

# CONTRACTING CADASTRAL SURVEYS IN ALASKA

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## Abstract

This paper will focus on the development and evolution of the contracting program for cadastral surveys in the Bureau of Land Management, Alaska. Our office has administered over 120 contracts during the last twenty years on a wide variety of survey projects for various clients. The vast majority of this work has involved State and Native land selections authorized by Congressional legislation (i.e. The Alaska Statehood Act and The Alaska Native Claims Settlement Act). For many years these contracts were procured under Architectural and Engineering (A&E) regulations with private land surveying firms. With the advent of the Indian Self-Determination Act (ISDA), tribal organizations are beginning to contract directly with the federal government for survey projects involving Native land selections. These changes have posed many challenges for everyone involved, however, for the most part this program has worked exceedingly well. ISDA contracts

combine experienced land surveyors with local-hire Natives working under the direction of a registered land surveyor who manages the technical aspects of the project. The tribal organization handles the administrative and financial affairs making sure that sufficient resources are funneled through the local communities. BLM inspectors provide technical guidance and support to insure that survey specifications are followed and the project proceeds on schedule. The end result is a unique partnership which requires a lot of hard work on everyone's part, but has the potential to deliver benefits in ways which were never anticipated before.

### Background

In Alaska, the Bureau of Land Management (BLM) has been charged with the mission of surveying over 375 million acres of public domain lands. Of this land, the State has selected 105 million acres under provisions of the Statehood Act and Native interests have selected 44 million acres under the Alaska Native Claims Settlement Act (ANCSA).

For many years, BLM (Alaska) has managed to provide for the surveys of these lands by combining an aggressive contracting program with a substantial in-house effort using government staff land surveyors. Since the mid-1980's, approximately one-half of the survey work has been contracted to private-sector surveying and engineering firms. Over the last three years, BLM has responded to numerous tribal requests to contract for cadastral survey work under the provisions of the Indian Self-Determination Act. Since the majority of our current workload in Alaska consists of Native land surveys, our office is now contracting almost exclusively under the provisions of this law. The remainder of

this paper will focus on the law as it applies to the Bureau's cadastral survey program and the federal government's role in managing its implementation.

#### The Law (P.L. 93-638, as amended)

On January 4, 1975, the 93rd Congress passed the Indian Self-Determination and Educational Assistance Act. This law (P.L. 93-638) was intended "to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people..."

For the first twelve years this law only covered programs administered by the Bureau of Indian Affairs (Dept. of the Interior) and the Indian Health Service (Dept. of Health and Human Services). Beginning with the 1987 amendments (P.L. 100-472), all programs within the Department of the Interior which benefit Indian tribes were presumed eligible for contracting under provisions of the Indian Self-Determination Act (ISDA). In writing this law, Congress clearly intended to provide tribal organizations the opportunity to contract federal programs to the extent that these programs served or benefited an Indian tribe.

It is important to recognize that tribal organizations must take the initiative in exercising their rights under this legislation and that this opportunity represents a choice as to whether or not to contract for a specific program or project. Certain requirements and restrictions apply to the administration of this program as well as the responsibility

entrusted upon the tribal organization to complete the work or function contracted. Within the last year several tribal organizations have expressed interest in surveying Native land selections within their region. BLM has responded to these requests by researching the law and developing a policy for the administration of this program.

### Letter of Intent to Contract

The first formal step in this process begins when a tribal organization submits a letter of intent to contract for a Native land survey project under the provisions of ISDA. A simple form letter addressed to the State Director (BLM) is sufficient to satisfy this requirement. In order for a project to qualify, it must meet the following three tests.

The project in question must benefit an Indian tribe, such as the survey of Native land selections. This precludes any State selection or other agency work.

Secondly, the function must be contractible, i.e. it cannot represent an approval action or survey authority.

Finally, the time frame must coincide with the BLM's five-year survey schedule. Funds for these survey projects are appropriated on a fiscal year basis which runs from October 1st through September 30th of the following year. This limitation prevents BLM from considering any requests for a project not on the current fiscal year's survey schedule.

Another consideration is that any funds which are not obligated by the end of the fiscal year lapse and the money is returned to the general fund. BLM has recognized this risk and taken steps to avoid this consequence at all costs. Our agency has established an early schedule to negotiate and award ISDA contracts with tribal organizations which will provide adequate time for alternative procurement procedures if necessary.

### Proposal Development

The Indian Self-Determination Act requires government agencies to provide tribal organizations whatever assistance is necessary to be successful in the preparation and development of their respective ISDA proposals. BLM's staff has responded by making all project information available to the tribes one month prior to the beginning of each fiscal year (Sept. 1st). This will allow time for tribal organizations to review the Statement of Work, Special Instructions, etc. and interface with BLM staff members to adequately address all proposal requirements in a timely fashion. A complete listing of these proposal requirements is available from our office upon request. The following six items comprise the major elements required:

1. Tribal resolutions must be obtained from each tribal governing body to be served by the contract. The resolution should be specific to BLM and include a statement authorizing the survey of all Native land selections within their jurisdiction.
2. The technical discussion should provide a detailed description of the proposed methods and procedures for accomplishing the survey project. The written narrative should include

references to the BLM Survey Manual, Statement of Work, Special Instructions and any other legal requirements for survey.

3. The proposal should include a list of all required personnel and the qualifications for each specific position. The format provided can be either individual resumes or detailed position descriptions.

4. All equipment and logistical support plans should be clearly outlined in the written narrative. This includes on-site transportation, lodging, meals, etc.

5. A full description of all management systems should be provided including personnel, financial, property, procurement, etc. These systems are not required for standard A&E contracts, but are specifically mandated for ISDA contracts.

6. The proposal must include a complete budget which identifies any indirect and support costs necessary to complete the project.

### Technical Guidance

BLM has a staff of land surveyors available to provide tribal organizations with whatever technical guidance or administrative support is necessary to adequately address the required elements of an ISDA proposal. Our agency recognizes its responsibility in this regard and is currently in the process of developing guidelines for the administration of this program.

The Cadastral Survey Division (Alaska) negotiated and awarded the first ISDA contract for the Bureau in September of 1992. This contract was signed with Copper River Native Association for the survey of thirty Native allotment parcels in the Ahtna region near Chistochina, AK. Throughout this process our staff researched existing law and consulted with officials from various agencies to determine what ISDA policies had already been established. Since that time twelve additional ISDA contracts have been signed with qualified tribal organizations to perform large-scale cadastral surveys throughout Alaska.

In developing a policy for BLM, our staff has been directed to rely primarily on statutory and case law. Unfortunately many issues have arisen which are not specifically addressed by the language in the law. In these instances, our staff will rely on legal opinions from our solicitor's office and language in the draft regulations, which although fairly complete, are still undergoing a formal review process. Our office has been advised that the original regulations (25CFR) do not apply to BLM programs or projects, because they were promulgated prior to the 1987 amendments (P.L. 100-472). This position has been formally stated in a solicitor's response to a case now pending before the Interior Board of Land Appeals (No. 90-442).

#### Review and Approval / Declination

The first step in the review process is formal acknowledgment by the State Director upon receipt of the ISDA proposal. Following this, BLM staff members review the proposal for completeness to determine whether all of the required elements are adequately addressed.

If the proposal lacks critical information which prevents its evaluation in light of the declination criteria, BLM will consider it to be an incomplete application to contract and notify the tribal organization in writing of any missing items. Following this, BLM staff members will work with the tribal organization to correct these deficiencies.

Once the ISDA proposal is complete a formal acknowledgment will be made by the State Director and our staff will begin to negotiate technical and cost items during a sixty (60) day review period. If agreement can be reached on all major issues the proposal will be forwarded to the BLM Director in Washington, D.C. for his approval. If negotiations break down every effort will be made to find an agreeable compromise within the framework of the law. If declination issues result in an impasse, the proposal will be formally declined and the tribal organization may seek judicial relief through the appeal process.

#### Contract Preparation / Issuance

Once the BLM Director has officially approved an ISDA survey proposal, the Denver Service Center staff, Branch of Procurement will prepare the contract documents over a thirty (30) day period. Because this work is considered A&E (architectural or engineering) due to recent Brook's Act amendments (P.L. 100-656 and P.L. 100-679), BLM will require a Standard Form 26 contract format very similar to those used with private land surveying firms. All Federal Acquisition Regulations normally applied to these contracts will be utilized and standard BLM clauses will be modified as necessary to



conform with provisions of the ISDA. The contract document will be awarded as a firm fixed-price contract. Line item unit prices will be negotiated with the tribal organization to accommodate any changes to the estimated quantities and payment will be made based upon the percentage of work completed. Any advance payments will be negotiated as provided for in the law to accommodate a tribal organization's specific concerns. Standard procedures for inspection and monitoring will be employed to insure the integrity of the survey and mitigate any potential for a conflict of interest. This will also provide the tribal organization access to BLM personnel for technical assistance and whatever guidance may be necessary to successfully complete their survey project.

#### Conclusion

Beginning with the Land Ordinance of 1785, BLM (and former agencies) have been responsible for surveying and patenting the public domain lands of the United States. With the passage of the Indian Self-Determination Act, BLM is now responsible for providing technical assistance to tribes which desire to assume a greater role in the administration of land survey projects within their region. By promoting the greatest possible spirit of cooperation it is our hope that these changes can be accomplished in an atmosphere of good will and that everyone will benefit from the increased tribal involvement that the law provides for.