

1Supporting Statement for

Indian Self-Determination and Education Act Assistance Programs, 25 CFR 900

OMB Control Number 1076-0136

Terms of Clearance: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

This is a request for renewal of currently approved information collection OMB #1076-0136, which is authorized by Public Law (P.L.) 93-638, the Indian Self-Determination and Education Assistance Act (ISDEA) as amended by Title I of P.L. 103-413 of the Indian Self-Determination Contract Reform Act of 1994. Section 107(a)(2)(A)(ii) of ISDEA requires the Department of the Interior and the Department of Health and Human Services (hereafter referred to as the Departments) to award contracts and grants to American Indian tribes without the unnecessary burden or confusion associated with having two sets of rules and information collection requirements for single program legislation. Applicable portions of the statutes are at *Attachment A*.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a**

questionnaire, every question needs to be justified.]

Through the Negotiated Rulemaking process, representatives of the Departments and tribes developed a joint rule to implement section 107 of ISDEA. The rule, codified at 25 CFR Part 900, is at *Attachment B*. The parties that submit information under the regulation are tribes or tribal organizations authorized by American Indian tribal governments. Subparts of the rule that contain information collection requirements are summarized below.

Tribal governments and tribal organizations provide the information to the Departments when submitting documentation required for a P.L. 93-638 contract or grant proposal. The information collected is used by the Departments to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and resources, and permit the Departments to administer and evaluate tribal P.L. 93-638 contract and grant programs.

Subpart C contains provisions relating to the initial contract proposal contents. The proposal contents essentially consist of a checklist of 13 items that must be addressed in a proposal. These items include basic information about the respondent and program to be contracted, such as: name and address; authorizing resolution; date of submission of proposal; description of geographical service area; estimated number of people to be served; brief statement of program functions, services or activities to be performed; description of the proposed program; financial, procurement, and property management standards; description of reports to be provided; staff qualifications, if any; budget information; and waiver information, as requested. The information is collected at the time the tribe or tribal organization makes an initial application to contract a program.

Subpart F contains the minimum standards for the management systems used by tribes or tribal organizations when carrying out self-determination contracts. Sections 900.43, 44, 49, 53, 55 and 60 discuss the information and record keeping requirements of contractors regarding the financial, procurement and property management standards. This information is collected and reported at the time a tribe or tribal organization makes its initial application to contract a program.

Subpart G provides for the negotiation of all reporting and data requirements between the tribe or tribal organization and the Secretary. The information collected is directly related to the operation of the program and is negotiated on a contract by contract basis. The Departments use the information to monitor contract operations and determine if satisfactory services are being provided. The information is collected and reported during the operation of the contract based on the terms negotiated in each contract.

Subpart I establishes procedures regarding donation of Federal excess and surplus property to tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract. This subpart addressed the procedures to be followed when tribes or tribal organizations wish to acquire excess Bureau of Indian

Affairs or Indian Health Service property, and excess or surplus government property from other agencies. This subpart also addresses the process for tribes or tribal organizations to request that real property be placed “in trust”. The Departments use the information to determine what property the tribes want to acquire and how the property will be used. The information is collected and reported when a tribal or tribal organization submits a request for excess and surplus federal property.

Subpart J addresses the process by which a tribe or tribal organization may contract for construction activities, or portion of it, and sets forth minimum requirements for contract proposals. The subpart requires the tribe or tribal organization to submit descriptions of standards when proposing to contract a construction project. These standards include use of licensed and qualified architects and engineers; applicable health and safety standards; adherence to applicable Federal, state, or tribal building codes and engineering standards; structural integrity; accountability for funds; adequate competition for sub-contracting under tribal or other applicable law; the commencement, performance and completion of the contract; adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals); the use of proper materials and workmanship; necessary inspection and testing; and a process for changes, modifications, stop work and termination of the work when warranted. In addition to the above, additional information is required when a tribe or tribal organization is proposing to contract design and construction activity.

Subpart K authorizes the Secretary to make exceptions in the regulations promulgated to implement the Act or to waive such regulations under certain circumstances and explains how tribes or tribal organizations may apply for a waiver request. The information is collected and reported when a tribe submits a waiver request.

Subpart L provides the appeal procedures available to tribes and tribal organizations. Section 900.158 explains how to file a notice of appeal with the Interior Board of Indian Appeals and what the notice should contain; and 900.166 provides instructions for submitting a written statement of objections concerning a Administrative Law Judge’s decision. The Departments use the information to evaluate and approve/disapprove and applicant’s appeal request. The information is collected and reported when a tribe or tribal organization requests an appeal conference, files a notice of appeal, or requests an appeal time extension, or submits objections to an Administrative Law Judge’s decision.

Subpart M explains the applicability of the Federal Tort Claims Act (FTCA). Section 900.201 explains how to file FTCA claims, e.g. medical related claims should be filed on Standard Form 94 (Claim for Damage, Injury or Death) or comparable written information must be submitted; 900.203 describes contractor responsibilities. The Departments use the information to evaluate and approve/disapprove an FTCA claim. The information is collected and reported when a FTCA claim is filed.

Subpart N covers the process for post-award contract disputes. Section 900.219 explains how tribes or tribal organizations submit a Contract Disputes Act (CDA) claim.

The Departments need and use the information to evaluate and approve/disapprove a CDA claim. The information is collected and reported as needed when such a claim is filed

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].**

During December 2001, Indian Affairs (IA) was forced to disconnect from the internet by a court order issued by the judge in the Cobell litigation. Hence, IA cannot implement GPEA until reconnection to the internet is completed.

Tribes will be able to submit some of their information electronically as soon as connection is restored and systems are in place for safeguarding the information and for electronic signatures. This will depend on our systems availability and the tribes' electronic resources.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information supplied is not duplicated in any other data collection and is unique to this program and the particular contractor. In keeping with the Paperwork Reduction Act and other statutory requirements, the information collected is the minimum needed for the intended purpose.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

While tribes and tribal organizations are not considered small governmental jurisdictions or small entities as defined under the Regulatory Flexibility Act, the Departments consulted with tribes to determine the amount of information required to make informed decisions concerning the award of contracts under P.L. 93-638. As required by E.O. 13175, we held consultation meetings from draft to final rule; thus tribes and tribal organizations have helped us minimize the information collection burden.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Information is collected, as needed, when tribes or tribal organizations apply for an ISDEA contract. If the collection is not conducted or is conducted less frequently, the Departments would be unable to award ISDEA contracts and grants, to properly administer and monitor such contracts or to carry out Departments' ISDEA program responsibilities. There are no technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * *requiring respondents to report information to the agency more often than quarterly;*
- * *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- * *requiring respondents to submit more than an original and two copies of any document;*
- * *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
- * *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- * *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- * *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- * *requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

There are special circumstances that require exceptions to 5 CFR 1320.5(d)(2). The regulations do require respondents to respond to a collection of information in fewer than 30 days when the original submission is lacking information. Section 900.13 establishes procedures the Secretary must follow upon receiving a proposal for a self-determination contract. Within 15 days of receiving the proposal, the Secretary must advise the applicant of any items which are missing from the proposal package and request that the applicant provide the missing information within 15 days. This abbreviated time schedule is necessary, as the ISDEA only allows the Secretary a total of 90 days from the receipt of a proposal to decide whether to accept the proposal and award the contract. The 90-day timeframe is mandatory and may not be extended except with the applicant's written permission. For this reason, the Secretary must have all relevant information and documentation as soon as possible, in order to review and evaluate it prior to making a decision about approving a contract under the Act. It is important to note, however, that applicants are only requested to provide the missing information within 15 days. There are no fixed penalties for failing to respond, although failure to provide the information may, in the worst case, prevent the ultimate award of a

self-determination contract.

Respondents usually provide two copies or reports. Statistics are not used and there is no confidential information or proprietary trade secrets involved with self-determination contracts.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Forty-eight tribal representatives participated in the Negotiated Rulemaking process, which included negotiation of information collection requirements. In addition a Federal Register notice, as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB was published in Federal Register April 24, 2006 (71 FR 21033). The Departments received no responses to the Federal Register notice. A copy of the notice is *Attachment C*.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Contact Stuart Mani, Senior Awarding Official Midwest Regional Office, located at One Federal Drive, Room 500, Ft. Snelling, MN. 55111-4004, (612) 725-4507 for names of persons outside the agency for their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format, and on the data elements to be recorded, disclosed, or reported.

9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

The respondents will not receive payment or gifts.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality provided to respondents concerning this information collection.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature solicited in this information collection.

12. **Provide estimates of the hour burden of the collection of information. The statement should:**

- * **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- * **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

The burden hours estimate for this renewal has risen, even though many tribes are contracting multiple programs under a single contract as provided by the 1994 amendments of the Act. The number of reports has declined but the complexity of the reports has increased which has caused the burden hours estimate to increase from 191,174 to 219,792. A table listing the sections of Part 900 with the associated burden is *Attachment D*.

13. **Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- * **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation**

and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The estimated total annual cost burden to respondents or record keepers for capital and start-up costs components (annualized over the expected useful life) for this information collection is zero. The information collection will not require the purchase of any capital equipment nor create any start-up costs because the tribes/ tribal organizations are allowed to request any federal equipment used to operate the program. Computers and software used to complete this information collection are part of the respondent's customary and usual business practices, and therefore are not included in the estimate.

The estimated total cost burden to respondents or record keepers for operation and maintenance, and purchase of services components for this information collection is zero. The information collection will not create costs associated with generating maintaining, and disclosing or providing information that is not already identified in this supporting statement.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The estimated annual cost to the government in the original information collection totaled \$281,900 for the Departments. This was based on:

- (a) DOI: the review, negotiation and approval of 1,581 annual ISDA contracts.
- (b) DHHS: the review, negotiation and approval of 3,923 annual ISDA contracts.

The current estimated annual cost to the government has been calculated by using the 2006 General Schedule Annual Rates by Grade and Step GS11, Step 7. The average work time is estimated at 2 ½ hours per response. The formula used is 5267 X \$66.40 = \$349,729.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

The estimated number of responses for the information collection requirements of 25 CFR Part 900 declined from 5507 to 5267 because some tribes are contracting under 25 CFR 900.8 which permits tribes to contract several programs under a single contract, thus lowering the number of responses. The complexity of the reports has offset the contracting multiple programs burden hours, therefore the burden hours estimate rose from 191,174 to 219,792 hours, an adjustment increase of 28,618 hours.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There is no intention to publish this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Departments intend to display the expiration date with the OMB Clearance Number.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

The Departments are not seeking any exceptions.