

**§ 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.

(3) The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

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

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

(2) The Secretary shall inspect any real property on the list to determine

**§ 900.88**

**25 CFR Ch. V (4-1-11 Edition)**

the presence of any hazardous substance activity, as defined in 41 CFR 101-47.202.2(b)(10). If the Indian tribe or tribal organization desires to take title to any real property on the list, the Indian tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe or tribal organization.

(c) For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

(1) The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101-47.202.2(b)(10).

**§ 900.88 What should the Indian tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?**

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall take all necessary steps to effect a transfer of the land to the Secretary of the Interior and shall also forward the

Indian tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

**§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to an Indian tribe or tribal organization?**

(a) Except as provided in paragraph (b) of this section, when a self-determination contract or grant agreement, or portion thereof, is retroceded, re-assumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) That title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of \$5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, re-assumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

**§ 900.90 Does government-furnished real property to which an Indian tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?**

Yes.