

## § 1000.107

## 25 CFR Ch. VI (4-1-06 Edition)

Consortium renegotiates funding levels:

(a) It must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other Tribes; and

(b) It is eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other Tribes.

### **§ 1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts?**

No, if a Tribe/Consortium negotiated amounts before January 16, 2001, it does not need to renegotiate new Tribal shares and residual amounts.

(a) At Tribal option, a Tribe/Consortium may retain funding amounts that:

(1) Were either base eligible or in the Tribe's base; and

(2) Were negotiated before this part is promulgated.

(b) If a Tribe/Consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the Tribe/Consortium must:

(1) Negotiate all funding included in the AFA; and

(2) Use the process for determining residuals and funding amounts on the same basis as other Tribes.

(c) Self-governance Tribes/Consortia are eligible for funding amounts for new or available programs not previously included in the AFA on the same basis as other Tribes/Consortia.

### **§ 1000.108 How are self-governance base budgets established?**

At the request of the Tribe/Consortium, a self-governance base budget identifying each Tribe's funding amount is included in BIA's budget justification for the following year, subject to Congressional appropriation.

### **§ 1000.109 How are self-governance base budgets adjusted?**

Self-governance base budgets must be adjusted as follows:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying

a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct the errors.

(c) *Mutual agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

## **Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements**

### PURPOSE

### **§ 1000.120 What is the purpose of this subpart?**

This subpart describes program eligibility, funding, terms, and conditions of AFAs for non-BIA programs.

### **§ 1000.121 What is an annual funding agreement for a non-BIA program?**

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain:

(a) A description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and

(b) Associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program.

## ELIGIBILITY

**§ 1000.122 What non-BIA programs are eligible for inclusion in an annual funding agreement?**

Programs authorized by sections 403(b)(2) and 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will publish annually a list of these programs in accordance with section 405(c)(4).

**§ 1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?**

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93-638.

**§ 1000.124 What programs are included under Section 403(b)(2) of the Act?**

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93-638.

**§ 1000.125 What programs are included under Section 403(c)?**

Department of the Interior programs of special geographic, historical, or cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in AFAs under section 403(c).

**§ 1000.126 What does "special geographic, historical or cultural" mean?**

(a) *Geographic* generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country," as defined by 18 U.S.C. 1151. In addition, "geographic" includes:

- (1) Lands of former reservations;
- (2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);
- (3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
- (4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular his-

tory that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

- (1) Sacred and medicinal sites;
- (2) Gathering of medicines or materials such as grasses for basket weaving; or
- (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

**§ 1000.127 Under Section 403(b)(2), when must programs be awarded non-competitively?**

Programs eligible for contracts under Pub. L. 93-638 must be awarded non-competitively.

**§ 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?**

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

**§ 1000.129 Are there any programs that may not be included in an AFA?**

Yes, section 403(k) of the Act excludes from the program:

- (a) Inherently Federal functions; and
- (b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium, except as provided in §1000.134.

**§ 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?**

No, the Act favors the inclusion of a wide range of programs.