

§ 1000.175

25 CFR Ch. VI (4-1-06 Edition)

§ 1000.175 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the Tribe/Consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/Consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and Tribe/Consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.175 must address at a minimum the following:

(a) The specific Tribe/Consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the Tribe/Consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the Tribe/Consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.177 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the Tribe/Consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian Tribe/Consortium served by the BIA Agency that serves any Tribe/Consortium that is a party to the AFA.

§ 1000.178 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under § 1000.177(b).

§ 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?

(a) If the Tribe/Consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the Tribe/Consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the Tribe/Consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The Tribe/Consortium has 30 days from receipt of the bureau's written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

NEGOTIATION PROCESS FOR SUCCESSOR ANNUAL FUNDING AGREEMENTS

§ 1000.180 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request

and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the AFA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.182 What is the process for negotiating a successor AFA?

The Tribe/Consortium and the bureau use the procedures in §§ 1000.173—1000.179.

Subpart H—Limitation and/or Reduction of BIA Services, Contracts, and Funds

§ 1000.190 What is the purpose of this subpart?

This subpart prescribes the process that the Secretary uses to determine whether a BIA self-governance funding agreement causes a limitation or reduction in the services, contracts, or funds that any other Tribe/Consortium or Tribal organization is eligible to receive under self-determination contracts, other self-governance compacts, or direct services from BIA. This type of limitation is prohibited by section 406(a) of Pub. L. 93-638. For the purposes of this subpart, Tribal organization means an organization eligible to receive services, contracts, or funds under section 102 of Pub. L. 93-638.

§ 1000.191 To whom does this subpart apply?

Participating and non-participating Tribes/Consortia and Tribal organizations are subject to this subpart. It does not apply to the general public and non-Indians.

§ 1000.192 What services, contracts, or funds are protected under section 406(a)?

Section 406(a) protects against the actual reduction or limitations of services, contracts, or funds.

§ 1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?

BIA or any affected Tribe/Consortium or Tribal organization may raise the issue that a BIA self-governance AFA limits or reduces particular services,

contracts, or funding for which it is eligible.

§ 1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?

(a) From the beginning of the negotiation period until the end of the first year of implementation of an AFA, BIA may raise the issue of limitation or reduction of services, contracts, or funding. If BIA and a participating Tribe/Consortium disagree over the residual information, a participating Tribe/Consortium may ask the Deputy Commissioner—Indian Affairs to reconsider residual levels for particular programs. [See § 1000.95(d)]

(b) After the AFA is signed, BIA must raise the issue of any undetermined funding amounts within 30 days after the final funding level is determined. BIA may not raise this issue after this period has elapsed.

§ 1000.195 When must an affected Tribe/Consortium or Tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?

(a) A Tribe/Consortium or Tribal organization may raise the issue of limitation or reduction of services, contracts, or funding for which it is eligible during:

(1) Region-wide Tribal shares meetings occurring before the first year of implementation of an AFA;

(2) Within the 90-day review period before the effective date of the AFA; and

(3) The first year of implementation of an AFA.

(b) Any Tribe/Consortium or Tribal organization claiming a limitation or reduction of contracts, services, or funding for which it is eligible must notify, in writing, both the Department and negotiating Tribe/Consortium. Claims may only be filed within the periods specified in paragraph (a) of this section.