

## **§ 273.22**

entered into with a tribal organization must so notify the Area Director no later than February 1 preceding the school year for which the contract will be let.

(b) If the tribal governing body's notice is not received by the date given in paragraph (a) of this section, the Area Director may contract with the State, school district, or Indian corporation under this part.

### **§ 273.22 Application approval officials.**

(a) Each Area Director is authorized to approve the contract(s) submitted by the State, school district, or Indian corporation under this part which will provide services to Indian children within the jurisdiction of that Area Office.

(b) When a proposed contract(s) will provide services to Indian children within the jurisdiction of more than one Area Office, the contract must be approved by the Commissioner.

### **§ 273.23 Submitting application to Area Office.**

When services under the proposed contract will be provided to Indian children within the jurisdiction of a single Area Office, the completed application shall be submitted to the Area Director of that Area Office.

### **§ 273.24 Area Office review and decision.**

Upon receiving a contract application, the Area Director shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Area Office receives the application.

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

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

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to funds requested pursuant to this part.

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

(e) Approve or disapprove the application 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 application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to part 2 of this chapter.

### **§ 273.25 Deadline for Area Office action.**

(a) The Area Director shall approve or disapprove an application for a contract within sixty (60) days after the Area Office receives the application and any additional information requested in § 273.24(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this part cannot be approved before February 1 preceding the school year for which the contract will be let.

### **§ 273.26 Submitting application to Central Office.**

When services under the proposed contract will be provided to Indian children within the jurisdiction of two or more Area Offices, the completed application shall be submitted to the Commissioner through the respective Area Offices.

### **§ 273.27 Central Office review and decision.**

Upon receiving a contract application, the Commissioner shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Central Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the

applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner 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 pursuant to this part.

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

(e) Approve or disapprove the application 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 application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to part 2 of this chapter.

#### **§ 273.28 Deadline for Central Office action.**

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional Information requested in § 273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this part cannot be approved before February 1 preceding the school year for which the contract will be let.

#### **§ 273.29 Negotiating the contract.**

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in § 273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

### **Subpart C—Funding Provisions**

#### **§ 273.31 Distribution formula.**

(a) Funds shall be distributed to eligible contractors based upon the number of eligible Indian students to be served times twenty-five (25%) percent of the higher of the State or national average per pupil operating cost. Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose shall be allotted pro rata in accordance with the distribution method outlined in this formula.

(b) The Assistant Secretary may make exceptions to the provisions of paragraph (a) of this section based on the special cultural, linguistic, social or educational needs of the communities involved including the actual cost of education in the community only after consultation with all tribes who may be affected by such exceptions.

(25 U.S.C. 452-456; sec. 202, Pub. L. 93-638, 88 Stat. 2203, and Pub. L. 95-561, sec. 1102 (a) and (b))

[45 FR 9241, Feb. 11, 1980]

#### **§ 273.32 Pro rata requirement.**

All monies provided by a contract pursuant to this part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall 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 minimus. Such de minimus participation must be approved by the Indian Education Committee.

#### **§ 273.33 Use of funds for operational support.**

All funds for school operational support shall be used to meet established State educational standards or State-wide requirements.

#### **§ 273.34 Use of other Federal, State and local funds.**

(a) Contract funds under this part shall supplement, and not supplant, Federal, State and local funds. Each