

## § 900.124

102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing and provide all documents relied on in making the declination decision within 20 days of such decision to the Indian tribe or tribal organization;

(2) Provide assistance to the Indian tribe or tribal organization to overcome the stated objections;

(3) Provide the Indian tribe or tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly under section 110(a) of the Act.

### **§ 900.124 May the Indian tribe or tribal organization elect to use a grant in lieu of a contract?**

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when agreed to by the Secretary and the Indian tribe or tribal organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.

## 25 CFR Ch. V (4–1–14 Edition)

### **§ 900.125 What shall a construction contract proposal contain?**

(a) In addition to the full name, address, and telephone number of the Indian tribe or tribal organization submitting the construction proposal, a construction contract proposal shall contain descriptions of the following standards under which they propose to operate the contract:

(1) The use of licensed and qualified architects;

(2) Applicable health and safety standards;

(3) Adherence to applicable Federal, State, local, or tribal building codes and engineering standards;

(4) Structural integrity;

(5) Accountability of funds;

(6) Adequate competition for subcontracting under tribal or other applicable law;

(7) The commencement, performance, and completion of the contract;

(8) Adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals and the Secretary shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs);

(9) The use of proper materials and workmanship;

(10) Necessary inspection and testing;

(11) With respect to the self-determination contract between the Indian tribe or tribal organization and Federal government, a process for changes, modifications, stop work, and termination of the work when warranted;

(b) In addition to provisions regarding the program standards listed in paragraph (a) of this section or the assurances listed in paragraph (c) of this section, the Indian tribe or tribal organization shall also include in its construction contract proposal the following:

(1) In the case of a contract for design activities, this statement, "Construction documents produced as part of this contract will be produced in accordance with the Program of Requirements and/or Scope of Work," and the POR and/or Scope of Work shall be attached to the contract proposal. If tribal construction procedures, standards

and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(2) In the case of a contract for construction activities, this statement, “The facility will be built in accordance with the construction documents produced as a part of design activities. The project documents, including plans and specifications, are hereby incorporated into this contract through this reference.” If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(3) Proposed methods to accommodate the responsibilities of the Secretary provided in §900.131; and

(4) Proposed methods to accommodate the responsibilities of the Indian tribe or tribal organization provided in §900.130 unless otherwise addressed in paragraph (a) of this section and minimum staff qualifications proposed by the Indian tribe or tribal organization, if any;

(5) A contract budget as described in §900.127; and

(6) A period of performance for the conduct of all activities to be contracted;

(7) A payment schedule as described in §900.132;

(8) A statement indicating whether or not the Indian tribe or tribal organization has a CMS contract related to this project;

(9) Current (unrevoked) authorizing resolutions in accordance with §900.5(d) from all Indian tribes benefitting from the contract proposal; and

(10) Any responsibilities, in addition to the Federal responsibilities listed in §900.131, which the Indian tribe or tribal organization proposes the Federal government perform to assist with the completion of the scope of work;

(c) The Indian tribe or tribal organization will provide the following assurances in its contract proposal:

(1) If the Indian tribe or tribal organization elects not to take title (pursuant to subpart I) to Federal property used in carrying out the contract, “The Indian tribe or tribal organization will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. The Indian tribe or tribal organization will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project”; and

(2) “The Indian tribe or tribal organization will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*)” which prohibits the use of lead based paint in construction or rehabilitation of residential structures;

(3) “The Indian tribe or tribal organization will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646),” which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal participation in purchases; and

(4) “Except for work performed by tribal or tribal organization employees, the Indian tribe or tribal organization will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874),” for Federally assisted construction subagreements;

(5) “The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234),” which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;

(6) “The Indian tribe or tribal organization will comply with all applicable

## § 900.126

Federal environmental laws, regulations, and Executive Orders;”

(7) “The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting the components or potential components of the national wild and scenic rivers system;”

(8) “The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).”

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, share them with the other party, and refer to them in the construction contract. The parties will make a good faith effort to identify tribal laws, ordinances, and resolutions which may affect either party in the performance of the contract.

### **§ 900.126 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?**

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (including national, regional, State, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards, the Secretary shall accept the tribally proposed standards.

### **§ 900.127 What can be included in the Indian tribe or tribal organization’s contract budget?**

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded under a construction contract shall re-

## 25 CFR Ch. V (4-1-14 Edition)

flect an overall fair and reasonable price to the parties (see § 900.129).

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization’s budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) The costs of preparing the contract proposal and supporting cost data;

(3) The costs associated with auditing the general and administrative costs of the Indian tribe or tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.

(d) In establishing a contract budget for a construction project, the Secretary shall not be required to identify separately the components described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(e) The Indian tribe or tribal organization’s budget proposal includes a detailed budget breakdown for performing the scope of work including a total “not to exceed” dollar amount with which to perform the scope of work. Specific budget line items, if requested by the Indian tribe or tribal organization, can include the following:

(1) The administrative costs the Indian tribe or tribal organization may incur including: