

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the grantee in the consideration of any future grant award under this part.

(d) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The grantee shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the grantee for those portions of obligations which could not be canceled and which had been properly incurred by the grantee in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR part 58, as applicable, shall be determined as part of the closeout process.

(e) *Termination for cause.* In cases in which HUD terminates the grantee's grant under the authority of subpart H of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is canceled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

**§ 1003.509 Force account construction.**

(a) The use of tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by the Area ONAP before the start of project implementation. In reviewing requests for an approval of

force account construction or renovation, the area ONAP may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(3) Information showing that the workers to be used are, or will be, listed on the tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 1003.305 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

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**§ 1003.510 Indian preference requirements.**

(a) *Applicability.* HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

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(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act [25 U.S.C. 450b] defines “Indian” to mean a person who is a member of an Indian tribe and defines “Indian tribe” to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) *economic enterprise* is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines *Indian organization* to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to Area ONAP one-time approval, the grantee’s own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee’s small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any

of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section:

(1) Each complaint shall be in writing, signed, and filed with the grantee.

(2) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

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**§ 1003.511 Use of escrow accounts for rehabilitation of privately owned residential property.**

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 1003.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work