§ 137.336 What is the difference between fixed-price and cost-reimbursement agreements?

(a) Cost-reimbursement agreements generally have one or more of the following characteristics:

(1) Risk is shared between IHS and the Self-Governance Tribe;

(2) Self-Governance Tribes are not required to perform beyond the amount of funds provided under the agreement;

(3) Self-Governance Tribes establish budgets based upon the actual costs of the project and are not allowed to include profit;

(4) Budgets are stated using broad categories, such as planning, design, construction project administration, and contingency;

(5) The agreement funding amount is stated as a “not to exceed” amount;

(6) Self-Governance Tribes provide notice to the IHS if they expect to exceed the amount of the agreement and require more funds;

(7) Excess funds remaining at the end of the project are considered savings; and

(8) Actual costs are subject to applicable OMB circulars and cost principles.

(b) Fixed-Price agreements generally have one or more of the following characteristics:

(1) Self-Governance Tribes assume the risk for performance;

(2) Self-Governance Tribes are entitled to make a reasonable profit;

(3) Budgets may be stated as lump sums, unit cost pricing, or a combination thereof;

(4) For unit cost pricing, savings may occur if actual quantity is less than estimated; and

(5) Excess funds remaining at the end of a lump sum fixed price project are considered profit, unless, at the option of the Self-Governance Tribe, such amounts are reclassified in whole or in part as savings.

§ 137.337 What funding must the Secretary provide in a construction project agreement?

The Secretary must provide funding for a construction project agreement in accordance with sections 106 [25 U.S.C. 450j–1] and 508(c) of the Act [25 U.S.C. 488aaa–7(c)].

§ 137.338 Must funds from other sources be incorporated into a construction project agreement?

Yes, at the request of the Self-Governance Tribe, the Secretary must include funds from other agencies as permitted by law, whether on an ongoing or a one-time basis.