Approving Official Online Course and Guide

AS PROVIDED IN P.L.93-638,
THE LAW AND REGULATIONS
And
DELEGATION OF SIGNATORY AUTHORITY
THE 13 INDIAN AFFAIRS MANUAL (IAM)

Division of Self-determination Services
and the Office of Indian Services
Delegation of Signatory Authority Requires:

Separation of duties
Specifically between the Approving Officials, Awarding Officials and Awarding Official’s Technical Representatives

“The organizational structure shall be such that it provides for distinct separation of key duties and responsibilities… as follows”:

See Dropdown Menu: Delegation of Signatory Authority Handbook 2.2
Delegation of Signatory Authority

Bureau Policy

*It is the policy of the Bureau of Indian Affairs to provide for maximum delegation of authority to the service delivery level while ensuring full compliance with all applicable laws, regulations, and policies to ensure sound management control and business decisions.*

See Dropdown: *Delegation of Signatory Authority, 1.2 B*
Approving Officials

Delegation of Signature Authority

Scope:
A. This Handbook shall be used to implement the authorities delegated 3 Indian Affairs Manual and its related bulletins

B. Prior to implementing this authority each Regional Office shall prepare an “Implementation Plan” in accordance with Section 2.2A and B of this Handbook.

See dropdown menu: Delegation of Signatory Handbook 1.3 B.
Approving Official

Approving Official designation is: specific to a position and not to an individual.

The approving official means Bureau of Indian Affairs line officer =

- Regional Directors,
- Regional Education Program Administrators,
- Agency Superintendents,
- Agency Superintendents for education,
- or other officials with delegated line authority.
The responsibilities and duties of the approving official include but are not limited to:

- Review and approve 638 contract applications in accordance with the Self-determination Act and Regulations.
- Determine whether or not declination issues exist.
- Provide technical assistance to overcome issues.
- Decline the application in accordance with the Act.

(Responsibilities continued)

- Ensure funds avail to contract.
- Ensure compliance with appropriation law and use of appropriated funds.
- Ensure timely and effective transfer of Federal Government responsibilities in the event of retrocession and reassumption.
APPROVING OFFICIAL

Duty Separation

An Approving is NOT an Awarding

- **Awarding Official** Means Contracting Officer and shall be any person in the self-determination career field, **who has been certified under the Awarding Official Certification System (AOCS)** as an Awarding Official,

- Awarding Official designation shall be appointed by the Deputy Bureau Director, Indian services. An individual recommended for appointment as an Awarding Official must be certified under the Awarding Official Certification System (AOCS). **The delegated authority is limited to contracts, including construction contracts, entered under the ACT, and all self-determination grants.**
Awarding Official Responsibilities
The responsibilities of the Awarding Official include, but are not limited to:

- Ensure compliance with all appropriate laws, regulation, policies, and procedures.
- Execute the obligation of the contract or grant actions.
- Ensure transactions are properly documented - maintaining the official contract or grant file.

See Dropdown: Delegation of Authority 2.2 A. (2)
Awarding Official’s Responsibilities

The responsibilities of the Awarding Official include, but are not limited to:

Technical knowledge with expertise in business and other administrative areas such as:

- review adequacy of the tribal organization’s plan to accomplish contract or grant objectives and comply with program requirements,

- evaluates tribal organization’s performance and their use and availability of funds.
Awarding Official Duties

Function in a similar manner as a warranted contracting officer or a grant management officer.

The duties of an awarding official include, but are not limited to, the following:

- Negotiates and awards contracts/grants and contract/grant modifications or amendments.

- Issues correspondence involving business management aspects of contracts.
Awarding Official Duties

- Exercise contracting authority as established in law, regulation, manuals, and the Delegation of Signatory Authority.

- Implement applicable policies and procedures.

- Provides assistance, consultation, and training to program officials and tribal organizations.
Awarding Official Duties (continued)

- Represents the Federal Government on contract/grant management matters.

- Reviews and evaluates business management aspects of applications to assure compliance with applicable regulations and policies.

- Negotiates cost schedule, oversight and review.

- Prepares, issues, and tracks awards.
Awarding Official Duties (continued)
- Certifies that all legal, regulatory, and policy requirements are met.
- Certifies that award amounts are accurate and appropriate.
- Tracks, reviews, and analyzes post award actions, identifies and resolves management and administrative problems that arise during performance.
- Acts as consultant to the tribal organization on management and administrative matters through site visits and other management assistance services: and initiates formal action to protect the Federal Government’s interest.
Awarding Official Duties (continued)

• Initiates independent audits, as warranted.

• Ensure timely resolution of audits under the Single Audit Act and ensures follow-up actions are taken.
Serves as accountable property officer
ensures certification of annual inventories, disposal of excess
real and personal property according to applicable laws and
regulations.

Conducts final reviews of completed contracts/grants, and
formal closeout of contracts/grants.
Awarding Official Duties (continued)

- Prepares and executes determination and finding.

- Issues reassumption letter and is responsible for accomplishments of all actions necessary to effect reassumption.

- Designates a representative(s) to serve as the awarding official’s technical representative (AOTR) or the subordinate awarding official’s technical representative (SAOTR).
Awarding Official’s Technical Representative (AOTR)

Duties and responsibilities of the AOTR/SAOTR shall include, but are not limited to, the following:

Become thoroughly familiar with the terms and conditions of the contract/grant.

Prepare a plan for monitoring the contract/grant and submit it to the awarding official within 45 calendar days of receipt of the designation memorandum.
AOTR Continued...

Advise the tribal organization of any violation of the contract/grant terms and provisions and promptly bring the matter to the attention of the awarding official if the tribal organization fails or is unable to correct or stop the violation.

Review any proposed modifications initiated by the tribal organization and furnish recommendations regarding their cost, need, and etc.

Maintain a working contract/grant file.
Recommend approval/disapproval, and monitor P-638 Automated Clearing House (ACH) and other payment requests, ensure contract/grant fund are used for the purpose intended, ensure cash on hand is not excessive, ensure that accounting and appropriation data are correct. ensure all distributions are properly supported prior to payment by contracts, purchase orders, invoices, receiving reports and/or inspection reports.

Submit quarterly monitoring reports for term contracts and grants and semi-annual monitoring reports for mature contracts and grants.
AOTR Continued...

Review contract/grant progress reports and recommend approval or disapproval to the awarding official.

Ensure that all accountable real and personal property purchased with contract funds or provided as Federal Government furnished property are accounted for annually, and ensure that laws, regulations, departmental and Bureau directives are followed in the excess and disposal process.
The AOTR or SAOTR shall not:

- Enter into supplemental agreements.
- Suspend work, or issue change orders.
- Grant extensions of time.
- Modify the terms or conditions of the contract/grant.
- Commit the Federal Government in any manner.
The AOTR or SAOTR shall not:

- Make a final decision that is subject to appeal under the disputes clause of the contract.

- Commit the Federal Government in any manner.

- Redelegate their duties and responsibilities.
Line Officer

Is the

Approving Official
Line Officer:

means the federal official responsible for oversight and direction of the operation of a program, including planning, controlling, and accounting for the achievement of goals and objectives. Line Officers have direct operational responsibility for accomplishing assigned missions and ensuring that activities under their authority are being performed in accordance with established laws, regulations, and policies.
APPROVING OFFICIAL

Approving Officials/Line Officers are:

☑ Regional Directors
☑ Agency Superintendents
☑ Regional Education Program Administrators
☑ Agency Superintendents for Education
☑ District Officers
☑ Fire Management Officials (FMOS)
APPROVING OFFICIAL

- Line Officers
- Program Manager
- Awarding Official Technical Representative (AOTR)
- Awarding Official
APPROVING OFFICIAL

Agency Superintendents

Program Manager

Awarding Official Technical Representative (AOTR)

Awarding Official
APPROVING OFFICIAL

Agency Superintendents for Education

Program Manager

Awarding Official Technical Representative (AOTR)

Awarding Official
APPROVING OFFICIAL

Law Enforcement District Manager

Program Manager

Awarding Official Technical Representative (AOTR)

Awarding Official
APPROVING OFFICIAL

- Fire Management Official (FMO)
- Program Manager
- Awarding Official Technical Representative (AOTR)
- Awarding Official
APPROVING OFFICIAL

AUTHORITY
What drives the process

Why Approving Officials have “authority”:

• Public Law 93-638, as Amended

• Regulations

• Indian Affairs Manual (IAM)
  13 IAM, Chapter 2
• Public Law 93-638, as Amended
  Section 102(a)(1)

“The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization...”

See dropdown menu: Law, Section 102
APPROVING OFFICIAL

APPROVE

OR

DECLINE
Timeframe: Law

Section 102(a)(2) - Non-Construction

Ninety (90) Days:

Acknowledge Receipt;
Approve/Decline; and
Award

Extension, written request, written approval
• Timeframe: Law

Section 105(m)(4)(C)(v) - Construction

“... 30 days after receiving ... final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to Sections 102(a)(2) and 102(b) of section 102 (including providing opportunity for an appeal pursuant to section 102(b).
• Time Frame: Regulations

Non-Construction: 25 CFR 900.17

“… 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.”
• **Timeframe: Regulations**

Construction: 25 CFR 900.123(a)

“... 30 days after receiving the final contract proposal, ... approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections 102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).”
25 CFR, Chapter V, Part 900, Subpart B:

- 900.6 Definitions

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.
What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

Review for Authorizing Resolution

No Resolution - Return Proposal, no action

Resolution Yes - Acknowledge Receipt
- Within two days notify the applicant in writing that the proposal has been received.

- Within 15 days notify the application in writing of any missing items required by §900.8 and request that the items be submitted within 15 days of receipt of the notification; and
Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.
900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) The full name, address and telephone number of the Indian tribe or tribal organization the contract.

(b) If the tribal organization is not a Indian tribe, the proposal must also include

(1) A copy of the tribal organization’s organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).
(2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.

(c) The full name(s) of the Indian tribe(s) proposed to be served.

(d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

(1) If an Indian tribe or tribal organization proposed to serve a specific geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.
If a currently effective authorization resolution covering the scope of the initial proposal has already been provided to the agency receiving the proposal, a reference to that proposal.

The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.

The date of the submission of the proposal.

A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including.
A description of the geographical service area, to be served.
The estimated number of Indians people who will receive the
benefits or services under the proposed contract.

An identification of any local, Area, regional, or national level
departmental programs, functions, services, or activities to be
contracted, including administrative functions.

A description of the proposed program standards.

An identification of the program reports, data and financial
reports that the Indian tribe or tribal organization will provide,
including their frequency.
(6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted.

(7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and

(8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in subpart F, subject to any waiver that may have been granted under subpart K.

(h) The amount of funds requested, including;
(1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization’s share of funds related to such programs, functions, services or activities, if any, from any Departmental local, area, regional, or national level.

(2) An identification of the amount of direct contract support, costs, including one-time start-up or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);
(ii) Equipment;
(iii) Materials and supplies;
(iv) Travel;
(v) Subcontracts; and
(vi) Other appropriates items of costs

(3) An identification of funds the Indian tribe or tribal organization request to recover for indirect contract support costs. This funding request must include either:
(i) a copy of the most recent negotiated indirect cost rate agreement; or
(ii) an estimated amount requested for indirect cost, pending timely establishment of a rate or negotiation of administrative overhead costs.

(4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount of time and period covered or to be covered; and

(5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.
(i) The proposed starting date and term of the contract.
(j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.
(k) The extent of any planned use of federal personnel and Federal resources.
(l) Any proposed waiver(s) of the regulations in this part; and
(m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contracted, or as otherwise required by law.
May the Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in section 900.8?

No.
Sec. 900.12  Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, and Indian tribe or tribal organization should submit a renewal proposal (or notification of intent to renew) or an annual funding agreement proposal at least 90 days before the expiration date of the contract or existing annual funding agreement. The proposal shall provide funding information in the same detail and format as the original proposal and may also identify any significant proposed changes.
APPROVING OFFICIAL

• Proposal Review: 15 Days
  – Review for Content, Declination - Trust Issues - Within 15 Days
    • Prepare/Review Program Standard
    • Prepare/Review Statement of Work
    • Review Budget and Budget Narrative
    • Request Information
    • Request Extension of Time
  – Offer/Provide Technical Assistance
APPROVING OFFICIAL

• Proposal Review: 90 Days
  – Approve
    • Prepare Approval Letter
    • Prepare Package for Awarding Official
      – Identify Accounting String
      – Dollar Amount
    • Advance Payment Provision
      – Lump Sum
      – Semi-Annual
      – Quarterly
      – Other
    • Recommend AOTR/SAOTR
    • Special Provisions
APPROVING OFFICIAL

• 13 IAM Chapter 1
  Authorities and Waivers

• 13 IAM Chapter 2
  Implementation Plans

• 13 IAM Chapter 3
  Awarding Official Certification System

• 13 IAM Chapter 4
  Standard of Conduct
Sec. 105(a) Applicability of Federal contracting laws and regulations:

(1) Non-Construction non-procurement, “...except to the extent that such laws expressly apply to Indian tribes.”

(3)(A) Construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions ... shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is -

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this Act.
Sec. 900.22  When can a proposal be declined

The Secretary may only decline to approve a proposal for one of the five specific reasons:
(a) The services to be rendered to the Indian beneficiaries of the particular program or functions to be contracted will not be satisfactory;
(b) Adequate protection of trust resources is no assured;
(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
When can a proposal be declined

Sec. 900.22

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or a portion thereof) that is subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.
Sec. 900.23 Can the Secretary decline a proposal where the Secretary’s objection can be overcome through the contract?

No. The Secretary may not decline the enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.
Sec. 900.24  Can a contract proposal for an Indian tribe or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified in Sec. 900.22?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary’s annual report to Congress under section 106(c)(6) of the Act.
Sec. 900.25  What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in Sec. 900.20, subject to any alteration in the scope of the proposal that the Secretary and Indian tribe or tribal organization approve.
Sec. 900.26 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposed in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposed a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 102(a) of the Act, or approve a level of funding that is authorized under section 106(a) of the Act. As noted in Sec. 900.25, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.
Sec. 900.27 If an Indian tribe or tribal organization elects to contract for a servable portion of a proposal does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No. But the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.
Sec. 900.28 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.
Sec. 900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required,

(a)To advise the Indian Tribe or tribal organization in writing of the Secretary’s objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in Sec. 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, within 20 days, any documents relied on in the making the decision; and
Sec. 900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required,

(b) To advise the Indian tribe or tribal organization in writing of the rights described in Sec. 900.31
Sec. 900.31 When the Secretary declines all or a portion of a proposal, is an Indian tribe or tribal organization entitled to any appeal?

Yes. The Indian tribe or tribal organization is entitled to an appeal on the objection raised by the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are in subpart L of these regulations. Alternatively, at its option the Indian tribe or tribal organization has the right to sue in Federal district court to challenge the Secretary’s decision.
Sec. 900.32  Can the Secretary decline an Indian tribe or tribal organization’s proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases including in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement proposal which is not substantially the same as that which was funded previously.
Sec. 900.32 Can the Secretary decline and Indian tribe or tribal organization’s proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases including in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement proposal which is not substantially the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity),
Sec. 900.32 Can the Secretary decline and Indian tribe or tribal organization’s proposed successor annual funding agreement?

(e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity), or any annual funding agreement proposed which pertains to a contract with any agency of DOI other than the BIA, is subject to the declination criteria and procedures in subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.
• Decline

Law  Section 102(a)(2)(A-E)
  • Section 102(b)(1-3)

Regulations  25 CFR 900.22(a-e)
  • 25 CFR 900.29(a-b)  [Non-Construction]
  • 25 CFR 900.123(b)(1-3)  [Construction]
– Decline
  • Offer/Provide Technical assistance
  • Prepare Declination Letter
    – PL 93-638, as Amended, Title I, Sec. 102(b)
    – 25 CFR, Ch. V, Subpart E, 900.26
  • Identify Declination Issue(s)
    – PL 93-638, as Amended, Title I, Sec. 102(a)(2)(A-E)
    – 25 CFR, Ch. V, Subpart E, 900.22(a-e)
## Approving Official

### Separation of Duties

<table>
<thead>
<tr>
<th>Federal</th>
<th>Function</th>
<th>Tribal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line Officer</td>
<td>Approve/Decline</td>
<td>Tribal Council</td>
</tr>
<tr>
<td>Budget Officer</td>
<td>Budget</td>
<td>Treasure</td>
</tr>
<tr>
<td>Finance Officer</td>
<td>Finance</td>
<td>Comptroller Finance Manager</td>
</tr>
<tr>
<td>AOTR/SAOTR</td>
<td>Services</td>
<td>Program Staff</td>
</tr>
<tr>
<td>Awarding Official</td>
<td>Award Contract</td>
<td>President</td>
</tr>
</tbody>
</table>