

OSG Negotiation Guidance Timeline (from previous presentation)

- February - Green Book published in e-form
- March - Draft circulated to feds
- April - Draft released for Tribal comment
- Spring - SG Annual Conference
- May - final version released
(approximately two weeks after conference)
- Final version posted on OSG website

Negotiation Guidance
and
Attachments
are prepared as a tool
to assist tribes and
negotiators.

Please review annually.



Negotiation Guidance

Documents to be negotiated:

- Compact
- Funding Agreement
- Reprogramming Request (or FA Online)



Compacts

- Are executed documents that affirm the government-to-government relationship between the Self-Governance Tribe and the United States.
- Parts apply to all bureaus within the Department of the Interior rather than a single bureau.

(A Tribe may enter into a Self-Governance Funding Agreement without first entering into a Compact.)

Funding Agreements (FA)

- Are legally binding and mutually enforceable written agreements
- Negotiated and entered into between a Self Governance Tribe and BIA
- May be annual or Multi-year
- May include
 - PSFAs administered by the BIA
 - Any provisions that the parties mutually agree upon.

Reprogramming Requests

- The key financial document to be completed at negotiations.
- OSG Finance will pre-load the current Self-Governance base budget into each Tribe's online reprogramming request.
- The OSG Negotiator will enter the online negotiation data if Tribal Self-Governance employees are not security cleared.
- Budget information for the initial reprogramming request will be provided by the BIA Region Self-Governance Coordinator.

Negotiation Process

- There are two phases of the negotiation process:
 - 1) The information phase; and
 - 2) The negotiation process.
- Any Tribe that has been admitted to Tribal Self-Governance or the applicant pool may initiate the information phase.
- A Tribe may go directly to the negotiation phase if it so chooses.

Negotiation Process



REQUEST INFORMATION

Information phase- submitting a letter of interest

- To the OSG Director
- The Tribe's initial indication of interest in seeking information for the possible negotiation.
- May be submitted at any time of the year but should be submitted
 - by April 1 for FY Tribes or
 - May 1 for calendar year Tribes.

Negotiation Process

- Within 15 calendar days of receiving a Tribe's letter of interest, the BIA will notify the Tribe as to the person responsible for responding to the Tribal requests for information.
- The BIA representative must act in good faith in fulfilling his/her responsibilities in responding to the Tribe's requests for information.

Negotiation Process

- To initiate the negotiation phase, an authorized official of the newly selected Tribe must submit a written request to negotiate a FA to the Director, Office of Self-Governance.
- A pre-negotiation meeting may be held at the request of the Tribe.
- Within 30 days of receiving a written request to negotiate, the BIA and the Tribe will agree to a date to conduct an initial negotiation meeting.

Negotiation Process

- Subsequent meetings will be held with reasonable frequency at reasonable times.
- Lead negotiators must be authorized to negotiate on behalf of their government and involve all necessary persons in the negotiation process.
- Lead negotiators include
 - an authorized Tribal representative,
 - the BIA Regional Director,
 - and OSG negotiator.



Negotiation Process

- **BIA Regional Director**
 - is the lead negotiator for all BIA programs issued by the Director, BIA for non base programs.
 - is responsible for coordinating with and notifying all pertinent BIA program offices regarding dates and locations of the negotiations to support the timely completion of negotiations.
- **OSG negotiator**
 - is the lead negotiator for the ASIA
 - coordinates with the BIE Education Line Officer and Special Agent in charge of law enforcement.

Negotiation Process

- **Must address:**
 - 1) The specific intentions of the Tribe;
 - 2) Legal or program issues identified as concerns by the BIA or Tribe;
 - 3) Options for negotiating programs and related budget amounts;
 - 4) Dates for conducting and concluding negotiations;
Protocols for conducting negotiations;
 - 5) Responsibility for preparation of a written summary of the discussions; and
 - 6) Who will prepare an initial draft of the Funding Agreement.

Negotiation Process

- Negotiations are conducted based on the President's budget request to Congress.
- Funding amounts actually provided to the Tribe are adjusted to reflect Congressional actions.
- Once negotiations have been successfully completed, the BIA and Tribe will prepare and either execute or disapprove a Funding Agreement within 30 days or by a mutually agreed upon date.

Negotiation Process

- If the Tribe and BIA **do not** reach agreement during the negotiation phase, they may each make a last and best offer to the other.
- If a last and best offer is not accepted within 15 days, the BIA will provide a written explanation to the Tribe explaining its reasons for not entering into the Funding Agreement for the requested program.
- The Tribe has 30 days from receipt of the BIA's written explanation to file an appeal.

Negotiation Process

Successor Funding Agreement

- Is negotiated after a Tribe's initial agreement for continuing to perform a particular program
- The same negotiation process is used as was used in the negotiation of the initial Funding Agreement
- Pre-negotiations and actual face-to-face negotiations may not be necessary and will not be scheduled unless a Tribe seeks to add new programs to its FA or has other issues which need to be addressed

Negotiations Process

Successor Funding Agreement

- If either party anticipates a significant change in an existing program in the FA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.
- In instances where there may be a disagreement or lack of clarity concerning who is performing different functions, wording should be negotiated and included in the Funding Agreement to clarify the matter.
- Dispute language may not be included in the Funding Agreement.

Negotiation Process

Once final agreement has been reached, Tribes are responsible for preparing final negotiation packets for surname and signature which include:

- 1) Two signed, original Compacts (initial or as applicable)
 - 2) Two signed, original Funding Agreements;
 - 3) Two signed, original Reprogramming Requests;
 - 4) Two copies of authorizing Tribal resolutions as needed;
 - 5) Two copies of any attachments; and
- (6) A Final Report Form for Federal Negotiators
(provided and completed by the BIA Regional Director and OSG negotiator)

Negotiation Process



After all parties have signed the FA

- A copy is sent to the Tribe
- The Secretary forwards copies to appropriate Congressional Committees and each Indian Tribe served by the BIA Agency that serves any Tribe that is party to the FA.
- The effective date is not earlier than 90 days after the FA is submitted to the appropriate Congressional Committees.

Negotiation Process

FA Amendment

When there is no indication in the FA that a certain program is to be included and an award is later made to the Tribe, an amendment is required to add the funding to the FA.

