

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Table of Contents**

0. Table of Contents

1. GENERAL

1. Purpose
2. Policy
3. Scope
4. Authority

2. PROCESSES AND PROCEDURES

1. Definitions
2. Implementation Plan
3. Selection, Appointment & Termination of Awarding Official
4. Evaluation
5. Training
6. Technical Assistance
7. Cost Benefits
8. Services Benefits
9. Uniformity

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
GENERAL**

1. GENERAL

1.1 Purpose. The purpose of this manual supplement is to establish procedural requirements to implement the delegation of authority to Bureau of Indian Affairs line officers to approve, decline, award, modify, and perform all other functions in the administration of non-procurement, non-construction contracts, and to make determination and findings in respect thereto, under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended (Act). This supplement does not address self-determination construction contracts, discretionary grants under Section 103 of the Act, and Title III, Tribal Self-Governance Demonstration Project of the Act.

1.2 Policy.

A. Federal Policy. The self-determination policy inherent in the Act is to end Federal Government domination of Indian programs and services whereby Indian tribes may assume control over federal programs and services by contract. This does not mean Indian tribes will be forced into contracting. In the final analysis, the decision must rest with Indian tribes. The policy is also based on the premise that Indian participation in the design of federal programs and services will make those programs and services more responsive to the wants, needs, and desires of the Indian people. The essence of the self-determination policy is that Indian actions and Indian decisions shall determine the Indian future.

B. Bureau Policy. It is the policy of the Bureau of Indian Affairs to provide for maximum delegation of authority to the service delivery level while ensuring full compliance with all applicable laws, regulations, and policies to ensure sound management control and business decisions.

1.3 Scope.

A. This supplement shall be used to implement the authorities delegated in 10 BIAM and its related bulletins.

B. In the interim, Section 2.2A and B of this supplement shall apply to the Bureau of Indian Affairs in preparation for the full implementation of these authorities.

1.4 Authority. Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, dated December 4, 1975,

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS**

General

(25 U.S.C. 450, 88 Stat. 2203), as amended by Public Law 100-472, the Indian Self-Determination and Education Assistance Act Amendments of 1988, dated October 5, 1988, and Public Law 101-644, Title II, the Indian Self-Determination and Education Assistance Act Amendments of 1990, dated November 29, 1990. The Act, as amended, is composed of the following: 1) Title I, the Indian Self-Determination Act; 2) Title II - The Indian Education Assistance Act; 3) Title III - Tribal Self-Governance Demonstration Project. Funds are appropriated pursuant to the Snyder Act of November 2, 1921, (25 U.S.C.A. 13), and Acts subsequent thereto and promulgated regulations cited in 25 CFR 271.

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

2. Processes and Procedures

2.1 Definitions. Unless otherwise provided, the following terms shall mean:

A. "Act" means Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, as amended.

B. "Approving Official" means Bureau of Indian Affairs line officers (i.e. Area Directors, Area Education Program Administrators, Agency Superintendents, Agency Superintendents for Education, or other officials with delegated line authority).

C. "Awarding Official" means contracting officer and shall be any person, other than an "Approving Official", who has the delegated authority to award, modify and administer all non-procurement and non-construction contracts as defined in 25 U.S.C.A. Section 450b(j), as amended, and shall make decisions and issue determination and findings with respect thereto. The awarding official may be other than a warranted contracting officer, but also includes warranted contracting officers.

D. "Awarding Official's Representative" (AOR) or the "Subordinate AOR" (SAOR) means authorized representative(s) of the awarding official. The AOR or SAOR are designated by memorandum from the awarding official which prescribes their authorities, duties, and responsibilities. The AOR or SAOR may be selected from area office personnel, with concurrence of the area line officer.

E. "Contract" means a self-determination contract (or grant or cooperative agreement utilized in lieu of a contract under Section 9 of the Act) entered into under Title I of the Act between a tribal organization and the Secretary of the Interior for the planning, conduct, and administration of programs, services, or portions thereof, which are otherwise provided to Indian tribes and their members pursuant to Federal Government law. Provided, that no contract entered into pursuant to this supplement shall be construed to be a procurement or construction contract.

F. "Line Officer" means the federal official responsible for oversight and direction of the operation of a program, including planning, controlling, and accounting for the achievement of goals and objectives. Line officers have direct

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

operational responsibility for accomplishing assigned missions and ensuring that activities under their authority are being performed in accordance with established laws, regulations, and policies. Line Officers include, but are not limited to, area directors, agency superintendents, area education program administrators, and agency superintendents for education.

G. "Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

H. "Tribal Organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

2.2 Implementation Plan. In preparation for this delegation of authority, each area office shall prepare an Area Implementation Plan which shall provide for the following:

A. Separation of Duties. The organizational structure shall be such that it provides for distinct separation of key duties and responsibilities in authorizing, processing, recording, and reviewing transactions between the officials to be involved in the contract approval and award processes as follows:

(1) Approving Official. The approving official shall be the line officer. The responsibilities and duties of the approving official include, but are not limited to:

(a) Review and ensure contractibility of the program.

(b) Approve the contract application in accordance with the Act.

(c) Review and determine whether or not

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

declination issues exist and provide technical assistance in accordance with the Act.

(d) Decline the application in accordance with the Act.

(e) Ensure fund availability.

(f) Ensure compliance with appropriation law and use of appropriated funds.

(g) Ensure timely and effective transfer of Federal Government responsibilities in the event of retrocession and reassumption.

(2) Awarding Official. The awarding official shall be an official other than the approving official. Awarding official designation shall be specific to an individual, and not by position, and shall be appointed by the area director, based on the recommendation of the approving official. The delegated authority is limited to non-procurement and non-construction contracts entered under the Act; and does not include construction contracts and discretionary grants under Section 103 of the Act.

(a) Responsibilities. The responsibilities of the awarding official include, but are not limited to:

(1) Ensure compliance with all appropriate laws, rules, regulations, policies, and procedures.

(2) Execute the obligation of the contract action.

(3) Ensure the transactions are properly documented by maintaining the official contract file.

(4) Complement 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.

(b) Duties. The awarding official shall function

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

in a similar manner as a warranted contracting officer or a grants management officer. However, designation as a warranted contracting officer or grants management officer is not necessary for award of non-procurement and non-construction contracts. The duties of an awarding official include, but are not limited to, the following:

- (1) Negotiates, awards contracts and contract modifications or amendments.
- (2) Issues correspondence involving business management aspects of contracts.
- (3) Exercises contracting authority as otherwise established in law, regulations, manuals, and this supplement.
- (4) Implements applicable policies and procedures.
- (5) Provides assistance, consultation, and training to program officials and tribal organizations.
- (6) Represents the Federal Government on contract management matters before the public, in litigation, and in administrative appeals.
- (7) Reviews and evaluates business management aspects of applications to assure compliance with applicable regulations and policies.
- (8) Negotiates cost schedule, Federal Government oversight and review, and administration of fiscal terms and awards.
- (9) Prepares, issues, and tracks awards, certifies that all legal, regulatory and policy requirements are met, certifies that award amounts are accurate and appropriate.
- (10) Tracks, reviews, analyzes post award actions, identifies and resolves management and administrative problems that arise during performance.
- (11) Acts as consultant to the tribal

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

organization on management and administrative matters through site visits and other management assistance services; and initiates formal action to protect the Federal Government's interests.

(12) Initiates independent audits, as warranted.

(13) Ensures timely resolution of audits and the Single Audit Act and ensures follow-up actions are taken.

(14) Serves as accountable property officer (both real and personal property) ensuring 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.

(15) Reports contract awards and modifications in compliance with the Department of the Interior Procurement Data System (IPDS), the Federal Assistance Automated Data System (FAADS), as appropriate; and any necessary changes in the Automated Personal Property Inventory System (APPIS).

(16) Conducts final reviews of completed contracts, makes adjustments or appropriate disallowances, ensures proper disposition of property and formal closeout of contracts.

(17) Prepares and executes determination and findings.

(18) Designates a representative(s) to serve as the awarding official's representative (AOR) or the subordinate awarding official's representative (SAOR).

(3) Awarding Official's Representative (AOR). Duties and responsibilities of the AOR or SAOR shall include, but are not limited to, the following:

(a) Become thoroughly familiar with the terms and conditions of the contract.

(b) Prepare a plan for monitoring the contract and submit it to the awarding official within 45 calendar days of

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

receipt of the designation memorandum.

(c) Recommend 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.

(d) Advise the tribal organization of any violation of the contract terms and provisions and promptly bring the matter to the attention of the awarding official if the tribal organization fails or is unable to correct or stop the violation.

(e) Review any proposed modifications initiated by the tribal organization and furnish recommendations regarding their cost, need, etc.

(f) Maintain a working contract file.

(g) Recommend approval or disapproval and monitor P-638 Automated Clearing House (ACH) and other payment requests, ensure contract funds are used for the purpose intended, ensure cash on hand is not excessive, ensure that accounting and appropriation data are correct and that all disbursements are drawn on the Treasury of the United States by authorized officers and that all disbursements are properly supported prior to payment by contracts, purchase orders, invoices, receiving reports and/or inspection reports.

(h) Submit quarterly monitoring reports for term contracts and semi-annual monitoring reports for mature contracts.

(i) Review contract progress reports and recommend approval or disapproval to the awarding official.

(j) Ensure 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 ensure that laws, regulations, departmental and Bureau directives are followed in the excess and disposal processes.

(k) The AOR or SAOR shall not:

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

- (1) Enter into supplemental agreements.
- (2) Suspend work or issue change orders.
- (3) Grant extensions of time.
- (4) Modify the terms or conditions of the contract.
- (5) Commit the Federal Government in any manner.
- (6) Redelegate their duties and responsibilities.
- (7) Make a final decision that is subject to appeal under the disputes clause of the contract.

(4) Budget Official. An independent budget official shall be responsible for ensuring the validity of the funding authority and the availability of funding to prevent deficiency as defined by the Anti-Deficiency Act, 31 U.S.C. Section 1341, and to assure separation of duties.

(5) Finance Official. An independent finance official shall be responsible for ensuring the accuracy of the accounting data, the appropriate encoding to record the obligation into the Federal Finance System (FFS) and separation of duties.

(6) Program Official. 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.

B. Internal Controls.

(1) Management Controls. Line officers 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.

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

(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.

(2) Compliance. Line officers shall ensure compliance with:

(a) Applicable OMB Circulars.

(b) General Accounting Office Policy and Procedures Manual for Guidance of Federal Government Agencies, Revised Title 2, Appendix II, Internal Control Standards, dated November 14, 1984.

(c) 25 CFR Parts 271 through 278.

(d) Interim Guidance for Implementation of Public Law 100-472, Indian Self-Determination and Education Assistance Act Amendments of 1988, 20 BIAM Supplement 1, Release 1, dated September 25, 1990.

(e) Subsequent applicable laws, regulations, policies, directives, and manuals.

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

(3) Assurance of Organizational Independence.

The Deputy Commissioner of Indian Affairs shall conduct 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. This review shall be concurrent with Section 2.4 of this supplement.

(4) Assessment of Workload. Workload of agencies will be evaluated through area office assessments. Assignment of workload to staff shall be made in a manner to assure full compliance with assigned duties and responsibilities, compliance with all laws, regulations, policies and directives to assure timely delivery of services to tribal organizations and to protect the interests of the Federal Government. Other factors to be considered are:

(a) Having requisite experienced and knowledgeable staff.

(b) Minimal restructuring requirements.

(c) Degree of tribal and area office support.

(5) Projection of Costs.

(a) The line officer shall develop and submit to the area line officer cost estimates for implementing delegated authority. This shall include, but not be limited to:

(1) Training and technical assistance requirements.

(2) Real and personal property.

(3) Staffing requirements.

(4) Supply and service requirements.

(5) Travel requirements.

(6) Other related expenses.

(b) The area line officer shall provide to the Deputy Commissioner of Indian Affairs a report on the needs of

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

those agencies requiring additional resources in order to implement the delegation of authority.

(6) Assessment. Evaluation of agencies capabilities for assumption of this delegated authority is the responsibility of the Deputy Commissioner of Indian Affairs, and shall be conducted through review and evaluation of the foregoing information, under the following conditions:

(a) Expansion of this authority to additional agencies shall be predicated upon a detailed assessment which addresses their capabilities, staffing, resources, equipment, space, training, experience, other applicable factors and successful completion of the prescribed core training curriculum.

(b) The area line officer and the agency line officer shall develop an action plan to meet the identified needs of an agency being considered for delegated authority.

(c) Agencies and area offices that can meet the needs within existing resources shall be given priority. Area offices and agencies requiring additional resources exceeding available resources will receive consideration only after the resource needs are resolved.

2.3 Selection, Appointment and Termination of Awarding Official.

A. Selection. In selecting awarding officials, area line officers shall consider the candidate's experience, training, education, business acumen, judgment, character, and reputation. Selection criteria includes:

(1) Experience with Public Law 93-638, as amended, contracts and administration.

(2) Education and/or training in Public Law 93-638, as amended, contract administration, property management, accounting, or related fields.

(3) Knowledge of Public Law 93-638, as amended, policies and procedures, including legislation, regulations, and the proposed regulations.

(4) Satisfactory completion of Public Law 93-638 and other contract related training courses.

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

B. Appointment. Awarding officials shall be appointed by an area line officer, in writing, via a "Letter of Appointment" which shall appoint the individual by name and state any limitations on the scope of authority to be executed. The area line officer shall maintain files containing copies of all Letters of Appointment.

C. Termination of Appointment. Termination of an awarding official appointment shall be by letter. Termination may be for reasons such as reassignment, termination of employment or unsatisfactory performance. No termination shall operate retroactively.

2.4 Evaluation.

A. Responsibility.

(1) Area Line Officer. The area line officer shall be responsible for conducting management reviews of agency performance under the delegated authority and shall prepare a report outlining his findings and recommendations to the agency line officer. This review shall be conducted in accordance with the area specific implementation plan. Upon completion of the management reviews, the area director shall prepare a summary report to the Deputy Commissioner of Indian Affairs containing, at a minimum, a status of the implementation of the delegation of authority. Such report shall include evaluation methodology, tribal input, successes and problems and area recommendation for permanency of programs for further Bureau of Indian Affairs implementation. The Director of Tribal Services shall conduct an independent evaluation of the delegate agencies. Such report shall include the above stated factors.

(2) Agency Line Officer. The agency line officer shall be responsible for preparing and implementing a corrective action plan to ensure correction of deficiencies identified in the administrative management review.

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 Parts 271 through 278, and 20 BIAM Supplement 1, Release 1.

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

- (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, and accounting officials.
- (6) Compliance by the tribal organization with the terms and conditions of the contracts.
- (7) Maintenance of contract files in accordance with 19 BIAM Supplement 14 and 16 BIAM.
- (8) A review of the determination and findings of the awarding official.
- (9) Any matter which may pertain to waste, fraud, or abuse, or conflicts of interest.
- (10) Existence of any inappropriate influence on the approving and awarding officials.
- (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 awarding official.
- (15) Tribal assessment of the agency's performance of the delegated authority.

2.5 Training. The Division of Self-Determination Services shall develop training criteria and curriculum to ensure successful expansion of the delegated authority.

2.6 Technical Assistance. The area line officer shall be

**DELEGATION OF AUTHORITY FOR NON-CONSTRUCTION, NON-PROCUREMENT
SELF-DETERMINATION CONTRACTS
Processes and Procedures**

responsible for providing requested or recommended technical assistance to the agencies having this delegated authority.

2.7 Cost Benefits. The agency line officer shall conduct an annual cost benefit analysis to measure the effectiveness of the delegated authority, and report findings to the area line officer, in accordance with the area specific plan. The training workgroup shall also evaluate the cost benefit study for the Deputy Commissioner of Indian Affairs and/or Director of Tribal Services.

2.8 Service Benefits. The agency line officer shall conduct an annual survey of services performed and benefits associated with the implementation of the delegated authority and report findings to the area line officer, in accordance with the area specific plan.

2.9 Uniformity. Bureau of Indian Affairs line officers shall ensure that internal controls are consistent with the provisions prescribed in this supplement.