



## Management Contracts & Background Investigations



**KEY POINTS:**

Welcome to Management Contracts and Background Investigations.

**NOTES:**

# Learning Objectives



- IGRA and NIGC Requirements
- Timeline
- Submission and Approval Process
- Background Investigation Process

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Industry Integrity    Agency Accountability    Preparedness    Outreach

**KEY POINTS:**

**NOTES:**

**Management  
Contract Approval**

**Background Investigations  
And Suitability Determinations**

**IGRA**

**Requirements**

**Management  
Contract Content  
Requirements**

**Contract Length And Fees**

**KEY POINTS:**

IGRA Requirements

- Management Contracts must be approved by the NIGC Chairperson.
- Managers of Class II facilities are subject to Background Investigations and Suitability Determinations.
- Management contract content requirements.
- Restrictions on contract length and fees.

**NOTES:**



**KEY POINTS:**

IGRA Requirements

- Circumstances when the Chair must disapprove.
- Unapproved management contracts are void.
- Amendments to existing management contracts must also be approved.
- A management company may not act under the terms of a management contract, or an amendment, prior to approval.

**NOTES:**

# NIGC Regulations

- Approved management contracts must comply with IGRA and 25 CFR parts:
  - 531 – Content of Management Contracts
  - 533 – Approval of Management Contracts
  - 535 – Post-Approval Procedures
  - 537 – Background Investigations

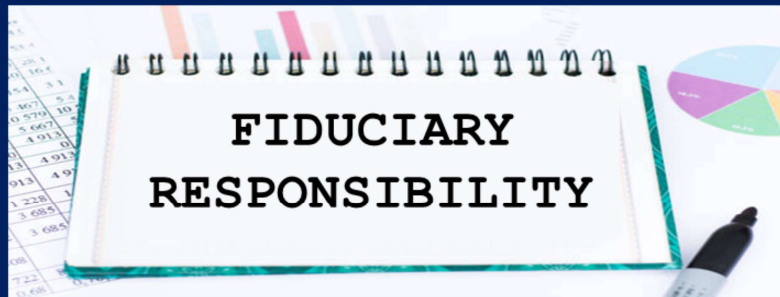
- An unapproved contract is **void** (*25 CFR 533.7*);
  - Managing without an approved contract is a substantial violation of IGRA

**KEY POINTS:**

**NOTES:**

# NIGC Regulations

The NIGC Chair has a fiduciary responsibility to tribes when reviewing contracts. The Chair must disapprove a contract that a trustee, exercising the skill and diligence to which a trustee is held, would not approve. 25 C.F.R. § 533.6(b)(4).



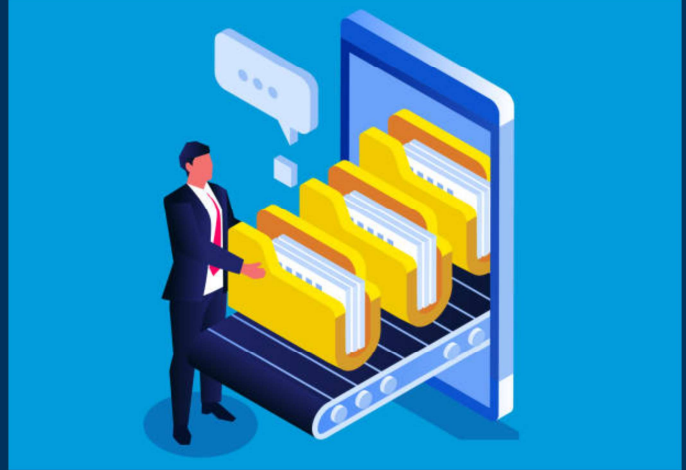
**KEY POINTS:**

**NOTES:**

# Timeline



Management Contract submission is processed and reviewed based on the order received.



**KEY POINTS:**

The management contract submission is based on order received.

**NOTES:**

The approval process & length of the review is dependent upon several factors:

- Completeness of each submission and responsiveness of the parties
- Significance of, and time required to, resolve issues discovered
- Governmental review processes or lawsuits
- Complexity of contract and background investigation

**KEY POINTS:**

The approval process & length of the review is dependent upon several factors:

- Completeness of each submission, responsiveness of the parties, and degree to which the submission meets requirements of the law and regulations
- Significance of, and time required to, resolve issues discovered
- Governmental review processes or lawsuits
- Complexity of contract, including collateral documents, and individuals and entities subject to the background investigation

**NOTES:**



## Submission and Approval Process



- Review submission documents
- Review management contract and collateral documents and review financial projections
- Background investigations process initiated
- Resolve and clear parties responses
- Present management contract and background investigation reports to NIGC Chair for decision
- Issue decision letter

### **KEY POINTS:**

#### Submission and Approval Process

- Review submission documents - send Submission Deficiency letter
- Review management contract and collateral documents for compliance with IGRA and NIGC regulations, review financial projections - send Issues letter
- Background investigations process initiated
- Resolve and clear parties responses to Submission Deficiency and Issues letters
- Present management contract and background investigation reports to NIGC Chair for approval/disapproval decision
- Issue approval/disapproval letter

### **NOTES:**

## Submitters Responsibilities



Submit documents  
in accordance with  
25 CFR Parts 531,  
533 & 537



### **KEY POINTS:**

- Tribe and manager must submit management contract and relevant documents in accordance with 25 CFR Parts 531, 533 and 537 to NIGC.
- To avoid delays, parties should be prompt in responding to inquiries and requests for additional information from NIGC throughout the review.

### **NOTES:**



# What is a Management Contract ?

## KEY POINTS:

Definition of Management Contracts (*25 CFR 502.15*): Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

Management encompasses activities such as: Planning; Organizing; Directing; Coordinating; and Controlling [see NIGC Bulletins 94-5 and 2021-3].

Declination Letters:

- If a tribe or a contractor is uncertain whether a gaming-related agreement requires the approval of the NIGC Chair as a management contract or violates the sole proprietary interest provision, they should submit those agreement to the NIGC for review [ see NIGC Bulletins 94-5 and 2021-3].

## NOTES:

## Submission Requirements (25 CFR Part 533)

The contract must be submitted within 60 days of execution.



**KEY POINTS:**

The contract must be submitted within 60 days of execution.

**NOTES:**

## The submission must include:

- Original signatures
- A representation that the contract represents the entire agreement
- A letter from the Tribal Chair
- List of all persons and entities
- Business plan & Financial projections
- Legal land description
- Justification for term in excess of 5 years
- Justification for management fee in excess of 30%.

### **KEY POINTS:**

The submission must include:

- Contract with original signatures of the Tribe and management contractor;
- A representation that the contract represents the entire agreement;
- A letter from the Tribal Chair, setting forth the authority of an authorized tribal official to execute the agreement with copies of resolutions;
- List of all persons and entities with a financial interest in, or having management responsibilities for, the contract
  - Applications, if applicable
  - Deposit from Manager towards cost of background investigations
- A business plan and financial projections
- Legal land description of the proposed site
- Justification for term in excess of 5 years; and
- Justification for management fee in excess of 30%.

### **NOTES:**

# Content Requirements



## Management Contract Checklist (25 C.F.R. § 531.1)

### KEY POINTS:

#### Management Contract Checklist (25 C.F.R. § 531.1)

- Gaming conducted in accordance with IGRA & tribal ordinances
- Establish responsibilities of each party for management of facility and operations
- Provide for adequate accounting systems & procedures
- Provide dispute resolution mechanisms
- Provide Minimum Guaranteed Monthly Payment
- Management fee calculation - meets Regulations  $\leq 30\%$  or  $\leq 40\%$  cap
- Contract term - meets Regulations –  $\leq 5$  or  $\leq 7$  years
- Tribe has immediate access to daily operations
- Agreed max development & construction costs
- Defines Effective Date - requires NIGC approval
- Addresses termination, amendments & mods

### NOTES:

## Management Fee

**Percentage  
of Net  
Revenue**

**Not  
Exceed  
30% of  
Net  
Revenue**

**Chair May  
Approve a  
Fee up to  
40%**

### KEY POINTS:

25 CFR § 531.1(i)

- Management contract fee based upon a percentage of Net Revenue must be reasonable in light of the surrounding circumstances.
- Generally, fee shall not exceed 30% of Net Revenue.
- The Chair may approve a fee of up to 40% of Net Revenue under certain circumstances.

### NOTES:

# Who must have a background investigation completed?



## KEY POINTS:

### Background Investigations

- Includes all persons and entities that have a financial interest in, or management responsibility for, the management contract (*25 CFR Part 537*)
  - Including Directors of entities that are required to file applications.
- For contracts involving class II gaming each person must complete items required under Part 537 as outlined in the submission instructions for background investigations, which includes finger prints, an Office of Personnel Management (OPM) application form and the NIGC Supplemental Information form

## NOTES:



**Amendments  
Must Be Approved**

**No Management Under  
Amendment Until  
Approved**

**Tribe Submits Amendment**

**NIGC Review  
Of  
Amendments**

**KEY POINTS:**

Amendments and Extensions

- Amendments to existing management contracts must also be approved.
- A management company may not act under the terms of an amendment to an existing management contract, prior to approval by NIGC Chair.
- Tribe submits an amendment and relevant documents in accordance with 25 CFR Part 535
- NIGC staff review amendment and collateral documents under the same criteria as management contracts
  - Submission deficiency letter sent for any missing information or documents
  - NIGC sends issues letters to parties to address issues/concerns identified during review

**NOTES:**

## **Under what circumstances would the Chairman disapprove a contract?**




### **KEY POINTS:**

The Chair shall not approve a contract if any person having a direct financial interest in, or management responsibility under the contract (25 U.S.C. § 2711(e)(1)):

- Is an elected member of the Tribe;
- Convicted of a felony or gaming offense;
- Knowingly and willfully provided materially important false statements or information to the NIGC or the Tribe;
- If the management contractor refuses to respond to questions asked by the Chair.; or
- Determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulations and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

### **NOTES:**



**Are there any other circumstances that the Chairman would disapprove a contract?**

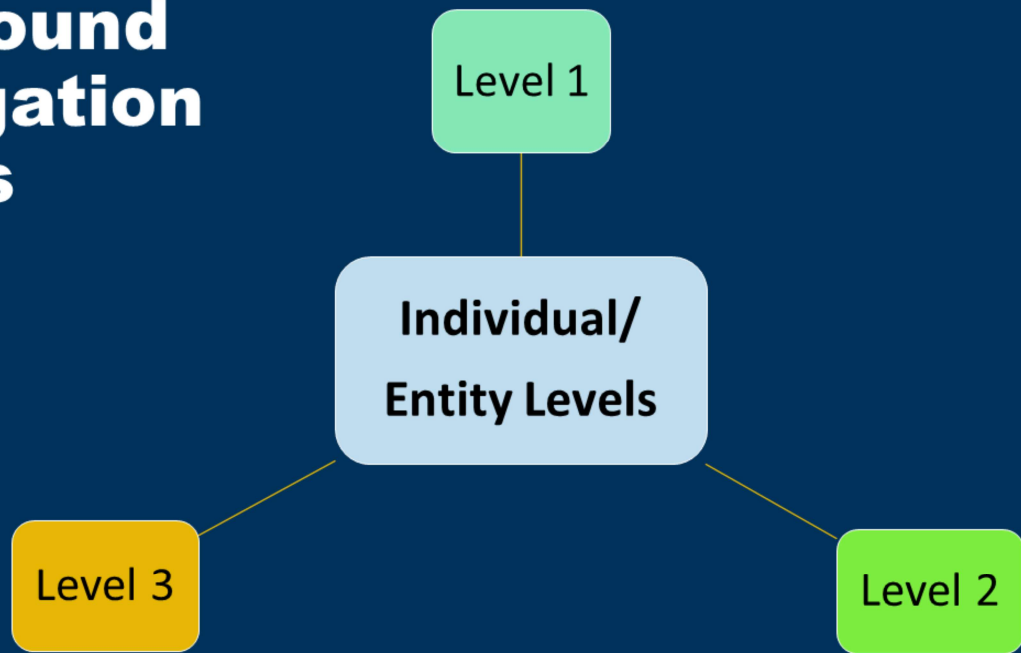
**KEY POINTS:**

The Chair shall not approve a contract if (25 U.S.C. § 2711(e)(2)):

- The management contractor has or has attempted to unduly interfere or influence for its gain or advantage any Tribal decision or process relating to the gaming activity.
- The management contractor deliberately or substantially failed to comply with the terms of the management contract or gaming ordinance.
- A trustee, exercising the skill and diligence that a trustee is commonly held to would not approve the contract.

**NOTES:**

# Background Investigation Process



## KEY POINTS:

See Handout #1

## NOTES:

# Background Investigation Process

Information Collection

Analysis

Follow Up

Report

**KEY POINTS:**

See Handout #2

**NOTES:**

# Chair Approval



- Submit decision package to the Chair
- Considerations for the Chair's approval/ disapproval determination of contract (*25 CFR 533.6*), amendments/modifications (*25 CFR 535.1(e)*)
- NIGC Chair may void, or require modifications of, an approved contract

## KEY POINTS:

### Chair Approval

- NIGC staff submit completed review and background investigations to the Chair
- Considerations for the Chair's approval/ disapproval determination of contract (*25 CFR 533.6*), Amendments/modifications (*25 CFR 535.1(e)*)
- NIGC Chair may void, or require modifications of, an approved contract if Chair learns of any actions or conditions that violate standards of Parts 531, 533, 535 or 537

## NOTES:

# Questions



## KEY POINTS:

Thank you for joining us today.

## NOTES:



If you have any questions  
or comments please send  
them to  
[TRAININGINFO@nigc.gov](mailto:TRAININGINFO@nigc.gov)

**KEY POINTS:**

**NOTES:**



# Handout #1 - Entity and Individual Background Levels

<b>ENTITY BACKGROUND</b>	<b>LEVEL 1</b>
	Minimum 5 year business record review that may be extended due to project timeline or staff discretion
	<p><b>Management Contract Entity</b> - This is the entity that is on the management contract.</p> <p><b>Main Operating Entity</b> - controls the operations, pay bills, signs contracts - Caesars Operating Co., Station Casinos, ...</p> <p>* Major Financial Interest Entities</p>
	<b>LEVEL 2</b>
	Minimum 3 year business record review or until previous investigation was completed
	* Minor Financial Interest
	<b>LEVEL 3</b>
	Minimal Financial Review and Background Checks at staff discretion
	<p><b>Flow Through Entities</b> where financial interest passes through to another entity for tax or liability purposes</p> <p><b>Non Control Entities</b> - Trusts/Special Purpose Entities</p> <p><b>Institutional Investors</b></p> <p><b>Entities for Class III Only Contracts</b></p> <p><b>Reduced Scope of Investigation</b></p>

<b>INDIVIDUAL BACKGROUND</b>	<b>LEVEL 1</b>
	Minimum 5 year financial review with background investigation extended back to 7 years or age 18 at staff discretion
	<p>Individuals with <b>Management Responsibility</b> - as designated by the contract or contractor to have management responsibility for the contract</p> <p>* <b>Major Financial Interest</b></p> <p><b>General Manager, CFO, or Other Manager's Onsite Personnel</b></p> <p><b>Inside Director</b> -A director who is an employee, officer or stakeholder in the company</p>
	<b>LEVEL 2</b>
	Minimum 3 year financial record review or until previous investigation was completed
	<p><b>Independent Director</b> does not have a material relationship with company or related persons</p> <p>* <b>Minor Financial Interest</b></p> <p>Update of <b>Inside Director</b></p> <p>Update of Secondary Individuals with <b>Management Responsibility</b></p>
	<b>LEVEL 3</b>
	Minimal Financial Review and Background Checks at staff discretion
	<p><b>Beneficiaries &amp; Trustees</b></p> <p>Update of <b>Independent Director</b></p> <p>* Update of <b>Minor Financial Interest</b></p> <p><b>Individuals for Class III Contracts</b></p>

\* subject to resolution of top ten vs. over 10% financial interest

# HANDOUT #2

## Task Description - Business Entity Financial Background Investigation:

Review NIGC Business Entity Background Application  
Prepare/Send Initial Document Request Letter  
Initial Applicant Interview/Contact

Review Entity Organizational Documentation/Ownership Verification  
Review Litigation  
Conduct Court Checks  
Review Minutes of Meetings/Committees  
Analyze Organizational Chart(s)  
Review Consulting Agreements  
Review Regulatory History  
Follow Up with Regulatory Authorities  
Review Existing Gaming Operations  
Review/Analyze Tax Returns  
CPA Review and Follow Up  
Review Development loan accounts  
Review Chart of Accounts  
Review Cash Receipts, Disbursement Journals and General Ledgers  
Review Notes Payables / Receivables  
Review Loan / Debt Agreements  
Review Entity Vendor List  
Review Accounts Payable Files  
Internal Auditors Review  
Review Stock Exchange - Public Information  
Review Investment Analyst Reports  
Review Stock Option / Incentive / Bonus Plan(s)  
Online Record Searches  
Online Court Checks

Supplemental Document Request Letter(s)  
Interim Applicant Interview  
Submit preliminary status report

Report Writing  
Report Review  
Final Applicant Interview  
Submit Final Report

## Task Description - Individual Background Investigation:

Review NIGC Individual Background Application

Prepare/Send Initial Document Request Letter

Database Searches

IRS 8821 Request/Review

Review/Analysis of Individual Federal Tax Returns

Review of CPA Work Papers

Review/Analysis of Bank/Brokerage Statements

Review of Financial Statements

Cash flow analysis

Review of Real Estate Documents

Review of Accounts/Notes Receivable

Review of Accounts/Notes Payable

Review of Other Related Financial Documents

Litigation Review

Federal/State/Local Court Checks

Review Regulatory History - Contact Jurisdictions

Review of Business Investments: Net Worth

Individual Business Investment - Background - Litigation

Individual Business Investment - Background - Correspondence

Individual Business Investment - Background - Formation Docs

Individual Business Investment - Background - Business Partners

Individual Business Investment - Background - Meeting Minutes

Individual Business Investment - Financial - Chart of Accounts

Individual Business Investment - Financial - G/L's

Individual Business Investment - Financial - Bank Records

Individual Business Investment - Financial - AP/AR

Individual Business Investment - Financial - Cash Disb journals

Individual Business Investment - Financial - Tax Returns

Individual Business Investment - Financial - Real Estate mortgages

Individual Business Investment - Financial - Notes Rec/pay

Individual Business Investment - Financial - Cont. Liabilities

Individual Business Investment - Financial - Lease/Credit

Individual Business Investment - Financial - Financial Stmt

Online Record Searches

Supplemental Document Request Letter(s)

Interim Applicant Interview

Submit preliminary status report

Report Writing

Report Review

Final Applicant Interview

Submit Final Report