

§ 1003.509

24 CFR Ch. IX (4-1-05 Edition)

determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

§ 1003.509 Force account construction.

(a) The use of tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by the Area ONAP before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, the area ONAP may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(3) Information showing that the workers to be used are, or will be, listed on the tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 1003.305 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 1003.510 Indian preference requirements.

(a) Applicability. HUD has determined that grants under this part are

subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, sub-contract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act [25 U.S.C. 450b] defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) *economic enterprise* is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines *Indian organization* to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A grantee, at its discretion, may require information of prospective con-

tractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the

§ 1003.511

24 CFR Ch. IX (4-1-05 Edition)

project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section:

(1) Each complaint shall be in writing, signed, and filed with the grantee.

(2) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 1003.511 Use of escrow accounts for rehabilitation of privately owned residential property.

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 1003.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties con-

taining no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the grantee, by a subrecipient as defined in § 1003.4, by a public agency designated under § 1003.500(a), or by an agent under a procurement contract governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6-2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the grantee's administrative costs under § 1003.206 or rehabilitation services costs under § 1003.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal ICDBG payment procedures (e.g., from withdrawals of grant funds under the grantee's line of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance