

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(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.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

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been selected from the applicant pool as described in subpart B of this part;

(b) Planning grants may be available to Tribes/Consortia requiring advance funding to meet the planning phase requirement of the Act; and

(c) Financial assistance may be available to Tribes/Consortia to plan for negotiating for non-BIA programs, as described in subpart D and §§ 1000.42–1000.45 of this subpart.

AVAILABILITY, AMOUNT, AND NUMBER OF GRANTS

§ 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

No, grants to cover some or all of the planning costs that a Tribe/Consortium may incur, depend upon the availability of funds appropriated by Congress. Notice of availability of grants will be published in the FEDERAL REGISTER as described in § 1000.45.

§ 1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses?

Yes, a Tribe/Consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and an AFA.

§ 1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year?

If appropriated funds are available but insufficient to meet the total requests from Tribes/Consortia:

(a) First priority will be given to Tribes/Consortia that have been selected from the applicant pool to negotiate an AFA; and

(b) Second priority will be given to Tribes/Consortia that require advance funds to meet the planning requirement for entry into the self-governance program.

§ 1000.45 How many grants will the Department make each year and what funding will be available?

The number and size of grants awarded each year will depend on Congress-

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sional appropriations and Tribal interest. By no later than January 1 of each year, the Director will publish a notice in the FEDERAL REGISTER that provides relevant details about the application process, including the funds available, timeframes, and requirements for negotiation grants, advance planning grants, and financial assistance as described in subpart D of this part.

SELECTION CRITERIA

§ 1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant?

Any Tribe/Consortium that has been accepted into the applicant pool and has been accepted to negotiate a self-governance AFA may apply for a negotiation grant. By March 15 of each year, the Director will publish a list of additional Tribes/Consortia that have been selected for negotiation along with information on how to apply for negotiation grants.

§ 1000.47 What must a Tribe/Consortium do to receive a negotiation grant?

If funds are available, a grant will be awarded to help cover the costs of preparing for and negotiating a compact and an AFA. These grants are not competitive. To receive a negotiation grant, a Tribe/Consortium must:

(a) Be selected from the applicant pool to negotiate an AFA;

(b) Be qualified as eligible to receive a negotiation grant in the FEDERAL REGISTER notice discussed in § 1000.45;

(c) Not have received a negotiation grant within the 3 years preceding the date of the latest FEDERAL REGISTER announcement;

(d) Submit a letter affirming its readiness to negotiate; and

(e) Formally request a negotiation grant to prepare for and negotiate an AFA.

§ 1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?

A selected Tribe/Consortium may elect to negotiate without applying for a negotiation grant. In such a case, the Tribe/Consortium should notify OSG in writing so that funds can be reallocated for other grants.