[Docket No. FI 396]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the fourth column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	State map repository	Local map repository
*	*	*	*	*	*	*
Arkansas	Faulkner	Conway, city of	Oct. 29, 1974. Emergency	May 17, 1974		
New York	Oswego	Hannibal, village of	do	May 31, 1974		
Oklahoma	Pushmataha	Antlers, town of	do	Jan. 9, 1974		
Pennsylvania	Washington	Carroll, township of	do			
Do	Montgomery	Collegeville, borough of	do			
Do	Erie	North East, township of	do	Sept. 20, 1974		
Do	Montgomery	Perkiomen, township of	do	Oct. 25, 1974		
Texas	Hidalgo	Elsa, city of	do	May 17, 1974		

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: October 25, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74-25991 Filed 11-7-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ATOMIC ENERGY COMMISSION

PART 9–56—SELECTION OF CONTRACTORS BY BOARD PROCESS

Miscellaneous Amendments

This revision of AECPR 9–56, Selection of Contractor by Board Process, is being made to clarify the fact that the contract amounts for architect-engineer contracts will be based on the estimated costs of such services and not on the estimated construction cost. The revision also establishes the dollar value at which selection of A–E contractors will be made by board process.

1. In Part 9–56, Selection of Contractors by Board Process, §§ 9–56.001, *Applicability*, and 9–56.002, *Policy, cost-type contractor procurement*, are revised as follows:

§ 9–56.001 Applicability.

(a) Contract Proposal Evaluation Boards are to be used:

(1) In selecting operating contractors and participants under the power demonstration program;

(2) If the contract is estimated to exceed $500,000, in selecting contractors for research and development, cost-type construction, and any contract effort where, in order to select the best qualified firm, it is necessary to judge the relative technical and managerial capabilities of a group of firms; and

(3) If the cost is estimated to exceed $50,000, in selecting architect-engineer contractors, including those for advance engineering.

(b) Contract Proposal Evaluation Boards shall be used for the selection of contractors referred to in paragraph (a)(2) and (3) of this section estimated to cost less than $500,000 (or less than $50,000 for A–E contracts), whenever it is likely that later phases of the same project will cause the contract to exceed those dollar thresholds.

(c) The policies and principles of this part also are applicable to the selection of contractors for procurements estimated to cost less than $500,000, or, for A–E services, less than $50,000. However, less formal procedures and practices may be followed, depending on the circumstances in each particular selection, at the discretion of the designating official.

(d) The policies and requirements of this part do not apply to the following:

(1) Extensions of contracts where it has been determined that formal selection procedures need not be followed;

(2) Formally advertised contracts or fixed-price negotiated contracts in which price is the primary consideration;

(3) Research and development contracts entered into under the criteria in Subpart 9–4.51 or 9–4.52;

(4) Determination as to whether a given scope of work should be performed in AEC-owned or in commercial facilities; and

(5) Determination as to which existing AEC operating contractor should perform a given scope of work.

§ 9–56.002 Policy, cost-type contractor procurement.

For the selection of subcontractors under AEC cost-type contracts of the type identified in AECPR 9–56.001(a) (2) and (3), evaluations normally should be made on the basis of group judgment by representatives experienced in technical and business areas appropriate to the requirement, using weighted evaluation factors established prior to receipt of proposals. Numerical ratings should be supplemented with supporting narrative explanations of the important judgments involved in arriving at such ratings.

Subpart 9–56.1—Contract Proposal Evaluation Boards

2. In Subpart 9–56.1, Contract Proposal Evaluation Boards, § 9–56.101, *Use of Contract Proposal Evaluation Boards*, is revised as follows:

§ 9–56.101 Use of Contract Proposal Evaluation Boards.

It is the policy of AEC to use Contract Proposal Evaluation Boards in the selection of contractors for contracts of the type referred to in § 9–56.001(a) and (b).

Subpart 9–56.4—Policy Governing Particular Types of Contracts

3. In Subpart 9–56.4, Policy Governing Particular Types of Contracts, § 9–56.405, *Selection of contractors for engineering and construction work*, paragraph (b), is revised as follows:

§ 9–56.405 Selection of contractors for engineering and construction work.

* * * * *

(b) A firm currently under contract to AEC or to a cost-type AEC contractor shall not be invited to submit a proposal for work in the same field if the proposed project would be performed concurrently with the existing contract and if the estimated cost of the new construction work exceeds $10 million or the estimated cost of the architect-engineer services exceeds $1 million. If, for cogent reasons, the designating official believes that such a firm should be invited, approval shall be obtained from the Division of Contracts. This requirement shall not apply to:

(1) Firms currently engaged only on AEC fixed-priced construction contracts awarded as a result of formal advertising or invited bids;

(2) Any firm currently engaged on AEC construction contracts, the total of which involves costs of less than $10 million.

(3) Any firm currently engaged on AEC A-E contracts, the total of which involves costs of less than $1 million.

(4) Any architect-engineer firm after it has completed title II work, exclusive of checking shop drawings, even though it still has title III inspection services to perform.

* * * * *

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date: This amendment is effective November 8, 1974.

Dated at Germantown, Maryland this 4th day of November 1974.

For the U.S. Atomic Energy Commission.

ROMAN C. BRAUN,
Acting Director,
Division of Contracts.

[FR Doc.74-26161 Filed 11-7-74;8:45 am]

Title 10—Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 70—SPECIAL NUCLEAR MATERIAL

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

Reporting of Theft or Attempted Theft of Special Nuclear Material

On February 8, 1974, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 4930) proposed amendments to its regulations in 10 CFR Part 70, "Special Nuclear Material," and 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274," which would require reporting of theft or attempted theft of special nuclear material in the interest of the common defense and security.

Interested parties were invited to submit comments and suggestions for consideration pertaining to the proposed amendments by March 25, 1974. Upon consideration of the comments received, and other factors involved, the Commission has adopted the proposed amendments with minor editorial and clarifying changes.

These reporting requirements are being promulgated as part of an overall AEC effort to strengthen the protection of strategically important special nuclear material.

In the interest of the common defense and security, the Commission has found that good cause exists for making the amendments effective upon publication in the FEDERAL REGISTER without the customary 30-day notice.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments of 10 CFR Parts 70 and 150 are published as a document subject to codification.

1. Section 70.52 of 10 CFR Part 70 is revised to read as follows:

§ 70.52 Reports of accidental criticality or loss or theft or attempted theft of special nuclear material.

(a) Each licensee shall report immediately to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of Part 73 of this chapter, by telephone, telegram, or teletype any case of accidental criticality and any loss, other than normal operating loss, of special nuclear material.

(b) Each licensee who possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall report immediately any theft or other unlawful diversion of special nuclear material which he is licensed to possess, or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material in accordance with the procedures in § 73.71 of this chapter.

2. Section 150.16 of 10 CFR Part 150 is revised to read as follows:

§ 150.16 Submission to Commission of nuclear material transfer reports.

(a) Each person who transfers and each person who receives special nuclear material pursuant to an Agreement State license shall complete and distribute Nuclear Material Transaction Reports on Form AEC-741, in accordance with printed instructions for completing the form, whenever he transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Each person who transfers such material shall submit a copy of Form AEC-741 to the Commission and a copy to the receiver of the material promptly after the transfer takes place. Each person who receives special nuclear material shall submit a copy of Form AEC-741 to the Commission and to the shipper of the material within ten (10) days after the special nuclear material is received.

(b) Each person who, pursuant to an Agreement State License, possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall report promptly to the Director of the appropriate Regulatory Operations Regional Office, listed in Appendix A of Part 73 of this chapter, by telephone, telegram, or teletype any theft or other unlawful diversion of special nuclear material which he is licensed to possess or any incident in which an attempt has been made, or is believed to have been made, to commit a theft or unlawful diversion of such material. The initial report shall be followed within a period of fifteen (15) days by a written report submitted to the Director of the appropriate Regulatory Operations Regional Office with a copy submitted to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545, which sets forth the details of the incident. Subsequent to the submission of the written report required by this paragraph, each licensee shall promptly inform the Director of the appropriate Regulatory Operations Regional Office by means of a written report of any substantive additional information, which becomes available to such person, concerning an attempted or apparent theft or unlawful diversion of special nuclear material.

Effective date. These amendments become effective on Friday, November 8, 1974.

(Sec. 161, 274; Pub. L. 83-703, 86-373; 68 Stat. 948, 73 Stat. 688 (42 U.S.C. 2201, 2021))

Dated at Washington, D.C. this 4th day of November 1974.

For the Atomic Energy Commission.

GORDON M. GRANT,
Assistant Secretary
of the Commission.

[FR Doc.74-26144 Filed 11-7-74;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Limitations on Carryovers of Unused Credits and Capital Losses

Correction

In the correction appearing in the first column at page 38906 in the issue of Monday, November 4, 1974, in line three the reference to "October 18, 1974," should read "October 16, 1974."

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[41 CFR Parts 14H–1, 14H–3, 14H–30]

CONTRACTING WITH INDIAN TRIBES

Notice of Proposed Rulemaking

NOVEMBER 4, 1974.

Chapter 14H of 41 CFR was published beginning on page 13659 of the August 26, 1969, FEDERAL REGISTER (38 FR 13659) and subsequently amended. Chapter 14H contains the Bureau of Indian Affairs Procurement Regulations (BIAPR).

Notice is hereby given that it is proposed to amend Chapter 14H of Title 41 of the Code of Federal Regulations by adding a new § 14H–1.270 to Subpart 14H–1.2 of Part 14H–1; by adding a new Part 14H–3 with new Subparts 14H–3.2, 14H–3.3, and 14H–3.8; and by adding a new Part 14H–30 with new Subparts 14H–30.2 and 14H–30.4. This amendment is proposed pursuant to the authority contained in the Act of November 2, 1921, Ch.115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14–1.008; and section 23 of the Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47). The purpose of the amendment is to provide greater ease in contracting with Indian tribes and to define reservation programs, Indian reservation, Indian tribes, and Indian tribal contractor.

It is the policy of the Department of the Interior, whenever practicable to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Director of Administration, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, on or before December 9, 1974.

It is proposed to amend Chapter 14H of Title 41 of the Code of Federal Regulations as follows:

PART 14H–1—GENERAL

1. By adding a new § 14H–1.270 to Subpart 14H–1.2 of Part 14H–1, to read as follows:

§ 14H–1.270 Definitions and terms pertaining to contracts with Indian tribes.

§ 14H–1.270–1 Reservation program.

"Reservation program" means all or any part of a program for operating reservation activities that could be performed by an Indian tribe as determined by the Commissioner and/or authorized by law.

§ 14H–1.270–2 Indian reservation.

"Indian reservation" means all Indian reservations, former Indian reservations in Oklahoma, and lands occupied by other Indian groups and by Alaska Native communities, including all or any part of any of the twelve regions in Alaska established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that are recognized by the Secretary, or his designee.

§ 14H–1.270–3 Indian tribe.

"Indian tribe" means any Indian tribe, band, nation, or other organization or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and includes village corporations, regional corporations, and Native associations provided for or recognized by the Alaska Native Claims Settlement Act (85 Stat. 688).

§ 14H–1.270–4 Indian tribal contractor.

"Indian tribal contractor" means the tribal governing body of an Indian tribe as defined in § 14H–1.270–3 of this chapter, any public non-profit type corporation approved by an Indian tribal governing body which serves as a governmental instrumentality of an Indian tribe, or any organization legally established by one or more Indian tribal governing bodies for the benefit of their respective members which is controlled and operated by these Indian tribal governing bodies.

PART 14H–3—PROCUREMENT BY NEGOTIATION

2. By adding a new Part 14H–3 consisting of Subparts 14H–3.2, 14H–3.3, and 14H–3.8, to read as follows:

Subpart 14H–3.2—Circumstances Permitting Negotiation

AUTHORITY: Act of November 2, 1921, Ch. 115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14–1.008; sec. 23, Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47).

Subpart 14H–3.2—Circumstances Permitting Negotiation

§ 14H–3.210 Impractical to secure competition by formal advertising.

Indian reservation programs can be performed successfully only by an Indian tribal governing body or by an entity approved by such a body. Therefore, a contract for an Indian reservation program will be made only with an Indian tribal contractor as defined in § 14H–1.270–4 of this chapter.

§ 14H–3.215 Otherwise authorized by law.

§ 14H–3.215–70 Buy Indian Act.

Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47) referred to as the Buy Indian Act permits negotiation of contracts with Indians to the exclusion of non-Indians, and, when used, should be cited in the contract document.

Subpart 14H–3.3—Determinations, Findings, and Authorities

§ 14H–3.301 General.

The following class determination and findings apply to all contracts and contract modifications entered into with an Indian tribal contractor as defined in § 14H–1.270–4 for the performance of reservation programs and authorize negotiation without competition. This section shall be cited on all contracts entered into with an Indian tribal contractor as defined in § 14H–1.270–4 of this chapter.

BUREAU OF INDIAN AFFAIRS

DETERMINATIONS AND FINDINGS

AUTHORITY TO NEGOTIATE A CLASS OF CONTRACTS

Based upon the following findings and determinations, the class of contracts for reservation programs may be negotiated without competition pursuant to authority of 41 U.S.C. 252(c)(10) and as implemented by § 1-3.210 of the Federal Procurement Regulations, by any contracting officer.

Findings

(a) The Bureau of Indian Affairs, through its various contracting officers, proposed to enter into contracts by negotiation without competition for the performance of programs and the furnishing of services from Indian tribal contractors, residing on Indian reservations.

(b) National policy proclaims that Indian tribes be given an opportunity for self-determination in resolving the many facets that pertain to their well being. Contracting with tribal governments for the performance of various programs and for the furnishing of various kinds of services is one method toward the accomplishment of that goal. Accordingly it is the policy of the Department of the Interior that the Bureau of Indian Affairs through its various field establishments allow and encourage tribal governments to enter into contracts with the Bureau of Indian Affairs for the performance of Indian reservation programs.

(c) It is not conducive to Indian self-determination or feasible to formally advertise or to attain competition for the performance of programs or the furnishing of services by contract on an Indian reservation when the program or services fall in the category of those that could be performed by an Indian tribal contractor for its members with the governing body of the Indian tribe or such other organization established by the governing bodies of one or several Indian tribes.

(d) Contracts with Indian tribal contractors for the performance of various programs or for the furnishing of various kinds of services on Indian reservations are contracts for which it is hereby determined to be impracticable to obtain competition and therefore such contracts with Indian tribal contractors for the performance of Indian reservation programs shall of necessity be negotiated without regard to competition as authorized by § 1-3.210 of the Federal Procurement Regulations.

Subpart 14H-3.8—Price Negotiation Policies and Techniques

§ 14H-3.807 Pricing techniques.

§ 14H-3.807-2 Requirement for price or cost analysis.

Except for initial contracts or other agreements for the performance of reservation programs, the requirements of § 1-3.807-2 are optional with contracting officers when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2 when a plan of operation has been presented and accepted.

§ 14H-3.807-3 Cost or pricing data.

Except for initial contracts or other agreements for the performance of reservation programs, the requirements of § 1-3.807-3(a) are optional with the contracting officer when an Indian tribal contractor is involved pursuant to Subpart 14H-3.2 if the initial plan of operation contains itemized estimates of costs.

PART 14H-30—CONTRACT FINANCING

3. By adding a new Part 14H-30 consisting of Subparts 14H-30.2 and 14H-30.4, to read as follows:

AUTHORITY: Act of November 2, 1921, Ch. 115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14-1.008; sec. 23, Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47).

Subpart 14H-30.2—Basic Policies

§ 14H-30.213 Financial information and analysis.

The requirements of § 1-30.213 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2 when a plan of operation has been presented and accepted.

§ 14H-30.214 Appropriate information—purposes.

The requirements of § 1-30.214 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-1 Cash flow forecast and estimated financial statements.

The requirements of § 1-30.214-1 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-2 Realistic assumptions.

The requirements of § 1-30.214-2 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-3 Estimated profit and loss statements and balance sheets.

The requirements of § 1-30.214-3 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

Subpart 14H-30.4—Advance Payments

§ 14H-30.403 Interest.

Advance payments made under non-profit contracts to Indian tribal contractors, individual Indians and other Indian organizations will not require the payment of interest.

§ 14H-30.404 Standards-amounts-need.

An advance payment to an Indian tribal contractor, as defined in § 14H-1.270-4, is an exception under § 1-30.404(b).

§ 14H-30.406 Responsibility-delegation of authority.

Authority to make advance payments not to exceed $250,000 to Indian tribal contractors and other Indians who operate a totally Indian owned and controlled non-profit business and who qualify for contracts with the Bureau of Indian Affairs shall be exercised by the Area Directors. Advance payments shall be made based upon written findings, determinations and authority as provided for in § 1-30.405 that the making of the advance pyaments is in the public interest and that adequate financing cannot be obtained elsewhere. The advance payment clause in § 14H-30.414-2 shall be referred to in the determinations, findings, and authority and shall be incorporated into the contract.

§ 14H-30.410 Findings, determinations, and authorizations.

The following is format of the Findings, Determinations, and Authorization for advance payment for use with contracts with Indian tribal contractors and other Indians who operate a totally owned and controlled non-profit business and who have contracts with the Bureau of Indian Affairs. A copy of the Findings, Determinations, and Authorization shall be inserted in the contract file.

BUREAU OF INDIAN AFFAIRS

FINDINGS AND DETERMINATIONS AND AUTHORIZATION FOR ADVANCE PAYMENT

FINDINGS

1. I hereby find that:

a. The Bureau of Indian Affairs has entered (intends to enter) into a contract as indicated below. (Use appropriate language).
Type of Contract: (Indicate type).
Amount of Contract: (State amount).
Contractor: (Indicate name of contractor).
Purpose: (Give description of contract).
Contracting Office: (Give name of contracting office).

b. (Note to Contracting Officer: Summarize the specific facts and significant circumstances concerning the contract and the contractor, which, together with the other findings, will clearly support the determination below).

c. An advance payment has been requested by the contractor and is required for prompt and efficient performance of the services under this contract which will be of benefit to the Bureau. No means of adequate financing other than by an advance payment are available to the Contractor.

d. The attached advance payment clause that will be included in the contract contains appropriate provisions for the protection of the Government as security for the advance payment. These include provisions that the advance payment(s), and all progress and final contract payments made, will be deposited in a special bank account, and that the Government will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or property acquired for the performance of the contract.

e. The security provisions of the advance payment clause that will be used are deemed adequate.

f. Because of the lack of financial resources, the Contractor is not in a position to pay interest and it should not be charged on the advance payment(s).

g. The Bureau is committed to help develop Indian organizations to attain financial and managerial viability.

DETERMINATIONS

2. Upon the foregoing findings, I hereby determine that the making of an advance payment(s) without payment of interest, except as provided in the attached advance payment clause that will be included in the contract, is in the public interest.

AUTHORIZATION

Upon the findings and determination stated above, an advance payment not to exceed the amount stated below is hereby authorized pursuant to 41 U.S.C. 255 upon terms and conditions as contained in the advance payment clause to be included in the contract, a copy of which is attached thereto. The amount of the advance payment(s), at any time outstanding, shall not exceed the unpaid contract price nor the contractor's estimated interim needs arising during the reimbursement cycle. Amount of advance payment shall not exceed thirty (30) percent of the contract amount including any modification.

Signature: ________________
Title: ________________
Date: ________________

§ 14H–30.411 Application for advance payment.

Paragraphs (a), (d), and (e) of § 1–30.411 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H–3.2.

§ 14H–30.412 Action by contracting officer.

Paragraphs (c) and (d) of § 1–30.412 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H–3.2.

§ 14H–30.414 Agreement for special bank account and contract provisions.

§ 14H–30.414–1 Form of agreement for special bank account.

For all advance payments made to Indian tribal contractors and other Indians who operate a totally owned and controlled non-profit business, the form of agreement and modification given in paragraphs (a)–(d) of this section should be used.

(a) The following is the form of agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT FOR ADVANCE PAYMENT(S)

(1) This agreement entered into between the United States of America, hereinafter called the "Government," Contractor, and Bank, each represented by the officials executing this agreement.

(2) The Government and the Contractor entered into the Contract(s) or Supplemental Agreement(s) thereto, providing for the making of advance payment(s) to the Contractor. Copy of the advance payment clause included in the contract is attached to and made a part of this agreement.

(i) The advance payment clause requires that amounts advanced to the Contractor be deposited in a Special Bank Account at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(ii) This Special Bank Account shall be designated as indicated in paragraph (7) of this agreement.

(3) In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(i) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the bank with respect to such account.

(ii) The Bank will be bound by the provisions of the advance payment clause relating to the deposit in and withdrawal of funds from the Special Bank Account, but shall not be responsible for the use of funds withdrawn from said account. Upon receipt by the Bank of written directions of any kind from the Contracting Officer, or from the duly authorized representative of the Contracting Office, pertaining to the use of the funds in the Special Bank Account upon Department of the Interior, Bureau of Indian Affairs stationery and purporting to be signed by the Contracting Officer or the Contracting Officer's authorized representative, the Bank shall act thereon and insofar as the rights, duties, and liabilities of the Bank are concerned, the written directions shall be conclusively deemed to have been properly issued and filed with the Bank by the Department of the Interior, Bureau of Indian Affairs.

(iii) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to the Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of the Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Contracting Officer.

(5) The Bank, Contractor, and Government, by executing this agreement, are bound by all of the provisions contained in the advance payment clause attached, which is made a part of the contract.

(6) The contract number and purpose of the contract(s) or supplemental agreement(s) referred to above are as follows:
____
____

(7) The Special Bank Account shall be designated as "SPECIAL BANK ACCOUNT NUMBER ____ Bureau of Indian Affairs.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the date and year written below:

Date ________________, 19__

CONTRACTOR

Name: ________________________________
____

Name & Title of Representative: __________
____
____

Complete Mailing Address: ______________
____
____

BANK

Name: ________________________________
____

Name & Title of Representative: __________
____
____

Complete Mailing Address: ______________
____
____

UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs: ______________
____
____

Complete Mailing Address: ______________
____

Name and Title of Contracting Officer: ____
____
____
____
____
____

(b) The following instructions apply to the form of agreement shown in paragraph (a) of this section:

(1) Under paragraph (6) of the agreement, state the contract number and describe the purpose of the contract in brief but sufficient detail to convey a general understanding of its nature. If the contract uses a descriptive title to designate its purpose, that description should be used.

(2) Insert, in the blank space in paragraph (7) of the agreement, the number assigned by the Bank as the Account Number for the "Special Bank Account."

(3) The agreement should be dated on the date it is signed by the Contracting Officer.

(4) The complete mailing address of the bank is necessary as the advance payment check and all progress payment checks will be mailed to the bank. The zip code is required.

(5) The Contracting Officer should not sign the agreement until authority to make the advance payment has been obtained.

(c) The following is the form of modification of an agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Modification Number ______

(1) The Agreement for Special Bank Accounted dated ______, 19__, is modified as follows:

(2) The contract number and the purpose of the contract is as follows:
____
____

(3) The Special Bank Account number is indicated as follows:
____

IN WITNESS WHEREOF, the parties hereto have caused this modification to be executed as of the date and year written below.

Date ________________ 19__

Name of Contractor	Name of Bank
____________________	____________________
Signature	By ________________
By ________________	
Name and Title of Contractor's Representative	Name and Title of Bank's Representative

UNITED STATES OF AMERICA
Acting Through
The Bureau of Indian Affairs

Signature

By ---------------------------------------
Name and Title of Contracting Officer

(d) The following instructions apply to the form of modification of an agreement shown in paragraph (c) of this section:

(1) The date of the original Agreement for Special Bank Account should be indicated in the first line of paragraph (1) of the modification.

(2) Under paragraph 2 of the modification, state the contract number and describe the purpose of the contract. If the purpose given in paragraph (6) of the original agreement is changed, describe it. Otherwise repeat the original description.

(3) Under paragraph (3) of the modification, indicate the Special Bank Account Number if a new one is being issued. If the original number is being used, repeat it.

(4) If a change is not made under either paragraphs (2) or (3) of the modification, then no modification of the original agreement is necessary.

(5) If a modification is required, it should be dated when signed by the Contracting Officer.

§ 14H-30.414-2 Contract provisions for advance payments.

The contract clause for use when an advance payment is made or to be made on a contract with an Indian tribal contractor and other Indians who operate a totally Indian owned and controlled business follows:

ADVANCE PAYMENT

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment(s) to the Contractor. No advance payment(s) shall be made (1) without the Contracting Officer's approval as to the financial necessity therefor; and (2) in an amount in excess of that stated in paragraph (n) (1) hereof.

(b) *Special bank account.* Until the advance payment(s) made hereunder is liquidated and the Contracting Officer approves in writing the release of any funds due and payable to the Contractor, the advance payment(s) and all other payments (progress, partial, and final) made under the contract shall be made by check payable to the Contractor but mailed to the bank, where the special bank account is mantained as stated in the Agreement for Special Bank Account. The check must be marked for "Deposit in Special Bank Account Number ______, Bureau of Indian Affairs." The Agreement for Special Bank Account shall designate the account number. No part of the funds deposited in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be only by check of the Contractor, unless countersigning on behalf of the Government by the Contracting Officer or such other person as he may designate in writing is determined to be in the best interest of the Government and the Contracting Officer notifies the Contractor and bank in writing that countersigning will be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for materials, labor, administrative and overhead expenses, and other purposes required for this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of contract cost principles and procedures in 41 CFR Part 1-15 or other agency cost principles and procedures, if any, which are made part of this contract), or for the purposes of reimbursing the Contractor for such payments, and for such other purposes as the Contracting Officer may approve in writing. If this is a cost reimbursement contract, the funds in the Special Bank Account may be withdrawn by the Contractor solely for the purpose of making payments for items of allowable costs as defined in clause titled "ALLOWABLE COST, FIXED-FEE AND PAYMENT" of this contract. Any interpretation required as to the proper use of funds shall be made in writing by the Contracting Officer.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payment as shall in the opinion of the Contracting Officer be in excess of the Contractor's current requirements or when added to total advances previously made and liquidated are in excess of the amount specified in paragraph (n) (1) hereof or are no longer to be made available to the Contractor because of default, or abuse in their use, or for such other reasons as the Contracting Officer may specify. In the event the Contractor fails to repay such part of the unliquidated balance of the advance payment when so requested by the Contracting Officer, all or any part thereof may be withdrawn from the Special Bank Account by check(s) made payable to the Bureau of Indian Affairs signed by the Contracting Officer or by an official of the Bureau of Indian Affairs authorized in writing by the Contracting Officer to take such action. Such withdrawals shall be applied in reduction of the advance payment(s) then outstanding hereunder. The Contracting Officer shall notify the contractor and the bank of the action taken.

(e) *Liquidation.* If not otherwise liquidated, the advance payment(s) made hereunder shall be liquidated as herein provided. When the sum of all the estimated payments remaining due on the contract approximate the unliquidated amount of the advance payment(s), the Contracting Officer shall thereafter withhold further payments due on the Contract represented by proper invoiced amount(s) submitted by the Contractor, and apply the amount(s) withheld against the liquidation of the advance payment until the advance payment has been fully liquidated. If, upon completion or termination of the contract or for other reasons, the entire advance payment(s) is not fully liquidated by the process indicated above and the Contractor does not repay the balance due upon request, then the balance thereof shall be offset against any sums otherwise due or which may become due to the Contractor from the Government on any other contracts or from any source.

(f) *Interest charge.* No interest will be charged on the amount of the advance payment(s), but any interest earned on the advance payment(s) including sub-advances or contract earnings deposited in the Special Bank Account shall be used in the performance of the contract and to liquidate the advance payment(s) made.

(g) *Bank agreement.* Before an advance payment(s) is made hereunder, the Contractor shall submit to the Contracting Officer, in the form prescribed, an Agreement for Special Bank Account, in triplicate, signed by the contractor and an official of the bank in which the Special Bank Account is established as the depository for the advance payment(s) and other payments. The agreement shall clearly set forth the character of the Special Bank Account and the responsibilities of the Contractor, the bank and the Contracting Officer thereunder. Wherever possible, such bank shall be a member of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payment(s) made hereunder.

(i) *Lien on property under contract.* Any advance payment(s) made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract. The Government's lien shall apply to all material and other property acquired for or allocated to the performances of this contract, except to the extent that the Government by virtue of any other provisions of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payment(s) then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (1) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen compensation laws. The Contractor agrees that, until work under this contract has been completed and the advance payment(s) made hereunder has been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificate with respect to his insurance as the Contracting Officer may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (1) termination of this contract by reason of fault of the Contractor; (2) a finding by the Contracting Officer that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract, or (ii) has so failed to make progress or is in such unsatisfactory financial condition as to endanger performance of this contract; or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes, or of the costs of performance of this contract in the ordinary course of business; (3) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property or institution of bankruptcy, reorganization, arrangement, or liquidation proceedings by or against the Contractor; (4) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (5) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may in its discretion and upon written notice to the Contractor and Bank, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor and Bank, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances;

(A) Withdraw all or any part of the balance in the Special Bank Account by checks made payable to the Bureau of Indian Affairs signed solely by an official of the Bureau of Indian Affairs, authorized in writing by the Contracting Officer to take such action, and apply such amounts in reduction of the advance payment(s) then outstanding hereunder and in reduction of any other claims of the Government against the Contractor;

(B) Demand immediate repayment of the unliquidated balance of the advance payment(s) hereunder; or

(C) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of the advance payment(s) hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not, while any part of the advance payment(s) is unliquidated, pledge, or otherwise assign any monies due under this contract, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution. (See clause titled ASSIGNMENT OF CLAIMS).

(m) *Information—access to records.* The Contractor shall furnish to the Contracting Officer signed or certified balance sheets and profit and loss statements monthly, if required by the Contracting Officer, together with a monthly bank statement for the Special Bank Account and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Designations and determinations.* (1) Amount. The amount of the advance payment(s) at any time outstanding hereunder shall not exceed the amount authorized in the Findings, Determinations, and Authorization for the advance payment(s) prepared pursuant to 41 CFR 14H–30.410.

(2) Depository. The advance payment(s) shall be deposited in the bank with which the Agreement for Special Account is established pursuant to 41 CFR 14H–30.414–1.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payment(s) hereunder.

(p) *Representations and warranties.* To induce the making of the advance payment(s), the Contractor represents and warrants that;

(1) No litigation or proceedings are presently pending or threatened against the Contractor.

(2) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing agreement of the Contractor.

(3) The Contractor has the power to enter into this contract and accept an advance payment(s) hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(4) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(5) All information furnished by the Contractor to the Contracting Officer in connection with the request for an advance payment is true and correct.

(6) These representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of any subsequent request for additional advance payment(s) under this contract.

(q) *Subadvances.* Subject to the prior written approval of the Contracting Officer, funds from the Special Bank Account may be used by the Contractor to make advance payment(s) or down payments to subcontractors and suppliers of material in advance of performance by the subcontractor or suppliers of material. Such subadvances shall not exceed the subcontract price or estimated cost as the case may be, and the subcontractors or suppliers of material to whom such advance payment(s) is made shall furnish adequate security therefor. Unless other security is required by the Contracting Officer, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplemental hereto) between the Government, the Contractor, and the Bank may be considered as adequate for such subadvance(s). Subadvances shall not be made without payment of interest of six percent per annum unless adequate justification is first furnished to and approval obtained by the Contracting Officer, as provided in 41 CFR 1–30.403(b).

(r) *Covenants.* During the period of time that an advance payment(s) made hereunder remains unliquidated, the Contractor shall not, without prior written consent of the contracting officer:

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereinafter acquired by it, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Contracting Officer incident to the establishment of these advance payment(s) provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations, of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments, or of rates provided by this contract, or in existing agreements, in connection with which notice has been given to the Contracting Officer, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder.

(9) Make any substantial change in management, ownership, or control of the organization with which this contract is made.

(10) Merge or consolidate with any other firm or corporation, change the type of its business, or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation; or

(12) Create or incur indebtedness, borrow money or advances other than advances to be made hereunder, except as specified herein.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

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