

§ 900.116 Are negotiated fixed-price contracts treated the same as cost-reimbursable contracts?

Yes, except that in negotiated fixed-price construction contracts, appropriate clauses shall be negotiated to allocate properly the contract risks between the government and the contractor.

§ 900.117 Do these “construction contract” regulations apply to planning services?

(a) These regulations apply to planning services contracts only as provided in this section.

(1) The Indian tribe or tribal organization shall submit to the Secretary for review and approval the POR documents produced as a part of a model contract under section 108 of the Act or under a construction contract under this subpart.

(i) Within 60 days after receipt of the POR from the Indian tribe or tribal organization for a project that has achieved priority ranking or that is funded, the Secretary shall:

(A) Approve the POR;

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR that the Secretary may have; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 60 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(ii) Within a maximum of 180 days after receipt of a POR from an Indian tribe or tribal organization for a project that is not funded and is not described in paragraph (a)(1)(i) of this section, the Secretary shall:

(A) Approve the POR; or

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 180 days, and state the

time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(2) Any failure of the Secretary to act on a POR within the applicable period required in paragraph (a)(1) of this section will be deemed a rejection of the POR and will authorize the commencement of any appeal as provided in section 110 of the Act, or, if a model agreement under section 108 of the Act is used, the disputes provision of that agreement.

(3) If an Indian tribe or tribal organization elects to provide planning services as part of a construction contract rather than under a model agreement as set out in section 108 of the Act, the regulations in this subpart shall apply.

(b) The parties to the contract are encouraged to consult during the development of the POR and following submission of the POR to the Secretary.

§ 900.118 Do these “construction contract” regulations apply to construction management services?

No. Construction management services may be contracted separately under section 108 of the Act. Construction management services consultants and/or Indian tribe or tribal organization employees assist and advise the Indian tribe or tribal organization to implement construction contracts, but have no contractual relationship with or authority to direct construction contract subcontractors.

(a) If the Indian tribe or tribal organization chooses to contract solely for construction management services, these services shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and the Secretary;

(2) Review of work produced by the Secretary to determine compliance with:

(i) The POR and design contract during the design stage; or

(ii) The project construction documents during the construction stage;

(3) Disputes shall be resolved in accordance with the disputes clause of the CMS contract.

(b) If the Indian tribe or tribal organization conducts CMS under section 108 of the Act and the Indian tribe or