

# RECLAMATION

*Managing Water in the West*

## **Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)**



**U.S. Department of the Interior  
Bureau of Reclamation  
Commissioner's Office  
Washington, D.C.**

**June 2019**

## **Mission Statements**

The Department of the Interior protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Note: This Best Practices Handbook is designed to provide a reference resource for the Public Law 93-638 practitioner community. It summarizes requirements in law, regulation, Reclamation Manual policies and directives and standards, and internal controls. It also establishes best practices to help assure program success.

# **Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)**



**U.S. Department of the Interior  
Bureau of Reclamation  
Commissioner's Office  
Washington, D.C.**

**June 2019**



## **Acknowledgements**

### **Reclamation Public Law 93-638 Steering Committee, 2017-2018 (Best Practices Handbook Authors)**

Great Plains Region: Mike Black, Shane Schieck, Greg Kruzich

Lower Colorado Region: Nathalie Washington, Beverly Nelson

Mid-Pacific Region: Rick Woodley, Kevin Clancy

Pacific Northwest Region: Melinda Ritacco, Matt Howard

Upper Colorado Region: Sean Torpey, Tracey Heller

Native American and International Affairs Office: Jeff Morris, Vicki Cook,  
Kelly Titensor

U.S. Department of the Interior, Office of the Solicitor, Division of  
Indian Affairs

### **Other Participation (Best Practices Handbook Reviewers)**

U.S. Department of the Interior, Office of Self-Governance

U.S. Department of the Interior, Bureau of Indian Affairs



# Table of Contents

	<i>page</i>
<b>1. Introduction.....</b>	<b>1</b>
<b>2. Background and Purposes of Developing Best Practices .....</b>	<b>3</b>
<b>3. Protocol—Working With Indian Tribes.....</b>	<b>5</b>
3.1 Understanding the Federal-Tribal Relationship.....	5
3.2 Tips for Working Effectively With Tribal Governments .....	5
3.2.1 Cultural Awareness .....	5
3.2.1.1 Respect for the Natural World .....	5
3.2.1.2 Spirituality.....	6
3.2.1.3 Elders and Children and the Importance of Clans and Kinship	6
3.2.1.4 Leadership and Decision Making .....	6
3.2.1.5 Cross-Cultural Communication .....	6
3.2.2 Protocol.....	7
<b>4. Outreach .....</b>	<b>9</b>
4.1 Why Do Outreach? .....	9
4.2 Three Components of Outreach .....	10
4.2.1 Conducting Outreach on a Government-to-Government Basis.....	10
4.2.2 Sharing Information.....	11
4.2.3 Encouraging Contracting of Eligible Programs .....	12
<b>5. Technical Assistance .....</b>	<b>13</b>
5.1 Background.....	13
5.2 Required Technical Assistance .....	13
5.3 Discretionary Technical Assistance.....	14
<b>6. Definitions.....</b>	<b>17</b>
<b>7. Internal Controls.....</b>	<b>21</b>
7.1 Management’s Responsibility for Risk Management and Internal Control...	21
7.2 Reclamation’s Programmatic Internal Control Program .....	21
7.3 P.L. 93-638 as a Reclamation Assessable Unit.....	22
7.4 Requirements for Execution and Administration of P.L. 93-638 Contracts and Self-Governance Annual Funding Agreements .....	22
7.5 Best Practices for P.L. 93-638 Internal Controls.....	23
<b>8. Delegations of Authority for Awarding Officials.....</b>	<b>25</b>
8.1 Awarding Official Delegation of Authority.....	25
8.2 Awarding Official Appointment Requirements.....	25
8.3 Considerations for Awarding Official Appointment, Training, and Continuing Education .....	26
8.3.1 Awarding Official Appointment Considerations.....	26
8.3.2 Awarding Official Continuing Education Considerations .....	27

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

<b>9. Roles and Responsibilities .....</b>	<b>29</b>
9.1 Ethical Conduct.....	29
9.2 Regional Director.....	29
9.3 Awarding Official .....	29
9.4 Program Manager.....	29
9.5 Awarding Official’s Technical Representative.....	30
9.6 Independent Reviewer .....	31
9.7 DOI Office of the Solicitor .....	32
9.8 Reclamation Native American and International Affairs Office .....	32
<b>10. Pre-Award Phase .....</b>	<b>33</b>
10.1 Review of Contract Proposal or Self-Governance Funding Agreement.....	33
10.1.1 Title I Non-Construction Contracts .....	34
10.1.2 Title I Construction Contracts .....	35
10.1.3 Title IV Non-Construction AFAs .....	35
10.1.4 Title IV Construction AFAs .....	36
10.2 Preparing for Negotiations.....	37
10.2.1 Pre-Award Kickoff Meeting.....	37
10.2.1.1 Purpose and Participants .....	37
10.2.1.2 Kickoff Meeting Topics .....	37
10.2.2 Evaluation of Risk .....	39
10.2.3 Tribal Management Standards Review .....	40
10.2.4 Environmental Compliance/Access Permits/Cultural Surveys .....	41
10.3 Proposed Contract or Annual Funding Agreement Terms and Conditions .	41
10.3.1 Initial Considerations.....	41
10.3.2 Developing the Proposed Contract or Self-Governance Funding Agreement .....	43
10.4 Reporting and Monitoring Considerations.....	44
10.4.1 Title I Construction Contracts .....	45
10.4.2 Title I Non-Construction Contracts .....	46
10.4.3 Title IV Construction and Non-Construction AFAs .....	47
10.5 Negotiations .....	48
10.6 Fair and Reasonable Funding Amount .....	48
10.6.1 Reclamation’s Government Cost Estimate.....	48
10.6.2 Budget Analysis.....	49
10.6.3 Cost or Price Analysis .....	50
10.7 Documentation for Award .....	51
10.7.1 Structuring the Title I Contract.....	51
10.7.2 Structuring the Title IV AFA .....	52
10.8 Pre-Award Reviews and Approvals.....	53
10.8.1 Independent and/or Management Reviews .....	53
10.8.2 Native American and International Affairs Office.....	54



**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

<b>11. Award Phase.....</b>	<b>55</b>
11.1 Award and Distribution.....	55
11.2 Special Considerations for Fiscal Year-End Awards .....	56
11.3 Information Management and Tracking System.....	56
11.4 Create the Official Award File .....	57
<b>12. Post-Award Phase .....</b>	<b>59</b>
12.1 Appointment of Awarding Official’s Technical Representative .....	59
12.2 Post-Award Conference .....	59
12.3 P.L. 93-638 Post-Award Monitoring and Monitoring Requirements .....	61
12.3.1 Site Visits.....	62
12.3.2 Deliverables .....	63
12.3.3 Notice of Late or Incomplete Reporting.....	66
12.3.4 Other Reviews .....	66
12.3.5 Additional Considerations .....	67
12.3.6 Records Retention .....	68
12.4 Noncompliance .....	68
12.5 Amendments .....	68
12.6 Post-Award Technical Assistance.....	69
12.7 Post-Award Review of Management Standards and Other Records .....	70
12.8 Payment.....	72
12.8.1 Requirements .....	72
12.8.2 Risk Assessment.....	72
12.8.3 Advances With Agency Review.....	73
12.8.4 Reimbursement and Other Specific Conditions .....	73
12.9 Required Tribal Communication .....	74
12.10 Closeout .....	75
12.11 Records Retention.....	76
<b>13. Retrocession, Reassumption, and Termination .....</b>	<b>77</b>
13.1 Title I Self-Determination Contracts .....	77
13.1.1 Non-Construction .....	77
13.1.1.1 Retrocession .....	77
13.1.1.2 Reassumption .....	78
13.1.1.3 Termination.....	79
13.1.2 Construction .....	80
13.1.2.1 Retrocession .....	80
13.1.2.2 Reassumption .....	80
13.1.2.3 Termination.....	80
13.2 Title IV Annual Funding Agreements .....	81
13.2.1 Non-Construction .....	81
13.2.1.1 Retrocession .....	81
13.2.1.2 Reassumption .....	82
13.2.1.3 Termination.....	84

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

13.2.2 Construction .....	84
13.2.2.1 Retrocession .....	84
13.2.2.2 Reassumption .....	84
13.2.2.3 Termination .....	85
<b>14. Evaluation and Updates to Best Practices Handbook .....</b>	<b>87</b>

## **Abbreviations and Acronyms**

638	Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638)
AAMD	Reclamation's Acquisition and Assistance Management Division
Act	Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638)
A/E	Architect and Engineer
AFA	Annual Funding Agreement (under Title IV of Public Law 93-638)
AO	Awarding Official
AOTR	Awarding Official's Technical Representative
ASAP	Automated Standard Application for Payments
BIA	Bureau of Indian Affairs
CAP	corrective action plan
CFR	Code of Federal Regulations
COA	Certificate of Appointment
D&S	Directives and Standards
DM	Department Manual
DOI	U.S. Department of the Interior
DOI IBC	U.S. Department of the Interior's Interior Business Center
FAADS	Federal Assistance Award Data System
FBMS	Financial and Business Management System
GSA	U.S. General Services Administration
Best Practices Handbook	Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)
HHS	U.S. Department of Health and Human Services
IBC	Interior Business Center
IGCE	Independent Government Cost Estimate

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

IMATS	Information Management and Tracking System
ISDEAA	Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638)
MS	Microsoft
MSO	Mission Support Organization
NAIAO	Native American and International Affairs Office
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PICP	Programmatic Internal Control Program
P.L.	Public Law
P.L. 93-638	Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638)
PM	program manager
PRISM	Procurement Information System for Management
QA/QC	quality assurance/quality control
Reclamation	Bureau of Reclamation
RD	Regional Director
RM	Reclamation Manual
SAM	GSA's System for Award Management
Secretary	U.S. Secretary of the Interior
SF	Standard Form
SF-425	Federal Financial Report, Standard Form 425
SME	subject-matter expert
SOW	scope of work
TSC	Technical Service Center
Tribe(s)	Indian Tribe(s)
U.S.	United States
USC	United States Code

# 1. Introduction

With enactment of the Indian Self-Determination and Education Assistance Act of 1975 (Act) Public Law 93-638 (P.L. 93-638) (638), the United States (U.S.) Congress declared an obligation on the part of the U.S. to assure maximum American Indian participation in the direction of educational and other Federal services to Indian Tribes (Tribes), to render such services more responsive to the needs and desires of those communities.

The U.S. Department of the Interior (DOI), through the regulations published in 25 CFR sections 900.3(b) and 1000.4(b), established Secretarial policy providing a uniform and consistent set of rules for contracts under the Act. The policy recognizes that contracting, whether under the Act or not, is an exercise by Tribes of their sovereignty and their government-to-government relationships with the U.S.

The Bureau of Reclamation (Reclamation) implements P.L. 93-638, as amended, to provide maximum Indian participation in programs and services for American Indians.

Reclamation's goals for each of its P.L. 93-638 actions are to:

- Ensure the full spirit and intent of P.L. 93-638 is fulfilled.
- Fulfill Reclamation's Trust responsibilities to Tribes.
- Support the government-to-government relationships between the U.S. and Tribes.
- Recognize that P.L. 93-638 contracts and funding agreements are not considered to be procurement contracts.
- Execute actions in a timely, cost-effective, and efficient manner.
- Ensure that processes add value to the quality, content, and compliance with statutory and regulatory requirements of P.L. 93-638 contracts and annual funding agreements (AFAs) covered by this Best Practices Handbook.
- Ensure that Federal fiduciary responsibilities are met.

This *Best Practices Handbook for Implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)* (Best Practices Handbook) has been developed by Reclamation's P.L. 93-638 Steering Committee, formed under a Charter signed by the Commissioner and Deputy Commissioners in 2017. The handbook addresses review comments received

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

from Reclamation's Tribal clients and input from the DOI Office of Self-Governance. It is intended to apply to Indian Self-Determination (Title I) and Tribal Self-Governance (Title IV) activities and projects, both construction and non-construction, and address how Reclamation traditionally prepares and administers P.L. 93-638 actions. The best practices provided in this handbook are not intended to impose requirements on Tribal clients or present practices that would exceed P.L. 93-638 statutory or regulatory requirements.

## **2. Background and Purposes of Developing Best Practices**

A primary purpose of developing best practices is to provide a common Reclamation-wide framework to implement and administer P.L. 93-638, while still leaving room to the individual regions to address unique challenges posed by workload or individual circumstances. Another purpose is to implement consistent procedures within Reclamation that reflect a high level of customer service, not only for Tribal partners, but also among the various Federal agencies and offices that are involved in P.L. 93-638 implementation.

Best practices are intended to:

- Improve communication and transparency between offices and program areas.
- Provide guidance for P.L. 93-638 practitioners.
- Improve documentation throughout the contracting process.
- Respect Regional, Area, and Program Offices' Tribal relationships and cultural sensitivities.
- Be scalable and adjustable based on the level of anticipated risk associated with each project and on special circumstances that might exist with a project or Tribe.

Best practices accomplish:

- Defining the roles of individuals involved in the P.L. 93-638 process and the responsibilities of each of those roles.
- Identifying the sequence of actions in the P.L. 93-638 process from inception to contract closeout.
- Identifying the documents that are required for each of the actions in P.L. 93-638 contracting.
- Providing timelines for actions involved in developing a P.L. 93-638 contract and defining the amount of time needed to complete each action.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Clarifying the contract monitoring process and establishing timelines for those actions.
- Identifying controls and/or eliminating risks to Reclamation and Tribes.

Reclamation's best practices do not change any provision of P.L. 93-638 or the regulations contained in 25 CFR part 900 and 25 CFR part 1000. Best practices are presented separately in many instances to appropriately recognize the distinctions between Title I and Title IV statutory and regulatory requirements. These best practices are intended to augment Reclamation and DOI policy and clarify how to apply policy.



## 3. Protocol—Working With Indian Tribes

### 3.1 Understanding the Federal-Tribal Relationship

Working effectively with Tribal Governments requires a basic understanding of the unique government-to-government relationship between the Federal Government and federally recognized Tribes, which is built upon respect for Tribal sovereignty, self-determination, and self-governance together with recognition of the Federal Trust responsibility and treaty rights. To better appreciate this relationship, it is necessary to understand the evolution of Federal Indian law and policy dating back to the European colonies and the effects those laws and policies have had on Tribes.

Any meaningful discussion of this history and associated laws and policies is beyond the scope of this Best Practices Handbook. However, by way of brief introduction to these subjects, see *Working Effectively with Tribal Governments*.<sup>1</sup> For additional material or information specific to the Tribe with whom you are working, contact your regional Native American and Cultural Resources staff, who can point you to sources.

### 3.2 Tips for Working Effectively With Tribal Governments

This section provides general guidance regarding cultural awareness and protocol that should be considered when working with Tribal Governments. Keep in mind that each Tribe is unique and this guidance offers no quick, one-size-fits-all approach to working with Tribal Governments.<sup>2</sup> Ultimately, there is no substitute for the experience gained by working directly with Tribes and establishing personal relationships with Tribal members.

#### 3.2.1 Cultural Awareness

##### 3.2.1.1 Respect for the Natural World

Many Native American cultures hold a strong connection to all aspects of the natural world. It is important to recognize the inseparable links that bind together Native American cultures, religions, and the environment. This nexus with the natural world creates a sense of responsibility that often influences the way Tribal Governments evaluate programs that affect the environment.<sup>3</sup>

---

<sup>1</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009). Available at [https://www.michigan.gov/documents/mdch/Working-Effectively-with-Tribal-Governments\\_384010\\_7.pdf](https://www.michigan.gov/documents/mdch/Working-Effectively-with-Tribal-Governments_384010_7.pdf).

<sup>2</sup> *Protocol Guidelines: Consulting With Indian Tribal Governments* (Reclamation, 2012), p. 14.

<sup>3</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009), section 3.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

**3.2.1.2 Spirituality**

A strong respect for spirituality is common among Tribes and often forms a sense of group unity. Spiritual practices are frequently part of daily activity. Many Tribes, for example, conduct meetings with traditional opening and closing ceremonies.

Specific ceremonial practices, prayers, and religious protocols vary among Tribes. Be mindful that many traditional Tribal beliefs and practices are not to be shared publicly.<sup>4</sup>

**3.2.1.3 Elders and Children and the Importance of Clans and Kinship**

For many Tribes, elders and children are accorded special respect. Elders are honored for their sacrifices for future generations of the Tribe and seen as holders of cherished cultural knowledge. Children are viewed as future leaders who will ensure the continuation of the Tribe and its culture. Many Tribes also place high importance on extended families, clan ties, and kinship.<sup>5</sup>

**3.2.1.4 Leadership and Decision Making**

Tribal traditions often require that Tribal leaders meet in person, deliberate extensively, seek consensus, and consider the long-term impacts of their decisions on future generations. Moreover, Tribal governing bodies may convene only at certain times of the year. Development of any schedules or timelines should consider these factors in order to provide adequate time for Tribal decision making.<sup>6</sup>

**3.2.1.5 Cross-Cultural Communication**

Tribal members, especially elders, may speak English as a second language. Some concepts may not be easily translated. Thus, cross-cultural communication can present challenges to an otherwise ordinary conversation.

Be sensitive and clearly convey points. Seeking clarification in a respectful manner can help bridge gaps in cross-cultural communication.<sup>7</sup> In early stages of the relationship, follow the lead of the Tribal participants in the use or non-use of humor. This may help prevent misunderstandings that may lead to setbacks in relationships.<sup>8</sup>

---

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* and *Tribal Protocol Manual* (U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; 2017), p. 14.

<sup>7</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009), section 3.

<sup>8</sup> *Protocol Guidelines: Consulting With Indian Tribal Governments* (Reclamation, 2012), p. 16.

### **3.2.2 Protocol**

Protocol provides a framework for maintaining a government-to-government relationship and prescribes the correct etiquette to be observed and followed when interacting with representatives of sovereign nations.<sup>9</sup> Check with your regional Native American program staff to see what protocol, if any, exists between Reclamation and the Tribal Government that you will be interacting with regarding P.L. 93-638. A protocol may be formally documented or based on a pattern of prior interactions and communications between Reclamation and Tribal Government officials. If a protocol exists, be sure to follow it. As a supplement to any protocol (including the absence of a protocol), the following etiquette should be observed:

- General Etiquette
  - Learn to pronounce the name of the Tribe correctly and recognize that some Tribal Governments represent two or more Tribes.
  - Be willing to admit that you have limited knowledge of Tribal culture and respectfully invite Tribal members to educate you about their culture and related protocols.<sup>10</sup>
  - Always ask for permission before taking photographs.<sup>11</sup> Do not assume that previously granted permission applies to current or future situations.
  - As a guest of the Tribe that you are visiting, respect their laws and customs. If you are invited to attend an event or ceremony, watch respectfully, and be mindful that some ceremonies and events are for Tribal members only. When invited, however, you are encouraged to attend Tribal cultural events as a means to improve your cultural understanding and promote positive relationships.<sup>12</sup> However, never assume you are welcome to wander the reservation without an invitation.<sup>13</sup>
  - Be respectful and receptive to different standards for greeting courtesies and communication.

---

<sup>9</sup> *Protocol for the Modern Diplomat* (U.S. Department of State, Foreign Service Institute; 2013), p. 2, available at <https://www.state.gov/documents/organization/176174.pdf> and *Consulting with Tribal Nations* (DOI University, 2017), pp. 2–4.

<sup>10</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009), section 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Tribal Protocol Manual* (U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; 2017), p. 25.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Meeting Etiquette
  - Collaborate with the appropriate Tribal representative on meeting logistics (e.g., location, date, length, agenda, attendees, meeting format, confidentiality concerns, need for a facilitator, visual aids, technical assistance, etc.) and, to the extent practicable, seek to accommodate Tribal preferences and schedules.<sup>14</sup>
  - Listen, and observe more, than speak. Become comfortable with long pauses during conversation. In Tribal communities, interruption may be highly disrespectful and may undermine your effectiveness.<sup>15</sup>
  - Promise only what you can deliver, and timely deliver what you promise.<sup>16</sup>
  - Respect Tribal needs for confidentiality. Ask about Tribal concerns regarding confidentiality before documenting or taking possession of information deemed sensitive by the Tribe. Be candid about your ability to maintain confidentiality of information in your possession. If you are unsure, say so.<sup>17</sup>
  - Summarize the main points of the meeting, the various points of view, areas needing further discussion, next steps, and deadlines, if any. The appropriate Reclamation representative (or facilitator, if one is present) should orally summarize these points before the end of the meeting and try to obtain a consensus among participants that the summation fairly captures the meeting highlights. The representative or facilitator should also indicate that a written summation will be sent to them for their review, edit, or comment on, as appropriate.

---

<sup>14</sup> See, e.g., *Protocol Guidelines: Consulting With Indian Tribal Governments* (Reclamation, 2012), pp. 19–20.

<sup>15</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009), section 3.

<sup>16</sup> *Protocol Guidelines: Consulting With Indian Tribal Governments* (Reclamation, 2012), p. 20.

<sup>17</sup> *Working Effectively with Tribal Governments* (White House – Office of Intergovernmental Affairs, 2009), section 3.

## 4. Outreach

### 4.1 Why Do Outreach?

In the 1970s, the Congress signaled a major shift in Federal Indian policy by ushering in an era of Indian self-determination and self-governance.<sup>18</sup> An important cornerstone of that policy was established through passage of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA). The ISDEAA establishes a statutory contracting process (commonly referred to as “638 contracting”) that allows for administration of many Indian programs and services to be transferred from DOI and the Indian Health Service (an agency within the U.S. Department of Health and Human Services [HHS]) to Tribes.<sup>19</sup> The 638 contracting process lies at the heart of the congressional commitment made to Indian people in 1975:

“The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.”<sup>20</sup>

Reclamation takes affirmative steps to implement that congressional commitment.<sup>21</sup> A critical and necessary first step in that process is outreach to Tribal Governments.

---

<sup>18</sup> See, e.g., 25 USC §§ 5301–5302.

<sup>19</sup> See, generally, 25 USC § 5301 *et seq.*

<sup>20</sup> 25 USC § 5302(b).

<sup>21</sup> RM D&S NIA 10-01 § 4.C(3) and RM Policy NIA P10 § 5.D.

## **4.2 Three Components of Outreach**

ISDEAA outreach consists of three key components: 1) conducting outreach on a government-to-government basis,<sup>22</sup> 2) sharing information,<sup>23</sup> and 3) encouraging contractibility of eligible programs while respecting Tribal sovereignty.<sup>24</sup>

### ***4.2.1 Conducting Outreach on a Government-to-Government Basis***

Outreach on a government-to-government basis requires that communication occur between appropriate representatives of Reclamation and the respective Tribal Government.

Reclamation representatives should include individuals knowledgeable about the ISDEAA and the specific program(s) eligible for contracting by the Tribe, along with an individual, such as an area manager, who can represent Reclamation more generally.<sup>25</sup>

A Tribal Government can be represented only by the governing body, typically a council member or someone expressly designated to represent the Tribal Government.

Interacting on a government-to-government basis is founded on respect for sovereignty. In practical terms, and for purposes of conducting outreach, this requires that Reclamation not only share information with the Tribal Government, but also solicit its views and perspectives. For example, it would be appropriate for Reclamation to share its ideas about future initiatives for ISDEAA training and outreach but, then, to also respectfully seek the views of the Tribal Government as to training needs or other ideas on how best Reclamation can help the Tribe increase its knowledge of contracting for Reclamation programs. This type of government-to-government interaction ensures that training and outreach is tailored to meet the specific needs of the Tribe, while being respectful of Tribal sovereignty and furthering the congressional policy of Indian self-determination.

---

<sup>22</sup> 25 CFR § 900.3(b)(7), 25 CFR § 1000.4(c)(3), and RM Policy NIA P10 § 5.A. (“*Government-to-Government*. In recognition of inherent powers of tribal sovereignty and self-government, Reclamation will respect the special legal and political relationship between the United States government and Indian tribes and implement its activities in a manner consistent with it.”)

<sup>23</sup> 25 CFR § 900.3(b)(2) and 25 CFR § 1000.4(c)(4).

<sup>24</sup> 25 CFR § 900.3(b)(8).

<sup>25</sup> See, e.g., 512 DM § 5.5A(1).

Contact the regional Native American program staff for assistance with setting up a government-to-government meeting with a Tribal Government.<sup>26</sup> In most cases, it would make sense to incorporate ISDEAA training and outreach into existing annual government-to-government meetings with the Tribal Government. That way, outreach would be added as an agenda item along with other issues that Reclamation and the Tribal Government regularly communicate about and work on together.<sup>27</sup>

The exchange of information between Reclamation and Tribes should include training about the ISDEAA. Training, however, should be tailored to those provisions of the ISDEAA that are applicable to Reclamation programs.

Because the ISDEAA, for example, applies more broadly to Bureau of Indian Affairs (BIA) programs, it is important that training be focused on those provisions of the ISDEAA dealing with the contractibility of Reclamation programs, as distinguished from BIA programs.

In addition to training, the exchange of information between Reclamation and Tribes should also include a discussion about specific Reclamation programs that are eligible for contracting.<sup>28</sup> Programs can include those eligible for mandatory contracting under Title I<sup>29</sup> and Title IV<sup>30</sup> of the ISDEAA, as well as “nexus” programs eligible for discretionary contracting.<sup>31</sup> In determining what programs are contractible, staff will need to consult with Regional Office management as well as the Native American and International Affairs Office (NAIAO) and the Regional or Field Solicitor’s Office, as appropriate. Staff should also review the annual report filed by the Secretary of the Interior (Secretary) pursuant to 25 USC section 5365, which identifies programs that have previously been determined as eligible for Title IV AFAs.

---

<sup>26</sup> It is important to distinguish between a government-to-government meeting and a consultation. While both obviously occur on a government-to-government basis, they serve distinct purposes. A government-to-government meeting serves to strengthen the Federal-Tribal Government relationship through regular communication and collaboration. Consultation, on the other hand, focuses on a discrete issue or set of issues and must adhere to the process prescribed in 512 DM 5.

<sup>27</sup> See, generally, RM Policy NIA P10 § 5.

<sup>28</sup> 25 CFR § 900.3(b)(2).

<sup>29</sup> 25 USC § 5321(a)(1)(E).

<sup>30</sup> 25 USC § 5363(b).

<sup>31</sup> 25 USC § 5363(c).

### ***4.2.3 Encouraging Contracting of Eligible Programs***

To further congressional goals of self-determination and self-governance, Reclamation should encourage Tribes to contract for programs eligible under the ISDEAA. See 25 CFR section 900.3(b)(8) (“It is the policy of the Secretary that the contractibility of programs under this Act should be encouraged.”).

Encouragement, however, must be tempered by respect for Tribal sovereignty. As an expression of self-determination, Tribal Governments ultimately decide whether to contract for Reclamation programs.<sup>32</sup>

---

<sup>32</sup> 25 CFR § 900.3(b)(5).



## 5. Technical Assistance

This section describes Reclamation’s obligations and opportunities to provide technical or other assistance when a Tribe is preparing a proposal, when Reclamation is reviewing a proposal, and throughout contract performance. This section also provides best practices to help ensure that such assistance is meaningful and productive.

### 5.1 Background

Technical assistance differs from management, monitoring, and oversight responsibilities for contracts and AFAs. These responsibilities are inherently Federal and must be carried out by Federal employees. Similarly, project responsibilities that Reclamation retains in a negotiated contract or AFA are not technical assistance.

#### Best Practices

- Provide background to Tribes on “inherently Federal functions” when it impacts their planning or expectations.

### 5.2 Required Technical Assistance

P.L. 93-638 requires Reclamation to provide technical assistance to Tribes on a non-reimbursable basis when:

- Developing a new contract proposal authorized by the Act and providing for the assumption of a program.<sup>33</sup>
- Developing modifications to a contract proposal that Reclamation has declined to approve.<sup>34</sup>
- For construction contract proposals, providing (no later than 30 days after receiving a Tribal request) all available information regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.<sup>35</sup>

---

<sup>33</sup> 25 USC §§ 5322(d)(1) and 5322(d)(2), and 25 CFR § 900.7.

<sup>34</sup> 25 USC §§ 5321(b)(2) and 5322(d)(3), and 25 CFR §§ 900.28 and 900.30.

<sup>35</sup> 25 USC § 5324(m)(2) and 25 CFR §§ 900.120–900.122.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Assisting the Tribe in overcoming deficiencies in contract performance, subject to available resources, when Reclamation suspends, withholds, or delays the payment of funds for 30 days based on a determination that the Tribe has failed to substantially carry out the contract without good cause.<sup>36</sup>
- Assisting the Tribe in overcoming deficiencies in contract performance in a non-emergency reassumption.<sup>37</sup>
- Waiving a provision of 25 CFR part 900, including any cost principles adopted by the regulations.<sup>38</sup>

### **5.3 Discretionary Technical Assistance**

Upon the request of a Tribe, Reclamation may provide technical assistance, subject to the availability of appropriations or resources, under the following circumstances:

- In response to a request for technical assistance that a Tribe makes in a letter of interest to assume a program through a self-governance funding agreement.<sup>39</sup>
- For a self-governance funding agreement, to mitigate imminent jeopardy to a trust asset, natural resource, or public health and safety.<sup>40</sup>
- When necessary to help a Tribe ensure successful completion of a self-determination contract or self-governance funding agreement.

#### **Best Practices**

- Reclamation should include technical assistance as a discussion topic during initial contract negotiations.
- Reclamation project managers should confer with NAIAO for possible funding for technical assistance so as to minimize potential impacts on project budgets.
- Reclamation should document all technical assistance provided, including the date(s) and result(s) of its efforts. This documentation should be included in the official award file.

---

<sup>36</sup> 25 USC § 5325(l)(1).

<sup>37</sup> 25 CFR § 900.248.

<sup>38</sup> 25 CFR § 900.146.

<sup>39</sup> 25 CFR § 1000.170(i).

<sup>40</sup> 25 CFR § 1000.308.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Reclamation should submit a written report to the Tribe describing the scope and result(s) of provided technical assistance.
- If Reclamation declines to provide technical assistance that is subject to the availability of appropriations or resources, it should provide a written justification that explains why technical assistance cannot be provided.
- Reclamation project managers, program managers (PMs), and Awarding Officials (AOs) should routinely ask the Tribe if there is a need for technical assistance during meetings and calls.



## 6. Definitions

Important words and terms related to P.L. 93-638 actions are defined in the public law itself, its implementing regulations, DOI/HHS's 1999 *Internal Agency Procedures Handbook for Non-Construction Contracting Under Title I of the Indian Self-Determination and Education Assistance Act*;<sup>41</sup> and the Reclamation Manual (RM) Directives and Standards (D&S) NIA 10-01 (RM D&S NIA 10-01).<sup>42</sup> For the most part, these words and terms are not duplicated here except to provide emphasis specific to this Best Practices Handbook.

Where words and terms are defined in more than one document, priority of interpretation should be given in the following order:

1. 25 USC section 5304 (Definitions)
2. 25 CFR sections 900.6 and 1000.2 (Definitions)
3. *DOI/HHS Internal Agency Procedures Handbook*, chapter 3 (Definitions)
4. RM D&S NIA 10-01, paragraph 3 (Definitions)

For the purposes of this Best Practices Handbook, the following definitions apply:

**Automated Standard Application for Payments (ASAP).** The U.S. Department of the Treasury payment system in which recipient organizations can request advances or reimbursements. ASAP is a self-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds.

**Awarding Official (AO).** A Reclamation employee who by appointment or delegation, in accordance with applicable regulations, has the authority to enter into and administer contracts or AFAs on behalf of the U.S. and make determinations and findings with respect thereto. This person can be any Federal official including, but not limited to, contracting officers.

**Awarding Official's Technical Representative (AOTR).** A Reclamation employee who has been appointed by the AO to act as an authorized technical representative in the monitoring and administration of an executed self-determination contract or self-governance funding agreement. The AOTR is designated by written memorandum from the AO, which also describes AOTR authorities, duties, and responsibilities.

---

<sup>41</sup> Henceforth referred to as, *DOI/HHS Internal Agency Procedures Handbook* (1999). Available at <https://intra.usbr.gov/native/selfdetermination.html>.

<sup>42</sup> RM D&S NIA 10-01, "Requirements for Execution and Administration of Indian Self-Determination and Education Assistance Act (P.L. 93-638, as amended) Contracts and Annual Funding Agreements (AFAs)" (<https://www.usbr.gov/recman/nia/nia10-01.pdf>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

**Budget Analysis.** The review and evaluation of a contract or AFA proposal budget. The purpose of a budget analysis is to evaluate how well the proposed budget accounts for the cost of the contract in view of the supporting data provided by the Tribe. The budget analysis should be documented and provided to the AO as part of the approval package for the proposed contract.

**Construction Contract Amount.** The total amount of funding awarded under a contract that reflects an overall fair and reasonable price to the parties. The cost elements of a construction contract budget include, but are not limited to, the items outlined in 25 CFR 900.8(h), 25 CFR 900.127(c)(1-4), and must be consistent with 2 CFR part 200 subpart E (Cost Principles).

**Cost Analysis.** An evaluation of separate cost elements and proposed profit or fee (if applicable) of the proposed budget of a contract proposal.

**Cost Estimate.** An opinion or forecast of the probable cost to obtain an agreed-upon scope that is prepared by staff who have the requisite knowledge, skills, and abilities related to the proposed scope of work (SOW), based on information available at the time the cost estimate is prepared.

**Cost Realism Analysis.** An evaluation of specific cost elements to determine whether the proposed costs are 1) realistic for the work to be performed, 2) reflective of a clear understanding of the requirements, and 3) consistent with the various elements of the contract proposal.

**Days.** Defined at 25 CFR 900.6 for self-determination contracts and at 25 CFR 1000.2 for AFAs.

**Government Cost Estimate.** A cost estimate prepared independently by the Government based on such information as listed in 25 CFR 900.129(b)(1-4). The Government cost estimate must be provided to the Tribe as part of contract or self-governance funding agreement negotiations. The Government and Tribe shall continue to revise, as appropriate, their respective cost estimates based on changed or additional information to arrive at an overall fair and reasonable price.<sup>43</sup>

**Independent Government Cost Estimate (IGCE).** A detailed cost estimate prepared by the Secretary, which is derived from final project plans and specifications. An IGCE represents the Government's estimate of the costs that the Tribe would incur to construct the proposed facilities. In the alternative, the Secretary may rely on the estimate prepared by the Tribe.<sup>44</sup> An IGCE is also known as an Engineer's Estimate.

---

<sup>43</sup> 25 CFR § 900.129(c)(1-5).

<sup>44</sup> 25 CFR § 130(b)(5-6) and 25 CFR § 900.131(b)(4).

**Independent Reviewer.** An individual with the appropriate qualifications to review and provide recommendations on a proposed contract or self-governance funding agreement and its supporting documentation.

**Price Analysis.** An examination and evaluation of a proposed budget to determine whether it is fair and reasonable, without evaluating its separate cost elements or proposed profit or fee (if applicable).

**Program Manager (PM).** The Reclamation line officer who has authority and responsibility and who is accountable to plan, manage, use, allocate, and protect Reclamation resources to accomplish an authorized program.

**Project Manager.** A Reclamation employee who is delegated responsibility for the planning and execution of a project. A project is any undertaking that has a defined scope, budget, schedule, and acceptance criteria, including defined start and finish dates.

**Regional or Field Solicitor's Office.** The office that has been designated to ensure that a proposed contract award, self-governance funding agreement, amendments thereof, and supporting documentation is legally sufficient and within the statutory authority delegated to Reclamation.

**Technical Analysis.** The review and written evaluation of a contract proposal by a program manager, his/her designated representative, or the AOTR. The analysis should address the technical judgments and assumptions the Government used to determine that 1) the Tribe's proposal provides an acceptable risk of successful performance and 2) the costs associated with the proposed performance are fair and reasonable.

**Technical Assistance.** The provision of Reclamation expertise to a Tribe as required by the Act or regulations, or as negotiated in a contract or self-governance funding agreement.

**Tribal Management Standards Review.** A Reclamation review and evaluation of a Tribe's financial, procurement, and property management system standards outlined in 25 CFR part 900 subpart F. Reclamation evaluates compliance with these standards when the Tribe submits an initial contract proposal.<sup>45</sup>

---

<sup>45</sup> 25 CFR § 900.40.





## 7. Internal Controls

### 7.1 Management's Responsibility for Risk Management and Internal Control

Office of Management and Budget (OMB) Circular A-123, "Management's Responsibility for Enterprise Risk Management and Internal Control," sets the framework for an agency's internal control requirements by stating that the agency head must establish controls that reasonably ensure:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations

### 7.2 Reclamation's Programmatic Internal Control Program

Reclamation's management is responsible for establishing and maintaining effective internal control [see *Departmental Manual* (DM) part 340 chapter 1(1.5)(K)]. Reclamation has established a Programmatic Internal Control Program (PICP) to allow managers at all levels to satisfy their applicable internal control responsibilities and proactively manage risk associated with the achievement of their programs.

RM D&S ADM 07-01, "Programmatic Internal Control Program Management,"<sup>46</sup> outlines Reclamation's requirements for establishing, maintaining, evaluating, improving, and reporting on programmatic internal controls. This D&S applies to all Reclamation employees involved in programmatic functions and emphasizes integrity and ethical values that address demands for Government programs and operations to be effective, efficient, reduce loss of assets, and be compliant with laws and regulations.

Internal controls serve as the first line of defense in safeguarding assets and in preventing and detecting errors, fraud, waste, and abuse. Further, internal controls help Government PMs achieve desired results through effective stewardship of public and Tribal resources. Each program participating in the PICP must perform the following steps annually:

1. Complete a risk assessment to identify and document program risks.
2. Establish, document, and/or verify key processes and internal controls.

---

<sup>46</sup> RM D&S ADM 07-01 (<https://www.usbr.gov/recman/adm/adm07-01.pdf>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

3. Plan for and conduct internal control reviews to assess the implementation and effectiveness of internal controls.
4. Document results of the internal control reviews.
5. Develop and implement corrective actions to address findings identified in the internal control reviews.

The process of continually assessing and responding to risks helps to ensure that Reclamation establishes and maintains effective internal controls.

### **7.3 P.L. 93-638 as a Reclamation Assessable Unit**

Reclamation identified P.L. 93-638 as one of many of its assessable units, defined as a critical program, activity, or functional subdivision of Reclamation's mission. Each assessable unit has a direct role in managing or achieving a Reclamation objective, goal, or mission (e.g., water delivery and compliance). Establishing P.L. 93-638 as an assessable unit supports Reclamation's mission to help manage, develop, and protect water and related resources on behalf of federally recognized Tribes.

### **7.4 Requirements for Execution and Administration of P.L. 93-638 Contracts and Self-Governance Annual Funding Agreements**

RM D&S NIA 10-01, effective May 22, 2014,<sup>47</sup> establishes Reclamation's requirements for the execution (award) and administration of P.L. 93-638 Title I contracts and Title IV self-governance AFAs. Prior to its release, this D&S was formally vetted through Reclamation's senior leadership, public review and commenting, and formal Tribal consultation sessions in five regional localities.

Among other requirements, RM D&S NIA 10-01 establishes NAIIO's authority and responsibility for implementing a P.L. 93-638 internal control plan, normally each fiscal year, containing minimum internal control requirements in the following areas:

---

<sup>47</sup> RM D&S NIA 10-01, "Requirements for Execution and Administration of Indian Self-Determination and Education Assistance Act (P.L. 93-638, as amended) Contracts and Annual Funding Agreements (AFAs)" (<https://www.usbr.gov/recman/nia/nia10-01.pdf>).

- NAIAO review and approval of individual actions from an internal control standpoint
- DOI's Office of the Solicitor review for legal sufficiency
- NAIAO on-site cyclical review (generally every 3 years, but no less than once every 5 years) of each region's P.L. 93-638 program to assess its strengths and weaknesses in the areas of:
  - Organizational alignments and leadership
  - Policies and processes
  - Human capital
  - Knowledge and information management
  - Other applicable focus areas

Upon completion of this review, NAIAO will prepare a written report outlining findings and recommendations, along with any needed corrective action plan (CAP).

## **7.5 Best Practices for P.L. 93-638 Internal Controls**

Establishing effective and efficient internal controls for P.L. 93-638 results in a win-win for Reclamation and Tribes since these controls help ensure successful completion of projects or programs by helping to mitigate performance and financial management risk throughout the contract or self-governance funding agreement's duration. To this end, a balance between effective internal controls and project goals and objectives is necessary. Best practices to consider when developing and implementing P.L. 93-638 internal control requirements include, but are not limited to:

### **Best Practices**

- **Organizational Separation of Functions.** To mitigate any potential or actual organizational conflict of interest, the regions should separate program functions from contracting functions. This separation insulates contract execution and administration personnel from programmatic pressures to make awards, allowing them to maintain impartiality and independent decision making in the contracting process.
- **Identification of Key Duties.** The organizational structure should provide a distinct separation of key duties and responsibilities in authorizing, processing, recording, and reviewing transactions between officials involved in the contract approval and award processes.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- **Independent Peer or Management Review of Proposed Contract/Self-Governance Funding Agreement Actions.** Regions should establish an internal control for qualified independent peer or management reviews, either internally or across regions, to review proposed contract/self-governance funding agreement actions. This is particularly important where an AO is signing his/her own work. Additionally, a peer or management review of one's work might help provide added objectivity for those 638 projects that an AO, AOTR, or 638 specialist has worked on for a long period of time. These peer or management reviews do not replace the NAIAO and DOI Office of the Solicitor review requirements in RM D&S NIA 10-01, or any other applicable internal control review requirements.

## 8. Delegations of Authority for Awarding Officials

### 8.1 Awarding Official Delegation of Authority

Reclamation's AO authority to enter into and administer P.L. 93-638 contracts and AFAs has been delegated to its Regional Directors (RDs) through DOI's *Departmental Manual*, "Delegation of Authority" (200 DM 1). Further delegations are authorized pursuant to RM Delegations of Authority.<sup>48</sup>

### 8.2 Awarding Official Appointment Requirements

RM D&S NIA 10-01, paragraph 5, outlines certain requirements when RDs are appointing AOs, including appointment procedures, qualifications, limitations on the AO's authority, and terminations. As added emphasis, this D&S requires RDs to consider a person's experience, training, education, business acumen, and judgment when appointing AOs. These considerations model the *DOI Contracting Officer Certificate of Appointment (COA) Program* manual.<sup>49</sup> The COA manual excludes P.L. 93-638 actions from its coverage, since these contracts and AFAs are not construed to be procurement contracts. However, the manual lists 638-specific training considerations and recommended credentials that DOI bureaus should carefully consider before delegating AO authority to certain employees:

"Indian Self-Determination and Educational Assistance Act contracts and annual funding agreements are negotiable under the authority of Public Law 93-638, as amended. Although these transactions are not traditional procurement contracts and are exempt from the COA Program, they can be very complex, and post-award disputes are subject to the Contract Disputes Act. The authority to obligate the Federal government is a serious matter and employees delegated this authority must have the knowledge, skills and abilities to perform their duties effectively.

Bureaus with authority to award these contracts and agreements must establish supplementary procedures to delegate authority and establish minimum training, experience, and continuing education requirements. The knowledge, skills, and abilities necessary for these positions are the same requirements expected of a Level II

---

<sup>48</sup> RM Delegations of Authority (<https://www.usbr.gov/recman/delegations/Delegations.pdf>).

<sup>49</sup> DOI Contracting Officer COA Program manual (<https://www.doi.gov/pam/programs/acquisition/Acqworkfor>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

CO complemented by a strong foundation in Public Law 93-638. Candidates must exhibit strong business acumen and personal integrity.

Training should include in-depth specific training in Public Law 93-638, as amended, contracting policy and procedures, cost and price analysis, Indian Trust resource issues and concerns, as well as instruction on applicable rules and regulations, reporting instructions, and guidance. This includes: latest issuance of DOI's Federal Assistance Awards Data System (FAADS) reporting instruction, 25 CFR Part 900; OMB Circulars A-87, A-102, A-123, and A-133;<sup>[50]</sup> and any Departmental or bureau guidance issued on P.L. 93-638, as amended. Individuals authorized to work on complex or specialized (e.g., construction) actions must have additional specialized training and experience commensurate with their duties."

## **8.3 Considerations for Awarding Official Appointment, Training, and Continuing Education**

### ***8.3.1 Awarding Official Appointment Considerations***

As outlined above, an AO is required to have the necessary experience, training, education, business acumen, and judgment to perform within his/her delegated authority. Therefore, before appointing AOs, RDs should consider the following recommended qualifications:

- Individuals with a minimum of 40 hours of combined training in P.L. 93-638 contracting policy and procedures, cost and price analysis, Indian Trust resource issues and concerns, OMB Federal cost principles, and the Single Audit Act of 1984.
- Individuals authorized to work on complex or specialized actions (e.g., construction) and have an additional 16 hours of specialized training and experience commensurate with their duties.
- Individuals who have filed an annual "Confidential Financial Disclosure Report" (OGE Form 450), as required by DOI's Departmental Ethics Office.<sup>51</sup> (Check with Reclamation's Ethics Office for further information.)

---

<sup>50</sup> Effective December 26, 2013, OMB Circulars A-87, A-102, and A-133 were superceded with coverage in 2 CFR part 200.

<sup>51</sup> DOI's Departmental Ethics Office (<https://www.doi.gov/ethics/disclosure-of-financial-interests>).

### ***8.3.2 Awarding Official Continuing Education Considerations***

To maintain his/her AO authority, RDs should require AOs to complete 24 hours of continuing education every 2 years. Possible courses/sessions include, but are not limited to:

- Consultation With Indian Tribes
- Government-to-Government Relationship
- Trust Resources: Preservation and Protection
- Tribal Management Systems (25 CFR part 900 subpart F)
- Cost and Price Analysis
- Indirect Cost Rates
- Indian Law
- Construction Inspection
- Refresher Training in P.L. 93-638
- P.L. 93-638 Construction Contracting
- Contract Law
- Contract Management and Administration
- Contract Negotiation
- 2 CFR part 200 subparts E (Cost Principles) and F (Audit Requirements)





## 9. Roles and Responsibilities

### 9.1 Ethical Conduct

All personnel involved in P.L. 93-638 shall ensure compliance with the “Employee Responsibilities and Conduct” (43 CFR part 20)<sup>52</sup> and “Standards of Ethical Conduct for Employees of the Executive Branch” (5 CFR part 2635) regulations.<sup>53</sup>

Note: 5 CFR part 2635 subpart B contains standards that prohibit an employee from soliciting or accepting any gift, gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value from a prohibited source (see 5 CFR section 2635.203), unless otherwise excepted.

### 9.2 Regional Director

The responsibilities of the RD include, but are not limited to, those outlined in RM D&S NIA 10-01, paragraph 4.C, and are not duplicated here.

### 9.3 Awarding Official

The responsibilities of the AO include, but are not limited to, those outlined in RM D&S NIA 10-01, paragraph 4.D, and are not duplicated here.

### 9.4 Program Manager

The PM has overall responsibility to implement a program in the field and must work in partnership with the AO during the pre-award, award, and post-award phases of the 638 contract or self-governance funding agreement. In general, an AO would not appoint the PM to serve as AOTR of an awarded contract or AFA, since the PM’s role is to oversee multiple awarded projects within his/her line of authority. Recommended duties include:

- Reviewing and recommending approval or declination of contract proposals, successor AFAs, contract renewals, and modifications in accordance with applicable laws and regulations.
- Ensuring that all pre- and post-award notifications required by applicable laws and regulations are provided.

---

<sup>52</sup> 43 CFR part 20, “Employee Responsibilities and Conduct” (<https://www.ecfr.gov/>).

<sup>53</sup> 5 CFR part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch” (<https://www.ecfr.gov/>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Managing overall risk and assuring project objectives are met.
- Consulting with the appropriate internal stakeholders (finance, environmental, contracting/awarding offices) and determining their requirements and expectations to ensure that they are actively involved at an early stage in the contracting process.
- Preparing a plan for monitoring the contract and submitting it to the AO with the documentation for the award package.
- Ensuring that incoming document(s) are date stamped and filed and that the appropriate Reclamation management and administrative officials are notified.
- If requested, and subject to the availability of appropriations or resources, providing technical assistance to the Tribe in preparing contract proposals.
- Providing a written explanation to the Tribe, signed by the RD, if a contract proposal must be declined.
- Providing technical assistance to the Tribe to avoid declination of a contract proposal and/or to overcome objections.
- Recommending suitable candidates for AOTR appointment to the AO.
- Participating in pre-award activities for construction projects as required by 25 CFR part 900 subpart J.

## **9.5 Awarding Official's Technical Representative**

The responsibilities of the AOTR include, but are not limited to, those outlined in D&S NIA 10-01, paragraph 4.E, and are not duplicated here. Since the AO relies on the AOTR to ensure successful completion of a contract or self-governance funding agreement, certain AOTR duties are outlined below as best practices:

### **Best Practices**

- Participating in all P.L. 93-638 kickoff meetings and assisting in determining the appropriate level of participation by Regional Office staff in subsequent P.L. 93-638 actions.

- Assisting the AO to resolve issues regarding compliance with the terms and provisions of the contract.
- Providing relevant information to the Tribe, reviewing any modifications proposed by the Tribe, and furnishing recommendations regarding their cost, need, etc.
- Maintaining a technical contract or self-governance funding agreement file and ensuring that the AO has the original of all documents for the official award file. The file should include a record of all telephone calls, meeting notes, emails, faxes, trip reports, and correspondence related to the contract or self-governance funding agreement.
- Reviewing contract or self-governance funding agreement payment requests and providing a written recommendation to the AO for acceptance or rejection of the requests.
- Reviewing contract or self-governance funding agreement progress reports and providing a written recommendation to the AO for acceptance or rejection of the reports.
- Working with the Tribe to reconcile differences between actual work accomplished and submitted progress reports.
- Assisting the AO in reviewing the use, management, and disposition of all accountable real property and other property purchased with contract or self-governance funding agreement funds or provided as Federal Government-furnished property.
- Monitoring performance to ensure that work progresses in accordance with the contract or self-governance funding agreement schedule.
- Monitoring requirements contained in the safety and health provisions of the contract or self-governance funding agreement.
- Assisting the AO to ensure compliance with the requirements of the Davis-Bacon Act of 1931 and related laws for construction activities.

## **9.6 Independent Reviewer**

As listed in section 6, “Definitions,” of this Best Practices Handbook, an independent reviewer is an individual with the appropriate qualifications to review and provide recommendations on a proposed contract or self-governance

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

funding agreement and its supporting documentation. The independent reviewer is an individual separate from the person preparing the action and should reside outside the originating program office to maintain impartiality and objectivity.

## **9.7 DOI Office of the Solicitor**

Duties and responsibilities of the Regional or Field Solicitor's Office include, but are not limited to:

- Participating in P.L. 93-638 kickoff meetings, as appropriate.
- Reviewing the proposed award package of P.L. 93-638 actions for legal sufficiency (e.g., contractibility, authority, etc.).
- Reviewing subsequent modifications, as applicable.

## **9.8 Reclamation Native American and International Affairs Office**

The responsibilities of the NAI AO include, but are not limited to, those outlined in D&S NIA 10-01, paragraph 4.B, and are not duplicated here.

## 10. Pre-Award Phase

All P.L. 93-638 pre-award actions shall be documented in writing for each self-determination (Title I) contract or self-governance (Title IV) funding agreement. The purpose of this documentation is to present a reviewable record of significant actions, activities, and decisions. The documentation shall be available for review of the AO's analyses, findings, determinations, and compliance with P.L. 93-638. This documentation and all supporting materials shall be retained by the AO in the official award file.

### 10.1 Review of Contract Proposal or Self-Governance Funding Agreement

Title I non-construction contracts must meet the initial contract proposal requirements outlined in 25 CFR part 900 subpart C (Contract Proposal Contents).<sup>54</sup> Title I construction contracts must meet the initial contract proposal requirements outlined in 25 CFR part 900 subpart J (Construction). Title IV AFAs must be negotiated consistent with requirements in 25 CFR part 1000 subpart F (Non-BIA Annual Self-Governance Compacts and Funding Agreements) and subpart G (Negotiation Process for Annual Funding Agreements).<sup>55</sup>

P.L. 93-638 and its regulations prescribe distinct and separate requirements for proposal reviews, negotiations, and award timelines for Title I non-construction contracts, Title I construction contracts, and Title IV construction and non-construction AFAs.

#### **Best Practices**

Each office should develop standard operating procedures that include:

- Developing a standard checklist of items that need to be completed and the responsible individual for each.
- Formalizing and instituting a process for properly stamping proposals when received and maintaining a log of the dates when Reclamation must complete action on received proposals.
- Sharing key project information with the Tribe on an ongoing basis.

---

<sup>54</sup> 25 CFR part 900, "Contracts Under the Indian Self-Determination and Education Assistance Act" (<https://www.ecfr.gov/>).

<sup>55</sup> 25 CFR part 1000, "Annual Funding Agreements Under the Tribal Self-Government Act Amendments to the Indian Self-Determination and Education Act" (<https://www.ecfr.gov/>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Developing a standard response letter to Tribes acknowledging receipt of their proposals.
- Developing a standard followup letter notifying Tribes of missing proposal information.
- Developing a standard letter notifying Tribes when everything is complete and Reclamation is ready to commence negotiations.

**10.1.1 Title I Non-Construction Contracts**

Upon receipt of a contract proposal for Title I non-construction activities, the region's authorized representative shall: (a) within 2 days, notify the Tribe in writing that the proposal has been received; (b) within 15 days, notify the Tribe in writing of any missing items required by 25 CFR section 900.8 and request that the items be submitted within 15 days of receipt of the notification; and (c) review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.<sup>56</sup>

As outlined in 25 CFR section 900.22, Reclamation may only decline a Title I non-construction contract proposal for one or more of the following five reasons:

1. The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;
2. Adequate protection of trust resources is not assured;
3. The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
4. The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act;<sup>57</sup> or
5. The program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act<sup>58</sup> because the proposal includes activities that cannot lawfully be carried out by the contractor.

---

<sup>56</sup> 25 CFR § 900.15. Section 102(a)(2) of the Act is codified at 25 USC § 5321(a)(2).

<sup>57</sup> Section 106(a) of the Act is codified at 25 USC § 5325(a).

<sup>58</sup> Section 102(a)(1) of the Act is codified at 25 USC § 5321(a)(1).

After receipt of a Title I non-construction contract proposal, Reclamation has 90 days to review and approve the proposal and award the contract, or decline the proposal in compliance with section 102 of the Act<sup>59</sup> and 25 CFR part 900 subpart E (Declination Procedures).<sup>60</sup> At any time during the review period, the Secretary may approve the proposal and award the requested contract.<sup>61</sup> If the proposal is not declined or the contract is not awarded within 90 days, or any extension granted in writing by the Tribe, the proposal is deemed approved.

If declination issues arise, the region should immediately assemble a team to determine if the issues can be overcome. The team should collaborate with all pertinent parties, including the RD or Area Manager, PM or project manager, NAIAB, DOI's Office of the Solicitor, and the AO, as appropriate.

### ***10.1.2 Title I Construction Contracts***

Upon receipt of a contract proposal for Title I construction activities containing the required information outlined in 25 CFR section 900.125, Reclamation shall acknowledge receipt of the proposal within 30 days and, if requested by the Tribe, confer with the Tribe to develop a negotiation schedule containing the minimum information outlined in 25 CFR section 900.122(b).

If Reclamation and the Tribe are unable to develop a mutually agreeable construction contract proposal under the procedures in 25 CFR section 900.122, the Tribe may submit a final contract proposal. Not later than 30 days after receiving the final contract proposal, the Secretary shall either approve the contract proposal and award the contract, or decline the proposal under sections 102(a)(2) and 102(b) of the Act.<sup>62</sup> Reclamation may only decline a construction contract proposal for one or more of the five reasons previously listed in section 10.1.1.

### ***10.1.3 Title IV Non-Construction AFAs***

Reclamation will follow the requirements of 25 CFR sections 1000.166 through 1000.175 when reviewing and responding to the Tribe's letter of interest and/or request to negotiate a Title IV AFA for performing authorized non-construction activities. Pursuant to 25 CFR section 1000.175(c), once negotiations are successfully completed, Reclamation and the Tribe will prepare an AFA and

---

<sup>59</sup> Section 102 of the Act is codified at 25 USC § 5321.

<sup>60</sup> If the Tribe has submitted a complete proposal, including Tribal resolution, and the Region determines an extension is necessary beyond the 90-day statutory award timeframe, the RD, Area Manager, or other authorized representative must obtain the Tribe's voluntary and express written consent to the proposed extension by the 90th day.

<sup>61</sup> 25 CFR § 900.16.

<sup>62</sup> Sections 102(a) and 102(b) of the Act are codified at 25 USC § 5321(a) and (b).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

Reclamation will either execute or disapprove the AFA within 30 days or by a mutually agreed-upon date. If the parties fail to negotiate an agreement by the mutually agreed-upon date for completing negotiations, the Tribe and Reclamation may each make a last and best offer to the other party.

If the Tribe's last and best offer is not accepted within 15 days, Reclamation must provide a written explanation to the Tribe explaining the reasons for not entering into an AFA for the requested project, along with information regarding the Tribe's appeal rights.<sup>63</sup>

***10.1.4 Title IV Construction AFAs***

Reclamation will follow the same requirements previously identified in section 10.1.3. All provisions of 25 CFR part 1000 apply to construction portions of AFAs unless the provisions are inconsistent with 25 CFR part 1000 subpart K (Construction).<sup>64</sup>

The following six regulations in 25 CFR part 1000 subpart K (Construction) pertain to negotiating the construction portions of AFAs:

1. 25 CFR 1000.240 (*programs* that can be included in a construction AFA)
2. 25 CFR 1000.242 (*AFA provisions* that *may* be included in a construction AFA)
3. 25 CFR 1000.243 (*AFA provisions* that *must* be included in a construction AFA)
4. 25 CFR 1000.246 (applicability of Federal construction standards)
5. 25 CFR 1000.247 (required design provisions and other required terms and conditions)
6. 25 CFR 1000.256 (Secretary's retention of project funds to ensure proper health and safety standards)

---

<sup>63</sup> 25 CFR § 1000.179.

<sup>64</sup> 25 CFR § 1000.252.



## 10.2 Preparing for Negotiations

### 10.2.1 Pre-Award Kickoff Meeting

#### 10.2.1.1 Purpose and Participants

The region should conduct an internal pre-award kickoff meeting after the Tribe has submitted a proposal that Reclamation has determined to be eligible for contracting under P.L. 93-638. The kickoff meeting is intended to:

- Brief the meeting participants on the proposed project and level of complexity.
- Determine the level of risk in completing the project with the tasks or work involved (to include staff qualifications or subcontractors).
- Determine the AO's involvement in contract negotiations.
- Determine the level of involvement for each of the participants in subsequent stages of the pre-award, award, and post-award phases of the project.
- Determine the scope of Reclamation's pre-award review of the Tribe's financial, procurement, and property management system standards.

#### Best Practices

- To determine the scope and nature of Reclamation's review of Tribal management system standards, first obtain and review the Tribe's policies surrounding these standards.
- The PM or project manager should be responsible for coordinating the kickoff meeting. At a minimum, the PM and/or project manager, AO, and the regional Native American program representative should participate. Additional participants may include, but are not limited to, the Regional or Field Solicitor's Office and the environmental compliance representative.
- Determinations resulting from the kickoff meeting should be recorded and included in the official award file.

#### 10.2.1.2 Kickoff Meeting Topics

Kickoff meeting discussions may include, but are not limited to, the following topics:

- Involvement of Regional/Area Office staff and other Reclamation or Federal agency parties

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Project description and components
- Project complexity/uniqueness and legal issues
- Content and format of cost estimates for project
- Environmental compliance and related concerns, including the National Environmental Policy Act (NEPA), National Historic Preservation Act of 1966 (NHPA), and any other environmental compliance issues
- Projection of non-contract costs<sup>65</sup>
- 25 CFR part 900 subpart J considerations (including 25 CFR section 900.137) for Title I construction projects/activities
- Any additional proposal information required by 25 CFR sections 900.8 or 900.125 from the Tribe
- Reclamation's request for extension of the 90-day statutory timeframe for award (Title I non-construction contracts only), as applicable, and written approval from the Tribe
- Prudence of Reclamation's review of the Tribe's financial, procurement, and property management system standards
- Risk assessment including, but not limited to, historical performance of the Tribe and compliance with reporting requirements
- Single audit/financial statement issues
- Frequency of reporting and identification of required support documentation
- Post-award monitoring
- Attendance of AO and/or AO designee in negotiations
- Negotiations and award schedule
- Need for additional communication meetings

---

<sup>65</sup> RM D&S FAC 09-02 § 8 (<https://www.usbr.gov/recman/fac/fac09-02.pdf>).

### ***10.2.2 Evaluation of Risk***

Inherent risk of the contract or self-governance funding agreement in the areas of financial management or work performance is important to address during the kickoff meeting, or separately. The region should examine if a reasonable business case exists for negotiating contractual safeguards and/or offering technical assistance to the Tribe to minimize Reclamation's risk exposure in entering into a contract or self-governance funding agreement.

Meeting participants may examine several factors in determining inherent risk including, but not limited to:

- Is the Tribe in compliance with 2 CFR part 200 subpart F (Audit Requirements)<sup>66</sup> referenced in 25 CFR section 900.40(b)?
- Do current and recent single audit reports, conducted by external auditors, indicate that the Tribe had material weaknesses, significant deficiencies, noncompliance findings, or other reportable conditions potentially impacting the contract or AFA?
- Has Reclamation awarded Federal funds to the Tribe within the previous 3 fiscal years, and has the Tribe properly recorded and accounted for project transactions to:
  - permit the preparation of reliable and timely Federal reports;
  - maintain accountability over assets; and
  - demonstrate compliance with laws, regulations, and other compliance requirements?
- If a single audit has not been performed, has Reclamation or another Federal agency performed a Tribal Management Standards Review within the previous 3 to 5 fiscal years that determined, in writing, that the Tribe's business management practices are compliant with the minimum standards in 25 CFR part 900 subpart F for financial, procurement, and property management systems? Also, has Reclamation or another Federal agency implemented sanctions for single audit noncompliance, pursuant to 2 CFR sections 200.338 and 200.505?
- Do previous or current monitoring plans recommend or determine that Reclamation should exercise preventive action designed to mitigate contractual risk, such as offering to provide technical assistance to the Tribe?

---

<sup>66</sup> 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (<https://www.ecfr.gov/>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Have the AO and/or AOTR raised other concerns?
- Are the activities detailed in the contract's SOW including, but not limited to, the value of the project, duration of the project, type and complexity of the work being performed, other non-Tribal beneficiaries, and the extent of Reclamation involvement?
- Is elevated political or media exposure expected?

### ***10.2.3 Tribal Management Standards Review***

During the kickoff meeting, or otherwise separate, Reclamation shall determine a plan for reviewing the Tribe's financial, procurement, and property management system standards and internal policies and procedures before award to ensure compliance with the minimum standards outlined in 25 CFR part 900 subpart F.<sup>67</sup> The scope of this review may be either comprehensive by evaluating each of the Tribe's financial, procurement, and property standards and/or practices, or limited by analyzing any partial combination of the three standards and/or practices.

In determining whether the scope of this review should be comprehensive or limited, Reclamation should examine several factors including, but not limited to, whether:

- Single audit reports by external auditors issued annually within the previous 3 years indicate that the Tribe had material weaknesses or significant deficiencies.
- Single audit reports have been timely and issued for the Tribe's recent operating year subject to a single audit.
- Reclamation or another Federal agency has performed a business management review within the previous 3 fiscal years that determined in writing that the Tribe exercises adequate management system standards and/or practices to properly and accurately purchase goods and services, manage property, and administer and account for Federal funds.

The AO and PM should ensure that the Reclamation employee performing the review possesses a combination of education, training, experience, and skill to make technical observations and provide well-informed recommendations on the adequacy of the Tribal management systems. The reviewer shall possess a working knowledge of the theories, principles, practices, and terminology involving the subject matter for the type of review to be conducted.

---

<sup>67</sup> 25 CFR § 900.40(a) requires Reclamation to perform this review when a Tribe submits an initial contract proposal.

The reviewer's observations may be, but are not limited to, the following:

- A sufficient mixture of quantitative and qualitative documented facts and data that experienced professionals in the system's subject matter would typically rely on in making a knowledgeable observation.
- Reliable and widely recognized principles and methods that experienced professionals in the system's subject matter would reasonably apply in making a fundamentally sound observation.

The observations resulting from the performance of a Tribal Management Standards Review could present an additional opportunity to offer technical assistance to the Tribe.

#### ***10.2.4 Environmental Compliance/Access Permits/Cultural Surveys***

To fulfill NEPA requirements, the PM has responsibility to ensure that the appropriate Regional or Area Office environmental staff is present at the beginning of the P.L. 93-638 process. NEPA, NHPA, and any other environmental compliance issues will be addressed during the kickoff meeting.

*Reclamation's NEPA Handbook* has been designed as a guidance tool for use by all Reclamation staff.<sup>68</sup> The handbook addresses specific "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and Endangered Species Act, Secretarial Order 3206;" "Tribal Trust Responsibilities;" and "Indian Trust Asset Policy and Guidance" (attachments 7, 8, and 9, respectively, of the handbook).

### **10.3 Proposed Contract or Annual Funding Agreement Terms and Conditions**

#### ***10.3.1 Initial Considerations***

Contract formulation begins well before "pen-to-paper" activities occur. Working in partnership with the PM, the following list describes some of the major considerations the AO questions when structuring a contract or AFA:

1. Does the authorizing statute for project activities to be performed contain any restrictions or special requirements when contracting or entering into the 638 contract or self-governance funding agreement with the Tribe?
2. Are there other Indian or non-Indian project beneficiaries? If so, have all other applicable reviews and approvals been obtained, as applicable?

---

<sup>68</sup> *Reclamation's NEPA Handbook* (Reclamation, 2012) (<https://www.usbr.gov/nepa/>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

3. Is the project funded?
4. Has the project been fully scoped?
5. Has a cost estimate for the project been developed, at least to the level of contracting anticipated (i.e., contracting for the preparation of an environmental impact statement might also include contracting for Architect and Engineer (A/E) services to develop up to 30% designs to support the environmental work—design estimating would only need to cover up to the 30% design level)?
6. Has a project schedule (preliminary or otherwise) been developed?
7. Have permits (Tribal or otherwise) been secured, or planned to be secured under the contract?
8. Have rights-of-way issues been addressed?
9. Is there a current resolution specifically authorizing the Tribe to enter into a Title I contract or self-governance funding agreement, or will one be forthcoming soon?<sup>69</sup>
10. Have all applicable program standards been identified?
11. Has a project budget been developed (by category) identifying such items as salaries, fringe benefits, capital equipment, etc.?
12. Have reporting requirements been identified and mutually agreed upon with the Tribe and, if not, how will they be negotiated with the Tribe?
13. Have all additional provisions to be included in the contract or self-governance funding agreement been internally discussed, drafted, and agreed upon?
14. Has a proposed monitoring plan been developed?

---

<sup>69</sup> A Title I contract proposal is not considered complete until a Tribal resolution is provided, which serves as the Tribal Government's formal authorization to contract with Reclamation under Title I of P.L. 93-638 for eligible project activities. See 25 USC § 5321(a)(1) and 25 CFR § 900.8(d).

### ***10.3.2 Developing the Proposed Contract or Self-Governance Funding Agreement***

Coordination with the Tribe throughout the drafting process will minimize misunderstandings of the terms and conditions of the contract or self-governance funding agreement. Reclamation shall use NAI/O's prescribed P.L. 93-638 Title I non-construction and construction contract templates to structure new Title I cost-reimbursement contracts.<sup>70</sup> No changes are permitted to the "model contract" contained in the Title I non-construction template except those items that may be subject to negotiation with the Tribe. Both Reclamation and the Tribe should have access to and share information regarding terms and conditions contained in the appropriate template early in the negotiation and contract formulation process. The parties should consider what additional terms and conditions are appropriate for inclusion in the contract based on the SOW, risk assessment, duration and complexity of the project, safety and health considerations, etc.

Title I contract terms and conditions that are typically negotiated may include, but are not limited to:

- SOW
- Program standards
- Performance schedule
- Budget
- Labor mix and methodology
- Indirect cost rate
- Reporting frequency and type of reporting
- Tribal Management Standards Review
- Site visits
- Documentation necessary to be submitted prior to the funding drawdown in the ASAP system

---

<sup>70</sup> At the option of the Tribe, a Title I *construction* contract may be negotiated and structured as a fixed-price contract. Since the Tribe assumes significant performance and financial risk under a fixed-price contract, along with the ability to earn profit, the contract's SOW and contract terms and conditions will be much more comprehensive than under a cost-reimbursement contract.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Post-award monitoring
- Payment
- Insurance
- Method and frequency for deliverables
- Property (Government-furnished and/or Tribally-acquired)
- Level of Federal involvement
- Funds for Government contract administration and oversight
- Proposed capital equipment purchases
- Cost share (if program authority mandates)
- Tribal Employment Rights Office and other Tribal ordinances and fees
- Rights-of-way and easements
- Tribal environmental, cultural, and natural resources ordinances and permits
- Assistant Secretary for Water and Science approval to waive certain ISDEAA regulations as requested by the Tribe
- 25 CFR part 900 subpart J (Construction) considerations, including 25 CFR section 900.137

Title IV AFAs shall address the minimum requirements under 25 CFR part 1000 subpart F (Non-BIA Annual Self-Governance Compacts and Funding Agreements) and 25 CFR part 1000 subpart K (Construction), as applicable.

## **10.4 Reporting and Monitoring Considerations**

This section discusses certain P.L. 93-638 regulations regarding post-award monitoring and reporting requirements applicable under a contract or self-governance funding agreement. In preparing for negotiations, Reclamation should ensure that the proposed contract or self-governance funding agreement contains terms and conditions that are compliant with these requirements. Note that reporting requirements are subject to the declination criteria.



#### ***10.4.1 Title I Construction Contracts***

25 CFR part 900 subpart J governs the requirements for Title I construction contracts. Additional reporting and monitoring requirements can be negotiated into the contract, particularly if Reclamation has reasonable cause to believe that a serious performance deficiency may exist, or Reclamation requires information for other purposes such as to fulfill requirements of the project's authorizing legislation or environmental compliance.

Below are citations from the regulations specific to post-award monitoring and oversight of Title I construction contracts:

1. **Financial and Performance Reporting.** 25 CFR section 900.130(c)(7) states:

“The Indian tribe or tribal organization shall provide to the Secretary progress and financial status reports.

(i) The reports shall be provided quarterly, or as negotiated, and shall contain a narrative of the work accomplished, the percentage of work completed, a report of funds expended during the reporting period, and total funds expended for the project.

(ii) The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial schedule of values and updates as they may occur, and an initial construction schedule and updates as they occur.”

#### **Best Practices**

- Reclamation should consider if the following financial support documents should be submitted by the Tribe:
  - Quarterly revenue and expenditure report
  - Quarterly balance sheet
  - Quarterly detailed trial balance
  - Monthly bank statements and reconciliations for the quarter

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

2. **Records Available for Monitoring Visits.** 25 CFR section 900.130(c)(8) states:

“The Indian tribe or tribal organization shall maintain on the job-site or project office and make available to the Secretary during monitoring visits: contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline drawings.”

3. **Monthly/Critical Milestone On-Site Monitoring Visits.** 25 CFR section 900.131(b)(9) states:

“The Secretary may conduct monthly on-site monitoring visits, or alternatively if negotiated with the Indian tribe or tribal organization, critical milestone on-site monitoring visits.”

4. **Final Project Inspections.** 25 CFR section 900.131(b)(10) states:

“The Secretary retains the right to conduct final project inspections jointly with the Indian tribe or tribal organization and to accept the building or facility. If the Secretary identifies problems during the final project inspections the information shall be provided to the Indian tribe or tribal organization and shall be limited to items that are materially noncompliant.”

#### ***10.4.2 Title I Non-Construction Contracts***

The provisions of the “model agreement” must be included or incorporated by reference into a P.L. 93-638 non-construction contract.<sup>71</sup> Title I limits post-award monitoring of contract performance and the contractor’s financial status for non-construction contracts unless reporting and monitoring requirements are negotiated into the contract, the Tribe agrees to additional requirements, or Reclamation determines that there is reasonable cause to believe that a serious performance deficiency may exist.

1. **Financial and Performance Reporting.** In the initial contract proposal, the Tribe proposes the type and frequency of financial and performance reports to be provided. Reclamation then negotiates the type and frequency of reports with the Tribe and identifies them in the Title I contract.<sup>72</sup>

---

<sup>71</sup> 25 USC § 5329(a)(1).

<sup>72</sup> 25 CFR §§ 900.8(g)(5), 900.45(a), and 900.65.

**Best Practices**

- Reclamation should consider if the following financial support documents should be submitted by the Tribe:
  - Quarterly revenue and expenditure reports
  - Quarterly balance sheet
  - Quarterly detailed trial balance
  - Monthly bank statements and reconciliations for the quarter
  
- 2. **On-site Monitoring Requirements.** The Act permits one annual on-site performance monitoring visit unless the Tribe agrees to additional visits.<sup>73</sup> Therefore, the contract or its attached AFA may need to provide for additional routine on-site monitoring. Without such additional language in the contract or its attached AFA, Reclamation can conduct additional on-site monitoring if there is reasonable cause to believe that a serious performance deficiency may exist.<sup>74</sup> The Act gives Reclamation access to the Tribe's financial records for audit or examination purposes until 3 years after completion of the contracted project or undertaking.<sup>75</sup>

**10.4.3 Title IV Construction and Non-Construction AFAs**

For Title IV construction and non-construction activities, the Secretary may conduct on-site monitoring visits and require reporting as negotiated in the self-governance funding agreement.<sup>76</sup>

Solely for Title IV construction activities, the Secretary may require the Tribe to provide brief progress reports and financial status reports and the parties may negotiate (within the funding agreement) the frequency, format, and content of the reporting requirement.<sup>77</sup> As negotiated, these reports may include: 1) a narrative of the work accomplished, 2) the percentage of the work completed, 3) a report of funds expended during the reporting period, and 4) the total funds expended for the project.<sup>78</sup>

---

<sup>73</sup> 25 USC § 5329(c), Model Agreement § 1(b)(7)(C).

<sup>74</sup> 25 USC § 5329(c), Model Agreement § 1(b)(7)(C)(ii).

<sup>75</sup> 25 USC § 5305(b).

<sup>76</sup> 25 USC §§ 5363(b)(2)(Indian programs) and 5363(c)(non-Indian programs).

<sup>77</sup> 25 CFR § 1000.243(d).

<sup>78</sup> 25 CFR § 1000.243(d).

## **10.5 Negotiations**

During negotiations, Reclamation and the Tribe develop agreed-upon terms and conditions for the contract or self-governance funding agreement and discuss the scope of any technical assistance to be provided to the Tribe during the performance period. Negotiations shall comply with the requirements described in RM D&S NIA 10-01, paragraph 9.C, including written documentation of negotiation results for retention in the official award file.

The negotiations should include all Reclamation employees who are integral to the success of the project, including the PM, project manager, AO, Native American program manager or Tribal liaison, cost estimator, cost/price analyst, and technical experts, as appropriate. Negotiations shall include a discussion with the Tribe on funding necessary to be retained by Reclamation to perform project oversight and, inherently, Federal functions. The basis and justification for these retained funds shall be shared with the Tribe. Title IV regulations at 25 CFR sections 1000.174 through 1000.182 address requirements for negotiating initial and successor AFAs.

## **10.6 Fair and Reasonable Funding Amount**

### ***10.6.1 Reclamation's Government Cost Estimate***

Complexity of a project and project-specific circumstances will determine the level of detail required to prepare Government cost estimates to be used as a tool to analyze the project budget and negotiate a fair and reasonable funding amount. The Government cost estimate should be prepared before the kickoff meeting. For a proposed Title I construction contract, Reclamation and the Tribe shall share throughout the contract award process all construction project cost information available to them to facilitate reaching agreement on an overall fair and reasonable funding amount for the project.<sup>79</sup>

Reclamation has established policies and directives and standards that form the basis for preparing cost estimates in support of activities related to Reclamation's mission.<sup>80</sup> Reclamation also has established templates and other resources available to guide cost estimators.

The following Reclamation policies, directives and standards, handbooks, references, and templates may be used as tools to help develop a Government cost estimate for a P.L. 93-638 project:

---

<sup>79</sup> 25 CFR § 900.129(a).

<sup>80</sup> Reclamation shall develop P.L. 93-638 project cost estimates in recognition of the special government-to-government relationship, Tribal rights of self-government, Federal Trust responsibilities, and applicable Federal laws.

- **Policies:**
  - FAC P09 – “Cost Estimating”<sup>81</sup>
  
- **Directives and Standards:**
  - FAC 09-01 – “Cost Estimating”<sup>82</sup>
  - FAC 09-02 – “Construction Cost Estimates and Project Cost Estimates”<sup>83</sup>
  - FAC 09-03 – “Representation and Referencing of Cost Estimates in Bureau of Reclamation Documents Used for Planning, Design and Construction”<sup>84</sup>
  
- **Handbooks, References, and Templates:**<sup>85</sup>
  - Estimate Worksheet – Guide for Designers
  - Estimate Worksheet – Best Practices Flow Chart
  - MS Excel<sup>®</sup> Worksheet Template
  - QA/QC – Roles and Responsibilities/Quantity Estimate Worksheets
  - Construction Cost Trends
  - Technical Service Center’s (TSC) *Cost Estimating Handbook*
  - Estimating tools including, but not limited to, Government contract rates at <https://calc.gsa.gov/>.

Cost estimates prepared by Reclamation shall be current, signed, and dated by the cost estimator. Also, the PM and AO should reconcile with the preparer any significant differences between the Government cost estimate and the Tribe’s estimate. The AO shall retain a copy of the cost estimate in the official award file.

### **10.6.2 Budget Analysis**

The objective of budget analysis is to ensure that the final agreed-to cost for a proposed project is fair and reasonable. Budget analysis in the pre-award stage assists Reclamation and the Tribe to delineate clearly which expenditures will be considered allowable, allocable, and reasonable for the performance of the project, pursuant to the Act, 25 CFR part 900, 25 CFR part 1000, and Federal cost principles contained in 2 CFR part 200 subpart E (Cost Principles). Reclamation’s technical analysis of the proposed budget will be performed on all proposals. The AO, in partnership with the PM, will ensure before award that written budget analyses substantiate that proposed costs are allowable, allocable, and reasonable, in accordance with the Act.

---

<sup>81</sup> RM Policy FAC P09 (<https://www.usbr.gov/recman/fac/fac-p09.pdf>).

<sup>82</sup> RM D&S FAC 09-01 (<https://www.usbr.gov/recman/fac/fac09-01.pdf>).

<sup>83</sup> RM D&S FAC 09-02 (<https://www.usbr.gov/recman/fac/fac09-02.pdf>).

<sup>84</sup> RM D&S FAC 09-03 (<https://www.usbr.gov/recman/fac/fac09-03.pdf>).

<sup>85</sup> TSC Cost Estimating (<https://intra.usbr.gov/tsc/techreferences/cost.html>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

The budget analysis will consider, but not be limited to, the following:

- The level of effort or the total amount of time proposed. The proposed effort should be consistent with the effort required by the SOW.
- The labor mix or the labor categories proposed. Labor mix should be consistent with the caliber of effort—professional/nonprofessional/clerical—required by the SOW.
- The fringe benefit rates and how they apply to total labor costs.
- Whether the travel, equipment, supplies, and materials are the appropriate amount and type to perform the proposed work.
- Contractual services and whether the services are directly related to the project. The budgets for contractual services are typically fully detailed.
- The indirect cost rate, and whether the Tribe has a current DOI Interior Business Center (IBC)-negotiated indirect cost rate agreement. Whether the rate has been applied to the appropriate cost elements, per the indirect cost rate agreement, will also be verified.

For complex projects, such as construction projects that already have a Government cost estimate prepared, the budget analysis will consist of a technical comparison of the Government cost estimate to the proposed budget to document and explain any acceptable or unacceptable discrepancies and changes that were made to correct discrepancies.

Each budget analysis review will be documented in writing, in a written format, even if the evaluation found no questionable areas. The budget analysis should also verify that the budget detail agrees with the budget summary and the SOW. The documentation shall include the name of the employee performing the budget analysis and will be included in the Documentation for Award, which is referenced in section 10.7.

### ***10.6.3 Cost or Price Analysis***

When the AO determines it appropriate to obtain a separate, independent cost or price analysis to help establish a fair and reasonable funding amount, the AO should, depending on the complexity of the action, consider using Reclamation's cost/price analyst(s) to perform such analysis.

Cost analysis is the review and evaluation of separate cost elements in the budget breakdown, as needed, to determine a fair and reasonable overall project cost or level of cost realism for the project.<sup>86</sup> Price analysis includes examining and evaluating a proposed price without evaluating its separate cost elements or the proposed profit. Ultimately, the goal is to ensure that the funding amount for cost-reimbursement contracts and AFAs (or fixed-price construction contracts, as applicable) is fair and reasonable to the parties. The AO should ensure any independent cost or price analysis is documented in writing by its preparer.

## **10.7 Documentation for Award**

To comply with requirements of the Act and implementing regulations at 25 CFR part 900 and 25 CFR part 1000, documentation is required for each contract and AFA action, including both new awards and modifications. This documentation, including all accompanying reference documents, shall be retained in the official award file. NAIIO's currently prescribed "Documentation for Award" for both Title I and Title IV awards are included as an attachment to NAIIO's current Internal Control Plan. This documentation should be prepared before obtaining Reclamation's internal and independent reviews.

### ***10.7.1 Structuring the Title I Contract***

Each new Title I contract shall be executed on either the Standard Form (SF) 26 (Award/Contract) or Reclamation Form 7-2279 (Assistance Agreement), clearly referencing the legal authority for the project or program and citing Title I of P.L. 93-638 as the contracting authority. The award shall include:

- A detailed SOW
- A fair and reasonable funding amount for contracted activities
- Period of performance
- Applicable terms and conditions, consistent with the stated requirements of 25 USC 5301 *et seq.* (formerly 25 USC 450 *et seq.*) and 25 CFR part 900
- Signatures of both parties, with the AO signing after obtaining the authorized signature of the Tribe

---

<sup>86</sup> For Title I construction contracts negotiated as fixed-price, the AO will determine reasonableness of the overall fixed price for the project, including profit considerations.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

Each new Title I contract shall contain the following provisions, terms, and conditions:

- **Non-construction.** Each Title I non-construction contract shall contain the mandatory provisions, terms, and conditions contained in 25 USC 5329. Additional provisions, terms, and conditions negotiated with the Tribe shall be carefully reviewed to ensure that they are not in conflict with the language prescribed in 25 USC 5329.
- **Construction.** Each Title I construction contract shall contain the provisions, terms, and conditions outlined in P.L. 93-638 and subpart J of 25 CFR 900, as appropriate to the phase(s) of construction activities included under the self-determination construction contract.

The term of a Title I contract shall not exceed 3 years, unless a longer period is negotiated with the Tribe and the necessity for requiring a contract beyond 3 years is documented by the AO prior to award. Each Title I contract with a term longer than 1 year shall include a provision stating that the contract will be revisited annually thereafter to ensure that:

- The contract terms, conditions, and SOW are still appropriate and valid.
- The contract remains consistent with P.L. 93-638 and 25 CFR 900.
- The contract funding remains fair and reasonable to the parties.

***10.7.2 Structuring the Title IV AFA***

Each Title IV AFA shall be executed using a format negotiated between the Tribe and Reclamation and agreed to as mutually acceptable to the parties. The AFA shall include:

- A detailed SOW
- Amount of funding for AFA activities
- Period of performance
- Applicable terms and conditions, consistent with the requirements of 25 USC 5361 to 25 USC 5368 and 25 CFR 1000
- Signatures of both parties, with Reclamation's AO signing after obtaining the authorized signature of the Tribe



## 10.8 Pre-Award Reviews and Approvals

As part of the overall internal control, RM D&S NIA 10-01 requires certain P.L. 93-638 contracts and AFAs to be reviewed and approved by NAIIO and reviewed by DOI's Office of the Solicitor before award. Internal reviews and approvals performed by NAIIO, DOI's Office of the Solicitor, and others serve as an internal control to help ensure contracts and AFAs are in compliance with laws, regulations, and other Reclamation requirements.

### *10.8.1 Independent and/or Management Reviews*

Each region should establish and implement its own system of internal controls and checks and balances to include an independent and/or management review of proposed contracts and AFAs (and accompanying documentation).

Such reviews should be conducted by personnel who are knowledgeable about P.L. 93-638, the project's authorizing legislation, and the type of work to be performed. In addition to documentation requirements in RM D&S NIA 10-01, each region should establish its protocol and process requirements for these independent and/or management reviews.

Pursuant to RM D&S NIA 10-01, paragraph 7.B, NAIIO's current Internal Control Plan establishes pre-award legal sufficiency review requirements for Titles I and IV.<sup>87</sup> For actions requiring legal sufficiency review before award, the recommended template for obtaining and documenting such review is included in the DOI "Acquisition, Assistance, and Asset Policy" (reference number 0075).<sup>88</sup>

In general, the individual performing the legal sufficiency review will be determining if:

- Contract or AFA activities are eligible to be performed under the Act.
- The contract or self-governance funding agreement contains a defined SOW, schedule, and budget for the work to be performed.
- Correct P.L. 93-638 statutory and regulatory citations are cited.

---

<sup>87</sup> NAIIO's current Internal Control Plan requires all new contracts and initial AFAs to be reviewed for legal sufficiency by DOI's Office of the Solicitor before execution, regardless of dollar value. Any legal concerns addressed by the reviewer shall be resolved between the AO and the legal reviewer, with the resolution documented in writing and retained in the official award file. Matters that cannot be resolved between the respective AO and the legal reviewer must be submitted to DOI's Office of the Solicitor, Washington D.C., for resolution.

<sup>88</sup> DOI "Acquisition, Assistance, and Asset Policy" (reference number 0075)

(<https://docs.google.com/document/d/122Qqkph4RjrlxZMhZPvIghhPEP6zMcSxL6k3YAgC2gk/e/dit?pli=1#>).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Correct program authorizing statute for the project activities is cited.
- Appropriate terms and conditions are included for 1) the type and complexity of the project; 2) provisions of the water rights settlement act, if applicable; and 3) compliance with any other Federal laws or requirements.
- Contract or self-governance funding agreement mitigates financial or performance risks to the extent possible.

***10.8.2 Native American and International Affairs Office***

RM D&S NIA 10-01, paragraph 7.A, requires NAIIO to develop a P.L. 93-638 internal control plan, normally each fiscal year, addressing NAIIO's pre-award review and approval requirements for individual contract or AFA actions. NAIIO's current Internal Control Plan is located on Reclamation's Native American Affairs Intranet site.<sup>89</sup>

Note: NAIIO's internal control review and approval of individual contract and AFA actions does not usurp the AO's overall authority, accountability, and responsibilities.

---

<sup>89</sup> Reclamation's Native American Affairs (Intranet) (<https://intra.usbr.gov/native/selfdetermination.html>).

## 11. Award Phase

### 11.1 Award and Distribution

The AO will structure the Title I contract or Title IV AFA as described in section 10, “Pre-Award Phase,” of this Best Practices Handbook. The AO is the only individual authorized to award the contract or AFA on behalf of Reclamation, and will ensure the Tribe’s authorized signatory signs the proposed contract or AFA before the AO signs (executes) the award.

The following award procedures shall be followed to properly record the funding obligation in Reclamation’s Financial and Business Management System (FBMS):

1. Pursuant to NAI AO Update No. 002, dated July 11, 2013,<sup>90</sup> a contract or AFA shall not be executed unless the AO has verified that the Tribe has an active enrollment in the General Services Administration’s (GSA) System for Award Management (SAM)<sup>91</sup> and the U.S. Department of the Treasury’s ASAP system through Reclamation’s enrollment process. To verify the Tribe’s successful enrollment in ASAP, the AO will check the Tribe’s enrollment status on Reclamation’s ASAP SharePoint site.<sup>92</sup>
2. All 638 contracts and AFAs must be recorded in USAspending.gov ([www.usaspending.gov](http://www.usaspending.gov)) (formerly populated in FAADS). An FBMS error preventing the release of the award will occur if the USAspending.gov document has not been created.
3. The AO will execute (approve) the award in FBMS using the “Grants Management System” module (currently PRISM), which will obligate the funding amount of the award.
4. The AO, or designee, should verify that funds were properly obligated in FBMS within 24 hours of awarding the contract. This can be completed by reviewing the “Award in Core Financials” module in FBMS.

---

<sup>90</sup> “Bureau of Reclamation Requirements and Procedures for Bureau-wide Use of the U.S. Department of Treasury’s Automated Standard Application for Payments (ASAP) System for Financial Assistance and P.L. 93-638 Contracts/Agreements, Reclamation Acquisition Circular (RAC) 13-10 [FA]/NAIAO Update No. 002 – P.L. 93-638.” Available under “Reclamation Policy and Guidance” at <https://intra.usbr.gov/native/selfdetermination.html>.

<sup>91</sup> GSA’s SAM (<https://www.sam.gov/SAM/>).

<sup>92</sup> ASAP Enrollment: Registration Tracker SharePoint ([https://projectsdrosp.bor.doi.net/asap/Lists/ASAP\\_Recipient\\_Tracking/AllItems.aspx](https://projectsdrosp.bor.doi.net/asap/Lists/ASAP_Recipient_Tracking/AllItems.aspx)). Note this SharePoint site is accessible only to Reclamation employees and permissions must be obtained from Reclamation’s Acquisition and Assistance Management Division (AAMD), Denver Office.

**Best Practices**

- When sending the complete award package to the Tribe for signature, prepare a request for signature transmittal document (can be an email) that notifies the Tribe of the contract or AFA number, project title, action purpose (e.g., new award), completion date, contract or AFA amount; to whom and how the signed document should be returned; and point-of-contact information for questions.

## **11.2 Special Considerations for Fiscal Year-End Awards**

Each region should be aware of fiscal year-end cutoff dates for obligating funds under 638 contracts and AFAs. Each fiscal year, the Acquisition and Assistance Management Division (AAMD) in Reclamation’s Mission Support Organization (MSO) publishes cutoff dates on its “AAMD One Stop Shop” Web site for obligating fiscal year-end funding.<sup>93</sup> In addition, if proposed contracts or AFAs are required to be executed by the region’s acquisitions or financial assistance office, the AO, AOTR, and other cognizant 638 practitioners should be aware of any regional cutoff dates and procedures necessary to obligate and award contracts and AFAs during fiscal year-end.

## **11.3 Information Management and Tracking System**

The Information Management and Tracking System (IMATS) collects data on awards and post-award actions and administrative data currently captured in the official award file. The AO, or designee, will populate the award shell that was automatically transmitted to the IMATS from FBMS. The AO or designee will be required to validate information and upload the award document. The following best practices are recommended when populating IMATS:

**Best Practices**

- Upload the “Post-Award Monitoring Plan” into IMATS to track required site visits. This will create an electronic repository for site visit reporting.
- Identify the reporting frequency requirements during validation. This will create an electronic repository for financial and progress reporting. The IMATS system will automatically notify the Tribe prior to the established due date that required reports are due.

---

<sup>93</sup> AAMD One Stop Shop, Acquisition and Financial Assistance Cutoff Dates (<https://sites.google.com/a/usbr.gov/bor-aamd-policy/cut-of-dates>).

- The AO, or designee, should validate and upload all documentation to IMATS within 21 days from the date of award or the due date of the report.

## **11.4 Create the Official Award File**

The AO should consider including the following information and documents when creating the official award file:

- **Pre-Award Documentation:**
  - Pre-award correspondence (internal and external)
  - Purchase requisition document
  - Notice of intent letter with the original SOW and budget submitted
  
- **Pre-Award Due Diligence:**
  - SAM (<https://www.sam.gov/SAM/>) documentation
  - Single audit/financial statement audit
  - Technical evaluation
  - Responsibility determination
  - DOI IBC Indirect Cost Rate Agreement
  - Budget/price/cost analysis and supporting information
  - Documentation for award
  - Reviews/approvals (internal review, NAIAO review and approval, Regional or Field Solicitor's Office review)
  
- **Award Documentation:**
  - AOTR designation letter
  - Valid, final USAspending.gov document
  - Award transmittal document (Title IV AFA congressional transmittal documentation)
  - Full executed 638 contract/AFA
  
- **Post-Award Documentation:**
  - Any modifications and supporting documentation
  - Post-Award Monitoring Plan (if applicable)
  - Financial reporting and any required supporting documentation
  - Progress reports
  - Site visit reports
  - Post-award correspondence (internal and external)
  - Closeout documentation



## 12. Post-Award Phase

### 12.1 Appointment of Awarding Official's Technical Representative

RM D&S NIA 10-01<sup>94</sup> requires the AO to appoint in writing an AOTR upon award of each 638 contract or AFA, outlining in the appointment the responsibilities and authority limitations in accordance with paragraphs 4.E and 6.C of the RM D&S. AOTRs must maintain a current certification as either a Reclamation Grants Officer's Technical Representative or Contracting Officer's Technical Representative.<sup>95</sup> The AO must make a new appointment when the current AOTR will no longer be serving in that capacity.

#### Best Practices

- The AO should use an AOTR appointment memorandum (similar to the Lower Colorado Region's "Awarding Official's Technical Representative Memorandum") when appointing an AOTR. The AO should also inform other personnel who have occasional dealings with the Tribe under the 638 contract or AFA that they are not authorized to commit or imply commitment of Reclamation or direct the Tribe's actions.
- Immediately upon award, the AO should transmit the AOTR appointment memorandum to the AOTR and a copy to the Tribe.
- The AOTR should develop and maintain a working technical file. At a minimum, this file should track project progress and annotate any noteworthy milestones, discrepancies, or updates.

### 12.2 Post-Award Conference

#### Best Practices

- The AO, AOTR, and other appropriate Reclamation personnel should conduct a post-award conference with the Tribe following the execution of each 638 contract or AFA. The conference can be either an in-person meeting or conference call, and should be completed in the first 2 weeks after award and whenever the Tribe's administration changes. The purpose of the conference is to establish a clear and mutual understanding of the 638 contract or AFA work requirements and specific terms and conditions.

---

<sup>94</sup> RM D&S NIA 10-01 § 4.D.(4).

<sup>95</sup> RM D&S NIA 10-01 § 6.B.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

The following topics should be considered for discussion during the post-award conference:

1. Roles and Responsibilities—Both Federal and Tribal
  - a. Administrator of the award
  - b. Authority over the award
  - c. Signatory for the award/reporting
2. General Scope of the Contract or AFA—Schedule and Milestones
3. Approved Budget—Reprogramming Versus Modification
4. Property
  - a. Equipment purchases (if applicable)
  - b. Government-furnished equipment
5. Deliverable Requirements
  - a. Identifying deliverables
  - b. Reporting requirements
    - o Frequency
    - o Minimum requirements (including content and format)
6. 638 Contract or AFA Provisions
7. Reclamation-Provided Technical Assistance or Other Activities—To Be Performed by Reclamation or Other Federal Entities (e.g., BIA, U.S. Geological Survey)
8. Reclamation Progress and Financial Reports to Tribe
9. Monitoring and Measuring Performance
  - a. Post-award monitoring and Post-Award Monitoring Plan
    - o Site visits, such as technical coordination meetings, AO coordination meetings, and financial reviews
    - o Additional review requirements



- b. Payment/invoicing procedures
  - o Associated source documentation (if applicable)
  - o ASAP Agency Review (if applicable)
- 10. Roles and Responsibilities
  - a. Reclamation
  - b. Tribe
  - c. Subcontractors/Tribal Force Account
- 11. Amendments
- 12. Safety Plans and Programs (including, but not limited to, Occupational Safety and Health Administration [OSHA] requirements)
- 13. Environmental, Cultural, and Natural Resource Issues
- 14. Rights-of-Way, Easements, and Permits (if applicable)
- 15. Dispute Process
- 16. Closeout

### **12.3 P.L. 93-638 Post-Award Monitoring and Monitoring Requirements**

RM D&S NIA 10-01, paragraph 11.A, requires the AO and AOTR to collaborate in the development of a post-award monitoring strategy and apply minimum post-award monitoring requirements. NAIAO's current Internal Control Plan issued under the RM D&S further requires the AO to develop a monitoring plan for every 638 contract and AFA. The P.L. 93-638 Post-Award Monitoring Plan template must be used for 638 contracts and AFAs based on the thresholds outlined in NAIAO's current Internal Control Plan. The Post-Award Monitoring Plan must identify the methods, tools, and performance milestones the AO and AOTR will use to measure and assess performance under the 638 contract or AFA, and compliance with terms of the contract or AFA. The plan must also comply with the requirements and limitations specified in P.L. 93-638, its implementing regulations at 25 CFR part 900 and 25 CFR part 1000, and the 638 annual internal control plan.

**Post-Award Monitoring Requirements.** The AO is required to ensure post-award monitoring occurs in the manner and frequency established by the Post-Award Monitoring Plan and the terms and conditions of the 638 contract or AFA. The following minimum post-award monitoring requirements apply to each 638 contract or AFA:

### ***12.3.1 Site Visits***

The AOTR must conduct site visits in the manner and frequency established by the plan and the 638 contract or AFA. In conducting site visits, the AO or the AO's designated subject-matter expert (SME) (i.e., a regional employee with expertise in the subject being reviewed) must ensure that the Tribe is complying with Federal requirements and the terms and conditions of the 638 contract or AFA.

- 1. On-Site Monitoring Visits for Title I Non-Construction Contracts.** Reclamation is limited to one routine on-site monitoring visit annually, unless the Tribe agrees to additional visits or the appropriate Reclamation official determines that there is reasonable cause to believe that a serious contract performance deficiency may exist.<sup>96</sup>
- 2. On-Site Monitoring Visits for Title I Construction Contracts.** For design and/or construction phase activities, Reclamation may conduct monthly on-site monitoring visits, or as negotiated, critical milestone on-site monitoring visits.<sup>97</sup>
- 3. On-Site Monitoring Visits for Title IV AFAs.** For construction activities, Reclamation may conduct on-site monitoring visits as negotiated in the AFA.<sup>98</sup>

During site visits, the AOTR considers whether there are conditions that adversely affect health and safety, evaluates work in progress and work completed, and determines if the contractor has failed to substantially carry out the terms and conditions of the 638 contract or AFA without good cause.

If such conditions exist, the AO has the authority to suspend, withhold, or delay payment for 30 days after determining that a Title I non-construction contractor has failed to substantially carry out the contract without good cause.<sup>99</sup> The AO

---

<sup>96</sup> P.L. 93-638, Title I, § 108, Model Agreement § 1(b)(7)(C), as amended, codified at 25 USC § 5329(c), Model Agreement § 1(b)(7)(C).

<sup>97</sup> 25 CFR § 900.131(b)(9).

<sup>98</sup> 25 CFR § 1000.249(c).

<sup>99</sup> P.L. 93-638, Title I, § 106(l), as amended, codified at 25 USC § 5325(l).

may also reassume a Title I or Title IV non-construction or construction project in certain situations and terminate a Title I construction contract for cause, in the event of substantial non-compliance.<sup>100</sup>

The AOTR must provide the AO with written documentation of all major findings discovered during on-site monitoring visits.

### **Best Practices**

- The AO should provide the AOTR with guidance regarding the level of detail needed when documenting site visit findings. The documentation should include meeting attendees, a copy of or listing of agenda items, an overview of the scope of the monitoring activity, an overview of the project's progression in accordance with the SOW and milestones within the 638 contract or AFA, and any problems or other identifiable issues. This documentation should be included in the official award file.
- The AOTR should document the site visit using the "Monitoring Activity Checklist and Memorandum" (Form RF-123), or similar.
- To document site visits, the AOTR should consider the feasibility of using mobile construction management tools such as Fieldwire, GoCanvas, or the Online Form Builder application on the JotForm Web site (<https://www.jotform.com>), all of which have mobile apps for Apple and Android devices.

### **12.3.2 Deliverables**

The AO and AOTR shall ensure that all required reports are *received* from the Tribe in accordance with the frequency specified in the 638 contract or AFA, and *reviewed* for compliance with the requirements specified in P.L. 93-638 and established in the 638 contract or AFA.

1. **Progress Reporting.** The AO shall ensure that Tribal progress reports are submitted timely and contain the level of detail required by P.L. 93-638 and the 638 contract or AFA.

---

<sup>100</sup> 25 CFR § 900.247 (for Title I non-construction contracts for reasons of safety, harm to trust resources, or gross negligence or mismanagement of contract funds); 25 CFR § 1000.301 (for Title IV non-construction AFAs in the event of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety); 25 CFR § 1000.249(g) (for Title IV construction AFAs if substantial noncompliance continues); and 25 CFR § 900.131(b)(12) (for termination of Title I construction contracts for cause).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- a. Title I Non-Construction Contracts. Progress reports must be submitted consistent with the frequency, format, and content requirements specified in the 638 non-construction contract.
- b. Title I Construction Contracts. Progress reports must be submitted quarterly, or as negotiated and reflected in the 638 construction contract. The reports must contain a narrative of the work accomplished; descriptions of contracts, major subcontracts, and modifications implemented during the report period; A/E service deliverables; and the percentage of work completed.
- c. Title IV Construction Contracts. Reclamation may require the Tribe to provide brief progress reports.<sup>101</sup> The AFA shall contain reporting frequency, format, and content requirements.<sup>102</sup>

**Best Practices**

- The AOTR should review progress reports for accuracy within 21 days and notify the Tribe of any changes or corrections that need to be made.
  - The AOTR should provide the AO or the AO's designated SME with a recommendation to accept or decline the Tribe's progress report. The AOTR's review should compare reported progress against the contract SOW, milestones, 638 contract or AFA terms and conditions, and expenditures reported on the "Federal Financial Report" (SF-425). If any concerns or deficiencies in the progress report are identified during review, the AOTR should address them immediately with the AO or the AO's designated SME for resolution.
2. **Financial Reporting.** The AO or the AO's designated SME should verify that the Tribe has completed all required sections of the SF-425.
- a. Title I Non-Construction Contracts. Reclamation and the Tribe should negotiate reporting frequency, format, and content of the requirements into the 638 contract or AFA.<sup>103</sup>
  - b. Title I Construction Contracts. Financial status reports must be submitted quarterly, or as negotiated. The reports must include funds expended during the reporting period and total funds expended for the project.<sup>104</sup>

---

<sup>101</sup> 25 CFR § 1000.243(d).

<sup>102</sup> 25 CFR § 1000.243(d).

<sup>103</sup> 25 CFR § 900.65.

<sup>104</sup> 25 CFR §§ 900.130(b)(8) and 900.130(c)(7)(i).

- c. Title IV Construction AFAs. Reclamation may require the Tribe to provide brief financial status reports. The parties should negotiate reporting frequency, format, and content of the requirements into the AFA.<sup>105</sup>

**Best Practices**

- The AO should review financial status reports for accuracy within 21 days and notify the Tribe of any changes or corrections that need to be made.
  - The AO should follow current guidance in NAIAO’s “Review of SF-425 Federal Financial Report” (NAIAO Release No. 2017-02).
  - The AO should ensure that the current approved indirect cost rate is being used when reviewing the Tribe’s SF-425 submissions.
  - If the 638 contract or AFA requires supporting documentation to be submitted with the SF-425 (such as Tribal financial ledgers for the reporting period and associated contractor invoices), the AO should document the outcome of the review and retain in the official contract or AFA file.
  - The AO should track and provide to the Tribe a written report accounting for any retained project funds for Reclamation’s activities provided under the 638 contract or AFA.
3. **Single Audits.** The AO shall review the Tribe’s annual single audit report.<sup>106</sup> In cases of continued inability or unwillingness of the Tribe to have an audit conducted in accordance with 2 CFR part 200 subpart F, Reclamation *must* take appropriate action as provided in 2 CFR section 200.338 (Remedies for noncompliance).

**Best Practices**

- The AO should verify the Tribe has prepared and implemented, or is implementing, a CAP to address audit findings.
- The AO should perform a risk assessment to determine whether any substantial changes from the prior year’s audit report exist and negotiate mitigation terms or conditions if warranted (ASAP Agency Review, special conditions, etc.).

---

<sup>105</sup> 25 CFR § 1000.243(d).

<sup>106</sup> Single audits are currently required only if the Tribe expends \$750,000 or more in annual Federal funding (2 CFR § 200.501(a)).

### ***12.3.3 Notice of Late or Incomplete Reporting***

The AO shall provide written notification to the Tribe regarding overdue or incomplete progress and/or financial status reports, or any other deliverables, as required by the 638 contract or AFA. Although the AOTR or SME provides the AO with all the appropriate details relating to the lateness or incomplete reporting, only the AO is authorized to correspond with the Tribe on such matters.

#### **Best Practices**

- Reclamation's existing post-award IMATS reporting portal should be used to send automated reminder notices to Tribes of upcoming reporting requirements 10 days before the due dates.
- The AO should notify the Tribe in writing, within 15 business days, of any reporting or other required deliverable delinquencies, deficiency of detail, or noncompliance with requirements as negotiated in the 638 contract or AFA. This documentation must be retained as part of the official award file.

### ***12.3.4 Other Reviews***

Depending on the nature of the 638 contract or AFA, other reviews are recommended and are outlined below as best practices:

#### **Best Practices**

- For construction contracts/AFAs, the AO or the AO's designated SME should conduct random or periodic reviews of the Tribe's contract files to verify that subcontractor payrolls are certified and independently inspected by the Tribe for compliance with the Davis-Bacon Act.<sup>107</sup> The AO or the AO's designated SME should then document the review and retain the results in the official award file.

Note: Do not collect any documents with personally identifiable information.

- The AO should verify the Tribe's indirect cost rate annually. An approved indirect cost rate agreement is required for most 638 contracts and AFAs charging indirect costs. If the 638 contract or AFA is awarded with a provisional (temporary) indirect cost rate, the AO should reconcile the provisional and final rate prior to closeout.

---

<sup>107</sup> Davis-Bacon Act, 40 USC § 3141 *et seq.*

- There should be an approved indirect cost rate agreement that covers all years of the period of performance. The AO should monitor the 638 contract or AFA so that when the approved indirect cost rate expires, Reclamation can request the current one from the Tribe.

### ***12.3.5 Additional Considerations***

Since there is no legal relationship (privity of contract) between Reclamation and the Tribe's contractors, Reclamation should not engage or take part in Tribal-contractor matters except as specifically addressed in the 638 contract or AFA, or as otherwise required by Federal law. However, if the 638 contract or AFA requires Reclamation to be part of the procurement process and/or review proposed subcontracts or other subcontract data, the AO or the AO's designated SME is responsible for ensuring reviews and approvals are completed and documented in the official award file.

#### **Best Practices**

- When the 638 contract or AFA requires that Reclamation receive copies of subcontracts, Reclamation should review their status during monitoring visits and document any issues.
- The AO should document in writing, with a memorandum to the official award file, any review of documentation related to the Tribe's competitive bidding/selection process or sole-source justification.
- The AO should document in writing any review of property records and reports received from the Tribe to ensure that they are being received timely and as required, and property is being tracked appropriately, as identified in any applicable property standards requirements including, but not limited to, 25 CFR section 900.51.
- Reclamation should negotiate clear timeframes for review of Tribal documents or other Tribal submissions. In the absence of specific timeframes in the contract or AFA, Reclamation should provide comments within 21 days of receipt, in accordance with 25 CFR section 900.131(b)(1).
- The AO should verify, in writing, that the Tribe has adequately addressed Reclamation's comments, once submitted.
- If required to approve documents received from the Tribe, as specified in the contract or AFA, Reclamation should promptly notify the Tribe of any concerns or issues that may lead to disapproval and work with the Tribe to resolve any issues.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

***12.3.6 Records Retention***

The AO must retain financial, progress, and site visit reports in the official contract or AFA award file (see section 10, “Pre-Award Phase,” of this Best Practices Handbook for the creation of 638 contract file indices). In addition, the AO must comply with Reclamation’s current internal control requirements for uploading award and amendment documents into IMATS.

**Best Practices**

- The AO or the AO’s designated SME should upload internal and Tribal post-award monitoring documents into IMATS within 21 days of generation or receipt.

**12.4 Noncompliance**

If, during performance monitoring, the AO determines that the Tribe is unable to complete the project as agreed to in the terms and conditions of the award, the AO must take steps to protect both the Government’s and the Tribe’s interests, including those created by Reclamation’s fiduciary responsibility to the taxpayers and the Federal Government’s Trust responsibility to Tribes.

**Best Practices**

- The AO should notify the Tribe of noncompliance and state what is necessary to become compliant. Some options the AO may consider are:
  - Meeting with the Tribe to discuss the noncompliance and the steps to become compliant
  - Placing the Tribe on “Agency Review” through the ASAP system
  - Providing technical assistance to help the Tribe become compliant

**12.5 Amendments**

The AO must execute each amendment to a 638 contract on either Reclamation’s “Assistance Agreement” (Form 7-2279) or “Amendment of Solicitation/Modification of Contract” (SF 30). Each amendment to a Title IV AFA or successor AFA shall be executed using the format negotiated between the Tribe



and Reclamation.<sup>108</sup> The amendment shall contain all necessary documentation outlined in NAIAO's current Internal Control Plan and be reviewed in accordance with 25 CFR part 900 or 25 CFR part 1000.

Amendments should be executed by both parties before the expiration of the performance period specified in the 638 contract or AFA. The amendment must contain the signatures of both parties, with Reclamation's AO signing *after* obtaining the authorized signature of the Tribe. The AO must document all funding amendments, as defined in RM D&S NIA 10-01, paragraphs 3.H and 9.C.(3).

### **Best Practices**

- **Designated Officials.** Negotiate a clause into the amendment for any changes to key personnel (Reclamation and Tribe).
- **Internal Collaboration.** The success of all 638 contracts and AFAs depends on a combination of expertise from many Reclamation fields. It is important to collaborate with every individual whose position or area of responsibility could be affected by an amendment to obtain the necessary review and/or approval (i.e., PMs and Environmental and Financial Specialists). Respect for each SME's contribution and collaboration during the process will help ensure a successful project. Consult with the original author of the documents if changes are being made to ensure that there are no compliance issues with P.L. 93-638 regulations or terms and conditions of the current 638 contract or AFA.

## **12.6 Post-Award Technical Assistance**

P.L. 93-638 regulations delineate various circumstances under which a Tribe may request, or is entitled to receive, post-award technical assistance. For example, 25 CFR section 900.32 states that any proposal for a non-BIA Title I successor AFA is subject to the declination criteria and procedures in 25 CFR part 900 subpart E (Declination Procedures).

As specified in 25 CFR section 900.30, Reclamation must provide technical assistance to the Tribe to overcome Reclamation's stated declination objections, including technical assistance requested by the Tribe to develop modifications to overcome those objections.

---

<sup>108</sup> RM D&S NIA 10-01 § 11.D.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

If the AO becomes aware of the need for technical assistance that is not included in the 638 contract or AFA, he/she should notify the appropriate AOTR immediately. Working together, the AO and AOTR should provide the needed technical assistance in accordance with the 638 law and regulations (subject to the availability of appropriations or resources). Other technical assistance may include, but is not limited to, the following:

- Assistance in developing 638 successor AFA proposals.
- Advice on, or assistance in, developing business systems.
- Expert advice on engineering, hydrology, archaeological, cultural, financial, contracting, and other matters.
- Technical assistance for water rights settlements.

Note: Funding for this technical assistance will come from project funds and not from oversight funds included in the settlement.

## **12.7 Post-Award Review of Management Standards and Other Records**

Before award, the AO must conduct a Tribal Management Standards Review and document the evaluation to ensure compliance with 25 CFR part 900 subpart F. The AO and Tribe may also negotiate prior to award and/or post-award that further review of the Tribe's records, or ongoing compliance with standards, is required. Reasons may include, but are not limited to, the following:

- Single audit findings that require the Tribe to establish a CAP, thus further Reclamation review is necessary to ensure the Tribe's CAP resolves findings pertinent to the 638 contract or AFA.
- Performance, reporting, or financial management concerns, thus further Reclamation review is necessary to mitigate those concerns and/or risks.

In these instances, the review(s) shall be included as a term and condition of the 638 contract or AFA.

If a post-award financial review is included in the 638 contract or AFA, it can be conducted as either a desk or on-site review, as negotiated with the Tribe. To the greatest extent possible, the review activities should not duplicate the work of the annual single audit. At the AO's discretion, the reviews may be conducted by Reclamation's regional personnel, Denver Office personnel, or a combination of the two. The overall objective of this review is to provide Reclamation with

reasonable assurance that the Tribe is compliant with applicable laws and regulations. The reviewer's observations should provide the AO with a reasonable degree of confidence that the Tribe is fulfilling the minimum administrative and financial requirements in P.L. 93-638. The reviewer should assess whether the Tribe's financial performance, in support of the 638 contract or AFA, conforms to the terms and conditions of the 638 contract or AFA, the 638 law and regulations.

The reviewer examines, under a test-basis methodology, whether the expenditures are allowable, allocable, and reasonable in conjunction with findings in the single audit. The reviewer's testing procedures should examine available documentation to reasonably verify that:

- Project expenditures identified in the SF-425 (or other documents) reconcile with costs posted in the general ledger and the bank records.
- Project cost-share requirements for qualified expenditures, if any, are satisfied.
- Project expenditures for the 638 contract's SOW are not reimbursed in duplicate by Reclamation or another Federal agency.
- Project expenditures occurred during the 638 contract's period of performance.
- Project expenditures reasonably correlate with project activities, locations, objectives, and conditions.
- Project expenditures are approved and signed by an authorized or designated official, manager, or representative.
- Funds are used only for project purposes authorized under the 638 contract or AFA and not used for any other purpose, even on a temporary basis.
- Employee benefit expenditures, if applicable, are substantiated.
- Indirect cost expenditures, if applicable, are verified and comply with the DOI IBC-approved indirect cost rate.

If the reviewer finds deficiencies in the Tribe's financial reporting and/or internal control, the reviewer must promptly communicate this information to the AO. The AO should promptly consider the information provided, determine which of the identified deficiencies require a remedy, and present this information in writing to the Tribe. The AO will coordinate with the Tribe in developing a CAP to resolve the deficiencies in a timely manner.

## **12.8 Payment**

### ***12.8.1 Requirements***

Tribes are required to use the ASAP system to request payment advances or reimbursements under 638 awards. ASAP is a self-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds.

The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds and the disbursement thereof by the Tribe.<sup>109</sup>

Reclamation offices shall follow the requirements and procedures contained in Reclamation Acquisition Circular 13-10/NAIAO Update No. 002 – P.L. 93-638 for processing payments to Tribes under 638 contracts and AFAs. The AO, in coordination with the AOTR, is responsible for documenting and invoking any ASAP Agency Review payment controls based on potential or actual risk. An ASAP Agency Review requires the AO to review and approve payment requests before disbursement of contract or AFA funds.

### ***12.8.2 Risk Assessment***

Each region should implement procedures for determining financial and project risk and the need to invoke ASAP payment controls based on those identified risks. The AO should use the “Recommendation to Place a Recipient on Agency Review Memorandum,” or similar, to document the rationale for this decision.

If the risk assessment indicates a low potential for problems, advance payments should be made to the Tribe through the ASAP system based on the contract terms, without review and approval by Reclamation prior to the Tribe’s ASAP drawdown. In this instance, reviews should still be conducted after drawdowns to ensure funds are being used properly.

A risk assessment should be completed annually when the single audit report is received to determine if the Tribe is authorized to take advances with or without an ASAP Agency Review, or if the Tribe will be subject to further conditions such as reimbursement payments in lieu of advances. The least restrictive payment option should be used, and then a move towards more restrictive options if needed. If concerns or issues arise during the year, risk should be reassessed and a new payment determination made, as appropriate.

---

<sup>109</sup> P.L. 93-638, Title I, § 105, codified at 25 USC § 5324(b).

### ***12.8.3 Advances With Agency Review***

If the risk assessment indicates a moderate level of financial or performance risk, advance payments should be made to the Tribe through the ASAP system based on the contract terms and *after* review and approval by Reclamation of the requested drawdown. Reclamation has 10 days to approve or deny a payment request.

Each region should implement a procedure for reconciling the Tribe's expenditure support documentation with the payment request if the Tribe is on an ASAP Agency Review. The recommended process is to:

1. Request supporting documentation. If, at any time, additional documentation is necessary, the AO should request it from the Tribe.
2. Ensure, from a technical aspect, that expenditures are consistent with the progress made under the statement of work. The AOTR should review and recommend approval of the payment in writing.
3. Assign the review of the support documentation to a SME or other person qualified to perform the review. The AO should make this assignment.
4. Identify any discrepancies in the support documentation received. The reviewer should provide an analysis with a recommendation to the AO to approve or disapprove the payment.
5. Notify the Tribe of any questions and concerns. If the AO is unable to resolve any discrepancies with the Tribe, the AO may disapprove the payment while continuing to work with the Tribe toward resolution.
6. Notify the ASAP Operations Desk within 10 days whether the payment is approved or disapproved.

### ***12.8.4 Reimbursement and Other Specific Conditions***

If the risk assessment indicates high potential for financial or performance risk, there is a need for more restrictive payment processing. Reclamation should place the Tribe on specific conditions in order to safeguard Federal funds. These conditions should be thoroughly documented by the AO and outlined in the 638 contract or AFA. Such payment conditions may include, but are not limited to, reimbursements.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

Reimbursement is a payment process where Tribal funds are expended for the completion of project tasks and the Tribe is reimbursed by Reclamation after costs have been incurred. In this instance, Reclamation reviews actual costs that have been paid by the Tribe and provides reimbursement for those costs deemed allowable, allocable, and reasonable under the terms and conditions of the agreement.

## **12.9 Required Tribal Communication**

If a Tribe is contracting solely to perform construction management services, Reclamation is required to confer with the Tribe on a regular basis, as agreed by the parties, to facilitate the exchange of information.<sup>110</sup>

If the Tribe is contracting to perform design- and/or construction-phase activities, Reclamation is required (when carrying out review, comment, and approval functions) to provide for full Tribal participation in the decision-making process and to honor Tribal preferences and recommendations to the greatest extent feasible. This includes promptly notifying the Tribe in writing of any concerns or issues that may lead to disapproval, meeting with the Tribe to discuss these concerns and issues, sharing relevant information and documentation, and making a good-faith effort to resolve all issues and concerns of the Tribe.<sup>111</sup>

### **Best Practices**

- Reclamation should notify the Tribe in writing of which personnel are authorized to 1) negotiate the specifics of the contracted project; 2) provide technical assistance; and 3) approve documents (as authorized under the contract), NEPA, relevant state-specific environmental compliance, easements, etc. Reclamation should also request that the Tribe respond in writing, identifying its points of contact for similar purposes. If the Tribe would like Reclamation to work with another Tribal entity or contracted consultant or contractor, the Tribe should give specific written approval to Reclamation before Reclamation communicates with those entities.
- Except as required by ISDEAA or other Federal laws such as NEPA, OSHA, etc., Reclamation should not get involved in the Tribe's subcontract administration.

---

<sup>110</sup> 25 CFR § 900.131(a)(1).

<sup>111</sup> 25 CFR § 900.131(b)(1).

## **12.10 Closeout**

Reclamation is required to close out all 638 contracts and AFAs within 120 days after the last remaining closeout prerequisite has been completed.<sup>112</sup>

The minimum closeout requirements are:

1. Physical completion of the project.
2. Expiration of the contract or AFA.
3. Receipt of all deliverables required by the contract or AFA.
4. Resolution of all single audit findings and questioned costs related to Reclamation's project or program.
5. Disposition of all property in accordance with the terms and conditions of the contract or AFA.
6. Resolution of all post-award disputes under 25 CFR part 900 subpart N or 25 CFR part 1000 subpart R, as applicable, and all claims under the Contract Disputes Act of 1978.<sup>113</sup>
7. Completion of all required payments, including the final payment.
8. Issuance of any final amendments (to include any necessary adjustments).

The task of collecting the information and documentation required for closeout is typically completed by the office that has been administering the P.L. 93-638 contract or AFA. When the AO receives and accepts the final documentation, the AO must execute a contract amendment to officially close out the 638 contract or AFA. This amendment must be signed by both the AO and the Tribe.

### **Best Practices**

- Each region should consider establishing a closeout process that includes either a construction or a non-construction closeout checklist and is signed by the appropriate individuals, as established by regional processes and practice. A pre-closeout letter can also identify items that may assist with the closeout process.

---

<sup>112</sup> RM D&S NIA 10-01 § 12.A.

<sup>113</sup> Contract Disputes Act, 41 USC § 7101 *et seq.*

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

- Due to the nature of construction activities, closeout for construction contracts should include additional considerations, such as receipt of punch lists and final As-Builts from the Tribe.
- The AOTR's technical working file should be transferred to the administering office, to be assembled with the official award file as deemed necessary.
- The AO should notify the Tribe in writing of any identified items that are missing for closeout and provide a timeframe for the Tribe to submit the required information and/or documentation.
- The AO should include language in the closeout modification stating that both the Tribe and Reclamation agree that all terms and conditions of the 638 contract or AFA have been met, final reports received, total costs reconciled, and final payments processed.
- The AO should obtain from the Tribe the completed "Release of Claims" (DI-137) form before closeout.

## **12.11 Records Retention**

All 638 contract or AFA official award files and supporting records must be retained by Reclamation in accordance with applicable record-retention requirements identified in RM D&S NIA 10-01, paragraph 12.C.

### **Best Practices**

- Records should include, if applicable, bid advertisements, selections, awards, notices to proceed, letters/e-mails/telephone documentation, reports, meeting notes, invoices, project certifications, submittals, As-Built plans, payment reconciliations, payrolls, etc.
- For construction activities, specific construction records should include plans, specifications, engineers' estimates, second level engineering reviews (if applicable), rights-of-way, NEPA, archaeological, and cultural resource documentation; documentation of final acceptance from the Tribal engineer to the Tribe; documentation of acceptance of final payment and waiver of claims from the Tribal subcontractor(s) to the Tribe; and other pertinent records.



## 13. Retrocession, Reassumption, and Termination

This section discusses retrocession, emergency and non-emergency reassumption, and termination of both construction and non-construction agreements under the ISDEAA.<sup>114</sup> The standards and procedures differ between Title I self-determination contracts and Title IV AFAs, and between construction and non-construction agreements, as described in the following subsections.

### 13.1 Title I Self-Determination Contracts

#### 13.1.1 Non-Construction

##### 13.1.1.1 Retrocession

**Standards.** At its option, a Tribe may retrocede to Reclamation a program, function, service, or activity in a non-construction self-determination contract, in whole or in part, for any reason, on or before the expiration of the contract term.<sup>115</sup>

**Procedures.** Reclamation first offers any available technical assistance to the Tribe in order to allow the Tribe to continue operating the program.<sup>116</sup>

If the Tribe chooses to proceed with retrocession, Reclamation and the Tribe agree upon an effective date for retrocession.<sup>117</sup> By regulation, retrocession becomes effective on the earliest of:

- One year from the date of the Tribe's request;
- The date the contract expires; or
- A mutually agreed-upon date.<sup>118</sup>

Before retrocession becomes effective, Reclamation and the Tribe minimize disruption of the program; plan a smooth transition to Reclamation's operation of the program; and identify personnel, property, and financial resources that Reclamation will need in order to continue operating the program.

On the effective date of retrocession, the Tribe delivers to Reclamation all requested property and equipment that Reclamation previously provided under the

---

<sup>114</sup> ISDEAA, P.L. 93-638, as amended, 25 USC § 5301 *et seq.*

<sup>115</sup> 25 CFR § 900.240.

<sup>116</sup> DOI/HHS *Internal Agency Procedures Handbook* (1999), p. 14-1.

<sup>117</sup> DOI/HHS *Internal Agency Procedures Handbook* (1999), p. 14-1.

<sup>118</sup> 25 CFR § 900.242.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

contract and that has a per item fair market value, less the cost of improvements borne by the Tribe, in excess of \$5,000 at the time of retrocession.<sup>119</sup>

**13.1.1.2 Reassumption**

Reclamation rescinds a non-construction self-determination contract and reassumes<sup>120</sup> operation of the contracted program, in whole or in part, without the Tribe's consent, on an emergency or a non-emergency basis, as described in the following circumstances.

*Non-Emergency*

**Standards.** Reclamation reassumes a non-construction self-determination contract on a non-emergency basis if the Tribe's performance of the contract involves:

- A violation of the rights or endangerment of the health, safety, or welfare of any persons.
- A gross negligence or mismanagement in the handling or use of contract funds, trust funds, trust lands, or interests in trust lands pursuant to the contract.<sup>121</sup>

**Procedures.** Reclamation notifies the Tribe (and any Tribes or Tribal organizations served by the Tribe), in writing by certified mail, of the deficiencies in contract performance; requests specified correction action within a reasonable timeframe, not less than 45 days; and offers and provides, if requested, technical assistance and advice necessary to assist the Tribe in overcoming the deficiencies.<sup>122</sup>

If the Tribe fails to take corrective action, Reclamation provides a second written notice, by certified mail, to the Tribe (and any Tribes or Tribal organizations served by the Tribe) that the contract will be rescinded, in whole or in part.<sup>123</sup> The second written notice includes the intended effective date of reassumption, the facts supporting reassumption, instructions on the right to a formal hearing within 30 days of receipt of the notice, and instructions on submitting a claim for actual and reasonable "windup costs" incurred after the rescission.<sup>124</sup>

---

<sup>119</sup> 25 CFR § 900.245.

<sup>120</sup> 25 CFR § 900.246.

<sup>121</sup> 25 USC § 5330 and *DOI/HHS Internal Agency Procedures Handbook* (1999), p. 14-5.

<sup>122</sup> 25 CFR § 900.248.

<sup>123</sup> 25 CFR § 900.249.

<sup>124</sup> 25 CFR §§ 900.250 and 900.254, and *DOI/HHS Internal Agency Procedures Handbook* (1999), p. 14-6.

Reclamation appoints a team to plan for, and implement, reassumption.<sup>125</sup>  
Reclamation rescinds the contract only after a final decision, in any appeal.<sup>126</sup>

### *Emergency*

**Standards.** Reclamation has an obligation to reassume a non-construction self-determination contract on an emergency basis if the Tribe fails to fulfill the requirements of the contract and this failure poses an immediate threat of imminent harm to the safety of any person; or imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.<sup>127</sup>

**Procedures.** Reclamation immediately rescinds the contract, in whole or in part; assumes operation of the reassumed portion of the program;<sup>128</sup> and gives written notice to the contractor, the Tribe(s) served,<sup>129</sup> and the Deputy Director of the Office of Hearings and Appeals.<sup>130</sup> The notice includes instructions on submitting a claim for actual and reasonable “windup costs” incurred after the rescission and a request for the return of Reclamation-furnished property.<sup>131</sup>

#### **13.1.1.3 Termination**

**Standards.** The ISDEAA has no standards for terminating a non-construction self-determination contract, other than the standards for retrocession or reassumption.

**Procedures.** By regulation, when a contract terminates or expires, Reclamation has the option to take title to Government-furnished property for which title has been transferred to the Tribe if the property is still in use in the program and has a per item fair market value, less the cost of improvements borne by the Tribe, in excess of \$5,000.<sup>132</sup>

If the property is shared with ongoing contracts, Reclamation and the Tribe negotiate an arrangement for sharing the property and for retaining or transferring title.<sup>133</sup> Reclamation does not have authority, though, to reacquire title to excess or surplus Government property acquired from other Federal agencies for donation to the Tribe.<sup>134</sup>

---

<sup>125</sup> *DOI/HHS Internal Agency Procedures Handbook* (1999), p. 14-7.

<sup>126</sup> 25 CFR § 900.251.

<sup>127</sup> 25 CFR § 900.247.

<sup>128</sup> 25 CFR §§ 900.255 and 900.256.

<sup>129</sup> 25 CFR §§ 900.252 and 900.253.

<sup>130</sup> 25 CFR § 900.170.

<sup>131</sup> *DOI/HHS Internal Agency Procedures Handbook* (1999), p. 14-5.

<sup>132</sup> 25 CFR § 900.89(a).

<sup>133</sup> 25 CFR § 900.89(b).

<sup>134</sup> 25 CFR § 900.106.

### ***13.1.2 Construction***

#### **13.1.2.1 Retrocession**

The regulatory standards and procedures for retrocession<sup>135</sup> that are discussed in section 13.1.1, “Non-Construction,” also apply to construction self-determination contracts.<sup>136</sup>

#### **13.1.2.2 Reassumption**

The reassumption standards and procedures in the ISDEAA and its implementing regulations do not apply to construction self-determination contracts.<sup>137</sup> Instead, the regulations for construction self-determination contracts give Reclamation the ability to terminate the contracts for cause,<sup>138</sup> as described in the following subsection.

#### **13.1.2.3 Termination**

**Standards.** Reclamation can terminate a construction self-determination contract for convenience<sup>139</sup> or for cause.<sup>140</sup>

Reclamation can terminate for convenience if:

- The Tribe requests termination for convenience.
- At Reclamation’s request, the Tribe agrees to termination for convenience.
- The Congress rescinds funds allocated for the construction project.
- The Congress takes other actions that affect the subject matter of the contract.<sup>141</sup>

Reclamation can terminate for cause if the Tribe does not correct non-compliant work through the following procedures.<sup>142</sup>

**Procedures.** When Reclamation terminates a construction self-determination contract for convenience, Reclamation gives the Tribe 21 days advance written notice of intent to terminate for convenience and compensates the Tribe for reasonable costs incurred due to termination of the contract.<sup>143</sup>

---

<sup>135</sup> 25 CFR §§ 900.240–900.245.

<sup>136</sup> The ISDEAA section on retrocession of self-determination contracts does not apply to construction contracts (25 USC § 5324(m)(1)(A); see 25 CFR § 900.114), but the regulations on retrocession of self-determination contracts do apply to construction contracts (25 CFR § 900.137).

<sup>137</sup> 25 USC § 5324(m)(1)(A) and 25 CFR § 900.137.

<sup>138</sup> 25 CFR § 900.131(b)(12).

<sup>139</sup> 25 CFR § 900.131(b)(13).

<sup>140</sup> 25 CFR § 900.131(b)(12).

<sup>141</sup> 25 CFR § 900.131(b)(13).

<sup>142</sup> 25 CFR § 900.131(b)(12).

<sup>143</sup> 25 CFR §§ 900.131(b)(13)(v) and 900.131(b)(13)(vi).

When Reclamation terminates a construction self-determination contract for cause:

- Reclamation determines that it can suspend work under the contract because it discovers materially non-compliant work.<sup>144</sup>
- Reclamation provides a minimum of 5 business days advance written notice to the Tribe, describing the nature of the performance deficiencies or imminent safety, health, or environmental issues that are the cause for suspending work.<sup>145</sup>
- Reclamation suspends the contract for 30 days in order to give the Tribe an opportunity to correct the reasons for suspension.<sup>146</sup>

If the Tribe has not corrected the non-compliant work within 30 days, Reclamation can then terminate the contract for cause.

## **13.2 Title IV Annual Funding Agreements**

### ***13.2.1 Non-Construction***

#### **13.2.1.1 Retrocession**

**Standards.** At its option, a Tribe may retrocede any of the non-construction portions of a self-governance funding agreement.<sup>147</sup>

**Procedures.** The Tribe submits a written notice of retrocession to Reclamation, along with a Tribal resolution or other official action of the Tribe's governing body.<sup>148</sup>

Retrocession becomes effective on the date mutually agreed on by Reclamation and the Tribe, or as provided in the funding agreement.<sup>149</sup> Reclamation and the Tribe negotiate the amount of funding to be returned to Reclamation for the operation of the retroceded program, based on factors such as the time or functions remaining in the funding cycle, or as provided in the funding agreement.<sup>150</sup> On the effective date of retrocession, the Tribe returns all property and equipment, and title thereto, that the Tribe has acquired under the funding agreement for the retroceded program and that has a per item fair market value in excess of \$5,000 at the time of retrocession, or as otherwise provided in the funding agreement.<sup>151</sup>

---

<sup>144</sup> 25 CFR § 900.131(b)(11)(i).

<sup>145</sup> 25 CFR § 900.131(b)(11)(ii).

<sup>146</sup> 25 CFR § 900.131(b)(11).

<sup>147</sup> 25 CFR § 1000.332.

<sup>148</sup> 25 CFR § 1000.333.

<sup>149</sup> 25 CFR § 1000.334.

<sup>150</sup> 25 CFR § 1000.336.

<sup>151</sup> 25 CFR § 1000.337.

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

**13.2.1.2 Reassumption**

Reclamation rescinds a non-construction AFA and reassumes operation of the contracted program, in whole or in part, without the Tribe's consent, on an emergency or a non-emergency basis, as described in the following circumstances.

*Non-Emergency*

**Standards.** Reclamation reassumes a non-construction portion of a self-governance funding agreement within 60 days after finding imminent jeopardy to:

- A physical trust asset;
- A natural resource; or
- Public health and safety.<sup>152</sup>

**Procedures.** Reclamation immediately notifies the Tribe in writing following discovery of imminent jeopardy.<sup>153</sup> Reclamation reassumes the program within 60 days after finding imminent jeopardy, unless the Secretary's designated representative determines that the Tribe is able to mitigate the conditions.<sup>154</sup>

If the Secretary's designated representative determines that the Tribe cannot mitigate the conditions within 60 days of the finding of imminent jeopardy, Reclamation provides the Tribe with a written notice of intent to reassume.<sup>155</sup> If resources are available, the notice may include an offer of technical assistance to mitigate the imminent jeopardy.<sup>156</sup>

The notice of imminent jeopardy includes:

- A statement of reasons supporting the finding of imminent jeopardy.
- To the extent practical, a description of specific measures that the Tribe must take to eliminate imminent jeopardy.
- A notification that funds for the management of the trust asset, natural resource, or public health and safety found to be in imminent jeopardy may not be reallocated or otherwise transferred without Reclamation's written consent.

---

<sup>152</sup> 25 CFR § 1000.301. The regulations define imminent jeopardy to a physical trust asset (25 CFR § 1000.302), a natural resource (25 CFR § 1000.303), and public health and safety (25 CFR § 1000.304).

<sup>153</sup> 25 CFR § 1000.305(a).

<sup>154</sup> 25 CFR § 1000.306.

<sup>155</sup> 25 CFR § 1000.307.

<sup>156</sup> 25 CFR § 1000.308.

- The amount of funds, if any (not exceeding the amount awarded and based on factors such as the time or functions remaining in the funding cycle), that Reclamation believes the Tribe should refund to the Department for operation of the reassumed program.
- A notice of intent to invoke the return of property provision of the funding agreement.
- The effective date of the reassumption if the Tribe does not eliminate the imminent jeopardy. If the effective date is less than 60 days after the date of receipt, Reclamation includes a justification.<sup>157</sup>

The Tribe must respond in writing within 5 days of receiving the notice of imminent jeopardy.<sup>158</sup> The response must indicate the specific measures that the Tribe will take to eliminate imminent jeopardy and, if the Tribe proposes mitigating actions different from those proposed by Reclamation, the reasons for deviating from Reclamation's recommendations and how the Tribe's proposed actions will eliminate imminent jeopardy.<sup>159</sup>

Within 10 days of the Tribe's response, Reclamation determines in writing whether the Tribe's proposed measures will eliminate the imminent jeopardy.<sup>160</sup> If Reclamation accepts the Tribe's proposed measures, Reclamation notifies the Tribe in writing that reassumption is suspended.<sup>161</sup> If Reclamation finds that the Tribe's proposed measures will not eliminate imminent jeopardy, Reclamation notifies the Tribe in writing of this determination and of the Tribe's right to appeal.<sup>162</sup>

On the effective date of reassumption, at Reclamation's request, the Tribe delivers to Reclamation all property and equipment, and title thereto, that the Tribe received for the program under the funding agreement and that has a per item value in excess of \$5,000, or as otherwise provided in the funding agreement.<sup>163</sup>

After reassumption, Reclamation takes corrective action to eliminate the imminent jeopardy and may send Reclamation employees to the site.<sup>164</sup>

---

<sup>157</sup> 25 CFR § 1000.308.

<sup>158</sup> 25 CFR § 1000.309.

<sup>159</sup> 25 CFR § 1000.310.

<sup>160</sup> 25 CFR § 1000.311.

<sup>161</sup> 25 CFR § 1000.312.

<sup>162</sup> 25 CFR § 1000.313(a).

<sup>163</sup> 25 CFR § 1000.314.

<sup>164</sup> 25 CFR § 1000.313(b).

**Best Practices Handbook for Implementation of  
the Indian Self-Determination and Education  
Assistance Act (Public Law 93-638)**

The Tribe repays funds to Reclamation as soon as practical after reassumption.<sup>165</sup> Reclamation may reimburse the Tribe for actual and reasonable “windup costs” to the extent that funds are available.<sup>166</sup>

*Emergency*

**Standards.** After finding an immediate threat to human health, safety, or welfare, Reclamation may immediately reassume any of the non-construction portions of a self-governance funding agreement regardless of the timeframes for reassumption specified in the self-governance regulations.<sup>167</sup>

**Procedures** Reclamation provides the Tribe with a written notice of immediate reassumption, containing the applicable information previously described in the procedures for non-emergency reassumption.

**13.2.1.3 Termination**

The ISDEAA has no standards or procedures for terminating the non-construction portions of a self-governance funding agreement, other than the standards and procedures for retrocession and reassumption.

**13.2.2 Construction**

**13.2.2.1 Retrocession**

The regulatory standards and procedures for retrocession that are discussed in section 13.2.1 also apply to the construction portions of a self-governance funding agreement.<sup>168</sup>

**13.2.2.2 Reassumption**

**Standards.** Reclamation can reassume any of the construction portions of a self-governance funding agreement if:

- Reclamation finds that there is:
  - A significant failure to substantially carry out the terms of the funding agreement without good cause;
  - Imminent jeopardy to a physical trust asset or a natural resource; or

---

<sup>165</sup> 25 CFR § 1000.315.

<sup>166</sup> 25 CFR § 1000.316.

<sup>167</sup> 25 CFR § 1000.305(b).

<sup>168</sup> 25 CFR § 1000.252. All subparts of the self-governance regulations that are consistent with the subpart on construction apply to the construction portions of AFAs.



- Imminent jeopardy that adversely affects public health and safety, i.e., an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal action or inaction, or as otherwise provided in the funding agreement.<sup>169</sup> or
- At the end of a 30-day suspension of work:
  - An extension has not been negotiated, and
  - During the work suspension, the Tribe has not corrected or resolved its substantial failure to carry out the terms of the funding agreement without good cause.<sup>170</sup>

**Procedures.** On the effective date of reassumption, at Reclamation’s request, the Tribe delivers to Reclamation all property and equipment, and title thereto, that the Tribe received for the program under the funding agreement and that has a per item value in excess of \$5,000, or as otherwise provided in the funding agreement.<sup>171</sup> The Tribe repays funds to Reclamation as soon as practical after reassumption.<sup>172</sup> Reclamation and the Tribe negotiate the amount of funds to be returned, based on factors such as the time or functions remaining.<sup>173</sup>

### **13.2.2.3 Termination**

The ISDEAA has no standards or procedures for terminating the construction portions of a self-governance funding agreement, other than the standards and procedures for retrocession and reassumption.

---

<sup>169</sup> 25 CFR §§ 1000.249(g) and 1000.304.

<sup>170</sup> 25 CFR § 1000.251(b).

<sup>171</sup> 25 CFR § 1000.250; see 25 CFR §§ 1000.314 and 1000.337.

<sup>172</sup> 25 CFR § 1000.250; see 25 CFR §§ 1000.315 and 1000.336.

<sup>173</sup> 25 CFR §§ 1000.250 and 1000.336.



## 14. Evaluation and Updates to Best Practices Handbook

This Best Practices Handbook was developed in 2018 by Reclamation’s P.L. 93-638 Steering Committee. Before finalization, it was distributed in draft form via a “Dear Tribal Leader” letter, inviting Tribal consultation and comment on any of its content. The handbook will be modified, supplemented, or reissued (in whole or in part) by the Committee as needed to reflect changes in the 638 law or Tribal, Departmental, and/or Reclamation regulations and policy.

This Best Practices Handbook will be retained on Reclamation’s Native American Affairs Intranet site at: <https://intra.usbr.gov/native/selfdetermination.html>.