueblo of Jemez **	AAMM40750T	Southern Ute Tribe
AAMM20711T	Pueblo of Sandía	AAMM50701T	Jicarilla Apache Tribe
AAMM20712T	Pueblo of San Felipe	AAMM60702T	Mescalero Apache Tribe
AAMM20715T	Pueblo of Santa Ana	AAMM70721T	Zuni Tribe
AAMM20717T	Pueblo of Santo Domingo	AAMM75722T	Ramah Navajo Chapter
AAMM20720T	Pueblo of Zia	AAMM75723T	Ramah Navajo School Board
AAMM20725T	Ysleta del Sur**		
AAMM21707T	Pueblo of Laguna		
AAMM25708T	Pueblo of Nambe		
AAMM25709T	Pueblo of Picuris		
AAMM25710T	Pueblo of Pojoaque		
AAMM25713T	Pueblo of San Ildefonso		
AAMM25714T	Ohkay Owingeh **		

**** Self Governance Tribes**

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1.3 Scope. This manual shall be used to implement the authorities delegated in 10 BIAM and its related Southwest Regional Office Addenda. The procedures contained herein satisfy the requirements of the Southwest Regional Office Implementation Plan developed in accordance with 13 BIAM Supplement 2 Release No. 122 issued August 10, 2006.

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 procedures manual 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:  Date: 2/6/2015
Acting BIA Director

APPROVED:  Date: 4 Feb 2015
Regional Director - Southwest Region

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 Regional Director. 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.

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- (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.

B. Awarding Official. The Awarding Officials shall be the Self-Determination Officer and Self Determination Specialists. The Awarding Official designation is delegated by the Regional Director to the Self-Determination Officer/Specialist. 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) Negotiates, awards contracts, and contract modifications or amendments within 90 days of receipt of the approval letter signed by the Regional Director (Approving Official).
- (2) Executes the obligation of the contract action by:

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- (a) Attaching an FBMS Entry Document (FED) showing that funds are available on an attached budget addendum to the signed SF-26 award document or SF-30 modification document for signature of the Budget Official certifying that funds are available.
 - (b) Prepares a Purchase Requisition (PR) for entry into the Financial Business and Management System (FBMS) by the ACQ Requisitioner (ACQ_REQ).
 - (c) Purchase Requisition is approved and certified by the ACQ Certifying Funds Approver (ACQ_CFA) and ACQ PR Approving Official (ACQ_AO).
 - (d) Approved Purchase Requisition is assigned to the Financial Assistance Agreements Officer (FA_AGO) or Financial Assistance Grants Specialist by the ACQ Expediter (ACQ_EXP) in PRISM.
 - (e) The FA_AGO releases award or modification in PRISM upon receipt of tribal authorization.
- (3) Ensures the transactions are properly documented by maintaining the official contract file.
 - (4) 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.
 - (5) Ensures compliance with all appropriate laws, rules, regulations, policies, and procedures.
 - (6) Issues correspondence involving business management aspects of contracts.
 - (7) Exercises contracting authority as otherwise established in law, regulations, manuals, and this supplement.
 - (8) Implements applicable policies and procedures.
 - (9) Provides assistance, consultation, and training to program officials and tribal organizations.
 - (10) Represents the Federal Government on contract management matters before the public, in litigation, and in administrative appeals.

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- (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 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 tribal organization fails or is unable to correct or stop the violation.
- (16) Reviews any proposed modifications initiated by the 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. Ensures vendors and/or contractors (tribes/tribal organizations) are registered in the System for Awards Management (SAM) and the Automated Standard Application for Payments (ASAP).
- (18) Prepares annual monitoring reports for all contracts.
- (19) Reviews contract progress reports for approval or disapproval.
- (20) 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.
- (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.

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- (23) Ensures timely resolution of audits and the Single Audit Act, as well as ensures follow-up actions are taken. Awarding Official does not have authority over other forms of agreements including Government to Government Programmatic Agreements (G2G), Office of Self Governance Agreements or commercial contracts.
- (24) Serves as Property Officer (both real and personal property) to ensure 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.
- (25) Ensures financial and narrative reports are received in compliance with the Department of Interior reporting system for P.L. 93-638 contracts and grants as required by BIA, as appropriate.
- (26) Conducts final reviews of completed contracts, makes adjustments or appropriate disallowances, ensures proper disposition of property, and formal closeout of contracts.
- (27) Prepares and executes determination and findings.
- (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 by the Awarding Official. The Agency Office program staff, 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) Prepares a plan for monitoring the contract and submit it to the Awarding Official within 45 calendar days of receipt of the designation memorandum.
- (3) 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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- (4) Advises the tribal organization of any violation of the contract terms and provisions, and promptly brings the matter to the attention of the Awarding Official if the tribe or tribal organization fails or is unable to correct or stop the violation.
- (5) Reviews any proposed modifications initiated by the tribe or tribal organization and furnishes recommendations regarding their cost, need, etc., to the Approving Official and Awarding Official.
- (6) Maintains a working contract file.
- (7) Submits semi-annual narrative reports for term contracts and annual narrative reports for mature contracts.
- (8) Reviews contract progress reports and recommends approval or disapproval to the Awarding Official.
- (9) 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, and ensures that laws, regulations, departmental and Bureau directives are followed in the excess and disposal processes.
- (10) 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 (Awarding Official) 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.

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D. Budget Official. The Budget Official 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.

2.2 Review and Approval of Contract Proposals. The Regional Director has 90 days after receipt of 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 Regional Director may approve the proposal and notify the Awarding Official to award the requested contract. Upon the approval by the Regional Director, Superintendents, Program Managers 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 within any agreed extension under 35 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 Regional Program Managers, AOTR'S. The membership of the Agency Superintendent, Program Managers, AOTR'S and their responsibilities shall be as follows:

A. Agency Superintendents, Program Managers, AOTR'S. The Agency Superintendents, Program Managers, AOTR'S 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 responsibilities and duties of the Agency Superintendents, Program Managers, and the AOTR's include, but are not limited to:

- (1) The Agency Superintendents, Program Managers, and the AOTR's shall serve as the official recipient of all initial and renewal contract proposals.
- (2) The Agency Superintendents, Program Managers and the AOTR's 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 Agency Superintendents, Program Managers and the AOTR's shall within fifteen days of receipt:
 - (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.

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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 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 by the Agency Superintendents, Program Managers, and the AOTR's 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 Agency Superintendents, Program Managers and the AOTR's shall within 15 days of the receipt of the proposal prepare a letter for the Approving Official's signature, notifying the Awarding Official that the proposal is approved and to negotiate and award the contract within 30 days of the receipt of the notification. The Agency Superintendents, Program Managers, and the AOTR's shall immediately mail a copy of the signed approval letter to the recipient.
- (5) If the review by the Agency Superintendents, Program Managers, and the AOTR's 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 Agency Superintendents, Program Managers, and the AOTR's 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

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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) Reasons the Department of the Interior, Bureau of Indian Affairs can decline a proposal as stated in 25 CFR Part 900.22
 - (a) The service to be rendered to the Indian beneficiaries for the particular program or function to be contracted will not be satisfactory;
 - (b) Adequate protection of trust resources is not assured;
 - (c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
 - (d) 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
 - (e) 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.
- (6) If the information requested under (A)(5) above is submitted by the applicant within the requested 15 days of the notification, the Agency Superintendents, Program Managers, and the AOTR's shall convene to review the additional documents submitted by the tribe or tribal organization, and recommend approval or declination of the proposal to the Approving Official.
 - (a) If during the review Agency Superintendents, Program Managers, and the AOTR's 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 Agency Superintendent, Program Manager, and the AOTR shall prepare a letter for the Approving Official's signature, notifying the Awarding Official that the proposal is approved and to negotiate and award the contract within 90 days of receipt of the notification. The Agency Superintendent, Program Manager, and the

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AOTR shall immediately mail a copy of the signed approval letter to the applicant.

- (b) If the information requested under (A)(5) above was requested to overcome stated declination findings, and the review by the Agency Superintendents, Program Managers, and the AOTR's recommends that all or a portion of the proposal be declined, the Agency Superintendents, Program Managers, and the AOTR's 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, Subpart L Appeals in 900.150.
 - (3) That technical assistance is available to overcome the stated objections as described in 25 CFR, 900.30 – 33.

2.3 Subpart J Construction Contract. The BIA SWR 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. Further, BIA NR will utilize 25 CFR, Subpart J-Construction, §900.110-137, as guidance to ensure compliance related to Construction contracts. There are separate subparts for construction contracts and the model agreement in Section 108 to differentiate what is required subject to a separate proposal and review process.

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2.4 Internal Controls. The Regional Director, the key officials designated pursuant to Section 2.1 and the Program Managers, AOTR'S members designate pursuant to Section 2.2 shall ensure that:

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

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

C. 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.

D. 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 his findings and recommendations to the Regional Director. This review shall be conducted in accordance with the Southwest Region, 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 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 delegate Region.

(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.

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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.
- (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 BIAM.
- (8) A review of the determination and findings of the Awarding Officials.
- (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 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 Region.

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2.7 Service Benefits. The 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 procedures manual shall be effective on the date signed by the Regional Director and the BIA Director. Its provisions shall remain in effect until it is amended, superseded, or revoked by the Regional Director and the BIA Director.

LIST OF ATTACHMENTS

ATTACHMENT A – Checklist and Certification for TPA Funds Pub. L. 93-638 Contract Award/Modification

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ATTACHMENT B – Checklist and Certification for Construction Contract
Award/Modification

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ATTACHMENT C – Sample Memorandum of TPA Funds