

Tribe/Consortium in the drafting of its planning grant application.

§ 1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?

A Tribe/Consortium may request comments or selection documents under the Freedom of Information Act.

§ 1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

The Director will use the following criteria and point system to rank the applications:

(a) The application contains a clear statement of objectives and timelines to complete the proposed planning or negotiation activity and demonstrates that the objectives are legally authorized and achievable. (20 points)

(b) The proposed budget expenses are reasonable. (10 points)

(c) The proposed project demonstrates a new or unique approach to Tribal self-governance or broadens self-governance to include new activities within the Department. (5 points)

§ 1000.71 Can an applicant appeal a decision not to award a grant?

No, all decisions made by the Director to award or not to award a grant under this subpart are final for the Department.

§ 1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?

Yes, OSG will notify all applicant Tribes/Consortia and affected non-BIA bureaus in writing as soon as possible after completing the selection process.

§ 1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?

Yes, see § 1000.169.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

§ 1000.80 What is the purpose of this subpart?

This subpart describes the components of annual funding agreements for BIA programs.

§ 1000.81 What is an annual funding agreement (AFA)?

Annual funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into annually between a self-governance Tribe/Consortium and BIA.

CONTENTS AND SCOPE OF ANNUAL FUNDING AGREEMENTS

§ 1000.82 What types of provisions must be included in a BIA AFA?

Each AFA must specify the programs and it must also specify the applicable funding:

(a) Retained by BIA for “inherently Federal functions” identified as “residuals” (See § 1000.94);

(b) Transferred or to be transferred to the Tribe/Consortium (See § 1000.91); and

(c) Retained by BIA to carry out functions that the Tribe/Consortium could have assumed but elected to leave with BIA. (See § 1000.101).

§ 1000.83 Can additional provisions be included in an AFA?

Yes, any provision that the parties mutually agreed upon may be included in an AFA.

§ 1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93-638 in an AFA?

Yes, under Pub. L. 104-109, a Tribe/Consortium has the right to include any provision of Title I of Pub. L. 93-638 in an AFA.

§ 1000.85 Can a Tribe/Consortium negotiate an AFA with a term that exceeds one year?

Yes, at the option of the Tribe/Consortium, and subject to the availability of Congressional appropriations, a Tribe/Consortium may negotiate an

§ 1000.86

AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93-638.

DETERMINING WHAT PROGRAMS MAY BE INCLUDED IN AN AFA

§ 1000.86 What types of programs may be included in an AFA?

A Tribe/Consortium may include in its AFA programs administered by BIA, without regard to the BIA agency or office that administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the Tribe/Consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the Tribe/Consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA?

No, the Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation.

(a) The Secretary must approve any waiver, in accordance with subpart J of this part, before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist.

(c) Redesign shall not result in the Tribe/Consortium being entitled to receive more or less funding for the program from BIA.

(d) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

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§ 1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.90 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of the successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent adequate resources are available. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671-2680 (1994), and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities or portions thereof (PFSAs) for the full period it was or will be performed.

DETERMINING AFA AMOUNTS

§ 1000.91 What funds must be transferred to a Tribe/Consortium under an AFA?

(a) At the option of the Tribe/Consortium, the Secretary must provide the following program funds to the Tribe/Consortium through an AFA:

(1) An amount equal to the amount that the Tribe/Consortium would have been eligible to receive under contracts and grants for direct programs and