

§ 1000.22

officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with the following sec-

24 CFR Ch. IX (4-1-03 Edition)

tions of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For purposes of this part, "grantee" as defined in 24 CFR part 85 has the same meaning as "recipient."

(1) Section 85.3, "Definitions."

(2) Section 85.6, "Exceptions."

(3) Section 85.12, "Special grant or subgrant conditions for 'high risk' grantees."

(4) Section 85.20, "Standards for financial management systems," except paragraph (a).

(5) Section 85.21, "Payment."

(6) Section 85.22, "Allowable costs."

(7) Section 85.26, "Non-federal audits."

(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 85.33, "Supplies."

(10) Section 85.35, "Subawards to debarred and suspended parties."

(11) Section 85.36, "Procurement," except paragraph (a). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(12) Section 85.37, "Subgrants."

(13) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, “Financial reporting,” except paragraphs (a), (b), and (e).

(15) Section 85.44, “Termination for convenience.”

(16) Section 85.51 “Later disallowances and adjustments.”

(17) Section 85.52, “Collection of amounts due.”

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A-87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24

CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient’s written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient’s program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.