

**§ 170.620**

**25 CFR Ch. I (4–1–11 Edition)**

If . . .	Then . . .
(a) A contract serves a single tribe.	Section 7(c) under Title I of ISDEAA allows tribal employment or contract preference laws, including tribe local preference laws, to govern.
(b) A contract serves more than one tribe.	Section 7(b) under Title I of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA.	25 CFR 1000.406 applies.

**§ 170.620 How do ISDEAA’s Indian preference provisions apply?**

This section applies when the Secretary or a tribe enters into a cooperative agreement with a State or local government for an IRR construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in a cooperative agreement.

**§ 170.621 What if a tribe fails to substantially perform work under a contract or agreement?**

If a tribe fails to substantially perform work under a contract or agreement:

- (a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a)–(b) and ISDEAA, part 900 subpart L (appeals); and
- (b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000 subpart K.

**§ 170.622 What IRR programs, functions, services, and activities are subject to the self-governance construction regulations?**

All IRR Program design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR 1000 subpart K, including applicable exceptions.

**§ 170.623 How are IRR Program projects and activities included in a self-governance agreement?**

To include an IRR Program project or activity in a self-governance agreement, the following information is required:

- (a) A line item for each project or activity;

(b) Sufficient detail to describe the work as included in the FHWA-approved IRR TIP and Control Schedule; and

(c) All other information required under 25 CFR 1000 subpart K.

**§ 170.624 Is technical assistance available?**

Yes. Technical assistance is available from BIA for tribes with questions about contracting the IRR Program or IRR projects. For tribes with questions about self-governance agreements for the IRR Program or IRR project(s), technical assistance is available from the Office of Self-Governance and BIA. Technical assistance can include, but is not limited to, assistance in the preparation of self-determination contract proposal(s) and self-governance agreements.

**§ 170.625 What regulations apply to waivers?**

The following regulations apply to waivers:

- (a) For self-determination contracts, 25 CFR 900.140–148;
- (b) For self-governance agreements, 25 CFR 1000.220–232; and
- (c) For direct service, 25 CFR 1.2.

**§ 170.626 How does a tribe request a waiver of a Department of Transportation regulation?**

A tribe must follow the procedures in ISDEAA, Title I, and 25 CFR 900.140–148 for self-determination contracts and Title IV, 25 CFR 1000.220–232 for tribal self-governance agreements. A courtesy copy of the request should be sent to the Secretary of Transportation at: 400 7th St., SW., HFL–1, Washington, DC 20590. When a waiver request is outside the Secretary’s authority, the Secretary should forward the request to the Secretary of Transportation.

**APPENDIX A TO SUBPART E—IRR PROGRAM FUNCTIONS THAT ARE NOT OTHERWISE CONTRACTIBLE**

The program functions listed in this appendix cannot be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(d)(3)(B))

- A. IRR project-related pre-contracting activities:
  1. Notifying tribes of available funding including the right of first refusal; and