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## Title 25—Indians

## CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

## SUBCHAPTER Y—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAMS

## CONTRACTS AND GRANTS UNDER INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT; EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

## Revocation, Redesignation and Issuance of Regulations

OCTOBER 24, 1975.

This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 40982 of the September 4, 1975, FEDERAL REGISTER (40 FR 40982), there was published a notice of proposed rulemaking to amend Chapter I of Title 25 of the Code of Federal Regulations by revoking Part 33 under Subchapter E and by adding new Parts 401 through 407 under a new Subchapter Y. The amendment was proposed under the authority in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203).

## I. REDESIGNATION

Parts 401 through 407 are being redesignated upon the request of the Office of the FEDERAL REGISTER because these Parts were incorrectly numbered when published as proposed regulations. The Office of the Federal Register has assigned only Parts 1 through 299 to Chapter I of Title 25 of the Code of Federal Regulations which can be issued by the Bureau of Indian Affairs. The Parts beginning with 300 on up are assigned to other Chapters and other offices. Since the Bureau cannot use Part numbers 401 through 407, these Parts are redesignated as follows:

A. Part 401 is redesignated as Part 271. Sections 401.1 through 401.26 are redesignated as §§ 271.1 through 271.26. A new § 271.27 is added and § 401.27 is redesignated as § 271.28. Remaining §§ 401.31 through 401.84 are redesignated as §§ 271.31 through 271.84.

B. Part 402 is redesignated as Part 272. Sections 402.1 through 402.55 are redesignated as §§ 272.1 through 272.55.

C. Part 403 is redesignated as Part 273. Sections 403.1 through 403.44 are redesignated as §§ 273.1 through 273.44. Section 403.45 is deleted. Sections 403.46 through 403.54 are redesignated as §§ 273.45 through 273.53. Remaining §§ 403.61 through 403.73 are redesignated as §§ 273.61 through 273.73.

D. Part 404 is redesignated as Part 274. Sections 404.1 through 404.53 are redesignated as §§ 274.1 through 274.53.

E. Part 405 is redesignated as Part 275. Sections 405.1 through 405.4 are redesignated as §§ 275.1 through 275.4.

F. Part 406 is redesignated as Part 276. Sections 406.1 through 406.16 are redesignated as §§ 276.1 through 276.16.

G. Part 407 is redesignated as Part 277. Sections 407.1 through 407.53 are redesignated as §§ 277.1 through 277.53.

The purpose of the regulations is to implement the Indian Self-Determination and Education Assistance Act. (Pub. L. 93-638; 88 Stat. 2203). Part 271 (formerly Part 401) contains regulations under which tribal organizations, upon the request of an Indian tribe, can contract for the operation of all or parts of authorized Bureau of Indian Affairs programs for the benefit of Indians and Alaska Natives. Under Part 272 (formerly Part 402), tribal governing bodies may receive grants for strengthening tribal governments; planning, training, evaluation, or other activities to improve a tribe's capacity to contract; acquiring land for those purposes; and planning, designing, monitoring, and evaluating Federal programs serving the tribe or Alaska Native group.

Under Part 273 (formerly Part 403), a State, school district, or Indian corporation may contract for supplemental programs or operational support for education. The regulations in Part 273 replace the regulations in Part 33 and reflect the changes made to the Johnson-O'Malley Act (the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456) by the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203). Tribal organizations can contract for supplemental programs or operational support for education under Part 271 upon the request of an Indian tribe.

Part 274 (formerly Part 404) contains regulations under which tribal organizations may receive contracts or services for school construction for previously private schools that are controlled or managed by an Indian tribe or tribal organization.

Part 275 (formerly Part 405) informs the Indian tribes of ways in which they can obtain the use of Government employees in operating all or parts of Bureau of Indian Affairs programs under contract.

Part 276 (formerly Part 406) contains the administrative requirements for grants available under Part 272. These administrative requirements are basically the same as those in Federal Management Circular 74-7 which applies to the administration of grants with States and local governments. Federal Management Circular 74-7 is being revised to also apply to Indian tribes.

Under Part 277 (formerly Part 407), a State education agency or school district may contract for acquiring sites for, or for constructing, acquiring, or renovating, school facilities needed for educating Indians residing on an Indian reservation or other trust land.

The regulations have been developed in consultation with national, regional, tribal, and Alaska Native organizations served by the Bureau of Indian Affairs.

Based on two series of nationwide Indian and Alaska Native consultation sessions, the Bureau of Indian Affairs has attempted to spell out clearly the regulatory requirements necessary to implement Pub. L. 93-638. A concerted effort has been made to incorporate into the regulations three principal perspectives: The intent of Congress and the President as reflected in the legislation; the continuing Federal responsibility and trust relationships toward Indian tribes; and the expressed wishes and desires of tribal and Alaska Native leaders and members. The Bureau of Indian Affairs believes that such a posture has been achieved in these regulations.

Public Law 93-638 is a significant piece of legislation for Indian and Alaska Native people. The implementing regulations buttress the spirit and substance of this legislation by emphasizing the following elements: The role of tribal and Alaska Native governments as the key decision-makers in the self-determination process; the expanded powers and responsibilities of Indian Education Committees in public school assistance programs serving Indian and Alaska Native children; the recognition of the desirability of tribally-controlled and operated schools as an alternative to Federal and public learning systems; the availability of grants to strengthen tribal and Alaska Native governments and to enhance their eventual capability to operate a Bureau program under contract or to redesign a Bureau program for operation by the Bureau; and the use of Federal personnel for expanding the human resource base of tribal and Alaska Native governing bodies.

An important feature of the legislation is the change it makes in the contract relationship by directing the Bureau to contract a program to a tribal organization upon the request of a tribe unless the Bureau can make a finding to support declination in accordance with criteria set out in the Act. Unlike the ordinary relationship between the government and a prospective contractor, under this legislation the burden of proof is on the Bureau to show that the contract should not be entered into. Both the statute and the regulations stipulate, unless substantial evidence in support of a specific declination criteria exists, the Bureau will enter into the proposed contract.

The public was given until October 4, 1975, to submit written comments, suggestions, or objections regarding the proposed amendment. All comments received with respect to the proposed amendment were given due consideration.

## II. CHANGES MADE DUE TO COMMENTS RECEIVED

As a result of comments received, the following changes in the regulations are made in addition to language changes for clarification:

## A. PART 271:

1. The phrase "Revolving Funds for Loans; Indian Loan Guarantee and In-

insurance Funds" is added to § 271.2(d) to make it clear that programs and activities enumerated as line items in the Bureau's budget under those subactivities are considered a "business related function".

2. The definition of "Indian tribe" in § 271.2(i) is changed to make clear the involvement of the United States Government.

3. The definition of "previously private school" in § 271.2(j) is revised to conform to the definition in Part 273.

4. In § 271.2(p), the phrase "tribal governing body" is added for clarification.

5. Section 271.2(q) is changed to make it clear that the subactivity of "minerals, mining, irrigation, and power" is included in the definition of "Tribal governmental function."

6. Section 271.2(r) is revised to make it clear that intertribal organizations are considered "tribal organizations."

7. Section 271.2(s) is revised to clarify what is a "trust resource."

8. Section 271.2(t) is revised to strengthen the definition of "trust responsibility" and limit the definition to the purposes of the regulations.

9. Paragraphs (e) and (f) are added to § 271.3 to insure consultation with cognizant Indian organizations and give tribal groups an opportunity to suggest changes annually or at their own initiative.

10. An additional paragraph (h) is added to § 271.4 to make it clear that the eligibility criteria for services for individuals is not changed by the regulations, but that there is a means by which eligibility criteria may be waived.

11. Section 271.13 is changed to eliminate the need for an application form.

12. An additional paragraph (f)(5) is added to § 271.14 which requires staffing information to be given in the application.

13. An additional paragraph (b)(4) is added to § 271.15 to make it clear that applications for contracts that are not within the purview of § 271.1(a) may be declined.

14. Section 271.15(c)(4) is revised to emphasize the positive effect of a tribal governing body's resolution on the matter of community support.

15. Sections 271.15(c)(5)(ii) and § 271.15(c)(6)(i)(A) are revised to permit an agreement to develop a personnel system rather than requiring the system to be in place.

16. Sections 271.16(a), 271.20, 271.62, 271.82, 271.83(a) and (b), and 271.84 are revised to recognize any limitations that a tribal governing body might include in its resolution requesting a contract.

17. A new paragraph (b)(3) is added to § 271.16 to permit Bureau records to be physically located at the contract site when copying such records is not practicable or feasible due to their volume.

18. Paragraph (c)(2)(vii) of § 271.18 is expanded to emphasize the rights of the tribal governing body to set limitations on tribal organizations by resolution.

19. Several changes are made in § 271.20 to permit recontracting applications to go directly to the Area Director; to permit more time to consider such applications and to make it clear that tribes may withdraw from multi-tribal contracts.

20. An additional paragraph (b) is added to § 271.21 which requires applications for contracts to be submitted at least 120 days in advance of the proposed contract starting date when the proposed contract may result in the displacement of Bureau personnel, to give the Bureau sufficient time to comply with appropriate Civil Service Commission requirements.

21. Section 271.22(e)(2) is revised to permit applicants to request additional time to respond to the Superintendent's written recommendations to avoid possible declination.

22. Section 271.23(b)(1) is revised to set a limit on the time the Bureau can take to negotiate a contract.

23. Section 271.23(b)(2) is revised to make both the time and the place of the meeting under that section at the mutual agreement of the parties.

24. Section 271.25(b) is revised to clarify when, how and to whom recommendations are to be furnished.

25. Section 271.25(d)(1) is revised to set a time limitation on negotiating a contract when an Area Director's recommendation to decline is not accepted by the Commissioner.

26. Former § 401.27 is redesignated as § 271.28 and a new § 271.27 is added to provide a mechanism for the Commissioner to extend technical assistance to tribes in the event of declination.

27. Section 271.32 is revised to more clearly delineate what are considered contractable trust resources programs or portions thereof.

28. Paragraphs (a) and (e)(1) of § 271.44 are revised to take into consideration modifications or supplements to Chapter 2000 of the Treasury Fiscal Requirements Manual that might occur and to permit letters of credit to be used when the advance payment requirement is \$120,000 rather than \$250,000.

29. Section 271.42(b) is revised to make it clear that when equipment is transferred to a contractor it must meet certain standards at the time of transfer.

30. An additional paragraph (d) is added to § 271.44 to make it clear that a tribal governing body can establish its own Indian preference requirements to the extent that such requirements are not inconsistent with the intent of the regulations.

31. Section 271.46 is revised to conform to the requirements of the Federal Records Act and to require that records used or created under the contract are returned to the Bureau for proper disposition.

32. Section 271.47(a) is revised to make it clear that examination of records are restricted to those that are contract-related.

33. Section 271.49(a) and (b) is revised to make reports required thereunder, contract-related.

34. Section 271.49(a)(3) is revised to permit a tribal organization to submit its report when, in a multi-tribal situation, all of the tribes have not endorsed the report within a certain time.

35. Section 271.54(a) is revised to clarify what is included in the Bureau's direct operational costs and that such costs do not form a basis for reducing a tribal organization's allowable indirect costs.

36. Section 271.55(c) is revised to require savings under a retroceded contract to be carried over to provide services and benefits by the Bureau.

37. A new § 271.56 is added to conform the regulations to the requirements of the Privacy Act (5 U.S.C. 552a).

38. Section 271.65(c) is revised to provide for the appeal under this section to be sent to the Director, Office of Hearings and Appeals.

39. Section 271.72 is revised to permit tribes that so desire to retrocede from a multi-tribal contract, to delineate the conditions under which such retrocession may occur, and to state the rights of both the retroceding and non-retroceding tribes.

40. Section 271.73 is revised to permit a tribal governing body to submit its application to contract for a retroceded program directly to the Area Director or Commissioner, as appropriate.

41. Section 271.74 is revised to make it clear that when reassumption of a program is contemplated because of violation of rights, there must be a pattern or practice of such violation.

42. Section 271.74(b) and (c) are revised to emphasize a tribal organization's right to a hearing and decision and to provide for the Commissioner reviewing an Area Director's decision to reassume a contract before the reassumption can take place.

43. Section 271.75 is revised to require the Bureau to give a tribal organization an opportunity to present a plan to overcome deficiencies in contract performance before action to cancel can be taken and the right to have an Area Director's decision reviewed by the Commissioner before any proposed cancellation action can occur. In addition, paragraph (h) (formerly § 401.75(e)) is revised to clarify the funding level for a program under a contract cancelled for cause.

44. Section 271.76(a) is revised to permit the Bureau to operate the program under a retroceded contract at either the level intended by the contract or as operated previously by the Bureau.

45. Section 271.77(b) is revised to make the position and ceiling reserve applicable only to those contracts initially entered into on or after the effective date of the regulations.

46. Section 271.81(c) is revised to require the hearing official to issue a decision within 30 days of the hearing.

47. Section 271.83(a) is changed to provide for an appeal to the Director, Office of Hearings and Appeals, as provided in Subpart G of 43 CFR Part 4.

## B. PART 272

1. The definition of "tribal government", "tribal governing body", and "tribal council" is added as paragraph (q) of § 272.2. Existing paragraphs (q) and (r) of former § 402.2 are redesignated as paragraphs (r) and (s) of § 272.2. This change is made for consistency with Part 271.

2. The definitions of "Indian tribe," "resolution," "trust resources," and "trust responsibilities" given in paragraphs (j), (l), (r), and (s) of § 272.2 are revised to be consistent with the definitions in Part 271.

3. Comments were received pertaining to the need for more specific procedures in § 272.4 which provides for revising or amending the regulations in Part 272. As a result, new paragraphs (e) and (f) are added to this section to provide for more extensive and far-reaching consultation with tribes and Indian organizations in this regard.

4. Comments expressing concern about potential but unintentional limitations on the use of grants were received. Accordingly, language changes are made in paragraphs (a), (b), and (d) of § 272.12 providing "sight examples" rather than using phrases such as "this includes but is not limited to".

5. Many comments received expressed concern about § 272.15(b) (2) and (3). The major concern in this regard was the \$20,000 maximum limitation on initial planning grants to be used to develop larger grant applications. Accordingly, language is added to clarify the source of funds for these initial planning grants. Also, it should be noted that this \$20,000 limitation does not apply to the final grant application itself but rather to the cost of developing such an application. Another change is that the approving officer shall take action on an initial planning grant application within 30 days instead of "with a minimum of delay."

## C. PART 273:

1. The definitions of "Indian tribe" and "tribal organization" in paragraphs (g) and (v) of § 273.2 are revised to be consistent with the definitions in Part 271.

2. The definition for "previously private school" in § 273.2(n) is changed by deleting the phrase "early childhood" and substituting "age 3 years" to establish a specific base age that is less ambiguous than the deleted term. Also deleted from this section is the last sentence to clarify that such schools could be other than former sectarian facilities.

3. The definition of "reservation" in § 273.2(o) is revised to give statutory reference for Alaska Native regions and to delete the restrictive words "public domain."

4. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 273.2(u) to conform to the definitions in Part 271.

5. Paragraphs (d) and (e) are added to § 273.3 to conform to 25 CFR 271.3.

6. The term "early childhood" is also deleted in § 273.12 and the phrase "age

3 years" is substituted to establish a base age. The term "except those who are enrolled in Bureau or sectarian operated schools" is added after "grade(s) 12" to denote that these educational facilities are not included as eligible applicants.

7. Section 273.13(b)(1)(iv) is corrected to read "70%" instead of "75%," due to a misprint. Also, the last sentence of this paragraph, referring to the 51% eligible Indian enrollment, is deleted as the Commissioner has the delegated authority to waive any part(s) of these regulations.

8. A change is made to § 273.13(b)(1) by adding (v), (vi) and (vii) to strengthen the basis for contractor accountability.

9. Sections 273.15(a), 273.16(c) and 273.17(d) are deleted. The deleted paragraphs related to the matter of establishing Indian Education Committees where majority Indian school boards already exist. Since the Act was silent on this issue, i.e. it neither required nor prohibited an Indian Education Committee where a majority Indian school board already existed, the Bureau is not including this element in the regulations. Majority Indian school boards may make provisions for such parental involvement.

10. Section 273.16(a)(4) is changed by inserting "Commissioner through the" before the word "appropriate" and by inserting "or suspension" after the word "cancellation." This change is made to permit suspension of a program as an alternative to cancellation under certain circumstances.

11. Section 273.18(j), which requires that the education plan list special programs which are or will be operated and which gives examples of such programs, is deleted and will be considered for inclusion in the program guidelines to be developed. Subsequent paragraphs are redesignated.

12. Section 273.18(g), which requires certain written information be provided as part of the education plan, is revised to clarify the material that is to be provided as part of the plan.

13. The term "February 1" is substituted in § 273.21 in place of "January 15" to give consideration for election to Pueblo Councils. The same change is made in §§ 273.25(b) and 273.28(b).

14. Section 273.24(b) is amended by deleting the word "promptly" and inserting the phrase "within 20 days" after the word "request" to specify the response time allowed.

15. In § 273.25(a), the phrase "and any additional information requested in § 273.24(b)" is inserted in place of the phrase "except as given in paragraph (b) of this section." This change is made to clarify the change made in § 273.24(b). The same change is made to § 273.28(a).

16. Section 273.31 is completely revised to establish a policy for gradual phase-out of operational support and add a hold-harmless provision for supplemental assistance.

17. The last sentence of § 273.32 is added to provide some flexibility for Indian Education Committees to approve de minimus participation by non-eligible

students in programs contracted under Part 273.

18. Section 273.35 is completely revised to provide for meeting the full costs of peripheral dormitory students attending local public schools.

19. Additions are made to § 273.38 to assure equal treatment of Indian children. The additions are at the end of the first sentence and at the end of the section.

20. A new phrase is added at the end of § 273.44(a) and in § 273.44(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

21. Former § 403.45 on wage and labor standards is deleted as not being applicable to contracts under this part.

22. A new paragraph (d) is added to § 273.45 on Indian preference to conform to 25 CFR 271.44.

23. Section 273.47 is revised to refer to Federal Records Act requirements.

24. The term "and to the tribe(s)" is added in § 273.50(c) after the phrase "Indian Education Committee(s)" to assure tribal notification.

25. A new § 273.54 is added to include the Privacy Act requirements in the regulations.

## D. PART 274:

1. The definition of "average daily membership" in former § 404.3(a) is deleted as the term is not used in the text. Subsequent paragraphs in the section are redesignated.

2. The definitions of "Indian tribe" and "tribal organization" in paragraphs (j) and (r) of § 274.3 are revised to be consistent with the definitions in Part 271.

3. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 274.3(q) to conform to the definition in Part 271.

4. The definition in § 274.3(n) for "previously private school" is changed by deleting the phrase "early childhood" and substituting "age 3 years" to establish a specific base age that is less ambiguous than the deleted term. Also deleted from this section is the last sentence to clarify that such schools could be other than former sectarian facilities.

5. New paragraphs (d) and (e) are added to § 274.5 to conform to 25 CFR 271.3.

6. Section 274.11(b) is changed by adding new language for this paragraph as a condition of eligibility so Federal monies for construction are used only for facilities on tribal or government land. The term "early childhood" is also deleted in § 274.11(c) for consistency with § 274.3(n).

7. The term "No later than" is inserted to begin the sentence in § 274.22(a) to provide flexibility of operations.

8. Section 274.34 is revised to assure compliance and that funds are used for the purpose of the Act.

9. A new phrase is added at the end of § 274.36(a) and in § 274.36(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

10. A new paragraph (d)(4) is added to § 274.36 to allow records to be physi-



cally located at the contract site where copying is not practical or feasible because a large volume is involved.

11. A new paragraph (d) is added to § 274.38 on Indian preference to conform to 25 CFR 271.44.

**E. PART 275:**

1. The definition of "tribal government" and "tribal council" in paragraph (j) of § 275.2 is changed to include "tribal governing body" to comply with the definition in Part 271.

2. The definitions of "Indian tribe" and "tribal organization" in paragraphs (f) and (k) are revised to be consistent with the definitions in Part 271.

3. In § 275.3(a)(1) (formerly § 405.3(a)), the word "shall" is changed to "may" in the second sentence to make it clear that the agreement is optional and not required.

4. The paragraphs in § 275.3 are redesignated because the requirements in paragraph (c)(4) relate to more than agreements under the 1834 Act.

5. Section 275.3(b) (formerly § 405.3(c)(4)) is revised to clarify that the contracts referred to are contracts under Part 271 and that the application must be submitted, instead of notifying the Area Director, at least 120 days in advance.

**F. PART 276:**

1. The definitions of "Indian tribe" and "tribal organization" in paragraphs (i) and (r) of § 276.2 are revised to be consistent with the definitions in Part 271. The definition of "letter of credit" in paragraph (j) of this section is revised to reflect a memorandum of understanding between the Departments of Interior and Treasury.

2. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 276.2(q) to conform to the definition in Part 271.

3. A new paragraph (c) is added to § 276.13 to further clarify Indian preference procedures.

4. Section 276.15 is revised by adding procedures for grant rescission as recommended by the Library of Congress.

**G. PART 277:**

1. The last sentence of § 277.2(b) is amended to clarify the language. In addition, the phrase "designated by the Commissioner" is inserted after "officer" to denote that authority for construction contracts for school facilities will not be delegated to Bureau of Indian Affairs Area Directors but will remain vested in the Commissioner.

2. The definition of "average daily membership" in former § 407.3(a) is deleted as the term does not appear in the text. Subsequent paragraphs in the section are redesignated.

3. The definitions in § 407.3 (h), (k), and (l) are deleted as they presently appear in the Pub. L. 81-815 regulations issued by the Department of Health, Education, and Welfare and are not required here.

4. The definition of "Indian tribe" in § 277.3(g) (formerly § 407.3(j)) is re-

vised to conform to the same definition in Part 271.

5. A definition of "tribal government," "tribal governing body," and "tribal council" is added as § 277.3(o) to conform to the definition in Part 271.

6. New paragraphs (d) and (e) are added to § 277.4 to conform to 25 CFR 271.3.

7. Section 274.11(a) is amended by deleting the term "State education agency or" and that portion of the sentence after the word "Indians." These changes are in conformity with the current regulations for Pub. L. 81-815 issued by the Department of Health, Education, and Welfare.

8. In § 277.12(a), the term "Indian Education Committee" is substituted for the term "public school officials", as stated in the Act. Further, in § 277.12(c), the term "and the Indian Education Committee" is inserted after the word "officials" to maintain consistency with paragraph (a) of that section.

9. The word "Regional" is deleted in § 277.13(a) in consultation with the Department of Health, Education, and Welfare as is the phrase in § 277.13(b)(1) after the word "purposes".

10. Deletions are made in § 277.22(e). The term "local education agency" is substituted for the phrase "tribe to obtain its approval". Also deleted is the phrase after the word "adequacy". These changes are in conformity with Pub. L. 81-815 regulations issued by the Department of Health, Education, and Welfare.

11. Section 277.24 is revised to assure compliance and that funds are used for the purposes of the Act.

12. A new phrase is added at the end of § 277.26(a) and in § 277.26(b) after the word "may" to emphasize the role of tribal governing bodies on their reservations.

13. A new paragraph (d) is added to § 277.28 on Indian preference to conform to 25 CFR 271.44.

14. The last sentence of § 277.31(e) is deleted and new language inserted upon the advice of the Department of Health, Education, and Welfare regarding public school policies.

**III. CHANGES NOT ADOPTED**

Certain other comments have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons given:

**A. PART 271**

1. Various comments were received regarding the definition of "Indian," "Indian tribe," "tribal organization" and "trust responsibility". Although the definitions contained in the regulations may not resolve each commentator's concern, it is felt that the definitions are consistent with the Act and generally in conformity with what was expressed during the consultation sessions required by the Act.

2. Two commentators expressed the opinion that tribal organizations should be allowed to contract for Bureau programs under other authorities when the

tribal governing body does not request a contract. Although the Bureau recognizes that other contracting authorities are available to it, it does not believe that the mandate of the Act would be served if it contracts for Bureau programs under these other authorities because the tribal governing body involved does not request the contract under the regulations promulgated to implement the Act.

3. Comments were received that were critical of the Bureau's restricting contracting under the Act to non-profit cost reimbursable contracts. The Bureau believes that the requirements found in section 106 of the Act concerning the amount of funds to be provided under a contract and how savings under a contract can be utilized, can best be served through non-profit cost reimbursable contracts.

4. One commentator objected to the Bureau's perception of the role of the tribal governing body in the contracting process and felt the role of the Indian people and community was being subverted thereby, citing the language in section 102 of the Act whereby requests for contracts must be submitted by Indian tribes in support of this contention. The Bureau does not agree with this analysis and feels that the Act clearly mandates the role of the tribal governing body in the contracting process.

5. One commentator observed that in certain States only Certified Public Accountants can be licensed under State law and suggested that provision be made in the regulations for the certification of accountants in such States under rules and regulations that would be developed by the Secretary. The Bureau does not believe that such action would be feasible or practical and, therefore, has taken no action on this comment.

6. One commentator felt that the retrocession procedure of the regulations, as they relate to a tribal governing body's right to request retrocession of a contract when the contractor is not the tribal governing body, violates the contractor's right to due process. The Bureau believes that the tribe that requests a contract also has the right to request retrocession of the contract and that the procedures set forth in the regulations concerning the tribal organization's rights in this situation do not violate due process.

7. Several commentators suggested that the regulations should provide for the payment of a tribal organization's legal expenses when a hearing or appeal is involved. The Bureau feels that these suggestions were well made, but does not believe it is authorized to provide for such payments.

8. Several commentators took exception to the requirement for contractors to make a monthly report regarding the contract to the members of the tribe(s) being served under the contract. The Bureau believes that the people receiving contract services should receive this information on a regular basis without having to make a specific request for it.

9. Some concern was expressed over the regulations dealing with appeals. The Bureau is giving this matter further consideration and will utilize the comments submitted in its consideration.

10. Several commentators expressed the opinion that the equal opportunity provisions of the regulations were not applicable to Indian tribes in view of Title VII of the Civil Rights Act. The Bureau does not believe that the arguments submitted in support of this position are so clear as to require a change in the regulations at this time. Counsel has, however, been sought and the results will be considered when received.

#### B. PART 272:

1. Many comments pertained to "tribal organizations" and recommended that "tribal organizations" be permitted to apply for or request grants on the same basis as tribal governing bodies as per §§ 272.11 and 272.16. The Bureau's position in this regard is that a tribal governing body should be the prime grantee with all of the authority and responsibility this designation infers. In effect, the Bureau believes that "tribal organizations" should not have equal status with tribal governing bodies in this grant program and that the regulations as written reaffirm the basic authority and responsibility of tribal governing bodies for tribal business affairs. Tribal governing bodies may, of course, subgrant or subcontract with tribal organizations as per § 272.26.

2. Other comments recommended that authority for the approval, execution and administration of grants be extended to the Agency or Superintendent level. The Bureau agrees that input at the the Agency or Superintendent level is and has provided for this input in § 272.15 and § 272.18. However, the Bureau has determined that it is administratively and technically difficult for any given Agency or Superintendent to assume these responsibilities and that the Area or Commissioner levels are better equipped by virtue of available staff and technical expertise to function in this regard. Also, this is consistent with the approval, execution and administration procedures prescribed in Part 271 on contracts.

#### C. PART 273:

1. Several respondents objected to the inclusion of "previously private schools" as participants under this Part. The Bureau of Indian Affairs does not agree with these respondents as the Act requires that such schools be included, as stated in Title II, Section 208.

2. Various comments were also received regarding the composition, scope of duties, powers, and responsibilities of the Indian Education Committee. The Bureau takes the position that the present regulations reflect the legislative intent and statutory provisions of the Act relative to this Committee.

3. Suggestions were made to alter, in one form or another, the allocation and distribution of funds under this Part. The Bureau takes the position that op-

erational support taken off the top will be phased-out, as stated in § 273.31, over a three year period. The allocation of funds for supplementary programs or operational support will be determined so as to assure an equitable distribution for eligible Indian students with the proviso that each State in FY 1977 will receive no less than 75 percent of its FY 1975 supplementary program assistance.

4. Some commentators raised issues regarding the internal operation of tribal governing bodies relating to such matters as Indian preference, the Indian Education Committee, etc. The Bureau of Indian Affairs takes the position that these issues fall within the purview of the governing bodies of tribes to be resolved in their dealings with their constituents.

#### D. PART 274:

1. Several comments were received regarding the requirement of vesting land title in the tribe or in the United States in order to qualify for construction monies. The Bureau of Indian Affairs declares this requirement is a policy decision to protect the integrity and expenditure of Federal funds.

2. Some commentators raised questions related to the minimum or projected enrollment figure of 25 pupils in elementary grades. The Bureau believes an enrollment figure lower than this number would not prove economically feasible in construction.

#### E. PART 275:

There were no major suggestions received regarding Part 275 which were not adopted.

#### F. PART 276:

1. Some comments were received which pertained to Part 276, Uniform Administrative Requirements for Grants. With the exception of changes to §§ 276.13 and 276.15, no significant changes were made in Part 276. This is because the standards and requirements contained in Part 276, including Appendices A and B, conform with Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments". These administrative standards and requirements are minimal and are in use government-wide, including grant programs provided to Indians by other Federal agencies.

#### G. PART 277:

1. Several comments were received regarding language directly affecting either Pub. L. 81-815 or its regulations. The Bureau of Indian Affairs takes the position that the regulations for Pub. L. 93-638 affecting public school construction, i.e. Part 277, in no way modify the procedures, criteria, and regulatory mechanisms inherent in Pub. L. 81-815 as administered by the Department of Health, Education and Welfare.

#### H. GENERAL COMMENTS APPLYING TO ALL PARTS:

1. Several comments were received suggesting that the regulations issued by the Bureau of Indian Affairs, Department of Interior, and by the Indian

Health Service, Department of Health, Education and Welfare, to implement Pub. L. 93-638 be the same. Since the early planning stages of the regulations, Bureau of Indian Affairs and Indian Health Service staffs have consulted continually on making both sets of regulations as consistent as possible. We will work further with the Indian Health Service and other Department of Health, Education and Welfare representatives on possible revisions and amendments to the regulations to achieve greater uniformity and consistency. No amendments will be made without appropriate Indian consultation or which would detract from the legislative intent or statutory provisions of the Act.

Accordingly, Chapter I of Title 25 of the Code of Federal Regulations is amended by revoking Part 33 under Subchapter E and by adding new Parts 271 through 277 under a new Subchapter Y as set forth below.

#### IV. EFFECT ON OTHER DOCUMENTS

A. On the effective date of these regulations, the tribal contracting guidelines published beginning on page 6377 of the February 11, 1975, FEDERAL REGISTER (40 FR 6377) are hereby revoked. These guidelines are no longer needed since all contracting with tribal organizations for the operation of all parts of Bureau programs will be done in accordance with 25 CFR Part 271 and 41 CFR Part 14H-70.

B. On the effective date of these regulations, the All Purpose Tribal Contract issued by memorandum dated May 7, 1974, is hereby revoked.

C. Part 20 of the Bureau of Indian Affairs Manual on Indian involvement programs will be revoked by a release memorandum to be issued in the near future. The revocation will be made effective on the effective date of these regulations.

D. Except for Part 14H-70, Chapter 14H of Title 41 of the Code of Federal Regulations which contains the Bureau of Indian Affairs procurement regulations will be revised as soon as possible after the effective date of the regulations in 25 CFR Parts 271 through 277.

*Effective date.* The revocation of Part 33 and the addition of Parts 271 through 277 shall become effective on December 4, 1975.

MORRIS THOMPSON,  
Commissioner of Indian Affairs.

#### SUBCHAPTER Y—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAMS PART 271—CONTRACTS UNDER INDIAN SELF-DETERMINATION ACT

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- 271.81 Hearings.
- 271.82 Appeals from decision or action by Area Director.
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- 271.84 Appeals from Bureau decision to cancel contract for cause.

**AUTHORITY:** Sec. 102, Public Law 93-638, 88 Stat. 2203, unless otherwise noted.

**Subpart A—General Provisions**

**§ 271.1 Purpose and scope.**

(a) The purpose of the regulations in this Part is to give the application and approval process for non-profit contracts with the Bureau under section 102 of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act. Contracts under the Act include "tribal governmental functions" as defined in § 271.2(q), "business related functions" as defined in § 271.2(d), and certain contractable trust resources programs or parts of programs as set forth in § 271.32. The nature of contracts with Indian entities which do not fall within the purview of the Act, including contracts which may provide for profit, and the conditions for entering into such contracts, are set forth in the regulations implementing the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47), commonly referred to as the "Buy Indian" Act.

(b) Section 104 of Title I of the Act provides authority for making grants for certain purposes. It is the Bureau's policy to make grants for the purpose specified in Section 104 of the Act in lieu of contracts. Part 272 of this chapter gives the procedures and requirements for obtaining grants under section 104 of the Act.

(c) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any trust responsibility of the United States with respect to the Indian people; or

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(d) Nothing in these regulations shall be construed to mandate a tribe to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of any Bureau program. Such applications under these regulations are strictly voluntary.

**§ 271.2 Definitions.**

As used in this part: (a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Business related function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget request under Tribal Resources Development as the Sub-activities of Business Enterprise Development, Credit and Indian Action Teams; Revolving Funds for Loans; Indian Loan Guaranty and Insurance

Funds; and also programs or parts of programs connected with construction projects but exclusive of the actual construction of the project.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(h) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(i) "Indian" means a person who is a member of an Indian tribe.

(j) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students in any grade or grades from age 3 years through grade(s) 12; and, which at the time of application is controlled, and sanctioned or chartered by the governing body(s) of an Indian tribe(s).

(k) "Recontracting" means the entering into a contract with a tribal organization which holds a contract for the same program.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(o) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(p) "Tribal government," "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(q) "Tribal governmental function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget requests under the Activities of Education and Indian Services, the Subactivities of Direct Employment and Road Maintenance, and those programs related to Irrigation and Power Operation and Maintenance identified as a part of the subactivity minerals, mining, irrigation and power under the Activity of Tribal Resources Development.

(r) "Tribal organization" means the recognized governing body of any In-

dian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided*, That a request for a contract must be made by the tribe that will receive services under the contract; *Provided further*, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

(a) "Trust resources" means natural resources, land, water, minerals, funds or property, asset, or claim, including any intangible right or interest on any of the foregoing, which is held by the United States in trust for any Indian tribe or any Indian individual or which is held by any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(t) "Trust responsibility" means, for the purposes of this part only, the rect, manage, develop and approve authorized transfers of interests in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiduciary responsibility.

#### § 271.3 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to the regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(d) After consideration of all comments received, publish the regulations in the Federal Register in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), (c) and (d) of this section.

#### § 271.4 Statement of policy.

(a) The Congress has recognized the obligation of the United States to respond to the strong expression of the In-

dian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibilities to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) It is the policy of the Bureau to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions thereof, which the Bureau is authorized to administer for the benefit of Indians and to facilitate the coordination of all Federal and other programs on Indian reservations.

(g) It is the policy of the Bureau to continually encourage Indian tribes to become increasingly knowledgeable about Bureau programs and the opportunities Indian tribes have regarding them; however, it is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts.

(e) It is the policy of the Bureau not to impose sanctions on Indian tribes with regard to contracting or not contracting; however, the special resources made available to facilitate the efforts of those Indian tribes which do wish to contract should be made known to all tribes, as should the current realities of funding and Federal personnel limitations.

(f) Contracting is one of several mechanisms by which Indian tribes can exercise their right to plan, conduct, and administer programs or portions thereof which the Secretary is authorized to administer for the benefit of Indians. Another mechanism afforded Indian tribes is the use of a grant, as provided in Part 272 of this chapter, or other resources, to plan the manner in which it wishes the Bureau to operate a program or portion thereof.

(g) Contracting by its very nature places Bureau officials in the dual position of assisting Indian tribes, in many instances, by furnishing technical assistance in preparation of contract proposals, and of carrying out their fiscal and administrative responsibilities as officials of the Federal Government. It is recognized that very often these two positions are in opposition to each other. The Act and these regulations are designed to address this problem. To the degree practicable, the Commissioner, Area Directors and Superintendents, as line officers of the Bureau, are expected to balance these two positions within the framework of the regulations in this Part.

(h) The regulations in this Part are not meant to and do not change the eligibility criteria which individuals must meet to be eligible for any program currently operated by the Bureau. The eligibility criteria for each Bureau program is given in the Part of Chapter I, Title 25 of the Code of Federal Regulations which deals with that program. A contractor shall use the existing Bureau eligibility criteria in operating all or parts of a Bureau program under a contract under this part unless a waiver is obtained from the Commissioner. The Commissioner may not waive eligibility criteria established by statute. The Commissioner may waive eligibility criteria established by regulation in Chapter I, Title 25 of the Code of Federal Regulations.

#### -Subpart B—Application Process

##### § 271.11 Eligible applicants.

Any tribal organization is eligible to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of Bureau programs under section 102 of the Act. However, before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the Indian tribe or tribes to be served by the contract in accordance with § 271.18.

##### § 271.12 Contractable Bureau programs.

Tribal organizations are entitled to contract with the Bureau to plan, conduct, and administer all or parts of any program which the Bureau is authorized to administer for the benefit of Indians. All or parts of any program include:

(a) Any part of a Bureau program which is divisible from the remainder of the program so long as the contract does not significantly reduce benefits to Indians served by the non-contracted part(s) of the program. However, to the extent that it is within the Bureau's existing authority and the program or part thereof involves only one tribe and one Bureau Agency or Area Office, the benefits provided to Indians by the non-contracted part(s) of the program may be reduced at the request of the tribe. When the program or part thereof serves more than one tribe, the benefits provided by the non-contracted part(s) of the program may be reduced when all of the tribes served consent to a reduction.

(b) A single employee position only when the functions to be performed provide a direct service to Indians and meets the criteria in paragraph (a) of this section.

(c) Programs or parts of programs or services that are authorized but not currently operated or provided by the Bureau.

(d) Operation of, or services provided by, previously private schools.

(e) All of the foregoing paragraphs of this section apply to trust resources programs or portions thereof. Additional criteria for contractable trust resources programs, or portions thereof, are given in § 271.32.



§ 271.13 Application information.

Application instructions and related materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 271.14 Contents of contract application.

Application for a contract under this Part shall contain the following information in sufficient detail to permit evaluation of the application in light of the declination criteria set forth in § 271.15. No further detail is, or shall be, required.

(a) Full name, address and telephone number of the tribal organization which is applying for the contract.

(b) Full name of tribe(s) with which the tribal organization is affiliated.

(c) Full name of tribe(s) directly benefiting or receiving services from the proposed contract.

(d) Documentation of the tribal request to contract as required in § 271.18.

(e) Date of submission to the Bureau and the name of the office where the application was submitted.

(f) Signature by the authorized representative of the tribal organization and the date thereof.

(g) Estimated number of Indian people who will receive benefits or services from the contract, based on available data including tribal records.

(h) Descriptive narrative of what functions, Bureau programs, or portions of programs the tribal organization wants to contract for.

(i) Plan of operations, which shall include but is not limited to:

(1) A statement of tribal goals and objectives to be obtained by the contract.

(2) The organization, methods and procedures to be used to accomplish the tribal goals and objectives.

(3) The means to measure progress and accomplishment.

(4) The budget showing the amount and sources of funding and other resources required for the contract.

(5) Staffing plan, including extent, if any, that Bureau personnel may be utilized. (See Part 275 of this chapter for staffing options the applicant may wish to consider).

(6) The evaluation criteria and control systems the tribal organization will use to assure that the quality and quantity of actual performance conforms to the requirements of the plan.

(j) Statement of tribal organization's substantive knowledge of the program, part of a program or functions to be contracted.

(k) Description of personnel system and position descriptions for key personnel.

(l) Listing of equipment, facilities, and buildings needed to carry out the contract and how the tribal organization intends to obtain them.

(m) Certification by a licensed accountant that the bookkeeping and accounting procedures the tribal organization presently uses meet the standards of Appendix B of Part 276 of this chapter. In place of the certification, the tribal

organization may submit a written agreement to establish a bookkeeping and accounting system that meets the standards of Appendix B of Part 276 of this chapter and to have the bookkeeping and accounting system certified before the Bureau disburses any funds under a contract awarded as a result of the application. When a certification has been submitted in connection with a previous application, the applicant may state this fact instead of submitting a new certification.

(n) Proposed system for managing property and keeping records or agreement to establish within 90 days of contract execution, a satisfactory system for managing property and keeping records.

(o) Advance payment required by the tribal organization for contract.

(p) Term of contract requested and proposed starting date of contract.

§ 271.15 Criteria for declining to contract.

(a) The Commissioner may decline to contract only for the specific causes given in paragraph (b) of this section. The burden of proof is on the Commissioner to demonstrate, through substantial evidence, that one of the specific grounds for declination exists and that, therefore, the application must be declined.

(b) The Commissioner may decline to contract when:

(1) The services to be provided to the intended Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.

(i) It will be presumed by the Bureau that the program plan and budget set forth by the tribal organization provides a basis for the delivery of satisfactory services to the Indian people unless it can be demonstrated by the Bureau by substantial evidence that the program will yield results which will be deleterious to the welfare of the Indian people to be served.

(ii) The service to be provided shall be deemed satisfactory if the contract application indicates that the applicant has or will establish procedures to assure that services and assistance shall be provided to the Indians affected by the contract in a fair and uniform manner. Such procedures include: eligibility criteria for a tribal member to receive services; recordkeeping adequate to verify the fairness and uniformity of services in case of formal complaints; an adequate complaint procedure available to all Indians affected; and those rights the individual will retain following the complaint.

(2) Adequate protection of trust resources is not assured. Criteria for determining if there is adequate protection of trust resources are given in § 271.34.

(3) The proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract.

(4) The application is not within the purview of § 271.1(a).

(c) In arriving at his finding, the Commissioner shall consider whether the tribal organization would be deficient in

performance under the contract with respect to the factors listed in this paragraph.

(1) Equipment, buildings and facilities. No higher standards with regard to buildings, facilities, or equipment shall be applied to tribal organizations than have previously been applied to the Bureau. As provided in § 271.42, the Bureau shall make available the use of all equipment which has been allocated to the operation of the program by the Bureau in the past, unless the Bureau proves the provision of the equipment will seriously interfere with the Bureau's ability to provide services to Indian people in non-contracted programs. Where equipment is shared by the programs to be contracted and other non-contracted programs, equipment-sharing or other suitable arrangements shall be stated in the contract.

(2) Bookkeeping and accounting procedures. It must be clearly demonstrated by the Bureau that the tribal organization which will undertake the contract does not have or cannot set in place, using the contract funds, an accounting and bookkeeping system which will be adequate.

(3) Substantive knowledge of the program to be contracted.

(i) Where the tribal organization proposing to contract is the tribal governing body and the program or function to be contracted is a tribal governmental function, there shall be an absolute presumption that the tribal governing body has substantive knowledge of the program or function to be contracted.

(ii) Where the tribal organization proposing to contract is not the tribal governing body or the program or function to be contracted is not a tribal governmental function, the tribal organization shall be presumed to have substantive knowledge of the program to be contracted if the tribal organization meets one or more of the following conditions:

(A) The tribal organization has adequately managed a similar program before through grant or contract.

(B) The tribal organization which is to manage the project possesses by virtue of its knowledge and/or experience substantive knowledge of the program to be contracted.

(C) The tribal organization has been a consumer of such services in the past and thus has developed an understanding of the issues involved with the program sufficient to enable it to effectively carry out the contract operation; and, the tribal organization can secure through the resources of the contract, Bureau staff or other resources, the training in the particular subject area which will develop its substantive knowledge of the program.

(4) Community support. Before the Bureau can enter into a contract there must be a request made in accordance with § 271.18. The tribal governing body's resolution under § 271.18 shall be presumed to demonstrate that there is community support for the proposed contract. Unless it can be demonstrated by substantial evidence that there is a lack of community support for



the contract and the lack of support will result in unsatisfactory services, inadequate protection of trust resources or impossibility of service maintenance, the tribal governing body's resolution shall be deemed conclusive. Those asserting that there is a lack of community support for a proposed contract must demonstrate that they have exhausted their tribal remedies before the matter is considered by the Bureau. In any event, there will be no finding by the Bureau of a lack of community support that would result in deficiencies in performance under the contract until those asserting it have exhausted all their tribal remedies.

(5) Adequacy of trained personnel. The adequacy of trained personnel available to the tribal organization to carry out the proposed contract will be presumed if any of the following conditions exist:

(i) If the tribal organization has a personnel system that prescribes minimum occupational qualification standards, procedures for the selection of personnel on the basis of such standards, and the personnel to be used under the proposed contract are to be employed under the personnel system.

(ii) If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the tribal organization has established position descriptions for key personnel to be employed under the contract and agrees to establish a personnel system similar to the one described in paragraph (c) (5) (i) of this section.

(6) Other necessary components of contract performance.

(i) All other necessary components of contract performance will be deemed to be met unless a tribal organization:

(A) Does not agree to develop an adequate personnel system that provides selection standards which insure equal access to all qualified tribal members;

(B) Has not agreed to establish and maintain a property management system which will adequately account for and protect government property.

(C) Has not agreed to keep such records as required pursuant to § 271.46, make reports required by § 271.49, or to make such reports and information available to Indian clients as required by § 271.48.

(D) Has not submitted a completed contract application.

(ii) All "other necessary components" have been specifically identified in this section. No other components shall be defined which may serve as a basis for declination unless they are added to these regulations by revision or amendment of the regulations.

(d) Program plans and designs of tribal organizations for contract operation of Bureau programs or parts may be inconsistent with other Parts of this chapter if a waiver is obtained from the Commissioner. Inconsistencies between such plans and designs and Bureau manuals, guidelines or other procedures that are appropriate to programs or parts of programs operated by the Bureau are not grounds for declination.

(e) Tribes may request a waiver from the Commissioner of regulations in this chapter as given in § 1.2 of this chapter.

(f) Bureau officials may not decline to enter into a contract with a tribal organization because of any objection that could be overcome through the contract.

#### § 271.16. Access to Bureau records.

(a) Upon the request of a tribal organization, the Superintendent or Area Director shall make available any information requested and such other information as the tribal organization may need to prepare a contract application or carry out a contract. Tribal organizations, other than the governing body of an Indian tribe (except when operating under a contract authorized under the Act), shall seek such information through that tribe's chairman or other official(s) designated by the tribal governing body, unless the tribal resolution under § 271.18(d) (1) or subsequent resolution sets forth another procedure. Requests for information are subject only to the limits of the Freedom of Information Act (5 U.S.C. 552) as amended by the Act of November 21, 1974 (Public Law 93-502, 88 Stat. 1561), the Privacy Act (5 U.S.C. 552a) and other applicable laws. Information to be made available shall include, but not be limited to:

(1) Data on program services to intended beneficiaries;

(2) Reports on Bureau program operations for the past three years;

(3) Present Bureau staffing pattern and grade levels, existing vacancies and position descriptions;

(4) Data on the amount of funds which have been provided for the direct operation of the specific program(s) or portions thereof by the Bureau during the past fiscal year and proposed contract period;

(5) Existing appraisals, inventories, and assessment of trust resources.

(b) The tribal organization shall have access to Bureau records as follows:

(1) The tribal organization shall have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(2) If the tribal contractor needs a reasonable volume of identifiable Bureau records, the Bureau will furnish the copies to the tribal organization.

(3) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that Bureau official is designated by the Commissioner or Area Director as custodian of the records.

(c) Failure of the Bureau to provide such access may be appealed under the provisions set out in 43 CFR 2.17.

#### § 271.17 Pre-application technical assistance.

(a) Upon the request of a tribe, Bureau Agency and Area Offices shall provide technical assistance to a tribal organization to assist them in:

(1) Determining the appropriateness of contracting.

(2) Developing an effective program design and plan of operations.

(3) Preparing technical parts of the contract application.

(4) Such other ways as may be requested.

(b) Upon the request of a tribe, to the extent that funds are available, the Bureau may make technical assistance available to the tribal organizations from sources including, but not limited to:

(1) Technical assistance organizations under contract with the Bureau.

(2) Grants under Part 272 of this chapter.

(3) Other technical assistance resources funded by the Bureau.

(c) Upon the request of a tribe, the Bureau will also assist tribal organizations in obtaining technical assistance from other Federal agencies.

#### § 271.18 Tribal request for initial contract.

(a) Before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the tribe to be served under the contract. The tribe's request shall be in the form of a resolution by the tribal governing body. If the tribal organization is applying for a contract to perform services benefiting more than one tribe, an authorizing resolution from each tribal governing body must be obtained before submitting the application to the Bureau for approval. A tribal governing body may pass a single resolution authorizing a tribal organization to apply for, negotiate, and execute more than one contract if the resolution specifies for each contract the same information required in paragraphs (b) and (c) of this section.

(b) The resolution of the tribal governing body shall authorize the applicant tribal organization to apply for, negotiate and contract with the Bureau, subject to the specific terms, conditions and limitations of the resolution and applicable tribal laws, codes, and regulations. The resolution shall include the results of the vote (the number for and against), the date the resolution was approved, and signature of the person authorized to certify the accuracy of the information contained in the resolution.

(c) The tribal governing body's request (resolution) should include the following:

(1) When the tribal organization is the tribal governing body:

(i) A brief statement of the contract scope.

(ii) The tribal official authorized to negotiate the contract and any amendments thereto.

(iii) The tribal official authorized to execute the contract and any amendments thereof.

(iv) The expiration date of the authorities granted by the resolution.

(v) The extent and procedure, if any, for review of the contract and any amendments thereto by the tribal governing body before execution.

(vi) The proposed date for contract commencement.

(vii) The proposed term of the contract.

(2) When the tribal organization is other than the tribal governing body:

(i) The name of the tribal organization:

(ii) A brief statement of the contract scope.

(iii) The extent and procedure for review by the tribal governing body of the contract and any amendments thereto prior to execution by the tribal organization.

(iv) The tribal office or official to which the Bureau should send copies of contract documents and correspondence.

(v) The proposed term of the contract.

(vi) The proposed date for contract commencement.

(vii) Any limitations on authorities granted the tribal organization, including authorities granted to or vested in the tribal organization and/or tribal governing body in regard to:

(A) Access to Bureau records under § 271.16.

(B) Recontracting under § 271.20.

(C) Appeals of a decision of the Commissioner under § 271.26.

(D) Requests to revise or amend a contract under §§ 271.61 and 271.62.

(E) Requests for contract retrocession under §§ 271.71 and 271.72.

(F) Right to appeal under § 271.82 § 271.83 or § 271.84.

(d) Any procedures given in this section concerning the manner in which a tribal governing body passes a tribal resolution shall apply except where inconsistent with the tribe's organic documents or in the absence of such organic documents the tribal practice.

§ 271.19 Status of contracts in effect before effective date of regulations.

(a) Contracts between the Bureau and tribal organizations which were entered into before the effective date of these regulations and are still in effect shall continue until expiration of that Contract. Any revisions or amendments requested during the contract period shall be subject to the provisions of Subpart E of this Part.

(b) Upon completion of contracts in effect before the effective date of the regulations, one of the following will occur:

(1) Where the tribal organization was authorized to enter into its existing contracts by a tribal resolution even if the resolution was passed before the effective date of these regulations, the tribal organization shall have the right to recontract subject to the provisions given in § 271.20.

(2) Where the tribal organization did not have a tribal resolution authorizing it to enter into the existing contract, it shall not be entitled to recontract, but must obtain a tribal request as provided in § 271.18 and submit an application as provided in § 271.14.

§ 271.20 Recontracting.

The Bureau will recontract for the same function(s) or programs as the original contract at the written request of the tribal organization designated in the tribal resolution. Requests for recontracting shall be made as follows unless restricted by the resolution under § 271.18(c) (2) or subsequent resolutions:

(a) If the original contract provided services to only one Indian tribe, written applications to recontract shall be sent by the tribal organization to the Area Office as follows:

(1) Directly, when the tribal organization involved is the governing body of the tribe.

(2) Through the governing body of the tribe for review when the tribal organization is not the governing body of the tribe. Submission shall be made to the governing body at least 120 days before the original contract expires. Copies of the submission shall be sent to the Superintendent and Area Director at the time of submission to the tribal governing body. The tribal organization shall promptly notify the Area Director in writing of the date the tribal governing body received the application. If, within 45 days after receiving the application, the tribal governing body does not provide the Area Director with a formal resolution objecting to the application to recontract, the absence of receipt of such resolution shall constitute the tribe's request to recontract.

(b) If the original contract provided services to more than one Indian tribe, the tribal organization must give a copy of the written application to recontract to each tribal governing body 120 days before the original contract expires. The tribal organization shall promptly notify the Bureau office, where the application is to be submitted under § 271.21, in writing of the date the tribal governing bodies received copies of the application. If, within 45 days after receiving copies of the application, none of the tribal governing bodies provide the appropriate Bureau office with a formal resolution objecting to the application to recontract, the absence of receipt of such resolutions shall constitute the tribe's request to recontract. If one or more of the tribal governing bodies involved object to the contract, they may withdraw from the contract. In such case those withdrawing can stipulate how they wish the previously contracted services to be rendered and the remainder may be recontracted at the option of the tribes involved.

§ 271.21 Submission of requests to contract.

(a) Tribal requests to contract and contract applications shall be submitted to the Bureau, as follows:

(1) To the Superintendent when the tribe(s) or Indians to be served by the contract are within the jurisdiction of that Agency office.

(2) To the Area Director when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Agency office in the same Bureau Area.

(3) To the Commissioner when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Area Office.

(b) An application for a contract under this Part may be submitted at any time. However, when the proposed contract may result in the displacement of Bureau personnel, the application must be submitted to the appropriate Bureau

official at least 120 days before the contract's proposed starting date so the Bureau can comply with all Civil Service Commission requirements which apply to separation and/or reassignment of Federal employees.

§ 271.22 Review and action by Superintendent.

The Superintendent shall take the following actions after receiving the contract application:

(a) Within five days of receipt, the Superintendent shall notify the applicant and the tribal governing body, if different from the applicant, that the application was received.

(b) Within 15 days of receipt, the Superintendent shall review the application for completeness and request any additional information from the applicant or from the requesting tribe that is needed to satisfy the requirements of § 271.14.

(c) Within 30 days of receipt, the Superintendent shall make recommendations in writing to the applicant and the tribal governing body which he feels are needed to avoid possible declination and shall indicate the technical assistance available from the Agency Office to correct any deficiencies.

(d) The Superintendent shall provide the technical assistance offered in the written recommendation as requested by the tribal organization and tribal governing body.

(e) The Superintendent shall forward the application to the Area Office with his comments and recommendations as follows:

(1) Within 30 days after receiving the application when the Superintendent has no recommendations to make to the applicant.

(2) Within 10 days after making written recommendations to the applicant when the applicant does not respond, or request additional time in which to respond or refuses the technical assistance offered.

§ 271.23 Review and action by Area Director.

Upon receipt of the contract application, the Area Director will review the application and the Superintendent's recommendations or, where the application was submitted directly to the Area Director as provided for in § 271.21, obtain the appropriate Superintendents' recommendations within 10 days and then proceed as follows:

(a) Notify the applicant and the tribal governing body, if different from the applicant, that the application was received, within five days of its receipt.

(b) Within 30 days, review the contract application, the recommendations of the Superintendent, any responses from the contract applicant or the tribal governing body and the criteria for declination set forth in § 271.15 to determine if there are any declination issues that must be addressed, and at the completion of the review, take one of the following actions as appropriate:

(1) If there are no declination issues, the Area Director will notify the contract

applicant in writing of this fact, and shall negotiate and award the contract within 30 days of notifying the applicant, unless a later date is requested by the applicant, and furnish a copy of any documents to be used by the Bureau during negotiations.

(2) If it is felt that there are declination issues that must be resolved, the Area Director will notify the applicant and/or tribal governing body of this fact in writing. The notice shall include a list of the declination issues identified by the Area Director, the reason(s) for such identification, a copy of any documents used in arriving at the issues, recommendations for resolving the issues and the technical assistance available for this purpose. The notice shall also request a meeting with the applicant and/or tribal governing body to discuss the issues and seek agreement on a course of action to resolve them. The meeting shall be held within 15 days of the applicant's and/or tribal governing body's receipt of the notice or at a time and place mutually agreed to by the parties.

(i) If the applicant accepts the technical assistance, it shall be provided in accordance with the applicant's request. At such time as the issues are thus resolved, the Area Director will so advise the applicant and offer to enter into negotiations within 15 days of resolution or at the applicant's convenience.

(ii) If the applicant declines the Area Director's offer of technical assistance and the matter is not otherwise resolved, the Area Director shall proceed in accordance with § 271.24.

(iii) If the applicant does not respond within 30 days of receipt of the Area Director's recommendations and offer of assistance, and does not request additional time in which to respond, the Area Director shall proceed in accordance with § 271.24.

(iv) If the applicant does not agree with the Area Director's recommendations and the matter is not resolved within 30 days of the Area Director's receipt of the applicant's response to the Area Director's recommendations, the Area Director shall proceed in accordance with § 271.24.

#### § 271.24 Area Director's recommendation to decline.

(a) If the Area Director, the applicant and the tribal governing body fail to resolve the declination issues, the Area Director shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the applicant or tribe to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the tribal organization to overcome declination objections.

(4) Copies of all correspondence be-

tween the Agency, Area and applicant and/or tribe, and all responses thereto, including any reports of meetings between the parties relative to the application.

(5) Copy of original application.

(c) The Area Director shall send the written recommendation to the Commissioner within 15 days after the time periods provided in § 271.23(b)(2)(iii) and (iv). At the same time, he shall send a copy of the written recommendation to the tribal organization and tribal governing body.

(d) Within 15 days of receipt of the Area Director's recommendation to decline, the applicant may notify the Commissioner and the Area Director that it accepts the offer of technical assistance described in paragraph (b)(3) of this section, thereby staying the declination process. To reconstitute the application process the applicant must notify the Area Director, at which time the Area Director shall proceed in accordance with § 271.23.

#### § 271.25 Review and action by Commissioner.

(a) Within five days after receiving a contract application submitted directly under § 271.21 or a contract application and the Area Director's recommendations to decline, the Commissioner shall notify the applicant and the tribal governing body(s) in writing of the receipt of the application.

(b) Within 20 days after an application is received by the Commissioner under § 271.21, the Commissioner shall direct and the appropriate Area Director(s) shall furnish written recommendations to the Commissioner, the tribal governing body(s) and the applicant.

(c) Within 15 days after receiving the Area Directors' recommendations, the Commissioner shall review the application, the Area Directors' recommendations, and the declination criteria in § 271.15.

(d) Within 15 days after receiving the Area Directors' recommendations, the Commissioner shall notify the applicant, the appropriate tribal governing bodies, and the Area Director(s) of one of the following:

(1) When the Commissioner does not accept the Area Director's recommendations to decline, notice shall be given that the recommendations are not accepted and that the Bureau shall negotiate and award the contract within 45 days, unless the applicant requests additional time.

(2) When the Commissioner accepts the Area Directors' recommendations and believes that the Bureau should not contract as requested, notice shall be given that the Commissioner plans to issue a declination notice and that the applicant has the following rights:

(i) The applicant may submit a written rebuttal to the Commissioner's plan to issue a declination notice.

(ii) The applicant may request a meeting with the Commissioner or his representative under paragraph (e) of this section.

(iii) The applicant must use these rights within 30 days after receiving the notice required in paragraph (d)(2) of this section.

(e) If the applicant requests a meeting with the Commissioner under paragraph (d)(2)(ii) of this section, the Commissioner shall:

(1) Select a site for a meeting between the applicant and the Commissioner or his representative from the Bureau's headquarters.

(2) Authorize payment of transportation costs and per diem under terms he may make to allow adequate representation of the applicant and the appropriate tribe(s), if the meeting is more than 50 miles from the office of the applicant.

(3) Notify the applicant and the appropriate tribe(s) of the time, location and other terms of the meetings.

(4) Hold the meeting within 30 days of the request, unless the applicant requests a later date.

(f) (1) If the Commissioner determines the application should be declined, the declination notice shall be issued as follows:

(i) Within 15 days after receiving the applicant's rebuttal submitted under paragraph (d)(2)(i) of this section or

(ii) After the conclusion of the meeting under paragraph (e) of this section.

(iii) Within 45 days after notifying the applicant under paragraph (d)(2) of this section when the applicant has not used the rights under paragraph (d)(2) of this section.

(2) The declination notice shall be in writing and shall contain:

(i) Identification of specific objections, categorized under one or more of the declination criteria set forth in § 271.15.

(ii) Specific recommendations on actions required by the applicant to overcome objections and a description of the nature, scope, and source of the technical assistance which will be available to overcome declination objections.

(iii) Copies of all correspondence between the Bureau, applicant and/or tribe(s), and all responses thereto, including any reports of meetings between the parties relative to the application.

(iv) Copy of original application.

(v) The appeal rights of the applicant and/or the tribal governing body under § 271.83.

#### § 271.26 Appeals of Commissioner's decision to decline.

The tribal organization and/or the tribal governing body shall have 60 days to appeal to the Board of Indian Appeals, Department of Interior, Washington, D.C., the decision by the Commissioner to decline to contract. Provided, that the tribal organization is authorized by the tribal governing body in the request under § 271.18(c)(2) or subsequent resolution to make such an appeal. The appeal shall be made as provided in § 271.83.

#### § 271.27 Technical assistance after declination.

If the Commissioner's decision to decline to contract is not appealed or is

upheld on appeal, the Commissioner shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the declination issues. Within 30 days of the tribal governing body's acceptance of this offer, the Commissioner will make technical assistance available to the tribal governing body for the development of a plan for overcoming the objections that resulted in the decision to decline.

**§ 271.28 Failure of Bureau Agency or Area Office to act.**

Whenever a Bureau Agency or Area Office official fails to take action on a contract application within the time limits established in this Part, the tribal organization that submitted the application, may, at its option, request action by the next higher Bureau official. In such cases, the official that failed to act shall immediately forward the application and all material pertinent thereto to the official to whom the request for action was made.

**Subpart C—Additional Requirements for Trust Responsibilities**

**§ 271.31 Applicability.**

This Subpart gives additional requirements applicable to the application and approval process for contracts under this Part which involve the Bureau's trust responsibilities in the area of natural resources, such as assessments, irrigation; real estate, forestry, range management, wildlife and parks, water inventories, and hunting and fishing.

**§ 271.32 Contractable functions or programs.**

Contractable trust resources programs, or portions thereof, include the following:

- (a) Assessments; inventories of existing resources in trust for individuals and for tribes.
- (b) Soil and moisture conservation; basic soil and water conservation, watershed protection, flood prevention, cooperative surveys and investigations, and resource conservation and development.
- (c) Irrigation; development, construction, recordkeeping, rehabilitation, operations and maintenance.
- (d) (1) Real estate: land use planning and zoning, maintenance of land records, preparation of abstracts of title, research programs to determine heirship and inventory of estates, collection of technical data and studies to be used in determinations of tribal claims to real property, collection of data leading to ascertainment of surface and subsurface resources, administration of leases.
- (2) Advice and technical assistance provided individual landowners in connection with lease negotiations initially will be made concurrently by the contractor and an appropriately designated Federal official.
- (e) Forestry: forest management and planning, including the making of inventories, management plans and maintenance, tribal or individual Indian consultation services, administration of timber sales and Indian permit cutting, conduct of timber stand improvement

projects, protection of the forest against wildfire, trespass, disease, or insect infestation, and participation in cooperative programs with other Federal, State, or tribal organizations related to programs of the Bureau. Activities which already are provided Indian forests from non-Bureau sources, as part of the management of a forested area larger than the reservation, are not contractable under provisions of this Part. Advice and technical assistance provided individual landowners in connection with forestry programs will be made concurrently by the contractor and an appropriately designated Federal official.

(f) Range management: development of contract stipulations for agricultural leases/permits (land use stipulations or conservation standards necessary to define each use shall be incorporated in and made a part of such lease or permit); supervision of compliance, fee collection, watershed management, game and fish management, outdoor recreation, wildfire prevention and control.

(g) Wildlife and parks: conservation, use, and development of wildlife (including fisheries resources), and preservation of natural beauty, historical sites, and archeological remains.

(h) Water inventories and other appropriate programs for protection of water rights.

(i) Hunting and fishing: programs to regulate and enforce on- and off-reservation hunting and fishing and programs to provide data supporting litigation concerning hunting and fishing issues.

**§ 271.33 Content of application.**

In addition to the information required in § 271.14, the following additional information shall be included in the contract application when a trust resource or responsibility is involved:

- (a) A statement of the impact of proposed activity on trust resources related to:
  - (1) Maintenance of inventory levels and values to tribes and to individuals; and,
  - (2) Income to individuals and tribe.
 The statement must also demonstrate a thorough assessment of the trust resources issues, positive steps to protect the trust resources, provisions that limit or eliminate potential for conflicts-of-interest, and that no delegation of trust responsibility is requested.
- (b) A statement of the special skills and qualifications required of personnel attached to program activity impacting on trust resources and trust responsibility.

**§ 271.34 Criteria for declining to contract.**

If a contract application includes a project or function which is related to the Bureau's performance of a trust responsibility in the area of natural resources as given in § 271.32, the Commissioner shall decline to contract if he finds that:

- (a) The contract application provides for or would necessarily require the delegation to the tribal organization of a trust responsibility vested by law in the Secretary or the Commissioner.

(b) The contract application provides for the termination of a trust responsibility.

(c) The contract application provides for completion or maintenance of the project or function to a lesser standard than under Bureau administration. However, a tribal proposal to raise performance standards shall not be used as a reason for declination.

(d) The proposed activity requires special skills for its performance and the proposed key staff does not meet Civil Service Commission or excepted qualification standards, other accepted professional standards appropriate to the discipline involved, or are not otherwise recognized as technically qualified.

**Subpart D—General Contract Requirements**

**§ 271.41 Advance payments.**

(a) At the request of a tribal contractor, the Bureau contracting officer shall make advance payments under contracts as provided in this section. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, apply to making the advance payments.

(b) Any request for advance payment by a tribal contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance will be limited to the amount of estimated expenditures for a sufficient period of time required to effect payment, based on experience in the locality. The initial advance may be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances may be made at times and in amounts determined necessary to insure availability of funds for timely payment of the tribal contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

(e) Advance payments shall be made as follows:

(1) When the annual advance to a tribal contractor is expected to exceed \$120,000 in the aggregate and the contract term is for at least one year, the letter-of-credit method normally shall be used. The requirements contained in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, shall apply to making these advance payments.

(2) Except as provided in paragraph (e) (1) of this section, advance payments shall be made by check made payable to the tribal contractor and handled as follows:

(i) Advance payments may be made directly to the tribal contractor when the contractor is a tribal governing body, a non-profit Indian organization serving as a governmental instrumentality of an



Indian tribe or an intertribal council. However, when the contractor is not one of the above, the advance payment may be made directly if all of the following conditions exist:

(A) The advance payment does not exceed \$2500.

(B) It is the only advance payment involved in the contract.

(C) The performance time is less than 90 days.

(D) The advance payment does not exceed 85% of the amount of the contract.

(I) Checks for advance payments which cannot be made directly to the tribal contractor, as given in paragraph (e) (2) (i) of this section, shall be marked for deposit in a special bank account established for the contract. No part of the funds deposited in the special bank account shall be mingled with other funds of the tribal contractor before the funds are withdrawn to meet obligations under the contract.

(F) Tribal contractors shall not be held accountable for interest earned on funds advanced pending disbursement. However, bank balances must be maintained at the minimum level consistent with program requirements. Requests for advances shall be reviewed to insure that excess funds are not advanced.

(g) Sub-advances may be made when predetermined as a part of contracted programs or when specifically authorized in writing by the contracting officer. Sub-advances will not be made to individuals except for approved travel. In such cases, the sub-advances shall not exceed the minimum required for one trip and shall be settled by voucher or repayment within 30 days.

#### § 271.42 Use of Government property.

(a) In carrying out a contract made under this Part, the Superintendent, Area Director or Commissioner shall, wherever possible, permit a tribal contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction. To the extent possible, arrangements on the use of Bureau property shall be provided for in the contract agreement. In determining whether real or personal property can be provided, the Bureau shall determine whether it can provide comparable services for any of the uncontracted part(s) of the program.

(b) Requests for the use of Bureau property which arise after signing of the contract shall be submitted to the relevant Bureau official by the tribal organization. Such requests should be granted and the contract appropriately amended unless such use will seriously interfere with the administration of existing Bureau programs. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

#### § 271.43 Wage and labor standards.

(a) All laborers and mechanics employed by tribal contractors or subcon-

tractors in the construction, alteration, or repair of buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the tribal contractor is the recognized governing body of the tribe or a non-profit Indian organization serving as a governmental instrumentality of an Indian tribe and the construction, alteration, or repair work is being performed by the tribal organization or the tribe with its own employees.

#### § 271.44 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and to Indian-owned economic enterprises.

(c) All subcontractors employed by the tribal organization shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 271 and subject to the provisions of Part 14 H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b), and (c) of this section.

#### § 271.45 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered with the Bureau under this Part. However, where the contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

#### § 271.46 Recordkeeping.

A tribal contractor will be required to maintain a record-keeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.) and to facilitate contract retrocession or reassumption under Subpart F of this part. Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than contract funds which may be included in the operation of a program.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent student records and transcripts.

(d) Provide for orderly retirement of records used or created under the contract. Such records shall be returned to the Bureau for disposition according to the General Records Schedules and the Bureau Records Control Schedules.

#### § 271.47 Records—access to and retention.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General, the Secretary and the Commissioner or any of their duly authorized representatives shall have access, for audit and examination purposes, to any of the tribal contractor's books, documents, papers, and records which, are related or pertinent to the contract or any subcontract, with the following exceptions:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) When records are transferred to or maintained by the Bureau, the three year retention requirement does not pertain to the contractor for those records.

(b) The tribal contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The tribal contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program or project properly separated from general records or cross-referenced to general files.

#### § 271.48 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on tribal contractors which will limit public access to the tribal contractors' records except when records must remain confidential.

(b) A tribal contractor under this Part shall make all reports and information concerning the contract, including the report required, under § 271.49, available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.



(ii) Related solely to internal personnel rules and practices of the Bureau.

(iii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iv) Memoranda or letters between agencies of the Federal Government which would not be available by law to a party other than the Federal Government in litigation with the Federal Government.

(v) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(vi) Investigatory records compiled for law enforcement purposes when production of the records would:

(A) Interfere with enforcement proceedings;

(B) Deprive a person of a right to a fair trial;

(C) Be an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures; or

(F) Endanger the life or physical safety of law enforcement personnel.

(vii) Contained in or related to examination, operating, or condition reports prepared for the use of an agency of the Federal Government responsible for the regulation or supervision of financial institutions.

(viii) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the tribal contractor. Within ten working days after receiving the request, the tribal contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 271.49 Annual reporting.

(a) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Commissioner. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, the tribe's evaluation of the contract performance using the criteria submitted in the contract application, and information on the conduct of the program or services involved. The report shall include any other contract-related information re-

quested by the Commissioner and may be submitted as follows:

(1) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Area Director.

(2) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Area Director or Commissioner as appropriate.

(3) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Area Director or Commissioner as appropriate. Should any of the tribes fail to endorse the report within 75 days of its receipt, the tribal organization may submit the report with the endorsements that have been received.

(b) The annual report shall be submitted to the Area Director or Commissioner as appropriate within 90 days after the end of the fiscal year in which the contract was performed. However, upon receipt of a written request, the period for submitting the report may be extended by the Area Director or the Commissioner if there is just cause for such extension.

(c) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the contract shall provide that the tribal contractor will make available monthly, to members of the tribe(s) affected, an accounting of the amounts and the purposes for which the contract funds were expended during the previous monthly period in the following manner:

(1) By posting a notice containing such information on or before the tenth of each month, at a conspicuous place readily accessible to members of the tribe(s) affected; or,

(2) By such other means as is mutually agreed to by the tribal contractor and the Bureau.

(d) In addition to the requirements contained in paragraphs (a), (b) and (c) of this section, the tribal contractor shall furnish other contract-related reports when and as required by the Area Director or Commissioner.

§ 271.50 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds \$100, he shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

§ 271.51 Federal contracting laws and regulations.

(a) Contracts with a tribal organization under this Part shall comply with the Bureau procurement regulations contained in 41 CFR Part 14H-70, except as provided in paragraph (b) of this section.

(b) The Commissioner may waive any Federal contracting laws, executive orders, regulations, rules and other administrative requirements which he determines are not appropriate for the purposes of the contract involved or are inconsistent with the Act. Regulations and clauses which are deemed inconsistent or inappropriate for inclusion in contracts entered into under the Act may be waived, modified or supplemented in 41 CFR Part 14H-70 of the Bureau's procurement regulations. Requests for waivers may be made as follows:

(1) Tribal organizations may submit written requests for a waiver or modification of contract regulations on specific contracts to the Commissioner through, or jointly with, the contracting officer. The contracting officer will promptly transmit the request and his recommendations on it to the Commissioner, who shall issue a ruling within 15 days after receipt of the request.

(2) When the waiver or modification requested is determined by the Commissioner to apply in general, it will be made a part of 41 CFR Part 14H-70. When the Commissioner determines that the request for modification or waiver should not apply in general but is warranted for the contract to which the request pertains, the tribal organization and the contracting officer will be so advised in writing.

(3) If the request for waiver or modification is determined by the Commissioner not to be appropriate, the tribal organization will be notified in writing.

(c) Contracts will be negotiated on a non-competitive basis without advertising when the contracts are requested by a tribal governing body in accordance with § 271.18.

(d) A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this Part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors to furnish both performance and payment bonds as follows:

(1) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in carrying out the contract. Whenever the total amount payable by the terms of the contract is not more than \$1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more

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than \$1,000,000 but not more than \$5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than \$5,000,000, the payment bond shall be \$2,500,000.

#### § 271.52 Term of contract.

(a) The term of contracts under this Part shall not exceed one year except that contracts may be made for a longer term up to three years, subject to availability of funds under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe(s) to be served by the contract request that the term be more than one year. The tribal organization will indicate the desired term of the contract on the application form. When the Indian tribe(s) request that the contract be approved as provided in § 271.18, that will also be deemed a request for the longer term indicated in the application.

(b) Contracts made for a term of more than one year may be renegotiated annually to reflect factors, including, but not limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract. Such changes may be initiated by either the tribal contractor or the Bureau but must be agreed to by both.

#### § 271.53 Performing personal services.

Any contract made under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in accordance with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Determining the provisions of such assistance, benefits, or services.

#### § 271.54 Contract funds.

The tribal organization shall be entitled to be funded for direct and indirect costs under the contract as follows:

(a) Direct costs under contracts for operations of programs or parts shall not be less than the Bureau would have provided if the Bureau operated the program or part during the contract. Direct costs shall include the Bureau's direct costs for planning, administering, and evaluating the program or part and shall not be used to reduce indirect costs otherwise allowable to the tribal organization.

(b) Direct costs under contracts for operation of programs or parts operated by the Bureau before contract operations shall be not less than the funds that are programmed and available for the program or part at the time of the contract application, except as limited in paragraph (g) of this section.

(c) Direct costs under contracts for the operation of programs or parts authorized to be operated by the Bureau, but not operated by the Bureau, for the benefit of the Indians to be served under the contract shall be determined by mutual agreement based on a comparison of similar programs operated by the applicant, the requesting tribe, other tribes, the Bureau, other governmental, public or private organizations.

(d) Direct costs for programs or parts to be contracted at the Agency Office level shall be based on the funds available at that level.

(e) Direct costs for programs or parts to be contracted at the Area Office level shall be based on funds available at that level.

(f) Allowability of costs under contracts shall be determined under Appendix A of Part 276 of this chapter.

(g) Funds provided under contract for direct or indirect costs shall not cause a reduction in funds provided for other programs or parts not under contract, except as agreed to by the affected tribe(s) and within the existing authorities of the Bureau.

#### § 271.55 Savings under contract.

(a) If it becomes apparent during the contract term that the estimated amount of a contract under this Part will be in excess of actual expenditures under the contract, the identified savings shall be used to provide additional services or benefits under the contract.

(b) When both the tribal organization and the Bureau agree that it is not practicable to spend the savings during the contract term and the contract funds were appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), the savings may be carried over into the succeeding fiscal year contract, except as otherwise specifically provided in appropriation acts. Savings carried over into a succeeding fiscal year shall be added to the contract amount for that fiscal year. The savings shall not reduce the amount that would have been made available if there had been no savings.

(c) If there are savings under a contract that is retroceded as provided in § 271.71, the savings shall be used by the Bureau to operate the program or part of a program covered by the retroceded contract. The savings shall be carried over and used for such operations during the succeeding fiscal year, except as otherwise specifically provided in appropriation acts.

#### § 271.56 Privacy Act requirements.

(a) When a tribal contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5

U.S.C. 552a). Examples of the tribal contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The tribal contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(c) The tribal contractor is subject to the penalties provided in subsection (d) of 5 U.S.C. 552a.

#### Subpart E—Contract Revision or Amendment

##### § 271.61 Requesting revision or amendment.

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program, project or function being contracted.

(b) The contractor shall submit proposed revisions and amendments to the Bureau as follows:

(1) To the contracting officer in the Area Office when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) To the contracting officer in the Bureau's headquarters in Washington, D.C. when the tribe(s) or Indians served are within the jurisdiction of more than one Area Office.

(c) The contractor shall send copies of all requests for revisions or amendments to the designated representative of the tribal governing body at the same time as they are sent to the appropriate contracting officer.

##### § 271.62 Review and action by contracting officer.

Upon receipt of the proposed revision or amendment from the contractor, the contracting officer shall, unless the tribal resolution under § 271.18(c) (2) or any

subsequent amendment restricts such action, proceed as follows:

(a) Within five days, notify in writing the contractor and the tribal governing body(s) if different from the contractor, of receipt of the proposed revision or amendment and that the tribal governing body(s) shall have 15 days from receipt of the notice to send any written objections to the contracting officer. If the tribal governing body(s) object to the proposed revision or amendment, the contracting officer shall so notify the contractor and the proceedings under this subpart shall cease.

(b) Within 30 days after the tribal governing body(s) received the notice, if no objections are received, review the proposed revision or amendment and the criteria for declination given in § 271.15. At the completion of the review, the following action will be taken as appropriate:

(1) If there are no declination issues, the contracting officer will notify the contractor and the tribal governing body(s) in writing of this fact and revise or amend the contract within 30 days of issuing the notice or at their convenience.

(2) If it is felt that there are declination issues that must be resolved, the contracting officer will notify the contractor and the tribal governing body(s) of this fact and the extent of the issues, recommend a course of action to resolve the issues and offer technical assistance to resolve the issues within 30 days after issuing the notice.

(i) If the contractor and the tribal governing body(s) accept the technical assistance, it shall continue in accordance with their request. At such time as the issues are thus resolved the contracting officer will so advise the contractor and the tribal governing body(s) and revise or amend the contract within 15 days of resolution or at their convenience.

(ii) If the contractor and the tribal governing body(s) decline the contracting officer's offer of technical assistance and the matter is not otherwise resolved, the contracting officer shall proceed in accordance with § 271.63.

(iii) If the contractor and the tribal governing body(s) do not respond within 30 days of receipt of the contracting officer's recommendations and offer of assistance and do not request additional time in which to respond the contracting officer shall proceed in accordance with § 271.63.

(iv) If the contractor and the tribal governing body(s) do not agree with the contracting officer's recommendations and the matter is not resolved within 30 days of the contracting officer's receipt of their response to the contracting officer's recommendations, the contracting officer shall proceed in accordance with § 271.63.

**§ 271.63 Contracting officer's recommendation to decline.**

(a) If the contracting officer, the contractor, and the tribal governing body fail to resolve the declination issues, the

contracting officer shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the contractor or tribe(s) to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the contractor and the tribal governing body(s) to overcome the declination objections.

(4) Copies of all correspondence between the contracting officer and contractor and tribal governing body(s) and all responses thereto, including any reports of meetings between the parties relative to the proposed revision or amendment.

(5) Copy of original proposed revision or amendment.

(c) The contracting officer shall make written recommendations to:

(1) The Area Director when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) The Commissioner when the tribes or Indians served are within the jurisdiction of more than one Area Office.

**§ 271.64 Review and action by Area Director or Commissioner.**

(a) Within five days after receiving a proposed revision or amendment and the contracting officer's recommendations to decline, the Area Director or Commissioner as given in § 271.61 shall notify the contractor and the tribal governing body(s) in writing of the receipt of the proposed revision or amendment.

(b) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall review the application, the contracting officer's recommendations, and the declination criteria in § 271.15.

(c) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall notify the contractor, the appropriate tribal governing body(s), and the contracting office of one of the following:

(1) When the Area Director or Commissioner does not accept the contracting officer's recommendations to decline, notice shall be given that the recommendations are not accepted and that the Bureau shall revise or amend the contract as requested by the contractor and the tribal governing body(s).

(2) When the Area Director or Commissioner accepts the contracting officer's recommendations and believes the Bureau should not revise or amend the contract as requested, notice shall be given that the Area Director or Commissioner plans to issue a declination notice and that the contractor and the tribal governing body(s) have the following rights:

(i) The contractor and the tribal governing body(s) may submit a written rebuttal to the Area Director's or Commissioner's plan to issue a declination notice.

(ii) The contractor and the tribal governing body(s) may request to appear before the Area Director or Commissioner or their representatives under paragraph (d) of this section.

(iii) The contractor and the tribal governing body(s) must exercise these rights within 30 days after receiving the notice required in paragraph (c)(2) of this section.

(d) If the contractor and the tribal governing body(s) request to appear before the Area Director or Commissioner under paragraph (c)(2)(ii) of this section, the Area Director or Commissioner shall:

(1) Select a site for a meeting between the contractor, the tribal governing body(s), and the Area Director or Commissioner. The Area Director or Commissioner may designate a representative from his office to attend the meeting.

(2) Authorize payment of transportation costs and per diem under terms he may make to allow adequate representation of the contractor and the appropriate tribe(s), if the meeting is more than 50 miles from the office of the contractor.

(3) Notify the contractor and the appropriate tribe(s) of the time, location and other terms of the meeting.

(4) Hold the meeting within 30 days of the request, unless the contractor and the tribal governing body(s) request a later day.

(e) (1) The Area Director or Commissioner shall issue a declination notice as follows:

(i) Within 15 days after receiving the contractor's and tribal governing body(s)' rebuttal submitted under paragraph (c)(2)(i) of this section or after the conclusion of the meeting under paragraph (d) of this section.

(ii) Within 45 days after issuing the notice under paragraph (c)(2) of this section when the contractor and tribal governing body(s) have not used the rights under paragraph (c)(2) of this section.

(2) The declination notice shall be in writing and shall contain:

(i) Identification of specific objections, categorized under one or more of the declination criteria set forth in § 271.15.

(ii) Specific recommendations on actions required by the contractor or tribe to overcome the objections.

(iii) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the contractor and the tribal governing body(s) to overcome declination objections.

(iv) Copies of all correspondence between the Bureau, the contractor and/or tribe, and all responses thereto, including any reports or meetings between the parties relative to the application.

(v) Copy of original proposed revision or amendment.

(vi) The appeal of rights of the contractor and the tribal governing body(s).

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under § 271.82 or § 271.83 as given in § 271.65.

**§ 271.65 Appeal of Area Director's or Commissioner's decision to decline.**

(a) The contractor and/or the tribal governing body(s) shall have 60 days to appeal the decision by the Area Director or Commissioner to decline to amend the contract.

(b) An appeal from an Area Director's decision to decline to amend the contract shall be made to the Commissioner as provided in § 271.82.

(c) An appeal from the Commissioner's decision to decline to amend the contract shall be made to Director, Office of Hearings and Appeals, Department of Interior, Washington, D.C., as provided in § 271.83.

**§ 271.66 Revisions or amendments proposed by Bureau.**

(a) Where the Bureau proposes a revision or amendment to a specific contract, it shall notify the contractor and the tribal governing body(s) in writing of the following:

(1) The specific revision or amendment which is proposed.

(2) The rationale for the proposal.

(b) All amendments proposed by the Bureau must be agreed to, in writing, by the contractor, the tribal governing body(s) and the Bureau. If such agreement cannot be obtained, the proposed amendment shall not be adopted by the Bureau.

**Subpart F—Retrocession and Reassumption**

**§ 271.71 Retrocession.**

(a) Tribal governing bodies not only have a right to contract for Bureau programs or portions thereof, as they choose, but also have a right to return responsibility for the operation of a contracted program or portion thereof to the Bureau for any reason they deem appropriate. Retrocession specifically recognizes the Federal Government's unique and continuing relationship with and responsibility to Indian people.

(b) When a tribal organization experiences specific problems with the operation of a contract and is considering the possibility of retrocession, it may request the Bureau to assist it to avoid retrocession. In the event of such a request, the Bureau will:

(1) Meet with appropriate officials of the tribal organization and the tribe, where the tribal governing body is not the contractor, to develop a plan to avoid retrocession.

(2) Provide, to the extent possible, special technical assistance to assist the tribal organization to satisfactorily operate the program and enable it to avoid retrocession.

**§ 271.72 Full retrocession procedures.**

(a) Whenever an Indian tribe requests retrocession of a contract, retrocession shall be effective upon a date specified by the Commissioner or Area Director as appropriate but no later than 120 days after the date of the request from the

tribe(s), except when the tribe(s) and the Commissioner mutually agree on a later date.

(b) When the contract is with a tribal organization other than the tribal governing body and the tribal resolution required under § 271.18(c)(2) does not vest in the tribal governing body the sole right to request retrocession, the tribal governing body shall consult with the tribal organization and, if so requested, offer it an opportunity to be heard in accordance with tribal procedures before requesting retrocession of the contract.

(c) When the contract is with a tribal organization which is performing services benefiting more than one Indian tribe, all or any of the tribes may request a retrocession in accordance with the procedures provided for in the tribal resolution required for the initial contract § 271.18(c)(2). When all of the tribes request retrocession, the retrocession shall be accomplished as provided for in this section. When one or more, but not all of the tribes request retrocession, the contract will continue until the end of the contract term or the fiscal year, whichever comes first. In such case the Bureau shall assess its available resources and capabilities to provide such services independently of and in addition to that being provided under the contract and inform the tribes requesting retrocession of the level of services that will be available to them upon retrocession. The fact that these services may necessarily be at a reduced level will not constitute cause to cancel the existing contract providing services to tribes not retroceding. The existing contract will be modified as appropriate to reflect the nonparticipation to the tribes no longer being served. The Bureau will, however, provide sufficient resources to maintain the existing level of services under the contract to the tribes that did not request retrocession.

(d) Within 15 days after receipt by the Commissioner or Area Director of a request for retrocession, representatives of the tribe(s), the tribal organization when appropriate, and the Commissioner or Area Director as appropriate shall meet and take the following actions:

(1) Mutually agree on a plan for orderly transfer of responsibilities.

(2) Mutually agree on a plan for inventorying and accounting for materials and supplies on hand, equipment, facilities and real property.

(3) Establish an accounting of funds, current and anticipated obligations, and costs of operation until the retrocession date.

(4) Identify all records relating to the contract and to the contracted function.

(e) On the date of retrocession, the tribal contractor will deliver to the Bureau all property that was acquired with contract funds and all materials, supplies and records of whatever nature which have been identified as necessary for the continuation of the program, project or function.

(f) Within 60 days after retrocession, the tribe(s) and the Bureau will jointly develop a report to the Commissioner

outlining the reasons why retrocession was requested.

(g) Retrocession of a contract by an Indian tribe shall be without prejudice to:

(1) Any other contract to which it is a party.

(2) Any other contracts it may request.

(3) Any future request to contract for the programs or services covered by the retroceded contract, insofar as the conditions which led to retrocession are no longer a factor and the tribal organization is the same one that held the retroceded contract.

**§ 271.73 Tribal assumption of retroceded contracts.**

Wherever an Indian tribe chooses to retrocede a contract operated by a tribal organization other than the tribal governing body, the tribal governing body pursuant to § 271.18 may contract for the program. In such a case, the tribal governing body shall submit a contract application pursuant to § 271.14; *Provided*, That the tribal governing body may submit the contract application directly to the Area Director or Commissioner, as appropriate.

**§ 271.74 Reassumption.**

(a) A contract made under this Part may be terminated, and control or operation of the program or function assumed by the Commissioner or Area Director as appropriate, in whole or in part, when the Commissioner or Area Director determines that the tribal organization's performance under the contract involves:

(1) The violation of the rights of any persons can be identified as a pattern or practice, or

(2) The endangerment of the health, safety and welfare of any persons, or

(3) Gross negligence or mismanagement in the handling or misuse of funds provided under the contract.

(b) If the Commissioner or Area Director as appropriate finds there is an immediate threat to safety, he may, upon written notice to the tribal organization, immediately suspend the contract and resume control or operation of the program. In such an event, the Commissioner or Area Director will hold a hearing within 10 days. The hearing shall be conducted as provided in § 271.81. The decision issued pursuant to § 271.81(c) shall include a statement of the corrective action needed to be taken by the tribal organization before it can assume operation of the contract.

(c) (1) If there is no immediate threat to safety, the Commissioner or Area Director as appropriate shall provide written notice to the tribal organization of intent to terminate the contract. The notice shall give the reasons for the proposed termination, the corrective measures necessary, and a reasonable time period in which corrective action must be taken. The Commissioner or Area Director shall also hold a hearing in accordance with § 271.81 within 10 days of issuance of the notice.

(2) When the decision resulting from the hearing held pursuant to § 271.81 is



adverse to the tribal organization, the decision shall as a minimum state the corrective action that must be taken, state the technical assistance the Bureau will provide the tribal organization and give the tribal organization at least 60 days in which to take corrective action. Within 30 days of the tribal organization's receipt of an Area Director's decision, it may request the Commissioner to review the decision. If the Commissioner determines that staying the Area Director's decision will not result in an immediate threat to safety, he may provide additional time for taking corrective action. If the Commissioner determines the Area Director's decision is not correct, he may advise the Area Director to rescind the hearing decision.

(d) A decision to terminate the contract and reassume control or operation may be appealed as provided in § 271.82 or § 271.83, as appropriate.

(e) The Commissioner may decline to enter into a new contract and may retain control of the program or function until he is satisfied that the conditions which caused the contract to be terminated have been corrected.

**§ 271.75 Cancellation of contract for cause.**

(a) Any contract with a tribal organization entered into under this Part may be cancelled for cause when the tribal organization fails to perform within the terms and conditions of the contract.

(b) Before cancellation of the contract, the Area Director or Commissioner shall advise the tribal organization and the tribal governing body(s) if different than the tribal organization in writing of the following:

(1) The reasons why the Area Director or Commissioner is considering cancelling the contract.

(2) That the tribal organization will be given at least 45 days to present an acceptable plan to overcome the deficiencies in its contract performance.

(3) That the Bureau will furnish technical advice an assistance to help overcome the deficiencies in the contract performance, when requested.

(c) When the contract is with other than the governing body of the Indian tribe, the tribe(s) receiving services or benefits under the contract will be notified when a cancellation for cause is contemplated. The notice shall include the reasons why a cancellation for cause is contemplated and any supporting documents used by the Area Director to reach his conclusions. The notice shall also offer to hold a meeting with the tribe(s) to discuss the issues and explore any options available to the tribe(s). The Area Director and the tribe(s) will mutually consider the relevant issues before the Area Director proceeds with any cancellation action.

(d) If the tribal organization does not present an acceptable plan to overcome the deficiencies in its contract performance within 45 days of its receipt of the notice of deficiencies or does not request

the Commissioner to review the Area Director's decision as provided in paragraphs (e) and (f) of this section, the Area Director will cancel the contract for cause. The contracting officer will notify the tribal organization, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the tribal organization to appeal under § 271.84.

(e) When the Area Director determines the contract should be cancelled for cause the decision shall state as a minimum: The reasons for the decision; the actions that must be taken to achieve satisfactory performance; the technical assistance the Bureau will provide 60 days to correct its performance deficiencies; and the tribal organization's right of appeal under § 271.84. The decision shall also advise the tribal organization that it may request the Commissioner to review the decision and that such request must be made within 30 days of receipt of the decision.

(f) The Commissioner's review will be conducted and the tribal organization advised of the results within 30 days of receiving the request. If the Commissioner concurs in the Area Director's decision, the tribal organization will be so advised in writing and of its right to appeal the Area Director's decision pursuant to § 271.84. If the Commissioner decides that the Area Director's decision is not supported by the record, he will so advise both the Area Director and the tribal organization and the cancellation action will cease. In no case shall an Area Director cancel a contract until the review requested by a tribal organization has been completed by the Commissioner and results thereof have been received.

(g) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. When the Bureau does not have sufficient forces on hand to immediately perform the work, it may, for temporary periods of the shortest duration possible, contract with a contractor that is not a tribal organization. However, in such cases, the advice of the tribe(s) will be obtained to determine how they desire the services to be rendered.

(h) Excess costs resulting from a cancellation that are required to operate the program will be provided by the Bureau to the extent that funds are available for that fiscal year. However, if current funds are not sufficient to maintain the program at its planned level, the program may be reduced until funds become available for the remainder of the fiscal year, at which time the program will be resumed at its planned level.

(i) Any tribal organization that has a contract cancelled for cause must demonstrate that the causes which led to the cancellation have been cured before it will be considered for another contract. In addition, there must be a new resolution and a new request from the Indian tribe(s) that will receive services or benefits under the contract.

**§ 271.76 Bureau operation of retroceded, reassumed or cancelled for cause contracts.**

(a) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of service that would have been provided at the level intended by the contract or operated previously by the Bureau.

(b) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of permanent and temporary personnel that meet the U.S. Civil Service qualifications that would have been provided at the level intended by the contract or previously operated by the Bureau. The procedures in § 271.77 will be followed to obtain personnel to operate programs or parts of programs previously under contract with a tribal organization but returned for operation by the Bureau because the contract was either retroceded, reassumed or cancelled for cause.

(c) This section shall apply to all contracts for the operation of Bureau programs or parts of programs in effect at the time of the effective date of these regulations entered into under the authority of the Buy Indian Act (25 U.S.C. 47), and any contracts under this Part.

(d) Actions under this section shall not cause a reduction in the quality and quantity of services to tribe(s) or Indians not served by contracts which are retroceded, reassumed or cancelled for cause.

**§ 271.77 Authorized position and end-of-year employment ceiling reserve for Bureau operation of retroceded, reassumed or cancelled contracts.**

(a) When authorized permanent and other positions and permanent and other end-of-year employment ceiling are not required for the operation of all or parts of a Bureau program because the program or parts of a program are under contract with a tribal organization under this Part, the positions and ceilings shall be reserved. The positions and ceiling reserved shall be available only for the same program or parts of a program at the same locations if the Bureau must operate the program or parts of a program because a tribe has retroceded the contract or because the Bureau has reassumed or cancelled the contract for cause.

(b) The Bureau shall establish a position and ceiling reserve for all contracts for the operation of all or parts of Bureau programs initially entered into on or after the effective date of these regulations.

**Subpart G—Hearings and Appeals**

**§ 271.81 Hearings.**

Hearings required by § 271.74 shall be conducted as follows:

(a) The tribal organization and the Indian tribe(s) shall be notified, in writing, of the hearing. The notice shall give



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the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within five days following the hearing.

(c) Within 30 days of the hearing, the Commissioner or Area Director as appropriate shall issue a written decision on the issues considered during the hearing.

**§ 271.82 Appeals from decision or action by Area Director.**

A tribal organization (unless restricted by the tribal resolution under § 271.18 (c) (2) or subsequent resolutions) or tribal governing body may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

**§ 271.83 Appeals from decision or action by Commissioner.**

(a) A tribal organization (unless restricted by the tribal resolution under § 271.18(c) (2) or subsequent resolutions) or tribal governing body may appeal the Commissioner's decision to decline to contract or to decline to amend a contract under §§ 271.25 or 271.64 to the Director, Office of Hearings and Appeals, Department of the Interior, as provided in Subpart G of 43 CFR Part 4.

(b) A tribal organization (unless restricted by the tribal resolution under § 271.18(c) (2) or subsequent resolutions) or tribal governing body may appeal any other decision made, action taken, or action not taken within the time limits required by this Part, by the Commissioner if authorized and as provided in Part 2 of this chapter. A decision by the Commissioner concerning funding levels for a program or part of a program to be contracted is considered to be an exercise of the Commissioner's discretionary authority and, therefore, is final for the Secretary.

**§ 271.84 Appeals from Bureau decision to cancel contract for cause.**

A tribal organization (unless restricted by the tribal resolution under § 271.18 (c) (2) or subsequent resolutions) may appeal the Bureau's decision to cancel for cause any contract made under this Part. Such appeal shall be made to the Director of the Office of Hearings and Appeals as provided in Subpart G of 43 CFR Part 4.

**PART 272—GRANTS UNDER INDIAN SELF-DETERMINATION ACT**

**Subpart A—General Provisions**

- Sec.
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**AUTHORITY:** Sec. 104, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

**Subpart A—General Provisions**

**§ 272.1 Purpose and scope.**

The purpose of the regulations in this Part is to provide the application and approval procedures for the award by the Bureau of grants under section 104(a) of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act.

**§ 272.2 Definitions.**

As used in this Part:

- (a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).
- (b) "Applicant" means a tribal governing body applying for a grant under this Part.
- (c) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.
- (d) "Bureau" means the Bureau of Indian Affairs.
- (e) "Commissioner" means the Commissioner of Indian Affairs.
- (f) "Days" means calendar days.
- (g) "Economic enterprise" means any commercial, industrial, agricultural or business activity that is at least 51 per cent Indian owned, established or organized for the purpose of profit.
- (h) "Grant" means a written agreement between the Bureau and a tribal governing body where the Bureau provides funds to carry out specified programs, services or activities and where

the administrative and programmatic provisions are specified.

(i) "Grantee" means the tribal governing body which is responsible for administration of the grant.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will pursuant to its organic documents. In the absence of such organic documents a written expression adopted pursuant to tribal (current) practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(o) "Subcontracts" means contracts undertaking some of the obligations of primary grants.

(p) "Subgrants" means secondary grants undertaking some of the obligations of primary grants.

(q) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Trust resources" means natural resources, land, water, minerals, funds or property, asset, or claim, including any intangible right or interest in any of the foregoing, which is held by the United States in trust for any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(s) "Trust responsibility" means for the purposes of this Part only the responsibility assumed by the United States Government, by virtue of treaties, statutes and other means, legally associated with the role of trustee, to protect, manage, develop and approve authorized transfers of interest in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiduciary responsibility.

**§ 272.3 Effect on existing Indian rights.**

The regulations in this Part are not meant to and do not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by an Indian tribe; or

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people.

**§ 272.4 Revision or amendment of regulations.**

Before making any substantive revisions or amendments to the regulations

in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional organizations from initiating requests for revisions or amendments, subject to paragraphs (a), (b), (c) and (d) of this section.

§ 272.5 Statement of policy.

(a) The Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) is intended to facilitate increased self-determination for American Indians by providing a means through which they may plan, conduct and administer programs and services to Indian people. These programs and services are essentially those authorized by the Act of April 16, 1934 (Johnson-O'Malley Act); the Act of November 2, 1921 (Snyder Act) and other subsequent Acts.

(b) A most important aid available to assist Indians in achieving this objective of increased self-determination is the grant authority provided in section 104 of the Act. This grant authority will assist Indian tribes in improving their governing capabilities, increase their ability to effectively administer programs under contract, and enable them to provide direction to the Federal programs intended to serve Indian people.

(c) Under this grant authority the Bureau of Indian Affairs will administer a program of Indian self-determination grants which shall be subject to Parts 272 and 276 of this chapter. In the administration of this grant program, it shall be the Bureau's policy that approval of applications for these grants shall include a determination that there is a direct and reasonable relationship between the applicant's proposal and the provisions of section 104a of the Act and of § 272.12.

(d) In accordance with this policy, it shall be the responsibility of the applicant to establish that such a grant will improve the tribe's governing capabilities, enhance the tribe's ability to

administer Federal programs under contract, or enable the tribe to provide direction to Bureau programs and to other Federal programs serving it.

(e) Emphasis on planning and training in relation to the purposes of a grant given in paragraph (d) of this section is considered in keeping with the intent of section 104(a) of the Act. Applications which include these elements are encouraged.

Subpart B—Application Process

§ 272.11 Eligibility requirements.

The governing body of any Indian tribe or tribes may apply for a grant under this Part.

§ 272.12 Purposes of grants.

Grants are for the purpose of: (a) Strengthening and improving administration of tribal government. Examples in this specific regard are as follows:

(1) Developing the capability of the executive, legislative, and judicial branches of tribal government in such areas as administration of planning, financial management, or merit personnel systems.

(2) Improvement of tribally funded programs or activities.

(3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.

(4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.

(5) Design and implementation of new tribal government operations.

(6) Development of policy-making, legislative and judicial skills.

(b) Planning, training, evaluation or other activities designed to improve the capacity of an Indian tribe to enter into a contract or contracts pursuant to section 102 of the Act and the additional costs associated with the initial years of operation under such a contract or contracts. Examples of use of grants by Indian tribes, as indicated in this paragraph, are as follows:

(1) Evaluation of programs and services currently being provided directly by the Bureau in order to determine:

(i) Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.

(ii) Whether the Indian tribe can improve the quality or quantity of the service now available.

(iii) Whether certain components should be redesigned but the program should continue to be operated by the Bureau.

(iv) Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.

(3) Training of tribal officials and employees in areas related to the conduct and administration of programs of the Bureau which the Indian tribe may wish to operate under contract.

(4) Costs associated with contracting to enable tribal contracting. Examples of such costs include curriculum development in support of tribal contracting of schools, in-service training programs to develop the skills of employees of the Indian tribe on a continuing basis, special on-the-job training activities in support of tribal members being prepared to assume program responsibilities.

(c) Acquisition of land in connection with paragraphs (a) and (b) of this section. Procedures for acquisition of land are prescribed in § 276.11 of this chapter.

(d) Planning, designing, monitoring, and evaluating Federal programs serving the Indian tribe. An example of this regard is assisting the tribal government to influence Federal programs presently offered or those that could be offered to the tribe to assure that they are responsive to the needs of Indian tribes. A tribal government may monitor and evaluate the operations of such programs which now serve tribal members and replan and redesign those programs to better respond to their needs. Bureau programs which are planned, replanned, designed or redesigned in accordance with this paragraph shall be implemented by the Bureau as prescribed in § 272.27.

(e) Funds made available for grants for the purposes described above may be applied as matching shares for other Federal or non-Federal grant programs as prescribed in § 272.33.

§ 272.13 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 272.14 Content of application.

Application for a grant under this Part shall include:

(a) Name and address of Indian tribal governing body(s) applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau.

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 272.33.

§ 272.15 Assistance in developing and completing grant applications.

(a) Technical assistance and support necessary to develop and complete grant applications under this Part shall be provided by the Superintendents, Area Di-

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rectors and their designated representatives upon request of the applicant.

(b) Applicants may apply for initial planning grants to cover the costs of developing and completing larger grant applications. Such initial planning grants will be made from funds which may be budgeted for grants under this part for tribal governing bodies. Applications for these initial planning grants shall be made as follows:

(1) An application for an initial planning grant may be accomplished by submission of a tribal request as prescribed in § 272.16, together with an accompanying letter from the tribal governing body requesting an initial planning grant in a specific amount. This letter shall include a brief description of the proposed initial planning project, its purpose or objective as related to development or completion of a larger grant application, and the initial planning project budget categories or items.

(2) This initial planning grant shall be no more than 10% of total grant funds which may be budgeted for grants under this part for the tribal governing body, up to a maximum of \$20,000.

(3) An application for an initial planning grant shall be submitted directly to the appropriate officer having grant approval authority as prescribed in § 272.17(a) or (b) and shall be acted upon by that officer within 30 days.

#### § 272.16 Request from tribal governing body.

The Bureau shall not make a grant under this Part unless specifically and officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

#### § 272.17 Grant approval limitations.

(a) Area Office approval. Authority for approval of a grant application under this Part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes located within that Area Director's administrative jurisdiction.

(b) Central Office approval. Authority for approval of a grant application under this Part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes representing different Area Office administrative jurisdictions but located within the Commissioner's overall administrative jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 272.12. However, this does not include funds appropriated for Indian Business Development Fund grants which are administered under Part 80 of this chapter.

#### § 272.18 Submitting application to Agency Office.

An application for a grant under this Part shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 272.19. This does not include applications for initial planning grants to develop and complete larger grant applications. Such initial planning grant applications are submitted and acted upon as prescribed in § 272.15(b).

#### § 272.19 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this Part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this Part, the Superintendent shall:

(1) Acknowledge in writing receipt of the application within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 272.12, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

#### § 272.20 Deadline for Agency Office action.

Within 30 days of receipt of an application for a grant under this Part, the Superintendent shall take action as prescribed in § 272.19. Extension of this deadline will require consultation with and written consent of the applicant.

#### § 272.21 Area Office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following the applicable review procedure prescribed in § 272.19.

(2) Review the Superintendent's recommendation as pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraph (a) or (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

#### § 272.22 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this Part, the Area Director shall take action as prescribed in § 272.21. Extension of this deadline will require consultation with and written consent of the applicant.

#### § 272.23 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 272.19.

(b) Review Agency and Area Office recommendations as pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

#### § 272.24 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this Part the Commissioner shall take action as prescribed in § 272.23. Extension of this deadline will require consultation with and written consent of the applicant.

#### § 272.25 Grant execution and administration.

(a) Grants approved pursuant to § 272.17(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 272.17(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

#### § 272.26 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided

that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

**§ 272.27 Acceptance of tribal plans for the operation of Bureau programs.**

Any Bureau program, excluding any trust resources program, which is planned, replanned, designed or redesigned by a tribe under a grant provided under this part, or from any other resource, shall be implemented by the Bureau if requested by the tribe through resolution. However, before implementation the program shall meet the following requirements:

(a) Funding, staffing and other resources are available to implement the plan.

(b) The implementation of the plan would not cause a reduction in the quality or quantity of services to Indians.

(c) The plan meets the administrative planning requirements of the Bureau. However, the plan need not meet the planning requirements for the particular program.

(d) The plan provides a basis for the delivery of satisfactory services to Indian people, unless it can be demonstrated by the Bureau by substantial evidence that the plan will yield results which will be deleterious to the welfare of the Indian people to be served.

(e) The Commissioner may waive any regulatory requirements given elsewhere in this chapter or any other requirements not inconsistent with law. Inconsistencies between tribal plans and Bureau manual, guidelines, or other non-regulatory procedures are not constraints on the tribal plans.

**Subpart C—General Grant Requirements**

**§ 272.31 Applicability.**

The general requirements for grant administration in this Subpart are applicable to all Bureau grants provided to tribal governing bodies under this Part, except to the extent inconsistent with an applicable Federal statute or regulation.

**§ 272.32 Reports and availability of information to Indians.**

Any tribal governing body receiving a grant under this Part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available by the tribe within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (P.L. 93-502; 88 Stat. 1561).

**§ 272.33 Matching share.**

(a) Specific Federal laws notwithstanding, grant funds provided to tribal governing bodies under this Part may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes specified in § 272.12.

(b) Superintendents, Area Directors, and their designated representatives will, upon tribal request, assist tribes in obtaining information concerning other Federal grantor agencies with matching fund programs and will, upon tribal request, provide technical assistance to tribes in developing applications for submission to those Federal grantor agencies.

**§ 272.34 Performing personal services.**

Any grant provided under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

**§ 272.35 Fair and uniform services.**

Any grant provided under this Part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

**§ 272.36 Penalties.**

If any officer, director, agent, or employee of, or connected with, any recipient of a grant, subgrant, contract or subcontract under this Part, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds \$100, he shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

**Subpart D—Grant Revision, Cancellation, or Assumption**

**§ 272.41 Revisions or amendments of grants.**

(a) Requests for budget revisions or amendments to grants awarded under this Part shall be made as provided in § 276.14 of this chapter.

(b) Requests for revisions or amendments to grants provided under this Part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 272.19.

**§ 272.42 Assumption.**

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program can-

celled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

**Subpart E—Hearings and Appeals**

**§ 272.51 Hearings.**

Hearings referred to in § 276.15 of this chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

**§ 272.52 Appeals from decision or action by Superintendent.**

(a) A grantee may appeal any decision made or action taken by a Superintendent under this Part. Such appeal shall be made to the Area Director as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

**§ 272.53 Appeals from decision or action by Area Director.**

(a) A grantee may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

**§ 272.54 Appeals from decision or action by Commissioner.**

(a) A grantee may appeal any decision made or action taken by the Commissioner under this Part only as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

**§ 272.55 Failure of Agency or Area Office to act.**

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this Part, the applicant may at its option, request action by the next higher Bureau official who has grant approval authority as prescribed in this Part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

**PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT**

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Authority: 25 U.S.C. 452-456; sec. 202, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

## Subpart A—General Provisions

## § 273.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to set forth the application and approval process for education contracts under the Johnson-O'Malley Act. Such contracts shall be for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where

such support is necessary to maintain established State educational standards.

(b) The application and approval process in this part applies specifically to contracts with a State, school district, or Indian corporation.

(c) Contracts with tribal organizations for supplemental and operational support will be entered into only upon the request of an Indian tribe(s), and shall be subject to the provisions of Part 271 of this chapter and 41 CFR Part 14E-70, except as provided in § 273.11.

(d) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people; or,

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(e) Nothing in these regulations shall be construed to mandate an Indian tribe to request a contract or contracts. Such requests are strictly voluntary.

## § 273.2 Definitions.

As used in this Part:

(a) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(b) "Bureau" means the Bureau of Indian Affairs.

(c) "Commissioner" means the Commissioner of Indian Affairs.

(d) "Days" means calendar days.

(e) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(f) "Education plan" means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students under this Part.

(g) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian corporation" means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of "tribal organization" given in paragraph (u) of this section.

(i) "Indian Education Committee" means one of the entities specified by § 273.15.

(j) "Indian" means a person who is a member of an Indian tribe.

(k) "Johnson-O'Malley Act" means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49

Stat. 1458, 25 U.S.C. 452-456), and further amended by the Act of January 4, 1975 (88 Stat. 2203).

(l) "Operational support" means those expenditures for school operational costs in order to meet established State educational standards or State-wide requirements.

(m) "Pub. L. 93-638" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203).

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian tribe(s).

(o) "Reservation" or "Indian Reservation" means any Indian tribe's reservation, Pueblo, Colony, or Rancheria, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(p) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

(q) "Secretary" means the Secretary of the Interior.

(r) "State" means a State of the United States of America or any political subdivision of a State.

(s) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(t) "Supplemental programs" means those programs designed to meet the specialized and unique educational needs of eligible Indian students which may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors, and as provided by § 273.34(b).

(u) "Tribal government", "tribal governing body" and "tribal Council" means the recognized governing body of an Indian tribe.

(v) "Tribal organization," means the recognized governing body of any Indian tribe or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided*, That a request for a contract must be made by the Indian tribe that will receive services under the contract; *Provided further*, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.



**§ 273.3 Revision or amendment of regulations.**

In order to make any substantive revision or amendments to regulations in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the Federal Register in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), and (c) of this section.

**§ 273.4 Policy of maximum Indian participation.**

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval and implementation of all programs contracted under this Part shall be required.

**Subpart B—Application Process**

**§ 273.11 Eligible applicants.**

(a) Any State, school district, tribal organization or Indian corporation is eligible to apply for contracts for supplemental or operational support programs. For the purposes of this Part, previously private schools as defined in § 273.2(n) are considered tribal organizations.

(b) States, school districts, or Indian corporations shall apply for contracts for supplemental or operational support programs as required in this Part.

(c) Tribal organizations must comply with the following requirements to obtain contracts for supplemental programs or operational support:

(1) The application submitted by the tribal organization shall meet the requirements in § 273.20 in addition to those in § 271.14 of this chapter.

(2) The requirements in §§ 271.1 through 271.27, 271.41 through 271.52, 271.54, 271.61 through 271.68, and 271.81 through 271.84 shall apply to such contracts with tribal organizations.

(3) The provisions in §§ 271.71 through 271.77 of this chapter concerning retrocession and reassumption of programs do not apply to a tribal organization retroceding a contract for supplemental programs or operational support as the Bureau does not operate education programs authorized to be contracted under the Johnson-O'Malley Act. However, the tribal organization may retrocede such a contract and the Bureau will then contract with a State, school district, or Indian corporation under this Part for the supplemental programs or operational support.

(4) The requirements in §§ 273.12 through 273.18, 273.20, 273.21, 273.31 through 273.39, 273.41, 273.51 and 273.52 shall apply to such contracts with tribal organizations.

(5) The requirements in 41 CFR Part 14H-70 shall apply to such contracts with tribal organizations.

**§ 273.12 Eligible students.**

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this Part if they are ¼ or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts (a) which would serve Indian students on or near reservations and (b) where a majority of such Indian students will be members of the tribe(s) of such reservations (as defined in § 273.2(o)).

**§ 273.13 Proposals eligible for contracts.**

(a) Any proposal to contract for funding a program which meets the definition of a supplemental program given in § 273.2(b) will be considered an eligible proposal under this Part.

(b) (1) To contract for operational support, a public school district shall be required to establish as part of the proposal that:

(i) It cannot meet the applicable minimum State standards or requirements without such funds.

(ii) It has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs.

(iii) It has fully utilized all other sources of financial aid, including all forms of State aid and Pub. L. 874 payments. The State aid contribution per pupil must be at least equal to the State average.

(iv) There is at least 70 percent eligible Indian enrollment within the school district.

(v) It shall clearly identify the educational needs of the students intended to benefit from the contract.

(vi) It has made a good faith effort in computing State and local contributions

without regard to contract funds pursuant to this part.

(vii) It shall not budget or project a deficit by using contract funds pursuant to this Part.

(2) The requirements given in paragraph (b) (1) of this section do not apply to previously private schools.

(c) At his discretion, the Commissioner may consider as eligible a proposal to contract under which a school district will be reimbursed for the full per capita costs of educating Indian students who meet all of the following:

(1) Are members of recognized Indian tribes.

(2) Do not normally reside in the State in which the school district is located.

(3) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

**§ 273.14 Preparing the education plan.**

A prospective contractor in consultation with its Indian Education Committee(s) shall formulate an education plan and submit it to the appropriate Area Director as a part of the application to contract required by § 273.20. Such plan shall become a part of any contract awarded. The education plan shall contain:

(a) The education programs approved by the Indian Education Committee(s) as required in § 273.17.

(b) Other requirements for the education plan given in § 273.18.

**§ 273.15 Establishment of Indian Education Committee.**

(a) When a school district to be affected by a contract(s) for the education of Indians pursuant to this Part has a local school board not composed of a majority of Indians, the tribal governing body(s) of the Indian tribe(s) affected by the contract(s) under this Part shall specify one of the following entities to serve as the Indian Education Committee for the purpose of this Part:

(1) An Indian Education Committee to be elected from among the parents (including persons acting *in loco parentis* except school administrators or officials) of eligible Indian students enrolled in the school(s) affected by a contract(s) under this Part; or

(2) A local Indian committee established pursuant to section 305(b) (2) (B) (ii) of the Act of January 23, 1972 (86 Stat. 235) and existing prior to January 4, 1975; or

(3) An Indian advisory school board or Indian Education Committee established pursuant to the Johnson-O'Malley Act and existing prior to January 4, 1975.

(b) When the local school board is not composed of a majority of Indians and the tribal governing body(s) of the Indian tribe(s) affected by a contract(s) under this Part determine which of the entities provided for in paragraph (a) of this section is to serve as the Indian Education Committee for the purpose of this Part, it shall notify the Area Director of

program results, and dissemination thereof.

(4) Determination of staff and program effectiveness in meeting the stated needs of target students.

§ 273.19 Obtaining application forms.

Application forms, instructions, and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information required by § 273.20 is given in the application to contract.

§ 273.20 Content of application to contract.

An application for a contract under this Part shall be in writing and shall contain the following:

(a) Name, address, and telephone number of the proposed contractor.

(b) Name, address, and telephone number of the tribe(s) to be served by the contract.

(c) Descriptive narrative of the contract proposal.

(d) The education plan required by § 273.14.

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address.

(g) Documentation of the requirements for operational support in § 273.13

(b) (1).

§ 273.21 Tribal request for contract.

(a) An Indian tribal governing body(s) that desires that a contract be entered into with a tribal organization must so notify the Area Director no later than February 1 preceding the school year for which the contract will be let.

(b) If the tribal governing body's notice is not received by the date given in paragraph (a) of this section, the Area Director may contract with the State, school district, or Indian corporation under this Part.

§ 273.22 Application approval officials.

(a) Each Area Director is authorized to approve the contract(s) submitted by the State, school district, or Indian corporation under this Part which will provide services to Indian children within the jurisdiction of that Area Office.

(b) When a proposed contract(s) will provide services to Indian children within the jurisdiction of more than one Area Office, the contract must be approved by the Commissioner.

§ 273.23 Submitting application to Area Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of a single Area Office, the completed application shall be submitted to the Area Director of that Area Office.

§ 273.24 Area Office review and decision.

Upon receiving a contract application, the Area Director shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Area Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Area Director must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.25 Deadline for Area Office action.

(a) The Area Director shall approve or disapprove an application for a contract within sixty (60) days after the Area Office receives the application and any additional information requested in § 273.24(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.26 Submitting application to Central Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of two or more Area Offices, the completed application shall be submitted to the Commissioner through the respective Area Offices.

§ 273.27 Central office review and decision.

Upon receiving a contract application, the Commissioner shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Central Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.28 Deadline for Central Office action.

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional information requested in § 273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.29 Negotiating the contract.

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in § 273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

Subpart C—Funding Provisions

§ 273.31 Distribution formula.

(a) Funds for both supplemental programs and operational support shall be apportioned among the States on a substantially equal basis, based upon the number of eligible Indian students for whom funds are sought, with allowances being made for the actual cost of delivering educational services in each State; except that, any State or contractor who meets criteria in this Part and received operational support in FY 1976 may continue to receive such funds in FY 1977 and FY 1978 in addition to those described above. However, the amount of such assistance each year will be equal to that State or contractor's prior year operational support allocation reduced by one-third of its FY 1976 operational support allocation. Further, in FY 1977 no State shall receive less than 75% of the supplemental program assistance they received in FY 1975.

(b) Except as described in paragraph (a) of this section, all other funds shall

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be distributed among the contractors within each State so that each contractor will receive approximately the same amount for each eligible Indian student to be served under the contract.

(c) The Commissioner may make exceptions to the provisions of paragraphs (a) and (b) of this section based upon the special cultural, linguistic, social or educational needs of the communities involved, including the actual cost of education in the community.

**§ 273.32 Pro rata requirement.**

All monies provided by a contract pursuant to this Part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimus. Such de minimus participation must be approved by the Indian Education Committee.

**§ 273.33 Use of funds for operational support.**

All funds for school operational support shall be used to meet established State educational standards or State-wide requirements.

**§ 273.34 Use of other Federal, State and local funds.**

(a) Contract funds under this part shall supplement, and not supplant, Federal, State and local funds. Each contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this Part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children.

(c) Funds for operational support shall be used only as prescribed in § 273.33.

**§ 273.35 Capital outlay or debt retirement.**

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

**§ 273.36 Eligible subcontractors.**

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any

appropriate individual, organization or corporation.

**§ 273.37 Use of funds outside of schools.**

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

**§ 273.38 Equal quality and standard of education.**

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

**Subpart D—General Contract Requirements**

**§ 273.41 Special program provisions to be included in contract.**

All contracts under this Part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).

**§ 273.42 Civil Rights Act violations.**

In no instance shall there be discrimination against Indians or schools enrolling such Indians. When informed by a complainant or through its own discovery that possible violation of Title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds under this Part, the Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education, and Welfare of the possible violation of Title VI. The Department of Health, Education, and Welfare will conduct an investigation into the matters alleged, pursuant to a Memorandum of Understanding between the Department of the Interior

and the Department of Health, Education, and Welfare. If the report of the investigation conducted by the Department of Health, Education, and Welfare discloses a failure or threatened failure to comply with this Part, and if the non-compliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR 17.1, 17.8, and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the Commissioner or, at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR 17.8(e).

**§ 273.43 Advance payments.**

Advance payments to States, school districts and Indian corporations will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H except 41 CFR Part 14H-70.

**§ 273.44 Use and transfer of Government property.**

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the tribal government if such property is located on a reservation.

(b) In carrying out a contract made under this Part, the Area Director or Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee shall insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Other-

wise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

§ 273.45 Indian preference.

(a) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 273 and subject to the provisions of Part 14H of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b) and (c) of this section.

§ 273.46 Liability and motor vehicle insurance.

(a) States, school districts and Indian corporations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the con-

tractor may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of how small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, liability and motor vehicle insurance will not be required.

§ 273.47 Recordkeeping.

A contractor will be required to maintain a recordkeeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.). Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the operation of the contract.

(c) Provide for the creation, maintenance and safe guarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts.

(d) Provide for orderly retirement of permanent records in accordance with General Records Schedules and the Bureau Records Control Schedule, when there is no established system set up by the State, school district, or Indian corporation.

§ 273.48 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned

shall be further maintained until final determination has been made on the questioned expenditures.

(e) All contracts, non-confidential records concerning all students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program shall be made available by the contractor and local school officials to each member of the Indian Education Committee and to members of the public upon request. The contractor or local school official shall provide, free of charge, single copies of such documents upon request.

§ 273.49 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b) (1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 273.50 Annual reporting.

(a) A contractor under this Part shall make a detailed annual report to the approving official before September 15 of each year and covering the previous school year. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, information on the conduct of the program, a quantitative evaluation of the effectiveness of the contract program in meeting the



stated objectives contained in the applicant's educational plans, and a complete accounting of actual receipts at the end of the contract period.

(b) In addition to the yearly reporting requirement given in paragraph (a) of this section, the contractor shall furnish other contract-related reports when and as required by the Area Director or Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the Indian Education Committee(s) and to the tribe(s) under the contract at the same time as the reports are sent to the Bureau.

#### § 273.51 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds \$100, he shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

#### § 273.52 State school laws.

In those States where Public Law 83-280, 18 U.S.C. 1162 and 28 U.S.C. 1360 do not confer civil jurisdiction, State employees may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly-constituted governing body of the tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian tribal lands, reservations, or allotments.

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in loco parentis.

#### § 273.53 Applicable procurement regulations.

States, school districts, or Indian corporations wanting to contract with the Bureau under this part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR Part 1), as supplemented by the Interior Procurement Regulations (41 CFR Part 14), and the Bureau of Indian Affairs Procurement Regulations (41 CFR Part 14H), except 41 CFR Part 14H-70.

#### § 273.54 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(c) The contractor is subject to the penalties provided in subsection (d) of 5 U.S.C. 552a.

#### Subpart E—Contract Revision or Cancellation

##### § 273.61 Contract revision or amendment.

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program being contracted. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer. However, no program approved by the Indian Education Committee shall be altered from the time of its original approval to the end of the contract period without the written approval of the Committee.

##### § 273.62 Cancelling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties pursuant to this Part.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the

right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) which led to the cancellation have been remedied before it will be considered for another contract.

#### Subpart F—Appeals

##### § 273.71 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

##### § 273.72 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

##### § 273.73 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 273.71 and 273.72, may be appealed as provided in Part 2 of this chapter.

### PART 274—SCHOOL CONSTRUCTION CONTRACTS OR SERVICES FOR TRIBALLY OPERATED PREVIOUSLY PRIVATE SCHOOLS

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AUTHORITY: Sec. 204 and 208, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

## Subpart A—General Provisions

## § 274.1 Purpose.

The purpose of the regulations in this Part is to give the application and approval process for obtaining a contract or services from the Bureau for school construction for previously private schools now controlled and operated by tribes or tribally approved Indian organizations under sections 204 and 208 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

## § 274.2 Scope.

The Act authorizes the expenditure of funds authorized and appropriated under Part B of the Act to contract or provide services for school construction for tribally operated previously private schools. After an application has been completed and approved by the tribe, the application is forwarded through Bureau channels to the Commissioner for ranking by priority. If a project is within the funding priority, the Bureau contracting officer offers to negotiate a contract with the applicant subject to approval by the requesting tribe(s) for architectural-engineering design, facilities construction and purchase of equipment to provide educational facilities meeting Bureau space standards and construction code regulations. Subject to approval by the requesting tribe(s), the applicant then has the following options:

(a) Enter into a contract with the Bureau under which the applicant performs all or part of the necessary work with the Bureau performing the rest.

(b) Request that the Bureau perform or arrange for the performance of all the necessary work.

## § 274.3 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Attendance area" means, in relation to a particular school, the area in which the children who are normally served by that school reside.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner" means the Commissioner of Indian Affairs.

(f) "Contractor" means an applicant who has been awarded a contract under this Part.

(g) "Days" means calendar days.

(h) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(i) "Existing school facilities" means all facilities constructed as school buildings and used continuously for classroom purposes. Excluded are basement rooms, hallways, or other space, the use of which for school purposes (in view of the character, inaccessibility or other equally cogent reasons) seriously restricts the educational objective, or has impaired or will impair the health or safety of the school children.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Initial equipment" means any movable equipment necessary and appropriate to equip minimum school facilities. Such term does not include equipment purchased to replace any equipment which is obsolete or worn out and which was purchased with funds under the Act.

(m) "Minimum school facilities" means classroom and auxiliary rooms and initial equipment necessary to operate an approved educational program for the membership of the school at normal capacity in accordance with criteria established by the Bureau.

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau), that is operated primarily for Indian students from age 3 years through grade(s) 12; and, which at the time of application is controlled, sanctioned, or chartered by the governing body(s) of an Indian tribe(s).

(o) "Secretary" means the Secretary of the Interior.

(p) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(q) "Tribal government", "tribal governing body", and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided*, That a request for a contract or services must be made by the Indian tribe that will receive services under the

contract or from the Bureau by other means; *Provided further*, That in any case where a contract or services will affect more than one Indian tribe, the approval of each such Indian tribe shall be prerequisite to the approval of the application for the contract or services.

## § 274.4 Effect on existing Indian rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(b) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people; or

(c) Permitting significant reduction in services to Indian people as a result of this Part.

## § 274.5 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the Federal Register as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraph (a), (b), and (c), of this section.

## Subpart B—Application Process

## § 274.11 Eligible applicants.

Any tribal organization which meets all of the following criteria is eligible to apply for a contract with or services from the Bureau for school construction:

(a) The tribal organization must control and manage the previously private school for which the organization is applying for a contract or services under this Part.

(b) Title to the land on which the construction for the previously private school is located must be vested in the tribe or the United States; or, a lease for the useful life of the improvement must be entered into with the tribe or the United States for the ground on which it is located.

intendent having jurisdiction over the tribe(s) requesting the contract or services.

(b) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Agency Office within one Area, the application and documentation of the tribal requests shall be delivered or mailed to the Area Director involved.

(c) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Area Office, the application and documentation of the tribal requests shall be delivered or mailed to the Commissioner.

**§ 274.17 When to submit application.**

Applications may be submitted by a tribal organization to the Bureau at any time to be placed on the Bureau's priority listing.

**§ 274.18 Agency Office review and action.**

(a) The Superintendent has 30 days from receipt of an application to notify the applicant in writing of its receipt, review the application for completeness, and request any needed information from the applicant.

(b) When the Superintendent has determined that the application is complete, he will forward the completed application with documentation of the tribal request(s) to the Area Director having jurisdiction over that Agency Office with a written statement that the application is complete.

**§ 274.19 Area Office review and action.**

Within 30 days after receiving an application directly or from the Superintendent, the Area Director will take the following actions:

(a) Notify the applicant in writing that the application was received in the Area Office.

(b) Review each application submitted directly to the Area Office as provided in § 274.16(b) for completeness and obtain any needed information from the applicant.

(c) Assign each proposed project an Area Office priority. The Area Office will include an updated priority index with each application or group of applications transmitted to the Commissioner for appropriate action.

(d) Forward each application and documentation of tribal request(s) to the Commissioner.

**§ 274.20 Priorities for funding construction.**

As prescribed in §§ 274.19(c) and 274.21(b), the Area Director and Commissioner shall evaluate and assign priorities on the basis of the application data submitted as required by § 274.13 including:

(a) Education program required by § 274.13(g).

(b) Geographic attendance boundaries given in § 274.13(h).

(c) Enrollment characteristics given in § 274.13(i).

(d) Project description and justification required by § 274.13(j).

**§ 274.21 Central Office review and action.**

Within 30 days after receiving an application directly or from the Area Director, the Commissioner will take the following actions:

(a) Notify the applicant in writing that the application was received in the Central Office.

(b) Review each application submitted directly to the Commissioner as given in § 274.16(c) for completeness, request any needed information from the applicant, and assign the proposed project a priority.

(c) Update the Bureauwide priority listing of all approved projects in order of priority with the project with the highest priority listed first. As new applications are received, they will be added to the priority listing according to their ranking.

(d) Notify each applicant in writing of the project's priority ranking on the Bureauwide list. The applicant will be notified of any subsequent changes to that ranking if new applications were received with a higher ranking.

**§ 274.22 On-site inspection and cost estimate.**

(a) No later than three months before the new fiscal year begins, the Commissioner or his representative shall conduct an on-site inspection for projects high on the priority listing, beginning with the project ranked highest on the Bureauwide priority listing. The on-site inspection is to determine which buildings are to be retained, demolished or remodeled and to gather initial information required for development of the planning document.

(b) From this information, a tentative cost estimate for design, construction and equipment will be made for budget purposes in cooperation with the tribal organization.

**§ 274.23 Preparing a commitment-to-fund listing.**

As each high priority project is given an on-site inspection and a tentative cost estimate is made, the project will be placed on a commitment-to-fund listing. Projects will be added as long as the total of the tentative cost estimates is less than the amount of funds appropriated for previously private school construction for the new fiscal year. Each applicant will be notified in writing when the project has been placed on the commitment-to-fund listing.

**§ 274.24 Performing construction work.**

When a project has been placed on the commitment-to-fund listing, the applicant will be given the following options, subject to approval by the requesting tribe(s):

(a) To negotiate a contract with the Bureau to perform all of the work or part of the work needed for the project with the Bureau performing the rest. Such contracts shall comply with the require-

ments in Subpart C of this Part and with 41 CFR Part 14H-70.

(b) To have the Bureau perform or arrange for the performance of all the work needed.

**§ 274.25 Reapplication.**

Once an applicant has applied for a contract or services and the project has been placed on the Bureauwide priority listing, there is no need to reapply. The project will be carried on the priority listing until placed on the commitment-to-fund list. However, if changes occur which would affect the project's rank and, thus, its priority, the applicant must submit a new application.

**§ 274.26 Funding provisions.**

(a) No funds from any contract under this Part shall be made available by the Bureau directly to other than Indian tribes and tribal organizations. However, Indian tribes and tribal organizations assisted under this Part may use funds provided to subcontract for necessary services.

(b) Twenty-five (25) per cent of all funds appropriated under Title II, Part B, section 204 of the Act shall be expended for construction of previously private schools controlled and managed by a tribal organization. Any unobligated funds will be retained until completion of the project and unexpended funds returned to the Bureau. Projects which are partially funded shall be given first consideration for the additional funding necessary to complete such projects.

**Subpart C—General Contract Requirements**

**§ 274.31 Applicability.**

This Subpart applies only when the applicant exercises the option of contracting with the Bureau to perform all or part of the construction work.

**§ 274.32 Architectural design.**

(a) Plans and specifications for a project shall comply with such Federal, State and local laws, ordinances and regulations pertaining to standards or construction and safety requirements as may be applicable.

(b) An Architect/Engineer shall be selected by the contractor subject to the advice and assistance of the Commissioner who shall counsel the contractor with respect to professional qualifications and performance history of firms so the best qualified firm for the work is selected. No Architect/Engineer agreement shall be entered into by the contractor until the Commissioner has reviewed the agreement and consented in writing to its provisions.

(c) Plans and specifications must conform to the project description, with approved revisions. Such plans and specifications must be forwarded for the approval of the Commissioner including schematic design, design development, and final construction document.

**§ 274.33 Facilities construction.**

(a) The Commissioner may assist in preconstruction and construction activi-

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ties to assure conformity with the requirements of the Act. Approval of all proposed preconstruction documents will be obtained from the Commissioner. Assistance prior to the preparation of these and similar documents will be provided, upon request, by the Commissioner or his representative. A preliminary conference may be suggested with the project architect and others if that seems desirable. The Commissioner will provide sufficient copies of all forms used to prepare the documents required for the project.

(b) The Commissioner will provide, upon request, technical supervision and services to the contractor in connection with the construction of school facilities. When appropriate, such services will provide assistance with periodic inspection of construction progress and determine the propriety of making partial payments as construction progresses.

#### § 274.34 Selecting initial equipment.

Equipment procured with payments under this Part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

#### § 274.35 Payment to contractors.

(a) At the request of a contractor, the Bureau contracting officer may make advance payments under contracts made under this Part. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual apply to making the advance payments.

(b) Any request for advance payment by a contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance shall be limited to the amount of estimated expenditures for a period of time required to effect payment, based on experience in the locality. The initial advance shall be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances shall be made at times and in amounts determined necessary to insure availability of funds for timely payment of the contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

#### § 274.36 Use and transfer of Government property.

(a) The use of Government-owned facilities for tribal purposes may be authorized when not needed for Government activities. Transfer of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to the tribal organization under a use permit, the permittee shall insure the property against damage by flood, fire, rain, windstorm, vandalism, snow and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of the property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the tribal organization is self-insured and can present evidence of that fact to the Commissioner, insurance for lost or damaged property will not be required. However, the tribal organization will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(d) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractors may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

(4) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that a Bureau official is designated by the Commissioner or Area Director as custodian of the records.

#### § 274.37 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in con-

structing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the contractor is the recognized governing body of the tribe and the construction, alteration or repair work is being performed by the tribal organization or the tribe with its own employees.

#### § 274.38 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 274 and subject to the provisions of Part 14H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements that are not inconsistent with the purpose and intent of paragraph (a), (b), and (c) of this section.

#### § 274.39 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

#### § 274.40 Recordkeeping.

A contractor will be required to develop and maintain a record-keeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.



ties to assure conformity with the requirements of the Act. Approval of all proposed preconstruction documents will be obtained from the Commissioner. Assistance prior to the preparation of these and similar documents will be provided, upon request, by the Commissioner or his representative. A preliminary conference may be suggested with the project architect and others if that seems desirable. The Commissioner will provide sufficient copies of all forms used to prepare the documents required for the project.

(b) The Commissioner will provide, upon request, technical supervision and services to the contractor in connection with the construction of school facilities. When appropriate, such services will provide assistance with periodic inspection of construction progress and determine the propriety of making partial payments as construction progresses.

#### § 274.34 Selecting initial equipment.

Equipment procured with payments under this Part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

#### § 274.35 Payment to contractors.

(a) At the request of a contractor, the Bureau contracting officer may make advance payments under contracts made under this Part. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual apply to making the advance payments.

(b) Any request for advance payment by a contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance shall be limited to the amount of estimated expenditures for a period of time required to effect payment, based on experience in the locality. The initial advance shall be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances shall be made at times and in amounts determined necessary to insure availability of funds for timely payment of the contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

#### § 274.36 Use and transfer of Government property.

(a) The use of Government-owned facilities for tribal purposes may be authorized when not needed for Government activities. Transfer of title to such facilities may be arranged under the pro-

visions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to the tribal organization under a use permit, the permittee shall insure the property against damage by flood, fire, rain, windstorm, vandalism, snow and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of the property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the tribal organization is self-insured and can present evidence of that fact to the Commissioner, insurance for lost or damaged property will not be required. However, the tribal organization will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(d) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractors may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

(4) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that a Bureau official is designated by the Commissioner or Area Director as custodian of the records.

#### § 274.37 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in con-

structing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the contractor is the recognized governing body of the tribe and the construction, alteration or repair work is being performed by the tribal organization or the tribe with its own employees.

#### § 274.38 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 274 and subject to the provisions of Part 14H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements that are not inconsistent with the purpose and intent of paragraph (a), (b), and (c) of this section.

#### § 274.39 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

#### § 274.40 Recordkeeping.

A contractor will be required to develop and maintain a record-keeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

**§ 274.41 Audit and inspection.**

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access for audit and examination purposes to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program under the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide, free of charge, single copies of such documents upon request.

**§ 274.42 Freedom of information.**

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds ex-

ist for using the exemption given in paragraph (b) (1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

**§ 274.43 Reporting.**

(a) A contractor under this Part shall make a detailed report to the Commissioner after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribal governing body(s) who requested the contract at the same time as the reports are sent to the Bureau.

**§ 274.44 Repayment of funds.**

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

**§ 274.45 Penalties.**

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds \$100, he shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

**§ 274.46 Applicable procurement regulations.**

41 CFR Part 14H-70 provides the contract clauses which shall be included in contracts made with tribal organizations under this Part and places some requirements on them in addition to those given in this Subpart.

**§ 274.47 Contract revision or amendment.**

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. No revision or amendment shall be made without the

consent of the contractor. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

(b) If the contracting officer disapproves the proposed revision or amendment of the contract, he will notify the contractor in writing within 30 days after receiving the request. The notice shall state:

(1) The objections to the requested revision or amendment.

(2) The right of the contractor to appeals provided in Subpart C of 43 CFR Part 4.

**§ 274.48 Cancelling a contract for cause.**

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(3) That the Bureau may furnish technical advice and assistance to help overcome the deficiencies in the contract performance, when requested.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. However, when the contract is with other than the governing body of the Indian tribe, the advice of the tribe(s) will be obtained to determine how they wish the work to be performed.

**§ 274.49 Privacy Act requirements.**

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552 a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior

## RULES AND REGULATIONS,

approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

## Subpart D—Appeals

## § 274.51 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

## § 274.52 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

## § 274.53 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 274.51 and 274.52 may be appealed only as provided in Part 2 of this chapter.

## PART 275—STAFFING

- Sec.  
275.1 Purpose and scope.  
275.2 Definitions.  
275.3 Methods for staffing.  
275.4 Implementing regulations.

AUTHORITY: Sec. 502, 84 Stat. 1909, 1925; Sec. 105, Pub. L. 93-638, 88 Stat. 2203; 25 U.S.C. 48.

## § 275.1 Purpose and scope.

The purpose of this Part is to outline methods available to tribes for utilizing the services of Bureau employees. These regulations are not intended to prevent an Indian tribe or tribal organization from staffing their programs by other methods they feel appropriate. However, when an Indian tribe or tribal organization decides to provide Bureau employees certain Federal benefits, Civil Service Commission regulations must be adhered to.

## § 275.2 Definitions.

As used in this Part:

- (a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).  
(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.  
(c) "Bureau" means the Bureau of Indian Affairs.  
(d) "Commissioner" means the Commissioner of Indian Affairs.  
(e) "Days" means calendar days.  
(f) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the

Secretary to Indians because of their status as Indians.

(g) "Indian" means a person who is a member of an Indian tribe.

(h) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(i) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(j) "Tribal government" "tribal governing body," and "tribal council" means the recognized governing body of any Indian tribe.

(k) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

## § 275.3 Methods for staffing.

(a) An Indian tribal organization may use any of the following three methods to employ or obtain the services of Bureau employees:

(1) Agreement in accordance with the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3376). The agreement may be arranged between the tribal organization, the employee, and the Area Director or Commissioner. Assistance will be provided by the Area Personnel Office in complying with Civil Service instructions (Federal Personnel Manual Chapter 334) for completing an agreement.

(2) Employment of Bureau employees on or before December 31, 1985, when serving under an appointment not limited to one year or less. A mutual agreement will be made between a tribal organization and the employee before leaving Federal employment to retain coverage for any of the following Federal benefits:

- (i) Compensation for work injuries.  
(ii) Retirement.  
(iii) Health insurance.  
(iv) Life insurance.

(3) An agreement by an Indian tribe in accordance with the 1834 Act (25 U.S.C. 48) may be made in connection with contracts under section 102 of the Act.

(i) The agreement may provide for the tribal government to direct the day-to-day activities of Bureau employees. Tribal government direction of Bureau employees means the tribal chairman or other tribal official, as designated by the tribal governing body, is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments of each such Bureau employee are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

(ii) The agreement to direct day-to-day activities of Bureau employees shall include all employees:

(A) whose positions are in the program or portion of the program to be contracted; or

(B) in a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program.

(iii) The proposed agreement will be worked out between the tribe, the Superintendent, and the Area Director and forwarded to the Commissioner for final approval.

(b) When a contract application under Part 271 of this chapter does not include a proposed agreement for direction of Bureau employees, the application must be submitted at least 120 days in advance of the proposed effective date of the contract to allow time for placement of affected employees.

## § 275.4 Implementing regulations.

Regulations to implement section 105 of the Act will be issued by the Civil Service Commission. The regulations will cover the situations described in paragraphs (a) (1) and (a) (2) of § 275.3.

## PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

- Sec.  
276.1 Purpose and scope.  
276.2 Definitions.  
276.3 Cash depositories.  
276.4 Bonding and insurance.  
276.5 Recordkeeping.  
276.6 Program income.  
276.7 Standards for grantee financial management systems.  
276.8 Financial reporting requirements.  
276.9 Monitoring and reporting program performance.  
276.10 Grant payment requirements.  
276.11 Property management standards.  
276.12 Procurement standards.  
276.13 Indian preference in grant administration.  
276.14 Budget revision.  
276.15 Grant closeout.  
276.16 Subgrants and subcontracts to non-profit organizations.

## APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

## APPENDIX B—FINANCIAL REPORTING REQUIREMENTS

AUTHORITY: 34 CFR 256; Sec. 104, Public Law 93-638, 88 Stat. 2203, unless otherwise noted.

## § 276.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to give the uniform administrative requirements for grants awarded by the Bureau of Indian Affairs.

(b) The regulations in this Part shall apply to all grants awarded by the Bureau of Indian Affairs unless the Part which gives the application process and special requirements for the specific type of grant states otherwise.

## § 276.2 Definitions.

As used in this part:

- (a) "Advance by Treasury check" means a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

(b) "Date of completion" means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs" means those charges to a grant which the Bureau or its representative determines to be unallowable.

(d) "Economic enterprise" means any commercial, industrial, agricultural or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(e) "Excess property" means property under the control of the Bureau which, as determined by the Commissioner, is no longer required for its needs.

(f) "Expendable personal property" means all tangible personal property other than nonexpendable property.

(g) "Grant closeout" means the process by which the Bureau determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the Bureau.

(h) "Grantee" means the entity which is responsible for administration of the grant.

(i) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(j) "Letter of credit" means an instrument certified by an authorized official of the Bureau which authorizes a grantee to draw funds when needed from the Treasury, through a Regional Disbursing Office, in accordance with the provisions of Treasury Circular No. 1075 as modified and supplemented by a memorandum of understanding between the Bureau of Government Financial Operation, Department of the Treasury and the Department of the Interior.

(k) "Nonexpendable personal property" means tangible personal property having useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

(l) "Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

(m) "Real property" means land, land improvements, structures and appurtenances thereto, excluding removable personal property, machinery and equipment.

(n) "Reimbursement by Treasury check" means a payment made to a grantee with a Treasury check upon re-

quest for reimbursement from the grantee.

(o) "Suspension of a grant" means an action by the Bureau which temporarily suspends assistance under the grant pending corrective action by the grantee or pending decision to terminate the grant by the Bureau.

(p) "Termination of a grant" means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

(q) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or bodies of which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 276.3 Cash depositories.

(a) Except for situations described in paragraphs (b) and (c) of this section, the Bureau will not:

(1) Require physical segregation of cash depositories for Bureau grant funds provided to a grantee.

(2) Establish any eligibility requirements for cash depositories in which Bureau grant funds are deposited by grantees or their subgrantees.

(b) A separate bank account shall be used when payments under letter of credit are made on a "check-paid" basis in accordance with agreements entered into by a grantee, the Bureau, and the banking institutions involved. A check-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

(c) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 276.4 Bondings and insurance.

In administering Bureau grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. The Bureau will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in paragraphs (a) and (b) of this section.

(a) The recipient of a Bureau grant which requires contracting for construction or facility improvement (including any Bureau grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding \$100,000. For contracts exceeding \$100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm

commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(b) Where, in connection with a Bureau grant, the Bureau also guarantees the payment of money borrowed by the grantee, the Bureau may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed to be sufficient to protect adequately the interests of the Federal Government.

§ 276.5 Recordkeeping.

(a) The Bureau shall not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to a Bureau grant, or to any subgrant (or negotiated contract exceeding \$2500) under a grant, shall be retained for a period of three years, with the following qualifications:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Bureau grant funds shall be retained for three years after its final disposition.

(3) When grant records are transferred to or maintained by the Bureau, the three-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) Grantees are authorized, if they desire, to substitute microfilm copies in lieu of original records.

(d) The Bureau shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping the Bureau may make arrangements with the grantee for the grantee to retain any records which are continuously needed for joint use.

(e) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the grantees and their subgrantees which are pertinent to a specific grant



program for the purpose of making audit, examination, excerpts, transcripts and copies at government expense.

(f) Unless otherwise required by law, the Bureau shall not place restrictions on grantees which will limit public access to the grantee's records created as part of the grant except when records must remain confidential. Following are some of the reasons for withholding records:

- (1) Prevent a clearly unwarranted invasion of personal privacy;
- (2) Specifically required by statute or Executive Order to be kept secret;
- (3) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

#### § 276.6 Program income.

(a) No grantee receiving a grant shall be held accountable for interest earned on grant funds, pending their disbursement for program purposes.

(b) Proceeds from the sale of real or personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with § 276.11.

(c) Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Bureau share of costs will be based. After termination or completion of the grant, the Bureau share of royalties in excess of \$200 received annually shall be returned to the Bureau in the absence of other specific agreements between the Bureau and the grantee. The Bureau share of royalties shall be computed on the same ratio basis as the Bureau share of the total project cost.

(d) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be either:

- (1) Added to funds committed to the project by the Bureau and the grantee and be used to further eligible program objectives, or
- (2) Deducted from the total project costs for the purpose of determining the net costs on which the Bureau share of costs will be based.

(e) Grantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

#### § 276.7 Standards for grantee financial management systems.

(a) Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

- (1) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements and for each subgrant in accordance with the

grantees' requirements. Except when specifically required by law, the Bureau will not require financial reporting on the accrual basis from tribal organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, tribal organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(2) Records which identify adequately the source and application of funds for grant—or subgrant—supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(4) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Subgrantees shall institute similar procedures when funds are advanced by the grantee.

(6) Procedures for determining the allowability and allocability of costs shall be in accordance with the applicable cost principles prescribed in Appendix A of this Part.

(7) Accounting records which are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph (a) of this section.

#### § 276.8 Financial reporting requirements.

Requirements for grantees to report financial information to the Bureau, and to request advances and reimbursement when a letter of credit method is not used, are prescribed in Appendix B of this Part.

#### § 276.9 Monitoring and reporting program performances.

(a) Grantees shall constantly monitor the performance under grant-sup-

ported activities to assure that adequate progress is being made toward achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Grantees shall submit the performance reports to the Bureau with the Financial Status Reports (prescribed in Appendix B of this Part) in the frequency established by Appendix B. The Bureau shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement (prescribed in Appendix B) when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the Bureau as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Bureau assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in § 276.14, the grantee shall submit a request for budget revision.

(f) The Bureau shall make site visits as frequently as practicable to:

- (1) Review program accomplishments and management control systems.
- (2) Provide such technical assistance as may be required, or requested.

#### § 276.10 Grant payment requirements.

(a) Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by the Bureau where all of the following conditions exist:

- (1) When there is or will be a continuing relationship between a grantee

and the Bureau for at least a 12-month period and the total amount of advances to be received within that period from the Bureau is \$250,000, or more, as prescribed by Treasury Circular No. 1075.

(2) When the grantee has established or demonstrated to the Bureau the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) When the grantee's financial management system meets the standards for fund control and accountability prescribed in § 276.7.

(b) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraphs (a) (2) and (3) of this section.

(c) The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either paragraph (a) (2) or (a) (3), or both. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Bureau grant assistance constitutes a minor portion of the program.

(d) Unless otherwise required by law, the Bureau shall not withhold payments for proper charges made by grantees at any time during the grant period unless:

(1) A grantee has failed to comply with the program objectives, grant award conditions, or Bureau reporting requirements; or

(2) The grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the Bureau may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

(e) Appendix B of this Part provides the procedures for requesting advances or reimbursements.

**§ 276.11 Property management standards.**

(a) Grantees may follow their own property management policies and procedures if they observe the requirements of this section. With respect to property covered by this section, the Bureau may not impose on grantees any requirements (including property reporting requirements) not authorized by this Part unless specifically required by Federal law.

(b) Title to real property to be acquired in whole or in part from a Bureau grant under Part 272 of this Chapter shall vest in one of the following manners:

(1) Title may be taken by the United States in trust for the Indian tribe upon the request of the tribe and when the real property to be acquired is within the

reservation boundaries or adjoins on at least two sides other trust or restricted lands as prescribed in Part 272 of this chapter.

(2) Fee title to the acquired real property shall vest in the Indian tribe whenever the acquisition does not meet the criteria in paragraph (b) (1) of this section or unless for other reasons a tribe requests title to be taken in the name of the United States. In the absence of applicable statutory authority governing the disposition of real property acquired by a tribe, the tribe shall use the real property for the authorized purposes and in accordance with any other requirements imposed by the terms and conditions of the original grant. Changes in use compatible to other tribal programs may be authorized by the Bureau. When no longer needed for the authorized purposes, the real property shall be used in accordance with the standards set forth in § 276.11(d) (1) for non-expendable personal property. Accordingly, the following priority order for use of such property shall be:

- (i) Other grants from the Bureau.
- (ii) Grants from other Federal agencies.
- (iii) Tribal purposes consistent with those authorized for support by Bureau grants.
- (iv) Tribal official activities.

(3) In those instances where the Indian tribe requests, title may be acquired by the United States. Use of these acquired real property interests will be subject to the authorized purposes and in accordance with the provisions of the original grant. Upon a determination that the real property is no longer needed for the authorized purposes, disposition may be made by declaring it excess under provisions of the Act of January 2, 1975 (88 Stat. 1954) and title transferred to the Secretary to be held by the United States in trust for the tribe. Where real property does not meet the requirements under the Act of January 2, 1975 (88 Stat. 1954), the tribe may elect to acquire title under applicable enabling statutory authorities, or in the absence of statutory authority, request withholding disposition in aid of legislation, or authorize disposal under the General Services Administration procedures.

(c) The provisions of paragraph (b) (2) and (3) of this section shall also apply when real property is acquired in whole or in part by a Bureau grant other than that provided under Part 272 of this Chapter. However, when such property is acquired by a grantee other than an Indian tribe, or a tribal governing body, fee simple title to the property shall vest in the grantee upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirements, in addition to any other requirements imposed by the terms and conditions of the grant:

(1) The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The grantee shall obtain approval by the Bureau for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in paragraphs (c) (1) and (2) of this section, the grantee shall return all real property furnished or purchased wholly with Bureau grant funds to the control of the Bureau. In the case of property purchased in part with Bureau grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

(d) Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Bureau or acquired with Bureau funds are set forth below:

(1) *Nonexpendable personal property acquired with Bureau funds.* When non-expendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided in paragraph (d) (1) (iv) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(i) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal grants it has received in the following order of priority:

(A) Other grants from the Bureau needing the property.

(B) Grants of other Federal agencies needing the property.

(ii) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(A) Nonexpendable property with an acquisition cost of less than \$500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(B) All other nonexpendable property. The grantee may retain the property for

its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(iii) If the grantee has no need for the property, disposition of the property shall be made as follows:

(A) Nonexpendable property with an acquisition cost of \$1,000 or less. Except for that property which meets the criteria of paragraph (d) (1) (ii) (A) of this section, the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with paragraph (d) (1) (iii) of this section.

(B) Nonexpendable property with an acquisition cost of over \$1,000. The grantee shall request disposition instructions from the Bureau. The Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(1) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(2) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(3) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau an amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(iv) Where the Bureau determines that property with an acquisition cost of \$1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(A) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(B) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to issue disposition instructions within 120 days, the grantee shall apply the standards of paragraphs (d) (1) (i), (d) (1) (ii) (B), and (d) (1) (iii) (B) of this section.

(2) Federally-owned nonexpendable personal property. Unless statutory au-

thority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(e) The grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Bureau for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d) (1) (ii) (B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated

and administered in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for heads of executive departments and agencies), dated August 23, 1971, and Statement of Government Patent Policy as printed in 38 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Bureau reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

#### § 276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee officials to

avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b) (3) (vi) of this section is necessary to accomplish sound procurement. However, procurement of \$10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the Bureau for prior approval).

(C) The total amount involved does not exceed \$10,000;

(D) The contract is for personal or professional services, or for any service

to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over \$10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over \$100,000, grantees shall observe the bonding requirements provided in § 276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order No.

11246, entitled "Equal Employment Opportunity," as amended by Labor Regulations (41 CFR Part 60). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over \$2,000 for construction contracts and over \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles



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ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of \$10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

#### § 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this Part.

#### § 276.14 Budget revision.

Criteria and procedures to be followed by grantees in reporting deviations from grant budgets and requesting approval for budget revisions are as follows:

(a) For nonconstruction grants, grantees shall request prior approvals promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported program.

(2) The revision indicates the need for additional Bureau funding.

(3) The grant budget is over \$100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed \$10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(4) The grant budget is \$100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(5) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(6) The revisions pertain to the addition of items requiring approval in accordance with the provisions of Appendix A of this Part.

(b) All other changes to nonconstruction grant budgets, except for the changes described in paragraph (d) of this section do not require approval. These changes include (1) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and (2) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) For construction grants, grantees shall request prior approval promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported programs.

(2) The revision increases the budgeted amounts of Bureau funds needed to complete the project.

(d) When the Bureau awards a grant which provides support for both construction and nonconstruction work, the Bureau may require, in the grant agreement, the grantee to request prior approval before making any fund or budget transfers between the two types of work supported.

(e) For both construction and nonconstruction grants, the Bureau shall require tribal grantees to notify the Bureau promptly whenever the amount of Bureau authorized funds is expected to exceed the needs of the grantee by more than \$5,000 or 5 percent of the Bureau grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

(f) When requesting approval for budget revisions, grantees shall use the budget forms which were used in the

grant application. However, grantees may request by letter the approvals required by the provisions of Appendix A of this Part.

(g) Within 30 days from the date of receipt of the request for budget revisions, the Bureau shall review the request and notify the grantee whether or not the budget revisions have been approved. If the Bureau does not reach a decision prior to the end of the 30 day period or should the grantee not be notified of the Bureau's decision by the end of the 30 day period the grantee may appeal directly to the Commissioner.

#### § 276.15 Grant closeout.

(a) In closing out Bureau grants, the following shall be observed:

(1) Upon request, the Bureau shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall immediately refund to the Bureau any unencumbered balance of cash advanced to the grantee.

(3) The Bureau shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The Bureau may grant extensions when requested by the grantee.

(4) The Bureau shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of § 276.11.

(6) If a final audit has not been performed before the closeout of the grant, the Bureau shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension. When a grantee has materially failed to comply with the terms and conditions of a grant, the Bureau may after reasonable notice to the grantee, suspend the grant. The notice preceding suspension shall include the effective date of the suspension, the reasons for the suspension, the corrective measures necessary for reinstatement of the grant, and, if there is no immediate threat to safety, a reasonable time frame for corrective action prior to actual suspension. No obligations incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the Bureau may at its discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspensions if such costs would otherwise be allowable under the applicable cost principles specified in Appendix A of this Part. Appropriate adjustments to the payments under the suspended grant will be made, either by withholding the payments or by not allowing the grantee credit for disbursements which he may make in liquidation of unauthorized obligations he incurs during the period of suspension. Suspensions shall remain in

effect until the grantee has taken corrective action to the satisfaction of the Bureau or given assurances satisfactory to the Bureau that corrective action will be taken, or until the Bureau cancels the grant.

(c) (1) Cancellation for cause. The Bureau may cancel any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has:

(i) Materially failed to comply with the terms and conditions of the grant;

(ii) Violated the rights or endangered the health, safety, or welfare of any persons;

(iii) Been grossly negligent in or has mismanaged the handling or use of funds provided under the grant.

(2) When it appears that cancellation of a grant shall become necessary, the Bureau shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The Bureau shall also offer, and provide if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the Bureau provides notice of intent to cancel the grant as provided in paragraph (c)(3) of this section.

(3) Upon deciding to cancel for cause, the Bureau shall promptly notify the grantee in writing of that decision, the reasons for the cancellation, and the effective date. The Bureau shall also provide a hearing for the grantee before cancellation. However, the Bureau may immediately cancel the grant, upon notice to the grantee, if the Bureau determines that continuance of the grant poses an immediate threat to safety. In this event, the Bureau shall provide a hearing for the grantee within ten (10) days of cancellation.

(4) Payments made to grantees or recoveries by the Bureau under grants cancelled for cause shall be in accordance with the legal rights and obligations of the parties.

(d) (1) Cancellation on other grounds. Except as provided in paragraph (c) of this section, grants may be cancelled in whole or in part only as follows:

(i) By the Bureau with the consent of the grantee, in which case the two parties shall agree upon the cancellation conditions, including the effective date, and in the case of partial cancellation, the portion to be cancelled; or

(ii) By the grantee, upon written notice to the Bureau, setting forth the reasons for the cancellation, the effective date, and, in the case of partial cancellation, the portion to be cancelled.

(2) When a grant is cancelled in accordance with paragraph (d) of this section, the grantee shall not incur new obligations for the cancelled portion after the effective date, and shall cancel as many outstanding obligations as possible. The Bureau shall allow full credit to the grantee for the Bureau share of the noncancellable obligations properly

incurred by the grantee before cancellation.

§ 276.16 Subgrants and subcontracts to non-profit organizations.

The uniform administrative requirements in this part, including the cost principles in Appendix A, to this part, are applicable to all subgrants or subcontracts made by a grantee in accordance with the provisions of this chapter. However, these requirements and cost principles are applicable as minimum standards for subgrants or subcontracts made to nonprofit organizations. Accordingly, the grantee may prescribe additional or more stringent requirements with regard to subgrants or subcontracts made to non-profit organizations.

APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

PART I—GENERAL

A. Purpose and scope. 1. Objectives. This attachment sets forth principles for determining the allowable costs of programs administered by grantees under grants from the Bureau. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Bureau and tribal participation in the financing of a particular grant. They are designed to provide that Bureau assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. Policy guides. The application of these principles is based on the fundamental premises that:

a. Grantees are responsible for the efficient and effective administration of grant programs through the application of sound management practices.

b. The grantee assumes the responsibility for seeing that Bureau assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. Application. These principles will be applied by the Bureau in determining costs incurred by grantees under Bureau grants (including subgrants, contracts by grantees and subcontracts).

B. Definitions. 1. Approval or authorization of the Bureau means documentation evidencing consent prior to incurring specific cost.

2. Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Bureau as a discharge of the grantee's accountability for Bureau funds.

4. Cost objective means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. Federal agency means any department, agency, commission, or instrumentality in

the executive branch of the Federal Government which makes grants to grantees.

6. Grant means an agreement between the Bureau and a grantee whereby the Bureau provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Appendix as applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a grantee, including contracts, subcontracts and subgrants.

7. Grant program means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. Grantee means the entity which is responsible for administration of the grant.

9. Services, as used herein, means goods and facilities, as well as services.

10. Supporting services means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. Basic guidelines. 1. Factors affecting allowability of costs. To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of a grantee.

b. Be authorized or not prohibited under applicable laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. Allocable costs. a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome funds deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section I.

3. Applicable credits. a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indentities of losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Bureau funds are received or are available

from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use of depreciation of items donated or financed by the Bureau to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

**D. Composition of cost.** 1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

**E. Direct costs.** 1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the other ultimate cost objective.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

**F. Indirect costs.** 1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Part. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant

may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Bureau grants may be subject to laws that limit the amount of indirect costs that may be allowed. In this event, the Bureau will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. *Cost incurred by organizations other than the grantee.* 1. *General.* The cost of service provided by other organizations may only include allowable direct costs of the service plus a prorata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of an organization and his staff assistants not directly involved in operations. However, supervision by the head of an organization whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying organizations.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another organization, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another organization (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost incurred by grantee for others.* 1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee to another agency.

I. *Cost allocation plan.* 1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included

in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee should cover all joint costs of the grantees as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the Federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Bureau, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

4. *Negotiation and approval of indirect cost proposals for grantees.* a. The Bureau, in collaboration with the other Federal agencies and offices concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the grantees. These plans will cover central support service costs of the grantees.

b. The Department of the Interior Office of Audit and Investigation will have responsibility similar to that set forth in a., above, for the negotiation, approval, and audit of the indirect cost proposal.

c. Questions concerning the cost allocation plans approved under a. and b., above, should be directed to the Bureau.

#### PART II—STANDARDS FOR SELECTED ITEMS OF COST

A. *Purpose and applicability.* 1. *Objective.* This attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this Appendix.

B. *Allowable costs.* 1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by grantee advisory councils or committees established pursuant to Bureau requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office participate in the grantee budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central store's organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.* a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is responsible for the services rendered, (2) follows an appointment made in accordance with tribal government ordinances and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b., below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the tribal government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowance.* a. Grantees may be compensated for the use of their own buildings, capital improvements,

and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Bureau through charges to Bureau grant programs or otherwise, irrespective of whether title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the Bureau.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected Federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and in other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities,

employees' counseling services, employee information publications, and any related expenses incurred, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are allowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.* a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to grantees at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.



25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Bureau.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of the Bureau.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Bureau as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the Bureau.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the Bureau.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Bureau.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Bureau. When assets acquired with Bureau grant funds are (a) sold, (b)

no longer available for use in a Federally sponsored program or (c) used for purposes not authorized by the Bureau, the Bureau's equity in the asset will be refunded in the same proportion as Bureau participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the Bureau has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Bureau are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Bureau is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for on-going programs is allowable except that the cost of studies performed by agencies other than the grantee or outside consultants is allowable only when authorized by the Bureau.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee is allowable subject to such prior authorization as may be required by the Bureau.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

9. *Tribal government officer salaries and expenses.* Identifiable salary and expense costs incurred as a direct result of a tribal government officer's service to a grant program provided under this chapter are allowable subject to advance agreement with and approval by the Bureau. A general limitation in this regard is prescribed in section D.6.

D. *Unallowable costs.* 1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainments.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Tribal officer salaries and expenses.* The salaries and expenses of tribal government officers are considered a cost of general tribal government and are unallowable except as prescribed in Section C.9.

7. *Interest and other financial costs.* Interest on borrowing (however requested), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

#### APPENDIX B—FINANCIAL REPORTING REQUIREMENTS

A. *Purpose and scope.* This appendix prescribes requirements for grantees to report financial information to the Bureau and to request advances and reimbursement when a letter-of-credit method is not used.

B. *Definitions.* 1. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performance are required.

2. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from: (1) services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

3. *Disbursements.* Disbursements are payments in cash or by check.

4. *Bureau funds authorized.* Funds authorized represent the total amount of the Bureau funds authorized for obligations and establish the ceilings for obligation of Bureau funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

5. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

6. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

7. *Program income.* Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

8. *Unobligated balance.* The unobligated balance is the portion of the funds authorized by the Bureau which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

9. *Unpaid obligations.* Unpaid obligations represent the amount of obligations incurred by the grantee which have not been paid.

C. *Standard forms.* 1. Only the following forms will be authorized for obtaining financial information from grantees for grant programs:

a. *Financial Status Report.* (1) The Bureau shall require grantees to use a standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The Bureau may, however, have the bursement (paragraph 2a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The Bureau shall prescribe whether the report shall be on a cash or accrual basis. If the Bureau requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grant agreement shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be approved when requested by the grantee.

b. *Report of federal cash transactions.* (1) When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit a report of Federal Cash Transactions. The Bureau shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) The grant agreement may require forecasts of Federal cash requirements in the Remarks section of the report.

(3) When practical and deemed necessary, the Bureau may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) The Bureau shall accept the identical information from the grantees in a machine-usable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Bureau shall require a monthly report.

(6) The Bureau shall waive the requirement for submission of a Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per grantee provided that such advances are monitored through other forms contained in this Appendix or the grantee's accounting controls are adequate to minimize excessive Federal advances.

2. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Request for advance or reimbursement.* (1) The "Request for Advance or Reimbursement" form is the standard form for all non-

construction grant programs when letters of credit or predetermined automatic advance methods are not used. The Bureau, however, has the option of using this form for construction programs in lieu of an "Outlay Report and Request for Reimbursement for Construction Programs" (paragraph 2b) and shall specify in the grant agreement.

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of a Request for Advance or Reimbursement.

b. *Outlay Report and Request for Reimbursement for Construction Program.* (1) The "Outlay Report and Request for Reimbursement for Construction Programs" form is the standard format to be used for requesting reimbursement for construction programs. The Bureau may, however, have the option of substituting a "Request for Advance or Reimbursement" form (paragraph 2a) in lieu of this form when the Bureau determines that the former provides adequate information to meet its needs as stated in the grant agreement.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of an "Outlay Report and Request for Reimbursement for Construction Programs" form.

3. When the Bureau needs additional information in using these forms, the following shall be observed:

a. When necessary to comply with future legislative requirements, the Bureau shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, the Bureau shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this Appendix.

c. The Bureau, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

**PART 277—SCHOOL CONSTRUCTION CONTRACTS FOR PUBLIC SCHOOLS**

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**Subpart B—Application Process**

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- 277.21 Costs included in contracts.
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- 277.23 Facilities construction.
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- 277.31 Audit and inspection.
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- Sec. 277.33 Reporting.
- 277.34 Repayment of funds.
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**Subpart D—Contract Revision or Cancellation**

- 277.41 Contract revision or amendment.
- 277.42 Cancelling a contract for cause.

**Subpart E—Appeals**

- 277.51 Contract appeal.
- 277.52 Appeal from decision to cancel contract for cause.
- 277.53 Other appeals.

AUTHORITY: Sec. 204, Pub. L. 93-638, 88 Stat. 2203, unless otherwise noted.

**Subpart A—General Provisions**

**§ 277.1 Purpose.**

The purpose of the regulations in this Part is to give the application and approval process for a State or local education agency to obtain school construction contracts from the Bureau under Section 204 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203), to assist in the education of Indians.

**§ 277.2 Scope.**

(a) The application process for public school construction contracts under Section 204 of Pub. L. 93-638 is given in 20 U.S.C. 631-645 and 45 CFR 114. The application process is administered by and is the responsibility of the Commissioner of Education. The Commissioner of Indian Affairs participates with the Commissioner of Education in preparation of programs, cost estimates and other supplemental data which are part of the application and national priority index. The Commissioner of Education furnishes the national priority index to the Bureau at the start of each fiscal year.

(b) The Bureau requests and receives funding for acquisition of sites and for architectural-engineering design, facilities construction and equipment for the program. Funds are allocated to projects by the Bureau on the basis of funding priorities as established by the Commissioner of Education. In accordance with the approved program, a contract is negotiated with the applicant by a Bureau contracting officer, designated by the Commissioner, for the acquisition of sites and for the design, construction and purchase of equipment to provide educational facilities meeting standards of construction given in Pub. L. 81-815.

**§ 277.3 Definitions.**

- As used in this Part:
- (a) "Bureau" mean the Bureau of Indian Affairs.
  - (b) "Commissioner of Education" means the United States Commissioner of Education, Department of Health, Education, and Welfare.
  - (c) "Commissioner of Indian Affairs" means the Commissioner of Indian Affairs, Department of the Interior.
  - (d) "Contractor" means an applicant who has been awarded a contract under this Part.

## RULES AND REGULATIONS

(e) "Days" means calendar days.

(f) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(g) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian" means a person who is a member of an Indian tribe.

(i) "P.L. 81-815" means the Act of September 23, 1950 (P.L. 81-815, 72 Stat. 548), as amended.

(j) "P.L. 93-638" means the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 88 Stat. 2203).

(k) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission or similarly constituted assembly.

(l) "Secretary" means the Secretary of the Interior.

(m) "State" means a State of the United States of America or any political subdivision of a State.

(n) "State education agency" means the State Board of Education or other agency or office primarily responsible for supervision by the State of public elementary and secondary schools or, if there is no such office or agency, an office or agency designated by the Governor or by State law.

(o) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

#### § 277.4 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for re-

vision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b) and (c) of this section.

#### Subpart B—Application Process

##### § 277.11 Eligible applicants.

(a) Any school district may apply for a contract with the Bureau to assist the agency or district in acquiring sites for, or in constructing, acquiring, or renovating, facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians.

(b) The project for which the applicant is requesting funding must meet the eligibility requirements under subsections (a) and (b) of section 14 of Pub. L. 81-815.

##### § 277.12 Consultation with Indians.

(a) Except where there is a majority of Indians on an elected public school board, the Commissioner of Indian Affairs shall consult with the local Indian Education Committee and the tribal governing body(s) of the local Indian tribe(s) affected before the application for funding public school construction is submitted to the Commissioner of Education.

(b) This requirement will be deemed to be met unless the official tribal governing body(s) of the Indian tribe(s) to be benefited by the application notify the Commissioner of Education, in writing, within 60 days after the date of the consultation that the tribe(s) disapprove the application. The notice of disapproval must give specific stated objections to the application. A copy of the notice of disapproval shall be delivered or mailed to the Commissioner of Indian Affairs at the same time as the notice is delivered or mailed to the Commissioner of Education.

(c) After being notified that the tribe(s) disapproved a proposed application, the Commissioner of Indian Affairs or his designated representatives shall meet with tribal, public school officials and the Indian Education Committee to provide assistance in resolving the stated objectives to the application. The Commissioner of Indian Affairs shall notify the Commissioner of Education 15 days in advance of the date, place, and time of such meetings and shall invite the Commissioner of Education or his representatives to attend.

##### § 277.13 Application procedure for placement on priority list.

(a) Applications for public school construction assistance under this Part will be submitted and processed in accordance with procedures outlined in 20 U.S.C. 631-645 and 45 CFR 114. Application forms, instructions, advice, and assistance in accordance with 20 U.S.C. 636 and 45 CFR 114 may be obtained from

each State education agency. All questions pertaining to the preparation and filing of preapplications, applications, and request for materials should be directed to the State Representative for School Assistance, who will respond or may forward the inquiries, where appropriate, to the Commissioner of Education.

(b) Section 204(b) of Pub. L. 93-638 assigns responsibility for the application processing, determination of eligibility and establishment of project priority to the Commissioner of Education. Such application and review and determination processes includes the following:

(1) Field and site review by the Commissioner of Education assisted by the Commissioner of Indian Affairs to determine:

(i) Tentative cost estimate for budget purposes. The Commissioner of Indian Affairs or his representative will assist the Commissioner of Education in conducting the on-site inspection to determine which buildings need to be retained, demolished or remodeled and to gather initial information required for development of the planning document. From this information, a tentative cost estimate for design, construction, and equipment will be made for budget purposes.

(ii) Equal quality and standard of education. While assisting in the on-site inspection, the Commissioner of Indian Affairs or his representative must determine whether the quality and standard of education (including facilities and auxiliary services) for Indian students enrolled in the school are at least equal to that provided all other students from resources, other than resources provided under this Part, which are available to the local school district. If it is determined that the quality and standard of education for Indian students is not at least equal to that given all other students enrolled in the schools, the Commissioner of Indian Affairs or his representative shall recommend that the project not be placed on the priority list. Such a project will not be placed on the Bureau's commitment-to-fund list which is prepared under § 277.15.

(2) Discussion and consultation with State and local education agencies to determine the exact nature of the project to be constructed, including existing structure renovation or replacement.

(3) Presentation of program development for review and approval by the State and/or local education representatives and a current and updated project cost estimate.

(c) The Commissioner of Indian Affairs participates in the application process by furnishing technical assistance to the Commissioner of Education. The Commissioner of Indian Affairs insures consultation with Indians and assists with the preparation of the program, cost estimates, etc. as part of the data needed in order for the Commissioner of Education to prepare the priority listing of eligible applicants.

(d) The projects will be ranked by priority based on criteria established by

the Commissioner of Education as given in 45 CFR 114.16.

**§ 277.14 Submitting priority list to Bureau.**

Pursuant to Section 204(b) of Pub. L. 93-638, a list of public school projects eligible for funding under this Part shall be submitted to the Commissioner of Indian Affairs by the Commissioner of Education at the beginning of each fiscal year.

**§ 277.15 Preparing a commitment-to-fund list.**

(a) When the Commissioner of Indian Affairs receives the priority list from the Commissioner of Education, the Commissioner of Indian Affairs will place the project highest on the priority list at the top of a commitment-to-fund list. Projects will be added to the commitment-to-fund list in the same order as they are on the priority list. Each project will be added to the commitment-to-fund list as long as the total of the tentative cost estimates is less than the amount of funds appropriated for public school construction under this Part for the new fiscal year. However, a project shall not be placed on the commitment-to-fund list if the Commissioner of Indian Affairs or his representative has determined under § 277.13(b)(1)(iii) that the quality and standard of education for Indian students enrolled in the schools are not at least equal to that provided all other students from resources, other than resources provided under this Part, which are available to the local school district.

(b) Each applicant will be notified in writing when the project has been placed on the commitment-to-fund list.

**§ 277.16 Negotiating a contract.**

When a project has been placed on the commitment-to-fund list, a contract will be negotiated by a Bureau contracting officer with the applicant. The contract will be developed in accordance with the regulations in 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR Part 14H-70.

**§ 277.17 Funding provisions.**

(a) The Commissioner of Indian Affairs will expend not less than 75 per cent of appropriated funds authorized pursuant to Title II, Part B, Section 204 of Pub. L. 93-638 on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of Pub. L. 81-815.

(b) Projects which are partially funded shall be given first consideration for the additional funding necessary to complete such projects.

(c) No funds from any contract under this Part shall be made available by any Federal agency directly to other than public agencies. However, school districts and State education agencies assisted by this Part may use funds provided under this Part to contract for necessary services with any appropriate individual, organization, or corporation.

(d) Funds approved for public school construction under this Part may not exceed the Federal share of the total cost of the proposed school facilities, as such facilities are defined within the meaning of Pub. L. 81-815, to serve both Indian and non-Indian children, with the definition of children to be as prescribed by Pub. L. 81-815.

(e) When non-Federal funds are involved, a local school district shall have 120 days from receipt of the notice that the project has been placed on the commitment-to-fund list to assemble the funds from local and/or State sources before the contract negotiations are completed. An extension may be granted by the Commissioner of Indian Affairs for unusual circumstances.

**Subpart C—General Contract Requirements**

**§ 277.21 Costs included in contracts.**

A contract with a school district under this Part may include costs for architectural design, site acquisition, facilities construction (including site development and supervision), and equipment in accordance with the approved project description.

**§ 277.22 Architectural design.**

(a) Drawings and specifications for a project shall comply with such Federal, State, and local laws, codes, ordinances and regulations pertaining to standards of construction and safety requirements, as may be applicable.

[16 Comp. Gen. 948 (1937)]

(b) Local education agencies shall give due consideration to excellence of architecture and design when constructing minimum school facilities under this Part.

(c) An Architect/Engineer shall be selected by the contractor to prepare the plans and specifications with the advice and assistance of the Commissioner of Indian Affairs who shall counsel the contractor with respect to professional qualifications and performance history of firms in order that the best qualified firm be selected. No Architect/Engineer agreement involving the expenditures of Federal funds shall be entered into by the contractor until the Commissioner of Indian Affairs has reviewed such agreement.

(d) The drawings and specifications will conform to the project description as shown in the completed application, or as modified by approved revisions.

(e) The drawings and specifications will be sent to the Commissioner of Education for review to ensure that the approved program is followed. The drawings and specifications will be reviewed with the local education agency.

After approval by the State and other regulatory agencies, the final drawings and specifications will be reviewed and approved by the Bureau for structural and safety adequacy.

**§ 277.23 Facilities construction.**

The contractor usually bids, awards and administers the construction con-

tract. The Commissioner of Indian Affairs will assist in preconstruction and construction activities to assure conformity with the requirements of Pub. L. 93-638. Approval of all proposed preconstruction documents will be obtained from the Commissioner of Indian Affairs. Assistance prior to the preparation of these and similar documents will be provided upon request. In this connection, the Commissioner of Indian Affairs may suggest a preliminary conference with the project architect and others if that seems desirable. The Bureau shall make interim inspections and audits during construction and participate in the final acceptance inspection.

**§ 277.24 Selecting initial equipment.**

Equipment procured with payments under this part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

**§ 277.25 Advance payments.**

Advance payments to State education agencies or school districts will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR Part 14H-70.

**§ 277.26 Use and transfer of Government property.**

(a) The use of Government-owned facilities for public school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner of Indian Affairs may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities under a use permit, the permittee shall insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Bureau officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of prop-



## RULES AND REGULATIONS

erty. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

#### § 277.27 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in constructing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended.

#### § 277.28 Indian preference.

(a) Any contract made by the Bureau with a State or school district shall provide that the contractor shall, to the greatest extent feasible, give preference in employment and training to Indians.

(b) Any contract made by the Bureau with a State or school district shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and to Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the greatest extent feasible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 277 and subject to the provisions of Part 14 H of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b), and (c) of this section.

#### § 277.29 Liability and motor vehicle insurance.

(a) States and school districts shall obtain public liability and motor vehicle insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles

must contain a provision requiring the State or school district to provide liability insurance, regardless of how small the risk.

(c) If the State or public school authority is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, liability and motor vehicle insurance will not be required.

#### § 277.30 Recordkeeping.

A contractor will be required to develop and maintain a recordkeeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

#### § 277.31 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide information in accordance with the Freedom of Information Act.

#### § 277.32 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the

Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b) (1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

#### § 277.33 Reporting.

(a) A contractor under this Part shall make a detailed report to the Commissioner of Indian Affairs after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner of Indian Affairs.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribe(s) affected by the construction at the same time as the reports are sent to the Bureau.

#### § 277.34 Repayment of funds.

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

#### § 277.35 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed \$100, he shall be fined not more

than \$1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds \$100, he shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

**§ 277.36 Applicable procurement regulations**

States or school districts wanting to contract with the Bureau under this Part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR 1), as supplemented by the Interior Procurement Regulations (41 CFR 14) and the Bureau of Indian Affairs Procurement Regulations (41 CFR 14H), except 41 CFR Part 14H-70.

**§ 277.37 Privacy Act requirements.**

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny request for notification or access of records without prior approval of the appropriate Bureau systems manager.

**Subpart D—Contract Revision or Cancellation**

**§ 277.41 Contract revision or amendment.**

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

**§ 27.42 Canceling a contract for cause.**

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate.

**Subpart E—Appeals**

**§ 277.51 Contract appeal.**

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

**§ 277.52 Appeal from decision to cancel contract for cause.**

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in subpart C of 43 CFR Part 4.

**§ 277.53 Other appeals.**

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 277.51 and 277.52, may be appealed only as provided in Part 2 of this chapter.

[FR Doc. 75-29301 Filed 11-3-75; 8:45 am]

**Title 41—Public Contracts and Property Management**

**CHAPTER 14H—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

**PART 14H-70—CONTRACTING WITH INDIAN ORGANIZATIONS PURSUANT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT**

OCTOBER 24, 1975.

Beginning on page 41025 of the September 4, 1975, FEDERAL REGISTER (40 FR 41025), there was published a notice of proposed rulemaking to amend Chapter 14H of Title 41 of the Code of Federal Regulations by adding a new Part 14H-70. This amendment was proposed pursuant to the authority contained in the Indian Self-Determination and Education Assistance Act (Pub. L. 93-633; 88 Stat. 2203).

The purpose of the amendment is to consolidate in one Part all of the contracting requirements which Indian tribal and Alaska Native organizations must follow in contracting with the Bureau of Indian Affairs under the Indian Self-Determination and Education Assistance Act. In preparing the regulations in new Part 14H-70, waivers were made of some of the standard Federal Procurement Regulations as authorized by section 106(a) of the Act. Certain requirements were waived in an attempt to simplify contracting procedures for Indian tribal and Alaska Native organizations. Additional waivers may be made on a case-by-case basis as the

Commissioner considers such waivers appropriate.

The Bureau of Indian Affairs has sought to be responsive to the recommendations of Indian and Alaska Native governing bodies who are, or have contemplated, operating Bureau programs under contract. For some time, these groups have been critical of the complexities inherent in negotiating contracts under the standard Federal Procurement Regulations. In many instances, an unfavorable psychological climate was created that inhibited local desires for more meaningful expressions of self-determination based on their own needs and goals.

Through experience, the Bureau of Indian Affairs and its constituents have found the standard procurement regulations to contain numerous requirements that have little if any applicability to contracts. For this reason, the Bureau has evolved what, in essence, is a set of "Indian" Procurement Regulations for dealing with tribal and Alaska Native groups as the new Part 14H-70.

These regulations reflect the Bureau's attempt to follow the recommendations of Indian and Alaska Native people to place in one part all pertinent contracting regulations or references to such regulations affecting contracts with tribal organizations; to reduce referencing regulations contained in other CFR Parts, if possible; to make the regulations as comprehensive and clear as possible; to assure that both parties to the contract know their rights, roles and responsibilities; and to remove any unnecessary or inapplicable requirements found in the standard procurement rules which would not apply to self-determination contracts with tribal organizations.

The contractual approach is one of several voluntary options available to Indian and Alaska Native governing bodies to assist them in the self-development process. Depending on their basic needs and goals, they may want to use the contract mechanism in their self-development process. If so, Part 14H-70 seeks to simplify the contracting procedure for them.

The public was given until October 4, 1975, to submit written comments, suggestions, or objections regarding the proposed amendment. All comments received with respect to the proposed amendment were given due consideration.

A. *Changes made due to comments received.* As a result of comments received, the following changes in the regulations are made in addition to language changes for clarification:

1. A new § 14H-70.103 is added to define what is considered an Indian reservation and the former §§ 14H-70.103 and 14H-70.104 are redesignated as §§ 14H-70.104 and 14H-70.105, accordingly.

2. Section 14H-70.402 is revised to make it clear that an Indian tribe has the right to determine the tribal organization that will provide services to it under a contract and that, in such instances, the tribe's determination constitutes the Bureau's justification for

JANUARY 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

## STATEMENT BY THE PRESIDENT

I have signed into law S. 1017, the Indian Self-Determination and Education Assistance Act. My Administration is committed to furthering the self-determination of Indian communities without terminating the special relationships between the Federal Government and the Indian people.

The Congress is to be congratulated for its passage of this legislation. It will enhance our efforts to implement this policy of Indian self-determination.

Title I of this act gives the permanence and stature of law to the objective of my Administration of allowing -- indeed encouraging -- Indian tribes to operate programs serving them under contract to the Federal Government. Furthermore, with the passage of this act, Indian communities and their leaders now share with the Federal Government the responsibility for the full realization of this objective. It will be through the initiatives of Indian communities that the authorities provided in this Act will be implemented. I urge these communities to make the fullest possible use of them and pledge the support of this Administration.

In addition to making this kind of contracting a right, the act does much to make it feasible and practical.

For example, it authorizes the Bureau of Indian Affairs to make grants to tribal organizations to help them develop the abilities of potential workers -- through training and other means -- to operate these programs. At the request of the tribe, it also allows Federal employees who work in programs transferred to tribal operation to continue working without losing Federal fringe benefits, thus making it possible for the tribe to begin operation with a nucleus of experienced employees.

The granting authority provided in this act can also be used to strengthen tribal governments and tribally funded programs.

Title II, the Indian Education Assistance Act, amends the Johnson O'Malley Act to give the Indian community a stronger role in approving or disapproving the use of funds for children in public schools. It also provides for better planning in the use of these funds to meet the educational needs of the Indian students.

The enactment of this legislation marks a milestone for Indian people. It will enable this Administration to work more closely and effectively with the tribes for the betterment of all the Indian people by assisting them in meeting goals they themselves have set.

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