

NORTHERN CHEYENNE TRIBE

PROPERTY MANAGEMENT MANUAL

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PROPERTY MANAGEMENT MANUAL

Section 1 - General

A. Purpose

The purpose of the Property Management System is to provide the Northern Cheyenne Tribe with the capacity to manage the requisition, acquisition, maintenance and disposition of property in a manner which is in full compliance with federal standards.

The primary thrust of property management is to insure control over property of the Northern Cheyenne Tribe and to compliment the financial records. The elements of property control are:

1. Property Acquisition. The process of acquiring property either through requisition or transfer from government sources or through purchase including those made from contractor stores.
2. Receiving. The process of government property entering into the Northern Cheyenne Tribe's custody.
3. Records. The official accounting and subsidiary records maintained by the Northern Cheyenne Tribe to show the status and to control all property furnished to the Northern Cheyenne Tribe or acquired by the organization.
4. Storage and Movement. The process of storing and moving all types of property including movement from one point to another for any purpose, and protection during movement and storage.
5. Consumption. The process of incorporating federally owned property into an end item or otherwise consuming it in the performance of a federally sponsored program.
6. Utilization. The process of utilizing equipment and material for the purpose for which the materials or property were furnished or acquired.
7. Maintenance. The process of providing the care necessary to obtain a high quality of production and the most useful life for the property.
8. Physical Inventory. The process of physically locating and counting property, comparing it to records of such property, posting the findings and adjustments and reporting of inventory findings and adjustments to the proper administrator.
9. Subcontractor/Subgrantee Control. The process of control by the Northern Cheyenne Tribe over subcontractors and subgrantees with respect to property acquired by such subcontractors or subgrantees.

10. Disposition. The process of requesting disposition instructions and effecting disposal of property acquired with federal funds.

11. Reports and Accountability. The preparation and submission of reports reflecting the status of property required by grants and contracts.

The property management and management system must be consistent throughout the Northern Cheyenne Tribe. Property acquired with federal funds, property furnished by the federal government or property acquired with tribal funds shall all be treated in a consistent manner regardless of source of funds used to pay for such property.

Section 2 - Property Classification

A. Property Defined

Property Management means the functions within the tribal organization which deal with the acquisition, control, protection, use and disposition of property acquired with federal and tribal funds. The federal government defines property management as the broad function of managing , coordinating , and regulating the activities concerned with the planning of property needs and acquisition of property, the receipt, storage and distribution of property, the proper utilization and care of property, accounting, control and disposition of property (HEWMMM 103-1.5002-12).

Real property means any interest in land together with any improvements, structures and fixtures attached to the land. Federal regulations state that real property does not include interest in land which is withdrawn from the public domain, mineral rights, crops or trade fixtures.

Personal property means any property other than real property. Personal property includes equipment, materials and supplies. If such supplies or materials are incorporated on a permanent basis into real property, they lose their identity and instead are classified as real property. Personal property can be subdivided into two subcategories: expendable personal property and nonexpendable personal property.

Expendable personal property has a low dollar value and is generally consumed in the performance of the program activities or is incorporated into some end product. The cost of expendable property is charged against the program as an expense on receipt of the item.

Supplies are those expendable personal property items which are consumed during use.

Materials are those expendable personal property items which are transformed into nonexpendable personal property items. (e.g., lumber into a building).

Non-expendable personal property are items of personal property of high dollar value and of a durable nature with an expected lifetime more than one year. Such items retain their identity throughout their useful life and have a monetary value sufficiently great for the government to require that the Northern Cheyenne Tribe be accountable for such items. Non-expendable personal property is carried as capital assets in the records until disposed of through transfer, sale or other means. Nonexpendable personal property generally refers to equipment.

Accountable personal property is all personal nonexpendable property which is subject to accountability to an appropriate federal authority. Such property includes any capitalized items and all personal property for which quantitative records control is required to be maintained. The latter includes stocking and warehousing of expendable supplies. Accountable personal property typically includes equipment items.

Nonaccountable personal property is nonexpendable personal property which the Northern

Cheyenne Tribe does not have to account to the federal authority.

Sensitive items means those nonexpendable property items which are subject to appropriation for private use, i.e., subject to theft. Such property shall be accounted for by the Northern Cheyenne Tribe and shall be safeguarded. Property which has an acquisition cost of less than \$5000 and greater than \$100 but with a life of greater than one year and is subject to potential theft shall be considered "sensitive" property.

Capitalized property means property which will be recorded in the accounting records as a capital asset. Sensitive items shall be classified as capitalized nonaccountable personal property.

Non-capitalized property will not be recorded as a capital asset but will be expensed at time of acquisition and shall be classified as expendable personal property.

Fair market value is the value of an item as determined by the marketplace. Determination of fair market value shall be made by either comparison to sales of similar items, referencing a "Blue Book", or conducting an appraisal.

B. Acquisition and Title

Acquisition of property can occur through several sources.

- Property may be acquired through the excess or surplus property acquisition procedures allowed under P.L. 93-638.

Title to excess and surplus property shall vest in the Northern Cheyenne Tribe and shall be termed "restricted title" since the tribe must place the item into beneficial use in the program for at least one year.

The Property Technician shall obtain a GSA screening card designating the Property Technician as eligible to obtain property through GSA sources. The card shall indicate "all programs", "all GSA regions" and have an "Indefinite" or multi-year expiration date. The Property Technician shall obtain a listing of all GSA Area Utilization Officers (AUO's) and shall obtain property listings from such AUO's. The Property Technician shall periodically screen the Defense depots in the region for available DOD property. The Property Technician shall establish Internet links with GSA and DOD/DRMS and periodically shall access the Internet to identify needed property. The Property Technician shall also establish an electronic communication system with the GSA "MUFFIN" system.

- Property may be furnished by the federal government to the Northern Cheyenne Tribe under a program or by virtue of a transfer agreement.

Title to Government furnished property under '638 agreements shall vest in the Northern Cheyenne Tribe upon request by the Property Technician. The Property Technician shall obtain a listing of all property from BIA and IHS which the federal Property Technician shows as being transferred to the Northern Cheyenne Tribe.

The Property Technician shall inventory to determine the existence of such property and then shall formally request a transfer of title document from the federal Property Technician. Title shall be termed "reversionary title" since the federal government may reacquire such property if over \$5000 in fair market value upon retrocession or reassumption.

- Property may be purchased with '638 contract funds.

Title to property which is acquired by '638 contract funds shall vest with the Northern Cheyenne Tribe upon acquisition. Such property if over \$5000 in fair market value shall revert to the BIA or IHS if the tribe were to retrocede the program or to have the program reassumed. Thus such title shall be termed "reversionary title."

- Property may be acquired through grant funds.

For property acquired through grant funds, the Northern Cheyenne Tribe shall have a possessory title or use permit as long as the Northern Cheyenne Tribe has an identifiable need for such property. Such title shall be termed "encumbered title" since the federal government must be given the proceeds of disposal if the fair market value is in excess of \$5000.

- Property may be acquired with tribal funds.

Title to such property shall vest with the Northern Cheyenne Tribe as a fee simple title. Such title shall be termed "fee simple title."

The Property Technician and the Procurement Officer shall work closely together to determine if property requisitioned is reasonably required and is not available in existing stock in the Northern Cheyenne Tribe. The Property Technician shall maintain proof of title and shall record title on all relevant property records.

Section 3 - Responsibilities

A. Property Management Responsibilities

The Property Technician is the employee who has been designated by proper authority for the property management functions which are authorized to be performed at the Northern Cheyenne Tribe. Property Technician may be assisted by Property Clerk, accountable officers and custodial officers.

Accountable officers are those individuals who are charged with accountability for property placed under their jurisdiction. Accountable officers will normally be the program directors.

Custodial officers are responsible for the proper use, maintenance and protection of property entrusted to their possession. Custodians will normally be the day to day users of the item.

The Northern Cheyenne Tribe when receiving federal funds is accountable to the federal government for the performance and administration of such programs. This includes accountability for property acquired with such federal funds. This requires that the tribal government identify and designate a Property Technician. In turn, each program manager will be designated as an accountable officer for the property held, maintained and utilized by an individual program. Within each program, the property management officer and the accountable officer will designate custodians who are charged with the responsibility for use, maintenance and control of individual property items. If custodians are not designated then the program director will hold the role of both accountable officer and custodian.

The custodial officer has the physical responsibility for the proper use, maintenance and protection of property assigned to his or her area. Normally, this role will be outside their normal programmatic function. As such, the individual will have a staff relationship to the property management office. An accountable officer can supervise several separate accounts and custodians. Each custodial officer must maintain an account of their status in the records by the accountable officer and inventory the Property Technician.

On acquisition of property, the Northern Cheyenne Tribe must insure that such property is utilized in accordance with sound management practice and in accordance with the purposes and objectives found within each program. The Northern Cheyenne Tribe must also account for the property on a periodic basis to the federal agency funding the acquisition of such property. Finally, the Northern Cheyenne Tribe must establish procedures, policies and practices which provide for the disposal of the property at the end of the program or useful life of the property.

Property Technician shall be administratively responsible for accomplishing the duties and responsibilities discussed in these procedures and policies, and shall be responsible to the Tribal Treasurer for the accomplishment of these tasks. The Property Technician shall be under the general administrative direction of the Tribal Treasurer and shall be accountable to the Tribal Treasurer for all property management responsibilities identified herein.

The Tribal Treasurer will periodically evaluate the performance of the Property Technician to determine the effective accomplishment of the duties and responsibilities assigned and the performance of property management functions in accordance with the procedures outlined above.

Section 4 - Receiving Property

Receiving property is the process of property acquired with federal funds entering into the Northern Cheyenne Tribe's custody.

When property is delivered, the Property Technician shall receive or shall assign a Property Clerk to receive such property. This individual shall be someone other than the Purchasing Manager/Ordering agent. This Property Clerk shall determine that the property has met the purchase order specifications and shall compare the property to the shipping report provided by the vendor and to the purchase order issued by the Northern Cheyenne Tribe. The Property Clerk shall determine that the property is in new and good condition unless used property was ordered, and shall also determine if the quantity received is in agreement with the purchase order.

The Property Clerk shall prepare a receiving report which accurately and completely describes the items, shows the count and the condition. If the quantity, condition or description differs from that shown on the purchase order, a proper adjustment document shall be prepared and the Property Technician notified.

The Property Technician shall complete and sign the receiving report. The Property Clerk submit one copy to the accounting department and maintain one copy on file.

The Property Technician shall classify the item according to the definitions above (expendable or nonexpendable, capitalized or non-capitalized), and shall then insure that the item is properly tagged and marked during the receiving process. The marking and tagging shall occur within one day of the receipt of the item, and shall indicate the year in which the property was acquired, the funds source for acquisition of such property and the property identification tag number. These tagging identification marks shall be trackable to property records maintained by the property office. Property which the federal government has title to shall have a federal tag. The Property Technician shall implement a bar code tagging and marking system to facilitate property inventory.

The Northern Cheyenne Tribe shall insure that shipments of items which have been misdirected are adequately controlled prior to the receipt of instructions as to their disposition. This control process shall insure the protection of such items to prevent theft, damage or destruction.

Immediately on receipt of the property item, the Property Technician shall notify procurement of the receipt of property requiring applicable insurance coverage so that such property items are entered onto the property insurance coverage.

To prevent misuse of vehicles, all vehicles should be placed in a central area, or program area, after work hours. The area will be secured to prevent vandalism.

Section 5 - Controls for Property

A. Control of Fixed Assets

1. Records will be maintained on all fixed assets purchased or acquired by lease or lease/purchase using grant or contract funds. The records should contain information including the description of the asset, identification numbers, costs of the asset, date acquired, title, location and custodial responsibility. Expected lifetime and depreciation records will be maintained.
2. Property Technician will maintain fixed asset records. Property Technician will insure that all assets are tagged with identification tags bearing description, date acquired, and identification number.
3. Property Technician will assign a staff member as a custodian of specific assets. The custodian will be responsible for the disposition of these assets and in the event of loss or theft for which he or she is held responsible, the custodian agrees that he or she shall pay the original or replacement cost of the asset to the Northern Cheyenne Tribe within one month or garnishment of wages will be taken in lieu of payment.
4. All fixed assets acquired through funds other than grant or contract monies will be controlled using the above procedures but records will be maintained separately. Items will be tagged identifying source of money.
5. Comptroller and Property Technician and Property Clerk will annually insure that a physical inventory of nonexpendable personal property is completed.

B. Preventing Fraud, Waste and Abuse

Converting Tribal or Federal Property into Cash

Under Self-Determination contracts, property is obtained either by using federal funds for direct purchase or through physical transfer of the property from government stock to the contractor. The Tribe is required by regulation to maintain a property management system which provides for tracking of government property. All property to be disposed of shall be required to receive concurrence from the Comptroller and the Treasurer and all proceeds from the disposal shall be put into the program account.

Purchasing and Receiving

Purchasing and receiving shall be separated. The Property Clerk shall be accountable to the Property Technician. The Property Technician's and the Procurement Officer's functions shall be segregated.

Capital Assets

The following requirements will be met.

Segregation of Duties Requirements

1. Segregation of responsibilities for initiating, evaluating, and approving capital expenditures, leases, and maintenance or repair projects from those for project accounting, property records, and general ledger functions.
2. Segregation of responsibilities for initiating capital asset transactions from those for final approvals that commit government resources.
3. Segregation of responsibilities for the project accounting and property records functions from the general ledger function.
4. Segregation of responsibilities for the project accounting and property records functions from the custodial function.
5. Assigning responsibility for the periodic physical inventories or capital assets to responsible officials who have no custodial or record keeping responsibilities.
6. Maintaining the principle of segregation of duties within processing activities.

Procedural Controls Requirements

Authorization

7. Identification of those individuals authorized to initiate capital asset transactions and clear definition of the limits of their authority.
8. Established guidelines with respect to key considerations such as prices to be paid, acceptable vendors and terms, asset quality standards, and the provisions of grants or funds that may finance the expenditures.
9. Preparation of a separate capital projects budget.

Executive or Legislative Approval

10. Requiring written executive or legislative approval for all significant capital asset projects or acquisitions.
11. Insuring the authorizing, approving, and documenting sales or other dispositions of capital assets.
12. Assuring approval regarding financing alternatives and accounting principles, practices, and methods.

13. Providing for obtaining and documenting grantor (federal/state) approval, if required, for the use of grant funds for capital asset acquisitions.

14. Subjecting grant funded acquisitions to the same controls as internally funded acquisitions.

15. Requiring supplemental authorizations, including, if appropriate, those of the grantor agency, for expenditures in excess of originally approved amounts.

Asset Accountability Requirements

16. Maintaining detailed property records for all significant self-constructed, donated, purchased, or leased assets.

17. Establishing the accountability for each asset.

18. Periodic inventory of documents evidencing property rights (for example. deeds. leases, and the like).

19. Establishing physical safeguards over assets.

20. Ensuring that purchased materials and services for capital expenditure and repair projects are subjected to the same levels of controls as exist for all other procurements (for example, receiving, approval, checking).

21. Periodically comparing detail property records with existing assets.

22. Investigating differences between records and physical counts and adjusting the records to reflect shortages.

23. Ensuring that capital assets are adequately insured.

24. Subjecting lease transactions to controls similar to those required for other capital expenditures.

25. Properly identifying equipment by metal numbered tags or other means of positive identification.

26. Carrying fully-depreciated assets in the accounting records as a means of providing accounting control.

27. Monitoring the appropriate disposition of property acquired with grant funds.

General Ledger Requirements

28. Periodic reconciliation of the detail property records with the general ledger control accounts.

29. Assuring that accounting records-

- Distinguish between capital projects' fund expenditures and operating budget expenditures.
- Identify operating budget expenditures to be capitalized in fixed asset fund.
- Distinguish between capital and operating leases.
- Govern depreciation methods and practices.

30. If costs are expected to be charged against federal grants or contracts, depreciation policies or methods of computing allowances in accord with the standards outlined in OMB circular A-87 or grantor agency regulations; if not, adjusting depreciation charged to grants accordingly.

31. The accounting records should be adjusted promptly - both the asset and related allowance for depreciation - when items of plant and equipment are retired, sold or transferred.

C. Subgrant and Subcontract Controls

The Northern Cheyenne Tribe is responsible for establishing procedures for controls over subcontractors and subgrants with respect to property acquired with federal funds. The Procurement Officer shall provide terms and conditions to the subgrant or subcontract to inform the subcontractor or subgrantee requiring them to conform to the procedures imposed on the Northern Cheyenne Tribe with regard to acquisition, records, use, maintenance and inventories. The Property Technician shall periodically monitor the subcontractor or subgrantee to determine the use and implementation of adequate property management procedures.

The Procurement Officer of the Northern Cheyenne Tribe shall inform the subcontractor or subgrantee that property records maintained by the subgrantee or subcontractor remain the property of the Northern Cheyenne Tribe, and that any property acquired with federal funds provided by the Northern Cheyenne Tribe belongs to and is also the responsibility of the Northern Cheyenne Tribe.

Section 6 - Property Accountability

A. Accountability Defined

The Northern Cheyenne Tribe when utilizing federal funds for the acquisition of personal property must account to the funding agency for all such acquired property. The accountability procedures depend on the source of the program funds used to acquire the property and on the type of property acquired. Accountability requires that a system be established for recording information concerning the property and for later reporting such information to the federal funding agency.

Accountability is the state of being accountable or requiring an accounting. In property management, this is an obligation imposed by law or regulation or administrative order on the Northern Cheyenne Tribe to render an accounting to the funding agency for property acquired with federal funds or entrusted to the tribe by the federal agency.

Federal agencies require that property records be maintained until the property has either been transferred, issued, donated, sold or dropped from the federal accountability records.

The federal government has categorized personal property into two primary classes-- expendable property and nonexpendable property. To identify what property will be accounted for on an individual basis, federal agencies have established a dollar threshold for separating these two categories. These regulations have established that nonexpendable property which is acquired at a cost equal to or greater than \$5000.00 will be capitalized and for recordkeeping and accounting purposes will be individually accounted for.

The phrase "individually accounted for" means that the Northern Cheyenne Tribe is responsible for identifying each item with a identification number; that property records must be maintained which show all relevant information on the individual item including its location; and periodic reports must be submitted concerning the item.

The federal government and the Northern Cheyenne Tribe may require that some property other than those with values more than \$5000.00 must also be accounted for. Certain sensitive items subject to theft must also be accounted for. These items include such things as weapons, typewriters, recording devices and calculators computers, TV's, cameras, video players, printers, fax machines, copiers, refrigerators, microwaves, cleaning equipment, garden equipment, cell phones, livestock, and office desks. The federal government has defined these items as being accountable property regardless of their dollar value and the federal government requires that these items be individually accounted for.

B. Responsibility for Accountability

The Central Finance office of the the Northern Cheyenne Tribe is charged with the responsibility for keeping the books of record for all programs within the Northern Cheyenne Tribe. The Central Finance office must support each transaction shown in the financial records with source documents. Therefore, the Central Finance office (or other assigned offices) must be able to provide the following management records:

- Documentation of purchase or acquisition.
- Journal books of record showing the occurrence of the financial transaction resulting in the acquisition of property.
- General ledger accounts for various categories of property including materials, supplies, capitalized equipment and sensitive items.

The Property Technician and the program director must maintain several subsidiary records and registers which support the Central Finance office's records. These include the following - individual equipment item record, an item location record, inventory reports, receiving and shipping documents and others as needed.

The custodial officer is charged with the responsibility of using and maintaining individual items. This requires the custodial officer to maintain personal property records, designate custodial responsibilities, and to develop procedures and guidelines for the use and maintenance of the item and maintenance records.

C. Property Identification (Tagging)

The above definition of "individually accounted for" requires that each item which must be accounted for will be assigned a number and that the records will later reflect all relevant information about that item. Assigning a number for the identification of the property is the responsibility of the Property Technician who must identify and mark all property immediately upon receipt. The identification number must further be recorded on all applicable receiving documents, shipping documents, tribal property records, disposal records and any other document referring to the individual accountable item. The marking may only be removed upon disposal of such property.

The identification (tagging) of property depends on the source of funds used to acquire such items and the classification of the item acquired.

Equipment items which are above the federal threshold or which are individually sensitive items must be marked and identified. The use of a tribal identification symbol or federal identification symbol depends on the source of funds used to purchase the item and the consequent title.

If federal funds are used to acquire the item, the federal government retains a vested interest to such property. If the federal government has furnished individual items to the tribe, the federal government may retain title. In both instances, the Northern Cheyenne Tribe is required to identify and mark each item with an identification tag that indicates the funding agency or the federal equity interest in the item. The tribe shall develop an identification system which is capable of referring to the program, the funding agency, and the fiscal year in which the item was acquired. It is not necessary that this information be part of the identification number, but it is necessary that the number be able to be traced to records which indicate the funding agency, the grant or contract number and the fiscal

year.

The Northern Cheyenne Tribe may use instead of tags some non-removable technique such as indelible ink, acid, electrical etching or dye to identify the accountable items. Bar codes may be used as a means of identification and inventory control.

D. Property Records

The property records management process is the property, accounting and subsidiary records maintained by the Northern Cheyenne Tribe which shows the status of and controls for all property furnished to the Northern Cheyenne Tribe with federal funds or acquired by the Northern Cheyenne Tribe.

The Property Technician shall maintain an equipment item record. Property records shall allow for inventory control and to do so must provide documentation in support of the accounting entries. An individual property record form shall be maintained on all items defined to be nonexpendable personal property. The property record form shall describe the item, its location, custodian and the condition of the property in full and complete detail. This is an individual record on each piece of capitalized nonexpendable personal property, and will indicate the description of the item, any identification numbers, the location, title, the custodial responsibility and any actions which have affected the property. In addition, the individual equipment item record shall be periodically updated to reflect the inventory report and identify the present condition and replacement schedule for such items.

Stocking control records shall be maintained on supplies and material to reflect stock levels and re-order points.

The Property Technician shall maintain a property register that records all actions affecting the status of all property within a program(s). All vouchers for acquisition of property are indicated in this register and it is the source document for the reports furnished to the federal funding agencies. This register must be capable of being reconciled with the equipment and asset accounts shown in the financial records. The property item records shall be periodically summarized on an inventory property register. The property records shall be adjusted to reflect the physical inventory conducted and the property records closed, by means of proper accounting entries supported by documentation, and shall reflect the condition of the property pursuant to the inventory process.

Fabrication records must be prepared on all items fabricated from materials acquired using federal funds. Items fabricated shall show the description, status, completion date, cost of fabrication and other relevant information.

The Property Technician shall prepare a transfer document record showing the receipt and issuance of property items to entities within the Northern Cheyenne Tribe, as well as transfers from one entity within the organization to other entities. Records shall identify the property item, the identification number, the organizational entity transferring the item and the organizational entity receiving such item.

The Property Technician shall prepare and issue a custodial responsibility record. Custodial records must state the individual charged with custodial responsibility and shall assign the property to that individual. Custodial designation mandates that the custodian is financially obligated for the effective storage, protection, use and maintenance of such items they are responsible for. The Property Technician shall issue such custodial designation to the custodian and obtain his or her signature on receipt of the form.

The Property Technician shall prepare scrap and salvage records which reflect the status of all items declared to be scrap and all items which are reclaimed during salvage operations. Records shall indicate the proper classification of the items and provide documentation in support of the record. On scrapping of items, the records shall be properly adjusted and closed.

The Central Finance office shall establish general ledgers and subsidiary ledgers. General ledgers are fiscal records which are comprised of several accounts reflecting the dollar values of property held by the Northern Cheyenne Tribe. The general ledger is a primary book of record against which all other property records must be capable of being balanced. Accounts which are included in the general ledger are: equipment, furniture, vehicles, supplies, materials, and other as needed.

Subsidiary ledgers shall be used to reflect the value of capitalized, nonexpendable property on hand and in use for a particular program; to reflect the aggregate value of supplies and materials held in warehouses, stores, shops or working stock inventories; and to record furniture acquired by the organization or program.

The Property Technician will also maintain capitalized property records. Each quarter, the Property Technician shall prepare a periodic summary report of property on hand to reflect the opening inventory value of all property on record and the value of all transactions processed during the period, and the closing inventory value of the property account.

E. Physical Inventories

The Property Technician and Property Clerk are responsible for conducting an annual inventory of property acquired with federal funds. The inventory will be compared to the records of the property held by the Northern Cheyenne Tribe. Adjustments to the records will be made to reflect the physical inventory. The Property Technician is responsible for furnishing reports of such inventory findings to the federal government.

The Property Technician may institute electronic bar coding procedures as a means of facilitating the inventory process.

The Property Technician, Property Clerk and the accountable officer(s) are required periodically to conduct a physical inventory of all capitalized items of personal property, since a physical inventory record and report will provide an actual count and observation of all property identified by the Property Technician, Property clerk and custodial officer. The Property Technician may delegate the responsibility to inventory all items within each program to each program director. The inventory shall reflect the condition as well as the

physical presence of the item.

Prior to the conduct of the physical inventory, the Property Technician shall determine the timing for the inventory. A schedule for the annual inventory of tribal property shall be developed. The inventory process shall be spread over the entire year, with each program assigned a specific period during which the review will occur.

The Property Technician and Property Clerk shall next assemble the property records to be used during the inventory. Either of two records will be used: perpetual inventory record for materials or a fixed asset register for each program's nonexpendable personal property.

The Property Technician will develop an inventory record form to be used during such inventories. The inventory record shall reflect the number of items, the description of the item, its location and any other descriptive information necessary.

Two or more individuals shall be assigned to this task. They shall possess an inventory record form which reflects complete and accurate data concerning location, count, and description of each item, and they shall make sure that the inventory count is accurate.

The individuals responsible shall record on the inventory report the date of the inventory, the quantity of items identified (or the existence of the item) and the condition of each item. The tribe shall utilize a coding scheme reflect the property condition.

On completion of the inventory the Property Technician will transfer the results to the individual property item records within thirty days. The property record will reflect the date of the inventory and the quantity of items which have been inventoried. The Property Technician will identify any differences between the inventory record and the posting and will then inform the program and the accounting department of any differences. The Property Technician shall note the responsibility for the difference, and will insure that the individual who is responsible is held fiscally accountable for such differences. The accounting office will make an adjustment to the accounting records to reflect the adjustments resulting from the inventory. These will be shown as a loss to the capitalized items shown on the accounting records.

All instances of loss, damage or destruction of property shall be reported promptly and properly by the program to the Property Technician. The Property Technician shall notify the Procurement Officer for Insurance coverage. The loss of items owned by the federal government or items which the government furnished to the Northern Cheyenne Tribe shall be promptly reported to the federal government property administrator.

After receipt of the property inventory report, the Property Technician shall make certain that property records are adjusted to correspond to the report, and that both the federal agency and the accounting department are informed of any necessary changes. Any instances of loss, damage or destruction of property which was acquired with federal funds (grant or contract) shall be promptly reported to the agency which provided the funds to acquire the property.

The Property Technician and the accounting department shall indicate the loss in value of

the property item by adjusting the records to recognize depreciation, or some equivalent process such as fair market value write down.

The property insurer shall be informed of any change in the items, their value or condition, existence of any new property, loss, damage or destruction of any insured property. The Property Technician and the Insurance agent shall adjust the insurance policy coverage as required.

F. Reporting

The Northern Cheyenne Tribe is required to account to the funding agency for all property acquired with federal funds. In turn, federal funding agencies are required to account to Congress for the utilization of such funds and to identify existing property within the federal government.

The Northern Cheyenne Tribe must prepare and submit reports to the federal government which reflect the status of property acquired through grants and contracts.

Such reports are the responsibility of the Property Technician who shall utilize the federal program property register forms to prepare the report. The property report will be submitted within ninety days of the annual completion of the federal program. The program property register form will be prepared from individual item records and the inventory and will summarize the property held by each program. Property held by each program will include property acquired with program funds as well as property transferred to the program by the government.

The Property Technician, using perpetual inventory procedures, will insure that the report submitted to the federal government is complete and accurately reflects the property held by the program.

Property reports submitted to the federal government are required for both contracts and grants. The items to be reported for each shall be submitted in accordance with the guidelines for each program. The Property Technician is responsible for insuring that the property office is aware of and has on file guidelines for submission of property reports for each program, and will make adequate time available to provide for an orderly compilation and submission of the information needed.

Accountability reports submitted by the Northern Cheyenne Tribe to the federal government may be classified into three general groups. The first of these, "a recurring report", requires that the organization report to the federal government at a specified frequency. Both contracts and grants with the federal government require that the Northern Cheyenne Tribe submit an annual property inventory report to the funding agency which reflects the capitalized nonexpendable property acquired during the program year, the property inventory and the condition of such property.

For property purchased with contract funds for which the Federal government retains title, the Property Technician shall request instructions on the disposition of such property. Such

reports shall request that the federal government transfer title to the Northern Cheyenne Tribe if appropriate.

A second group of property reports is classified as an "as required reports," those which are contingent on the occurrence of a particular event and contain information surrounding that specific occurrence.

The first "as required report" is a report submitted before the acquisition of a property item by a grant program requesting approval (from the funding agency) for the purchase of such property. This is because purchase of nonexpendable personal property equipment requires that the federal government grant such approval before the actual purchase. Such a report is an "as required report". If the Tribe has enumerated the items in detail in the Program budget, the budget shall constitute the "as required report."

A second "as required report" are reports submitted to the federal government after the loss or theft or destruction of property which the federal government has title to. For example, theft of a school bus acquired with federal contract fund must be reported to the federal government and the circumstances surrounding such theft explained.

Generally, the reports submitted by the Northern Cheyenne Tribe to the federal government are submitted on a form designed and developed by the Northern Cheyenne Tribe. However, some federal agencies may require that the tribe use a form provided by the government. If such forms are furnished by the tribe, these reports are subsequently transmitted to a higher authority within the federal agency.

Two fundamental principles reflect the preparation of the reports which flow from the Northern Cheyenne Tribe to the federal government. First, the reports shall stem from the lowest level in the the Northern Cheyenne Tribe where the property resources are utilized, through succeeding levels till they reach the Property Technician, who in turn consolidates this information and submits it to the Tribal President for signature and then to the federal funding agency. Data shall stem from the lowest organizational level utilizing the property.

The second principle is that such reports shall contain accurate and valid data. The Property Technician shall take all efforts necessary to insure that the information contained in the report accurately reflect property held by the the Northern Cheyenne Tribe.

Section 7 - Property Accounting

A. Accountability Procedure

Definition of Fixed Asset.

A fixed asset is an asset with a life expectancy of more than one year and with a significant value, generally greater than \$5000. Capitalized fixed assets are those assets which are non-expendable and tangible in nature and which are recorded in the Asset accounts of the Northern Cheyenne Tribe. If the item has an original acquisition cost less than \$5000.00 and is subject to control for management or operational reasons, then the Northern Cheyenne Tribe may determine to classify the item as a capitalized asset for purposes of accountability. When any fixed asset is purchased, the purchase price is charged to one of the Capital Asset accounts which are maintained by the Property Technician. The Comptroller and the Treasurer shall be responsible for maintenance of the chart of accounts.

Fixed Assets Reporting.

The Property Department, with the technical support of Data Processing, maintains an up-to-date listing of fixed assets assigned to each program. When a fixed asset is purchased by, donated to, or transferred to a program, Property assures that the fixed asset is tagged and assigned a tag number and that the asset is added to the fixed asset listing for the program. When a fixed asset is no longer assigned to a program, Property deletes it from the program's fixed asset listing.

Fixed Assets Inventory Report

This report is a perpetual inventory of fixed assets assigned to each program. Each month, the Property Technician records changes in the fixed assets assigned to each program, and updates the Fixed Assets Inventory Report. Following is a list of the information contained on the report for each of the fixed assets listed for each program:

- X Tag number
- X Description of the Fixed Asset, including title, number of items, model number, and other identifying characteristics.
- X Serial Number
- X Date of Acquisition
- X Method of acquisition, e.g., purchase, donation, transfer.
- X Purchase Order number or other reference number.
- X Value, e.g., purchase price for purchased products, fair market value of donations.
- X Funding source, i.e., title of funding source providing funds for acquisition, and grant or contract number if applicable.
- X Location
- X Title

Fixed Assets Reporting.

Distribution of Fixed Assets Inventory Report. The report is distributed to program directors and Programs Administrator whenever a change has occurred in a program's fixed assets during the preceding month, when a report is requested, and when an inventory of fixed assets is required.

Receipt of Fixed Assets.

When a fixed asset is received by Property Clerk, it should receive a tag immediately. Upon receipt of a signed "receiving report" for a purchased fixed asset in the Property Office, a tag number is issued and the fixed asset is tagged by Property. If a fixed asset is transferred from one program to another a "Transfer of Property" form is submitted to Property, indicating the receiving program and the dispensing program. If a program receives donated property, Property and Supply shall be advised by the receiving program by a "Receipt for Property" form, and the fixed asset is tagged and entered as an addition on the Fixed Assets Inventory Report.

Tagging Fixed Assets.

Property Department is responsible for assigning to all fixed assets a tag number for internal control purposes. Usually, a fixed asset will be affixed with a metal tag with the assigned number engraved on it. When the attachment of a metal tag to a fixed asset is impractical, some other method, such as an engraving, will be used. For each fixed asset listed on the Fixed Assets Inventory Report, a tag number is assigned.

Transfer of Fixed Assets.

When a fixed asset is transferred from one program to another, a "Transfer of Property" form is completed by the issuing program, signed by the receiving program, and submitted to Property. The transfer is recorded by Property on the Fixed Assets inventory Report as a deletion from the issuing program and an addition to the receiving

Close-out of Terminated Programs.

When a program is terminated, the actual inventory of fixed assets is transferred to Property. Any discrepancies between the actual fixed assets inventory and the "book balance" on the Fixed Assets Inventory Report are investigated and reconciled. Any fixed assets that are missing may become the personal responsibility of the program director or property custodian of the terminated program.

Before reassigning or disposing of the fixed assets of a terminated program, Property Technician consults with the Comptroller to determine funding source restrictions, if any, applying to the fixed assets of the terminated program. Funding source restrictions will govern the availability for transfer or for other disposition of the assets of terminated program.

Periodic Inventory of Fixed Assets.

Prior to the end of each fiscal year, each program director with the assistance of the Property Technician and Property clerk are required to complete an inventory of fixed assets assigned to the program. Any discrepancies between actual inventory and the book balance on the Fixed Assets inventory Report are reconciled. An inventory of fixed assets is also required when there is a change in program directors. Inventory of Fixed Assets may be conducted at other times when deemed necessary by the program director, Property Technician or the Treasurer.

B. Depreciation of Capitalized Items

Policy: The Property Technician shall depreciate its capitalized property according to proprietary fund accounting principles, generally accepted accounting principles (GAAP/GAGAS), Tribal Council policies, and applicable federal laws, rules, and regulations.

Definitions:

Depreciation is the systematic allocation of the cost of a capital asset to reflect the allocation of the exhaustion of the asset.

Depreciation Base. Depreciation base is the difference between an asset's cost and its salvage value.

Salvage Value. Salvage value is the estimated amount that will be received at the time the asset is sold or removed from service.

Useful Life. The useful life (service life) of an asset is the number of years the asset is capable of economically providing the service it was purchased to perform.

Procedure:

To compute depreciation the following factors must be established.

- (1) Type of ownership interest
- (2) Depreciation base
- (3) Asset's useful life
- (4) Depreciation method to be used

Type of Ownership Interest (Title)

Ownership interest is dictated by the source of funds used to acquire the fixed asset. The type of ownership interest is defined in the following table.

- | | |
|---|---|
| § | Purchased with Tribal funds - "Fee Simple Title" |
| § | Purchased with Grant funds - "Encumbered Title" if fair market value is in excess of \$5000. (See A-102, Section .32) |

- § Purchased with '638 Contract funds - "Reversionary Title" if fair market value is in excess of \$5000. (See 25 CFR 900.91-.94)
- § Furnished by Federal Government under '638 Contract or donated by BIA/IHS as excess property - "Reversionary Title" if fair market value is in excess of \$5000. (See 25 CFR 900.87-.90 and .95-.101)
- § Donated by Federal Government under GSA/DRMS programs - "Restricted Title"

Capital Assets with Fee Simple title shall charge depreciation on a monthly basis as an expense against the using program with an offsetting entry to Fixed Asset - Depreciation (Contra Account). The Property Technician shall be responsible for the periodic entry charging Depreciation Expense and Fixed Asset - Depreciation (Contra Account) with the approval of the Comptroller.

Capital Assets with Encumbered, Reversionary or Restricted title cannot charge depreciation to the program as an expense charge. (See OMB Circular A-87, Attachment B, Item 19.) However, the Property Technician shall no less than annually reduce the Fixed Asset Value with an offsetting entry to Federal Fund Balance. This reduction in book value to the Fixed Asset Account shall be equivalent in amount to the calculated depreciation per annum.

When Capitalized Fixed Assets with an encumbered or reversionary title show a book value less than \$5000.00, the Treasurer in conjunction with the Property Technician and the Program Director of the using program shall determine on an annual basis whether to dispose of the asset. Proceeds from the disposal of property with an encumbered or reversionary title shall be deposited into the program which originally acquired such property if the program still exists or into the successor program funded by the same federal agency.

When Capitalized Fixed Assets are acquired from GSA/DRMS, the Northern Cheyenne Tribe shall insure that such items are used in the program for which they acquired for at least one year. When such Capitalized Fixed Assets show a book value less than \$5000.00, the Treasurer in conjunction with the Property Technician and the Program Director of the using program shall determine on an annual basis whether to dispose of the asset. Proceeds from the disposal of property with an encumbered or reversionary title shall be deposited into the Tribal General Fund.

Method of Depreciation.

The depreciation method selected should match the probable pattern of decline in an asset's services.

The following procedure details the typical method of depreciation to be used.

The method of depreciation is to be used for most capital assets shall be the straight line method. Depreciation charges using the straight-line method shall be determined as follows:

$$\frac{\text{Cost less salvage value}}{\text{Estimated service life}} = \text{Periodic Depreciation charge}$$

Useful Life

The following useful life table for vehicles shall comply with GAAP, the laws of the Internal Revenue Service, and other applicable Federal laws, rules and regulations. The Property Technician in conjunction with the Comptroller shall be responsible for obtaining the IRS Useful life schedule for other types of assets.

Useful Life Table (example)

<u>Type of Vehicles</u>	<u>Asset depreciation range (in years)</u>
Automobiles	2.5 to 3.5
Buses	7 to 11
Light General Purpose Trucks: Includes trucks for use over the road (actual unload weight less than 13,000 pounds)	3 to 5
Heavy General Purpose Trucks: Includes heavy general purpose trucks for use over the road (actual unload weight 13,000 pounds or more)	5 to 7
Tractor Units for Use Over-the-Road	3 to 5
Trailers and Trailer-Mounted Containers	5 to 7
Buildings	20 to 35
Equipment	3 to 5
etc.	

Section 8 - Property Utilization

A. Storage

Storage and movement is the process of storing and moving all types of property held by the Northern Cheyenne Tribe for any purpose and the protection of such items during the movement and storage.

The Property Technician shall arrange for facilities for storing and warehousing and insure that the facilities and the maintenance of such facilities are adequate to protect the property items. Protection must be provided for property items to make sure that the items will not be damaged or destroyed through corrosion, contamination or environmental effects. Hazardous materials, precious metals and sensitive items shall be adequately protected so that they are not damaged or destroyed or stolen.

If necessary, the Property Technician will segregate property for which title is held by the federal government from property owned by the Northern Cheyenne Tribe. Segregation may be through physical means or may be accomplished through use of the tagging identification on such property items.

A system for storing supplies and materials shall be developed by the Property Technician, who shall also establish a mechanism for issuing from stores the supplies and materials requested by tribal entities. Records will be maintained which reflect the stocking levels and reorder points of such stores.

Movement of property must be supported by records including an issuance record, a transfer or shipping ticket and a location change order. All such movement must have the proper authority. The Property Technician shall insure chain of custody. The organization receiving the property item shall provide documentation; the organizational entity transferring the item shall also document the shipment and the carrier of such item shall also provide documentation. The Property Technician will insure that protection for the property item is provided, such protection to include packing, covering, proper handling and equipment, insurance, and any necessary safety precautions to prevent damage or destruction of the property during transfer or shipment.

Loss or damage which occurs to the property during transfer or movement must be immediately reported to the Property Technician and provisions taken for assigning responsibility or replacement of such items through insurance means.

B. Insurance

During the useful life of the property, the Northern Cheyenne Tribe is responsible for administration, use and control of such property. Therefore, the Northern Cheyenne Tribe must establish procedures and policies governing the use, control and administration of property.

To insure the continuation of services and to prevent the tribe from being held liable for the

damages resulting from loss of property, the Northern Cheyenne Tribe shall implement a system for the protection and security of property held by the tribe.

If the loss or damaged property acquired with contract funds results from the willful misconduct, lack of good faith or the failure by the Northern Cheyenne Tribe to protect and insure the property and to establish sound management practices, then the Northern Cheyenne Tribe may be held accountable by the federal government for the loss or damage to such property.

Property acquired with federal grant funds belongs to the Northern Cheyenne Tribe. The federal government will not normally hold the Northern Cheyenne Tribe responsible for loss or damages to property occurring as the result of the Northern Cheyenne Tribe actions. However, the loss or damage of such property will result in an inability to provide program services and a loss of continuity in such services. Therefore, both for property acquired with contract funds and grant funds and for property furnished by the federal government, it is necessary for the Northern Cheyenne Tribe to establish a system of protection and insurance.

Several types of property insurance are available. The Northern Cheyenne Tribe shall consider the cost of such insurance as part of each federal program budget or as part of an indirect cost budget.

Several types of insurance are required for the tribe to adequately insure the property held by the organization. Such insurance types include: theft insurance, fire insurance, property damage insurance, and property damage liability insurance. The Property Technician in conjunction with the Procurement Officer shall obtain appropriate insurance. The Property Technician shall be responsible to insure that property items insured are kept up to date with the insurance company.

C. Security

Besides obtaining insurance for the protection of property, the Northern Cheyenne Tribe shall implement a security system to prevent property from being stolen or damaged through the failure by the Northern Cheyenne Tribe to establish sound management practices. The Property Technician shall suggest that the Northern Cheyenne Tribe provide secure areas where certain items are located.

The Property Technician of the Northern Cheyenne Tribe shall establish procedures which insure that all offices and facilities where equipment which could be stolen or misused can be locked and secured.

The Northern Cheyenne Tribe shall hire a security officer who will periodically monitor the facilities and property to insure that such property is not stolen, misappropriated or lost.

D. Custodial Relationship

The Property Technician must identify every person who is responsible for the use and maintenance of each item of accountable property. These individuals are the custodial officers. They are identified and assigned by the Property Technician. They are normally persons who would be the most likely to use such property during the program. The Property Technician shall assign custodial responsibilities to each individual and establish a relationship between the property office and the custodians. The Property Technician shall provide each custodial officer with a letter of designation establishing their duties and responsibilities. The Property Technician must maintain a copy of the designation of responsibility and the property to which such designation applies.

The custodian will be charged with responsibility for the use, care and maintenance of individually accountable nonexpendable personal property. The custodian will be required to develop, maintain and periodically submit records on the use, maintenance and repair of property within the custodians responsibility.

The custodial relationship between the custodian officer and the Property Technician is a staff relationship. The custodians immediate line supervisor will generally be the program director or administrator. However, the tribal government has charged the Property Technician with the responsibility of maintaining, protecting and implementing sound management practice for all tribal-held property. This requires that the Property Technician delegate certain aspects of his/her role to individuals within the various programs for each individual item.

The custodian, therefore, has a staff relationship with the Property Technician.

The custodian's designation must establish that the individual is responsible for the use and protection of the property. If the custodian, because of willful misconduct, lack of good faith, negligence, misfeasance, malfeasance, nonfeasance or failure to use effective sound management practices, allows the property to become lost or damaged; then the custodian shall be held financially responsible for such loss. This will prevent the Northern Cheyenne Tribe from incurring increased insurance rates while still insuring that the individual custodian is held accountable. The custodians shall, therefore, in the letter of designation, be assigned fiscal responsibility for the loss or a damage to the property for which they are held accountable. Fiscal responsibility means that the individual will be charged, by garnishment of payroll checks, for the loss or damages incurred to such property.

The custodian is required to establish a maintenance and repair program and to implement guidelines for the utilization of the property.

E. Property Use

The Northern Cheyenne Tribe is required by federal grants and contract terms and conditions to establish procedures governing the use of property acquired for programs. Federal cost standards and federal property management guidelines require that the Northern Cheyenne Tribe use such property only for the purposes and the program for

which the property was acquired unless the funding agency has established otherwise in the award or in the appropriate regulations. Tribes are prohibited from using property for any purpose other than that for which it was originally intended, and therefore the Northern Cheyenne Tribe must establish procedures which insure that property is used within the program for the programmatic aspects for which it was acquired.

Where permitted by federal law, the Northern Cheyenne Tribe may permit the property to be used for other than program purposes. The Property Technician shall establish procedures for checking out such property from one program to another program using such items. A release or disclaimer must be obtained guaranteeing that the using program will reimburse the releasing office for the replacement or repair of the item if loss or damages occur. Personal use of property acquired with federal funds is prohibited and the Property Technician will insure that no tribal property is used for personal or individual reasons. Such use shall be grounds for immediate termination of employment.

The Property Technician shall periodically inventory property items to insure that they are being used for the purposes for which they were originally acquired. In the letter of designation to the custodian, the Property Technician shall charge the custodian with the responsibility of insuring that the property item is used only for the purposes for which it was originally acquired. No property items shall be used for personal purposes. No property item shall be checked out to tribal members for use by such members unless that usage is within the guidelines of the program for which the property was acquired.

Annually, the tribal Property Technician will query the program and program custodians to determine the need for continued usage of property items in subsequent program years. This query will determine whether the property items will be retained, disposed of or transferred to other users within the organization. The Property Technician will maintain a record of the query. Necessary care must be employed to obtain high quality production and useful life from all property held by the Northern Cheyenne Tribe.

The Property Technician will develop records to document the occurrence and scheduling of preventative and corrective maintenance and major repair, replacement or other rehabilitation. A maintenance record must be prepared for all nonexpendable personal property items. Maintenance record forms will indicate the type of maintenance service, the date of such service, the schedule date of such service and the cost.

The Property Technician will insure that property items are scheduled for periodic maintenance. The custodian will be charged with the responsibility for maintenance and will inform the Property Technician of the occurrence of such maintenance. The Property Technician will periodically monitor to determine if the scheduled maintenance has been performed according to schedule.

Periodically, the Property Technician will contact the custodian of property to determine if there is a need for major repair, replacement or rehabilitation of capitalized property. The custodians of such property will also inform the Property Technician of the need for such capital repair, replacement or rehabilitation. The Property Technician will establish a schedule for inspection to determine major repairs and capital types of rehabilitation, and

then schedule the repairs or contract with a outside entity for the accomplishment of such rehabilitation services. The Property Technician shall monitor the rehabilitation to insure that it is accomplished as authorized, and make sure that the property maintenance records reflect the occurrence of scheduled maintenance and capital-type rehabilitation.

The Property Technician shall insure that all property custodians are bonded using a position fidelity bond. The Procurement Officer shall insure that the Northern Cheyenne Tribe has property damage, loss and theft insurance and that all property which could potentially cause harm to others and their property are covered under a liability insurance policy.

The Property Technician and custodian shall retain the instruction and operation manuals provided by the manufacturer or vendor for such operating procedures. If the manufacturer does not provide such operating guidelines, then the Property Technician and custodian shall develop these manuals. These operating guidelines and manuals must describe the procedures for utilization and operation of each item in terms readily understood by all individuals concerned.

The operating guidelines shall specify the normal operating procedures for the item concerned and shall specify actions which can possibly damage the property. The Property Technician shall insure that all individuals using tribal property shall be licensed and trained. Prior to use of any item, the Property Technician will inspect the item and will ascertain if the operator is trained and certified.

The Property Technician will identify if specialized training is required and where such training may be obtained. The Property Technician shall identify all individuals who have the need for such training and shall insure that all such individuals obtain such training. The Property Technician or Program Directors shall include funds in the operating budget for training in the use and operation of selected pieces of equipment which require specialized skills.

F. Property Maintenance

The federal government requires that property acquired with federal funds be maintained. This requires that an adequate maintenance program be established which will insure that the property can be used over its normal expected lifetime to attain the program objectives for which the property was acquired.

Two types of maintenance programs are needed:

- Normal preventative maintenance
- Capital repairs and rehabilitation

The tribal Property Technician and the custodian shall maintain records of maintenance and repairs.

Preventative maintenance is maintenance performed on a scheduled basis which identifies and corrects defects before they result in serious damage or destruction of the property. The vendor or the manufacturer may provide preventative maintenance as part of the sales agreement. If not, such vendors or manufacturers will often sell a service agreement to the Northern Cheyenne Tribe as part of the sale. A preventive maintenance program shall include the following actions:

- Inspection at periodic intervals,
- Adjustments for wear and replacement of worn or damaged parts,
- Establishment of necessary precautions to prevent deterioration in the working components of the property from usage, contamination or corrosion.

The custodian and the Property Technician shall inform the appropriate individuals of the need for major repair, replacement and other rehabilitative maintenance. The Property Technician shall determine if items which are scheduled for periodic maintenance actually receive such maintenance in accordance with the manufacturer's instructions and the tribe's procedures.

The Property Technician shall prepare maintenance records. These records shall indicate the date the maintenance was scheduled to be performed, the date it was actually performed, the services which were provided and the cost of maintenance.

Periodically, the Property Technician shall examine the maintenance records to determine the total cost of maintenance over a period of time. When the annual maintenance and repair costs exceed the value of the property at the time of examination, the Northern Cheyenne Tribe shall then replace such property.

G. Consumption of Materials

The process of incorporating materials into an end item or otherwise consuming supplies in the performance of a grant or contract is called consumption. The Property Technician has two responsibilities in this area, to see that consumption is reasonable and that items are conserved during consumption.

To do so, the Property Technician will periodically compare the quantities consumed during the conversion of materials into an end item or the billings on materials and material requirements list. Comparison of the material requirements list to the quantities actually consumed will reveal reasonableness of usage. The Property Technician shall also insure that selectively matched or numbered items are incorporated into the appropriate end item.

The Property Technician shall insure that excess items are promptly returned to storage and are properly recorded in records reflecting excess. To guarantee conservation of property where possible, the Property Technician shall insure maximum use of salvage items and repair of items in lieu of new acquisitions.

The Property Technician will utilize a first-in-first-out system with respect to property, supplies and materials so that items utilized do not become obsolete or unusable.

Section 9 - Disposal

A. General

Disposal of property acquired with federal funds must meet the guidelines provided by the federal government. Disposal criteria depends on the title to the property.

Prior to disposition of the property, the Property Technician, regardless of whether the property is contract or grant acquired, shall make sure there is proper authority for disposition. Within thirty days after the instructions for disposition have been received from the federal government (if necessary), the Property Technician will dispose of the property item. The property identification tag will be removed prior to disposal and documentation of the disposal will be prepared on a disposition record form. This record will reflect the authority for disposal, the actions taken, the date of disposal, the proceeds from the disposal and the property record which has been adjusted.

After disposition, the Property Technician will adjust the property item records, the program registers and any other property records maintained by the property office. The Property Technician will inform the accounting department of the disposal of the property item so that the finance office may adjust the financial records to reflect the disposal.

If the proceeds from the sale are required to be returned to the federal government, the Property Technician will record the receipt of the proceeds and transfer such receipts to the accounting department. The accounting department will then forward such receipts to the federal government agency which provided the funds for the original acquisition of the property.

If the tribal government is entitled to retain the proceeds from the disposal, the property department shall provide a receipt to the accounting department along with the proceeds from the sale so that the funds may be deposited in the appropriate account. The accounting department will adjust the accounting records to reflect the receipt of the proceeds of the sale.

B. Types of Disposal

The property held by the Northern Cheyenne Tribe is utilized during the lifetime of the program and in subsequent programs which can identify a need for such property. After the tribe has exhausted its need for the property, it must be disposed of. The disposal function involves not only the physical disposition of the property, but also the reconciliation of the property and accounting records to reflect such disposal, Disposal of property can be broken down into two primary techniques.

- Ordinary disposal which includes property disposed of through ordinary means; and,
- Extraordinary disposal which refers to property which has been lost, stolen, damaged or destroyed or reflects a shortage in inventory, thus requiring a survey report.

Ordinary disposal is disposal which includes property determined to be:

- Un-required
 - Property which is not needed by a program (excess to a program)
 - Property not needed in the tribe (surplus to the tribe)
 - Property which shall be traded in or sold
 - Property which is scrap or salvage
- Property which shall be intentionally destroyed
- Abandoned Property

C. Defining Ordinary Disposal

Un-required property is personal property which is no longer needed by a component or program of the Northern Cheyenne Tribe and is thus available for transfer to other programs or components of the tribe for utilization.

- The item shall be valued at fair market value more than \$100 and shall be classified in new or excellent condition; or
- The item is used but usable without repairs and in excellent condition and costs individually more than \$300 per item; or
- The item of equipment is one which could be economically transferred to be used by another program even though its condition is less than usable without repairs.

The term "condition" used above shall be described by use of a code system for property condition. The Property Technician shall define and implement a property condition code system.

Property which is beyond economical repair due to wear and tear shall not be classified as un-required property. Un-required property shall be identified during the annual inventory survey conducted by the property manager.

Surplus property, the second category in ordinary disposal, is un-required property which is available for transfer outside the tribe. Such property cannot be used by any component of the Northern Cheyenne Tribe.

Intentional destruction is applicable to such items as drugs, weapons, ammunition or other controlled substances. Intentional destruction is done to prevent the item being used in a potentially harmful or dangerous manner. These items require appointment of an authority to determine precisely what disposition shall be made. The Property Technician and the Custodian shall designate an individual(s) as Destruction Officer. When such property is disposed of, especially drugs, the Property Technician shall insure that adequate documentation is obtained from the Destruction Officer to insure that such disposition has

occurred and to adjust both the property records and the financial records accordingly. When property is destroyed by fire, flood or other such disaster, adjustments must be made to the property records to reflect the position of the property. The remains of the property can be disposed by classifying the property as abandoned. The Custodian shall certify to the Property Technician that the property is to be abandoned if destruction by fire, flood or natural disaster has occurred. Abandonment shall also be used when the cost associated with the salvage, processing and disposition of the property exceeds the anticipated re-sale or sale of such property. The Property Technician may provide for auction procedures for such abandoned property.

When trade-in occurs, the item is replaced by exchange with a vendor for a new item. The vendor applies the value of the old item against the acquisition cost of the new item; the result being a reduced net price on the new item. The cost of the new property which is acquired shall be recorded by the staff accountant as:

- The lesser of the cash paid or payable plus the amount allowed by the seller on the traded in property; or,
- What the purchase price which would have been had there been no trade in.

The Property Technician is responsible for sale of property which is not required in the Northern Cheyenne Tribe. When a sale is made, documentation that the sale has occurred must be provided to the Property Technician and the finance office so that such sales income can be recognized by the program from which the sale has occurred. Sale of property will be dictated by who possesses title.

Scrap or salvage refers to personal property which has lost its original value but retains a minimal worth. This minimal value may be for the basic material content or for a residual utility.

D. Disposal of Federally Acquired Property

In order to determine the need for disposition the Property Technician will annually screen the property held by each program to identify items considered to be excess. Items identified as excess property will then be listed and promptly reported.

In addition to determining excess items the Property Technician will identify those items which the programs have a continuing need for.

When items have been acquired with federal contract funds the Property Technician must determine the federal government disposition guidelines and the title criteria.

Federal Title

The authority of the Northern Cheyenne Tribe to dispose of property is dependent on the source of funds used to acquire it. Property which has been furnished by the federal government for which the federal government still holds title is subject to the control and discretion of the federal government. The Northern Cheyenne Tribe does not have the

authority to dispose of such property without the approval or permission of the funding agency. Therefore, the Northern Cheyenne Tribe must contact the federal funding agency to determine their suggestions and obtain authority before the disposition of any property which the Federal Government retains title. At the completion or termination of any contract, the Property Technician is required to report to the federal government on the federal property which is held by the tribal contractor. The Property Technician shall inform the government of property which the tribe no longer requires. The Property Technician will then ask the federal government Property Technician for permission to dispose of such property and will take such action as the federal official shall prescribe.

Tribal Title

When the Northern Cheyenne Tribe has identified a need to dispose of property according to one of the above ordinary disposal techniques, the Property Technician must process the disposal in accordance with federal guidelines.

Items which have been identified as excess to a program will be listed by the Property Technician, who will subsequently contact other entities within the Northern Cheyenne Tribe in accordance with the priority listing below to determine if other entities within the Northern Cheyenne Tribe have a need for such items.

If the tribe identifies that an item is un-required for a particular component in the Northern Cheyenne Tribe and such property has been acquired with federal funds, the Northern Cheyenne Tribe must first provide other components of the tribe with an opportunity to express a need or utility for such property. Federal property management guidelines specify that the tribe must use a priority roster in the determination of a need for such property. The order of priority is:

- Priority 1. Those items which are no longer required by the program will be offered to those programs which are funded by the same federal agency which purchased the item originally. If not needed by the Program to whom offered, then go to Priority 2.
- Priority 2. The un-required property will be offered to programs funded by other federal agencies. If not needed by the Program to whom offered, then go to Priority 3.
- Priority 3. The un-required property will be offered to tribal-sponsored or non-federally sponsored activities. If not needed, then dispose of item.

Having identified utilization needs within other programs in the Northern Cheyenne Tribe, the Property Technician then will then transfer the property to the needing program and will document the transfer. If the tribe has offered such un-required property to all other components of the tribe, and none of these components identifies a need for the property, it is then classified as surplus property (i.e., surplus to the tribes needs.)

If no other program needs the item, then the Property Technician will adhere to federal

guidelines for disposal of such grant acquired property. The property will be disposed of according to property guidelines and the proceeds of such sale used in accordance with instructions from the Tribal Treasurer.

Federal guidelines require that the Northern Cheyenne Tribe identify the fair market value of the item. If the fair market value of the item is below \$5,000, then the Property Technician may sell the property without further obligation to the government. The proceeds of such sales shall be retained by the tribal government and put into the program which originally purchased the item.

If the fair market value of the item was more than \$5,000, grantor funding agencies require that if the Northern Cheyenne Tribe sells the property, the federal agency must receive their share of proceeds of such sale minus the selling and handling expenses incurred by the Northern Cheyenne Tribe.

On disposition of the property in accordance with the criteria for ordinary disposal, the records of the Northern Cheyenne Tribe must be adjusted by the Property Technician and the staff accountant to reflect this disposition. If the property is transferred to another program within the Northern Cheyenne Tribe, the Property Technician's records shall reflect the assignment of a new custodian and a new location for such property. If the property is sold or destroyed, the asset account must be closed.

E. Extraordinary Disposal

Extraordinary disposal requires that the Property Technician adjust the property records to indicate that the property has been lost, stolen, damaged or destroyed or that inventory shortages are identified.

If the extraordinary loss affects property where the federal government holds title, the Property Technician must inform the federal funding agency that such an extraordinary loss has occurred. The federal funding agency will then convene a board of survey consisting of three or more federal employees appointed by the federal government as a fact finding body to determine the circumstances and conditions associated with the extraordinary loss. If the review board or the survey party identifies that the Northern Cheyenne Tribe is culpable, then the federal agency will assess damages equal to the value of the property at the time of loss. If, however, the federal survey review body finds that the Northern Cheyenne Tribe was not responsible, then the federal government will permit the Northern Cheyenne Tribe to replace such property utilizing insurance payments. If insurance does not exist, the federal agency will replace the property using normal federal channels for replacement of such items if such channels exist.

Section 10. Policy Revision, Amendment and Conflicts

A. Amendments and Changes

1. Amendments

If and when it seems desirable in the interest of good property administration, the Council may after a majority vote, make additions or amendments to these policies.

2. Effective Date

These procedures once adopted by the Council shall hereby rescind and repeal all prior policies, resolutions, ordinances, and memorandums on property administration. These policies shall remain in effect until rescinded, revised or amended by the Council.

3. Initiation of Changes

Changes or interpretation of these procedures shall not be made without review by the Treasurer, the Policy Review Committee and legal review by the tribal attorney as well as by other advisors. Upon completion of review, any changes recommended shall be submitted to the council for action.

B. Conflicts, Order of Precedence and Severability

Applicable federal law shall take precedence if conflicts exist between these policies and applicable Federal Law. If conflict exists between these policies and applicable Federal Law, only the conflicting section of these policies shall be voided. All other severable policies shall remain in force.

REFERENCES

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INDIAN SELF-DETERMINATION ACT

(Excerpts)

Sec. 105. (§ 450j.) Contract or grant provisions and administration

(f) Utilization of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property.

In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act [25 USCS §450f or 450h], the appropriate Secretary may

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act.

Sec. 106. (§ 450j-1.) Contract funding and indirect costs

(k) Use of funds without the approval of the Secretary.

Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

- (1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.
- .
- (3) Building, realty, and facilities costs, including rental costs or mortgage expenses.
- .
- (4) Automated data processing and similar equipment or services.
- .
- (5) Costs for capital assets and repairs.
- .
- .
- (8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.
- .
- (10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.
- .

Sec. 108. (§ 450I). Contract or grant specifications

(c) The model agreement referred to in subsection (a)(1) reads as follows:

"Section 1. Agreement between the secretary and the tribal government

"(b) Terms, provisions, and conditions.

"(8) Property.

"(A) In general. As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

"(B) Records. The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act [25 USCS §450j(f)(2)(A)] for purposes of replacement.

"(C) Joint use agreements. Upon the request of the Contractor, the Secretary and the

Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

"(D) Acquisition of property. The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

"(E) Confiscated or excess property. The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

"(F) Screener identification card. A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

"(G) Capital equipment. The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

"(10) Transportation. Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

OMB Circular A-102

Common Rule (excerpts)

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A-General

- § .1 Purpose and scope of this part
- § .2 Scope of subpart
- § .3 Definitions
- § .4 Applicability
- § .5 Effect on other issuances
- § .6 Additions and exceptions

Subpart B-Pre-Award Requirements

- § .10 Forms for applying for grants
- § .11 State plans
- § .12 Special grant or subgrant conditions for "high-risk" grantees

Subpart C-Post-Award Requirements

Financial Administration

- § .20 Standards for financial management systems
- § .21 Payment
- § .22 Allowable costs
- § .23 Period of availability of funds
- § .24 Matching or cost sharing
- § .25 Program income
- § .26 Non-Federal audits

Changes, Property, and Subawards

- § .30 Changes
- § .31 Real property
- § .32 Equipment
- § .33 Supplies
- § .34 Copyrights
- § .35 Subawards to debarred and suspended parties
- § .36 Procurement
- § .37 Subgrants

Reports, Records, Retention, and Enforcement

- § .40 Monitoring and reporting program performance
- § .41 Financial Reporting
- § .42 Retention and access requirements for records
- § .43 Enforcement

§ .44 Termination for convenience

Subpart D-After-The-Grant Requirements

§ .50 Closeout

§ .51 Later disallowances and adjustments

§ .52 Collection of amounts due.

Subpart E-Entitlements [Reserved]

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

Source: 53 FR 8077 and 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A - General

§ .3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and
- (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

- (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and
- (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means

- (1) with respect to a grant, the Federal agency, and

(2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:

(1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);

(2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account

for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the U.S. Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged.

Only costs are to be counted-not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any

agency or instrumentality of a State exclusive of local governments.
The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than "equipment" as defined in this part.

Suspension means depending on the context, either

(1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or

(2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without

charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Subpart C - Post-award Requirements

Financial Administration

§ .20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to-

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ .22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a -	Use the principles in -
State, local or Indian Tribal Government	OMB Circular A-87
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122
Educational Institutions	OMB Circular A-21
For-Profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31 Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency

§ .23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ .24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions-

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in § .25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § .25(g).)

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without

additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services-

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant,

the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee.

In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions.

Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § .22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ .25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the

final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § .34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § .31 and § .32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ .26 Non-Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations.

The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement.

Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed.

State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations.

This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § .36 shall be followed

Changes, Property, and Subawards

§ .30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program

changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § .22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes-

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law)

or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § .36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval.

(1) A request for prior approval of any budget revision will be in the same budget form as the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § .22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ .31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency.

The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ .32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § .25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the

equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow .32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ .33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ .35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ .36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other

grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only-

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local

authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § .36. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those

minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement.

The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in ____36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest.

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § .22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or

subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is

adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in

excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Reports, Records Retention, and Enforcement

§ .42 Retention and access requirements for records.

(a) Applicability.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors.

For a requirement to place a provision concerning records in certain kinds of contracts, see § .36(i)(10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period-

(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period.

However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records-

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

Subpart D - After-the-grant Requirements

§ .50 Closeout.

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)

(3) Final request for payment (SF-270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § .32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments.

(1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ .51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § .42;

(d) Property management requirements in §§ .31 and .32; and

(e) Audit requirements in § .26.

§ .52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government.

If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E - Entitlements-[Reserved]

OMB Circular A-87

Cost Principles for State, Local and Indian Tribal Governments

Vol. 60 No. 95 Wednesday, May 17, 1995 p 26484 (Notice) 1/3368 OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State, Local and Indian Tribal Governments
AGENCY: Office of Management and Budget.

ACTION: Final Revision to OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".

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SUMMARY: An interagency task force was established to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other Office of Management and Budget cost principles covering non-profit organizations and universities. Proposed revisions reflecting the results of those efforts were published on October 12, 1988 (53 FR 40352-40367) and August 19, 1993 (58 FR 44212-44234). The extensive comments received on these proposed revisions, discussions with interested groups, and other related developments were considered in developing this final revision.

DATES: Agencies shall issue codified regulations to implement the provisions of this Circular by September 1, 1995.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the revised Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202)395-7332.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal funding agency. Federal agencies should contact Gilbert H. Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, telephone: (202)395-3993.

Circular No. A-87 Revised

(excerpts)

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director

Subject: Cost Principles for State, Local, and Indian Tribal Governments

1. Purpose. This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).
2. Authority. This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").
3. Background. An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.
4. Rescissions. This Circular rescinds and supersedes Circular A-87, issued January 15, 1981.
5. Policy. This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.
6. Definitions. Definitions of key terms used in this Circular are contained in Attachment A, Section B.
7. Required Action. Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.
8. OMB Responsibilities. The Office of Management and Budget (OMB) will review agency

regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented. 9. Information Contact. Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202-395-3993.

10. Policy Review Date. OMB Circular A-87 will have a policy review three years from the date of issuance.

11. Effective Date. This Circular is effective as follows: -For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995. - For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

OMB Circular No. A-87-Cost Principles for State, Local and Indian Tribal Governments

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A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards

bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) Publicly- financed educational institutions subject to OMB Circular A- 21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a

hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on

behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public

authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or

indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

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Attachment B-Selected Items of Cost

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33. Professional service costs
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35. Publication and printing costs
36. Rearrangements and alterations
37. Reconversion costs
38. Rental costs
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40. Training
41. Travel costs
42. Underrecovery of costs under Federal agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

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6. Automatic electronic data processing. The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

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15. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government- wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it

presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6 2/3 percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

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19. Equipment and other capital expenditures.

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than \$5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to

be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

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22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

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24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable

subject to the following limitations:

- (1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.
- (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

- (1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

- (2) Earnings or investment income on reserves must be credited to those reserves.

- (3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

- (4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer. e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

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28. Maintenance, operations, and repairs. Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. Materials and supplies. The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

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31. Motor pools. The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

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36. Rearrangements and alterations. Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. Rental costs.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

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(Excerpts)

Subpart F - Standards for Tribal or Tribal Organization Management Systems

General

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and Subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the "common rule" apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the "common rule" that apply to self-determination contracts are the provisions adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§ 900.38 Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

§ 900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the "what" that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are "how" the activity will be accomplished.

§ 900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A-128.

§ 900.41 How long must an Indian tribe or tribal organization keep management system records?

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

(a) Financial records. Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

(b) Procurement records. Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

(c) Property management records. Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

(d) Litigation, audit exceptions and claims. Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action has been completed.

(a) Permit preparation of reports required by a self-determination contract and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the self-determination contract.

§ 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) Financial reports. The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities.

This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) Accounting records. The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) Internal controls. The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) Budget controls. The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract.

(e) Allowable costs. The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary. Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

Type of tribal organization	Applicable OMB cost circular
Tribal Government	A-87, "Cost Principles for State, Local and Indian Tribal Governments."
Tribal private non-profit other than: (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A-122 as not subject to that circular	A-122, "Cost Principles for Non-Profit Organizations."
Tribal educational institution	A-21, "Cost Principles for Educational Institutions."

(f) Source documentation. The financial management system shall contain accounting

records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) Cash management. The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

§ 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding agreement.

Procurement Management System Standards

§ 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this Subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from

contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for "major procurement transactions."

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

- (a) Be in writing;
- (b) Identify the interested parties, their authorities, and the purposes of the contract;
- (c) State the work to be performed under the contract;
- (d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and
- (e) Be subject to sections 7 (b) and (c) of the Act.

§ 900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts.

Property Management System Standards

§ 900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

- (a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or
- (b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

- (a) Personal property with an acquisition value in excess of \$5,000 per item;

- (b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and
- (c) Real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

- (a) For the conduct of periodic inventories;
- (b) To prevent loss or damage to property; and
- (c) To ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to

Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

- (a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;
- (b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and
- (c) The inventory shall report any increase or decrease of \$5,000 or more in the value of any item of real property.

§ 900.60 How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

- (a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.
- (b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

Subpart I - Property Donation Procedures

General

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to Indian tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of BIA or IHS excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

Government-Furnished Property

§ 900.87 How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to an Indian tribe or tribal organization before October 25, 1994:

- (1) The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a self-determination contract.
- (2) The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.
- (3) The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

(b) For government-furnished real property made available to an Indian tribe or tribal organization before October 25, 1994:

- (1) The Secretary, in consultation with the Indian tribe or tribal organization, shall develop a list of the property furnished for use in a self-determination contract.
- (2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101-47.202.2(b)(10). If the

Indian tribe or tribal organization desires to take title to any real property on the list, the Indian tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe or tribal organization.

(c) For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

(1) The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101-47.202.2(b)(10).

§ 900.88 What should the Indian tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall take all necessary steps to effect a transfer of the land to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to an Indian tribe or tribal organization?

(a) Except as provided in paragraph (b) of this section, when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires,

the Secretary shall have the option to take title to any item of government-furnished property:

- (1) That title has been transferred to an Indian tribe or tribal organization;
- (2) That is still in use in the program; and
- (3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of \$5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.90 Does government-furnished real property to which an Indian tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Contractor-Purchased Property

§ 900.91 Who takes title to property purchased with funds under a self-determination contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

The contractor takes title to such property, unless the contractor chooses to have the United States take title. In that event, the contractor must inform the Secretary of the purchase and identify the property and its location in such manner as the contractor and the Secretary deem necessary. A request for the United States to take title to any item of contractor-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

§ 900.92 What should the Indian tribe or tribal organization do if it wants contractor-purchased real property to be taken into trust?

The contractor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. If the request to take contractor-purchased real property into trust is submitted to the Secretary of Health and Human Services, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

§ 900.93 When may the Secretary elect to acquire title to contractor-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of \$5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.94 Is contractor-purchased real property to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

BIA and IHS Excess Property

§ 900.95 What is BIA or IHS excess property?

BIA or IHS excess property means property under the jurisdiction of the BIA or IHS that is excess to the agency's needs and the discharge of its responsibilities.

§ 900.96 How can Indian tribes or tribal organizations learn about BIA and IHS excess property?

The Secretary shall not less than annually send to Indian tribes and tribal organizations a listing of all excess BIA or IHS personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

§ 900.97 How can an Indian tribe or tribal organization acquire excess BIA or IHS property?

(a) The Indian tribe or tribal organization shall submit to the appropriate Secretary a request for specific property that includes a statement of how the property is intended for use in connection with a self-determination contract or grant. The Secretary shall expeditiously process the request and shall exercise discretion in a way that gives maximum effect to the request of Indian tribes or tribal organizations for the donation of excess BIA or IHS property.

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the requestor whose request is received on the earliest date. If two or more requests are received on the same date, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same parcel of real property is submitted, the Secretary shall award the property to the Indian tribe or tribal organization whose reservation or trust land is closest to the real property requested.

§ 900.98 Who takes title to excess BIA or IHS property donated to an Indian tribe or tribal organization?

The Indian tribe or tribal organization takes title to donated excess BIA or IHS property. The Secretary shall provide the Indian tribe or tribal organization with all documentation needed to vest title in the Indian tribe or tribal organization.

§ 900.99 Who takes title to any land that is part of excess BIA or IHS real property donated to an Indian tribe or tribal organization?

(a) If an Indian tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for an Indian tribe, the Indian tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the Indian tribe or tribal organization.

(b) If an Indian tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for an Indian tribe, the requestor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(1) If the donation request is submitted to the Secretary of Health and Human Services, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the Indian tribe or tribal organization's request and the Indian tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(2) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.100 May the Secretary elect to reacquire excess BIA or IHS property whose title has been transferred to an Indian tribe or tribal organization?

Yes. When a self-determination contract or grant agreement, or portion -- thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of the property;

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

- (1) Whose title has been transferred to an Indian tribe or tribal organization;
- (2) That is still in use in the program; and
- (3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of \$5,000.

(b) To the extent that any property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.101 Is excess BIA or IHS real property to which an Indian tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Excess or Surplus Government Property of Other Agencies

§ 900.102 What is excess or surplus government property of other agencies?

(a) "Excess government property" is real or personal property under the control of a Federal agency, other than BIA and IHS, which is not required for the agency's needs and the discharge of its responsibilities.

(b) "Surplus government property" means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration (GSA).

§ 900.103 How can Indian tribes or tribal organizations learn about property that has been designated as excess or surplus government property?

The Secretary shall furnish, not less than annually, to Indian tribes or tribal organizations listings of such property as may be made available from time to time by GSA or other Federal agencies, and shall obtain listings upon the request of an Indian tribe or tribal organization.

§ 900.104 How may an Indian tribe or tribal organization receive excess or surplus government property of other agencies?

(a) The Indian tribe or tribal organization shall file a request for specific property with the

Secretary, and shall state how the property is appropriate for use for a purpose for which a self-determination contract or grant is authorized under the Act.

(b) The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in § 900.86 of this Subpart.

(c) Upon approval of the Indian tribe or tribal organization's request, the Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate, by submitting the necessary documentation in order to acquire the requested property prior to the expiration of any "freeze" placed on the property by the Indian tribe or tribal organization.

(d) The Secretary shall specify that the property is requested for donation to an Indian tribe or tribal organization pursuant to authority provided in section 105(f)(3) of the Act.

(e) The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

§ 900.105 Who takes title to excess or surplus Federal property donated to an Indian tribe or tribal organization?

(a) Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession.

(b) Legal title to donated excess or surplus Federal real property shall vest in the Indian tribe or tribal organization upon acceptance by the Indian tribe or tribal organization of a proper deed of conveyance.

(c) If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for an Indian tribe, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of an Indian tribe.

(1) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the Indian tribe or tribal organization.

(2) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(i) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(ii) If the donation request of the Indian tribe or tribal organization is submitted to the Secretary of Health and Human Services, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall

also forward the Indian tribe or tribal organization's request and the Indian tribe's resolution.

(iii) The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(iv) The Secretary shall not require submission of any information other than that required by Federal law and regulation.

§ 900.106 If a contract or grant agreement or portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus Federal property of other agencies that was donated to an Indian tribe or tribal organization?

No. Section 105(f)(3) of the Act does not give the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to an Indian tribe or tribal organization.

Property Eligible for Replacement Funding

§ 900.107 What property to which an Indian tribe or tribal organization obtains title under this Subpart is eligible for replacement funding?

Government-furnished property, contractor-purchased property and excess BIA and IHS property donated to an Indian tribe or tribal organization to which an Indian tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.