

## 1 Supporting Statement for

### Indian Self-Determination and Education Assistance Act Contracts

#### 25 C.F.R. Part 900

OMB Control Number 0917-0037

#### A. Justification

##### 1. Circumstances Making the Collection of Information Necessary

This is a request for a revision of a currently approved information collection OMB No. 0917-0037, titled “Indian Self-Determination and Education Assistance Act Contracts 25 C.F.R. Part 900.”

This collection is necessary to negotiate and contract with Tribes, which is authorized by Title I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §§ 5301 et seq.

##### 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/TO) to assume control of certain Federal programs, e.g., health care programs that Federal agencies would otherwise provide to American Indians and Alaska Natives.

T/TO that intend to establish a new or expanded Title I self-determination contract with the Indian Health Service (IHS) are required to provide proposal information identified at 25 C.F.R. § 900.8, 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., 25 C.F.R. § 900.8). The proposal contents consist of required items that must be included in a proposal for a new or expanded program. These items include basic information about the T/TO 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 T/TO makes an initial application to contract a program.

**Subpart F** contains the minimum standards for the management systems used by T/TO when carrying out a self-determination contract. Sections 900.40-44, 48-49, 53, 55 and 60 discuss the information and record keeping requirements of T/TO regarding the financial, procurement and property management standards.

**Subpart G** provides for the negotiation of all reporting and data requirements between the T/TO and the Secretary (e.g., 25 C.F.R. § 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 excess and surplus Federal property to T/TO and acquisition of property with funds provided under a self-determination contract. This subpart addresses the procedures to be followed when T/TO wish to acquire excess Indian Health Service property, and excess or surplus government property from other agencies (e.g., 25 C.F.R. § 900.97). This subpart also addresses the process for T/TO to request that real property be placed “in trust.” The IHS uses the information to determine what property the T/TO want to acquire and how the property will be used. The information is collected and reported when a T/TO submits a request for excess and surplus federal property.

**Subpart J** addresses the process by which a T/TO may contract for construction activities and sets forth minimum requirements for contract proposals (e.g., 25 C.F.R. §§ 900.110-133). Among other things, the subpart requires the T/TO 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 T/TO is proposing to contract design and construction activity.

**Subpart L** (25 C.F.R. § 900.150 et seq.) provides the appeal procedures available to T/TO. Section 900.158 explains how to file a notice of appeal with the Interior Board of Indian Appeals (IBIA) and what the notice should contain. The IBIA receives the notice of appeal from the T/TO, and IHS receives a copy of information sent to the

IBIA; and § 900.166 provides instructions for submitting a written statement of objections concerning an Administrative Law Judge's decision. The information is collected and reported when T/TO request 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).

- 3. Subpart N** covers the process for post-award contract disputes (e.g., 25 C.F.R. §§ 900.215-230). Section 900.219 explains how T/TO 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. The CDA, 41 U.S.C. § 7101 et seq., sets forth the information required to be submitted for a claim. The regulations, including at § 900.220, only restate those statutory requirements and do not require any additional information. **Use of Improved Information Technology and Burden Reduction**

T/TO 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**

T/TO are not considered small governmental jurisdictions or small entities as defined under the Regulatory Flexibility Act.

- 6. Consequences if the Collection is not Conducted or Conducted Less Frequently**

T/TO that intend to contract with IHS under Title I of the ISDEAA are required to submit specific information identified in 25 C.F.R. § 900.8. Failure to submit the required information could negatively impact T/TO's ability to contract with IHS.

- 7. Special Circumstances Relating to the Guidelines of 5 C.F.R. § 1320.5**

There are special circumstances that require exceptions to 5 C.F.R. § 1320.5(d)(2). Part 900 requires 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 fifteen (15) days of receiving the proposal, the Secretary must advise the T/TO of any items which are missing from the proposal package and request that the T/TO provide the missing information within 15 days.

This abbreviated time schedule is necessary, as the ISDEAA only allows the Secretary a total of ninety (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 T/TO's written permission. 25 C.F.R. § 900.17 and 25 U.S.C. § 5321(a). 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 T/TO 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 prevent the 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 May 10, 2023 (88 FR 30149). A 30-day notice was published on August 7, 2023 (88 FR 52186). Two comments were received in response to this notice, however, both did not pertain directly to the information collection.

**9. Explanation of any Payment/Gift to Respondents**

T/TO will not receive payment or gifts.

**10. Assurance of Confidentiality Provided to Respondents**

There is no assurance of confidentiality provided to T/TO 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 30 hours, the specific time is unknown and is dependent on the complexity of the issues identified in the proposal of the contract and negotiation of the annual funding agreement (AFA) that is required to be negotiated each year.

Estimated Total Annual Hour Burden: 30 average hours per contract x 243 contracts = 7,290 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**

30 hours per contract x 243 contracts = 7,290 hours

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

The information collection will not require the purchase of any capital equipment nor create any start-up costs because T/TO 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. Some costs may be reimbursable as Contract Support Costs for pre-award and start-up activities and through grants.

**14. Annualized Cost to the Federal government.**

Costs may vary based on the complexity of a proposal.

**15. Explanation for Program Changes or Adjustments.**

IHS continues to improve its overall business practices for negotiating contracts with T/TO 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**

There are no forms used for this information collection. Everything required is all spelled out in 25 C.F.R. Part 900. .

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

The IHS is not seeking any exceptions.