

Supporting Statement A

Johnson-O'Malley Contracts, 25 CFR 273

OMB Control Number 1076-NEW

Terms of Clearance: None.

General Instructions

A completed Supporting Statement A 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 below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The JOM Act authorizes the Secretary of the Interior, through the Bureau of Indian Education (BIE), to enter into contracts with States, schools, and private organizations, and to expend appropriated funds in support of Indian students under those contracts. *See* 25 U.S.C. 5342. Contracts under JOM contain educational objectives that adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives. *See* 25 U.S.C. 5345. The regulations at 25 CFR part 273 implement this authority. The regulations at 25 CFR part 273 became effective in 1975 and the rule has been in effect over 40 years without substantial changes. The BIE had collected similar information under the JOM Act under OMB Control Number 1076-0096, the collection expired in 2005 due to lack of funding to carry out the program.

In 2018, Congress updated the JOM Act with the JOM Modernization Act, which requires BIE to update its JOM regulations at 25 CFR part 273 by December 31, 2019. Some of these updates include information collections, as listed in the table below:

Table 1 – Information Collections Associated with Johnson-O’Malley Act Contracts

Citation 25 CFR	Section Title	Information Collection Requirement
Subpart D — Education Plan		
273.119 and 273.120	What is an education plan and what should it include? Does an Education plan need to be approved by the Regional Director?	Implements statutory requirement for contracting parties to submit an education plan (25 U.S.C. 5345) and sets out what elements the education plan must contain.
Subpart E – Contract Proposal, Review, and Approval		
273.125; 273.130; 273.131	How may a new contracting party request a contract under the Johnson-O’Malley Act? What is required in the contract proposal for funding? What is required for a Tribal request for contract?	Requires eligible entities that have not previously entered into a JOM contract to submit an initial contract proposal.
Subpart G – Annual Reporting Requirements		
273.150; 273.151; 273.153	Does an existing contracting party need to submit any reports? What information must the existing contracting party provide in the annual report? Who else needs a copy of the annual report?	Requires existing contracting parties to submit a report annually containing certain elements.
Subpart H – General Contract Requirements		
273.178	Are there contract recordkeeping requirements?	Requires the contractor to maintain a recordkeeping system.
Subpart I– Contract Renewal, Revisions, and Cancellations		
273.192	What is required to renew a contract?	Requires submission to the awarding official of a request to renew with the education plan and budget.
273.193	May a contract be revised or amended?	Requires written request for revision/amendment.
Subpart K – Appeals		
273.207	How does a contractor request to resolve matters through dispute resolution?	[Not an information collection request because the request requires no more than a written request for dispute resolution].

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.

The Bureau of Indian Education (BIE) uses the information required by the regulations to ensure that the funding provided meets the purposes of the JOM Act, to financially assist those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards. The information collected provides an accounting of expenditures and data to measure the effectiveness of the education plan and associated educational objectives for Indian students.

Subpart D requires the contracting party to submit an education plan, which must include:

- The education programs developed and approved by the Indian Education Committee(s) to ensure that the contract will fund programs that meet the purposes of the JOM Act and will address the educational needs of the Indian students to be served by the contract;
- Procedures for addressing hearing grievances to ensure a process is in place to address grievances;
- Established State standards and requirements that must be maintained in operating the contracted programs and services to ensure that the JOM contract will meet applicable standards;
- A description of how the State standards and requirements will be maintained to ensure that the JOM contract will meet applicable standards;
- A requirement that the contractor comply in full with the requirements concerning meaningful participation by the Indian Education Committee, to ensure the Indian Education Committee steers the programs funded under the contract;
- A requirement that education facilities receiving funds be open to visits and consultations by the Indian Education Committee(s), Tribal representatives, Indian parents and guardians in the community, and by duly authorized representatives of the Federal and State Governments, for transparency;
- An outline of administrative and fiscal management procedures to be used by the contractor, to ensure contract abides by accepted commercial practices;
- Justification for requesting funds for operational support, to ensure a valid need meeting the purposes of the JOM Act;
- Budget estimates and financial information, to determine program costs to contract for services;
- The total enrollment of school or district, by age and grade level;
- The eligible Indian enrollment—total and classification by Tribal affiliation(s) and by age and grade level, to ensure tracking of fund use;
- The total number of school board members and number of Indian school board members, to allow for determination as to who serves as the Indian Education Committee;
- Government equipment needed to carry out the contract, to identify any necessary requirement to be provided;
- The period of contract term requested;
- The signature of the authorized representative of applicant; and
- Written information regarding program goals and objectives, to ensure the goals and objectives align with the purposes of funding under the JOM Act.

Subpart E requires the contracting party to provide funding information in support of its request for a contract. The contract proposal information will allow BIE to identify clearly what educational needs the JOM funds requested will address and ensure they are aligned with the purposes under the JOM Act. BIE plans to use an application form for new contract requests. The following describes the information requested by the application form and the purpose for which BIE is requesting the information on the Johnson-O'Malley Application for Contract:

Part I. Contract Summary

- Requests basic identifying information for the contracting party to allow BIE officials to identify and reach a point of contact, determine the type of contracting party under the regulations, and see the overall eligible student count, proposed budget, and contract term that is detailed in the rest of the application. The second page includes instructions for the applicant as to what parts the application must consist of.

Part II. Budget Summary

- This page provides the roll-up of budget categories that are detailed later in the application, so that both BIE and the contracting party know the consolidated costs in each category (e.g., in personnel, travel, supplies).

Part III. Contract Administration

- This part contains three subparts.
 - The first, "A. Assurances," highlights some of the items in the regulations with which the contracting party must comply.
 - The second, "B. Services Location Information," requests a list of each service location that the contracting party is applying to serve, whether the location is a Tribal or school building, whether each has a separate Indian Education Committee, and the contact and address for the location, so that BIE can contact the locations if needed.
 - The third, "C. Contract Administration Costs," lists activities and costs associated with contract administration that are not program costs but for which the contracting party is seeking funding, and requires details on the staffing plan and determination of and need for the amounts, so that BIE can review whether funding for these activities and costs are allowable under the Act.

Part IV. Programs

- This part also contains three subparts.
 - The first, "A. Needs Assessment," requires the applicant to describe how they carried out the needs assessment and ranking process and how they assessed other education program services and involved necessary stakeholders, so that BIE can ensure that the contracting party conducted the necessary background analysis for identifying the education needs for which funding is requested.
 - The second, "B. Public School and Indian Enrollment," requires the applicant to identify the public school district, community or Tribal organization and the student enrollment, and eligible Indian student enrollment, broken down by age/grade cohort.

- o The third, “C. Education Plan” requires a breakdown of each program component and measurable objectives that will be used, and a breakdown of the specific program costs for which JOM funds are being requested.

Part V. Indian Education Committee

- This part provides identifying information for the Indian Education Committee that is required by regulation to participate in developing and implementing the program and costs associated with those activities for which JOM funding is being requested.

Subpart G requires States to provide annual reports with general information on the contractor, number and names of schools, number of eligible Indian students who were served using amounts allocated under the contract during the previous fiscal year, the amounts and purposes for which the contract funds were expended, the effectiveness of the program, and an accounting. These reports allow the BIE to report to Congress, in turn, as required under the JOM Act.

Subpart H requires the contracting parties to meet recordkeeping requirements that allow BIE to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.).

Subpart I requires certain information for renewal, revision, or amendment of a contract to allow BIE the ability to identify the contract and supporting education plan, and maintain accountability for funds.

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.**

BIE will accept education plans, contract proposals, annual reports, and requests for renewal and amendment/revision by email, fax, and by regular mail.

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 needed to fulfill the JOM Act authorizing contracts with Indian corporations, States, public school districts, and Tribal organizations for the education of Indian children. No other law specifically addresses the provision of funding for this purpose and the data is not available from another source.

5. **If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Contracting parties that are Indian corporations or public school districts may be considered

small entities. (States and Tribes are not small entities). BIE has done its best to minimize the amount of information requested to only that which is necessary.

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.

Without the collections required by 25 CFR 273, BIE would not be able to ensure that JOM funding is being provided to provide educational benefits to eligible Indian students in accordance with the JOM Act. This would greatly hinder or terminate the continuance of benefits to recipients of this education program.

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.**

A special circumstance may exist if more than one Tribe is served by a contract. In that case, the contracting party would need to send an original and more than two copies of the annual report. Under section 273.153, the contracting party must send the original annual report to the awarding official and send copies to the Indian Education Committee and any Tribes under the contract.

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.

This request for approval is being submitted in connection with a proposed rule addressing JOM Contracts. A request for comments will be included in the proposed rule published in the Federal Register.

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

BIE reached out to representatives of the following Tribes that currently have JOM contracts, and based its estimates of hourly burden on that input: Cherokee Nation; Chickasaw Nation; Muscogee "Creek" Nation; Cheyenne & Arapaho Tribes; and Choctaw Nation. BIE is also conducting outreach to the public during the public comment period of this proposed rule.

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

BIE does not provide gifts or payments to respondents other than remuneration of contractors.

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

BIE does not provide any assurance of confidentiality. The information that BIE collects is subject to the requirements of the Privacy Act and the Freedom of Information Act.

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 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.**
- * 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.**

The total universe of possible respondents, as of the current count, is 311 contractors (if one new applicant is added next year, this totals 312). These are Tribal organizations, States, public school districts, or Indian corporations that currently have a JOM contract with BIE. BIE is estimating new annual contractors at one because there is currently no funding capability to take on new contractors, even though there is a legal framework for taking on new contractors.

Contractors may use one of four vehicles as their JOM contracting vehicle: a contract under Public Law 93-638 (“638 contract”), under Public Law 102-477 (“477 contract”), under the Self-Governance Act, Public Law 103-413 (“self-governance contracts”), or a contract with a State.

The information collection costs in Table 2 result from taking the number of hours multiplied by an hourly salary and benefits for Tribal staff and private consultants performing work on behalf of the Tribe. Total IC cost = [(staff hours) x (salary + benefits)]

This results in a total hour burden of **11,450 hours** per year or the amount equivalent to **\$411,284**.

Public Burden from Information Collections Associated with JOM Contracts

Citation 25 CFR	Information Collection Requirement	No. of Respondents	Average No. of Annual Responses	Hour Burden per respondent	Annual Burden Hours	Total Annual Cost (salary & benefits[^])
273.119; 273.120	Submit education plan – existing contractors	155*	1	6	930	\$33,406
273.119; 273.120	Submit education plan – new contractors	1**	1	40	40	\$1,437
273.125; 273.130; 273.131	Submit contract proposal/application	1	1	80	80	\$2,874
273.150; 273.151; 273.153	Submit annual report.	312	1	5	1,560	\$56,035
273.78	Maintain recordkeeping system.	312	N/A	24	7,488	\$268,969
273.92	Request renewal.	104***	1	7	728	\$26,150
273.93	Request amendment/ revision.	312****	1	2	624	\$22,414
			1,197	TOTAL BURDEN	11,450	\$411,284

^To obtain the hourly rate for Tribal government employees, we used \$35.92, which includes a benefits multiplier under the occupation group of Natural resources, construction and maintenance. This estimate is based on the Bureau of Labor Statistics' Employer Costs for Employee Compensation—December 2018, Table 1, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, December 2018, USDL 19-0449 (March 19, 2019). The document can be referenced at http://www.bls.gov/news.release/archives/ecec_03192019.pdf.

* Not all the existing 311 contractors need to respond each information collection each year: only about half (approximately 155) submit an education plan each year because the existing education plan may continue to serve the respondent's needs. Those who submit a new education plan may do so because they wish to change the scope of the education plan (e.g., because new parents are on the Indian Education Committee and have new or re-weighted priorities).

**Each new contractor will need to submit an education plan. Because the new contractor will not be working from an existing education plan, the burden hours are much higher.

***Contracts typically expire, requiring renewal, every 3 years, although some contractors may have negotiated for a different length term. Roughly one-third of the 311 expire each year, requiring renewal.

****Roughly all contractors submit some sort of amendment or revision to their contract on an annual basis.

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 already reflected in item 12.)

- * **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 for form processing). 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.**

There are no capital or start-up costs anticipated as contractors already have professionals on staff that can respond to these information collection requirements as a course of their regular

duties, using computer and printer equipment already available to them.

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.

BIE employees working on the JOM contracts review education plans and compile information provided in the annual reports. BIE works closely with BIA contracting staff to review contract proposals, renewals, and amendments,

We estimate that the annual cost to the Federal Government to administer this information collection is **\$833,128**. This includes \$828,128 in salary costs, plus \$5,000 in administrative costs consisting of miscellaneous services and supplies.

Federal Government Burden from Information Collections Associated with TERAs

Citation 25 CFR	Federal Government Activity	Average No. of Annual Responses	Hour Burden per response	Annual Burden Hours	Total Annual Cost (salary & benefits [^])
273.119; 273.120	Review education plan – existing contractors	155	4	1,240	\$70,296
273.119; 273.120	Review education plan – new contractors	1	16	16	\$907
273.125; 273.130; 273.131	Review contract proposal	1	40	40	\$2,268
273.150; 273.151; 273.153	Review and compile annual reports	312	40	12,480	\$707,491
273.78	Recordkeeping system.	N/A	N/A	N.A	
273.92	Review requests for renewal	104	2	208	\$11,792
273.93	Review requests for amendment/ revision	312	2	624	\$35,375
			TOTAL BURDEN	14,608	\$828,128

[^] Salary is based on a mix of personnel including: Self-Determination Specialist/Awarding Officials at GS-11, step 5, and Self-Determination Officers/Awarding Officials at GS-13, step 5. BIE has averaged the hourly rate required based on the mix of personnel required for each task, using the Office of Personnel Management Salary Table 2019-GS (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS_h.pdf) and a 1.6 multiplier to account for benefits, resulting in an hourly rate of \$46.75 for GS-11/5 (\$29.22 before multiplier) and \$66.62 for GS-13/5 (\$41.64 before multiplier). We used the average of these two hourly rates (\$56.69).

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

The annual burden hours of 11,450 are program changes due to the new statute (JOM Modernization Act), which require regulatory updates with information collection requirements. A similar information collection was previously approved under the former regulations, but was then discontinued because of a lack of program funding to fully implement the program. With the passage of the new statute (JOM Modernization Act), BIE is updating its regulations and is requesting approval for the information collection requirements included in those regulations.

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.

The JOM Modernization Act requires the agency to prepare an annual report, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendations on appropriate funding levels, and assessment of the contracts to include in Interior's budget request, submit to Congress, and make publicly available. See 25 U.S.C. 5342(d)(1). BIE will work to compile this information based on the annual reports submitted under this information collection (§ 273.150-153) and plans to make it available on its website at www.bie.edu.

The annual report is due from each contracting party on September 15, for the prior academic year. See § 273.152. BIE plans to compile and prepare the consolidated annual report by December 31, for the prior academic year.

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.

BIE plans to display the expiration date for OMB approval of the information collection.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.