CHAPTER 25-4 MAJOR HEALTH FACILITIES GRANTS

25-4.1	INTRODUCTION	(25-4) 1
25-4.2	APPLICABLE LAWS AND REGULATIONS	(25-4) 2
25-4.3	OTHER REFERENCES	(25-4) 2
25-4.4	OFFICE OF GENERAL COUNSEL OPINION	(25-4) 3
25-4.5	DEFINITIONS	(25-4) 4
25-4.6	APPLICABILITY FOR CONSTRUCTION	(25-4) 4
25-4.7	CONTACTS	(25-4) 4
25-4.8	IMPLEMENTING P.L. 93-638 GRANTS	(25-4) 5
25-4.9	POST-AWARD GRANTS ADMINISTRATION	(25-4) 5
APPENDIX A -	CONSTRUCTION AND TITLE III OF THE INDIAN SELF-DETERMINATION ACT (ISDA), MEMORANDUM DATED APRIL 17, 1995	(25-4) 6
APPENDIX B -	STEPS FOR IMPLEMENTING P.L. 93-638 CONSTRUCTION GRANTS	(25-4) 16
APPENDIX C -	COMPARISON OF CONTRACT VS. GRANT ELEMENTS	(25-4) 21

25-4.1 INTRODUCTION

In a memorandum dated June 22, 1995, the Assistant Secretary for Health removed the prohibition, imposed in 1982, on the use of grants to construct IHS facilities. Public Law (P.L.) 93-638, as amended by P.L. 103-413, Sections 102 [450f] and Section 107 [450k] of this Act allows the Secretary of Health and Human Services to make grants to any Indian tribal or tribal organization for -

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the IHS for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 [450g] of this Act.

This chapter addresses discretionary grants only. To be eligible to apply and receive a grant under this program the proposed facility must be on the Indian Health Service (IHS) Health Facilities Construction Priority List and appropriated funds must be available. The tribe may opt for grant funding of the design and construction phases or the construction phase only using plans and specifications developed by Engineering Services.

25-4.2 APPLICABLE LAWS AND REGULATIONS

IHS regulations governing the administration of grants are found in the Indian Health Manual, Part 5, Chapter 19, Manual Exhibit 5-19, 3-B, "Legislative Mandates" and OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.

25-4.3 OTHER REFERENCES

Supplemental policies and information on federally-assisted grants are contained in the documents below.

45 CFR, Part 92. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule)

42 CFR, Part 36, Subpart H. Grants for Development, Construction, and Operation of Facilities and Services

45 CFR 74. Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments

OMB A-87. Cost Principles for State, Local, and Indian Tribal Governments

P.L. 93-638, as amended.

Appendix 2, PHS Grants Policy Statement

Federally Assisted Guidelines, Chapter IV, Mandatory Requirements.

PHS Grants Administration Manual

25.4-4 OFFICE OF GENERAL COUNSEL OPINION

The Office of the General Counsel (OGC) issued memorandum dated April 17, 1995, titled "Construction and Title III of the Indian Self-Determination Act (ISDA)". Page 4., C., "Section 103 of ISDA", of this memorandum is cited below and provides clarification of the law as it pertains to construction grants.

> Section 103(b) authorizes IHS to make grants to tribes for the construction of health care facilities.[12] Title to a facility constructed under a grant generally remains with the grantee...
>
> ... In the event that PHS permits IHS to use its authority to make grants for construction, it is important for IHS and the grantee to review the Federal requirements related to construction grants including requirements for Federally assisted construction. Listed below are some of the Federal requirements that we believe are applicable to section 103 grants:
>
> 42 CFR Part 36, Subpart H--Grants for Construction,
>
> Chapter IV of the PHS Grants Administration Manual (GAM) on requirements for construction grants,
>
> Part 140 of Chapter I of the PHS GAM on protecting the Federal interest in real property acquired with grant funds,
>
> PHS Grants Policy Statement (especially note Appendix 2),HHS published guidelines for Federally assisted construction (HHS Technical Handbook, February 1994), and
>
> 45 CFR Parts 74 and 92.
>
> [12]Such facilities may be characterized as Federally assisted construction.

A copy of the memorandum is provided in Appendix A.

25-4.5 DEFINITIONS

New Construction. The erection of a building, structure or facility, including the concurrent installation of equipment, site preparation, landscaping, associated roads, parking, and utilities, which provides new program space. New construction includes freestanding structures, additional wings, floors, enclosed courtyards or entryways, and any other way of providing usable program space. It also includes complete replacement of an existing facility.

Renovation. Construction required to change the interior arrangements including utilities and equipment, of an existing facility so that it may be more effectively utilized (e.g., for the delivery of health care services). Renovations governed by these guidelines may include work referenced by such terms as improvements, conversion, and reconversion.

Expansion of Existing Facilities. Expansion of facilities is considered as new construction as it provides usable program space that did not previously exist.

Other Definitions. IHS Technical Handbook, Chapter 1-7, and 45 CFR, Part 92, Subpart 92.3 - standard definitions for federal grants administration.

25-4.6 APPLICABILITY FOR CONSTRUCTION

Grants can be awarded only if there are sufficient funds appropriated. As stated in 25-4.1, grants awarded under this authority are discretionary, requiring agency approval. These grants are non-competitive and only projects that are approved and on the IHS Health Facilities and Construction Priority List will be eligible for consideration.

25-4.7 CONTACTS

Director, Division of Acquisition and Grants Operation
Indian Health Service
12300 Twinbrook Parkway, Suite 100
Rockville, MD 20852
(301)-443-5204

Director, Division of Facilities Planning and Construction
Indian Health Service
12300 Twinbrook Parkway, Suite 600-C
Rockville, MD 20852
(301)-443-1852

Director, Division of Resources Management
Indian Health Service, Rm. 5A-44
5600 Fishers Lane
Rockville, MD 20852
(301)-443-1270

Engineering Services - Dallas
1200 Main Tower Building
Room 1900
Dallas, TX 75202
(214)-767-3491

Engineering Services - Seattle
2201 Sixth Avenue
Main Stop RX24
Seattle, WA 98121
(206)-615-2452

25-4.8 IMPLEMENTING P.L. 93-638 GRANTS

Appendix B of this chapter outlines the steps to be followed from eligibility to grant award.

25-4.9 POST-AWARD GRANTS ADMINISTRATION

Post-award administration of IHS grants follows established HHS and PHS policy and procedural guidelines. Post-award policies for program officials and grantees are contained in the PHS Grants Policy Statement (April 1, 1994) and the PHS Grants Administration Manual, July 1, 1986. Additional information is provided in Indian Health Manual, Part 5, Chapter 19, "Grants and Cooperative Agreements Management."

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of the General Counsel

Public Health Division
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Rockville, Maryland 20857
(301) 443-2644

APPENDIX A

April 17, 1995

TO : Michael H. Trujillo, Director
Indian Health Service

FROM : Barbara Hudson, Attorney
Office of the General Counsel

SUBJECT : Construction and Title III of the Indian Self Determination Act (ISDA)

This memorandum is in response to your request that we review our former legal opinion, dated August 24, 1993. You ask if funds appropriated for constructing health care facilities may be included in an Annual Funding Agreement (AFA) under Title III? Initially, the question appears relatively simple and straightforward. However, we must consider, not only whether funds may be included in an AFA, but the law governing the obligation and expenditure of such funds. For example, does including construction[1] funds in an AFA change the relationship between the tribe and the Federal government? In other words, is a tribe permitted to take over all Federal functions related to the direct Federal construction of a facility[2] simply because it has funding in its AFA? Alternatively, may the tribe use the construction funds in an AFA for the construction of a tribal facility under tribal procurement rules? To answer these questions, we examine decisions of the comptroller general with regard to improvement of property and the construction authority of the Indian Health Service (IHS).

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[1]The word construction, as used in this opinion, also includes design.

[2]When the term direct Federal construction is used in this opinion, we mean the construction of a facility with Federal funds and, upon completion, title to such facility belongs to the Federal government. The term Federally assisted construction means any construction involving Federal funds in which the final ownership of the facility does not reside with the Federal government.

I. COMPTROLLER GENERAL DECISIONS - IMPROVEMENT OF PROPERTY

In a long line of decisions, the Comptroller General has held that appropriated funds may not be used for improvement of private property in the absence of "express statutory authority."[3] However, the Comptroller General also has held that the construction of a Federal facility on Indian land would not violate this prohibition.[4] We note that we have found no Comptroller General decision which would support the use of Federal funds to construct a tribal facility, absent explicit statutory authority.[5]

We now turn to a discussion of what "explicit statutory authority" Congress has granted to the IHS with respect to construction of Federal and tribal facilities. Specifically, we examine the appropriation act[6], the Indian

[3] 69 Comp. Gen. 673, 675 (1990). Essentially, the Comptroller General concludes that improvement of non-governmental property through Federal appropriations is a gratuity to the owner. Under Article IV, Section 3, Clause 2 of the Constitution, only Congress has the power to disburse Federal property. (See, Royal Indemnity Co. v. United States, 313 U.S. 289, 294 (1941).) Therefore, in the absence of Congressional authority, a Federal agency may not improve private property. See also, 65 Comp. Gen. 722, 724 (1986).

[4] See 6 Comp. Dec. 957 (1900) and 24 Comp. Dec. 477 (1918).

[5] We note that rare exceptions to this rule occur in the use of level of need funded (LNF) and health services carryover funds. The legislative history related to LNF funds indicates that Congress intended that these funds be used for one-time expenses associated with the expansion of space at specified facilities. (S. Rep. No. 114, 103d Cong., 1st Sess. (1993).) Relying on the clear legislative history and a comptroller general decision, we concluded that the agency could provide LNF funds for the expansion/improvement of specified tribal facilities. (See legal opinion of B. Hudson dated April 5, 1994.) A similar conclusion was reached for the use of health service carryover funds to expand a tribal facility through the purchase, erection, and renovation modular buildings. (See legal opinion of B. Hudson dated May 24, 1994.)

[6] Department of the Interior and Related Agencies Appropriations, 1995, Pub. L. 103-332, 108 Stat. 2499, 2527 (1994).

Self Determination Act (ISDA)(Public Law 93-638)[7], and the Indian Sanitation Facilities Act (ISFA)(Public Law 86-121)[8] with respect to construction of sanitation facilities projects.

II. IHS CONSTRUCTION AUTHORITY

A. APPROPRIATION ACT

The Appropriation Act authorizes the expenditure of funds for construction of health care and related auxiliary facilities as authorized by the Indian Self-Determination Act (Pub. L. 93-638) and the Indian Health Care Improvement Act (IHCIA)(Pub. L. 94-437)[9] and for the construction of sanitation facilities for Indian homes and communities as authorized by the Indian Sanitation Facility Act (ISFA)(Pub. L. 86-121). Therefore, we must consider what these laws authorize with respect to construction.

B. SECTION 102 of ISDA

Section 102 of Title I of ISDA authorizes IHS to enter into contracts with tribes for the construction of Federal facilities.[10] The Indian Self Determination Act Amendments of 1994[11] made significant changes in Title I of ISDA. First, section 105(a), as amended, states that Federal contracting laws do not apply to contracts entered under section 102 of ISDA. Second, the applicability of the Federal Acquisition Regulations (FAR) is restricted and subject to negotiation between the parties. Third, section 106(f), as amended, states that title to a Federal facility used in connection with a section 102 self-determination contract for health services vests with a

[7] 25 U.S.C. 450 et seq.

[8] 42 U.S.C. 2004a.

[9] 42 U.S.C. 1601 et seq.

[10] We note that section 9 permits the IHS to use a grant under section 102 in lieu of a contract.

[11] Pub. L. 103-413, 103rd Cong., 2nd Sess. (1994)

tribe unless the tribe requests otherwise. However, the title is subject to a reversionary interest in the event of retrocession, recision, or termination of the ISDA contract or grant.

Thus, IHS has statutory authority to contract with Indian tribes under Title I of the ISDA for direct Federal construction projects. However, because the above sections specifically relate to contracts under section 102, we do not believe that they are applicable to Title III compacts.

C. SECTION 103 of ISDA

Section 103(b) authorizes IHS to make grants to tribes for the construction of health care facilities.[12] Title to a facility constructed under a grant generally remains with the grantee. While section 103 authorizes grants, the Public Health Service (PHS) has maintained a policy that grants under ISDA will not be used to construct facilities. However, this decision is a matter of agency policy and it is our understanding that IHS has requested a review of this PHS policy.

We note that section 105(a), which waives Federal contract and cooperative agreement laws, does not waive Federal grant laws.[13] In the event that PHS permits IHS to use its authority to make grants for construction, it is important for IHS and the grantee to review the Federal requirements related to construction grants including requirements for Federally assisted construction. Listed below are some of the Federal requirements that we believe are applicable to section 103 grants:

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[12]Such facilities may be characterized as Federally assisted construction.

[13]One might argue that this omission simply was an oversight on Congress' part. However, the legislative history does not support such a conclusion. The Senate bill, which became Pub. L. 103-413, at one time contained language which would have made Federal grant laws inapplicable to section 103 grants. (S. Rep. 103-374, 103rd Cong., 2nd Sess. 1994, 1994 LEXIS, Legis library, Cmtrpt file.) Because such language was removed prior to enactment, there is strong evidence that Congress did not intend to waive Federal grant requirements.

42 CFR Part 36, Subpart H--Grants for Construction,

Chapter IV of the PHS Grants Administration Manual (GAM) on requirements for construction grants,

Part 140 of Chapter I of the PHS GAM on protecting the Federal interest in real property acquired with grant funds,

PHS Grants Policy Statement (especially note Appendix 2),

HHS published guidelines for Federally assisted construction (HHS Technical Handbook, February 1994), and

45 CFR Parts 74 and 92.

D. SECTION 303 of ISDA

Section 303(a)(1) of Title III authorizes the Secretary to enter into AFAs with tribes for the administration of activities, programs, services, and functions. We believe that this language is broad enough to include taking over a Federal construction function. However, if Federal construction is a function that a tribe may take over under Title III, a question naturally arises as to what is the relationship between the tribe and the IHS with respect to carrying out the Federal project. Simply identifying funds in an AFA does not change the fact that it is direct Federal construction.[14]

While funding could be identified in a Title III AFA for use under a Title I contract or grant, we find nothing in Title III which would change or override other law related to direct Federal construction. Thus, the construction would be carried out under the provisions and authority of a Title I contract or grant.[15]

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[14]As discussed below, IHS may not contract for inherent Federal functions.

[15]As noted herein, by virtue of section 105(a), the applicability of Federal Acquisition Regulations to construction contracts is restricted and subject to negotiation between the

E. Indian Sanitation Facilities Act (Pub. L. 86-121)

In addition to the authority of ISDA, the appropriation act authorizes construction funds to be used under the authority of Pub. L. 86-121, the Indian Sanitation Facilities Act.[16] The ISFA authorizes IHS to construct sanitation facilities "by contract or otherwise" and to make "such arrangements and agreements" with tribes regarding contributions toward the construction as are equitable and will best assure future maintenance of facilities. This authority has been interpreted to give the IHS broad discretion in choosing methods of providing sanitation facilities.

Currently, construction of sanitation facilities is accomplished through an agreement authorized under Public Law 86-121 which sets forth the scope of work and method of accomplishing the work. We believe that funds may be identified in an AFA under title III for construction of sanitation facilities. However, as previously discussed, simply identifying funds in an AFA does not change the fact that it is Federally assisted construction under ISFA. As such, funds would be obligated and expended under an agreement authorized under the ISFA as currently is the practice when these projects are incorporated into AFAs.[17]

In summary, we believe that funds may be identified in an AFA for construction purposes. However, the AFA must specify that such funds only may be obligated and expended under a specific statutory construction authority, e.g., section 102 of ISDA, section 103 of ISDA, Public Law 86-121, etc.[18]

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parties. Other Federal laws related to acquisition are not applicable unless expressly provided in such law.

[16]42 U.S.C. 2004a. The appropriation act specifies that any funds transferred from the Department of Housing and Urban Development (HUD) to IHS are used under the authority of ISFA and ISDA.

[17]Further, as discussed below, IHS may not contract for inherent Federal functions.

[18]Similarly, we note that funds appropriated and allocated under the Indian Health Care Improvement Act for construction must be obligated and expended under that authority.

III. ALLOCATION OF FUNDS

A. STATUTORY REQUIREMENTS

This opinion naturally raises questions with respect to allocation of construction funds. In addressing these questions, it is important to consider the interrelationship among the following three sections of ISDA. First, section 303(a)(6) states that the Secretary shall provide an amount equal to that which the tribe would have been eligible to receive under a Title I contract. Second, section 106(a) states that the amount of funds provided to a tribe with a self determination contract shall not be less than the IHS otherwise would have provided for the operation of the program. Further, the amount of funds may include a tribe's share of certain headquarters and area office functions, commonly referred to as "tribal shares." Third, section 306 states that the Secretary may not interpret ISDA to reduce funds that any other tribe is eligible to receive under section 102. Thus, the allocation of construction funds must be consistent with these statutory provisions.

Based on these statutory requirements, we believe that the amount of the contract is what the Secretary otherwise would have provided for the construction of the facility.[19] It is our understanding that the agency provides Congress with estimated costs for the construction of specified facilities. Next, the appropriation committee identifies a specified amount in the lump sum appropriation for a particular facility. Subsequently, the agency determines final cost estimates for the facility and awards a contract for direct Federal construction. We note that the amount of the contract is based on the final cost estimate. Any difference in this amount and the amount identified in the legislative history remains with the Federal agency.

B. INHERENTLY FEDERAL FUNCTIONS

As noted in our August 23, 1993 opinion, IHS has functions which are inherently Federal, e.g., contracting officer. In other words, functions which must be carried out by a Federal employee. IHS may not

[19]Section 106(a)(1) of ISDA.

enter agreements which allocate funds that are associated with inherently Federal functions. Of course, it is a matter of agency discretion to determine the amount of funds necessary to carry out these Federal functions.

C. CONGRESSIONAL INTENT

IHS receives a lump sum appropriation for facilities construction. In the absence of specific statutory direction, the allocation of funds from a lump sum appropriation is a matter of agency discretion.[20] We note that the appropriation act usually does not require that IHS spend appropriation funds in the IHS facilities appropriation on particular projects.

However, the appropriation committee reports do specify that funding is earmarked for particular health care facility construction projects. While an agency is not bound by this legislative history, "an agency's decision to ignore congressional expectations may expose it to grave political consequences."[21] The IHS sanitation facilities appropriation also includes funding for agency's priority facilities which is distributed based on the III that requires the agency to change its method of allocating funds appropriated for health care facility construction or for sanitation construction.

Further, as explained above, section 106(a), which governs Title III allocations under section 303(a)(6), ties funds available for compacting to what the IHS "otherwise would have provided for operation of the program." In other words, if IHS would have allocated funds for the construction of a specified facility which would serve a particular tribe, then another tribe, which would not benefit, is not entitled to tribal shares with respect to that project.

For example, a tribe might argue that under an allocation methodology for tribal shares, it is entitled to its share of the entire appropriation for

[20] Lincoln v. Vigil, 113 S.Ct 2024, 2031 (1993).

[21] Id. at 2032.

[22] See section 302 of the Indian Health Care Improvement

facilities, including funds for particular projects. If the tribe takes "its share", there may not be sufficient remaining funds to construct the health care facilities for which Congress included funds in the appropriation. Similarly, a tribe might argue that it is entitled to its share of sanitation facilities construction funds. If IHS provides these tribes with their "share" of such funds, it may violate Congressional intent that these funds be allocated on a priority basis. If the agency provides tribal shares in such cases, it may face severe criticism from Congress.

Therefore, in calculating tribal shares, the agency should consider the amount it would otherwise have provided for the program under section 106(a) together with any applicable legislative history.

IV. PAYMENT OF FUNDS

As discussed above, if a tribe desires it may choose to identify funds in its AFA for construction and obligate and expend such funds under a Title I construction contract, a Title I grant, or, in the case of sanitation facilities, through an agreement authorized under the ISFA. In such a case, payment of funds would be governed by section 105(b) of ISDA which states:

> Payments of any grants or under any contracts pursuant to sections 102 and 103 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursements thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds.

We understand that the IHS currently is considering various legal instruments for constructing facilities, e.g., grant, a cost-reimbursement contract, a fixed-price contract, etc. Notwithstanding the type of instrument used, the transfer of funds must minimize the time elapsing between the transfer of such funds from the Treasury and the disbursement by the tribal organization.

In conclusion, the Comptroller General has determined that an agency must have express statutory authority to use Federal funds to improve non-governmental property. While funds may be identified in an AFA for construction of health care facilities or for sanitation construction, such funds must be used under an appropriate instrument pursuant to statutory authority, e.g., Title I contract, Title I grant, agreement authorized by ISFA, etc.[23] In determining funds available for tribal shares, the agency should consider the applicable sections of ISDA noted above, inherently Federal functions which the agency must carry out, and congressional intent with respect to funding particular projects. Finally, the agency has fairly broad discretion with respect to the payment of funds under a Title I contract or grant and should consider what is most advantageous in carrying out the purposes of ISDA.

I hope this information is helpful to you. If you have further questions, please feel to give me a call at 301-443-0406.

Barbara Hudson

cc: Richard McCloskey, Director
Division of Legislation and Regulations

[23]Funds also may be used as authorized by the Indian Health Care Improvement Act.

APPENDIX B

STEPS FOR IMPLEMENTING P.L. 93-638 CONSTRUCTION GRANTS
(from eligibility to grant award)

STEP A. PROJECTS IDENTIFIED DURING BUDGET PROCESS

1. Indian Health Service (IHS) construction projects are identified during the budget process based on the IHS Health Facilities Construction Priority List.

STEP B. NOTIFICATION OF IDENTIFIED CONSTRUCTION PROJECTS

1. The Director, Division of Facilities Planning and Construction (DFPC), will send written notification to appropriate Area Directors and Engineering Services (ES) that funds for approved construction projects have been made available to IHS.

2. The notification will identify the phase(s) of planning, design, and/or construction for which funding is available. The construction projects can be implemented by the following options:

   a. Tribal implementation using a P.L. 93-638 contract
   b. Tribal compact with construction contract addendum or amendment
   c. Direct Federal construction
   d. Tribal implementation using P.L. 93-638 Grant

STEP C. GRANTEE NOTIFIES, IN WRITING, GRANTS OFFICER AND DIRECTOR, DFPC, OF DECISION TO OPT FOR A GRANT

1. The Tribe notifies, in writing, the Director, DFPC, of the decision to request a grant. The Director, DFPC, will notify the Grants Officer of the Tribe's decision.

STEP D. PRE-APPLICATION MEETING

1. The Director, DFPC, establishes a pre-application meeting with the Tribe (hereafter called Grantee) and the Grants Officer.

2. Director, DFPC, and the Grants Officer will designate a Grants Officer Technical Representative (GOTR).

3. The Director, DFPC notifies Grantee, in writing, of the date, time, location, and purpose of pre-application meeting. The SF-424 Application Forms will be forwarded with the notification.

4. At the pre-application meeting, the Grants Officer will furnish the Grantee a full description of application requirements and IHS Technical Handbook 2.1 (Rev. Feb. 1994).

5. IHS will provide all pertinent project information to the tribe within 30 days.

STEP E. GRANTEE PREPARES APPLICATION

1. The Grantee may apply for any or all phases of planning, design, and construction of the project if the funds have been appropriated. If partial funding is requested, the Grantee must provide documentation that financial backing is secured to complete the project. (See 2.d., PHS 5161-1 Supplement).

2. In addition to submission of a tribal resolution, the following are prepared and submitted as part of the application package:

   a. SF-424 - Face Sheet
   b. SF 424c - Budget Information (Construction)
   c. SF 424d. Standard Assurances (Construction) with additional applicable assurances.
   d. PHS 5161-1 Supplement - Proposed Method of Financing Non-Federal Share (if applicable)

STEP F. GRANTEE SUBMITS ORIGINAL AND ONE COPY OF APPLICATION TO GRANTS OFFICER FOR REVIEW

1. Within 10 working days of receipt of the application, the Grants Officer will review the application and will notify the Grantee, in writing, of receipt of the application.

   a. If the application is complete, the Grants Officer will:

      i. Acknowledge receipt of the application; and
      ii. Furnish a copy of the application to the Directors, DFPC and Engineering Services, and request technical review.

   b. If the application is incomplete, the Grants Officer will:

      i. Identify, in writing, the deficiencies;
      ii. Offer technical assistance to the Grantee; and
      iii. Furnish a copy of the application and noted deficiencies to the Directors of DFPC and ES for information.

2. The Director, DFPC, will review the application and comment on:

   a. Technical and/or organizational capabilities of Grantee based on previous project performance(s) or on information contained in the application.

      i. use of qualified personnel;
      ii. method proposed to complete work

   b. Project budget submitted

   c. Program Narrative

3. The DFPC and ES will submit written recommendations to the Grants Officer for review within 30 working days of receipt of the request.

STEP G. GRANTS OFFICER DETERMINES ORGANIZATIONAL CAPABILITY

1. The Grants Officer determines whether the Grantee has organizational and financial management capabilities based on review of: cost analysis, financial systems and management, and financial capability.

2. Within 15 working days of receipt of the recommendation of the Director, DFPC, the Grants Officer will notify the Grantee, in writing, of the determination as to organizational capability.

   a. If the Grants Officer determines that the Grantee is capable, go to Step H.

   b. If the Grants Officer determines the Grantee lacks the capabilities or may be considered a "high risk", the Grants Officer must send written notification to the Grantee within 30 days providing the reasons the application will not be approved or the name of an official to contact for more information. (Refer to Indian Health Manual, Part 5, Chapter 19, 8E(3)). Or, the Grants Officer may impose special conditions more restrictive than those prescribed by 45 CFR, Part 74 and/or arrange for appropriate technical assistance to be provided to the Grantee.

   c. Special conditions for design and/or construction are located in the regulations under the subpart titled, "What shall a construction contract proposal contain?"

STEP H. NEGOTIATION OF GRANT REQUIREMENTS

1. The Grants Officer notifies the Grantee in writing of the date, time, location and purpose of meeting. Copies of the notice should be furnished the Directors of DFPC and ES.

2. The Grants Officer meets with the Grantee, appropriate DFPC staff, and if applicable, ES personnel. Items to be negotiated may include the items referenced in Step G.2.c. and the following depending on the appropriateness to the scope of the grant:

   a. Budget
   b. Design
   c. Inspection - responsible entity and frequency
   d. Space Guidelines - Health Facilities Planning Manual
   e. Workload and Staffing Projections
   f. Accreditation Standard
   g. Method and Schedule of Payments
   h. Indirect Grant Support Costs
   i. Equipment
   j. Property
   k. Financial Status Reports and Frequency
   l. Design Codes/Standards to be used
   m. Bonding for Construction Contractors
   n. Selection of A/E Firm
   o. Value Engineering
   p. Records Management
   q. Site Selection
   r. Program Requirements
   s. Procurement

   Also see appendix C, "Comparison of Contract vs. Grant".

3. If needed, the Grantee shall amend the application to incorporate special conditions and, within 14 working days of the meeting, submit an original and one copy of the amended application to the Grants Officer. The amendment will reflect the agreements reached during negotiations.

4. The Grants Officer, will, within 10 working days of receipt of amended application, provide a copy to Director, DFPC, for review and concurrence with the agreements reached.

STEP I. REQUEST FOR SUBALLOTMENT OF FUNDS

1. The Grants officer requests, in writing, the suballotment of funds from the Director, DFPC.

2. The request by the Grants Officer for the suballotment of funds shall constitute approval of the application and concurrence with the agreements reached on the grant requirements.

STEP J. SUBALLOTMENT OF REQUESTED FUNDS TO DIRECTOR, DIVISION OF RESOURES MANAGMENT (DRM)

1. The Director, DFPC, shall submit a request for the suballotment of funds to the Director, DRM. The DRM shall prepare the funds distribution document to suballot the requested funds to the Grantee.

2. The Director, DRM, will provide a copy of the approved funds distribution document to the Director, DFPC.

STEP K. DRM, SUBALLOTS FUNDS TO GRANTS OFFICER

STEP L. GRANTS OFFICER AMENDS P.L. 93-638 GRANT AND DESIGNATES GRANTS OFFICER TECHNICAL REPRESENTATIVE (GOTR)

1. The Grants Officer will amend the P.L. 93-638 grant and include the following supporting documents:

   a. Grant amendment document with approved application
   b. Funds Distribution Document
   c. Budget

2. The Grants Officer will formally designate the GOTR and will notify that individual in writing. The notification will advise the GOTR of his/her authorities, duties and responsibilities. Copies of the notification will be furnished to the Grantee and the Director of DFPC.

STEP M. GRANTS OFFICER PROCESSES PAYMENT(S) TO GRANTEE

STEP N. GRANTEE IMPLEMENTS GRANT

1. Grants Officer is the Grantee's primary contact regarding implementation of the construction grant. Grants Officer may request technical assistance from the designated GOTR on an as needed basis.

DEFINITIONS/ADDRESSES:

Grants Officer means the appropriate Indian Health Service Officer with responsibility for the P.L. 93-638 construction grant. Grants Officers administer P.L. 93-638 construction grants.

Director, Division of Acquisition and Grants Operation
12300 Twinbrook Parkway, Suite 100
Rockville, MD 20852

Director, DFPC, means the Director, Division of Facilities Planning and Construction or an authorized representative. The address for the Director is:

Director, Division of Facilities Planning and Construction, IHS
12300 Twinbrook Parkway, Suite 600-C
Rockville, MD 20852

Director, DRM means the Director, Resources Management or authorized representative. The address for the Director is:

Director, Division of Resources Management, IHS
Room 5A-44
5600 Fishers Lane
Rockville, MD 20857

APPENDIX C

Item	Contract	Grant
Standards	Section 102	Section 102
Payments	Quarterly - based on progress and need.	Quarterly and in-advance
Contingency	3% of the contracted construction phase or 50% of available funds; whichever is greater, in an initial payment with additional funds as justified & available.	3% of the contracted construction phase or 50% of available funds; whichever is greater, in an initial payment with additional funds as justified & available.
Savings	Funds obligated to the construction contract by the government and remaining at the completion of the scope of work shall be returned to the government.	Funds obligated to the construction contract by the government and remaining at the completion of the scope of work shall be returned to the government.
Facility Title	Title to facility will vest in the government.	Title to facility will vest in the grantee.
A/E Selection	Must be competitive and in accordance with tribal procurement requirements. Use of licensed architects.	Must be competitive and in accordance with tribal procurement requirements. Use of licensed architects.
Desigh Review	Review & approval at schematic and final; written comments by the government at all four reviews, concept, schematic, design development, and final.	Review at schematic and review & approval at final.
Review Periods	21 days or as negotiated, reviews should not be in-depth reviews.	As negotiated.
Change Orders	Change order approval required only when contract dollar amount will be exceeded, when contract performance period is extended, or for changes in scope of the project.	Change order approval required only when contract dollar amount will be exceeded or for changes in scope of the project.
Reporting	Quarterly progress and financial status reports.	Quarterly progress and financial status reports.
Info Copies	Initial schedule of values and initial construction schedule with updates for both items as they may occur.	Initial schedule of values and initial construction schedule with updates for both items as they may occur. Certified percentage of completion data.
On-site Docs	Contracts and major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, and current redline drawings.	Contracts and major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, and current redline drawings.
Shop Drawings	Review & comment on specific negotiated shop drawings	No review.
NEPA	Government responsible for approvals. Tribes responsible for complying with the various laws.	Government responsible for approvals. Tribes responsible for complying with the various laws.