

§ 900.14

Subpart D—Review and Approval of Contract Proposals

§ 900.14 What does this subpart cover?

This subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

§ 900.15 What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

- (a) Within two days notify the applicant in writing that the proposal has been received;
- (b) Within 15 days notify the applicant in writing of any missing items required by § 900.8 and request that the items be submitted within 15 days of receipt of the notification; and
- (c) Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

§ 900.16 How long does the Secretary have to review and approve the proposal and award the contract, or decline a proposal?

The Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

§ 900.17 Can the statutory 90-day period be extended?

Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

§ 900.18 What happens if a proposal is not declined within 90 days after it is received by the Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under § 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to

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the contract the full amount of funds pursuant to section 106(a) of the Act.

§ 900.19 What happens when a proposal is approved?

Upon approval the Secretary shall award the contract and add to the contract the full amount of funds to which the contractor is entitled under section 106(a) of the Act.

Subpart E—Declination Procedures

§ 900.20 What does this subpart cover?

This subpart explains how and under what circumstances the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations. For annual funding agreements, see § 900.32.

§ 900.21 When can a proposal be declined?

As explained in §§ 900.16 and 900.17, a proposal can only be declined within 90 days after the Secretary receives the proposal, unless that period is extended with the voluntary and express written consent of the Indian tribe or tribal organization.

§ 900.22 For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

- (a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;
- (b) Adequate protection of trust resources is not assured;
- (c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
- (d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or
- (e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond

the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.23 Can the Secretary decline a proposal where the Secretary's objection can be overcome through the contract?

No. The Secretary may not decline to enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.

§ 900.24 Can a contract proposal for an Indian tribe or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified in § 900.22?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary's annual report to Congress under section 106(c)(6) of the Act.

§ 900.25 What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in § 900.20, subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.26 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposes in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposes a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 102(a) of the Act, or approve a level of funding that is author-

ized under section 106(a) of the Act. As noted in § 900.25, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.27 If an Indian tribe or tribal organization elects to contract for a severable portion of a proposal, does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No, but the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.

§ 900.28 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested technical assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.

§ 900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required:

(a) To advise the Indian tribe or tribal organization in writing of the Secretary's objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in § 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, within 20 days, any documents relied on in making the decision; and

(b) To advise the Indian tribe or tribal organization in writing of the rights described in § 900.31.