§ 1000.175 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the Tribe/Consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/Consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and Tribe/Consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?

The negotiation meetings referred to in §1000.175 must address at a minimum the following:

(a) The specific Tribe/Consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the Tribe/Consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the Tribe/Consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.177 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the Tribe/Consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian Tribe/Consortium served by the BIA Agency that serves any Tribe/Consortium that is a party to the AFA.

§ 1000.178 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under §1000.177(b).

§ 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?

(a) If the Tribe/Consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the Tribe/Consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the Tribe/Consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The Tribe/Consortium has 30 days from receipt of the bureau’s written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

NEGOTIATION PROCESS FOR SUCCESSOR ANNUAL FUNDING AGREEMENTS

§ 1000.180 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a Tribe’s Consortium’s initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request
and date of the request, a written re-
quest is not mandatory. If either party
anticipates a significant change in an
existing program in the AFA, it should
notify the other party of the change at
the earliest possible date so that the
other party may plan accordingly.

§ 1000.182 What is the process for ne-
gotiating a successor AFA?
The Tribe/Consortium and the bureau
use the procedures in §§1000.173–
1000.179.

Subpart H—Limitation and/or Re-
duction of BIA Services, Con-
tracts, and Funds

§ 1000.190 What is the purpose of this
subpart?
This subpart prescribes the process
that the Secretary uses to determine
whether a BIA self-governance funding
agreement causes a limitation or re-
duction in the services, contracts, or
funds that any other Tribe/Consortium
or Tribal organization is eligible to re-
ceive under self-determination con-
tracts, other self-governance compacts,
or direct services from BIA. This type
of limitation is prohibited by section
406(a) of Pub. L. 93–638. For the pur-
poses of this subpart, Tribal organiza-
tion means an organization eligible to
receive services, contracts, or funds
under section 102 of Pub. L. 93–638.

§ 1000.191 To whom does this subpart
apply?
Participating and non-participating
Tribes/ Consortia and Tribal organiza-
tions are subject to this subpart. It
does not apply to the general public
and non-Indians.

§ 1000.192 What services, contracts, or
funds are protected under section
406(a)?
Section 406(a) protects against the
actual reduction or limitations of serv-
ices, contracts, or funds.

§ 1000.193 Who may raise the issue of
limitation or reduction of services,
contracts, or funding?
BIA or any affected Tribe/Consortium
or Tribal organization may raise the
issue that a BIA self-governance AFA
limits or reduces particular services,
contracts, or funding for which it is eli-
gible.

§ 1000.194 When must BIA raise the
issue of limitation or reduction of
services, contracts, or funding?
(a) From the beginning of the nego-
tiation period until the end of the first
year of implementation of an AFA, BIA
may raise the issue of limitation or re-
duction of services, contracts, or fund-
ing. If BIA and a participating Tribe/
Consortium disagree over the residual
information, a participating Tribe/Con-
sortium may ask the Deputy Commiss-
ioner—Indian Affairs to reconsider re-
sidual levels for particular programs.
(See §1000.95(d))
(b) After the AFA is signed, BIA must
raise the issue of any undetermined
funding amounts within 30 days after
the final funding level is determined.
BIA may not raise this issue after this
period has elapsed.

§ 1000.195 When must an affected
Tribe/Consortium or Tribal organi-
zation raise the issue of a limitation
or reduction of services, contracts,
or funding for which it is eligible?
(a) A Tribe/Consortium or Tribal or-
ganization may raise the issue of limi-
tation or reduction of services, con-
tracts, or funding for which it is eligi-
bale during:
(1) Region-wide Tribal shares meet-
ings occurring before the first year of
implementation of an AFA;
(2) Within the 90-day review period
before the effective date of the AFA;
and
(3) The first year of implementation
of an AFA.
(b) Any Tribe/Consortium or Tribal
organization claiming a limitation or
reduction of contracts, services, or
funding for which it is eligible must
notify, in writing, both the Depart-
ment and negotiating Tribe/Consort-
tium. Claims may only be filed within
the periods specified in paragraph (a) of
this section.