

§ 1000.245

to any suspension of work that occurred through no fault of the Tribe/Consortium. Project funds will not be used for this purpose. However, if suspension occurs due to the action or inaction of the Tribe/Consortium, then project funds will be used to cover suspension related activities.

§ 1000.245 May a Tribe/Consortium continue work with construction funds remaining in an AFA at the end of the funding year?

Yes, any funds remaining in an AFA at the end of the funding year may be spent for construction under the terms of the AFA.

§ 1000.246 Must an AFA that contains a construction project or activity incorporate provisions of Federal construction standards?

No, the Secretary may provide information about Federal standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable Federal standards, then the Secretary must accept the Indian Tribe/Consortium's proposed standards. The Secretary may accept commonly accepted industry construction standards.

§ 1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?

Yes, the relevant bureau may provide to the Tribe/Consortium project design criteria and other terms and conditions that are required for such a project. The project must be completed in accordance with the terms and conditions set forth in the AFA.

§ 1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA?

The Tribe/Consortium has the following role regarding a construction portion of an AFA:

- (a) Under the Act, the Indian Tribe/Consortium must successfully complete the project in accordance with the terms and conditions in the AFA.
- (b) The Tribe/Consortium must give the Secretary timely notice of any pro-

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posed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any other significant departure from the scope or objective of the project. The Tribe/Consortium and Secretary may negotiate to include timely notice requirements in the AFA.

§ 1000.249 What is the Secretary's role in a construction program in an AFA?

The Secretary has the following role regarding a construction program contained in an AFA:

(a) Except as provided in §1000.256, the Secretary may review and approve planning and design documents in accordance with terms negotiated in the AFA to ensure health and safety standards and compliance with Federal law and other program mandates;

(b) Unless otherwise agreed to in an AFA, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal Government purposes, designs produced in the construction program that are funded by AFA monies, including:

(1) The copyright to any work developed under a contract or subcontract; and

(2) Any rights of copyright that an Indian Tribe/Consortium or a Tribal contractor purchases through the AFA;

(c) The Secretary may conduct on-site monitoring visits as negotiated in the AFA;

(d) The Secretary must approve any proposed changes in the construction program or activity that require an increase in the negotiated AFA funding amount or an increase in the negotiated performance period or are a significant departure from the scope or objective of the construction program as agreed to in the AFA;

(e) The Secretary may conduct final project inspection jointly with the Indian Tribe/Consortium and may accept the construction project or activity as negotiated in the AFA;

(f) Where the Secretary and the Tribe/Consortium share construction program activities, the AFA may provide for the exchange of information;

(g) The Secretary may reassume the construction portion of an AFA if there is a finding of:

(1) A significant failure to substantially carry out the terms of the AFA without good cause; or

(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?

If there is a reassumption for substantial failure to carry out an AFA, property and funding will be returned as provided in subparts M and N of this part.

§ 1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?

(a) Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety as provided in subpart M of these regulations a finding of substantial failure to carry out the terms of the AFA without good cause must be processed under the suspension of work provision of § 1000.244.

(b) If the substantial failure to carry out the terms of the AFA without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601, *et seq.*

§ 1000.252 Do all provisions of other subparts apply to construction portions of AFAs?

Yes, all provisions of other subparts apply to construction portions of AFAs unless those provisions are inconsistent with this subpart.

§ 1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.35 of this part, a Tribe may withdraw from a Consortium and request its portion of a construction project's funds. The Secretary may decide not to award these funds if the award will affect the Consortium's ability to complete a non-severable phase of the project within available funding. An example of a non-severable phase of a project would be the construction of a single building serving all members of the Consortium. An example of a severable phase of a project would be the funding for a road in one village where the Consortium would be able to complete the roads in the other villages that were part of the project approved initially in the AFA. The Secretary's decision under this section may be appealed under subpart R of this part.

§ 1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?

No, a Tribe/Consortium may not reallocate funds from a construction program to a non-construction program unless otherwise provided under the relevant appropriation acts.

§ 1000.255 May a Tribe/Consortium reallocate funds among construction programs?

Yes, a Tribe/Consortium may reallocate funds among construction programs if permitted by appropriation law or if approved in advance by the Secretary.

§ 1000.256 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?

Yes, the Secretary must retain project funds to ensure proper health and safety standards in construction projects. Examples of purposes for which bureaus may retain funds include: