§ 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 IRRIP and Control Schedule; and

(c) All other information required under 25 CFR 1000.406 applies.

§ 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. (25 U.S.C. 262(d)(3)(B))

A. IRR project-related pre-contracting activities:

1. Notifying tribes of available funding including the right of first refusal; and
Federal permits are obtained; water permits as facility owner; design and construction with or exceeding Federal standards for IRR Federal laws; and with NEPA as well as all other applicable specifications, and cost estimates (PS&E’s) for IRR transportation association meetings; Western Tourism Policy Group); Millennium Trails, Lewis & Clark, 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;
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;
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. Conducting quality assurance of the IRR Program;
4. Providing FHWA-approved IRR transportation improvement programs;
5. Providing technical assistance to tribes/tri/bureaux/divisions and
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/revise 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 accomplish-ments 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;
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
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.