

§ 1000.29

the Tribe/Consortium must do to correct the deficiency.

(b) The Tribe/Consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice-of-deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

§ 1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?

(a) The Tribe/Consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a Tribal resolution requesting removal from the application pool.

(b) The failure of the Tribe/Consortium to execute an agreement has no effect on the selection of up to 50 additional Tribes/Consortia in a subsequent year.

§ 1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?

Yes, a Tribe/Consortium may be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1).

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§ 1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?

No, section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the Tribe/Consortium must be included in AFAs negotiated under section 403(a) and/or section 403(b). A Tribe may be selected to negotiate an AFA under section 403(c) at the same time that it negotiates an AFA under section 403(b)(1) and/or section 403(b)(2).

**WITHDRAWAL FROM A CONSORTIUM
ANNUAL FUNDING AGREEMENT**

§ 1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?

(a) A Tribe wishing to withdraw from a Consortium's AFA must notify the Consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a Tribal resolution or other official action by the Tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the Tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the Consortium, the Tribe, OSG, and the appropriate bureau agree otherwise.

§ 1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?

When a Tribe withdraws from a Consortium, the Consortium's AFA must be reduced by the portion of funds attributable to the withdrawing Tribe. The Consortium must reduce the AFA on the same basis or methodology upon which the funds were included in the Consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the

Consortium, Tribe, OSG, and the bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a Tribe withdraws in the middle of a funding year, the Consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the Tribe, or already spent or obligated by the Consortium on behalf of the Tribe; and

(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the Consortium agreement is reduced if:

(1) The Consortium, Tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

§1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the Consortium, OSG, bureau, and the withdrawing Tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA and OIEP programs, at least 5 days before the 90-day Congressional review, the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . .	then a copy of the decision must be sent to . . .
(1) A BIA program ..	BIA regional director, the Deputy Commissioner of Indian Affairs, the withdrawing Tribe, and the Consortium.
(2) An OIEP program.	the OIEP line officer, the Director of OIEP, the withdrawing Tribe, and the Consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

§1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under §1000.32 of this part, a Tribe may withdraw from a Consortium and request that the Secretary award the Tribe its portion of a construction project's funds. The Secretary may decide not to award these funds if the Secretary determines that the award of the withdrawing Tribe's portion of funds would affect the ability of the remaining members of the Consortium to complete a severable or non-severable phase of the project within available funding.

(a) An example of a non-severable phase of a project would be the construction of a single building to serve all members of a Consortium.

(b) An example of a severable phase of a project would be the funding of a road in one village where the Consortium would be able to complete the roads in other villages that were part of the project approved initially in the AFA.

(c) The Secretary's decision under this section may be appealed under §1000.428 of these regulations.

Subpart C—Section 402(d) Planning and Negotiation Grants

PURPOSE AND TYPES OF GRANTS

§1000.40 What is the purpose of this subpart?

This subpart describes the availability and process of applying for planning and negotiation grants authorized by section 402(d) of the Act to help Tribes meet costs incurred in:

(a) Meeting the planning phase requirement of the Act, including planning to negotiate for non-BIA programs; and

(b) Conducting negotiations.

§1000.41 What types of grants are available?

Three categories of grants may be available:

(a) Negotiation grants may be awarded to the Tribes/Consortia that have