

KIVA Institute, LLC
Training Agenda
“The Indian Self-Determination Act: Law & Administration”

Day 1:

9:00 a.m.

Module 1 – Evolution of Federal Indian Law and Policy

Pub. L. 93-638, the Indian Self-Determination & Education Assistance Act is about Tribal Sovereignty. It is not about federal procurement contracts. Rather, the agreements under Pub. L. 93-638 are Government-to-Government Agreements. Thus, it is important that attendees understand the federal legislative history, U.S. Supreme Court decisions, and federal Indian policy that led to the passage of Pub. L. 93-638. Module 1 provides for an understanding of the tenants of tribal sovereignty, federal trust doctrine; and to highlight the patterns of Indian law and policy development that affect the lives of American Indians. Armed with this knowledge, the practitioners can have a better understanding of Congress’ intent in passing the Indian Self-Determination Act. Module 1 will cover:

- Tribal Sovereignty: The key points
- Felix Cohen on Tribal Sovereignty
- Themes, Patterns and Elements of Federal – Tribal Relations
- Federal Trust Doctrine & Trust Relationships
- Federal Trust Responsibility
- U. S. Supreme Court Decisions
- The Marshall Trilogy
- Historical Indian Policy Eras:
 - Establishment of Federal Role
 - Movement to Reservations
 - General Allotment Act
 - Allotment & Assimilation
 - Indian Claims Commission
 - Indian Reorganization Act of 1934
 - Termination & Relocation
 - Tribal Self-Determination
 - Tribal Self-Governance
 - Trust Reform
 - Where Are We Today? Challenges to Tribal Jurisdiction

Module 2 - A Review of Indian Self-Determination Act (Statutes)

Module 1 provides an overview of the statutes with a special focus on the sovereign rights of Tribal Nations under Pub. L. 93-638; and the Congressional intent under the Indian Self-Determination Act. This module, Module 2, provides a critical, but brief overview of the U.S. Federal Indian Policy as it relates to the Indian Self-Determination Act; and explain the foundation & principles of Tribal Sovereignty and Federal Trust Responsibility. What are the differences between Pub. L. 93-638 contracts and commercial contracts? What programs may be contracted under Pub. Law 93-638? What are inherent Federal functions? What are the funding provisions and funding protections? What are contract support costs (indirect costs, direct contract support costs, start-up funds, pre-award costs)? What are tribal rights to appeals and contract disputes? This module will identify how contracts under Pub. L. 93-638 are different from regular federal contracts and commercial contracts.

- Congressional Intent and Policy
- Commercial Contracting – What is it?
- Contractual Relationships under the Act
- Differences between Self-Determination Contracts and Commercial Contracts
- Differences between Self-Determination Contracts and Discretionary Grants
- Key Principles under the Act
- Tribal Rights under the Act

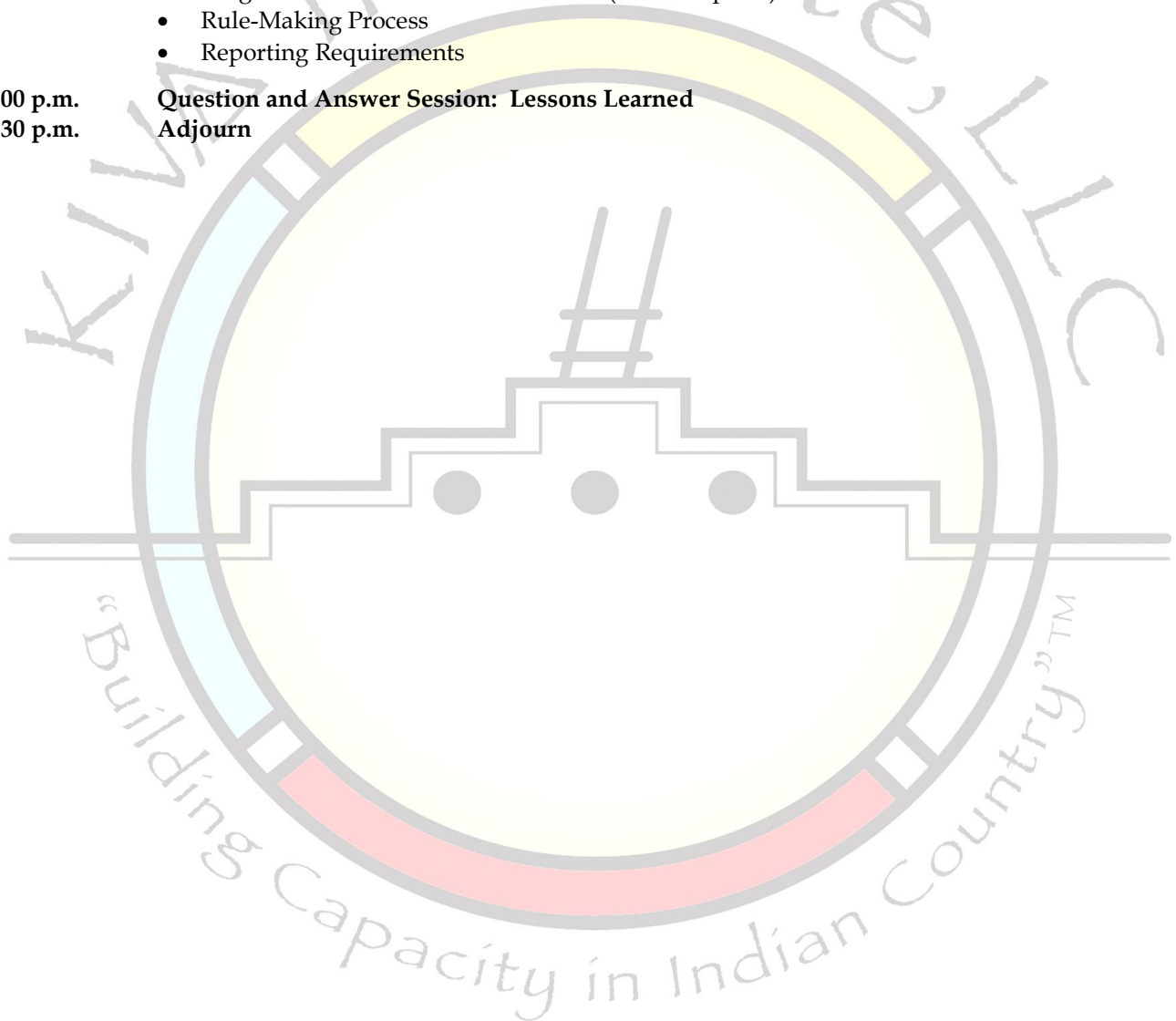
- Statutory Definitions (Self-Determination Contract, Mature Contract, etc.)
- What are Contractible/Compactible Functions?
- What are Inherent Federal Functions?
- Declination Criteria and Procedures
- What are Self-Determination Contracts? What are Self-Governance Compacts?
- Secretarial Funding Levels & Protection of Funds
- Funding Provisions under Pub. L. 93-638 (Direct Costs, Contract Support Costs)
- Contractible/Compactible Programs, Functions, Services and Activities (PFSAs)
- Inherent Federal Functions - What are they?
- Compliance with Tribal Laws
- Appeals Rights and Contract Disputes Act
- Program Retrocession and Rescission (Reassumption) Procedures
- Rule-Making Process
- Reporting Requirements

4:00 p.m.

Question and Answer Session: Lessons Learned

4:30 p.m.

Adjourn



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Day 2
9:00 a.m.

Module 3 – Review of Regulations – 25 CFR Part 900 (Subpart A through Subpart P)

Module 3 covers the details of the contracting rules under the Act, 25 CFR Part 900. It provides detailed instruction of every subpart, from Subpart A through Subpart P. It covers contract application process, contract review/declination process, standards for tribal management systems, reporting requirements, equipment/facilities and donation processes, waiver of regulations, appeals, tort claims, contract disputes, conflicts of interest and retrocession/reassumption procedures. Subpart J – Construction is a special, separate regulation and is covered under Module 4.

- Tribal Rights during Contract/Compact Preparation, Negotiation and Award
- Funding and other Contracting/Compacting Issues
- Preparing the Contract Proposal (Program Development Considerations)
- Contents of Contract Proposals
- Declination Criteria and Procedures (Statutory time frames)
- Secretarial Responsibilities During Contract Proposal Planning Phase, Application Phase, Declination Phase, Approval Phase
- Secretarial Responsibilities for Providing Technical Assistance
- Roles & Responsibilities of Line Officers, Awarding Officials, Awarding Officials’ Technical Representatives
- Appeals Process and Informal Conference Procedures
- Secretarial Funding Levels: Funding Issues (Direct Costs and Indirect Costs)
- Administrative Provisions (Staffing, Facilities, Donation of Equipment, Reporting Requirements)
- Contract Negotiation and Award Processes
- Model 108 Contracts – Annual Funding Agreements
- Contract Retrocession and Reassumption

Module 4 – Construction Contracting - Analysis of 25 CFR Subpart J – Construction

Module 4 provides highlights of Construction Contracting. Construction contracting under the Act is a very unique process and differs significantly from typical commercial construction contracting; and requires a separate 3-day training. It is important that tribal officials, tribal finance and grants/contracts staff know that all contracts under the Act are not “procurement contracts” so the Federal Acquisition Regulations (FAR), in this instance, do not apply to construction contracts under the Act. Module 3 covers topics such as the Davis-Bacon Act, subcontracting, subcontractor performance, bonding requirements, contract negotiations, tribal sovereign immunity, contract disputes, etc.

- How is Construction Contracting Different from Non-Construction Contracting?
- Contract Relationship Model
- Construction Contract Proposal Requirements
- Secretary’s Cost Estimate
- Negotiation Tips and Considerations
- Subcontracting Rules, Bonding Requirements Contract Provisions
- Acquisition Processes (Preparing Bid Documents, Issuing RFPs, Sealed Bidding, Negotiations, Bid Protests)
- Indian Preference Requirements, Davis-Bacon Act, etc.
- Bonding Requirements
- Tribal Sovereignty and Sovereign Immunity Issues
- Contract Administration (Express Changes, Excusable Delays, Constructive Changes, Termination for Default, Termination for Convenience, Liquidated Damages, Inspection and Acceptance, Government Audit Rights)

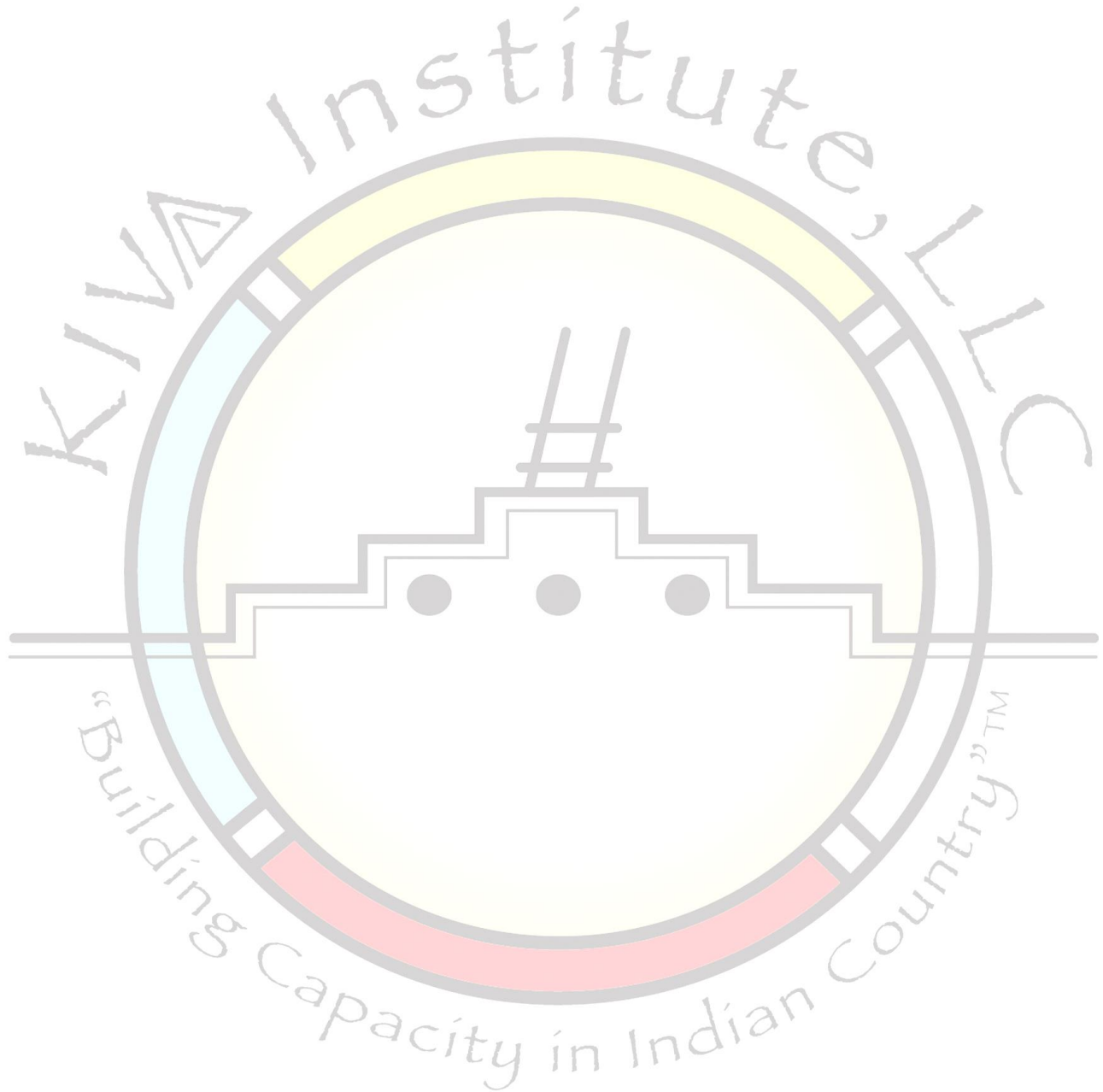
- Contract Disputes Act Process
- Final Records (Final Quantities Check, Final Construction Report, Materials Certification, As-Constructed Plans, Final Payment)
- Contract Close Out

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Question & Answer - Lessons Learned

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Day 3

9:00 a.m.

Module 5 – Single Audit Act and Reporting Requirements

Module 5 covers the new OMB regulations in 2 CFR Part 900 and how the new regulations affect Pub. L. 93-638 agreements. It identifies the new requirements under 2 CFR Part 200 as it relates to cost principles, single audits, steps to address non-compliance issues including imposing sanctions on tribes. It provides guidance on the responsibilities of tribes, auditors, and federal agencies on pre-audit, during audits, and post-audits.

- Public Law 98-502, the Single Audit Act of 1984
- New OMB Super Circular – Subpart F – Single Audit Act and Requirements
- New OMB Super Circular Cost Principles vs Pub. L. 93-638 Cost Principles
- Pre-audit and post-audit responsibilities of tribes, auditors and federal agencies
- Role of Federal Cognizant Agencies for Audit
- Role of Federal Cognizant Audit Agency for Indirect Costs
- Submitting the Audit Reports
- Special Audit Requirements
- Audit Compliance Supplement
- Audit Findings and Audit Resolution Process
- Addressing High Risk Designation Issues
- Special Audit Requirements

Module 6 – Indirect Cost Principles (Contract Support Costs): An Overview

Module 6 provides an overview to highlight the principles of Indirect Costs, the Indirect Cost Rate structure and how Indirect Cost Rates work. Special emphasis is placed on how Indirect Cost Rates work in a Pub. L. 93-638 environment; and how lack of full funding impacts tribal programs and tribal funds. Indian Self-Determination Act have unique statutory provisions that provide separate funding for tribal Indirect Costs, but full funding is not always provided. This module will provide an overview of the differences between Pub. L. 93-638 contracts and discretionary grant funding.

- Pub. L. 93-638 Funding Provisions
- What are Direct Costs? What are Indirect Costs?
- What is an Indirect Cost Rate?
- What are Different Types of Indirect Cost Rates?
- What are Contract Support Costs? What are Direct Contract Support Costs?
- How Do Indirect Costs Work?
- Collecting Indirect Costs
- Salazar v. Ramah Navajo Chapter Litigation
- Post-Salazar Impacts
- BIA & IHS Contract Support Cost Policies
- What Happens when Agencies Do Not Fund Indirect Costs?

Module 7 – Bureau of Indian Affairs & Indian Health Service Contract Support Cost Policies

- Review of Secretarial Funding Provisions (Section 106)
- Overview of BIA Contract Support Cost Policy
- Overview of IHS Contract Support Cost Policy
- Roles & Responsibilities
- Pre-Award Costs and Start-Up Costs
- Direct Contract Support Costs Formula
- Four Ways of Calculating Indirect Cost Rates
 - Total Direct Costs Less Pass-Through Costs (Current Rate)
 - Total Direct Costs Less Pass-Through Costs (Four-Year-Old Rates)

- Lump Sum Agreements (Tribes Without IDC Rates)
- 30 Percent Rate Less Pass-Through Costs (Tribes Not Meeting Audit Threshold)
- Overpayments and Underpayments
- CSC Shortfall Report
- Funding Mechanism
- Contract Disputes Act Process

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