

§ 900.66

which respond to the needs of the contracting parties and that are appropriate for the purposes of the contract. The extent of available resources will be a consideration in the negotiations.

§ 900.66 What happens if the Indian tribe or tribal organization and the Secretary cannot come to an agreement concerning the type and/or frequency of program narrative and/or program data report(s)?

Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E.

§ 900.67 Will there be a uniform data set for all IHS programs?

IHS will work with Indian tribe or tribal organization representatives to develop a mutually defined uniform subset of data that is consistent with Congressional intent, imposes a minimal reporting burden, and which responds to the needs of the contracting parties.

§ 900.68 Will this uniform data set be required of all Indian tribe or tribal organizations contracting with the IHS under the Act?

No. The uniform data set, applicable to the services to be performed, will serve as the target for the Secretary and the Indian tribes or tribal organizations during individual negotiations on program data reporting requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

§ 900.69 What is the purpose of this subpart?

Section 105(1) of the Act requires the Secretary, at the request of an Indian tribe or tribal organization, to enter into a lease with the Indian tribe or tribal organization for a building owned or leased by the tribe or tribal organization that is used for administration or delivery of services under the Act. The lease is to include compensation as provided in the statute as well as “such other reasonable expenses that the Secretary determines, by regulation, to be allowable.” This subpart contains requirements for these leases.

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§ 900.70 What elements are included in the compensation for a lease entered into between the Secretary and an Indian tribe or tribal organization for a building owned or leased by the Indian tribe or tribal organization that is used for administration or delivery of services under the Act?

To the extent that no element is duplicative, the following elements may be included in the lease compensation:

- (a) Rent (sublease);
- (b) Depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds;
- (c) Contributions to a reserve for replacement of facilities;
- (d) Principal and interest paid or accrued;
- (e) Operation and maintenance expenses, to the extent not otherwise included in rent or use allowances, including, but not limited to, the following:
 - (1) Water, sewage;
 - (2) Utilities;
 - (3) Fuel;
 - (4) Insurance;
 - (5) Building management supervision and custodial services;
 - (6) Custodial and maintenance supplies;
 - (7) Pest control;
 - (8) Site maintenance (including snow and mud removal);
 - (9) Trash and waste removal and disposal;
 - (10) Fire protection/fire fighting services and equipment;
 - (11) Monitoring and preventive maintenance of building structures and systems, including but not limited to:
 - (i) Heating/ventilation/air conditioning;
 - (ii) Plumbing;
 - (iii) Electrical;
 - (iv) Elevators;
 - (v) Boilers;
 - (vi) Fire safety system;
 - (vii) Security system; and
 - (viii) Roof, foundation, walls, floors.
 - (12) Unscheduled maintenance;
 - (13) Scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting);
 - (14) Security services;
 - (15) Management fees; and

(16) Other reasonable and necessary operation or maintenance costs justified by the contractor;

(f) Repairs to buildings and equipment;

(g) Alterations needed to meet contract requirements;

(h) Other reasonable expenses; and

(i) The fair market rental for buildings or portions of buildings and land, exclusive of the Federal share of building construction or acquisition costs, or the fair market rental for buildings constructed with Federal funds exclusive of fee or profit, and for land.

§ 900.71 What type of reserve fund is anticipated for funds deposited into a reserve for replacement of facilities as specified in § 900.70(c)?

Reserve funds must be accounted for as a capital project fund or a special revenue fund.

§ 900.72 Who is the guardian of the fund and may the funds be invested?

(a) The Indian tribe or tribal organization is the guardian of the fund.

(b) Funds may be invested in accordance with the laws, regulations and policies of the Indian tribe or tribal organization subject to the terms of the lease or the self-determination contract.

§ 900.73 Is a lease with the Secretary the only method available to recover the types of cost described in § 900.70?

No. With the exception of paragraph (i) in § 900.70, the same types of costs may be recovered in whole or in part under section 106(a) of the Act as direct or indirect charges to a self-determination contract.

§ 900.74 How may an Indian tribe or tribal organization propose a lease to be compensated for the use of facilities?

There are three options available:

(a) The lease may be based on fair market rental.

(b) The lease may be based on a combination of fair market rental and paragraphs (a) through (h) of § 900.70, provided that no element of expense is duplicated in fair market rental.

(c) The lease may be based on paragraphs (a) through (h) of § 900.70 only.

Subpart I—Property Donation Procedures

GENERAL

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to Indian tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of BIA or IHS excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

GOVERNMENT-FURNISHED PROPERTY

§ 900.87 How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a self-determination contract.

(2) The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.