

# Self Governance Contracting vs. Compacting

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# Presentation Overview

- **Comparison**
  - Self Governance
  - Self-Determination Contracting
- **Contract Negotiations**
- **Proposal**
- **Scope of Work**

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# Self-Governance

- ***Selection of Participating Tribes:***
  - Tribes must request participation
  - Tribes must demonstrate:
    - 3 fiscal years of financial stability and financial management as shown by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

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# Self-Governance

- ***Tribes must complete a planning phase:***
  - Legal and budgetary research
  - Internal tribal government planning and organizational preparation.

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# Self-Governance

- ***A planning report must be submitted that identifies:***
  1. BIA and non-BIA programs
  2. Describes the tribes BIA and non-BIA Planning activities
  3. Identify the benefits derived from the activities
  4. Identify process to resolve complaints by those who receive services
  5. Identify any organizational planning completed by the tribe to show implementation of the programs

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# Self-Governance

- ***Annual Funding Agreement***
  - Annual Funding Agreements are negotiated between the Tribe and Secretary of the Interior. A Tribe may also negotiate a multi-year funding agreement.
  - The agreement will identify the responsibilities of the Tribe and the Secretary.
  - Two or more eligible Tribes may participate in self-governance agreements, to contract a function/program or participate as a consortium of Tribes

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# Self-Governance

- ***Annual Funding Agreement***
  - Each AFA authorizes the tribe to plan, conduct, consolidate and administer programs, services, functions and activities administered by the BIA at the agency, region and central office level.
  - An AFA can also authorize the Tribe to plan, conduct, consolidate and administer programs, services, functions, and activities administered by non-BIA Agencies within the Department of Interior.
  - An AFA may also include programs, services, functions and activities which are of special geographic, historical or cultural significance to the participating tribe.

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# Self-Governance

- ***Annual Funding Agreement***
  - An AFA is required to specify the services to be provided, the functions to be performed, and the respective responsibilities of the Tribe and Secretary.
  - The AFA authorizes the Tribe to redesign or consolidate programs, services, functions and activities and reallocate funds. As well modify budgets within any year.
  - Modifications to the AFA must be in the form of a written amendment signed by the Tribe and the Secretary.

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# Self-Governance

- ***Annual Funding Agreement***
  - The Tribe is not required to abide by federal program guidelines, manuals and policy directives, except for those it specifically agrees to.
  - The AFA requires the Secretary to provide funds to the Tribe in an amount equal to the amount the tribe would be eligible to receive under contracts and grants under P.L 93-638, as amended.
  - This includes amounts for direct program and contract support costs and any funds specifically or functionally related to the provision by the Secretary of services and benefits to the tribe and its members.

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# Self-Governance

- ***Annual Funding Agreement***
  - Any funds not expended during the term of any of the fiscal years of the compact may be carried over to the succeeding fiscal year or any subsequent fiscal year.
  - Under an AFA, reallocation of funds from one program, service, function or activity to another within a general budget category or from one general budget category to another is to be governed only by Tribal Law and procedure and does not require Secretarial consent.

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# Self-Governance

- ***Annual Funding Agreement***
  - Nothing in tribal self-governance is to be construed to diminish the federal trust responsibility to Indian Tribes, individual Indians, or Indians with trust allotments.
  - The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States that exists under treaties, executive orders, and other laws.
  - AFA's are required to include provisions to monitor the performance of trust functions by the tribe through an annual trust evaluation.

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# Self-Governance

- ***Annual Funding Agreement***
  - A self-governance Tribe is required to provide to the designated official an annual single audit.
  - The Tribe must maintain management systems that are determined to be adequate by an independent audit the annual single agency audit report.
  - Federal Funds may only be used for the purposes identified in the AFA.
  - **BE prepared for an OST Audit.**

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# Self-Governance

- ***Reporting Requirements***

- The Secretary is required to submit to Congress a written report to:

- identify relative costs and benefits to self-governance
    - Identify funds transferred to each tribe and the corresponding reduction in the federal bureaucracy.
    - Include comments/views of the tribes
    - The funding formula for individual/tribal shares of central office funds

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# Self-Governance

- ***Reporting Requirements***

- Self Governance Tribes should submit data for budget formulation for the purpose of:
  - Fund distribution
  - Inclusion in the Secretary's report to Congress to show tribal expenditures, tribal goals and outcomes.
- The Freedom of Information Act does not apply to Tribal Records and are not to be considered federal records, except for previously provided copies of tribal records and records that the Secretary can demonstrate are clearly required to maintain as part of the Department's record keeping system.

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# Self-Governance

- ***Reporting Requirements***

- The Tribe is required to maintain a record keeping system, and provide reasonable access to the Secretary to meet minimum legal record keeping requirements.
- Provide record keeping systems and all documents necessary for the annual audit requirement.
- Under Self-Governance a Tribe may acquire excess property to support the programs, functions, services and activities.

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# Self-Determination Contracting

- ***Differences from Compacting***
  - Tribes must request a self-determination contract by resolution or other official action by the tribal governing body.
  - Upon the request by the tribe, mature contract status may be granted when financial stability and management capability are demonstrated. A mature contract has been operated continuously for three or more years and there are no significant and material audit findings.
  - No planning phase is required to be completed.

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# Self-Determination Contracting

- ***Differences from Compacting***
  - A contract proposal is submitted by the tribe to the Secretary and is subject to declination criteria.
  - A contract shall not exceed three years, unless it agreed upon by the Secretary and the Tribe.
  - A self-determination contract contains a scope of work to identify the programs, services, functions and activities to be administered by the Tribe. The scope of work provides greater detail.
  - If declined, technical assistance is available to the Tribe to remedy criteria for which is was denied.

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# Self-Determination Contracting

- ***Differences from Compacting***
  - Tribes may propose a redesign, modification, etc., however, it is subject to the declination criteria and must be approved by the Secretary.
  - The reallocation of funds from one program, service, function or activity within a general budget category or from one general budget category to another must be approved by the Secretary.
  - Under a Self-determination contract reports are not required to be submitted to other Agencies and Congressional Committees.

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# Self-Determination Contracting

- ***Differences from Compacting***
  - Routine visits by the Secretary for all programs are limited to not more than one performance monitoring visit. No additional visits can be made until reasonable advance notice is provided to the tribe which includes a description of the nature of the problem that requires the additional visit.
  - The Secretary may, upon providing written notice to a tribe, immediately rescind a contract or grant and resume control or operation of a program, service, function, or activity, if the Secretary finds that there is an immediate threat of imminent harm to a person, trust funds, trust lands, etc., or a threat arises from the failure of the contractor to fulfill the requirements of the contract.

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# Contract Negotiations

- Establishing the Working Group
  - Members of Council
  - Tribes Legal Counsel
  - Tribal Staff
- Formulate the Plan
- Reporting - Consider Timeline (annual/quarterly)

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# Tribal Priority Allocation Funds

- Consider the Programs (Roads, Social Services, Education, Natural Resources, Realty, LTRO, etc.)
- Formulate the dollars allocated for each of these programs
- Establish what is a trust service and non-trust service
- Establish the Budget

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# Contract Proposal

Technical assistance is available upon request of an Indian Tribe or Tribal Organization to assist in preparing an initial contract proposal (25 CFR Part 900.7)

Contents of the Initial Proposal (25 CFR Part 900.8) must contain:

- Name and address of Tribe or Tribal Organization proposing the contract
- Tribal Resolution

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# Contract Proposal

- Name of Authorized Representatives
- Date of Submission of Proposal
- Brief Statement of program functions, services or activities that the Tribe proposes to perform
- The Amount of the Funds requested
- An identification of the Funds requested by program, function, service or activity

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# Contract Proposal

- Contract support costs, including one time start up or pre award costs
  - Equipment
  - Materials and Supplies
  - Travel
  - Sub Contracts
  - Other appropriate items of cost

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# Review and Approval

- Upon receipt of a proposal the Secretary shall within:
  - Two Days, Notify the applicant in writing that proposal has been received.
  - 15 Days, notify applicant in writing of any missing items required by 25 CFR 900.8 and request that these items be submitted within 15 days of the notification and review the proposal to determine whether there declination issues under Section 102(a)(2) of the Act\* .

*\*Public Law 93-638, The Indian Self-Determination and Education Assistance Act of 1975*

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# Review and Approval

- 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 PL 93-638 Section 102 of the Act and subpart E.
- 90-day period can be extended upon written consent by the Indian Tribe or Tribal Organization.

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# Review and Approval

A proposal that is not declined within 90 days (or within any agreed extension under 25 CFR Part 900.17) is deemed approved and the Secretary shall award the contract or any amendments or renewal within that 90-day period and add to the contract the full amount of funds pursuant to PL 93-638 Section 106(a) of the Act\*.

*\*Public Law 93-638, The Indian Self-Determination and Education Assistance Act of 1975*

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# Review and Approval

- Technical Assistance is available to an Indian Tribe or Tribal Organization to avoid declination of a proposal, in accordance with PL 93-638 Section 103(d).
- If the Secretary decides to decline all or a portion of a proposal, the Secretary is required within 20 days to advise the Tribe in writing a detailed explanation of the reason for the decision to decline the proposal and any documents relied upon in making the decision.

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# Scope Of Work

- Basic Requirement
  - Clarity
  - Precision
  - Completeness
- Basic Questions
  - What is to be done?
  - How will it be done?
  - Where should it be done?
  - Who will do it?

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# Scope of Work

- The scope of work should be written so that it does not limit or restrict the performance of the contractor.
- The most important part of the scope of work is the description of the function to be performed.
  - Use Short Sentences and Familiar Words
- A good scope of work is a team effort.

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# Contract Reporting

- Narrative Report
  - Tracking Statistics
  - Describe Accomplishments
  - Programs Future Goals
- Financial Report
  - How were the TPA dollars spent
    - Employee Wages, Equipment, Supplies
  - Establish Dept. Codes/Project Numbers
- Realty/LTRO Reporting
  - Gift Deeds, ROW's, Mortgages, TSR

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# Contract Modification

- TPA funding may not cover all costs to run the Realty and LTRO function
- Depending on the Tribes Realty requirements a modification to the Contract maybe necessary to reprogram TPA dollars into the Realty and/or LTRO function

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# Contract Modification

- Morongo has modified their contract and reprogrammed the non trust services into the trust services:
  - Realty
  - Lands Title and Records (LTRO)
  - Social Services
  - Natural Resources
- This can help provide more funding for the Realty and LTRO function.

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# Additional Dollars

- Tribe can ask for Start Up Costs, for example:
  - Furniture and Equipment
  - Computers
  - File Cabinets
  - Office Supplies
- Other Costs.....
  - Duplication Costs (copy, scanning, printing)
  - Background Checks

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# Questions/Comments

- Sources of Information
  - PL 93-638 Indian Self Determination and Education Assistance Act
  - Self Governance Act of 1994
  - 25 CFR Part 900
  - 25 CFR Part 1000
  - DOI/Office of Self Governance
  - BIA Regional and Local Agency Offices
  - TribalSelfGov.org
  - National Tribal Land Association  
[www.ntla.info](http://www.ntla.info)

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