§ 900.161 How is a hearing arranged?

(a) If a hearing is to be held, the IBIA will refer the Indian tribe or tribal organization’s case to the Hearings Division of the Office of Hearings and Appeals of the U.S. Department of the Interior. The case will then be assigned to an Administrative Law Judge (ALJ), appointed under 5 U.S.C. 3105.

(b) Within 15 days of the date of the referral, the ALJ will hold a pre-hearing conference, by telephone or in person, to decide whether an evidentiary hearing is necessary, or whether it is possible to decide the appeal based on the written record. At the pre-hearing conference the ALJ will provide for:

1. A briefing and discovery schedule;
2. A schedule for the exchange of information, including, but not limited to witness and exhibit lists, if an evidentiary hearing is to be held;
3. The simplification or clarification of issues;
4. The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if an evidentiary hearing is to be held;
5. The possibility of agreement disposing of all or any of the issues in dispute; and
6. Such other matters as may aid in the disposition of the appeal.

(c) The ALJ shall order a written record to be made of any conference results that are not reflected in a transcript.

§ 900.162 What happens when a hearing is necessary?

(a) The ALJ shall hold a hearing within 60 days of the date of the order referring the appeal to the ALJ, unless the parties agree to have the hearing on a later date.

(b) At least 30 days before the hearing, the government agency shall file and serve the Indian tribe or tribal organization with a response to the notice of appeal.

(c) If the hearing is held more than 50 miles from the Indian tribe or tribal organization’s office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(d) The hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.163 What is the Secretary’s burden of proof for appeals from decisions under § 900.150(a) through § 900.150(g)?

For those appeals, the Secretary has the burden of proof (as required by section 102(e)(1) of the Act) to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.

§ 900.164 What rights do Indian tribes, tribal organizations, and the government have during the appeal process?

Both the Indian tribe or tribal organization and the government agency have the same rights during the appeal process. These rights include the right to:

(a) Be represented by legal counsel;
(b) Have the parties provide witnesses who have knowledge of the relevant issues, including specific witnesses with that knowledge, who are requested by either party;
(c) Cross-examine witnesses;
(d) Introduce oral or documentary evidence, or both;
(e) Require that oral testimony be under oath;
(f) Receive a copy of the transcript of the hearing, and copies of all documentary evidence which is introduced at the hearing;
§ 900.167 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary of Health and Human Services or the IBIA has 20 days from the date it receives any timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary of Health and Human Services or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or the IBIA shall:

(1) Be in writing;
(2) Specify the findings of fact or conclusions of law which are modified or reversed;
(3) Give reasons for the decision, based on the record; and
(4) State that the decision is final for the Department.