

§ 1000.400

support some or all of the costs of investment services.

§ 1000.400 Can a Tribe/Consortium retain savings from programs?

Yes, for BIA programs, the Tribe/Consortium may retain savings for each fiscal year during which an AFA is in effect. A Tribe/Consortium must use any savings that it realizes under an AFA, including a construction contract:

- (a) To provide additional services or benefits under the AFA; or
- (b) As carryover; and
- (c) For purposes of this subpart only, programs administered by BIA using appropriations made to other Federal agencies, such as the Department of Transportation, will be treated in accordance with paragraph (b) of this section.

§ 1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?

This section applies to BIA programs, services, functions, or activities, notwithstanding any other provision of law. Any funds appropriated under the Snyder Act of 1921 (42 Stat. 208), for any fiscal year that are not obligated or spent by the end of the fiscal year for which they were appropriated shall remain available for obligation or expenditure during the following fiscal year. In the case of amounts made available to a Tribe/Consortium under an AFA, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used under the provisions of §106(a)(3) of the Act, no additional justification or documentation of such purposes need be provided by the Tribe/Consortium to the Secretary as a condition of receiving or expending such funds.

§ 1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?

The bureau may request the return of funds already transferred to a Tribe/Consortium only under the following circumstances:

- (a) Retrocession;
- (b) Reassignment;

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(c) Construction, when there are special legal requirements; or

(d) As otherwise provided for in the AFA.

§ 1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?

(a) *BIA programs.* A person or group who is aggrieved by an action of a Tribe/Consortium with respect to programs that are provided by the Tribe/Consortium under an AFA must follow Tribal administrative procedures.

(b) *Non-BIA programs.* Procedures will vary depending on the program. Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the relevant bureau's appeal procedures.

§ 1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81; 82a; and 476 regarding professional and attorney contracts?

No, for the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81, 82a, and 476, do not apply to attorney and other professional contracts by participating Tribes/Consortia.

§ 1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?

Yes, self-governance AFA funds can be treated as non-Federal funding for the purpose of meeting matching requirements under Federal law.

§ 1000.406 Does Indian preference apply to services, activities, programs, and functions performed under a self-governance AFA?

Tribal law must govern Indian preference in employment, where permissible, in contracting and subcontracting in performance of an AFA.

§ 1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

No, wage and labor standards of the Davis-Bacon Act do not apply to employees of Tribes and Tribal Consortia.

They do apply to all other laborers and mechanics employed by contractors and subcontractors in the construction, alteration, and repair (including painting or redecorating of buildings or other facilities) in connection with an AFA.

SUPPLY SOURCES

§ 1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?

A Tribe/Consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) that must be available to the Tribe/Consortium and to its employees to the same extent as if the Tribe/Consortium were a Federal agency. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribe/Consortium to resolve any barriers to full implementation that may arise. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribes/Consortia to resolve any barriers to full implementation that may arise to the fullest extent possible.

PROMPT PAYMENT ACT

§ 1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?

Yes, upon mutual agreement of the parties, an AFA may incorporate the Prompt Payment Act.

Subpart R—Appeals

§ 1000.420 What does “Title-I eligible programs” mean in this subpart?

Throughout this subpart, the phrase “Title I-eligible programs” is used to refer to all programs, functions, services, and activities that the Secretary provides for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which the programs, functions, services, and activities have been performed.

§ 1000.421 What is the purpose of this subpart?

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of an AFA or compact and certain other disputes related to self-governance. It also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

- (a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes;
- (b) The Interior Board of Contract Appeals (IBCA) for certain post-AFA disputes;
- (c) The Assistant Secretary for the bureau responsible for certain disputed decisions;
- (d) The Secretary for reconsideration of decisions involving self-governance compacts; and
- (e) The agency head for certain pre-award AFA disputes.

§ 1000.422 How must disputes be handled?

- (a) The Department encourages its Bureaus to seek all means of dispute resolution before the Tribe/Consortium files a formal appeal(s).
- (b) Disputes shall be addressed through government-to-government discourse. This discourse must be respectful of government-to-government relationships and relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes.
- (c) Title I-eligible program disputes may use an informal conference as set forth in 25 CFR 900.153–157.
- (d) All disputes arising under this rule, including but not limited to Title I-eligible program disputes may use non-binding informal alternative dispute resolution at the option of the Tribe/Consortium, as prescribed in § 402 of this subpart. The Tribe/Consortium may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal(s). The appeals timetable will be suspended while alternative dispute resolution is pending.