

1 Supporting Statement for

Indian Self-Determination and Education Assistance Act Contracts

25 CFR 900

OMB Control Number 0917-0037

A. Justification

1. Circumstances Making the Collection of Information Necessary

This is a request for an extension of a currently approved information collection OMB No. 0917-0037, which is authorized by Public Law (Pub. L.) 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA) as amended by Title I of Pub. L. 103-413 of the Indian Self-Determination Contract Reform Act of 1994.

2. Purpose and Use of Information Collection

In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA) to authorize tribes and tribal organizations (T/TOs) to assume control of certain Federal programs, e.g., health care programs that Federal agencies would otherwise provide to American Indians and Alaska Natives. As originally enacted, the ISDEAA only authorized the Federal agencies to transfer the “Secretarial amount,” which is the amount the agency would have otherwise spent on the programs, functions, services, and activities (PFSAs) transferred to the T/TO in its ISDEAA agreement. In 1988, Congress amended the ISDEAA to authorize contract support costs (CSC) funding for the first time. CSC funding also is authorized only for reasonable, actual costs, and only to support the Federal PFSAs.

Tribal governments and tribal organizations that intend to establish a new or expanded contract with Indian Health Service (IHS) are required to provide proposal information identified at §900.8 of the ISDEAA, which describes what a contract proposal must contain. This information is used by the IHS to determine applicant eligibility, evaluate applicant capabilities, protect the service population, and safeguard Federal funds and resources.

Subpart C contains provisions relating to the initial contract proposal contents (i.e., §§ 900.8). The proposal contents essentially consist of required items that must be included 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 900.40-44, 48-49, 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 (i.e., § 900.65). The information collected is directly related to the operation of the program and is negotiated on a contract by contract basis. The IHS 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 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 Indian Health Service property, and excess or surplus government property from other agencies (i.e., § 900.97). This subpart also addresses the process for Tribes or Tribal organizations to request that real property be placed “in trust.” The IHS uses 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 Tribe 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 (i.e., §§ 900.110-133). 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 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 an Administrative Law Judge's decision. The IHS uses 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 (i.e., § 900.166).

Subpart N covers the process for post-award contract disputes (i.e., §§ 900.215-230). Section 900.219 explains how Tribes or Tribal organizations submit a Contract Disputes Act (CDA) claim. The IHS 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. Use of Improved Information Technology and Burden Reduction

Tribes and tribal organizations are able to submit their information electronically and systems are in place to safeguard the information.

4. Efforts to Identify Duplication and Use of Similar Information

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 required information needed for the intended purpose.

5. Impact on Small Businesses or Other Small Entities

Tribes and Tribal organizations are not considered small governmental jurisdictions or small entities as defined under the Regulatory Flexibility Act.

6. Consequences of Collecting the Information Less Frequent Collection

Information collection from a tribe or tribal organization that intend to contract with IHS is required to submit specific information identified in 900.8. Failure to submit the required information could negatively impact IHS's ability to contract with the tribe or tribal origination. Without an amendment to the ISDEAA, IHS is not able to amend or reduce the required data, however, the potential contractor is only required to submit the data one time or in its initial contract with IHS expect for any additional assumption of activities.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

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 900.15 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 (§ 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 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 full award of a self-determination contract.

8. Comments in Response to the Federal Register Notice/Outside Consultation

A 60-day notice for public comments was published in the Federal Register on December 26, 2019 (84 FR 70982). A 30-day notice was published on February 25, 2020 (85 FR 10704). No comments were received in response to this notice.

9. Explanation of any Payment/Gift to Respondents

The respondents will not receive payment or gifts.

10. Assurance of Confidentiality Provided to Respondents

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

11. Justification for Sensitive Questions

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

12. Estimates of Annualized Hour and Cost Burden

The IHS provides a summary of data collected to determine an estimated time and costs burden. Further, it is important to identify two specific factors 1) time and cost for new or expanded assumption of activities and 2) ongoing tribal contract

management.

Estimated Time per Response: Average of 35 hours, the specific time is unknown and is dependent on the complexity of the issues identified in the renewal of the contract and negotiation of the annual funding agreement (AFA) that is required to be negotiated each year. IHS generally uses a team to negotiate the contracts and therefore the depending on the activities assumed by the tribe, the amount of time can vary from each tribal negotiation.

Estimated Total Annual Hour Burden: 35 average hours per contract x 275 contracts = 9,625 total Annual Burden Hours. Depending on the activities assumed by the tribe, the amount of time can vary from each tribal negotiation.

12A. Estimated Annualized Burden Hours

35 hours per contract x 275 contracts = 9,625 hours

13. Estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.

No cost burden. 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.

14. Annualized Cost to the Federal government.

The current estimated annual cost to the government is zero.

15. Explanation for Program Changes or Adjustments.

IHS continues to improve its overall business practices for negotiating contracts with tribal and tribal organization by implementing an automated process that will not only reduce the number of hours but will improve immediate access to information. The improvements to time and cost will be reflected in subsequent reports.

16. Plans for Tabulation and Publication and Project Time Schedule

There is no intention to publish the information cost collection.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

The IHS intends to display the expiration date with the OMB clearance number, date of approval and expiration date displayed on the top each form.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

The IHS is not seeking any exceptions.