

Self-Governance Negotiation Process

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Agenda

- Introduction to the negotiation process
 - What are self-governance negotiations?
 - Negotiation Teams
 - Title V implementing documents
- Overview of the negotiation cycle
 - Planning
 - Pre-negotiations
 - Negotiations
 - Post-negotiations
- Negotiation best practices

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Introduction to the Negotiation Process

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What are self-governance negotiations?



- A collaborative process for entering the Tribal Self-Governance Program (TSGP).
- The method of determining and agreeing upon terms and provisions of a Tribe's compact and funding agreement, the implementing documents for the TSGP.
- A four-stage process, including planning, pre-negotiations, negotiations, and post-negotiations.

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What are self-governance negotiations?



Negotiations are an opportunity for both sides to work together in good faith to enhance each self-governance agreement. This is not an allocation process; it is an opportunity to review and discuss budget and program issues.

The design of the process:

- Allows a Tribe to set its own priorities when assuming responsibility for PSFAs.
- Observes the nation-to-nation relationship between the US and each Tribe.
- Involves active participation of both Tribal and IHS representatives, including the Office of Tribal Self-Governance (OTSG).

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Who negotiates?

- IHS negotiation teams are lead by an **Agency Lead Negotiator (ALN)**. The ALN is the *only* person with authority to negotiate self-governance compacts and funding agreements on behalf of the IHS Director (who has been delegated this authority by the Secretary of the Dept. of Health & Human Services (HHS)).
- The ALN is supported by a federal negotiation team, which includes an OTSG program and financial analyst, a representative of the Office of the General Counsel, and other IHS subject matter experts, as needed.

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Who negotiates?

- Tribal negotiation teams vary in composition.
- For example, some Tribes prefer that a Tribal Leader head up the negotiation team, while others choose their Health Director or Clinic CEO.
 - It is important to inform the ALN who has the authority to negotiate the compact and/or funding agreement on the Tribe's behalf.
- Tribal negotiation teams generally also include either in-house or outside legal counsel and someone from the finance office.

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What are we negotiating?

- 2 documents are produced through TSGP negotiations:
 - A compact and
 - A funding agreement.
- These documents are mutually-negotiated agreements which are legally binding and enforceable once signed by both parties.
- Either the compact or the funding agreement may be renegotiated at the request of the Tribe.

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What are we negotiating?

- Both a compact and a funding agreement are necessary to participate in the TSGP.
 - They are read together as the expression of the agreement between the parties.
- Generally, each Tribe or Tribal Organization will have one compact and one funding agreement.
 - In some cases (Alaska Area, Navajo Area) there may be one compact with multiple cosigners, each with their own funding agreement.

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What is a compact?

- Sets forth the general terms of the nation-to-nation relationship between the Tribe and the HHS Secretary and includes other terms that the parties intend to control from year to year.
- Although they sound similar, a self-governance compact is not the same as a Title I contract.
 - There is no model compact and only a small number of mandatory terms.
- Rather, each Tribe drafts a document that fits their unique situation.

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What is a funding agreement?

- Abbreviated as FA or MYFA (multi-year FA).
- The FA:
 - Describes the length of the agreement
 - Note: Although a finite term is specified, in the IHS TSGP, if a Tribe chooses not to renegotiate at the conclusion of the term, the FA will remain in effect until a subsequent FA is executed or the Tribe withdraws from the TSGP.
 - Identifies the Programs, Services, Functions or Activities (PSFAs), or portions thereof, that the Tribe will assume
 - Specifies the funding associated with those PSFAs
 - Includes terms required by law and other terms agreed to by the parties.
- There is no model FA, each is unique.

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Overview of the Negotiation Cycle

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4 Stages of Negotiation

1. **Planning**
 - Eligibility and mandatory planning phase for new Tribes
 - Program assessment and possible additional assumptions
2. **Pre-Negotiation**
 - Discuss questions on PSFAs or financial tables
 - Preparation of draft compact and FA
 - Pre-negotiation meeting to discuss draft documents
3. **Final Negotiations**
 - Resolution of remaining issues from pre-negotiation stage
 - Agreement on final documents
4. **Post-Negotiations**
 - How the documents are processed
 - How you get paid

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Pre-Negotiation



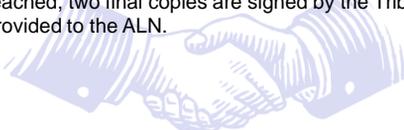
- Most of the time, this stage is the most work.
- It includes:
 - Review and discussion of issues identified during planning
 - Drafting or editing the compact & FA (typically by the Tribe)
 - Tribes are often willing to share their documents with other Tribes for reference. The ALN can help make appropriate referrals.
 - Review and discussion of the draft compact, FA, and funding tables
 - **Pre-negotiation meeting:** either in-person or by phone with both negotiation teams to discuss any questions or concerns regarding the documents and tables.
 - This meeting and the subsequent discussion (often by email) are very important. Working out most of the issues ahead of

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Final Negotiations

- Having reviewed and discussed the draft documents, the negotiation teams work together to reach agreement on the final documents.
- This meeting may occur in-person or by phone. Generally, OTSG recommends in-person negotiations for Tribes new to the program.
- Once agreement on the final documents has been reached, two final copies are signed by the Tribe and provided to the ALN.



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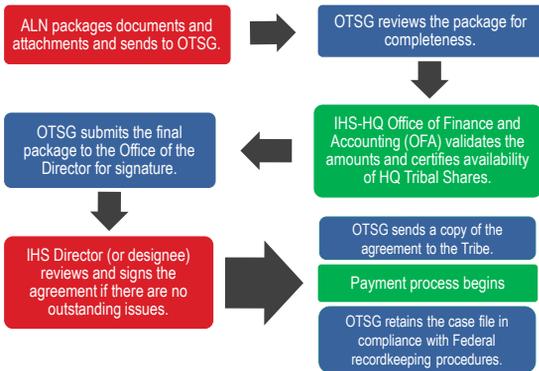
Post Negotiation

- After the documents have been signed by the Tribe and returned to the ALN, the ALN will review the documents, package them together with supporting information, and submit them to HQ for processing and signature.
- Once the compact and FA have been signed by both parties, they become legally binding and enforceable.

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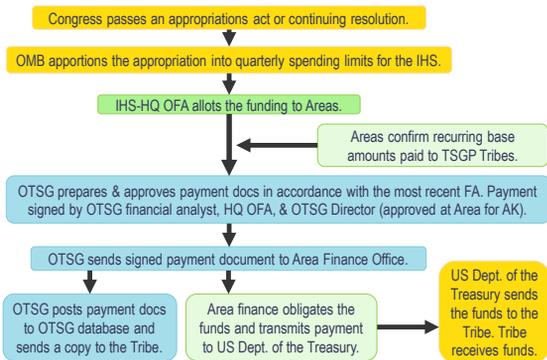
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TSGP Document Processing



TSGP Payment Process

A signed compact and FA must be in place for the payment process to begin.



Negotiation Best Practices

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3 Negotiation Stumbling Blocks

- Time
- Communication
- Paperwork

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Time: Not too fast; not too slow

- Preparation is essential to successful negotiations. Trying to rush through getting an agreement negotiated almost never goes well.
 - Both teams need enough time to review documents, formulate questions, gather information, formalize positions on issues, and consider possible solutions.
 - The pre-negotiation meeting is worth the extra time.
- On the other hand, negotiation teams need to stay in regular communication. When months pass between calls or meetings, it is easy to lose track.

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Communication

- Clearly identify a lead negotiator and negotiation team members and share that information with the ALN.
- If possible, include all team members on emails containing draft documents and negotiation-related communication. That way, everyone has access to the most up-to-date information and document versions.
- Internal team calls are helpful to get everyone on the same page.
- For pre or final negotiation meetings, an agenda helps clearly communicate expectations for the meeting, keep everyone on task, and ensure nothing

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Paperwork

- Negotiations can feel like this....



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Paperwork 2 best practices for keeping it all straight

1. Version Control
 - Mark draft documents and notes with dates and descriptors in file names or headers/footers.
 - E.g. Tribename IHS FY2015 FA draft 9-29-14.doc or "Notes from internal team call in preparation for 9-29-14 pre-negotiation meeting"
 - Then you can refer to the draft date to make sure everyone is working off the same version.

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Paperwork

2 best practices for keeping it all straight

2. Issue Tracking

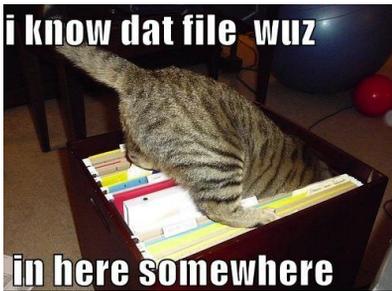
- Sometimes there are a lot of questions or discussion items on draft agreements.
- Compiling these in a list, rather than just using track changes, can be a good way to ensure that each issue is resolved and that the decisions are listed in one place.
- To track issue resolution over multiple calls, meetings, and email chains, an excel spreadsheet can be used.
- This can be especially helpful if some issues seemed to be resolved but were then reopened in a subsequent meeting.

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Paperwork

- The goal is to minimize time doing this..



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