

§ 137.336

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and specifications, and to assist in oversight of the design during construction;

(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, superintendence, safety and inspection;

(7) Travel, including local travel incurred 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, attorneys, accountants, and personnel who provide services, to include construction management services;

(9) Project site development;

(10) Project construction cost;

(11) General, administrative overhead, and indirect costs;

(12) Securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, 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 determined by taking into consideration the relevant risks and local market conditions.

§ 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. 458aaa-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.