

BUREAU OF INDIAN AFFAIRS PACIFIC REGION



INDIAN SELF-DETERMINATION NON-PROCUREMENT AND PROCUREMENT 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

**PROCEDURES FOR THE IMPLEMENTATION OF DELEGATED
PUBLIC LAW 93-638 AUTHORITY
PACIFIC REGION**

1. GENERAL

- 1.1 Purpose.** The purpose of this implementation plan is to establish procedural requirements to implement the delegation of authority to the Bureau of Indian Affairs (BIA) Pacific Region Office (PRO) to approve, decline, award, modify, and perform all other functions on the administration of the Public Law (Pub. L.) 93-638 non-procurement contract under 25 CFR Part 900 Subpart C, and non-traditional "procurement" construction contracts under 25 CFR Part 900 Subpart J Construction to make determinations and findings in respect thereto, under Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA), 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 BIA PRO to provide for the maximum service delivery and Indian participation in processing the Pub. L. 93-638 contracts to the tribe and its tribal organizations while ensuring full compliance with all applicable laws, regulations, and policies based on sound management control and business decisions. The BIA PRO, Branch of Indian Self-Determination Services administers and manages the Pub. L. 93-638 contracts for the following tribes and tribal organization:
- AAJJ51505T Guidiville Rancheria, California
 - AAJJ52554T Big Lagoon Rancheria, California
- 1.3 Scope.** The BIA PRO will utilize the Pacific Region Office Implementation Plan in accordance with 13 IAM 2, Indian Self-Determination Awarding Official Implementation Plan, issued as 13 IAM 3 # 122 as follows:
- Delegation: The BIA PRO will maintain and administer all Pub. L. 93-638 non-traditional, procurement construction contracts and distribution of Contract Support Cost functions at region level. The BIA PRO Branch of Indian Self-Determination Services shall continue to provide timely and appropriate coordination of contracting activities to BIA PRO.
- 1.4 Authority.** The Public Law 93-638, the ISDEAA, as amended and promulgated regulations cited in 25 C.F.R. 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 Pacific Regional Director and the Bureau of Indian Affairs Director. Its provisions shall remain in effect until it is amended, superseded, or revoked by the Pacific Regional Director and the Bureau of Indian Affairs Director.

APPROVED: 
BIA Director

Date: 2/20/15

APPROVED: 
Regional Director – Pacific Region Office

Date: 2/5/2015

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**2. PROCESSES AND PROCEDURES
NON-PROCUREMENT CONTRACTS**

2.1 Non-Procurement Process and Procedures: There are four types of proposals that required review and action within 90 days: Initial contract proposal (grant), Successor Annual Funding Agreement (SAFA) proposal, Contract Renewal proposal, and Contract Amendment (modification proposal). The BIA PRO Approving Officials have 90 days after receipt of proposal to review and approve the proposal and award or decline the proposal in compliance with Section 102 of the Act and 25 C.F.R. Part 900, Subpart E. At any time during the review period, the Approving Official may approve the proposal and the Awarding Official shall be notified to award the proposal. Upon receipt of the written notice to the Tribe/Tribal Organization of the proposal approval by the Approving Official, the Awarding Official shall award the contract proposal and add to the contract the full amount of funds to which the Tribe/Tribal Organization is entitled to under Section 106(a) of the Act. A proposal that is not declined within 90 days (or within any agreed extension under 25 C.F.R. 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. In order to accomplish a timely review on the proposal is taken within the 90-day time frame the BIA PRO shall establish a 638 Regional Review Committee. The members of the 638 Review Committee shall be responsible as follows:

Review Committee. The 638 Review Committee shall be responsible for conducting technical review of the both types of contract proposal and shall make appropriate recommendations to the Approving Official to ensure sound decisions are made. The 638 Review Committee may consist of the Regional Director, Deputy Regional Director of Indian Service, Program Manager (s), and Budget Officer. The Indian Self-Determination Specialist/Awarding Official 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 Review Committee Chairperson shall serve as the official recipient of assigned initial, SAFA and renewal contract proposals.
- (2) The Review Committee Chairperson conducts the initial review to determine if the proposal is supported by an authorizing resolution. Within two days after receipt of an initial, SAFA or renewal contract proposal the Review Committee Chairperson shall prepare a letter for the Approving Official's signature notifying the Tribe/Tribal Organization when the proposal was received and identify the 90-days review period will expire. The notification should indicate that the Review Committee Chairperson is the point of contact.
- (3) The Review Committee Chairperson shall within seven calendar days of receipt of a contract proposal convene the Review Committee to review the proposal and:
 - (a) Determine and review if the PFSA is consistent with the Bureau of Indian Affairs operated programs and are consistent with the applicable part(s) of 25 CFR. If the Tribe/Tribal Organization proposal contains a request for a waiver of any provisions of the regulations, ensure that the requirements contained in 25 C.F.R. Part 900, Subpart K are met. However, the waiver can be submitted separately from the contract proposal. Technical assistance is available as provided in 25 C.F.R. 900.7.
 - (b) If the proposal being reviewed is an initial contract proposal, determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.8 have been submitted. If it is determined

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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 C.F.R. 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) If the proposal being reviewed is a SAFA proposal, determine that all items required by 25 C.F.R. 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. The Pub. L. 93-638 contract/grant is generally for a 5-year period for the BIA PRO.
 - (e) Determine whether there are declination issues under 25 C.F.R. 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 stated objectives.
- (4) If the review of the Committee determines that the proposal meets all the requirements contained in 2.1(3)(a) through (d) above, and pursuant to 2.1(3)(e) above determines that no declination issues exist, the Program Manager (s) shall within 15 days of the receipt of the proposal complete a Contract Review Form (CRF) and return to Review Committee Chairperson who will initiate an Approval letter for the Approving Official's signature and request for NEPA. The return of signed CRF notifies the Awarding Official that the proposal is approved and to negotiate, if necessary, and award the contract within 30 days of the receipt of the notification. The respective Program Manager shall immediately mail a copy of the signed approval letter to the Tribe/Tribal Organization.
- (5) If the review of the Committee determines that the proposal is incomplete and does not meet all the requirements contained in 2.1(3)(a) through 2.1(3)(d) above, and/or that pursuant to 2.1(3)(e) determines that declination issues exist, the respective Program Manager 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 Tribe/Tribal Organization shall provide the following specific information and offer technical assistance to overcome the deficiencies.
- (a) A listing of all missing items required by 25 C.F.R. Part 900.8 or 900.22 with a citation of the specific regulatory requirement for each missing item.
 - (b) A listing of all declination issues found pursuant to 25 C.F.R. Part 900.22 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) Once the information is provided as requested under 2.1(5) above is submitted by the Tribe/Tribal Organization within the requested 15 days of the notification, the Chairperson of the 638 Review Committee shall reconvene the 638 Review Committee to further review the additional documents/information submitted by the Tribe/Tribal Organization, and immediately proceed with approval or declination of the proposal to the Approving Official.

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- (a) If the review of the Committee determines that the proposal meets all of the requirements contained in 2.1(3)(a) through (d) above, and the Tribe/Tribal Organization has overcome all stated declination issues, the respective Program Manager (s) shall complete and signed the CFR and return to Committee Chairperson to prepare a letter for the Approving Official's signature, and request for NEPA, the return of the signed CFR notifies the Awarding Official that the proposal is now approved and award the contract within 30 days of receipt of the notification. The respective Committee Chairperson shall immediately mail a copy of the signed approval letter to the Tribe/Tribal Organization.

- (b) If the information requested under 2.1(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 respective Program Manager shall prepare a letter for the Approving Official's signature, advising the Tribe/Tribal Organization:
 - (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 25 C.F.R. 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) Immediately consult with the Solicitor according to the BIA PRO policy and include all pertinent documentation.

 - (3) Of the Tribe/Tribal Organization's rights, advised the Tribe/Tribal Organization in writing of their rights as described in 900.31.

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

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/grant approval and award process.

2.2 Approving Official. The Approving Official shall be specific by position, and not to an individual. The Approving Official for the BIA PRO shall be the Regional Director (or Acting). 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 Tribe/Tribal Organization is notified in writing that the proposal has been received [25 C.F.R. 900.15 (a)] for initial proposal, Successor Annual Funding Agreement, Renewal, and Modification/Amendment [DOI/HHS Internal Agency Procedures Handbook, Chapter 5 (I). Introduction]

- (2) Ensure the contract application is reviewed to determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.8 and/or 900.12 have been submitted.

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- (3) Ensure that within 15 days the Tribe/Tribal Organization 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 is 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 federal appropriation law and the use of appropriated funds.
- (8) Ensure timely and effective transfer of Federal Government contracted responsibilities and funding to the Tribe/Tribal organization.
- (9) Ensure timely and effective return of a contracted program, in whole or in part to the Federal Government responsibilities in accordance with 25 C.F.R. Part 900, Subpart P in the event of retrocession and reassumption.

2.3 Awarding Official. Within the BIA the authority to appoint Awarding Official rests with the Assistant Secretary-Indian Affairs. However, the authority has been delegated to the Director, Bureau of Indian Affairs. In accordance with IAM Part 13, Chapter 3 and 13 IAM 3-H, the authority for Indian Self-Determination contractual matters rests exclusively with the Bureau employee who is in the self-determination career field and who has been certified under the Awarding Official Certification System (AOCS) as an Awarding Official Level I or Level II. The Awarding Official shall have the authority to award, modify, and administer all self-determination contracts as defined in the 25 U.S.C. Section 450b(j), including where applicable construction contracts as defined in 25 U.S.C. Section 450b(m), as amended and all self-determination grants as defined in 25 U.S.C. Section 9. The Awarding Official designation shall be specific to an individual, and not by position. The responsibilities and duties of the Awarding Official include, but are not limited to:

- (1) Negotiates, reviews, awards contracts, and issues contract modifications or grant amendments within 90 days of receipt of the proposal.
- (2) Executes the obligation of the contract or grant or modification/amendment by:
 - (a) Ensuring the FBMS Entry Document (FED) indicates that funds are available and signed by Budget Official certifying that funds are available.
 - (b) Ensuring the ACQ Requisitioners (ACQ_REQ) generates an entry of the PR into the Financial Business Management System (FBMS) and the Awarding Official receives the original copy of the PR for the contract files from the ACQ Requisitioners.

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- (c) PR is approved and certified by the ACQ Certifying Funds Approver (ACQ_CFA) and ACQ PR Approving Official (ACQ_AO) (can be same individual and generally the Program Manager).
 - (d) Approved PR is assigned to the Financial Assistance Agreements Officer (FA_AGO) (Specialists) or Financial Assistance Grants Specialist by the ACQ Expediter (ACQ_EXP) in PRISM (generally the Awarding Official).
 - (e) The FA_AGO releases award or modification in PRISM and payments to the Pub. L. 93-638 contractor are released in accordance with the contract/grant or modification terms and conditions. The Pub. L. 93-638 contracts/grants designated as high risk, payments are distributed according to an agreed payment method.
- (3) Ensures the transactions are properly documented by maintaining the official contract file or grant file.
 - (4) Ensures compliance for respective contract/grant with all appropriate laws, rules, regulations, policies, manuals, and procedures.
 - (5) Issues correspondence involving business management aspects of contracts and grants.
 - (6) Exercises contracting authority as otherwise established in law, regulations, manuals, handbooks and this Implementation Plan.
 - (7) Implements applicable policies and procedures with efficiency and necessary training.
 - (8) Provides assistance, consultation, and training to program officials and Tribe/Tribal organizations.
 - (9) Represents the Federal Government on contract and grant management matters before the public, in litigation, and in administrative appeals.
 - (10) Reviews and evaluates business management aspects of applications to assure compliance with applicable regulations and policies.
 - (11) Negotiates cost-schedule, Federal Government oversight and review, and administration of fiscal terms and awards.
 - (12) Prepares, issues, and tracks awards; certifies that all legal, regulatory and policy requirements are met, and certifies that award amounts are accurate and appropriate.
 - (13) Tracks, reviews and analyzes post award actions; identifies and resolves management and administrative problems that arise during performance.
 - (14) 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.

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- (15) Reviews any proposed modifications initiated by the Tribe/Tribal Organization and furnishes recommendations regarding their costs, need, etc.
- (16) 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 the Tribe/Tribal Organizations are registered in the System for Awards Management (SAM) and the Automated Standard Application for Payments (ASAP).
- (17) Prepares, in collaboration with the designated Awarding Official's Technical Representative (AOTR), annual on-site monitoring reports for the Tribe/Tribal Organization within 90 calendar days of the monitoring and file in the appropriate contract/grant files.
- (18) Assists the Awarding Official's Technical Representatives in reviewing contract progress reports for approval or disapproval. Ensures financial and narrative reports are submitted by the Tribe/Tribal Organization in compliance with the contract/grant provisions.
- (19) Serves as accountable property officer by ensuring all accountable 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 BIA directives are followed in the excess and disposal processes. The real property donation has not been redelegated to the Awarding Official [DOI/HHS Internal Agency Handbook Chapter 9, II. A. 3]. However, the Awarding Official shall work with the PRO Property Management Officer on personal property.
- (20) Initiates independent audits, as warranted.
- (21) Ensures timely resolution of audits under the Single Audit Act, and ensures follow-up actions are taken such as implementing corrective action plan and closeout.
- (22) Conducts final reviews of completed contracts/grants, makes adjustments or appropriate disallowances, ensures proper disposition of property, and formal closeout of contracts/grants, including Release of Claims on file.
- (23) Prepares and executes determination and findings.
- (24) Issues reassumption and or retrocession letter and is responsible for accomplishment of all actions necessary to effect reassumption and or retrocession of a contracted program, services, functions or activity.
- (25) Consults with Approving Officials and Solicitor as necessary and appropriate in accordance with PRO policy.
- (26) Ensures the Awarding Official certification number is affixed on an official legal contract instrument whenever the name/signature appears.
- (27) Designates a representative(s) to serve as the Awarding Official's Technical Representative (AOTR) or the Subordinate Awarding Official's Technical Representative (SAOTR).

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2.4 Awarding Official's Technical Representative (AOTR). Designation(s) of AOTR shall be specific to an individual, and not by position, and shall be appointed by the Awarding Official. The BIA PRO Program Managers, in most instances, may 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 Pub. L. 93-638 contracts/grants. 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/grant.
- (2) Prepares a monitoring plan for the contract/grant and submit it to the Awarding Official within 45 calendar days of receipt of the designation memorandum on initial or renewal contracts. The AOTR shall prepare an annual monitoring plan for the Successor Annual Funding Agreements that will be shared with the Tribe/Tribal Organization.
- (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/grant.
- (4) Advises the Awarding Official of the Tribe/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. The Awarding Official shall issue a letter to the Tribe/Tribal Organization of noncompliance.
- (5) Reviews any proposed modifications initiated by the Tribe/ Tribal Organization and furnishes appropriate recommendations regarding their cost, need, etc., to the Approving Official and Awarding Official within 15 days from receipt of notice from the Awarding Official.
- (6) Maintains a working contract file in accordance with the Record Management Policy and 16 IAM.
- (7) Submits AOTR semi-annual report to the Awarding Official on the status of the designated contract/grants within 30 days for the period ending June 30th and December 31st.
- (8) Reviews the Pub. L. 93-638 contract/grants progress reports; Quarterly Narrative Report; Annual Report; and Federal Financial Report (SF-425) and recommends approval or disapproval to the Awarding Official.
- (9) Ensures and tracks that all accountable 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 process.
- (10) Complements the technical knowledge of Program, Function, Services and Activity (PFSA) with expertise in business and other administrative areas, such as adequacy of the tribal organization's plans to accomplish contract or grant objectives and to comply with program requirements, evaluation of the quality of tribal organization's performance and availability of funds.

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- (11) Acts as technical advisor to the Tribe/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 through the Awarding Official.
- (12) Assists the Awarding Official on the audit resolution on the respective contracts/grants and the implementation of the correction action plan.
- (13) Understands and familiarizes with applicable federal PFSA; understands the applicable federal appropriation restrictions; and familiarizes with the greenbook of respective programs under Pub. L. 93-638 contracts/grants.
- (14) The AOTR shall not take action to: (This includes Subordinate Awarding Official's Technical Representative (SAOTR))
 - (a) Enter into supplemental agreements for respective designated Pub. L. 93-638 contracts/grants.
 - (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/grant.
 - (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/grant.
 - (g) Make a final decision that is subject to appeal under the Contract Disputes Act.
 - (h) Once the contract is awarded, the AOTR is not authorized to verbal directive, issue letters or emails to the Pub. L. 93-638 contractors involving changes or altering any terms of the contract documents.

2.5 Budget Official. The Pacific Region Office 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. Provide technical assistance to program managers and awarding officials in compliance with the funding distribution and resolving funding issues.

2.6 Finance Official. An independent finance official shall be responsible for ensuring the accuracy of the accounting data in accordance to the new FBMS roles.

2.7 Program Manager (s)/Officials. A program official shall be responsible for conducting a technical review of the contract proposal and shall make appropriate recommendations to the approving official to ensure sound decisions are made.

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**3. PROCESSES AND PROCEDURES
PROCUREMENT CONSTRUCTION CONTRACTS**

3.1 Procurement Construction Contract Process and Procedures: Subpart J – Construction establishes requirements for awarding fixed-price contracts to provide: Road/Bridge design, NEPA, construction, repair, improvement, expansion, and demolition in accordance with the construction documents. Before spending any funds for a project, the BIA PRO (Division of Transportation (DOT)) and/or Program Manager (s) through Regional Director consults with the tribe by either formal letter, email or face to face meeting with BIA-DOT & Federal Highway Administration (FHWA)) on how the tribe wants the BIA-DOT and/or Program Manager to carry out each project (i.e. by Pub. L. 93-638, Force Account, Buy Indian, or SBA set aside type contracts). The BIA-DOT and/or Program Manager then informs the tribe's tribal organization (i.e. Pacific Engineering & Construction Authority) what project, if any the tribe wants them to carry out under the following construction contract project processes and timelines:

(1) Pre-award Phase:

- (a) Notification: The Awarding Official, thru the Regional Director, notifies the tribe or tribal organization of the available project and for submittals of the letter of intent to contract for the project within 30 calendar days of receipt of the notification letter.
- (b) The Awarding Official, through the Regional Director shall, within 30 days after receiving a Letter of Intent from the tribe or its tribal organization, furnish the tribe or its tribal organization with all information available about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports, Sec. 900.120. The PRO-DOT and/or Program Manager through the Approving Official shall have a continuing responsibility to furnish information.
- (c) At the request of the tribe or its tribal organization and before finalizing its construction contract proposal, the BIA-DOT and/or Program Manager, and the Awarding Official shall provide for a pre-contract negotiation phase during the development of a contract proposal. Within 30 days the Awarding Official shall acknowledge receipt of the proposal and, if requested by the tribe or its tribal organization, shall confer with the tribe or its tribal organization to develop a negotiation schedule, Sec. 900.122. The negotiation phase shall include, at a minimum:

(2) Negotiation Phase:

- (a) The provision of technical assistance.
- (b) A joint scoping session between the BIA-DOT and/or Program Manager, & Indian Self Determination Specialist(Awarding Official) and the tribe or its tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.
- (c) An opportunity for the BIA to revise plans, designs, or cost estimates of the BIA

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- (d) A negotiation session during which the BIA and the tribe or its tribal organization shall seek to develop a mutually agreeable contract proposal; and
 - (e) Upon the request of the tribe or its tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.
 - (f) In accordance with Sec. 900.123, not later than 30 days after receiving the final contract proposal, the PRO shall approve the contract proposal and award the contract, unless, during the period the PRO declines the proposal under sections 102(a)(2) and 102(b) of the Act.
- (3) Awarding Phase:
- (a) The Awarding Official prepares the final contract documents and submits the package to the tribe or its tribal organization for signature and returns the package back to the Awarding Official for finalization.
 - (b) The Awarding Official then sends a complete contract package back to the tribe or tribal organization including the approved plans, and contract documents which also informs the tribe or tribal organization on who the Awarding Official's Technical Representative will be for the project with his/her delegated authorities.
 - (c) The Awarding Official then schedules a Pre-Construction meeting with the tribe or tribal organization and issues an agreed to Notice to Proceed letter.
 - (d) Once the contract is awarded, the AOTR is not authorized to verbal directive, issue letters or emails to the Pub. L. 93-638 contractors involving changes or altering any terms of the contract documents.

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 Subpart J – Construction Section. The BIA PRO will implement and utilize the Subpart J construction contracts in accordance with 25 CFR Part 900, Subpart J – Construction Section §900.110-137 and for the Tribal Transportation Program, 25 CFR Part 170.

3.2. Approving Official. The Approving Official, for the construction contract, shall be specific by position, and not to an individual. The Approving Official for construction contracts shall be the Regional Director (or Acting). The responsibilities and duties of the Approving Official include, but are not limited to:

- (1) Ensure that within 30 days of the receipt of a final proposal, the tribe or tribal organization is notified in writing that the proposal has been received [25 C.F.R. 900.123].
- (2) 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

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assistance is provided to overcome the stated objections in accordance with Section 102(b) of the Act, and 25 CFR Part 900, Subpart E.

- (3) Determine the applicable funding level for the contract is available for each project in accordance with 25 CFR 170.
- (4) Ensure that within 30 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.
- (5) Ensure compliance with federal appropriation law and the use of appropriated funds.
- (6) Ensure timely and effective return of a contracted program, in whole or in part to the Federal Government responsibilities in accordance with 25 C.F.R. Part 900, Subpart J- 131(11)(12)(13) in the event of Termination for Convenience or Termination for Default.

3.3 Awarding Official. For construction contract, only Level II Awarding Official has the authority to award, modify, and administer all Self-Determination Construction Contracts. The Level II, Awarding Official designation shall be specific to an individual, and not by position. The responsibilities and duties of the Level II Awarding Official for Subpart J Construction Contract include, but are not limited to as mentioned in 2.1.B (1-27) above.

3.4 Awarding Official's Technical Representative (AOTR). Designation(s) of Program Manager as the AOTR shall be specific to individual qualifications, and not by position, and shall be appointed by the Level II Awarding Official. The BIA DOT Manager nominates a representative, to be appointed as the AOTR for road construction contracts. These appointed positions are an extremely important aspect of the contract management team that will be responsible for the successful construction oversight, technical assistance and completion of all Pub. L. 93-638 roadway construction 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 construction contract.
- (2) Review and recommend approval of the contractor's reports, request for extensions, carry-forward funds, and quality control, safety, construction schedule, and traffic control plans.
- (3) Recommends resolution of questions of fact with regard to quality assurance and acceptability of work performed when determining compliance with the terms and provisions of the construction contract.
- (4) Advises the Level II Awarding Official of the tribe or tribal organization of any violation of the contract terms and provisions, and promptly brings the matter to the attention of the Level II Awarding Official if the tribe or tribal organization fails or is unable to correct or stop the violation. The Level II Awarding Official shall issue a letter to the tribe or tribal organization of noncompliance.
- (5) Reviews any proposed modifications initiated by the Nation or tribal organization and furnishes appropriate recommendations regarding their cost, need, etc., to the Level II Awarding Official within 15 days from receipt of notice from the Level II Awarding Official.

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- (6) Maintains a working contract file in accordance with the Record Management Policy and 16 IAM.
- (7) Submits bi-weekly narrative of project status to the Awarding Official.
- (8) Reviews the Pub. L. 93-638 construction contract Progress payments /Federal Financial Report (SF-425) and recommends approval or disapproval to the Awarding Official .
- (9) Acts as technical advisor to the tribe or 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 through the Awarding Official.
- (10) The AOTR shall not take action to: (This includes Subordinate Awarding Official's Technical Representative (SAOTR)
 - (a) Enter into supplemental agreements for respective designated Pub. L. 93-638 construction contracts.
 - (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 construction 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 construction contract.
 - (g) Make a final decision that is subject to appeal under the Contract Disputes Act.

3.5 Budget Official. The Pacific Region Office 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. Provide technical assistance to program managers and awarding officials in compliance with the funding distribution and resolving funding issues.

3.6 Finance Official. An independent finance official shall be responsible for ensuring the accuracy of the accounting data in accordance to the new FBMS roles.

3.7 Program Manager (s)/Officials. A program official shall be responsible for conducting a technical review of the contract proposal and shall make appropriate recommendations to the approving official to ensure sound decisions are made.

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4. INTERNAL CONTROLS

- 4.1 Management Controls.** RD shall ensure that appropriate management controls are in place to protect against fraud, waste, mismanagement, or misappropriation. Control systems shall provide for adequate:
- (a) Documentation. Internal control systems and all transactions and other significant events are to be clearly documented and the documentation is to be readily available for examination.
 - (b) Recording of transactions and events. Transactions and other significant events are to be promptly recorded and properly classified.
 - (c) Execution of transactions and events. Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority.
 - (d) Separation of duties. Key duties and responsibilities in authorizing, processing, recording, and reviewing transactions should be separated among individuals.
 - (e) Supervision. Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved.
 - (f) Access To and Accountability for Resources. Access to resources and records is to be limited to authorized individuals, and accountability for the custody and use of resources is to be assigned and maintained. Periodic comparison shall be made of the resources with the recorded accountability to determine whether the two agree. The frequency of the comparison shall be a function of the vulnerability of the asset.
- 4.2 Financial Management Budget System:** DOI enterprise financial system has implement a new Financial Budget Management System (FBMS) in 2012 with new guidelines, separation of duties, and obligation procedures and payment procedure.

FBMS includes the following components:

- Simplified Acquisition Procedure (SAP) (ECC or Core Financials) – An integrated Enterprise Resource Planning (ERP) System that supports financial, property and other business processes.
- Enterprise Management Information System (EMIS) – FBMS reporting environment with enhanced data analysis capabilities.
- Purchase Request Information System (PRISM) – A Contract Management System.

The Indian Self-Determination involvement with FBMS is limited to the Financial Assistance (FA) system. The FA process follows the life cycle of a grant award, contract award, or cooperative agreement made through P.L. 93-638, and is separated into four phases: Pre-Award, Award, Post-Award, and Close-out. Core activities of the FA business are performed in PRISM. In addition to PRISM, the purchase requisition process in the core financial system also supports the FA business process.

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Separation of Duties (SOD): To ensure that no single individual has control over two or more phases of a transaction or operation, so that deliberate fraud is more difficult because it requires collusion of two or more individuals or parties. SOD Rule – a business rule that defines functions that should be separated between two or more individuals (for example Contracting Officer vs. Requisitioning). With the FBMS separation of duties is highly enforced by role mapping concept of identifying job functions that should be performed by different individuals, for example, creating vendor master records and issuing payments. The document type for all Financial Assistance (FA) awards is “Grant” in the Financial Assistance Management System (FBMS).

Key Role:

- The Grant Specialist creates the award and enters Federal Assistance Award Data System (FAADS) information into PRISM. The Agreements Officer approves and releases the award, which creates the obligation in the core financial system. Awarding Officials (Grant Specialists) will go from a manual processing of a Standard Form (SF)-30 or SF-26 to execute a modification to an automated process in PRISM.
- The FA Agreements Officer/Awarding Official reviews the FAADS report entered by Grants Specialist for the award prior to releasing the award in PRISM. Some of the fields are pre-populated based on the information entered in PRISM.
- FA Grants Specialist reviews the application, enters the award information / attachments / supporting documents, and routes the award to the FA Agreements Officer, who reviews the award and FAADS report information
- FA Agreements Officer/Awarding Official releases the award in PRISM. When an award is created and released in PRISM, a Purchase Order is created in the core financial system, SAP, via the IF027 Interface, which obligates the funds.
- ACQ Certifying Funds Approver – Program Managers and Superintendents are delegated as the ACQ Certifying Funds Approver role and are responsible for approving FBMS requisitions.

4.5 Certification of Fund Availability: Acquisition Funds Approver-Users holding the ACQ/FA Certifying Funds Approver role are responsible for approving FBMS requisitions, which includes fund certification for ISD Awards. The user has the ability to display, change, approve, or reject a request. The user's ability to make changes is limited to financial related information only (e.g., cost center, UPC, account assignment category). This role is assigned to users who have budget responsibility and knowledge of what is being spent in their cost center (s) and who review requisitions from a financial perspective to validate that the funding account information (account strings) is correct and that funding is available. Individuals assigned to the ACQ Supervisor role may also be assigned this role. This requisition approver is always the final approver of the PR, triggers the PR interface to PRISM, and their approval commits the funds unless the PR is marked Subject to Availability of Funds (SAF).

4.6 Obligation of Funds: The Financial Assistance Agreements Officer/Awarding Official awards/releases the financial assistance action, updates the award screens and obligates the funds. Any employee mapped to the FA Agreements Officer role must have the authority to obligate funds on behalf of the Government. This role is primarily PRISM related but can view items in SAP.

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4.7 Payments: Payments are processed in accordance with negotiated annual funding agreement payment schedule, and the new Automated Standard Application for Payments (ASAP) enrollment procedure. Recipients must register and use ASAP to request and receive funds electronically. Once IA approves and obligates an award, the process is as follows:

1. SAP interfaces with ASAP to establish funding.
2. The Certifying Official certifies funds in ASAP.
3. The recipient draws funds via ASAP.
4. Funds are electronically transferred to the recipient's bank account through ASAP.
5. ASAP interfaces to SAP to posts payments against the Purchase Request (PO) and reduces the obligation.

4.8 Contract Support Fund Management: The regional office shall continue to administer the Contract Support Cost funds (CSC) for the agencies and shall coordinate the collection of pertinent contract funding data necessary to formulate the region's CSC projections and shall ensure timely and equitable distribution of CSC to the agency. Agency shall provide information as appropriate to ensure full participation in the forecasting of annual projections; and timely distribution of CSC funds.

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5. Evaluation of Regional Performance.

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

- 5.1 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 the findings and recommendations to the Regional Director. This review shall be conducted in accordance with the Pacific 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 BIA implementation.
 - (b) The BIA Director or the designee of the BIA Director shall conduct an independent evaluation of the delegated Region.
 - (c) The Director, Bureau of Indian Affairs shall notified the Pacific Regional Director 30 days in advance prior to conducting an annual management review to ascertain the adequacy of separation of duties and responsibilities of the agency to assure the independence of agency level officials to make sound business decisions.
- 5.2 Regional Director.** The Pacific 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.
- 5.3 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 officials.
 - (6) Compliance by the Tribe/Tribal organization with the terms and conditions of the contract awarded.
 - (7) Maintenance of contract files in accordance with 19 BIAM, Supplement 14 and 16 IAM.
 - (8) A review of the determination and findings of the Awarding Officials.

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- (9) Any contract matter which may pertain to waste, fraud, or abuse, and/or conflicts of interest as defined under the Delegation of Authority.
- (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 and distribution of new tasks or delegations.
- (15) Tribal assessment of the Region's performance of the delegated authority.

5.4 Technical Assistance. The BIA Director shall be responsible for providing requested or recommended technical assistance to the Pacific Region Office.

5.5 Service Benefits. The Pacific 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 Pacific Regional Office specific implementation plan.