

§ 137.334

(b) Within 20 days, provide all documents relied on in making the rejection decision to the Self-Governance Tribe;

(c) Provide assistance to the Self-Governance Tribe to overcome any objections stated in the written notice of rejection;

(d) Provide the Self-Governance Tribe 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 of the decision to reject the final construction contract proposal, under the regulations set forth in subpart P of this part, except that the Self-Governance Tribe may, in lieu of filing an appeal, initiate an action in Federal district court and proceed directly under sections 511 [25 U.S.C. 458aaa-10] and 110(a) of the Act [25 U.S.C. 450m-1(a)]. With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the final construction project proposal (or portion thereof); and

(e) Provide the Self-Governance Tribe with the option of entering into the severable portions of a final proposed construction project agreement (including a lesser funding amount) that the Secretary did not reject, subject to any additional alterations necessary to conform the construction project agreement to the severed provisions. Exercising this option does not affect the Self-Governance Tribe's right to appeal the portion of the final construction project proposal that was rejected by the Secretary.

§ 137.334 What happens if the Secretary fails to notify the Self-Governance Tribe of a decision to approve or reject a final construction project proposal within the time period allowed?

If the Secretary fails to notify the Self-Governance Tribe of the decision to approve or reject within 30 days (or a longer period if agreed to by the Self-Governance Tribe in writing), then the proposal will be deemed approved by the Secretary.

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§ 137.335 What costs may be included in the budget for a construction agreement?

(a) A Self-Governance Tribe may include costs allowed by applicable OMB Circulars, and costs allowed under sections 508(c) [25 U.S.C. 458aaa-7(c)], 106 [25 U.S.C. 450j-1] and 105 (m) of the Act [25 U.S.C. 450j(m)]. The costs incurred will vary depending on which phase of the construction process the Self-Governance Tribe is conducting and type of construction project agreement that will be used.

(b) Regardless of whether a construction project agreement is fixed price or cost-reimbursement, budgets may include costs or fees associated with the following:

(1) Construction project proposal preparation;

(2) Conducting community meetings to develop project documents;

(3) Architects, engineers, and other consultants to prepare project planning documents, to develop project plans and specifications, and to assist in oversight of the design during construction;

(4) Real property lease or acquisition;

(5) Development of project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance;

(6) Project management, superintendence, safety and inspection;

(7) Travel, including local travel incurred as a direct result of conducting the construction project agreement and remote travel in conjunction with the project;

(8) Consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who provide services, to include construction management services;

(9) Project site development;

(10) Project construction cost;

(11) General, administrative overhead, and indirect costs;

(12) Securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;