

the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

§ 36.223 Exemption from bonds.

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors, other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in carrying out the contract the use of each person. Whenever the total amount payable by the terms of the contract is not more than \$1,000,000 the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than \$1,000,000 but not more than \$5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than \$5,000,000 the payment bond shall be \$2,500,000.

§ 36.224 Construction and architect-engineering contracts.

The special provisions, procedures, and requirements applicable to construction and architect-engineering service contracts are set forth in § 3-4.6008 of 41 CFR.

§ 36.225 Performance of personal services.

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with

the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

§ 36.226 Advance payments.

Contracts awarded under the authority of the Act shall incorporate the following clause, which is also set forth in 41 CFR 3-4.6013 and 3-4.6014.

(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, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the officer administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) to the financial necessity therefore; (2) in an amount which together, as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) of this section; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) of this section. No part of the funds 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 made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent"). Until