

Supporting Statement for Indian Self-Determination and Education Assistance Act Programs

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 statistical information is involved, 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.**

The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes and directs the Bureau of Indian Affairs (BIA) to contract or compact with and fund Indian Tribes and Tribal organizations that choose to take over the operation of programs, services, functions and activities (PSFAs) that would otherwise be operated by the BIA. These PSFAs include programs such as law enforcement, social services, and tribal priority allocation programs. The contracts and compacts provide the funding that the BIA would have otherwise used for its direct operation of the programs had they not been contracted or compacted by the Tribe, as authorized by 25 U.S.C. § 450 *et. seq.*

Congressional appropriations are divided among BIA and Tribes and Tribal organizations to pay for both the BIA's direct operation of programs and for the operation of programs by Tribes and Tribal organizations through Self-Determination contracts and compacts. The regulations implementing ISDEAA are at 25 CFR 900.

The following table details the IC requirements in Subparts C, F, G, J, K, L, M, and N of these

regulations.

Table 1 – Information Collections Associated with ISDEAA		
Citation 25 CFR 900	Section Title	Information Collection Requirement
Subpart C — Contract Proposal Contents		
900.8	What must an initial contract proposal contain?	The Tribe must provide authorizing resolution along with application package.
900.10	How does an Indian tribe or tribal organization secure a list of all Federal property currently in use in carrying out the programs, functions, services, or activities that benefit the Indian tribe or tribal organization to assist in negotiating a contract?	Tribe must submit a written request asking for a list of all Federal property.
900.11	What should an Indian tribe or tribal organization that is proposing a contract do about specifying the Federal property that the Indian tribe or tribal organization may wish to use in carrying out the contract?	Tribe must provide a written statement list of Federal property intended for use under a contract and if equipment is to be shared by a contracted or non-contracted program, service, function, or activities.
900.12	Are the proposed contents requirements the same for renewal of a contract that is expiring for and securing an annual funding agreement after the first year of the funding agreement?	Tribe must submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal before the expiration date of the contract or existing annual funding agreement.
Subpart F – Standards for Tribal or Tribal Organization Management System		
900.40	When are Indian tribe or tribal organization management standards and management systems evaluated?	When the Tribe submits an initial contract proposal, the management standards are evaluated by the Secretary.
900.44	What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?	The Tribe shall be sufficient to prepare reports and tracing of contract funds.
900.48	If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?	The tribe shall ensure its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts.
900.49	What procurement standards apply to subcontracts?	Each subcontract entered into shall be in writing by the Tribe.
900.53	What kind of records shall the property management system maintain?	The Tribe shall maintain records that accurately describe the property.
900.55	What are the standards for inventories?	Tribe is to conduct physical inventory every 2 years.
900.60	How does an Indian tribe or tribal organization dispose of Federal personal property?	The Tribe shall report to the Secretary in writing any Federally-owned property that is worn out, lost, stolen, damaged beyond repair, or no longer needed.

Table 1 – Information Collections Associated with ISDEAA		
Citation 25 CFR 900	Section Title	Information Collection Requirement
Subpart G – Programmatic Reports and Data Requirements		
900.65	What programmatic reports and data shall the Indian tribe or tribal organization provide?	Each Tribe shall negotiate with the Secretary the type and frequency of program narrative and program data report(s).
Subpart J - Construction		
900.120	How does an Indian tribe or tribal organization find out about a construction project?	The Secretary will notify the Tribes after allocation of funds for construction.
900.121	What happens during the preplanning phase and can an Indian tribe or tribal organization perform any of the activities involved in this process?	A Tribe that wishes to secure a construction project should contact the appropriate agency to determine the specific steps involved in the application and selection process used to fund specific types of projects.
900.126	Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?	The Tribe may request Federal construction guidelines and manuals for consideration in the preparation of its contract proposal.
900.133	Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?	The declination process and the procedures in 900.122 and 900.123 apply to the proposal by an Indian Tribe when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds under 900.120.
Subpart K – Waiver Procedures		
900.140	Can any provision of the regulations under this part be waived?	Upon the request of a Tribe, the Secretary shall waive any provision of these regulations.
Subpart L - Appeals		
900.158	How does an Indian tribe or tribal organization appeal the initial decision, if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?	If the Tribe decides to appeal, it shall file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision.
900.166	Is the recommended decision always final?	Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision.
Subpart M – Federal Tort Claims Act Coverage General Provisions		
900.203	If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?	The contractor should immediately inform the Chief Litigation Branch, and the contractor's tort claims liaison, and forward required materials.
Subpart N – Post Award Contract Disputes		
900.219	How does an Indian tribe, tribal organization, or Federal agency submit a claim?	Tribe shall submit its claim in writing to the awarding official.

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 Bureau of Indian Affairs (BIA), Indian Health Service (IHS), and Tribes developed a joint rule, at 25 CFR 900, to implement the ISDEAA. The respondents that submit information under the regulations are Tribes, Tribal organizations, and contractors authorized by American Indian and Alaska Native Tribal governments. Tribal governments and Tribal organizations provide the information to the BIA when submitting documentation required for an ISDEAA contract proposal.

The information collected is used by the BIA to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and resources, and permit the BIA to administer and evaluate Tribal ISDEAA contract programs. Subparts of the rule that contain information collection requirements are summarized below.

The following details the IC requirements in subparts of 25 CFR 900.

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. The subpart discusses 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 of Interior (Secretary). The information collected is directly related to the operation of the program and is negotiated on a contract by contract basis. The BIA uses 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 J addresses the process by which a Tribe or Tribal organization may contract for construction activities, or portions 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 ISDEAA 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. The subpart explains how to file a notice of appeal with the Interior Board of Indian Appeals and what the notice should contain and provides instructions for submitting a written statement of objections concerning an Administrative Law Judge's decision. The BIA uses the information to evaluate and approve/disapprove an 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, 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), 28 U.S.C. §§ 1346(b), 2671-2680. This subpart explains how to file FTCA claims and describes contractor responsibilities. The BIA uses the information to evaluate and approve/disapprove an FTCA claim. The information is collected and reported when an FTCA claim is filed.

Subpart N covers the process for post-award contract disputes. The subpart explains how Tribes or Tribal organizations submit a Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109, claim. The BIA needs and uses 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].

The Tribes or Tribal Organizations are submitting their package back to either the Region or the Agency by both postal mail and by email depending on how the Region/Agency is requesting the information to be returned. If a Tribe or Tribal Organization is submitting their package by email, it is strongly recommended the attachments to the email are in the PDF format to ensure and protect the contents of the documents. It seems that the information is submitted 50% by mail and 50% by email; again depending on how the Region/Agency is requesting the information to be returned.

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 to the BIA by the Tribe or Tribal Organization is not duplicated in any other data collection and is unique to this BIA program. In keeping with the Paperwork Reduction Act and other statutory requirements, the information collected is the minimum needed for the intended purpose. The Secretary of the Interior may not require the Tribe or Tribal Organization to submit any other information beyond what is identified in 25 CFR § 900.

Since the IHS information collection is new and this is the first time both organizations separated, the BIA will work with IHS to see if there is a way to share Tribal information where applicable.

The information collected by IHS is covered by OMB Control Number 0917-0037.

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

Although Tribes are not considered small businesses, to the extent allowable by the regulations, the BIA has attempted to reduce the burden on small entities.

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.

Congressional appropriations are divided among BIA and Tribes and Tribal organizations to pay for both the BIA's direct operation of programs and for the operation of programs by Tribes and Tribal organizations through Self-Determination contracts and compacts. In 25 CFR § 900, Tribes or Tribal Organizations are required to submit requested information to apply for an ISDEAA contract. If the collection of information is not conducted or is conducted less frequently, the BIA would not have any documentation to review and approve such contracts. This will leave the Tribal or Tribal Organization unable to properly administer and monitor such contracts or compacts that the Tribes and Tribal organizations choose to take over the operation of programs, services, functions and activities that would otherwise be operated by the BIA.

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.

25 CFR 900.15 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 ISDEAA 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 (25 CFR 900.17). For this reason, the Secretary must have all relevant information and documentation as soon as possible, in order to review and evaluate it before making a decision about approving a contract under the ISDEAA. Applicants incur no penalty, however, for failing to respond within 15 days, 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.

A 60-day notice for public comments was published in the Federal Register on October 2, 2019 (84 FR 52529). No comments were received in response to this notice.

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.

The BIA reached out to several Tribes within the Rocky Mountain Region, the Alaska Region, the Navajo Region, and the Eastern Oklahoma Region, who would submit a package that could fall into any of the 12 categories indicated in Table 2, under question 13. The feedback received was the following:

- The reporting frequency is adequate and the information required for the reports are in a basic format.
- Financial reporting is standardized and well understood by Tribal contract/grant office in the various agencies.
- BIA has the least program reporting requirements in comparison to other Federal agencies, thus the amount of time it takes to submit the information is not burdensome.
- Training is available throughout the year levels of management for BIA contract/grants.

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 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. Instead, this cost should be included in Item 13.**

The following table provides the hourly burden estimates, which resulted in an estimated total hourly burden of 127,127 hours or the amount equivalent to \$6,981,816.

Table 2 – Tribal Burden								
Citation 25 CFR 900	Description	Information Collection Requirement	Respondents	Responses per Respondent	Responses	Time per Response	Total Annual burden Hours for Respondent	Total Annual Cost (Salary & Benefits)
900.8 900.44 900.48 900.49 900.53 900.55	Tribes or Tribal organizations submitting an initial Self-Determination contract proposal	(1) Contract Proposal Contents	567	0.94	533	28	14,924	\$819,626
900.12	Tribes or Tribal organizations submitting a Self-Determination contract renewal/annual funding agreement	(2) Self-Determination Contract Renewal/Annual Funding Agreements	567	5.64	3,198	4	12,792	\$702,537
900.120 900.121 900.126	Tribes submitting applications for construction	(3) Construction Projects	340	4	1,360	14	19,040	\$1,045,677

Table 2 – Tribal Burden

Citation 25 CFR 900	Description	Information Collection Requirement	Respondents	Responses per Respondent	Responses	Time per Response	Total Annual burden Hours for Respondent	Total Annual Cost (Salary & Benefits)
	projects							
900.10	Tribes or Tribal organizations submitting a written request to secure a list of all Federal property, or request a list of specific excess Federal property intended or currently in use, to the Secretary to carry out PFASAs	(4) Federal Property Request	340	1	340	26	8,840	\$485,493
900.11								
900.60	Tribes submitting written requests to dispose or return Federal property	(5) Tribal Disposal of Federal Property	101	1	101	9	909	\$49,922
900.40	Tribes or Tribal organizations submitting annual audits	(6) Audits	450	1	450	40	18,000	\$988,560
900.65	Tribes or Tribal organizations submitting required reports (i.e., program narrative or program data reports)	(7) Programmatic Reports and Data from Tribes	567	0.94	533	32	17,056	\$936,716
900.133	Tribes or Tribal organizations submitting a claim under the Contract Disputes Act	(8) Claims	93	3	279	57	15,903	\$873,393
900.219								

Table 2 – Tribal Burden								
Citation 25 CFR 900	Description	Information Collection Requirement	Respondents	Responses per Respondent	Responses	Time per Response	Total Annual burden Hours for Respondent	Total Annual Cost (Salary & Benefits)
900.140	Tribes or Tribal organizations submitting waivers for any provisions under 25 CFR 900	(9) Ability to Waive Provisions	49	1	49	4	196	\$10,764
900.158	Tribes or Tribal organizations submitting an appeal in response to an Agency declination	(10) Appeal Process for Initial Decisions	85	1	85	54	4,590	\$252,083
900.166	Tribes or Tribal organizations filing a written statement of objections to the recommended decision from the Administrative Law Judge (ALJ), within 30 days	(11) Finality of Recommended Decision	27	1	27	63	1,701	\$93,419
900.203	Tribes or Tribal organizations submitting notification to the BIA when an employee or subcontractor is involved in an alleged tort	(12) Contractor's Role in Alleged Tort by Employee or Subcontractor	27	4	108	122	13,176	\$723,626
Totals					7,063	453	127,127	\$6,981,816

*To obtain the hourly rate, we used \$36.61, with a 1.5 benefits multiplier, or an hourly rate of **\$54.92**. This estimate is based on the Bureau of Labor Statistics, *Employer Costs for Employee Compensation for civilian workers by occupational and industry group, June 2019, USDL 19-1649*. The document can be referenced at http://www.bls.gov/news.release/archives/ecec_03102016.pdf.

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.**

There is no non-hour cost burden associated with this information collection.

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.

We estimate the salary for a GS-11, Step 7, employee implementing this program to be \$35.79 per hour. This estimate is based on the Office of Personnel Management Salary Table 2019 – GS at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/19Tables/html/RUS_h.aspx. Including a multiplier of 1.6 for benefits, this result in a total salary of **\$57.26** per hour.

The average work time is estimated at 2.5 hours per response. The formula used is the sum of Responses, multiplied by the Government hourly rate of \$57.26 per hour, multiplied by the estimate of 2.5 hours per response.

7,063 X \$57.26 = \$404,427
\$404,427 X 2.5 hours per response = **\$1,011,067**

The BIA employee located at either the Region or Agency is reviewing all the applicable documents received from the Tribes or Tribal Organizations.

15. Explain the reasons for any program changes or adjustments.

The salary costs for respondents and the federal government increased because of increases in base salaries. No other changes were made to this information collection.

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 the results of 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.

There are no forms used for this information collection. Everything required is all spelled out in 25 CFR 900. In 25 CFR 900.2(f) cites the OMB has approved, the information collection requirements in part 900 under assigned OMB control number 1076-0136.

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

The BIA is not seeking any exceptions.