

**§ 1000.143**

funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that Tribe/Consortium.

OTHER TERMS AND CONDITIONS

**§ 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?**

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

REALLOCATION, DURATION, AND AMENDMENTS

**§ 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?**

Yes, section 403(b) permits such reallocation upon joint agreement of the Secretary and the Tribe/Consortium.

**§ 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?**

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds with the exception of construction projects.

**§ 1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year?**

Yes, subject to the terms of the AFA, a Tribe/Consortium and a non-BIA bureau may agree to provide for the performance under the AFA to extend beyond the fiscal year. However, the Department may not obligate funds in excess and advance of available appropriations.

**§ 1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect?**

Yes, terms and conditions in a non-BIA AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

**§ 1000.148 What happens if an AFA expires before the effective date of the successor AFA?**

If the effective date of a successor AFA is not on or before the expiration of the current AFA, subject to terms

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mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent resources permit. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671-2680 (1994); and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities (PFSA) or portions thereof for the full period they were or will be performed.

**Subpart G—Negotiation Process for Annual Funding Agreements**

PURPOSE

**§ 1000.160 What is the purpose of this subpart?**

This subpart provides the process and timelines for negotiating a self-governance compact with the Department and an AFA with any bureau.

(a) For a newly selected or currently participating Tribe/Consortium negotiating an initial AFA with any bureau, see §§ 1000.173 through 1000.179.

(b) For a participating Tribe/Consortium negotiating a successor AFA with any bureau, see §§ 1000.180 through 1000.182.