

Bureau of Indian Affairs, Interior

§ 170.611

resulting from unforeseen circumstances of the construction process (*i.e.*, cost overruns). If the Secretary is unable to fund the unforeseen costs in a cost reimbursable contract, the tribe may suspend performance of the contract until sufficient additional funds are awarded. (See 25 CFR 900.130(e).)

MISCELLANEOUS PROVISIONS

§ 170.605 When may BIA use force account methods in the IRR Program?

BIA may use force account methods in the IRR Program unless the tribe elects otherwise to enter into a self-termination contract or a self-governance agreement for the IRR Program. However, BIA must continue to consult with the tribe before using a force account under this situation. The applicable FAR and Federal law apply to BIA force account project activities.

§ 170.606 How do legislation and procurement requirements affect the IRR Program?

Other legislation and procurement requirements apply to the IRR Program as shown in the following table.

Legislation, regulation or other requirement	Applies to tribes under self-determination contracts	Applies to tribes under self-governance agreements	Applies to activities performed by the Secretary
Buy Indian Act	No	No	Yes.
Buy American Act	No	No	Yes.
Federal Acquisition Regulation (FAR).	No ¹	No	Yes.
Federal Tort Claims Act	Yes	Yes	Yes.
Davis-Bacon Act	Yes ²	Yes ²	Yes.

¹ Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115.
² Does not apply when tribe performs work with its own employees.

§ 170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?

Yes. Contract support costs are an eligible item out of a tribe's IRR Program allocation and need to be included in a tribe's project construction budget.

agreement following the requirements in 25 CFR parts 900 or 1000.

(a) Tribes may use IRR Program project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

(b) Appendix A to this subpart contains a list of non-contractible functions and activities that cannot be included in contracts or agreements.

§ 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?

No. Contract support costs for IRR construction projects cannot be paid out of Department of the Interior or BIA appropriations.

§ 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year IRR Program self-termination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume

CONTRACTS AND AGREEMENTS UNDER ISDEAA

§ 170.610 What IRR Program functions may a tribe assume under ISDEAA?

A tribe may assume all IRR Program functions and activities that are otherwise contractible under a self-termination contract or self-governance

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IRR Programs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see Title IV, 25 U.S.C. 450b(1) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract in accordance with 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct IRR Program self-determination contract that includes both the design and construction of one or more IRR projects. The Secretary may make advance payments to a tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semi-annual installments as indicated in the agreement.

§ 170.612 How are non-contractible functions funded?

(a) All non-contractible IRR program functions are funded by IRR Program management and oversight funds.

(b) All non-contractible IRR project functions are funded by IRR Program construction funds.

§ 170.613 When does BIA determine the amount of funds needed for non-contractible non-project related functions?

Each fiscal year the Secretary will develop national and regional BIA IRR Program budgets. Within the first quarter of each fiscal year BIA will publish a copy of the national and regional IRR budgets.

§ 170.614 Can a tribe receive funds before BIA publishes the notice of funding availability?

A tribe can receive funds before BIA publishes the notice of funding availability required by § 170.600(a)(1) only if the tribe has a negotiated self-determination contract or self-governance agreement.

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§ 170.615 Can a tribe receive advance payments for non-construction activities?

Yes. BIA must make advance payments to a tribe for non-construction activities under 25 U.S.C. 450l for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

§ 170.616 How are advance payments made when additional IRR Program funds are made available after execution of the self-governance agreement?

When additional IRR Program funds are available, following the procedures in 25 CFR 1000.104, tribes can request to use the additional funds for IRR Program activities or projects and have an addendum to the agreement executed.

§ 170.617 May a tribe include a contingency in its proposal budget?

(a) A tribe with a self-determination contract may include a contingency amount in its proposed budget in accordance with 25 CFR 900.127(e)(8).

(b) A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full IRR Program funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the RNDF allocation or within the negotiated ISDEAA contract or agreement.

§ 170.618 Can a tribe keep savings resulting from project administration?

When actual costs of the projects under contracts or agreements for construction projects are less than the estimated costs, the Secretary will determine the use of the excess funds after consultation with the tribe. (See 25 U.S.C. 450e–2.)

§ 170.619 Do tribal preference and Indian preference apply to IRR Program funding?

Tribal preference and Indian preference apply to IRR Program funding as shown in the following table: