

16. 23 CFR part 777, Mitigation of Impacts To Wetlands and Natural Habitat.

17. 36 CFR part 800, Protection of Historic Properties.

18. 40 CFR parts 260–271, Resource Conservation and Recovery Act.

19. Applicable tribal/State laws.

20. Other applicable Federal laws and regulations.

#### APPENDIX B TO SUBPART D—DESIGN STANDARDS FOR THE IRR PROGRAM

Depending on the nature of the project, tribes may use the following design standards. Additional standards may also apply. To the extent that any provisions of these standards are inconsistent with ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.

2. AASHTO A Guide for Transportation Landscape and Environmental Design.

3. AASHTO Roadside Design Guide, latest edition.

4. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers, latest edition.

5. AASHTO Standard Specifications for Highway Bridges, latest edition.

6. AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).

7. FHWA Federal Lands Highway, Project Development and Design Manual.

8. FHWA Flexibility in Highway Design.

9. FHWA Roadside Improvements for Local Road and Streets.

10. FHWA Improving Guardrail Installations and Local Roads and Streets.

11. 23 CFR part 625, Design Standards for Highways.

12. 23 CFR part 630, Preconstruction Procedures.

13. 23 CFR part 633, Required Contract Provisions.

14. 23 CFR part 635, Construction and Maintenance.

15. 23 CFR part 645, Utilities.

16. 23 CFR part 646, Railroads.

17. 23 U.S.C. 106, PS&E.

18. 23 U.S.C. 109, Standards.

19. DOT Metric Conversion Plan, October 31, 1991.

20. MUTCD Manual of Uniform Traffic Safety Devices, latest edition.

21. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, latest edition.

### Subpart E—Service Delivery for Indian Reservation Roads

#### FUNDING PROCESS

#### § 170.600 What must BIA include in the notice of availability of funds?

(a) Upon receiving the total fiscal year of IRR Program funding from FHWA, BIA will publish a notice of availability of funds in the FEDERAL REGISTER that includes the following:

(1) The total funding available to each region for IRR transportation planning, design, and construction projects based on each region's Relative Need Distribution Factor (RNDF) defined in subpart C;

(2) The total funding available to each tribe based on its RNDF, along with prior year information on IRR Program funding by tribe that identifies over-funded or advance-funded tribes; and

(3) A listing of FHWA-approved IRR/TIP projects for each State within each BIA region.

(b) Upon publication of the notice under this section, each BIA Regional Office must provide to each tribe within its region:

(1) A proposed project listing used to develop the region's control schedule;

(2) An offer to provide the tribe with technical assistance in preparing contract proposals;

(3) The various options available to the tribe for IRR construction projects (force account methods, direct service, self-determination contract, and self-governance agreement); and

(4) A request for a response from the tribe within 30 days.

#### § 170.601 What happens to the unused portion of IRR Program management and oversight funds reserved by the Secretary?

BIA distributes any unused IRR Program management and oversight funds to its Regional Offices using the RNDF (see subpart C). The Regional Offices use the funds for additional construction activities.

#### § 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

Yes. To the extent feasible, the Secretary must pay for all costs incurred

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resulting from unforeseen circumstances of the construction process (*i.e.*, cost overruns). If the Secretary is unable to fund the unforeseen costs in a cost reimbursable contract, the tribe may suspend performance of the contract until sufficient additional funds are awarded. (See 25 CFR 900.130(e).)

MISCELLANEOUS PROVISIONS

**§ 170.605 When may BIA use force account methods in the IRR Program?**

BIA may use force account methods in the IRR Program unless the tribe elects otherwise to enter into a self-termination contract or a self-governance agreement for the IRR Program. However, BIA must continue to consult with the tribe before using a force account under this situation. The applicable FAR and Federal law apply to BIA force account project activities.

**§ 170.606 How do legislation and procurement requirements affect the IRR Program?**

Other legislation and procurement requirements apply to the IRR Program as shown in the following table.

| Legislation, regulation or other requirement | Applies to tribes under self-determination contracts | Applies to tribes under self-governance agreements | Applies to activities performed by the Secretary |
|--|--|--|--|
| Buy Indian Act .....                         | No   | No   | Yes.   |
| Buy American Act .....                       | No   | No   | Yes.   |
| Federal Acquisition Regulation (FAR).        | No <sup>1</sup>                                      | No   | Yes.   |
| Federal Tort Claims Act .....                | Yes  | Yes  | Yes.   |
| Davis-Bacon Act .....                        | Yes <sup>2</sup>                                     | Yes <sup>2</sup>                                   | Yes.   |

<sup>1</sup> Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR part 900.115.  
<sup>2</sup> Does not apply when tribe performs work with its own employees.

**§ 170.607 Can a tribe use its allocation of IRR Program funds for contract support costs?**

Yes. Contract support costs are an eligible item out of a tribe's IRR Program allocation and need to be included in a tribe's project construction budget.

agreement following the requirements in 25 CFR parts 900 or 1000.

(a) Tribes may use IRR Program project funds contained in their contracts or annual funding agreements for contractible supportive administrative functions.

(b) Appendix A to this subpart contains a list of non-contractible functions and activities that cannot be included in contracts or agreements.

**§ 170.608 Can a tribe pay contract support costs from Department of the Interior or BIA appropriations?**

No. Contract support costs for IRR construction projects cannot be paid out of Department of the Interior or BIA appropriations.

**§ 170.611 What special provisions apply to ISDEAA contracts and agreements?**

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year IRR Program self-termination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of such contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume

CONTRACTS AND AGREEMENTS UNDER ISDEAA

**§ 170.610 What IRR Program functions may a tribe assume under ISDEAA?**

A tribe may assume all IRR Program functions and activities that are otherwise contractible under a self-termination contract or self-governance