§ 137.336
and specifications, and to assist in
oversight of the design during con-
struction;
(4) Real property lease or acquisition;
(5) Development of project surveys
including topographical surveys, site
boundary descriptions, geotechnical
surveys, archeological surveys, and
NEPA compliance;
(6) Project management, super-
intendence, safety and inspection;
(7) Travel, including local travel in-
curred as a direct result of conducting
the construction project agreement and
remote travel in conjunction with
the project;
(8) Consultants, such as demographic
consultants, planning consultants, at-
torneys, accountants, and personnel
who provide services, to include con-
struction management services;
(9) Project site development;
(10) Project construction cost;
(11) General, administrative over-
head, and indirect costs;
(12) Securing and installing moveable
equipment, telecommunications and
data processing equipment, furn-
ishings, including works of art, and
special purpose equipment when part of
a construction contract;
(13) Other costs directly related to
performing the construction project
agreement;
(14) Project Contingency:
(i) A cost-reimbursement project
agreement budgets contingency as a
broad category. Project contingency
remaining at the end of the project is
considered savings.
(ii) Fixed-price agreements budget
project contingency in the lump sum
price or unit price.
(c) In the case of a fixed-price project
agreement, a reasonable profit deter-
mined by taking into consideration the
relevant risks and local market condi-
tions.
§ 137.336 What is the difference be-
 tween fixed-price and cost-reim-
bursement agreements?
(a) Cost-reimbursement agreements
generally have one or more of the fol-
lowing characteristics:
(1) Risk is shared between IHS and
the Self-Governance Tribe;
(2) Self-Governance Tribes are not re-
quired 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 in-
clude 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 ex-
ceed 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 appli-
cable OMB circulars and cost prin-
ciples.
(b) Fixed Price agreements generally
have one or more of the following char-
acteristics:
(1) Self-Governance Tribes assume
the risk for performance;
(2) Self-Governance Tribes are enti-
tled to make a reasonable profit;
(3) Budgets may be stated as lump
sums, unit cost pricing, or a combina-
tion thereof;
(4) For unit cost pricing, savings may
occur if actual quantity is less than es-
imated; 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 Sec-
retary 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.
458aaa–7(c)].
§ 137.338 Must funds from other
sources be incorporated into a con-
struction project agreement?
Yes, at the request of the Self-Gov-
ernance Tribe, the Secretary must in-
clude funds from other agencies as per-
mitted by law, whether on an ongoing
or a one-time basis.