P.L. 93-638 Indian Self-Determination and Education Assistance Act of 1975

Implementation Regulations
25 CFR *Indians* Part 900
Part 900

Subpart A-General Provisions

900.1 Authority.

900.2 Purpose and Scope.

(a) General. ..regulations codify… contracts.. implementing Title I of the Indian Self-Determination and Education Assistance Act.
900.2 Purpose and Scope

(d) Freedom of Information. Access to records maintained by the Secretary is governed by the Freedom of Information Act.
900.3 Policy statements.

(a) Congressional policy. (1) ..assuring maximum Indian participation in the direction, planning, conduct and administration of educational..services to Indian communities...
900.3 Policy statements.

(a)(5) contracts shall be liberally construed for the benefit of the tribes to transfer the funding and the related functions, services, activities, and programs...
900.3 Policy statements.

(a)(6) minimize burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to declination procedures of section 102 of the Act.
900.3 Policy statements.

(a)(8) self-determination contract proposals must be supported by the resolution.
900.3 Policy statements.

(b)(1) remove any obstacles which might hinder Indian tribes, including obstacles that might hinder tribal autonomy and flexibility in the administration of such programs.
900.3 Policy statements.

(b)(3) afford Indian tribes flexibility, information and discretion necessary to design programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.
900.3 Policy statements.

(b)(5) ..decisions to contract or not to contract are equal expressions of self-determination.
900.3 Policy statements.

- (b)(10) ..make available ..all administrative functions that may lawfully be contracted under the Act,…

- (11) ..regulations be liberally construed for the benefit of Indian tribes ..to effectuate ..self-determination ..
900.4 Effect on existing tribal rights

Nothing in these regulations shall be construed as: (a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity enjoyed by Indian tribes;
Subpart C-Contract Proposal Contents
Subpart C-Contract Proposal Contents

900.8 What must an initial contract proposal contain?

(a) ..full name, address and telephone number of the Indian tribe...
900.8 What must an initial contract proposal contain?

(d) .. authorizing resolution from the Indian tribe(s)...

(e) The name, title, and signature of the authorized representative of the Indian tribe ...

(f) The date of submission of the proposal.
Subpart C-Contract Proposal Contents
900.8 (Cont’d)

(g) ..brief statement of the programs, functions, services, or activities (proposed)
– (1) A description of the geographic service area
– (2) .. number of Indian people who will receive the benefits..
– (3) ....programs, functions, services or activities to be contracted.
– (4) ..description of the proposed program standards.
(g)(5) identification of the program reports, data and financial reports that the Indian tribe will provide, including frequency.

(6) description of any proposed redesign of the programs, services, functions, or activities...
(g)(7) Minimum staff qualifications proposed by the Indian tribe…

- (8) A statement that the tribe will meet Minimum procurement, property and financial management standards…
(h) The amount of funds requested, including:
   – (1) identification of the funds requested by programs, functions, services, or activities...
   – (2) identification of the amount of direct contract support costs, including one-time start-up or pre-award costs presented by major categories such as:
     i. Personnel;
     ii. Equipment;
(h)(2) (Continued)

iii. Materials and supplies;
iv) Travel
v) Subcontracts; and
vi) Other appropriate items of cost
(h) ..amount of funds requested, including:
(3) An identification of funds to recover indirect contract support costs. This funding request must include either:
– I. A copy of the most recent negotiated indirect cost rate agreement; or
(h) The amount of funds requested, including: (3)
  – (ii) estimated amount requested for indirect costs,
(h)(4) ...any preaward costs, including the amount and time period covered.

– (5) ..identification of programs, functions, services, or activities.. which will be funded from sources other than the Secretary.
Subpart C-Contract Proposal Contents
900.8 (Cont’d)

- (h)(5)(I) proposed starting date and term of the contract.
  - (k) extent of any planned use of Federal personnel and Federal resources.
  - (l) proposed waiver(s) of the regulations in this part; and
(h)(5)(m) A statement that the tribe will implement procedures appropriate to the programs, functions, services or activities proposed ... assuring confidentiality of medical records and of information relating to the financial affairs of individual Indians.
Subpart C-Contract Proposal Contents

900.9 May the Secretary require an Indian tribe ... to submit any other information beyond that identified in 900.8?

No
900.10 How does an Indian tribe secure a list of all Federal property in carrying out the programs, functions, services, or activities that benefit the tribe to assist in negotiating a contract?

The tribe submits a written request.
Subpart C-Contract Proposal Contents

900.12 Are the proposal requirements the same for renewal of a contract and for securing an annual funding agreement after the first year?

No, tribe should submit a renewal proposal 90 days before the expiration of the contract.
Subpart D-Review and Approval of Contract Proposals

900.15 What shall the Secretary do upon receiving a proposal?
   - (a) Within two days notify the applicant in writing that the proposal has been received;
Subpart D-Review and Approval of Contract Proposals

900.15 What shall the Secretary do upon receiving a proposal?

- (b) Within 15 days, notify the applicant in writing of any missing items required by 900.8 and require that the items be submitted within 15 days of receipt of the notification.
900.15 What shall the Secretary do upon receiving a proposal?

– (c) Review the proposal to determine whether there are declination issues under Section 102(a)(2) of the Act
900.16 How long does the Sec have to review and approve the proposal and award ..or decline..?
The Secretary has 90 days ..to review ..approve, ..award ..or decline ..
900.17 Can the statutory 90-day period be extended?
Yes. ..with written consent of the tribe
Subpart D-Review and Approval of Contract Proposals

900.18 What happens if a proposal is not declined within 90 days..?
....deemed approved..
Subpart D-Review and Approval of Contract Proposals

900.19 What happens when a proposal is approved?
..Secretary shall award the contract and add to the contract the full amounts of funds...
900.20 What does this Subpart cover?

..how and ..what circumstances the Secretary may decline a proposal..
900.21 When can a proposal be declined?..within 90 days …unless that period is extended with the voluntary consent of the tribe..
Subpart E-Declination Procedures

900.22 For what reasons can the Secretary decline a proposal?
( ..five specific reasons)
(a) ..service ..will not be satisfactory;
(b) ..protection of trust resources is not assured;
Subpart E-Declination Procedures

900.22 For what reasons can the Secretary decline a proposal? (Cont’d)

(c) cannot be properly completed or maintained.

(d) amount of funds proposed is in excess of applicable funding level.
900.22 For what reasons can the Secretary decline a proposal? (Cont’d)
(e) ..cannot lawfully be carried out..
Subpart E-Declination Procedures

900.25 What if only a portion of a proposal raises one of the five declination criteria? ...
must approve any severable portion of a proposal that does not support a declination finding...
Subpart E-Declination Procedures

900.28 Is technical assistance available to a tribe to avoid declination?

Yes. Sec. Shall provide technical assistance to a tribe, and share all relevant information in order to avoid declination.
Subpart E-Declination Procedures

900.28 When the Secretary declines all or a portion of a proposal, is a tribe entitled to any appeal?

Yes. entitled to an appeal and the right to engage in full discovery at its option the tribe has the right to sue to challenge the decision.
Subpart F-Standards for Tribal Management Systems

900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for financial, procurement, and property management systems used by tribes.
Subpart F-Standards for Tribal Management Systems

900.35 What requirements are imposed upon tribes by this subpart?

Tribes shall develop, implement, and maintain systems that meet the minimum standards.
Subpart F-Standards for Tribal Management Systems

900.39 What is the difference between a standard and a system?

(a) Standards (are)..minimum baseline requirements for performance of an activity.

(b) Systems (are)..procedural mechanism and processes for the day-to-day conduct of an activity.
Subpart F-Standards for Tribal Management Systems

900.40 When are management standards and systems evaluated?

(a) Standards are evaluated when tribe submits an initial proposal.

(b) Systems are evaluated by an independent auditor through the annual single audit report.
Subpart F-Standards for Tribal Management Systems

900.41 How long must a tribe keep management system records?

A tribe must retain financial, procurement and property records for the minimum periods described.

(a) Financial records retained for three years.
Subpart F-Standards for Tribal Management Systems

900.41 How long must a tribe keep management system records?

(b) Procurement records retained for three years after final payment and all other pending matters are closed.

(c) Property records of transactions retained for three years from the date of disposition, replacement, or transfer.
Subpart F-Standards for Tribal Management Systems

900.41 How long must tribe keep management system records?
(d) Litigation, audit exceptions and claims retained until the action has been completed.
Standards for Financial Management Systems

900.42 What are the general financial management system standards ..?

..tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.
Standards for Financial Management Systems

900.44 What minimum general standards apply (to) financial management systems?

The fiscal control and accounting procedures shall be sufficient to:

(a) Permit preparation of reports required by a Self-Determination contract...
Standards for Financial Management Systems

900.44 What minimum general standards apply (to) financial management systems?

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions.
Standards for Financial Management Systems

900.45 What specific minimum requirements shall tribe(s) financial management system contain?

(seven elements)

(a) Financial reports. ..accurate, current and complete disclosure of the financial results.
Standards for Financial Management Systems

900.45 What specific minimum requirements shall ..tribe (‘s) financial management system contain ..?

(b) Accounting records. ..sufficiently detailed .. source and application of ..funds ..contract awards, obligations and unobligated balances, assets, liabilities, outlays, ..expenditures and income.
Standards for Financial Management Systems

900.45 What specific minimum requirements shall ..tribe (‘s) financial management system contain ..?

(c) Internal controls. ..effective.. accountability for ..funds received ..real property, personal property, and other assets furnished for used by the ..tribe..
Standards for Financial Management Systems

900.45 What specific minimum requirements shall ..tribe (‘s) financial management system contain ..?

(d) Budget controls. ..system shall permit the comparison of actual expenditures ..with the amounts budgeted ..
Standards for Financial Management Systems

900.45 What specific minimum requirements shall ..tribe (‘s) financial management system contain ..?

(e) Allowable costs. ..reasonableness, allowability, and allocability of ..costs
Standards for Financial Management Systems

900.45 What specific minimum requirements shall tribe(s) financial management system contain?

(f) Source documentation. Canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and records that support fund expenditures.
Standards for Financial Management Systems

900.45 What specific minimum requirements shall tribe (‘s) financial management system contain ..?

(g) Cash management. ..accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application ..
Standards for Financial Management Systems

900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations ..for transfer of funds from the United States to the Indian tribe …
Procurement Management System Standards

900.47 When procuring property or services with SDC funds, can a tribe follow the same procurement policies and procedures applicable to other Indian tribe organization funds?

Tribes shall have standards that conform to the standards in this subpart. If different, identify the standards it will use.
900.48 If the ..tribe ..does not propose different standards, what basic standards shall the ..tribe ..follow?

(b) The ..tribe ..shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.
900.48 If the tribe does not propose different standards, what basic standards shall the tribe follow?

(b)(2) An employee, officer, elected official, or agent of an Indian tribe is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors...
900.48 If the Tribe does not propose different standards, what basic standards shall the Tribe follow?

(b)(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.
Procurement Management System Standards

900.48 If the tribe does not propose different standards, what basic standards shall the tribe follow?

(f) The tribe shall maintain records on the significant history of all major procurement transactions.
900.48 If the tribe does not propose different standards, what basic standards shall the tribe follow?

(g) The tribe is responsible, for processing and settling all contractual and administrative issues arising out of procurement. Issues are source evaluation, protests, disputes and claims.
Procurement Management System Standards

900.48 If the tribe does not propose different standards, what basic standards shall the tribe follow?

(g)(1) settlement of any protest, dispute, or claim shall not relieve the tribe of any obligations.

(2) Violations shall be referred to the tribal or Federal authority having proper jurisdiction.
900.51 What is an Indian tribe property management system expected to do?
..account for all property furnished or transferred ..for use ..or acquired with contract funds.
Property Management System Standards

900.52 What type of property is the system required to track?
(a) Personal property with an acquisition value in excess of $5,000 per item;
900.52 What type of property is the system required to track?

(b) Sensitive personal property, subject to theft and pilferage. All firearms shall be considered sensitive personal property;

(c) Real property provided by the Secretary for use under the contract.
900.53 What kind of records shall the property management system maintain?
..records that accurately describe the property, including any serial number, source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition ..and ..date of disposal and sale price,..
900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls include:

(a) For the conduct of periodic inventories;
(b) To prevent loss or damage;
(c) To ensure property is used until property is declared excess to the needs of the contract...
900.55 What are the standards for inventories?

Inventory should be conducted at least once every two years. The results shall be reconciled with the organization’s internal property and accounting records.
900.65 What Programmatic reports and data shall the tribe provide? Each tribe shall negotiate type and frequency of program narratives and program data report(s).
900.140 Can any provision of the regulations under this part be waived?
Yes. Upon the request an Indian tribe ..., the Sec. Shall waive any provision of these regulations, including any cost principles adopted by the regulations under this part. ...granting the waiver is .. in the best interest of the Indians...
Subpart K-Waiver Procedures

900.141 How does an Indian tribe get a waiver?

..tribe..shall submit a written request to the Secretary identifying the regulation to be waived and the basis for the request. ..shall explain the intended effect of the waiver, impact ..if the waiver is not granted..
Subpart K-Waiver Procedures

900.142  Does an Indian tribe's waiver request have to be included in the initial contract proposal?

No. Although a waiver request may be included in a contract proposal. It can also be submitted separately.
Subpart K-Waiver Procedures

900.143 How is a waiver request processed?
Secretary shall approve or deny a waiver within 90 days...decision shall be in writing.

900.144 What happens if the Secretary makes no decision within the 90-day period?
waiver request is deemed approved.
Subpart K-Waiver Procedures

900.145 On what basis may the Secretary deny a waiver request?
(same criteria as 900.22)

900.146 Is technical assistance available for waiver requests?
Yes.
Subpart K-Waiver Procedures

900.147 What appeal rights are available?
..tribe ..has the right to appeal decision and request a hearing on the record...
..tribe ..may sue in Federal district court to challenge the Secretary’s action.
Subpart L-Appeals

Appeals other than Emergency Reassumption and Suspension. Withholding or Delay in Payment
Subpart M-Federal Tort Claims Act Coverage General Provisions
Subpart O-Conflicts of Interest
Subpart P-Retrocession and Reassumption Procedures