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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

2. Providing technical assistance.
- B. IRR project-related contracting activities:
  1. Providing technical assistance;
  2. Reviewing all scopes of work under 25 CFR 900.122;
  3. Evaluating proposals and making declination decisions, if warranted;
  4. Performing declination activities;
  5. Negotiating and entering into contracts or agreements with State, tribal, and local governments and other Federal agencies;
  6. Processing progress payments or contract payments;
  7. Approving contract modifications;
  8. Processing claims and disputes with tribal governments; and
  9. Closing out contracts or agreements.
- C. Planning activities:
  1. Reviewing IRR transportation improvement programs developed by tribes or other contractors;
  2. Reviewing IRR long-range transportation plans developed by tribes or other contractors; and
  3. Performing other Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.
- D. Environmental and historical preservation activities:
  1. Reviewing and approving all items required for environmental compliance; and
  2. Reviewing and approving all items required for archaeological compliance.
- E. Processing rights-of-way:
  1. Reviewing rights-of-way applications and certifications;
  2. Approving rights-of-way documents;
  3. Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR part 169;
  4. Responding to information requests;
  5. Filing Affidavit of Completion Forms; and
  6. Performing custodial functions related to storing rights-of-way documents.
- F. Conducting project development and design under 25 CFR 900.131:
  1. Participating in the plan-in-hand reviews on behalf of BIA as facility owner;
  2. Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance on behalf of BIA as facility owner;
  3. Reviewing PS&E's to assure compliance with NEPA as well as all other applicable Federal laws; and
  4. Reviewing PS&E's to assure compliance with or exceeding Federal standards for IRR design and construction.
- G. Construction:
  1. Making application for clean air/clean water permits as facility owner;
  2. Ensuring that all required State/tribal/Federal permits are obtained;
  3. Performing quality assurance activities;
  4. Conducting value engineering activities as facility owner;
  5. Negotiating with contractors on behalf of Federal Government;
  6. Approving contract modifications/change orders;
  7. Conducting periodic site visits;
  8. Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;
  9. Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;
  10. Participating in final inspection and acceptance of project documents as-built drawings on behalf of BIA as facility owner; and
  11. Reviewing project closeout activities and reports.
- H. Other activities:
  1. Performing other non-contractible required IRR project activities contained in this part, ISDEAA and part 1000; and
  2. Other Title 23 non-project-related management activities.
- I. BIADOT program management:
  1. Developing budget on needs for the IRR Program;
  2. Developing legislative proposals;
  3. Coordinating legislative activities;
  4. Developing and issuing regulations;
  5. Developing and issuing IRR planning, design, and construction standards;
  6. Developing/revising interagency agreements;
  7. Developing and approving IRR Program stewardship agreements in conjunction with FHWA;
  8. Developing annual IRR Program obligation and IRR Program accomplishments reports;
  9. Developing reports on IRR Program project expenditures and performance measures for the Government Performance and Results Act (GPRA);
  10. Responding to/maintaining data for congressional inquiries;
  11. Developing and maintaining funding formula and its database;
  12. Allocating IRR Program and other transportation funding;
  13. Providing technical assistance to tribe/tribal organizations/agencies/regions;
  14. Providing national program leadership for: National Scenic Byways Program, Public Lands Highways Discretionary Program, Transportation Enhancement Program, Indian Local Technical Assistance Program, Recreational Travel and Tourism, Transit Program, ERFO Program, Presidential initiatives (Millennium Trails, Lewis & Clark, Western Tourism Policy Group);
  15. Participating in and supporting tribal transportation association meetings;

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16. Coordinating with and monitoring Indian Local Technical Assistance Program centers;
17. Planning, coordinating, and conducting BIA/tribal training;
18. Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the IRR Program;
19. Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;
20. Participating in national, regional, and local transportation organizations;
21. Participating in and supporting FHWA Coordinated Technology Implementation program;
22. Participating in national and regional IRR Program meetings;
23. Consulting with tribes on non-project related IRR Program issues;
24. Participating in IRR Program, process, and product reviews;
25. Developing and approving national indefinite quantity service contracts;
26. Assisting and supporting the IRR Coordinating Committee;
27. Processing IRR Bridge program projects and other discretionary funding applications or proposals from tribes;
28. Coordinating with FHWA;
29. Performing stewardship of the IRR Program;
30. Performing oversight of the IRR Program and its funded activities;
31. Performing any other non-contractible IRR Program activity included in this part; and
32. Determining eligibility of new uses of IRR Program funds.

J. BIADOT Planning:

1. Maintaining the official IRR inventory;
2. Reviewing long-range transportation plans;
3. Reviewing and approving IRR transportation improvement programs;
4. Maintaining nationwide inventory of IRR strip and atlas maps;
5. Coordinating with tribal/State/regional/local governments;
6. Developing and issuing procedures for management systems;
7. Distributing approved IRR transportation improvement programs to BIA regions;
8. Coordinating with other Federal agencies as applicable;
9. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with FHWA;
10. Calculating and distributing IRR transportation planning funds to BIA regions;
11. Reprogramming unused IRR transportation planning funds at the end of the fiscal year;
12. Monitoring the nationwide obligation of IRR transportation planning funds;

13. Providing technical assistance and training to BIA regions and tribes;
14. Approving Atlas maps;
15. Reviewing IRR inventory information for quality assurance; and
16. Advising BIA regions and tribes of transportation funding opportunities.

K. BIADOT engineering:

1. Participating in the development of design/construction standards with FHWA;
2. Developing and approving design/construction/maintenance standards;
3. Conducting IRR Program/product reviews; and
4. Developing and issuing technical criteria for management systems.

L. BIADOT responsibilities for bridges:

1. Maintaining BIA National Bridge Inventory information/database;
2. Conducting quality assurance of the bridge inspection program;
3. Reviewing and processing IRR Bridge program applications;
4. Participating in second level review of IRR bridge PS-E's; and
5. Developing criteria for bridge management systems.

M. BIADOT responsibilities to perform other non-contractible required IRR Program activities contained in this part.

N. BIA regional offices program management:

1. Designating IRR System roads;
2. Notifying tribes of available funding;
3. Developing state IRR transportation improvement programs;
4. Providing FHWA-approved IRR transportation improvement programs to tribes;
5. Providing technical assistance to tribes/tribal organizations/agencies;
6. Funding common services as provided as part of the region/agency/BIA Division of Transportation IRR Program costs;
7. Processing and investigating non-project related tort claims;
8. Preparing budgets for BIA regional and agency IRR Program activities;
9. Developing/revising interagency agreements;
10. Developing control schedules/transportation improvement programs;
11. Developing regional IRR Program stewardship agreements;
12. Developing quarterly/annual IRR Program obligation and program accomplishments reports;
13. Developing reports on IRR project expenditures and performance measures for Government Performance and Results Act (GPRA);
14. Responding to/maintaining data for congressional inquiries;
15. Participating in Indian transportation association meetings;
16. Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;

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17. Participating in BIA/tribal training development highway safety, work zone safety, etc.;

18. Participating in special workgroups, task forces, and meetings as requested by tribes and BIA region/agency personnel;

19. Participating in national, regional, or local transportation organizations meetings and workshops;

20. Reviewing Coordinated Technology Implementation Program project proposals;

21. Consulting with tribal governments on non-project related program issues;

22. Funding costs for common services as provided as part of BIA IRR region/agency/contracting support costs;

23. Reviewing IRR Atlas maps;

24. Processing Freedom of Information Act (FOIA) requests;

25. Monitoring the obligation and expenditure of all IRR Program funds allocated to BIA region;

26. Performing activities related to the application for ERFO funds, administration, and oversight of such funds; and

27. Participating in IRR Program, process, and product reviews.

O. BIA regional offices' planning:

1. Coordinating with tribal/State/regional/local government;

2. Coordinating and processing the funding and repair of damaged Indian Reservation Roads with tribes;

3. Reviewing and approving IRR Inventory data;

4. Maintaining, reviewing, and approving the management systems databases;

5. Reviewing and approving IRR State transportation improvement programs; and

6. Performing Federal responsibilities identified in the IRR Transportation Planning Procedures and Guidelines manual.

P. BIA regional offices' engineering:

1. Approving tribal standards for the IRR Program use;

2. Developing and implementing new engineering techniques in the IRR Program; and

3. Providing technical assistance.

Q. BIA regional offices' responsibilities for bridges:

1. Reviewing and processing IRR bridge program applications;

2. Reviewing and processing IRR bridge inspection reports and information; and

3. Ensuring the safe use of roads and bridges.

R. BIA regional offices' other responsibilities for performing other non-contractible required IRR Program activities contained in this part.

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### **Subpart F—Program Oversight and Accountability**

#### **§ 170.700 What is the IRR Program stewardship plan?**

The IRR Program stewardship plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the IRR Program and the process used for fulfilling those roles and responsibilities.

#### **§ 170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?**

Yes. An IRR Program tribal/BIA region MOU is a document that a direct service tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the regional BIA office and the Indian tribal government. It describes how the IRR Program will be carried out by BIA on the tribe's behalf.

#### **§ 170.702 What activities may the Secretary review and monitor?**

The Secretary reviews and monitors the performance of construction activities under 25 CFR 900 subpart J and 25 CFR 1000 subpart K.

### **Subpart G—BIA Road Maintenance**

#### **§ 170.800 Who owns IRR transportation facilities?**

Public authorities such as tribes, States, counties, local governments, and the Federal Government own IRR transportation facilities.

#### **§ 170.801 What is the BIA Road Maintenance Program?**

The BIA Road Maintenance Program covers the distribution and use of the funds provided by Congress in the annual Department of the Interior appropriations acts for maintaining transportation facilities. Appendix A to this subpart contains a list of activities that are eligible for funding under the BIA road maintenance program.

#### **§ 170.802 How is road maintenance funded?**

(a) The U.S. Congress funds a BIA program for the maintenance of IRR transportation facilities as defined in