

**§ 137.378**

regulation pertaining to Federal procurement (including Executive Orders) shall apply to any construction project conducted under section 509 of the Act [25 U.S.C. 458aaa-8]. The Secretary and the Self-Governance Tribe may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction project agreement or funding agreement. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

**§ 137.378 Do the Federal Davis-Bacon Act and wage rates apply to construction projects performed by Self-Governance Tribes using their own funds or other non-Federal funds?**

No, the Federal Davis-Bacon Act and wage rates do not apply to construction projects performed by Self-Governance Tribes using their own funds or other non-Federal funds.

**§ 137.379 Do Davis-Bacon wage rates apply to construction projects performed by Self-Governance Tribes using Federal funds?**

Davis-Bacon Act wage rates only apply to laborers and mechanics employed by the contractors and subcontractors (excluding Indian Tribes, inter-Tribal consortia, and Tribal organizations) retained by Self-Governance Tribes to perform construction. The Davis-Bacon Act and wage rates do not apply when Self-Governance Tribes perform work with their own employees.

**Subpart O—Secretarial Responsibilities**

**BUDGET REQUEST**

**§ 137.401 What role does Tribal consultation play in the IHS annual budget request process?**

The IHS will consult with Tribes on budget issues consistent with Administration policy on Tribal consultation.

**42 CFR Ch. I (10–1–06 Edition)**

**REPORTS**

**§ 137.405 Is the Secretary required to report to Congress on administration of Title V and the funding requirements presently funded or unfunded?**

Yes, no later than January 1 of each year after the date of enactment of the Tribal Self-Governance Amendments of 2000, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a written report regarding the administration of Title V. The report shall include a detailed analysis of the funding requirements presently funded or unfunded for each Indian Tribe or Tribal organization, either directly by the Secretary, under self-determination contracts under Title I, or under compacts and funding agreements authorized under Title V.

**§ 137.406 In compiling reports pursuant to this section, may the Secretary impose any reporting requirements on Self-Governance Tribes, not otherwise provided in Title V?**

No, in compiling reports pursuant to this section, the Secretary may not impose any reporting requirements on Self-Governance Tribes, not otherwise provided in Title V.

**§ 137.407 What guidelines will be used by the Secretary to compile information required for the report?**

The report shall be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds. The report must identify:

- (a) The relative costs and benefits of self-governance, including savings;
- (b) With particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance Tribes and their members;
- (c) The funds transferred to each Self-Governance Tribe and the corresponding reduction in the Federal bureaucracy;

(d) The funding formula for individual Tribal shares of all headquarters' funds, together with the comments of affected Self-Governance Tribes, developed under §137.405 of this subpart; and

(e) Amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location.

### Subpart P—Appeals

**§ 137.410 For the purposes of section 110 of the Act [25 U.S.C. 450m-1] does the term contract include compacts, funding agreements, and construction project agreements entered into under Title V?**

Yes, for the purposes of section 110 of the Act [25 U.S.C. 450m-1] the term "contract" includes compacts, funding agreements, and construction project agreements entered into under Title V.

#### POST-AWARD DISPUTES

**§ 137.412 Do the regulations at 25 CFR Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V?**

Yes, the regulations at 25 CFR Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V.

#### PRE-AWARD DISPUTES

**§ 137.415 What decisions may an Indian Tribe appeal under § 137.415 through 137.436?**

An Indian Tribe may appeal:

(a) A decision to reject a final offer, or a portion thereof, under section 507(b) of the Act [25 U.S.C. 458aaa-6(b)];

(b) A decision to reject a proposed amendment to a compact or funding agreement, or a portion thereof, under section 507(b) of the Act [25 U.S.C. 458aaa-6(b)];

(c) A decision to rescind and re-assume a compact or funding agreement, in whole or in part, under section 507(a)(2) of the Act [25 U.S.C. 458aaa-6(a)(2)], except for immediate reassumptions under section

507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)];

(d) A decision to reject a final construction project proposal, or a portion thereof, under section 509(b) of the Act [25 U.S.C. 458aaa-8(b)] and subpart N of this part; and

(e) For construction project agreements carried out under section 509 of the Act [25 U.S.C. 458aaa-8], a decision to reject project planning documents, design documents, or proposed amendments submitted by a Self-Governance Tribe under section 509(f) of the Act [25 U.S.C. 458aaa-8(f)] and subpart N of this part.

**§ 137.416 Do §§ 137.415 through 137.436 apply to any other disputes?**

No, §§137.415 through 137.436 only apply to decisions listed in §137.415. Specifically, §§137.415 through 137.436 do not apply to any other dispute, including, but not limited to:

(a) Disputes arising under the terms of a compact, funding agreement, or construction project agreement that has been awarded;

(b) Disputes arising from immediate reassumptions under section 507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)] and §137.261 and 137.262, which are covered under §137.440 through 137.445.

(c) Other post-award contract disputes, which are covered under §137.412.

(d) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 45 CFR part 5.

(e) Decisions relating to the award of grants under section 503(e) of the Act [25 U.S.C. 458aaa-2(e)], which may be appealed under 45 CFR part 5.

**§ 137.417 What procedures apply to Interior Board of Indian Appeals (IBIA) proceedings?**

The IBIA may use the procedures set forth in 43 CFR 4.22-4.27 as a guide.

**§ 137.418 How does an Indian Tribe know where and when to file its appeal from decisions made by IHS?**

Every decision in any of the areas listed in §137.415 must contain information which shall tell the Indian Tribe where and when to file the Indian Tribe's appeal. Each decision shall include the following statement: