

## § 1000.230

with a substitute that otherwise maintains the requirements of the applicable Federal law, the Secretary may be able to approve the waiver request. The Tribe/Consortium and bureau officials must negotiate to develop a suggested substitution.

### **§ 1000.230 How is a waiver approval documented for the record?**

The waiver decision is made part of the AFA by attaching a copy of it to the AFA and by mutually executing any necessary conforming amendments to the AFA. The decisions announcing the waiver also will be posted on the Office of Self-Governance web site and all such decisions shall be made available on request.

### **§ 1000.231 How does a Tribe/Consortium request reconsideration of the Secretary's denial of a waiver?**

(a) The Tribe/Consortium may request reconsideration of a waiver denial. To do so, the Tribe/Consortium must submit a request to:

(1) The Director, OSG, for BIA programs; or

(2) The appropriate bureau head, for non-BIA programs.

(b) The request must be filed within 30 days of the day the decision is received by certified mail (return receipt requested) or by hand delivery. A request submitted by mail will be considered filed on the postmark date.

(c) The request must identify the issues to be addressed, including a statement of reasons supporting the request.

### **§ 1000.232 When must DOI respond to a request for reconsideration?**

The Secretary must issue a written decision within 30 days of the Department's receipt of a request for reconsideration. This decision is final for the Department and no administrative appeal may be made.

## **Subpart K—Construction**

### **§ 1000.240 What construction programs included in an AFA are subject to this subpart?**

(a) All BIA and non-BIA construction programs included in an AFA are subject to this subpart. This includes de-

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sign, construction, repair, improvement, expansion, replacement or demolition of buildings or facilities, and other related work for Federal, or Federally funded Tribal, facilities and projects.

(b) The following programs and activities are not construction programs and activities:

(1) Activities limited to providing planning services, administrative support services, coordination, responsibility for the construction project, day-to-day on-site management on site-management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement except that all project design and actual construction activities are subject to all the requirements of subpart K, whether performed by a Tribe/Consortium, subcontractor, or consultant.

(2) Housing Improvement Program or road maintenance program activities of BIA;

(3) Operation and maintenance programs; and

(4) Non-403(c) programs that are less than \$100,000, subject to section 403(e)(2) of the Act, other applicable Federal law, and §1000.256 of this subpart.

### **§ 1000.241 Does this subpart create an agency relationship?**

No, a BIA or non-BIA construction program does not automatically create an agency relationship. However, Federal law, provisions of an AFA, or Federal actions may create an agency relationship.

### **§ 1000.242 What provisions relating to a construction program may be included in an AFA?**

The Secretary and the Tribe/Consortium may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction part of an AFA. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.