

SUBCHAPTER M—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAM

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O’MALLEY ACT

Subpart A—General Provisions and Definitions

Sec.

- 273.101 What is the purpose and scope of this part?
- 273.102 How will revisions or amendments be made to this part?
- 273.103 What is the Secretary’s policy of maximum Indian participation?
- 273.104 How will the Secretary extend geographic coverage and enhance participation under the Johnson-O’Malley Act?
- 273.105 How do these regulations affect existing Tribal rights?
- 273.106 What key terms do I need to know?

Subpart B—Program Eligibility & Applicability

- 273.110 Who is eligible to request contracts under the Johnson-O’Malley Act?
- 273.111 How do the requirements for Tribal organizations differ from those for other eligible entities?
- 273.112 Who is an eligible Indian student under the Johnson-O’Malley Act?
- 273.113 How can the funds be used under the Johnson-O’Malley Act?
- 273.114 What programs may be contracted under the Johnson-O’Malley Act?

Subpart C—Indian Education Committee

- 273.115 Who determines the unique educational needs of eligible Indian students?
- 273.116 Does an Indian Education Committee need to establish procedures and report to the BIE Director?
- 273.117 What are the powers and duties of the Indian Education Committee?
- 273.118 Are there additional authorities an Indian Education Committee can exercise?

Subpart D—Education Plan

- 273.119 What is an education plan and what must it include?
- 273.120 Does an education plan need to be approved by the BIE Director?
- 273.121 When does the BIE Director approve the education plan?

Subpart E—Contract Proposal, Review, and Approval

- 273.125 How may a new contracting party request a contract under the Johnson-O’Malley Act?
- 273.126 What proposals are eligible for contracts under the Johnson-O’Malley Act?
- 273.127 Can a contract include funds to support the duties of an Indian Education Committee?
- 273.128 How are contracts prioritized?
- 273.129 May the BIE Director reimburse a public school district for educating non-resident Indian students?
- 273.130 What is required in the contract proposal for funding?
- 273.131 What is required for a Tribal request for a contract?
- 273.132 Who will review and approve the contract proposal?
- 273.133 What is the process for review and decision?
- 273.134 What is the timeframe for contract decision?
- 273.135 Who will negotiate the contract?

Subpart F—Funding Provisions

- 273.140 What is the funding formula to distribute funds?
- 273.141 Will funding be prorated?
- 273.142 Are advance payments on a contract allowed under the Johnson-O’Malley Act?
- 273.143 Must other Federal, State, and local funds be used?
- 273.144 Can Johnson-O’Malley funds be used for capital outlay or debt retirement?
- 273.145 How can funds be used for subcontractors?
- 273.146 Can funds be used outside of schools?
- 273.147 Are there requirements of equal quality and standard of education?

Subpart G—Annual Reporting Requirements

- 273.150 Does an existing contracting party need to submit any reports?
- 273.151 What information must the existing contracting party provide in the annual report?
- 273.152 When is the annual report due?
- 273.153 Who else needs a copy of the annual report?
- 273.154 What will happen if the existing contracting party fails to submit an annual report?
- 273.155 How will the existing contracting party know when reports are due?

§ 273.101

- 273.156 Will technical assistance be available to comply with the annual reporting requirements?
- 273.157 What is the process for requesting technical assistance and/or training?
- 273.158 When should the existing contracting party request technical assistance and/or training?
- 273.159 If the existing contracting party reported a decrease of eligible Indian students, how will funding be reduced?
- 273.160 Can the Secretary apply a ratable reduction in Johnson-O'Malley program funding?
- 273.161 What is the maximum decrease in funding allowed?

Subpart H—General Contract Requirements

- 273.170 What special program provisions must be included in the contract?
- 273.171 Can a contractor make changes to a program approved by an Indian Education Committee?
- 273.172 May State employees enter Tribal lands, reservations, or allotments?
- 273.173 What procurement requirements apply to contracts?
- 273.174 Are there any Indian preference requirements for contracts and subcontracts?
- 273.175 How will a Tribal governing body apply Indian preference requirements for contracts and subcontracts?
- 273.176 May there be a use and transfer of Government property?
- 273.177 Who will provide liability and motor vehicle insurance?
- 273.178 Are there contract recordkeeping requirements?
- 273.179 Are there contract audit and inspection requirements?
- 273.180 Are there disclosure requirements for contracts?
- 273.181 Are there Privacy Act requirements for contracts?
- 273.182 Are there penalties for misusing funds or property?
- 273.183 Can the Secretary investigate a potential Civil Rights Act violation?

Subpart I—Contract Renewal, Revisions, and Cancellations

- 273.191 How may a contract be renewed for Johnson-O'Malley funding?
- 273.192 What is required to renew a contract?
- 273.193 May a contract be revised or amended?
- 273.194 Does the Indian Education Committee have authority to cancel contracts?
- 273.195 May a contract be cancelled for cause?

25 CFR Ch. I (4-1-20 Edition)

Subpart J—Responsibility and Accountability

- 273.201 What is required for the Secretary to meet his or her reporting responsibilities?
- 273.202 Does this part include an information collection?

Subpart K—Appeals

- 273.206 May a contract be appealed?
- 273.207 How does a contractor request dispute resolution?
- 273.208 How does a Tribal organization request an appeal?
- 273.209 How does a State, public school district, or an Indian corporation request an appeal?

AUTHORITY: Secs. 201–203, Pub. L. 93–638, 88 Stat. 2203, 2213–2214 (25 U.S.C. 455–457), unless otherwise noted.

Subpart A—General Provisions and Definitions

§ 273.101 What is the purpose and scope of this part?

The purpose of this part is to set forth the process by which the Secretary will enter into contracts for the education of Indian students under the Johnson-O'Malley Act. Such contracts are for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards.

§ 273.102 How will revision or amendments be made to this part?

Prior to making any substantive revisions or amendments to this part, the Secretary will consult with Indian Tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and will consider their views in preparing the proposed revision or amendment. Nothing in this section precludes Indian Tribes or national or regional Indian organizations from initiating a request for revisions or amendments.

Bureau of Indian Affairs, Interior**§ 273.106****§ 273.103 What is the Secretary's policy of maximum Indian participation?**

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval, and implementation of all programs contracted under this part is required.

§ 273.104 How will the Secretary extend geographic coverage and enhance participation under the Johnson-O'Malley Act?

The Secretary will, to the extent practicable, and subject to the availability of appropriations, ensure full geographic coverage and the full participation of all federally recognized Tribes and school districts, regardless of whether the school districts or Tribal organizations had entered into a contract under the Johnson-O'Malley Act before fiscal year 1995. To the maximum extent practicable, the Secretary will consult with Indian Tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract in the implementation of this section.

§ 273.105 How do these regulations affect existing Tribal rights?

Nothing in these regulations may be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian Tribe;

(b) Authorizing or requiring the termination, waiving, modifying, or reducing of any existing trust responsibility of the United States with respect to the Indian people;

(c) Permitting significant reduction in services to Indian people as a result of this part; or

(d) Mandating an Indian Tribe to request a contract or contracts. Such requests are strictly voluntary.

§ 273.106 What key terms do I need to know?

Terms used in this part:

Academic year means the period of the year during which students attend an educational institution.

Appeal means a request for an administrative review of an adverse Agency decision.

Approving official means the BIE Director, or Agency Superintendents (for Tribes assigned under their management), has the responsibility and duties to review, approve or decline the contract in accordance with the Act.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. This person can be a contracting officer or other authorized Federal official.

BIE Director means the Bureau of Indian Education Director or his or her designee.

Bureau or *BIE* means the Bureau of Indian Education.

Bureau-funded school means a Bureau-operated elementary or secondary day or boarding school; or a Bureau-operated dormitory for students attending a school other than a Bureau school; or a Tribally controlled elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act, as amended.

Calendar year means the period of 365 days (or 366 days in leap years) starting from January 1.

Capital outlay means money spent to acquire, maintain, repair, or upgrade capital asset. Capital assets, also known as fixed assets, may include machinery, land, facilities, or other business necessities that are not expended during normal use.

§ 273.106**25 CFR Ch. I (4-1-20 Edition)**

Contract means to transfer the funds in support of the efforts designed to meet the specialized and unique educational needs of Indian students in the Johnson-O'Malley program from the Federal Government to the contractor. Tribes availing themselves of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, may receive funds under Title I contracts or Title IV contracts.

Contracting party means an entity that has a contract through a program authorized under the Johnson-O'Malley Act.

Contractor means any Tribal organization, State, school district, or Indian corporation to which a contract has been awarded.

Days means calendar days; except where a date specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day.

Debt retirement means the act of paying off debt completely to a lender.

Director means the Director of the Bureau of Indian Education.

Economic enterprise means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

Education plan means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students.

Eligible entity means a Tribal organization, State, public school district, or Indian corporation is eligible to request a contract for a supplemental or operational support program under this Act. For purposes of this part, previously private schools are considered Tribal organizations.

Existing contracting party means a contracting party that has a contract under this Act that is in effect on the date of the JOM Modernization Act (Pub. L. 115-404), enacted December 31, 2018.

Fiscal year means the period used by the Bureau for accounting and budget purposes. The Bureau's fiscal year begins October 1 and ends September 30.

Indian means a person who is a member of an Indian Tribe.

Indian Advisory School Board means an Indian advisory school board established pursuant to 25 U.S.C. 5342-5347 prior to January 4, 1975.

Indian corporation means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of "Tribal organization".

Indian Education Committee means one of the entities specified by § 273.115.

Indian Tribe means any Indian Tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Initial contract proposal and contract proposal means a proposal for education contracts under the Johnson-O'Malley Act for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

Johnson-O'Malley Act means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456), and by the Act of January 4, 1975 (88 Stat. 2203), and further amended by the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (Pub. L. 115-404), enacted December 31, 2018 (JOM Modernization Act).

Local Indian Committee means any committee established pursuant to 20 U.S.C. 7424(c)(4), which provides that the committee must be composed of and selected by parents and family members of Indian children; representatives of Indian Tribes on Indian lands located within fifty miles; teachers in the schools; and if appropriate, Indian students attending secondary schools.

New contracting party means an entity that enters into a contract under this Act after the date of enactment of

Bureau of Indian Affairs, Interior**§ 273.106**

the JOM Modernization Act (Pub. L. 115-404), enacted December 31, 2018.

Operational support means those expenditures for school operational costs in order to meet established State educational standards or Statewide requirements and as specified in § 273.126.

Parent means the lawful father or mother of someone, and may include:

- (1) Either the natural father or the natural mother of a child;
- (2) The adoptive father or adoptive mother of a child;
- (3) A child's putative blood parent who has expressly acknowledged paternity;
- (4) An individual or agency whose status as guardian has been established by judicial decree.

Previously private school means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian Tribe(s).

Public school district means a State-funded school district that:

- (1) Serves public elementary schools or public secondary schools; and
- (b) Has established or will establish local committees or is using a committee or Indian advisory school board to approve supplementary or operational support programs beneficial to Indian students.

Reservation or *Indian reservation* means any Indian Tribe's reservation, pueblo, colony, or rancheria, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

School district or *local education agency* means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

Scope of work means a framework document that will outline the work that will be performed under a contract and detail the expectations for the Johnson-O'Malley program.

Secretary means the Secretary of the Interior.

Sectarian school means a school sponsored or supported, at least in part, by a religious denomination; also commonly known as a parochial school.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and each of the outlying areas, or any political subdivision of the 50 States.

School official or *school administrator* means a person employed by the school in an administration, supervisory, academic, or support staff position.

Supplemental program means a program designed to meet the specialized and unique educational needs of eligible Indian students that may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors. Programs may also provide academic assistance to Indian students for the improvement of student learning, increase the quality of instruction, and as provided by § 273.143(b).

System of record means a system of record that contains information that is retrieved by an individual name or other unique identifiers.

Tribal government, *Tribal governing body* and *Tribal Council* means the recognized governing body of an Indian Tribe.

Tribal organization means the recognized governing body of any Indian Tribe or any legally established organization of Indians or Tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; provided that in any case where a contract is let to an organization to perform services benefitting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting of the contract.

§ 273.110**Subpart B—Program Eligibility & Applicability****§ 273.110 Who is eligible to request contracts under the Johnson-O’Malley Act?**

The following entities are eligible to enter into an education contract under the Johnson-O’Malley Act for the purpose of financially assisting efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards:

- (a) Tribal organizations;
- (b) States;
- (c) Public school districts that:
 - (1) Serve public elementary schools or public secondary schools; and
 - (2) Have a local school board composed of a majority of Indians or have established or will establish an Indian Education Committee, as described in § 273.115 to approve supplementary or operational support programs beneficial to Indian students; and
- (d) Indian corporations.

§ 273.111 How do the requirements for Tribal organizations differ from those for other eligible entities?

(a) States, public school districts, or Indian corporations must comply with the requirements in this part.

(b) The requirements of this part apply to Tribal organizations (including but not limited to provisions regarding how funds can be used under the Johnson-O’Malley Act and reporting requirements), except that Tribal organizations do not need to comply with:

- (1) Sections 273.120—273.121, regarding approval of an education plan by the Director;
- (2) Section 273.125, regarding entering into a contract as a new contracting party;
- (3) Sections 273.132—273.135, regarding review, approval, and negotiation of the contract;
- (4) Section 273.142, regarding advance payments;
- (5) Any section in subpart H (other than the following sections, which still apply: § 273.170, regarding special pro-

25 CFR Ch. I (4-1-20 Edition)

gram provisions to be included in a contract, § 273.172, regarding State employees’ access to Tribal lands, reservations or allotments, and § 273.182, regarding penalties for misusing funds or property);

(6) Any section in subpart I (other than § 273.194, regarding the Indian Education Committee’s authority to recommend cancellation or suspension of contracts, which still applies);

(7) Any section in subpart K (other than § 273.208).

(c) The contract proposal submitted by the Tribal organization must meet the requirements in part 900 or 1000 of this chapter, in addition to those in § 273.180 except that education plans must be submitted to the BIE Director for approval in accordance with § 273.170. The requirements in part 900 or 1000 of this chapter apply to contracts and compacts with Tribal organizations, except for the provisions in §§ 900.240 through 900.256, 1000.300, and 1000.330 of this chapter concerning retrocession and reassumption of programs. If a Tribal organization retrocedes a contract, the Bureau will then contract with a State, public school district, or Indian corporation for the supplemental programs or operational support. Redesign and reallocation under either Title I contracts or Title IV compacts must be done with approval in accordance with § 900.8(g)(6) of this chapter.

§ 273.112 Who is an eligible Indian student under the Johnson-O’Malley Act?

An Indian student is eligible for benefits provided by a Johnson O’Malley contract if the student is:

(a) From age three (3) years through grade(s) twelve (12);

(b) Not enrolled in a Bureau-funded school or sectarian school (except the student is eligible if enrolled in a previously private school controlled by an Indian Tribe or Tribal organization); and

(c) Is either:

(1) At least one-fourth ($\frac{1}{4}$) degree Indian blood descendant of a member of an Indian Tribe as defined in § 273.106; or

(2) A member of an Indian Tribe as defined in § 273.106.

Bureau of Indian Affairs, Interior**§ 273.117****§ 273.113 How can the funds be used under the Johnson-O'Malley Act?**

An eligible entity may use the funds available under the contract to provide educational benefits to eligible Indian students to:

(a) Establish, carry out programs or expand programs in existence before the contract period that provide:

(1) Remedial instruction, career, academic, and college-readiness counseling, and cultural programs;

(2) Selected courses related to the academic and professional disciplines; or

(3) Important needs, such as school supplies and items that enable recipients to participate in curricular and extra-curricular programs; and

(b) Purchase equipment to facilitate training for professional trade skills and intensified college preparation programs.

§ 273.114 What programs may be contracted under the Johnson-O'Malley Act?

All programs contracted under this part must:

(a) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee and as may be contained in the Committee's organizational documents and by-laws.

(b) Be included as a part of the education plan.

Subpart C—Indian Education Committee**§ 273.115 Who determines the unique educational needs of eligible Indian students?**

(a) When a school district to be affected by a contract(s) for the education of Indians has a local school board composed of a majority of Indians, the local school board may act as the Indian Education Committee; otherwise, the parents of Indian children may elect an Indian Education Committee from among their number or a Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the following entities to serve as the Indian Education Committee:

(1) A Local Indian Committee or Committees; or

(2) An Indian Advisory School Board or Boards.

(b) The Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the entities in paragraph (a)(1) or (2) of this section at its discretion if the Indian Education Committee was established prior to January 4, 1975.

§ 273.116 Does an Indian Education Committee need to establish procedures and report to the BIE Director?

The Indian Education Committee and its members must establish procedures under which the Committee serves. Such procedures must be set forth in the Committee's organizational documents and by-laws.

(a) Each Committee must file a copy of its organizational documents and by-laws with the BIE Director, together with a list of its officers and members.

(b) The existence of an Indian Education Committee may not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this part.

§ 273.117 What are the powers and duties of the Indian Education Committee?

Consistent with the purpose of the Indian Education Committee, each such Committee is vested with the authority to undertake the activities in paragraphs (a) through (d) of this section.

(a) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this part. Such participation includes further authority to:

(1) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs;

(2) Approve budget preparation and execution;

(3) Recommend criteria for employment in the program;

§ 273.118**25 CFR Ch. I (4-1-20 Edition)**

(4) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select; and

(5) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(b) Approve and disapprove all programs to be contracted under this part. All programs contracted require the prior approval of the appropriate Indian Education Committee.

(c) Secure a copy of the negotiated contract(s) that includes the program(s) approved by the Indian Education Committee.

(d) Recommend cancellation or suspension of a contract(s) under § 273.194.

§ 273.118 Are there additional authorities an Indian Education Committee can exercise?

The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties that would permit the Committee to:

(a) Participate in negotiations concerning all contracts;

(b) Make an annual assessment of the learning needs of Indian children in the community affected;

(c) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of § 273.180;

(d) Request periodic reports and evaluations regarding the Indian education program;

(e) Establish a local grievance policy and procedures related to programs in the education plan;

(f) Meet regularly with the professional staff serving Indian children and with the local education agency;

(g) Hold committee meetings on a regular basis which are open to the public; and

(h) Have such additional powers as are consistent with these regulations.

Subpart D—Education Plan**§ 273.119 What is an education plan and what must it include?**

A prospective contractor in consultation with its Indian Education Committee(s) must formulate an education plan that contains educational objectives that adequately address the educational needs of the Indian students and assures that the contract is capable of meeting such objectives. The education plan must contain:

(a) The education programs developed and approved by the Indian Education Committee(s);

(b) Educational goals and objectives that adequately address the educational needs of the Indian students to be served by the contract;

(c) Procedures for addressing hearing grievances from Indian students, parents, guardians, community members, and Tribal representatives relating to the program(s) contracted. Such procedures must provide for adequate advance notice of the hearing;

(d) Established State standards and requirements that must be maintained in operating the contracted programs and services;

(e) A description of how the State standards and requirements will be maintained;

(f) A requirement that the contractor comply in full with the requirements concerning meaningful participation by the Indian Education Committee;

(g) A requirement that education facilities receiving funds be open to visits and consultations by the Indian Education Committee(s), Tribal representatives, Indian parents and guardians in the community, and by duly authorized representatives of the Federal and State Governments;

(h) An outline of administrative and fiscal management procedures to be used by the contractor;

(i) Justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in § 273.126(b). The information given should include records of receipt of local, State, and Federal funds;

(j) Budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

- (1) State and district average operational cost per pupil;
- (2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding;
- (3) Administrative costs involved, total number of employees, and total number of Indian employees;
- (4) Costs that parents normally are expected to pay for each school;
- (5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability, and
- (6) Total number of employees for each special program and number of Indian employees for that program;

(k) The total enrollment of school or district, by age and grade level;

- (l) The eligible Indian enrollment—total and classification by Tribal affiliation(s) and by age and grade level;
- (m) The total number of school board members and number of Indian school board members;
- (n) Government equipment needed to carry out the contract;
- (o) The period of contract term requested;
- (p) The signature of the authorized representative of applicant; and
- (q) Written information regarding:

- (1) Program goals and objectives related to the learning needs of potential target students;
- (2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities;
- (3) Overall program implementation including staffing practices, parental and community involvement, evaluation of program results, and dissemination thereof; and
- (4) Determination of staff and program effectiveness in meeting the stated needs of target students.

§ 273.120 Does an education plan need to be approved by the BIE Director?

The Secretary will not enter into any contract for the education of Indians unless:

- (a) The contractor has submitted an education plan to the BIE Director; and
- (b) The BIE Director has determined that the education plan contains educational objectives that adequately address the educational needs of the Indian students who are to be beneficiaries of the contract, and that the contract is capable of meeting such objectives.

§ 273.121 When does the BIE Director approve the education plan?

The BIE Director approves the education plan when a contractor submits a contract proposal for funding.

Subpart E—Contract Proposal, Review, and Approval

§ 273.125 How may a new contracting party request a contract under the Johnson-O'Malley Act?

Subject to the availability of appropriations, eligible entities who have not previously entered into a contract for the Johnson-O'Malley program may submit an initial contract proposal.

§ 273.126 What proposals are eligible for contracts under the Johnson-O'Malley Act?

- (a) Any proposal to contract for funding a supplemental program will be considered an eligible proposal.
- (b)(1) To contract for operational support, a public school district is required to establish in the proposal that it:
 - (i) Cannot meet the minimum State or other applicable standards or requirements without such funds;
 - (ii) Has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs;
 - (iii) Has fully utilized all other sources of financial aid, including all forms of State aid and Public Law 874 payments, and the State aid contribution per pupil is at least equal to the State average;

§ 273.127

- (iv) Has at least 50 percent eligible Indian enrollment;
- (v) Has clearly identified the educational needs of the students intended to benefit from the contract;
- (vi) Has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this part; and
- (vii) Will not budget or project a deficit by using contract funds pursuant to this part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

§ 273.127 Can a contract include funds to support the duties of an Indian Education Committee?

Programs developed or approved by the Indian Education Committee may, at the option of such Committee, include funds for the performance of Committee duties to include:

- (a) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.
- (b) Other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

§ 273.128 How are contracts prioritized?

Priority will be given to contracts:

- (a) Which would serve Indian students on or near reservations; and
- (b) Where a majority of the Indian students will be members of the Tribe(s) of those reservations.

§ 273.129 May the BIE Director reimburse a public school district for educating non-resident Indian students?

The BIE Director may consider a contract proposal to reimburse a public school district for the full per capita costs of educating Indian students who meet all of the following:

- (a) Are members of recognized Indian Tribes;
- (b) Do not normally reside in the State in which the school district is located; and
- (c) Are residing in Federal boarding facilities for the purpose of attending

25 CFR Ch. I (4-1-20 Edition)

public schools within the school district.

§ 273.130 What is required in the contract proposal for funding?

A contract proposal must be in writing and contain the following:

- (a) Name, address, and telephone number of the proposed contractor;
- (b) Name, address, and telephone number of the Tribe(s) to be served by the contract;
- (c) Descriptive narrative of the contract proposal;
- (d) The education plan approved by the Indian Education Committee;
- (e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability;
- (f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address; and
- (g) Documentation of the requirements for operational support in § 273.126(b)(1).

§ 273.131 What is required for a Tribal request for a contract?

(a) An Indian Tribal governing body that desires that a contract be entered into with a Tribal organization must notify the BIE Director no later than February 1 preceding the school year for the contract.

(b) If the BIE Director does not receive the Tribal governing body's notice by the date in paragraph (a) of this section, the BIE Director may contract with the State, public school district, or Indian corporation under this part.

(c) The Tribal governing body has the option to contract with the State, public school district, or Indian corporation.

§ 273.132 Who will review and approve the contract proposal?

Each approving official within each Bureau Region is authorized to approve the contract(s) submitted by the State, public school district, or Indian corporation to provide services to Indian children within that approving official's region.

Bureau of Indian Affairs, Interior**§ 273.140****§ 273.133 What is the process for review and decision?**

Upon receiving a contract proposal, the approving official will:

(a) Notify the applicant in writing that the contract proposal has been received, within 14 days after receiving the contract proposal.

(b) Review the contract proposal for completeness and request, within 20 days after receiving the contract proposal, any additional information from the applicant which will be needed to reach a decision.

(c) On receiving the contract proposal for operational support, make a formal written determination and findings supporting the need for such funds. In arriving at such a determination, the approving official must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested.

(d) Assess the completed contract proposal to determine if the proposal is feasible and if the proposal complies with the appropriate requirements of the Johnson-O'Malley Act and this part.

(e) Approve or disapprove the contract proposal after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the contract proposal.

(g) If the contract proposal is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to subpart K of this part.

§ 273.134 What is the timeframe for contract decision?

The approving official will approve or disapprove the contract proposal within 90 days after the approving official receives the contract proposal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the applicant.

§ 273.135 Who will negotiate the contract?

After the approving official has approved the contract proposal, the

awarding official, assisted by Bureau education personnel, will negotiate the contract.

Subpart F—Funding Provisions**§ 273.140 What is the funding formula to distribute funds?**

Funds will be distributed to contractors based upon a funding formula. The funding formula is calculated using data obtained by the Department of Education from the previous year.

(a) The funding formula to determine the funding to be distributed to each contractor is the Weight Factor multiplied by the number of eligible Indian students, where the Weight Factor is:

(1) The State average cost per pupil count divided by the national average cost per pupil count; or

(2) A default weight factor of 1.3, if the calculation in paragraph (a)(1) of this section results in a weight factor of less than 1.3.

(b) Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose will be allotted pro rata in accordance with the distribution method outlined in this formula.

(c) For four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018):

(1) Existing contractors will not receive an amount that is less than the amount received for Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act), unless:

(i) The existing contractor fails to submit a complete annual report;

(ii) The Secretary has found that the existing contractor has violated the terms of a contract under this part; or

(iii) The number of eligible Indian students reported in the annual report has decreased below the number of eligible Indian students served by the existing contractor in Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act).

(2) Paragraph (c)(1)(iii) of this section notwithstanding, no existing contractor will receive an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student that the existing

§ 273.141**25 CFR Ch. I (4-1-20 Edition)**

contractor received for Fiscal Year 2018 (the fiscal year preceding the enactment of the JOM Modernization Act).

(d) Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party will receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous year.

§ 273.141 Will funding be prorated?

All monies provided by a contract may be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted, money expended under the contract will be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be *de minimis*. Such *de minimis* participation must be approved by the Indian Education Committee.

§ 273.142 Are advance payments on a contract allowed under the Johnson-O'Malley Act?

Payments to States, public school districts and Indian corporations will be made in advance or by way of reimbursement and in such installments and on such conditions as the BIE Director deems necessary to carry out the purposes of the Act.

§ 273.143 Must other Federal, State, and local funds be used?

(a) Contract funds under this part supplement, and do not supplant, Federal, State and local funds. Each contract must require that the use of these contract funds will not result in a decrease in State, local, or Federal funds that would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) constitutes the only federally funded school lunch program for Indian students in public schools. Where In-

dian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.119 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible Indian students under § 273.112.

§ 273.144 Can Johnson-O'Malley funds be used for capital outlay or debt retirement?

In no instance may contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.145 How can funds be used for subcontractors?

The Bureau may make contract funds under the Johnson-O'Malley Act available directly only to Tribal organizations, States, public school districts, and Indian corporations. However, Tribal organizations, States, public school districts, and Indian corporations receiving funds may use the funds to subcontract for necessary services with any appropriate individual, organization, or corporation.

§ 273.146 Can funds be used outside of schools?

Nothing in this part prevents the BIE Director from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.147 Are there requirements of equal quality and standard of education?

Contracts with State education agencies or public school districts receiving funds must provide educational opportunities to all Indian children within that school district on the same terms

Bureau of Indian Affairs, Interior**§ 273.157**

and under the same conditions that apply to all other students as long as it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs. Public school districts receiving funds must ensure that Indian children receive all aid from the State, and proper sources other than the Johnson-O'Malley contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance may there be discrimination against Indians or the schools enrolling Indians.

Subpart G—Annual Reporting Requirements**§ 273.150 Does an existing contracting party need to submit any reports?**

Each existing contracting party must submit an annual report based on the JOM funding received and other contract-related reports as required by the BIE Director.

§ 273.151 What information must the existing contracting party provide in the annual report?

Existing contracting parties who receive Johnson-O'Malley funding must submit the following information in the annual report:

- (a) General information about the contractor;
- (b) General information about the number and names of the schools;
- (c) The number of eligible Indian students who were served using amounts allocated under the contract during the previous fiscal year;
- (d) An accounting of the amounts and purposes for which the contract funds were expended;
- (e) Information on the conduct of the program;
- (f) A quantitative evaluation of the effectiveness of the contract program in meeting the stated objectives contained in the educational plans; and
- (g) A complete accounting of actual receipts at the end of the fiscal year for which the contract funds were expended.

§ 273.152 When is the annual report due?

All existing contracting parties must submit the annual report to the BIE Director on or before September 15 of each year and covering the previous academic year.

§ 273.153 Who else needs a copy of the annual report?

All existing contracting parties must send copies of the annual reports to the Indian Education Committee(s) and to the Tribe(s) under the contract at the same time as the reports are sent to the BIE Director.

§ 273.154 What will happen if the existing contracting party fails to submit an annual report?

Any existing contracting party that fails to submit the annual report will receive no amounts under this Act for the fiscal year following the academic year for which the annual report should have been submitted.

§ 273.155 How will the existing contracting party know when reports are due?

The BIE Director will provide existing contracting parties with timely information relating to:

- (a) Initial and final reporting deadlines; and
- (b) The consequences of failure to comply.

§ 273.156 Will technical assistance be available to comply with the annual reporting requirements?

The Bureau will provide technical assistance and training on compliance with the reporting requirements to existing contracting parties. The Bureau will provide such technical assistance and training on an ongoing and timely basis.

§ 273.157 What is the process for requesting technical assistance and/or training?

(a) Existing contracting parties may request technical assistance and/or training by addressing the request in writing to the BIE Director.

(b) The BIE Director, or designee, will acknowledge receipt of a request

§ 273.158

for technical assistance and/or training.

(c) No later than 30 days after receiving the original request, the BIE Director will identify a point of contact and begin the process of providing technical assistance and/or training. The BIE Director and requesting contracting party will work together to identify the form, substance, and timeline for the assistance.

§ 273.158 When should the existing contracting party request technical assistance and/or training?

The existing contracting party is encouraged to request technical assistance and/or training before annual reporting requirements are due in order to avoid the consequences for failure to comply.

§ 273.159 If the existing contracting party reported a decrease of eligible Indian students, how will funding be reduced?

Except as provided in § 273.140(c) and (d) of this part, for four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018) an existing contracting party's funding will not be reduced to a level that is less than the amount of funding per eligible Indian student that the existing contracting party received for Fiscal Year 2017 (the fiscal year preceding the date of enactment of the Johnson-O'Malley Modernization Act).

§ 273.160 Can the Secretary apply a ratable reduction in Johnson-O'Malley program funding?

If the funds available under the Johnson-O'Malley Act for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive under for the fiscal year, the Secretary will ratably reduce those amounts for the fiscal year.

§ 273.161 What is the maximum decrease in funding allowed?

Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party may receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

25 CFR Ch. I (4-1-20 Edition)**Subpart H—General Contract Requirements****§ 273.170 What special program provisions must be included in the contract?**

All contracts must contain the following:

(a) The education plan containing the education programs approved by the Indian Education Committee(s);

(b) Any formal written determination and findings made by the BIE Director supporting the need for operational support as required by § 273.133(c); and

(c) A provision that State, local, and other Federal Funds will be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.143(b).

(d) Public Laws 102-477 and 93-638 Self-Governance Tribes must submit their education plan as required by paragraph (a) of this section to the BIE Director for review. The BIE Director will forward copies of the education plans to the 477 office or the Office of Tribal Self-Governance, as appropriate.

§ 273.171 Can a contractor make changes to a program approved by an Indian Education Committee?

No program contracted may be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Indian Education Committee.

§ 273.172 May State employees enter Tribal lands, reservations, or allotments?

In those States where Public Law 83-280 (18 U.S.C. 1162 and 28 U.S.C. 1360) do not confer civil jurisdiction, State employees may be permitted to enter upon Indian Tribal lands, reservations, or allotments in an official capacity in connection with a contract under this part if the duly constituted governing body of the Tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian

Bureau of Indian Affairs, Interior**§ 273.176**

Tribal lands, reservations, or allotments; or

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in *loco parentis*.

§ 273.173 What procurement requirements apply to contracts?

States, public school districts, or Indian corporations wanting to contract with the Bureau must comply with the applicable requirements in the Federal Acquisition Regulations at 48 CFR part 1.

§ 273.174 Are there any Indian preference requirements for contracts and subcontracts?

(a) Any contract made with a State, public school district, or Indian corporation for the benefit of Indian students must require that the contractor, to the greatest extent feasible:

(1) Give preference in and opportunities for employment and training to Indians in connection with the administration of such contract(s); and

(2) Give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(b) All subcontractors employed by the contractor must, to the extent possible, give preference to Indians for employment and training and must include in their bid submission a plan to achieve maximum use of Indian personnel.

§ 273.175 How will a Tribal governing body apply Indian preference requirements for contracts and subcontracts?

A Tribal governing body may develop its own Indian preference requirements for its contracts and subcontracts.

§ 273.176 May there be a use and transfer of Government property?

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the Tribal government if such property is located on a reservation.

(b) In carrying out a contract, the BIE Director may, with the approval of the Tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within its jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee must insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow, or tornado, the insurance money collected may be expended only for repair or replacement of property. Otherwise, insurance proceeds must be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the BIE Director, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee will maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

§ 273.177

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

§ 273.177 Who will provide liability and motor vehicle insurance?

(a) States, school districts, and Indian corporations must obtain public liability insurance under contracts entered into with the Bureau, unless the Bureau approving official determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of how small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the approving official, liability and motor vehicle insurance will not be required.

§ 273.178 Are there contract record keeping requirements?

A contractor will be required to maintain a recordkeeping system that allows the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 *et seq.*). Such a record system must:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner that will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data;

(b) Reflect the amounts and sources of funds other than Bureau contract funds that may be included in the operation of the contract;

(c) Provide for the creation, maintenance, and safeguarding of records of lasting value, including those involving

25 CFR Ch. I (4-1-20 Edition)

individual rights, such as permanent records and transcripts; and

(d) Provide for the orderly retirement of permanent records in accordance with Department Records Schedule (Bureau of Indian Affairs (075)), when there is no established system set up by the State, public school district, or Indian corporation.

§ 273.179 Are there contract audit and inspection requirements?

(a) During the term of a contract and for three (3) years after the project or undertaking is completed, the BIE Director, or any duly authorized representative, must have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records that, in the BIE Director's or representative's opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor is responsible for maintaining invoices, purchase orders, canceled checks, balance sheets and all other documents relating to financial transactions in a manner that will facilitate auditing. The contractor is responsible for maintaining files of correspondence and other documents relating to the administration of the contract, properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds is responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned must be further maintained until a final determination is made on the questioned expenditures.

(e) The contractor and local school officials must make available to each member of the Indian Education Committee and to members of the public upon request: all contracts, non-confidential records concerning students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract program in the preceding and current years. The contractor or local school official must provide, free of charge, single copies of such documents upon request.

Bureau of Indian Affairs, Interior

§ 273.180 Are there disclosure requirements for contracts?

(a) Unless otherwise required by law, the Bureau may not place restrictions on contractors that will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor must make all reports and information concerning the contract available to the Indian people that the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret;

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis; or

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy; and

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information must be in writing and reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within 10 working days after receiving the request, the contractor must determine whether to grant or deny the request and immediately notify the request of the determination.

(d) The time limit for making a determination may be extended up to an additional 10 working days for good reason. The requester must be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 273.181 Are there Privacy Act requirements for contracts?

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor must comply with subpart K of 43 CFR part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

§ 273.182

(1) To continue maintaining systems of records declared by the Bureau to be subject to the Privacy Act;

(2) To make such records available to individuals involved;

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains, and in accordance with the exceptions listed in 43 CFR 2.231;

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records; and

(5) To provide safeguards for the protection of the records.

(b) The contractor may not, without prior approval of the Bureau:

(1) Discontinue or alter any established systems of records;

(2) Deny requests for notification or access of records; or

(3) Approve or deny requests for amendments of records.

(c) The contractor may not establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(d) The contractor may not collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(e) The contractor is subject to 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions.

§ 273.182 Are there penalties for misusing funds or property?

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this part embezzles, willfully misappropriates, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he or she will be subject to the following penalties:

(a) If the amount involved does not exceed \$100, person(s) will be fined not more than \$1,000 or imprisoned not more than one (1) year, or both.

(b) If the amount involved exceeds \$100, person(s) will be fined not more

§ 273.183

than \$10,000 or imprisoned for not more than two (2) years, or both.

§ 273.183 Can the Secretary investigate a potential Civil Rights Act violation?

In no instance may there be discrimination against Indians or schools enrolling Indians. When informed by a complainant or through its own discovery that a possible violation of title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds, the Secretary will, in accordance with Federal requirements, notify the Department of Education of the possible violation. The Department Education will conduct an investigation into the matters alleged. If the report of the investigation conducted by the Department of Education discloses a failure or threatened failure to comply with this part, and if the non-compliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law.

Subpart I—Contract Renewal, Revisions, and Cancellations**§ 273.191 How may a contract be renewed for Johnson-O'Malley funding?**

An awarding official will notify the existing contracting party in advance of the contract's expiration and ask if the existing contracting party wants to renew the contract. The renewal must be in writing from the existing contracting party and the awarding official.

§ 273.192 What is required to renew a contract?

(a) The existing contracting party seeking to renew a contract will submit to the awarding official:

- (1) A written request to renew;
- (2) The current education plan approved by the Indian Education Committee, if expired;
- (3) A scope of work; and
- (4) A budget outlining the Johnson-O'Malley funds for operational support

25 CFR Ch. I (4-1-20 Edition)

and/or supplemental programs, by line item, to facilitate accountability.

(b) The awarding official will send the existing contracting party an acknowledgment letter and specify if any information is required to complete renewal package.

(c) The approving official will approve or disapprove a renewal within 90 days after the approving official receives the renewal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the existing contracting party.

§ 273.193 May a contract be revised or amended?

Any contract may be revised or amended as deemed necessary to carry out the purposes of the program being contracted.

(a) A contractor may submit a written request for a revision or amendment of a contract to the awarding official.

(b) The written approval of the Indian Education Committee is required if the contract revision or amendment will alter a program that has been approved by the Indian Education Committee.

§ 273.194 Does the Indian Education Committee have authority to cancel contracts?

The Indian Education Committee may recommend to the BIE Director, through the appropriate awarding official, cancellation or suspension of a contract(s) that contains the program(s) approved by the Indian Education Committee, if the contractor fails to permit such Committee to exercise its powers and duties.

§ 273.195 May a contract be cancelled for cause?

(a) Any contract may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties.

(b) Before cancelling the contract, the BIE Director will provide the contractor with written notice, including:

Bureau of Indian Affairs, Interior**§ 273.208**

(1) The reasons why the Bureau is considering cancelling the contract; and

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice will give the reasons for the cancellation and the right of the contractor to appeal under subpart K of this part.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) that led to the cancellation have been remedied before it will be considered for another contract.

Subpart J—Responsibility and Accountability**§ 273.201 What is required for the Secretary to meet his or her reporting responsibilities?**

(a) The Secretary has the following reporting responsibilities to the Committee on Indian Affairs in the Senate; the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate; the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives:

(1) In order to provide information about the Johnson-O'Malley Program, the Bureau must obtain from all existing contracting parties the most recent determination of the number of eligible Indian students served by each contracting party.

(2) The Bureau will make recommendations on appropriate funding levels for the program based on such determination.

(3) The Bureau will make an assessment of the contracts under this Act.

(b) The Bureau will make such reports as described in paragraph (a) of this section publically available.

§ 273.202 Does this part include an information collection?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0193. Responses is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Subpart K—Appeals**§ 273.206 May a contract be appealed?**

(a) A contractor may appeal:

(1) An adverse decision or action of the Bureau regarding a contract; or

(2) A decision to cancel a contract for cause.

(b) The Secretary encourages contractors to seek all means of dispute resolution before a formal appeal.

§ 273.207 How does a contractor request dispute resolution?

The contractor may request dispute resolution in writing to the BIE Director.

(a) The Bureau has in place an alternative dispute resolution (ADR) process.

(1) The ADR process is intended to be a supplement to, and not a replacement for, the normal appeal process.

(2) Participation as a complainant in the ADR process is voluntary.

(3) Should a contractor participate in an ADR process, the pre-complaint process may extend to 90 days.

(b) The ADR process may result in an informal resolution of the complaint;

(c) If the ADR process does not result in an informal resolution of the complaint, the contractor still has the right to continue to pursue an appeal.

§ 273.208 How does a Tribal organization request an appeal?

A Tribal organization may request an appeal pursuant to part 900 or 1000 of this chapter, as applicable.

§ 273.209

§ 273.209 How does a State, public school district, or an Indian corporation request an appeal?

The State, public school district, or an Indian corporation may request an appeal by filing an appeal with the Civilian Board of Contract Appeals under the Contract Disputes Act, 41 U.S.C. 7101–7109, no later than 90 calendar days after the date the contractor receives the decision.

PART 275—STAFFING

Sec.

- 275.1 Purpose and scope.
- 275.2 Definitions.
- 275.3 Methods for staffing.
- 275.4 Implementing regulations.

AUTHORITY: Sec. 502, Pub. L. 91-648, 84 Stat. 1909, 1925 (42 U.S.C. 4762); Sec. 105, Pub. L. 93-638, 88 Stat. 2203, 2208-2210 (25 U.S.C. 450i); 26 U.S.C. 48.

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§ 275.1 Purpose and scope.

The purpose of this part is to outline methods available to tribes for utilizing the services of Bureau employees. These regulations are not intended to prevent an Indian tribe or tribal organization from staffing their programs by other methods they feel appropriate. However, when an Indian tribe or tribal organization decides to provide Bureau employees certain Federal benefits, Civil Service Commission regulations must be adhered to.

§ 275.2 Definitions.

As used in this part:

(a) *Act* means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

(b) *Area Director* means the official in charge of a Bureau of Indian Affairs Area Office.

(c) *Bureau* means the Bureau of Indian Affairs.

(d) *Commissioner* means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of the day-to-day operations of the Bureau of Indian Affairs.

(e) *Days* means calendar days.

25 CFR Ch. I (4-1-20 Edition)

(f) *Indian tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(g) *Indian* means a person who is a member of an Indian tribe.

(h) *Superintendent* means the official in charge of a Bureau of Indian Affairs Agency Office.

(i) *Tribal Chairman* means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(j) *Tribal government, tribal governing body, and tribal council* means the recognized governing body of any Indian tribe.

(k) *Tribal organization* means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(l) *Assistant Secretary—Indian Affairs* means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978; 45 FR 13452, Feb. 29, 1980]

§ 275.3 Methods for staffing.

(a) An Indian tribal organization may use any of the following three methods to employ or obtain the services of Bureau employees:

(1) Agreement in accordance with the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3376). The agreement may be arranged between the tribal organization, the employee, and the Area Director or Commissioner. Assistance

Bureau of Indian Affairs, Interior**§ 276.1**

will be provided by the Area Personnel Office in complying with Civil Service instructions (Federal Personnel Manual, chapter 334) for completing an agreement.

(2) Employment of Bureau employees on or before December 31, 1985, when serving under an appointment not limited to one year or less. A mutual agreement will be made between a tribal organization and the employee before leaving Federal employment to retain coverage for any of the following Federal benefits:

- (i) Compensation for work injuries.
- (ii) Retirement.
- (iii) Health insurance.
- (iv) Life insurance.

(3) An agreement by an Indian tribe in accordance with the 1834 Act (25 U.S.C. 48) may be made in connection with contracts under section 102 of the Act.

(i) The agreement may provide for the tribal government to direct the day-to-day activities of Bureau employees. Tribal government direction of Bureau employees means the tribal chairman or other tribal official, as designated by the tribal governing body, is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments of each such Bureau employee are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

(ii) The agreement to direct day-to-day activities of Bureau employees shall include all employees:

(A) Whose positions are in the program or portion of the program to be contracted; or

(B) In a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program.

(iii) The proposed agreement will be worked out between the tribe, the Superintendent, and the Area Director and forwarded to the Commissioner for final approval.

(b) When a contract application under part 900 of this chapter does not include a proposed agreement for direction of Bureau employees, the application must be submitted at least 120 days in advance of the proposed effec-

tive date of the contract to allow time for placement of affected employees.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 64 FR 13896, Mar. 23, 1999]

§ 275.4 Implementing regulations.

Regulations to implement section 105 of the Act will be issued by the Civil Service Commission. The regulations will cover the situations described in paragraphs (a)(1) and (a)(2) of § 275.3.

PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

Sec.

- 276.1 Purpose and scope.
- 276.2 Definitions.
- 276.3 Cash depositories.
- 276.4 Bondings and insurance.
- 276.5 Recordkeeping.
- 276.6 Program income.
- 276.7 Standards for grantee financial management systems.
- 276.8 Financial reporting requirements.
- 276.9 Monitoring and reporting program performances.
- 276.10 Grant payment requirements.
- 276.11 Property management standards.
- 276.12 Procurement standards.
- 276.13 Indian preference in grant administration.
- 276.14 Budget revision.
- 276.15 Grant closeout.
- 276.16 Subgrants and subcontracts to non-profit organizations.
- 276.17 Printing.

APPENDIX A TO PART 276—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS
APPENDIX B TO PART 276—FINANCIAL REPORTING REQUIREMENTS

AUTHORITY: 34 CFR 256; Sec. 104, Pub. L. 93-638, 88 Stat. 2203, 2207 (25 U.S.C. 450h).

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§ 276.1 Purpose and scope.

(a) The purpose of the regulations in this part is to give the uniform administrative requirements for grants awarded by the Bureau of Indian Affairs.

(b) The regulations in this part shall apply to all grants awarded by the Bureau of Indian Affairs unless the part which gives the application process and special requirements for the specific type of grant states otherwise.

§ 276.2

§ 276.2 Definitions.

As used in this part:

(a) *Advance by Treasury check* means a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

(b) *Date of completion* means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) *Disallowed costs* means those charges to a grant which the Bureau or its representative determines to be unallowable.

(d) *Economic enterprise* means any commercial, industrial, agricultural or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(e) *Excess property* means property under the control of the Bureau which, as determined by the Commissioner, is no longer required for its needs.

(f) *Expendable personal property* means all tangible personal property other than nonexpendable property.

(g) *Grant closeout* means the process by which the Bureau determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the Bureau.

(h) *Grantee* means the entity which is responsible for administration of the grant.

(i) *Indian tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(j) *Letter of credit* means an instrument certified by an authorized official of the Bureau which authorizes a grantee to draw funds when needed from the Treasury, through a Regional Disbursing Office, in accordance with the provisions of Treasury Circular No.

25 CFR Ch. I (4-1-20 Edition)

1075 as modified and supplemented by a memorandum of understanding between the Bureau of Government Financial Operation, Department of the Treasury and the Department of the Interior.

(k) *Nonexpendable personal property* means tangible personal property having useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

(l) *Personal property* means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

(m) *Real property* means land, land improvements, structures and appurtenances thereto, excluding removable personal property, machinery and equipment.

(n) *Reimbursement by Treasury check* means a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

(o) *Suspension of a grant* means an action by the Bureau which temporarily suspends assistance under the grant pending corrective action by the grantee or pending decision to terminate the grant by the Bureau.

(p) *Termination of a grant* means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

(q) *Tribal government, tribal governing body, and tribal council* means the recognized governing body of an Indian tribe.

(r) *Tribal organization* means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or bodies of which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

Bureau of Indian Affairs, Interior**§ 276.5****§ 276.3 Cash depositories.**

(a) Except for situations described in paragraphs (b) and (c) of this section, the Bureau will not:

(1) Require physical segregation of cash depositories for Bureau grant funds provided to a grantee.

(2) Establish any eligibility requirements for cash depositories in which Bureau grant funds are deposited by grantees or their subgrantees.

(b) A separate bank account shall be used when payments under letter of credit are made on a "check-paid" basis in accordance with agreements entered into by a grantee, the Bureau, and the banking institutions involved. A check-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

(c) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 276.4 Bondings and insurance.

In administering Bureau grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. The Bureau will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in paragraphs (a) and (b) of this section.

(a) The recipient of a Bureau grant which requires contracting for construction or facility improvement (including any Bureau grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding \$100,000. For contracts exceeding \$100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 per cent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(b) Where, in connection with a Bureau grant, the Bureau also guarantees the payment of money borrowed by the grantee, the Bureau may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed to be sufficient to protect adequately the interests of the Federal Government.

§ 276.5 Recordkeeping.

(a) The Bureau shall not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to a Bureau grant, or to any subgrant (or negotiated contract exceeding \$2500) under a grant, shall be retained for a period of three years, with the following qualifications:

(1) The records shall be retained beyond the three-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Bureau grant funds shall be retained for three years after its final disposition.

(3) When grant records are transferred to or maintained by the Bureau, the three-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) Grantees are authorized, if they desire, to substitute microfilm copies in lieu of original records.

§ 276.6

25 CFR Ch. I (4-1-20 Edition)

(d) The Bureau shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping the Bureau may make arrangements with the grantee for the grantee to retain any records which are continuously needed for joint use.

(e) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the grantees and their subgrantees which are pertinent to a specific grant program for the purpose of making audit, examination, excerpts, transcripts and copies at government expense.

(f) Unless otherwise required by law, the Bureau shall not place restrictions on grantees which will limit public access to the grantee's records created as part of the grant except when records must remain confidential. Following are some of the reasons for withholding records:

- (1) Prevent a clearly unwarranted invasion of personal privacy;
- (2) Specifically required by statute or Executive Order to be kept secret;
- (3) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

§ 276.6 Program income.

(a) No grantee receiving a grant shall be held accountable for interest earned on grant funds, pending their disbursement for program purposes.

(b) Proceeds from the sale of real or personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with § 276.11.

(c) Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Bureau share of costs will be based. After termination

or completion of the grant, the Bureau share of royalties in excess of \$200 received annually shall be returned to the Bureau in the absence of other specific agreements between the Bureau and the grantee. The Bureau share of royalties shall be computed on the same ratio basis as the Bureau share of the total project cost.

(d) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be either:

(1) Added to funds committed to the project by the Bureau and the grantee and be used to further eligible program objectives, or

(2) Deducted from the total project costs for the purpose of determining the net costs on which the Bureau share of costs will be based.

(e) Grantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

§ 276.7 Standards for grantee financial management systems.

(a) Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements and for each subgrant in accordance with the grantees' requirements. Except when specifically required by law, the Bureau will not require financial reporting on the accrual basis from tribal organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, tribal organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(2) Records which identify adequately the source and application of funds for

Bureau of Indian Affairs, Interior**§ 276.9**

grant—or subgrant—supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(4) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantees shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Subgrantees shall institute similar procedures when funds are advanced by the grantee.

(6) Procedures for determining the allowability and allocability of costs shall be in accordance with the applicable cost principles prescribed in appendix A of this part.

(7) Accounting records which are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph (a) of this section.

§ 276.8 Financial reporting requirements.

Requirements for grantees to report financial information to the Bureau, and to request advances and reimbursement when a letter of credit

method is not used, are prescribed in appendix B of this part.

§ 276.9 Monitoring and reporting program performances.

(a) Grantees shall constantly monitor the performance under grant-supported activities to assure that adequate progress is being made toward achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Grantees shall submit the performance reports to the Bureau with the Financial Status Reports (prescribed in appendix B of this part) in the frequency established by appendix B. The Bureau shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement (prescribed in appendix B) when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the Bureau as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment

§ 276.10

of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Bureau assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in § 276.14, the grantee shall submit a request for budget revision.

(f) The bureau shall make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems.

(2) Provide such technical assistance as may be required, or requested.

§ 276.10 **Grant payment requirements.**

(a) Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by the Bureau where all of the following conditions exist:

(1) When there is or will be a continuing relationship between a grantee and the Bureau for at least a 12-month period and the total amount of advances to be received within that period from the Bureau is \$120,000, or more, as prescribed by Treasury Circular No. 1075.

(2) When the grantee has established or demonstrated to the Bureau the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) When the grantee's financial management system meets the standards for fund control and accountability prescribed in § 276.7.

(b) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraphs (a)(2) and (3) of this section.

(c) The reimbursement by Treasury check method shall be the preferred method when the grantee does not

25 CFR Ch. I (4-1-20 Edition)

meet the requirements specified in either paragraph (a)(2) or (a)(3), or both. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Bureau grant assistance constitutes a minor portion of the program.

(d) Unless otherwise required by law, the Bureau shall not withhold payments for proper charges made by grantees at any time during the grant period unless:

(1) A grantee has failed to comply with the program objectives, grant award conditions, or Bureau reporting requirements; or

(2) The grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the Bureau may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(e) Appendix B of this part provides the procedures for requesting advances or reimbursements.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976]

§ 276.11 **Property management standards.**

(a) Grantees may follow their own property management policies and procedures if they observe the requirements of this section. With respect to property covered by this section, the Bureau may not impose on grantees any requirements (including property reporting requirements)—not authorized by this part unless specifically required by Federal law.

(b) Title to real property to be acquired in whole or in part from a Bureau grant under part 900 of this chapter shall vest in one of the following manners:

(1) Title may be taken by the United States in trust for the Indian tribe upon the request of the tribe and when the real property to be acquired is within the reservation boundaries or adjoins on at least two sides other

trust or restricted lands as prescribed in part 900 of this chapter.

(2) Fee title to the acquired real property shall vest in the Indian tribe whenever the acquisition does not meet the criteria in paragraph (b)(1) of this section, unless for other reasons a tribe requests title to be taken in the name of the United States. In the absence of applicable statutory authority governing the disposition of real property acquired by a tribe, the tribe shall use the real property for the authorized purposes and in accordance with any other requirements imposed by the terms and conditions of the original grant. Changes in use compatible to other tribal programs may be authorized by the Bureau. When no longer needed for the authorized purposes, the real property shall be used in accordance with the standards set forth in § 276.11(d)(1) for non-expendable personal property. Accordingly, the following priority order for use of such property shall be:

- (i) Other grants from the Bureau.
- (ii) Grants from other Federal agencies.
- (iii) Tribal purposes consistent with those authorized for support by Bureau grants.
- (iv) Tribal official activities.

(3) In those instances where the Indian tribe requests, title may be acquired by the United States. Use of these acquired real property interests will be subject to the authorized purposes and in accordance with the provisions of the original grant. Upon a determination that the real property is no longer needed for the authorized purposes, disposition may be made by declaring it excess under provisions of the Act of January 2, 1975 (88 Stat. 1954) and title transferred to the Secretary to be held by the United States in trust for the tribe. Where real property does not meet the requirements under the Act of January 2, 1975 (88 Stat. 1954), the tribe may elect to acquire title under applicable enabling statutory authorities, or in the absence of statutory authority, request withholding disposition in aid of legislation, or authorize disposal under the General Services Administration procedures.

(c) The provisions of paragraphs (b)(2) and (3) of this section shall also apply

when real property is acquired in whole or in part by a Bureau grant other than that provided under part 900 of this chapter. However, when such property is acquired by a grantee other than an Indian tribe, or a tribal governing body, fee simple title to the property shall vest in the grantee upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirements, in addition to any other requirements imposed by the terms and conditions of the grant:

(1) The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The grantee shall obtain approval by the Bureau for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in paragraphs (c)(1) and (2) of this section, the grantee shall return all real property furnished or purchased wholly with Bureau grant funds to the control of the Bureau. In the case of property purchased in part with Bureau grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

(d) Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Bureau or acquired with Bureau funds are set forth below:

(1) *Nonexpendable personal property acquired with Bureau funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided

§ 276.11

in paragraph (d)(1)(iv) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(i) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal grants it has received in the following order of priority:

(A) Other grants from the Bureau needing the property.

(B) Grants of other Federal agencies needing the property.

(ii) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(A) Nonexpendable property with an acquisition cost of less than \$500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(B) All other nonexpendable property. The grantee may retain the property for its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(iii) If the grantee has no need for the property, disposition of the property shall be made as follows:

(A) Nonexpendable property with an acquisition cost of \$1,000 or less. Except for that property which meets the criteria of paragraph (d)(1)(ii)(A) of this section, the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with paragraph (d)(1)(iii) of this section.

25 CFR Ch. I (4-1-20 Edition)

(B) Nonexpendable property with an acquisition cost of over \$1,000. The grantee shall request disposition instructions from the Bureau. The Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(1) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(2) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(3) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau an amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(iv) Where the Bureau determines that property with an acquisition cost of \$1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(A) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(B) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to issue disposition instructions within

Bureau of Indian Affairs, Interior**§ 276.11**

120 days, the grantee shall apply the standards of paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(iii)(B) of this section.

(2) Federally owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(e) The grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the bureau for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to

the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d)(1)(ii)(B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for heads of executive departments and agencies), dated August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is eligible to copyright the work if it is found that (i) the retention of the copyright is not precluded by statute and (ii) equity or the public interest is best served by doing so, by reason of special circumstances. If it is found that the public interest is best served by limiting the term of any copyright to be obtained, such limits shall be set forth in the grant agreement. "Developmental" copyrights may be requested during the development, testing, or evaluation of copyrightable materials in order to prevent them from prematurely falling into the public domain. The copyright will be in accordance with copyright laws. However, the Government shall receive a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others

§ 276.12

25 CFR Ch. I (4-1-20 Edition)

to use the work for Government purposes. A copy of any copyright obtained by a grantee shall be provided to the Bureau. Program income received as royalties from copyrights on materials produced under grants is retained by the grantee during the grant period and is to be used according to the provisions of § 276.6(c). Specific agreements between the Bureau and the grantee shall be entered into before the grant is awarded to determine the uses of the royalty income after the grant is completed or terminated.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978; 64 FR 13897, Mar. 23, 1999]

§ 276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties,

sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee official to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts,

Bureau of Indian Affairs, Interior**§ 276.12**

cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurement of \$10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impractical and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the Bureau for prior approval).

(C) The total amount involved does not exceed \$10,000;

(D) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for

experimental, developmental or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over \$10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default

§ 276.12

as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over \$100,000, grantees shall observe the bonding requirements provided in § 276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Labor Regulations (41 CFR part 87). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall

25 CFR Ch. I (4-1-20 Edition)

report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over \$2,000 for construction contracts and over \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of \$10,000 or less) awarded by

Bureau of Indian Affairs, Interior**§ 276.14**

grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 *et seq.*) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

§ 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this part.

§ 276.14 Budget revision.

Criteria and procedures to be followed by grantees in reporting deviations from grant budgets and requesting approval for budget revisions are as follows:

(a) For nonconstruction grants, grantees shall request prior approvals promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported program.

(2) The revision indicates the need for additional Bureau funding.

(3) The grant budget is over \$100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed \$10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(4) The grant budget is \$100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(5) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(6) The revisions pertain to the addition of items requiring approval in accordance with the provisions of appendix A of this part.

(b) All other changes to nonconstruction grant budgets, except for the changes described in paragraph (d) of this section do not require approval. These changes include:

(1) The use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and

(2) The transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) For construction grants, grantees shall request prior approval promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported programs.

(2) The revision increases the budgeted amounts of Bureau funds needed to complete the project.

§ 276.15

25 CFR Ch. I (4-1-20 Edition)

(d) When the Bureau awards a grant which provides support for both construction and nonconstruction work, the Bureau may require, in the grant agreement, the grantee to request prior approval before making any fund or budget transfers between the two types of work supported.

(e) For both construction and nonconstruction grants, the Bureau shall require tribal grantees to notify the Bureau promptly whenever the amount of Bureau authorized funds is expected to exceed the needs of the grantee by more than \$5,000 or 5 percent of the Bureau grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

(f) When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of appendix A of this part.

(g) Within 30 days from the date of receipt of the request for budget revisions, the Bureau shall review the request and notify the grantee whether or not the budget revisions have been approved. If the Bureau does not reach a decision prior to the end of the 30-day period or should the grantee not be notified of the Bureau's decision by the end of the 30-day period the grantee may appeal directly to the Commissioner.

§ 276.15 Grant closeout.

(a) In closing out Bureau grants, the following shall be observed:

(1) Upon request, the Bureau shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall immediately refund to the Bureau any unencumbered balance of cash advanced to the grantee.

(3) The Bureau shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The Bureau may grant extensions when requested by the grantee.

(4) The Bureau shall make a settlement for any upward or downward ad-

justments to the Federal share of costs after these reports are received.

(5) The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of § 276.11.

(6) If a final audit has not been performed before the closeout of the grant, the Bureau shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) *Suspension.* When a grantee has materially failed to comply with the terms and conditions of a grant, the Bureau may after reasonable notice to the grantee, suspend the grant. The notice preceding suspension shall include the effective date of the suspension, the reasons for the suspension, the corrective measures necessary for reinstatement of the grant, and, if there is no immediate threat to safety, a reasonable time frame for corrective action prior to actual suspension. No obligations incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the Bureau may at its discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspensions if such costs would otherwise be allowable under the applicable cost principles specified in appendix A of this part. Appropriate adjustments to the payments under the suspended grant will be made, either by withholding the payments or by not allowing the grantee credit for disbursements which he may make in liquidation of unauthorized obligations he incurs during the period of suspension. Suspensions shall remain in effect until the grantee has taken corrective action to the satisfaction of the Bureau or given assurances satisfactory to the Bureau that corrective action will be taken, or until the Bureau cancels the grant.

(c)(1) *Cancellation for cause.* The Bureau may cancel any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has:

(i) Materially failed to comply with the terms and conditions of the grant;

Bureau of Indian Affairs, Interior**§ 276.17**

(ii) Violated the rights or endangered the health, safety, or welfare of any persons;

(iii) Been grossly negligent in or has mismanaged the handling or use of funds provided under the grant.

(2) When it appears that cancellation of a grant shall become necessary, the Bureau shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The Bureau shall also offer, and provide if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the Bureau provides notice of intent to cancel the grant as provided in paragraph (c)(3) of this section.

(3) Upon deciding to cancel for cause, the Bureau shall promptly notify the grantee in writing of that decision, the reasons for the cancellation, and the effective date. The Bureau shall also provide a hearing for the grantee before cancellation, as provided in § 272.51. However, the Bureau may immediately cancel the grant, upon notice to the grantee, if the Bureau determines that continuance of the grant poses an immediate threat to safety. In this event, the Bureau shall provide a hearing for the grantee within ten (10) days of cancellation.

(4) Payments made to grantees or recoveries by the Bureau under grants cancelled for cause shall be in accordance with the legal rights and obligations of the parties.

(d)(1) *Cancellation on other grounds.* Except as provided in paragraph (c) of this section, grants may be cancelled in whole or in part only as follows:

(i) By the Bureau with the consent of the grantee, in which case the two parties shall agree upon the cancellation conditions, including the effective date, and in the case of partial cancellation, the portion to be cancelled; or

(ii) By the grantee, upon written notice to the Bureau, setting forth the reasons for the cancellation, the effective date, and, in the case of partial

cancellation, the portion to be cancelled.

(2) When a grant is cancelled in accordance with paragraph (d) of this section, the grantee shall not incur new obligations for the cancelled portion after the effective date, and shall cancel as many outstanding obligations as possible. The Bureau shall allow full credit to the grantee for the Bureau share of the noncancelable obligations properly incurred by the grantee before cancellation.

[40 FR 51316, Nov. 4, 1975, as amended at 45 FR 13452, Feb. 29, 1980]

§ 276.16 Subgrants and subcontracts to non-profit organizations.

The uniform administrative requirements in this part, including the cost principles in appendix A, to this part, are applicable to all subgrants or subcontracts made by a grantee in accordance with the provisions of this chapter. However, these requirements and cost principles are applicable as minimum standards for subgrants or subcontracts made to nonprofit organizations. Accordingly, the grantee may prescribe additional or more stringent requirements with regard to subgrants or subcontracts made to non-profit organizations.

§ 276.17 Printing.

As permitted by paragraph 36-2(c) in the Government Printing and Binding Regulations (October 1974, No. 23), published by the Joint Committee on Printing (JCP), printing required by a grantee in performing work under a grant is considered "incidental printing" (e.g., material which the grantee needs to use to respond to the terms of the grant). Whenever the incidental printing is likely to exceed the exclusions in paragraphs 36-3 and 36-4 of the Joint Committee on Printing (JCP) Printing and Binding Regulations, specific provisions on printing as may be required shall be included in the grant agreement. Grantees shall be given the option of using sources other than the Government Printing Office for incidental printing.

[43 FR 37446, Aug. 23, 1978]

Pt. 276, App. A

APPENDIX A TO PART 276—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

PART I—GENERAL

A. Purpose and scope. 1. *Objectives.* This attachment sets forth principles for determining the allowable costs of programs administered by grantees under grants from the Bureau. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Bureau and tribal participation in the financing of a particular grant. They are designed to provide that Bureau assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. Grantees are responsible for the efficient and effective administration of grant programs through the application of sound management practices.

b. The grantee assumes the responsibility for seeing that Bureau assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by the Bureau in determining costs incurred by grantees under Bureau grants (including subgrants, contracts by grantees and subcontracts).

B. Definitions. 1. *Approval or authorization of the Bureau* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost*, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Bureau as a discharge of the grantee's accountability for Bureau funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in

25 CFR Ch. I (4-1-20 Edition)

the executive branch of the Federal Government which makes grants to grantees.

6. *Grant* means an agreement between the Bureau and a grantee whereby the Bureau provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a grantee, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the entity which is responsible for administration of the grant.

9. *Services*, as used herein, means goods and facilities, as well as services.

10. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. Basic guidelines. 1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of a grantee.

b. Be authorized or not prohibited under applicable laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted

Bureau of Indian Affairs, Interior**Pt. 276, App. A**

to other Federal grant programs to overcome funds deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section I.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Bureau funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use of depreciation of items donated or financed by the Bureau to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of cost.* 1. *Total cost.* The total cost of a grant program is comprised of allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. *Direct costs.* 1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the other ultimate cost objective.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in section G of these principles.

F. *Indirect costs.* 1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this part. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

Pt. 276, App. A

25 CFR Ch. I (4-1-20 Edition)

3. *Limitation on indirect costs.* a. Bureau grants may be subject to laws that limit the amount of indirect costs that may be allowed. In this event, the Bureau will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this appendix the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. *Cost incurred by organizations other than the grantee.* 1. *General.* The cost of service provided by other organizations may only include allowable direct costs of the service plus a prorata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of an organization and his staff assistants not directly involved in operations. However, supervision by the head of an organization whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying organizations.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another organization, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another organization (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. *Cost incurred by grantee for others.* 1. *General.* The principles provided in section G will also be used in determining the cost of services provided by the grantee to another agency.

1. *Cost allocation plan.* 1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee should cover all joint costs of the grantees as well as costs to be allocated under plans of other agencies or organiza-

tional units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Bureau, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

4. *Submission of indirect cost proposal and negotiation of indirect cost rates.*

a. A grantee should submit its indirect cost proposal to the Federal agency which provides the largest dollar volume of contracts and grants. However, once a Federal agency has handled an indirect cost proposal, that same Federal agency should continue to act upon the proposal even though the preponderance of financial interest may have shifted to another Federal agency, and grantee shall not resubmit its indirect cost proposal to a second Federal agency.

b. Where the grantee submits its proposal to the Department of Interior, the proposal should be sent by the Bureau of Indian Affairs to the cognizant Regional Office of the Department's Office of Audit and Investigation. The Office of Audit and Investigation is responsible for the audit and review of the proposals and negotiation of the indirect cost rates.

c. Grant administrators officers will usually, but are not required to, accept indirect cost rates negotiated by other Federal agencies.

d. The Bureau of Indian Affairs will provide technical assistance in developing indirect cost proposals, if needed.

PART II—STANDARDS FOR SELECTED ITEMS OF COST

A. *Purpose and applicability.* 1. *Objective.* This attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general

Bureau of Indian Affairs, Interior**Pt. 276, App. A**

policies and principles stated in part I of this appendix.

B. Allowable costs. 1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

- a. Recruitment of personnel required for the grant program.
- b. Solicitation of bids for the procurement of goods and services required.
- c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.
- d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by grantee advisory councils or committees established pursuant to Bureau requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office activity participate in the grantee budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central store's organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.* a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) Is responsible for the services rendered, (2) follows an appointment made in accordance with tribal government ordinances and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b., below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the tribal government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowance.* a. Grantees may be compensated for the use of their own buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude

the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of whether title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected Federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insur-

ance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and in other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.* a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the purpose of the meeting is the dissemination of technical information relating to the grant program and they are

Bureau of Indian Affairs, Interior**Pt. 276, App. A**

consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to grantees at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Bureau.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of the Bureau.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned

equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Bureau as provided under the selected item for capital expenditures. The Bureau must obtain required Departmental clearances before such approval can be given.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the Bureau.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the Bureau.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Bureau.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Bureau. When assets acquired with Bureau grant funds are (a) sold, (b) no longer available for use in a Federally sponsored program or (c) used for purposes not authorized by the Bureau, the Bureau's equity in the asset will be refunded in the same proportion as Bureau participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

Pt. 276, App. B

(1) Types and extent and cost of coverage will be in accordance with sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the Bureau has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Bureau are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Bureau is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies*. The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee or outside consultants is allowable only when authorized by the Bureau.

6. *Preagreement costs*. Costs incurred prior to the effective date of the grant, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services*. Cost of professional services rendered by individuals or organizations not a part of the grantee is allowable subject to such prior authorization as may be required by the Bureau.

8. *Proposal costs*. Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

9. *Tribal government officer salaries and expenses*. Identifiable salary and expense costs incurred as a direct result of a tribal government officer's service to a grant program provided under this chapter are allowable subject to advance agreement with an approval by the Bureau. A general limitation in this regard is prescribed in section D.6.

D. *Unallowable costs*. 1. *Bad debts*. Any losses arising from uncollectible accounts

25 CFR Ch. I (4-1-20 Edition)

and other claims, and related costs, are unallowable.

2. *Contingencies*. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations*. Unallowable.

4. *Entertainments*. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties*. Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Tribal officer salaries and expenses*. The salaries and expenses of tribal government officers are considered a cost of general tribal government and are unallowable except as prescribed in section C.9.

7. *Interest and other financial costs*. Interest on borrowing (however requested), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Underrecovery of costs under grant agreements*. Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

APPENDIX B TO PART 276—FINANCIAL REPORTING REQUIREMENTS

A. *Purpose and scope*. This appendix prescribes requirements for grantee to report financial information to the Bureau and to request advances and reimbursement when a letter-of-credit method is not used.

B. *Definitions*. 1. *Accrued expenditures*. Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performed are required.

2. *Accrued income*. Accrued income is the earnings during a given period which is a source of funds resulting from: (1) Services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

3. *Disbursements*. Disbursements are payments in cash or by check.

4. *Bureau funds authorized*. Funds authorized represent the total amount of the Bureau funds authorized for obligations and establish the ceilings for obligation of Bureau funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

Bureau of Indian Affairs, Interior**Pt. 276, App. B**

5. *Obligations*. Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

6. *Outlays*. Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

7. *Program income*. Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copy-rights. Program income can be reported on a cash or accrued income basis.

8. *Unobligated balance*. The unobligated balance is the portion of the funds authorized by the Bureau which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

9. *Unpaid obligations*. Unpaid obligations represent the amount of obligations incurred by the grantee which have not been paid.

C. *Standard forms*. 1. Only the following forms will be authorized for obtaining financial information from grantees for grant programs:

a. *Financial Status Report*. (1) The Bureau shall require grantees to use a standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The Bureau may, however, have the option of not requiring a Federal Status Report when a request for advance or reimbursement (paragraph 2a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The Bureau shall prescribe whether the report shall be on a cash or accrual basis. If the Bureau requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grant agreement shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting

period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be approved when requested by the grantee.

b. *Report of federal cash transactions*. (1) When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit a report of Federal Cash Transactions. The Bureau shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) The grant agreement may require forecasts of Federal cash requirement in the Remarks section of the report.

(3) When practical and deemed necessary, the Bureau may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) The Bureau shall accept the identical information from the grantees in a machine-readable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Bureau shall require a monthly report.

(6) The Bureau shall waive the requirement for submission of a Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per grantee provided that such advances are monitored through other forms contained in this appendix or the grantee's accounting controls are adequate to minimize excessive Federal advances.

2. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Request for advance or reimbursement*. (1) The "Request for Advance or Reimbursement" form is the standard form for all nonconstruction grant programs when letters of credit or predetermined automatic advance methods are not used. The Bureau, however, has the option of using this form for construction programs in lieu of an "Outlay Report and Request for Reimbursement for Construction Programs" (paragraph 2b) and shall specify in the grant agreement.

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of a Request for Advance or Reimbursement.

Pt. 276, App. B

b. *Outlay Report and Request for Reimbursement for Construction Program.* (1) The "Outlay Report and Request for Reimbursement for Construction Programs" form is the standard format to be used for requesting reimbursement for construction programs. The Bureau may, however, have the option of substituting a "Request for Advance or Reimbursement" form (paragraph 2a) in lieu of this form when the Bureau determines that the former provides adequate information to meet its needs as stated in the grant agreement.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of an "Outlay Report and Request for Reimbursement for Construction Programs" form.

25 CFR Ch. I (4-1-20 Edition)

3. When the Bureau needs additional information in using these forms, the following shall be observed:

a. When necessary to comply with future legislative requirements, the Bureau shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, the Bureau shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this appendix.

c. The Bureau, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976; 43 FR 37447, Aug. 23, 1978]