

INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

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FOR FURTHER INFORMATION Office of Indian Services		DATE

EXPLANATION OF MATERIAL TRANSMITTED:

This Chapter establishes the procedures governing written and oral communications with Indian Self-Determination contractors and grantees, and prescribes a standard of conduct for all employees with regard to the administration and management of an Indian Self-Determination contract or grant.



Signature
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Director, Bureau of Indian Affairs

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- 4.1 Purpose.** Contracts and grants awarded and administered under the Indian Self-Determination and Education Assistance Act of 1975 (Pub. Law 93-638, as amended) are Federal acquisition instruments. However, they are not traditional Federal acquisition instruments. This Chapter establishes the procedures governing written and oral communications with Indian Self-Determination contractors and grantees, and prescribes a standard of conduct for all employees with regard to the administration and management of an Indian Self-Determination contract or grant.
- 4.2 Authority.** Within the Bureau of Indian Affairs (Bureau) the authority to appoint Awarding Officials rests with the Assistant Secretary-Indian Affairs. However, this authority has been delegated to the Director, Bureau of Indian Affairs. The authority for Indian Self-Determination contractual matters rests exclusively with a Bureau employee who has been designated by the Regional Director and certified as a Level I or Level II Awarding Official under the Awarding Official Certification System. An Awarding Official has authority to:
- A. Negotiate, award, administer, modify, closeout, or terminate Indian Self-Determination contract and grants.
 - B. Issue correspondence, conduct negotiations, and obligate the Federal Government in all self-determination contractual matters.
 - C. Designate AOTR or SAOTR to assist in the contract administration process.
- 4.3 Responsibilities.** The Awarding Official shall:
- A. Ensure that no Indian Self-Determination contractual obligation shall be entered until requirements of law, executive orders, regulations, and other applicable procedures, including applicable clearances and approvals, have been met and that sufficient funds are available to finance the obligation.
 - B. Ensure that Indian Self-Determination contractors receive fair and impartial treatment.
 - C. Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields as appropriate.
 - D. Ensure the performance of necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.
 - E. In order to perform those responsibilities, be allowed wide latitude in the exercise of business judgment.
- 4.4 Non-Awarding Officials Prohibited from Committing the Government.** Actions that commit Federal funds to an Indian Self-Determination contract/grant or modify the terms of Indian Self-Determination contracts/grants shall be processed only through proper administrative channels and shall be executed only by certified Awarding Officials.
- A. Except for the Awarding Official, no Bureau employee, regardless of position, title, or classification grade shall:
 - (1) Influence or commit the government on Indian Self-Determination contractual actions; and,

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- (2) Give the appearance of incurring, amending, or terminating contractual obligations on behalf of the Bureau by means of letters, memoranda, messages, or statements of any kind, written or oral, no matter how informal.
- B. Any attempt by an employee other than an Awarding Official to change or to offer to alter the scope of a contract's terms or conditions in any way may constitute an action for which the Bureau cannot be held accountable unless the unauthorized action is ratified by the Deputy Assistant Secretary-Indian Affairs. Regardless of the ultimate ratification of an unauthorized act, a letter or reprimand will be placed in the Official Personnel Folder of an employee who commits an unauthorized act related to an Indian Self-Determination contract or grant.
- C. An employee other than an Awarding Official who seeks to influence Indian Self-Determination contractual actions is subject to disciplinary action and may be required to personally reimburse the U.S. Treasury for any Bureau funds expended as a result of such actions.
- (1) Commitments made by persons who do not possess Indian Self-Determination contract signatory authority are considered personal acts and the Bureau is not legally bound in any contracts by the signature of an unauthorized person.
- (2) Any employee making an unauthorized commitment regarding a contract may be held personally liable by the contractor through civil collection proceedings.
- D. Any employee who encourages a contractor to work in the absence of funds may be violating 31 USC 665 and may be subject to criminal penalties.
- 4.5. **Written Communications.** Whenever possible, communications concerning contractual matters with Indian Self-Determination contractors or grantees, no matter how conducted, shall be finalized in writing.
- 4.6. **Communications Reserved for Awarding Officials.**
- A. Based on decisions of the Awarding Official, only Awarding Officials shall issue written communication intended for dissemination to a Public Law 93-638 contractor that:
- (1) Contractually commits the Bureau;
- (2) Interprets, waives, or changes the provision of any contract document;
- (3) Exercises any right under a contract;
- (4) Proposes or affects any other contractual terms or provisions;
- (5) Amends a contract; or
- (6) Gives advance, informal or formal notice of termination to a contractor or notice to suspend work.
- B. The Solicitor's Office may communicate directly with current contractors concerning matters of form and legality of contracts/grants, legal aspects of claims, litigation, and other legal issues. A copy of each communication between the parties should be sent to the Awarding Official for inclusion into the contract file.

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- C. Whenever oral communications may affect the scope or provisions of a contract, the Awarding Official shall be party to the discussion. Whenever legal aspects of a contract are to be discussed, the Solicitor's Office may be party to the discussion along with the Awarding Official. In the event that the Awarding Official or a representative from the Solicitor's Office cannot be a party to a discussion that may affect the scope or provision of a contract, particularly in the case of telephone conversations, the Bureau employee holding the discussion shall provide either or both offices with a written summary of the discussion. The following is a statement that a Bureau employee may use verbatim or in paraphrase to inform Indian Self-Determination contractors or grantees of the limitation of authority regarding contractual matters:

"You are hereby notified that I do not have the authority to direct you in any way to alter your obligations or change the Statement of Work in your contract. Further, if the Bureau of Indian Affairs, as a result of the information obtained from today's discussion desires to alter your contractual obligations or to change the contracts statement of work, changes will be issued in writing and signed by the Awarding Official. You should take no action on any change unless and until you receive written a change order or contract modification."

- 4.7 Standard of Conduct.** Indian Self-Determination contract and grant activities shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Bureau –contractor/grantee relationships. While many Federal laws and regulations place restrictions on the actions of Bureau personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.