

BUREAU OF INDIAN AFFAIRS
NAVAJO REGION



REGIONAL INDIAN
SELF-DETERMINATION
IMPLEMENTATION PLAN

Procedures for the Implementation of Delegation of
Authority, Public Law 93-638, the Indian Self-
Determination and Education Assistance Act,
as amended

January 2015

**PROCEDURES FOR THE IMPLEMENTATION OF DELEGATED
PUBLIC LAW 93-638 AUTHORITY
NAVAJO REGION**

1. GENERAL

1.1 Purpose. The purpose of this implementation plan is to establish procedural requirements to implement the delegation of authority to the Bureau of Indian Affairs (BIA) Navajo Region (NR) to approve, decline, award, modify, and perform all other functions on the administration of the Public Law (Pub. L.) 93-638 contracts and grants as non-procurement contracts and construction contracts as Subpart J Construction Contracts and are not traditional "procurement" construction contracts, and to make determinations and findings in respect thereto, under Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act (Act), as amended. This plan does not pertain to Title IV-Tribal Self-Governance Program of the Act, Non Pub. L. 93-638 Education Contracts, and Government to Government (Direct Grant) – Transportation Contracts.

1.2 Policy. It is the Policy of the BIA NR to provide for the maximum service delivery in processing the Pub. L. 93-638 contracts to the Navajo Nation and its tribal organizations while ensuring full compliance with all applicable laws, regulations, and policies based on sound management control and business decisions. The BIA NR, Branch of Indian Self-Determination Services administers and manages the Pub. L. 93-638 contracts and grants for the following Tribal Organizations:

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| The Navajo Nation |
| Navajo Agriculture Product Industry |
| Alamo Navajo School Board, Inc. |
| Dine Bi Olta School Board Association, Inc. |
| Navajo Engineering & Construction Authority |
| Navajo Technical College (NRO Issues PR for CSC Funds) |
| Rock Point Community School |

1.3 Scope. The BIA NR will utilize the Navajo Region Implementation Plan in accordance with 13 IAM 2, Indian Self-Determination Awarding Official Implementation Plan, issued as 13 IAM 3 # 122 as follows:

- A. **Delegation:** The BIA NR will maintain and administer all Pub. L. 93-638 contracts and grants as residual regional office functions, this includes construction contracts. The BIA NR Branch of Indian Self-Determination Services shall continue to provide timely and appropriate coordination of contracting activities to BIA NR, Navajo Bureau of Indian Education (BIE), and District IV Office of Justice Services (OJS). No Pub. L. 93-638 function will be administered at the NR Agencies, this includes the Pub. L. 93-638 contract/grant for Navajo BIE and Office of Justice Services.

The BIA NR through the Regional Director will not transfer delegation of authority to approve and decline contract administration to its Agencies. In addition, all of the Awarding Officials are stationed at the BIA NR level.

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1.4 **Authority.** Pub. L. 93-638, the Act, as amended and promulgated regulations cited in 25 C.F.R. Part 900. Funds are appropriated pursuant to the Snyder Act of November 2, 1921, (25 U.S.C. 13), and Acts subsequent thereto.

1.5 **Effective Date.** This implementation plan shall be effective on the date signed by the Navajo Regional Director and the Bureau of Indian Affairs Director. Its provisions shall remain in effect until it is amended, superseded, or revoked by the Navajo Regional Director and the Bureau of Indian Affairs Director.

APPROVED: 
BIA Director Date: 2/12/15

APPROVED: 
Regional Director - Navajo Region Date: 2/10/2015

2. PROCESSES AND PROCEDURES

2.1 **Designation of Key Officials – Separation of Duties.** The following officials are designated to provide for distinct separation of key duties and responsibilities in authorizing, processing, recording, and reviewing transactions involved in the contract/grant approval and award process.

A. **Approving Official.** The Approving Official shall be specific by position, and not to an individual. The Approving Official for the BIA NR shall be the Regional Director (or Acting) for BIA programs; Associate Deputy Director (ADD) Navajo (or Acting) for education programs; and the District IV Special Agent in Charge (or Acting) for Law Enforcement programs. The responsibilities and duties of the Approving Official include, but are not limited to the following:

- (1) Ensures that within two days of the receipt of a proposal, the Tribe/Tribal Organization is notified in writing that the proposal has been received [25 C.F.R. 900.15 (a)] for initial proposal, Successor Annual Funding Agreement, Renewal, and Modification/Amendment [DOI/HHS Internal Agency Procedures Handbook, Chapter 5 (I). Introduction]
- (2) Ensures the contract application is reviewed to determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.8 and/or 900.12 have been submitted.
- (3) Ensures that within 15 days the Tribe/Tribal Organization is notified in writing of any missing items required by 25 CFR Part 900, Subpart C, 900.8 or 900.12 and request that the items be submitted within 15 days of receipt of the notification.
- (4) Ensures the proposal is reviewed to determine whether there are declination issues under Section 102(a)(2) of the Act and 25 C.F.R. Part 900, Subpart E. If declination issues exist, ensure technical assistance is provided to overcome the stated objections in accordance with Section 102(b) of the Act, and 25 C.F.R. Part 900, Subpart E.

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- (5) Determines the applicable funding level for the contract is in accordance with Section 106(a) of the Act.
- (6) Ensures that within 90 days after receipt, the proposal is reviewed, approved, and awarded or is declined in compliance with Section 102 of the Act and 25 C.F.R. Part 900, Subpart E.
- (7) Ensures compliance with federal appropriation law and the use of appropriated funds.
- (8) Ensures timely and effective transfer of Federal Government contracted responsibilities and funding to the Tribe/Tribal Organization.
- (9) Ensures timely and effective return of a contracted program, in whole or in part to the Federal Government responsibilities in accordance with 25 C.F.R. Part 900, Subpart P in the event of retrocession and reassumption.

B. Awarding Official. Within the BIA the authority to appoint Awarding Official rests with the Assistant Secretary-Indian Affairs. However, the authority has been delegated to the Director, Bureau of Indian Affairs. In accordance with Indian Affairs Manual (IAM) Part 13, Chapter 3 and 13 IAM 3-H, the authority for Indian Self-Determination contractual matters rests exclusively with the Bureau employee who is in the self-determination career field and who has been certified under the Awarding Official Certification System (AOCS) as an Awarding Official Level I or Level II. The Awarding Official shall have the authority to award, modify, and administer all self-determination contracts as defined in the 25 U.S.C. Section 450b(j), including where applicable construction contracts as defined in 25 U.S.C. Section 450b(m), as amended and all self-determination grants as defined in 25 U.S.C. Section 9. The Awarding Official designation shall be specific to an individual, and not by position. The responsibilities and duties of the Awarding Official include, but are not limited to the following:

- (1) Negotiates, reviews, awards contracts, and issues contract modifications or grant amendments within 90 days of receipt of the proposal.
- (2) Executes the obligation of the contract/grant or modification/amendment by:
 - (a) Ensuring the FBMS Entry Document (FED) indicates that funds are available and signed by Budget Official certifying that funds are available. The FED must be attached to the Purchase Requisition (PR).
 - (b) Ensuring the ACQ Requisitioners (ACQ_REQ) generates an entry of the PR into the Financial Business Management System (FBMS) and the Awarding Official receives the original copy of the PR for the contract files from the ACQ Requisitioners.
 - (c) PR is approved and certified by the ACQ Certifying Funds Approver (ACQ_CFA) and ACQ PR Approving Official (ACQ_AO) (can be the same individual and generally the Program Manager).

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- (d) Approved PR is assigned to the Financial Assistance Agreements Officer (FA_AGO) (Specialists) or Financial Assistance Grants Specialist by the ACQ Expediter (ACQ_EXP) in PRISM (generally the Awarding Official).
 - (e) The FA_AGO releases contract award or modification in PRISM and payments to the Pub. L. 93-638 contractor are released in accordance with the contract/grant or modification terms and conditions. The Pub. L. 93-638 contracts/grants designated as high risk, payments are distributed according to an agreed payment method.
- (3) Ensures the transactions are properly documented by maintaining the official contract file or grant file.
 - (4) Ensures compliance for respective contract/grant with all appropriate laws, rules, regulations, policies, manuals, and procedures.
 - (5) Issues correspondence involving business management aspects of contracts and grants.
 - (6) Exercises contracting authority as otherwise established in law, regulations, manuals, handbooks and this Implementation Plan.
 - (7) Implements applicable policies and procedures with efficiency and necessary training. The Awarding Official obtains training or provides training to the Awarding Official's Technical Representatives/Subordinate Awarding Official's Technical Representatives.
 - (8) Provides assistance, consultation, and training to program officials and Tribe/Tribal Organizations.
 - (9) Represents the Federal Government on contract and grant management matters before the public, in litigation, and in administrative appeals.
 - (10) Reviews and evaluates business management aspects of applications to assure compliance with applicable regulations and policies.
 - (11) Negotiates cost-schedule, Federal Government oversight and review, and administration of fiscal terms and awards.
 - (12) Prepares, issues, and tracks awards; certifies that all legal, regulatory and policy requirements are met, and certifies that award amounts are accurate and appropriate.
 - (13) Tracks, reviews and analyzes post award actions; identifies and resolves management and administrative problems that arise during performance.
 - (14) Advises the Tribe/Tribal Organization of any violation of the contract terms and provisions and promptly brings the matter to the attention of the Approving Official if the Tribe/Tribal Organization fails or is unable to correct or stop the violation.

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- (15) Reviews any proposed modifications initiated by the Tribe/Tribal Organization and furnishes recommendations regarding costs, need, etc.
- (16) Ensures contract funds are used for the purpose intended, ensures cash on hand is not excessive and ensures that accounting and appropriation data are correct. Ensures the Tribe/Tribal Organizations are registered in the System for Awards Management (SAM) and the Automated Standard Application for Payments (ASAP).
- (17) Prepares, in collaboration with the designated Awarding Official's Technical Representative, annual on-site monitoring reports for the Tribe/Tribal Organization within 90 calendar days of the monitoring and file in the appropriate contract/grant files.
- (18) Assists the Awarding Official's Technical Representatives in reviewing contract progress reports for approval or disapproval. Ensures financial and narrative reports are submitted by the Tribe/Tribal Organization in compliance with the contract/grant provisions.
- (19) Serves as accountable property officer by ensuring all accountable personal property purchased with contract funds or provided as Federal Government furnished property are accounted for, tagged, and inventoried annually, as well as ensure that laws, regulations, departmental and BIA directives are followed in the excess and disposal processes. The real property donation has not been re delegated to the Awarding Official [DOI/HHS Internal Agency Handbook Chapter 9, II. A. 3.] However, the Awarding Official shall work with the BIA NR Property Management Officer on personal property.
- (20) Initiates independent audits, as warranted.
- (21) Ensures timely resolution of audits under the Single Audit Act, and ensures follow-up actions are taken such as implementing corrective action plan and closeout.
- (22) Conducts final reviews of completed contracts/grants, makes adjustments or appropriate disallowances, ensures proper disposition of property, and formal closeout of contracts/grants, including Release of Claims on file.
- (23) Prepares and executes determination and findings.
- (24) Issues re assumption and or retrocession letter and is responsible for accomplishment of all actions necessary to effect re assumption and or retrocession of a contracted program, services, functions or activity.
- (25) Consults with Approving Officials and Solicitor as necessary and appropriate in accordance with NR policy.
- (26) Ensures the Awarding Official certification number is affixed on an official legal contract instrument whenever the name/signature appears.
- (27) Designates a representative(s) to serve as the Awarding Official's Technical Representative or the Subordinate Awarding Official's Technical Representative.

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C. **Awarding Official's Technical Representative (AOTR).** Designation(s) of AOTR shall be specific to an individual, and not by position, and shall be appointed by the Awarding Official. The BIA NR Program Managers, including BIE and OJS, in most instances, may be appointed as the AOTR. The Approving Official provides recommendation on the AOTR designation. These appointed positions are an extremely important aspect of the contract management team that will be responsible for the successful administration and completion of all Pub. L. 93-638 contracts/grants. The designated AOTR/SAOTR must complete the 24 hour teacher-led training course as a prerequisite; thereafter the DOI online courses will qualify as recertification courses two years after an AOTR/SAOTR takes the 24-hour teacher led course. The online courses are refresher courses and are not meant to replace a 24 hour teacher led training course. Duties and responsibilities of the AOTR shall include, but are not limited to the following:

- (1) Becomes thoroughly familiar with the terms and conditions of the contract/grant.
- (2) Prepares a monitoring plan for the contract/grant and submit it to the Awarding Official within 45 calendar days of receipt of the designation memorandum on initial or renewal contracts. The AOTR shall prepare an annual monitoring plan for the Successor Annual Funding Agreements that will be shared with the Tribe/Tribal Organization.
- (3) Recommends resolution of questions of fact with regard to quality and acceptability of work performed when determining compliance with the terms and provisions of the contract/grant.
- (4) Notifies the Awarding Official, in writing, of any violation of the contract terms and provisions, and promptly brings the matter to the attention of the Awarding Official. If the Tribe/Tribal Organization fails or is unable to correct or stop the violation, the Awarding Official shall issue a letter to the Tribe/Tribal Organization of noncompliance.
- (5) Reviews any proposed modifications initiated by the Tribe/Tribal Organization and furnishes appropriate recommendations regarding their cost, need, etc., to the Approving Official and Awarding Official within 15 days from receipt of notice from the Awarding Official.
- (6) Maintains a working contract file in accordance with the Indian Affairs (IA) Records Management Manual and IA Record Schedule (April 2, 2008).
- (7) Submits AOTR semi-annual report to the Awarding Official on the status of the designated contracts/grants within 30 days for the period ending June 30th and December 31st.
- (8) Reviews the Pub. L. 93-638 contracts/grants progress reports; Quarterly Narrative Report; Annual Report; and Federal Financial Report (SF-425) and recommends approval or disapproval to the Awarding Official.
- (9) Ensures and tracks that all accountable personal property purchased with contract funds or provided as Federal Government furnished property are accounted for, tagged, and inventoried annually, and ensures that laws, regulations, departmental and Bureau directives are followed in the excess and disposal process.

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- (10) Complements the technical knowledge of Program, Function, Services and Activity (PFSA) with expertise in business and other administrative areas, such as adequacy of the tribal organization's plans to accomplish contract or grant objectives and to comply with program requirements, evaluation of the quality of tribal organization's performance and availability of funds.
 - (11) Acts as technical advisor to the Tribe/Tribal Organization on management and administrative matters through site visits and other management assistance services; and initiates formal action when necessary to protect the Federal Government's interests through the Awarding Official.
 - (12) Assists the Awarding Official on the audit resolution on the respective contracts/grants and the implementation of the correction action plan.
 - (13) Understands and familiarizes with applicable federal PFSA; understands the applicable federal appropriation restrictions; and familiarizes with the Budget Data by Documents: Greenbook, Financial Management Handbook, etc. of respective programs under Pub. L. 93-638 contracts/grants.
 - (14) The AOTR shall not (This includes Subordinate Awarding Official's Technical Representative (SAOTR):
 - (a) Enter into supplemental agreements for respective designated Pub. L. 93-638 contracts/grants.
 - (b) Suspend work or issue change orders (modifications).
 - (c) Grant extensions of time for any reason.
 - (d) Modify the terms and conditions or provisions of the contract/grant.
 - (e) Commit the Federal Government in any manner.
 - (f) Terminate in whole or part the contractor's right to proceed with any part of the work covered by the contract/grant.
 - (g) Make a final decision that is subject to appeal under the Contract Disputes Act.
 - (h) Provide verbal directives, issue letters or emails to the Pub. L. 93-638 contractors involving changes or altering any terms of the contract documents.
- D. **Budget Official.** The Navajo Region Budget Official shall be responsible for ensuring the validity of funding authority and the availability of funding to prevent deficiency as defined by the Anti-Deficiency Act, 31 U.S.C. Section 1341. Provide technical assistance to Program Managers and Awarding Officials in compliance with the funding distribution and resolving funding issues.

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2.2 Navajo Region Review and Approval of Proposals (non-construction proposals). There are four types of proposals that required review and action within 90 days: Initial contract/grant proposal, Successor Annual Funding Agreement (SAFA) proposal, Contract Renewal proposal, and Contract Amendment (modification proposal). The BIA NR Approving Officials have 90 days after receipt of proposal to review and approve the proposal and award or decline the proposal in compliance with Section 102 of the Act and 25 C.F.R. Part 900, Subpart E. At any time during the review period, the Approving Official may approve the proposal and the Awarding Official shall be notified to award the proposal. Upon receipt of the written notice to the Tribe/Tribal Organization of the proposal approval by the Approving Official, the Awarding Official shall award the contract proposal and add to the contract the full amount of funds to which the Tribe/Tribal Organization is entitled to under Section 106(a) of the Act. A proposal that is not declined within 90 days (or within any agreed extension under 25 C.F.R. 900.17 is deemed approved and the Awarding Official shall award the contract or any amendment or renewal and add to the contract the full amount of funds pursuant to Section 106(a) of the Act. In order to accomplish a timely review on the proposal within the 90-day time frame, the BIA NR shall establish a 638 Regional Review Committee. The members of the 638 Review Committee shall be responsible as follows:

- A. Review Committee.** The 638 Review Committee shall be responsible for conducting technical review of the contract/grant proposal and shall make appropriate recommendations to the Approving Official to ensure sound decisions are made. The 638 Review Committee may consist of the Deputy Regional Director – Indian Services/Deputy Regional Director – Trust Services, Property Management Officer, Program Manager, and Budget Officer. The Indian Self-Determination Specialist/Awarding Official shall serve as the Chairperson of the Committee. The responsibilities and duties of the 638 Review Committee includes, but is not limited to the following:
- (1) The Chairperson of the 638 Review Committee shall serve as the official recipient of assigned initial, SAFA and renewal contract proposals.
 - (2) The Chairperson of the 638 Review Committee conducts the initial review to determine if the proposal is supported by an authorizing resolution. Within two days after receipt of an initial, SAFA or renewal contract proposal the Chairperson of the 638 Review Committee shall prepare a letter for the Approving Official's signature notifying the Tribe/Tribal Organization when the proposal was received and identify when the 90-days review period will expire. The notification should indicate the Chairperson of the 638 Review Committee is the point of contact.
 - (3) The Chairperson of the 638 Review Committee shall within seven calendar days of receipt of a contract proposal convene the Review Committee to review the proposal and:
 - (a) Determine and review if the PFSA is consistent with the Bureau of Indian Affairs operated programs and are consistent with the applicable part(s) of 25 CFR. If the Tribe/Tribal Organization proposal contains a request for a waiver of any provisions of the regulations, ensure that the requirements contained in 25 C.F.R. Part 900, Subpart K are met. However, the waiver can be submitted separately from the contract proposal. Technical assistance is available as provided in 25 C.F.R. 900.7.

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- (b) If the proposal being reviewed is an initial contract proposal, determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.8 have been submitted. If it is determined that items required are missing, state the specific items and cite the specific regulatory requirement for the missing items.
 - (c) If the proposal being reviewed is a renewal contract proposal, determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.12 have been submitted. If it is determined that items required are missing, state the specific items and cite the specific regulatory requirement for the missing items.
 - (d) If the proposal being reviewed is a SAFA proposal, determine that all items required by 25 C.F.R. Part 900, Subpart C, 900.12 have been submitted. If it is determined that items required are missing, state the specific items and cite the specific regulatory requirement for the missing items. The Pub. L. 93-638 contract/grant is generally for a 5-year period for the BIA NR.
 - (e) Determine whether there are declination issues under 25 C.F.R. Part 900, Subpart E. If it is determined that declination issues exist, state specific objections, and provide with specificity what shall be required of the tribal organization to overcome the stated objectives.
- (4) If the review of the Committee determines that the proposal meets all the requirements contained in (A)(3)(a) through (d) above, and pursuant to (A)(3)(e) above determines that no declination issues exist, the Program Manager shall within 15 days of the receipt of the proposal prepare a letter for the Approving Official's signature, notifying the Awarding Official that the proposal is approved and to negotiate, if necessary, and award the contract within 30 days of the receipt of the notification. The respective Program Manager shall immediately mail a copy of the signed approval letter to the Tribe/Tribal Organization.
- (5) If the review of the Committee determines that the proposal is incomplete and does not meet all the requirements contained in (A)(3)(a) through (A)(3)(d) above, and/or that pursuant to (A)(3)(e) determines that declination issues exist, the respective Program Manager shall within 15 days of the receipt of the proposal, prepare a letter for the Approving Official's signature notifying the applicant of the deficiencies and request that the required items be submitted within 15 days of the receipt of the notification. The notification to the Tribe/Tribal Organization shall provide the following specific information and offer technical assistance to overcome the deficiencies:
- (a) A listing of all missing items required by 25 C.F.R. Part 900.8 or 900.22 with a citation of the specific regulatory requirement for each missing item.
 - (b) A listing of all declination issues found pursuant to 25 C.F.R. Part 900.22 with specific citations for each stated objection and shall provide with specificity what is required of the Tribe/Tribal Organization to overcome each of the stated objections.

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- (6) Once the information as requested under (A)(5) above is submitted by the Tribe/Tribal Organization within the requested 15 days of the notification, the Chairperson of the 638 Review Committee shall reconvene the 638 Review Committee to further review the additional documents/ information submitted by the Tribe/Tribal organization, and immediately proceed with approval or declination of the proposal to the Approving Official.
- (a) If the review of the Committee determines that the proposal meets all of the requirements contained in (A)(3)(a) through (d) above, and the Tribe/Tribal Organization has overcome all stated declination issues, the respective Program Manager shall prepare a letter for the Approving Official's signature, notifying the Awarding Official that the proposal is now approved and award the contract within 30 days of receipt of the notification. The respective Program Manager shall immediately mail a copy of the signed approval letter to the Tribe/Tribal Organization.
- (b) If the information requested under (A)(5) above was requested to overcome stated declination findings, and the review of the Committee recommends that all or a portion of the proposal be declined, the respective Program Manager shall prepare a letter for the Approving Official's signature:
- (1) To advise the Tribe/Tribal Organization of the objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority) one of the conditions set forth in 25 C.F.R. 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and provide any documents relied upon in making the decision.
- (2) To advise the Tribe/Tribal Organization of the rights described in 25 C.F.R. 900.31.
- (3) To advise the Tribe/Tribal Organization of the additional technical assistance to overcome the stated objections as described in 25 CFR, 900.30.
- (4) To consult immediately with the Solicitor according to the BIA NR policy and include all pertinent documentation

3. SUBPART J CONSTRUCTION CONTRACT

3.1 Subpart J Construction Contracts – The BIA NR will implement the Subpart J Construction Contracts in accordance with 25 CFR Part 900, Subpart J – Construction, Section 900.110-137 and 25 CFR Part 170, Tribal Transportation Program.

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- A. **Subpart J Construction Contract Process and Procedures:** Subpart J – Construction establishes requirements for awarding fixed-price contracts to provide: Road/Bridge design, NEPA, construction, repair, improvement, expansion, and demolition in accordance with the construction documents. The BIA NR shall adhere to the following construction contract phrases and timelines:
- (1) Preaward Phrase:
 - (a) Before spending any funds for a project, the BIA Division of Transportation (BIA DOT) through the Regional Director consults with the Navajo Nation (Nation) (by either a formal letter, email or face to face meeting with the Nation and the Federal Highway Administration (FHWA)) on how the Nation wants the BIA DOT to carry out each project (i.e. by Pub. L. 93-638, Force Account, or Commercial contracts). The BIA DOT then informs the Nation's Tribal Organization (i.e. Navajo Engineering & Construction Authority) what project, if any the Nation wants them to carry out under the authority of the Pub. L. 93-638.
 - (b) The BIA DOT through the Regional Director shall within 30 days after receiving a Letter of Intent from the Nation/Tribal Organization, furnish the Nation/Tribal Organization with all information available about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports, 25 C.F.R. 900.120. The BIA DOT through the Regional Director shall have a continuing responsibility to furnish information.
 - (c) At the request of the Nation/Tribal Organization and before finalizing the construction contract proposal, the BIA DOT and the Level II Awarding Official shall conduct a preaward negotiation phase during the development of a contract proposal. Within 30 days the Level II Awarding Official shall acknowledge receipt of the proposal and, if requested by the Nation/Tribal Organization, shall consult with the Nation/Tribal Organization to develop a negotiation schedule, 25 C.F.R. 900.122.
 - (2) Negotiation Phase shall include, at a minimum:
 - (a) Technical Assistance.
 - (b) A joint scoping session between the BIA DOT and Indian Self-Determination Specialist (Level II Awarding Official) and the Nation/Tribal Organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.
 - (c) An opportunity for the BIA DOT to revise plans, designs, or cost estimates.

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- (d) A negotiation session during which the BIA DOT and the Nation/Tribal Organization shall seek to develop a mutually agreeable contract proposal.
 - (e) Upon the request of the Nation/Tribal Organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions in accordance with Subchapter IV of Chapter 5 of the United States Code.
 - (f) In accordance with Sec. 900.123, no later than 30 days after receiving the final contract proposal, the Approving Official shall approve the contract proposal and the Level II Awarding Official shall award the contract, unless, during the period the Approving Official declines the proposal under Sections 102(a)(2) and 102(b) of the Act.
- (3) Awarding Phase:
- (a) The Level II Awarding Official prepares the final contract documents and submits the award documents to the Nation/Tribal Organization for signature and return back to the Level II Awarding Official for finalization.
 - (b) The Level II Awarding Official sends a fully executed contract to the Nation/Tribal Organization which shall include the approved construction plans, contract documents and the designation of the Awarding Official's Technical Representative for the contract.
 - (c) The Level II Awarding Official schedules a Pre-Construction meeting with the Nation/Tribal Organization and issues a Notice to Proceed based upon the agreed start date.
- B. Approving Official.** The Approving Official, for the construction contract, shall be specific by position, and not to an individual. The Approving Official for construction contracts shall be the Regional Director (or Acting or delegated program representative). The responsibilities and duties of the Approving Official include, but are not limited to:
- (1) Ensure that within 30 days of the receipt of an initial proposal, the Nation/Tribal Organization is notified in writing that the proposal has been received [25 C.F.R. 900.122].
 - (2) Ensure the proposal is reviewed to determine whether there are declination issues under Section 102(a)(2) of the Act and 25 C.F.R. Part 900, Subpart E. If declination issues exist, ensure technical assistance is provided to overcome the stated objections in accordance with Section 102(b) of the Act, and 25 C.F.R. Part 900, Subpart E.
 - (3) Determine the applicable funding level for the contract is available for each project in accordance with 25 C.F.R. 170.

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- (4) Ensure that within 30 days after receipt, the final proposal is reviewed, approved, and awarded or is declined in compliance with Section 102 of the Act and 25 C.F.R. Part 900, Subpart E.
 - (5) Ensure compliance with federal appropriation law and the use of appropriated funds.
 - (6) Ensure timely and effective return of a contracted program, in whole or in part to the Federal Government responsibilities in accordance with 25 C.F.R. Part 900.131(11)(12)(13) in the event of Termination for Convenience or Termination for Default.
- C. **Awarding Official.** For construction contracts, only Level II Awarding Official has the authority to award, modify, and administer all Self-Determination Construction Contracts. The Level II, Awarding Official designation shall be specific to an individual, and not by position. The responsibilities and duties of the Level II Awarding Official for Subpart J Construction Contract include, but are not limited to as stated those in Section 2.1.B (1) to (27).
- D. **Awarding Official's Technical Representative (AOTR).** The Level II Awarding Official shall designate AOTR that shall be specific to an individual and not by position. The BIA DOT Manager nominates a representative, to be appointed as the AOTR for road construction contracts based on their qualification. The designated AOTR/SAOTR must complete the 24 hour teacher-led training course as a prerequisite; thereafter the DOI online courses will qualify as recertification courses two years after an AOTR/SAOTR takes the 24-hour teacher led course. The online courses are refresher courses and are not meant to replace a 24 hour teacher led training course. These appointed positions are an extremely important aspect of the contract management team that will be responsible for the successful construction oversight, technical assistance and completion of all Pub. L. 93-638 roadway construction contracts. Duties and responsibilities of the AOTR shall include but are not limited to the following:
- (1) Becomes thoroughly familiar with the terms and conditions of the construction contract.
 - (2) Reviews and recommends approval of the contractor's quality control, safety, Storm Water Pollution Preventive Plan (SWPPP), construction schedule, and traffic control plans.
 - (3) Recommends resolution of questions of fact with regard to quality assurance and acceptability of work performed when determining compliance with the terms and provisions of the construction contract.
 - (4) Notifies the Level II Awarding Official, in writing, of any violation of the contract terms and provisions. If the Nation/Tribal Organization fails or is unable to correct or stop the violation, the Level II Awarding Official shall issue a letter to the Nation/Tribal Organization of noncompliance.
 - (5) Reviews any proposed modifications initiated by the Nation/Tribal Organization and furnishes appropriate recommendations regarding their cost, need, etc., to the Level II Awarding Official within 15 days from receipt of notice.

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- (6) Maintains a working contract file in accordance with the IA Records Management Manual and IA Record Schedule (April 2, 2008).
- (7) Submits bi-weekly narrative of project status to the Level II Awarding Official.
- (8) Reviews the Pub. L. 93-638 construction contract progress payments and recommends approval or disapproval to the Level II Awarding Official.
- (9) Acts as a technical advisor to the Nation/Tribal Organization and must take the lead under the guidance and direction of the Level II Awarding Official to determine that work being performed fulfills the needs of the Federal Government and protects the Federal Government's interests according to contract statement of work, specifications, and drawings.
- (10) The AOTR shall not (This includes Subordinate Awarding Official's Technical Representative (SAOTR):
 - (a) Enter into supplemental agreements for respective designated Pub. L. 93-638 construction contracts.
 - (b) Suspend work or issue change orders (modifications).
 - (c) Grant extensions of time for any reason.
 - (d) Modify the terms and conditions or provisions of the construction contract.
 - (e) Commit the Federal Government in any manner.
 - (f) Terminate in whole or part the contractor's right to proceed with any part of the work covered by the construction contract.
 - (g) Make a final decision that is subject to appeal under the Contract Disputes Act.
 - (h) Provide verbal directives, issue letters or emails to the Pub. L. 93-638 contractors involving changes or altering any terms of the contract documents.

4. INTERNAL CONTROLS

4.1 Internal Controls. The Navajo Region Line Officer, Navajo Education Line Officer, and District IV Office of Justice Services Line Officers shall ensure that appropriate management controls are in place to protect against fraud, waste, mismanagement, or misappropriation. In addition, the Line Officers shall ensure the following:

- A. **Documentation.** All transactions and other significant events are clearly documented and the documentation is readily available for examination. All files are properly maintained and

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protected in accordance with the File Maintenance Plan, IA Records Management Manual, and IA Record Schedule (April 2, 2008).

- B. **Recording of Transactions and Events.** All transactions and other significant events are promptly recorded and properly filed.
- C. **Execution of Transactions and Events.** All transactions and other significant events are authorized and executed only by persons acting within the scope of their authority.
- D. **Access to and Accountability for Resources.** Access to resources and records is limited to authorized individuals. Ensure compliance with the IA Records Management Manual, the IA Record Schedule (April 2, 2008), the Freedom of Information, the Privacy Act, and the Information Technology System.

4.2 Evaluation of Regional Performance.

A. **Responsibility.** The BIA Director and Regional Director are responsible for reviewing the Region's performance and implementing any corrective action to ensure compliance with the delegated authority.

- (1) **BIA Director.** The BIA Director shall be responsible for conducting management reviews of Regional performance under the delegated authority and shall prepare a report outlining the findings and recommendations to the Regional Director. This review shall be conducted in accordance with the Navajo Regional Office specific implementation plan. Upon completion of the management review, the BIA Director shall prepare a summary report to the Director of Indian Services containing, at a minimum, a status of the delegation of authority.
 - (a) Such report shall include evaluation methodology, tribal input, successes and problems, as well as Regional Office recommendation for permanency of programs for further BIA implementation.
 - (b) The BIA Director or the designee of the BIA Director shall conduct an independent evaluation of the delegated Region.
 - (c) The Director, Bureau of Indian Affairs shall notify the Navajo Regional Director 60 days in advance prior to conducting an annual management review.
- (2) **Regional Director.** The Navajo Regional Director shall be responsible for preparing and implementing a corrective action plan to ensure correction of deficiencies identified in the administrative management review, if warranted.

B. **Factors.** The scope of the management review shall include, but not be limited to an evaluation of the following factors:

- (1) The application review and award process in compliance with 25 C.F.R. Part 900.

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- (2) A random sample of contracts and actions for proper budget certification and fund authority.
- (3) A random sample of personal property inventory for accountability.
- (4) Proper separation of duties, internal controls, and independence of decision making.
- (5) Compliance with the designated duties and responsibilities by key officials, including budget officials.
- (6) Compliance by the Tribe/Tribal Organization with the terms and conditions of the contract awarded.
- (7) Maintenance of contract files in accordance with 19 BIAM, Supplement 14, IA Records Management Manual, and IA Record Schedule (April 2, 2008).
- (8) A review of the determination and findings of the Awarding Officials.
- (9) Any contract matter which may pertain to waste, fraud, or abuse, and/or conflicts of interest as defined under the Delegation of Authority.
- (10) Existence of any inappropriate influence on the Approving Official and/or Awarding Official.
- (11) Compliance with other applicable special approval and clearance requirements.
- (12) Adequacy of training and staffing.
- (13) Response and follow-up to audit findings; implementation of corrective action plan.
- (14) Workload of the Awarding Official and distribution of new tasks or delegations.
- (15) Tribal assessment of the Region's performance of the delegated authority.

4.3 Technical Assistance. The BIA Director shall be responsible for providing requested or recommended technical assistance to the Navajo Region.

4.4 Service Benefits. The Navajo Regional Director shall conduct an annual survey of services performed and benefits associated with the implementation of the delegated authority and report findings to the BIA Director in accordance with the Navajo Regional Office specific implementation plan.

4.5 Effective Date. This Implementation Plan shall be effective on the date signed by the Navajo Regional Director and the BIA Director. The Implementation Plan shall remain in effect until it is amended, superseded, or revoked by the Navajo Regional Director and the BIA Director. The Navajo Regional Director may at any time, in writing, make changes within the general scope of the Implementation plan. The BIA Director must approve the amendment within 30 days from the date of receipt of the written amendment or it will be deemed approved if no action is taken on the amendment.