

Chapter – 17

Tribal Contracts/Compacts

A. Introduction

Public Law. 93-638 [The Indian Self-Determination and Education Assistance Act of 1975, as amended], provide maximum Indian participation in the Government and education of the Indian people: To provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

B. Fire Management Administration

These guidelines are intended to be used by the Bureau and Indian Tribes when negotiating annual funding agreements, whether 638 or Self-Governance.

1. Guiding Principles

- a. Indian tribal fire management programs will be held to the same standards as Bureau fire management programs. Both Bureau and Indian tribal programs will strive to achieve excellence.
- b. Indian Tribal and Bureau Wildland Fire Management (WFM) programs will receive equal consideration for available budget and resources.
- c. The Bureau is committed to working with Indian tribes to ensure the success of their WFM programs.
- d. Indian tribes desiring to either compact or contract for national, regional or agency fire program functions or services provided by Bureau employees to benefit more than one Indian tribe must have a plan to provide comparable functionality or services and agreement of other affected Indian tribes.

2. Inherently Federal Activities

- a. Hiring and termination of Federal employees including emergency firefighters or Administrative Determined Casuals (EFFs or ADs).
- b. However, Indian tribes may designate a tribal official to sign as time officer on the EFF or AD timesheet (OF-288) when such Indian tribal officials are designated in a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) or Contract scope of work statement between the Indian tribe and the Bureau.
- c. Approval, consolidation and submission of budget requests.
- d. Obligating federal funds.
- e. Approval of resource management or land use plans, fire management plans (FMPs), NEPA documents, wildland fire decision support system (WFDSS) documents, burned area emergency stabilization (BAER) and rehabilitation plans. To fulfill its trust responsibility in resource protection, the Bureau must approve the documents in the preceding sentence. Even though Indian tribal approval of the foregoing documents cannot be in lieu of Bureau approval, it is strongly recommended that Indian tribes be included in the document review process, be provided the opportunity to document concerns they may have for the record and be afforded the opportunity for joint approval.
- f. Delegation of authority (DOA) to incident management and BAER teams operating on reservations. It is required that the Bureau approves a DOA to such teams and is strongly recommended that DOA documents also be approved by the Indian tribe.

3. Wildland Fire Management Funding

- a. Wildland Fire Preparedness activity
 - 1) Consists of the following components:
 - Readiness (includes program management)
 - Research and Technology
 - Fire Management Plans

This Activity consists of all the actions needed to prepare for the response to wildland fire ignitions. Preparedness funds provide significant support to the overall management and planning of the Bureau's and Indian tribal fire management programs. Preparedness includes readiness and capability to provide safe, cost-effective fire management programs in support of land and resource management plans. This activity requires the hiring and training of personnel, interagency hotshot crews, prevention activities, purchase and contracting of equipment, supplies, and support; planning and coordination, policy development and oversight, research as well as interagency coordination and direction which may include establishment and funding of interagency agreements and interagency fair share contributions as well as national programs.

- 2) Congress appropriates the preparedness or readiness budget based on the normal year readiness and performance capability or a percentage of the normal year readiness and performance capability.
- 3) Indian tribal fire management programs will be budgeted at the percentage of the normal year readiness and performance capability appropriated for a given fiscal year.
- 4) Indian tribes are eligible for available tribal shares.
- 5) Indian tribes are eligible for indirect costs from the wildland fire appropriation.
- 6) The normal year readiness and performance capability funding, tribal shares, and indirect costs may be included in the Indian tribal annual funding agreements (AFAs). For compacted wildland fire preparedness, wildland fire prevention and interagency hotshot programs, funding shall be transferred to the Office of Self-Governance (OSG) by the BIA NIFC Budget Officer.

7) Non-recurring funding (e.g. one-time funding or one-time project funding) will be applied for annually and distributed to Indian tribes through Bureau regional offices via cooperative agreements, grants or contracts. Funding shall be transferred to the Office of Self-Governance (OSG) by the BIA NIFC Budget Officer. These are project-based one-time transfers of funds. Indirect costs on non-recurring or one-time wildland fire preparedness funds are not authorized, however reasonable administrative and over head costs incurred by Indian tribes in such projects may be authorized and should be built into such projects as direct costs. Indian tribal and Bureau programs will be given equal consideration for non-recurring preparedness funding and will be coordinated at the Regional Office level.

b. Fire Facility Construction and Maintenance Activity

Consists of the following:

- Projects for construction of fire facilities valued at greater than \$25,000 must be included in the five-year DOI Facilities Construction Plan and identified as part of the Wildland Fire Annual Budget Appropriation.
- Funding is obtained by Indian tribes through Bureau regional offices via cooperative agreements, contracts or through agreements with other Federal agencies to reimburse Indian tribes for fire facilities construction costs on a project-by project basis.
- Indirect costs for fire facilities and deferred maintenance construction projects are not authorized. Administrative fees are authorized when requests have them built into the total cost of the construction project as a direct cost.

This activity provides for the maintenance and construction of fire facilities for line item funded in the Department of the Interior (DOI) wildland fire appropriation only. All projects are approved through a consolidated DOI process and entered into the Departments five year plan. The five-year plan is a fiscal year based plan and is part of the overall budget process. The plan requires annual updating so that the budget request continues to reflect a five-year picture of the actual need. As a result, the schedule of activities is based on the fiscal year, not the calendar year. The annual update presents the opportunity for the fire bureaus' to adjust project priorities based on newly identified needs or previously identified needs that have become more critical during the past year. Projects in the out-years may also be removed become more critical during the past year. Projects in the out-year may also be removed because they were

addressed through other means. The Bureau's five-year plan submissions are completed at least a year before Congress enacts the annual appropriation.

- c. Emergency Suppression activity
- 1) This activity provides for the development and implementation of three operation components:
 - Emergency Suppression
 - Emergency Stabilization
 - Severity
 - 2) Emergency suppression includes all wildfire suppression activities
 - Funding is obtained by Indian tribes through agreements established by Bureau regional offices or other Federal agencies to reimburse Indian tribes for fire costs on a fire-by-fire basis [per FireCode]. Indirect costs for fire suppression are not authorized.
 - Indian tribes and the Bureau may negotiate to establish an escrow account based on historical fire suppression costs. This is a one-time expense. The account will be reimbursed on a fire-by-fire [per FireCode] basis. If an Indian tribe should retrocede or the Bureau reassumes suppression responsibilities the account will be reimbursed in total to Bureau.
 - 3) Emergency stabilization includes all post fire burned area stabilization activities covered by approved emergency stabilization plans. Funding is obtained by Indian tribes through agreements established by the Bureau regional offices or other Federal agencies to reimburse Indian tribes for costs on a project by project basis [per FireCode]. Indirect costs for emergency stabilization projects are not authorized, however reasonable administrative and overhead costs incurred by Indian tribes in such projects may be authorized within stabilization plans and should be built into the project and treated as a direct cost.
 - 4) Severity [Short-term and Long-term] authority and funding for activities necessary to augment initial attack capability when abnormal fire conditions occur throughout a region resulting in the fire season starting earlier than normal, or exceeding average high fire danger ratings for prolonged periods.

Funding is obtained by Tribes through agreements established by Bureau regional offices or other Federal agencies to reimburse Indian tribes for severity costs incurred under an approved fire severity cost request.

Indirect costs for severity funds are not authorized.

5) Hazard Fuel Reduction Operations (WUI and Non-WUI)

Includes costs associated with planning and the operational of hazardous natural fuel reduction projects and restoration of fire to the ecosystem through the use of prescribed fire except prescribed fire fuel treatment projects specifically planned to treat hazardous fuels adjacent to "high risk" wildland/urban interface communities.

- Funding is obtained by Indian tribes through agreements established by Bureau regional offices or other Federal agencies to reimburse Indian tribes for wildfire costs on a project by project basis (per project code).
- Indirect costs for hazard fuel reduction, fire use projects and authorized fuels personnel costs are authorized and will be provided to Indian tribes through agreements established by regional Bureau offices or other federal agencies.
- Includes costs associated with planning and the operational implementation of mechanical treatment(s) except when such mechanical treatment projects are specifically planned to treat hazardous fuels adjacent to the "high risk" wildland/urban interface communities.
- Indirect costs for hazard fuel reduction, fire use projects are authorized and will be provided to Indian tribes through agreements established by Bureau regional offices or other Federal agencies.
- Includes costs associated with planning and the operational implementation of projects to treat fuels adjacent to "high risk" wildland/urban interface communities through mechanical means (thinning, brushing, herbicide, etc.) or prescribed fire.

- Indirect costs for hazard fuel reduction, wildland urban interface projects and authorized fuels personnel staffing are authorized and will be provided to Indian tribes through agreements established by Bureau regional offices or other Federal agencies.

6) Rural Fire Assistance activity

The Rural Fire Assistance (RFA) program was initially authorized in the FY 2001 Interior and Related Agencies Appropriations Act (*Public Law 1006-291*) the intent was to provide assistance to rural fire departments that protect rural communities and play a substantial cooperative role in the suppression of wildland fire in, on or near Department of Interior (DOI) lands. This is a grant program. Funding provides for the purchases of wildland fire safety equipment, firefighting tools, training and essential communications equipment to continue enhancing interoperability with other Federal and State cooperators.

Funding may be applied for and, if an Indian tribe's RFD Assistance proposal is approved by Bureau, will be distributed to Indian tribes through Bureau regional offices via a grant. These are grants and considered project-based one-time transfers of funds. Indirect costs for rural fire assistance funding are not authorized.

7) Burned Area Rehabilitation activity

Includes all post-fire burned area rehabilitation activities covered by approved rehabilitation plans.

Funding is obtained by Indian tribes through agreements established by Bureau regional offices or other Federal agencies to reimburse Indian tribes for fire costs on a project-by-project basis (per FireCode).

Indirect costs for rehabilitation projects are not authorized, however an administrative or overhead costs incurred by Indian tribes in such projects may be authorized within stabilization/ rehabilitation plans but must be built into the project cost and will be treated as a direct cost.

4. Program Operational Standards

Unless waivers to the following standards are explicitly approved and identified in Indian tribal annual funding agreements, the following standards will apply to Indian tribal fire management programs.

- a. Fire program personnel that will be assigned to wildland fire incidents must meet the National Wildland Fire Coordinating Group (NWCG) standards for the positions held and functions performed. Indian tribal fire management officers are responsible for certifying Indian tribal program employee qualifications and maintaining records of their employee qualifications. They may use the firefighter qualifications/ certification component of the incident qualification and certification system (IQCS). They may choose to do so, but are not required to use that system.
- b. NWCG position standards are considered the "industry standard" in the United States wildland fire community and are essential for safe operations in the hazardous wildland fire environment. Failure to meet the standards will prohibit participation in off reservation fire activities and could put Indian tribal fire fighters at personal risk.
- c. Fire occurrence reports will be encoded to the wildland fire management information (WFMI) System within two weeks after a wildfire is declared out. Obligating government funds is an inherently Federal function and fire reports are an essential element in accounting for the obligation of Federal funds.
- d. Placing resource orders for incident management teams (IMTs) to manage extended, large fire operations, or for BAER/Rehabilitation teams requires the involvement of Bureau. All actions require that the Bureau approve delegations of authority to teams, because they involve the commitment to obligate large amounts of Federal funds and/or involve operations critical to meeting the Bureau trust responsibility on Indian land.
- e. The *Interagency Incident Business Management Handbook* will be used as a guide for wildland fire management operations. Fire suppression operations require the obligation of large amounts of Federal funds and the *Interagency Incident Business Management Handbook* is the "industry standard" for the conduct of financial business by the wildland fire community. It provides fair and prudent business practice guidance to situations common to wildland fire project operations.

- f. Approved FMPs and documented compliance with environmental and cultural resource management laws must be complete to receive project funding for fuels treatment projects involving prescribed fire or mechanical treatments. The desired condition is to have a fire management plan that compliments an approved integrated resource management plan (IRMP) or forest management plan (FMP). Prescribed fire operations have potential for large liability and are critical to the Bureau trust responsibility on Indian land so quality program and project level implementation planning for its use is required.

5. Indirect Cost

In January of each fiscal year, the Budget Officer in the Branch of Fire Management will contact the Regional Awarding Official and the Office of Self-Governance (OSG) to get the applicable indirect cost rates for Indian tribes that are contracting and compacting the WFM program.

In late January of each fiscal year, the Branch of Fire Management will distribute indirect cost funding to OSG tribes and the BIA Regional Office awarding officials will request indirect cost funding for contracting Indian tribes.

6. Minimum Provisions for Contract and Annual Funding Agreements

The minimum provisions that are recommended to be included in annual funding agreements are as follows:

- a. Amount of program funding (normal year readiness and performance capability).
- b. Estimated amount of indirect cost funding with language subjecting the final amount to the process identified in the foregoing indirect cost rates section as negotiated by the National Business Center or Department of Health and Human Services.
- c. When applicable, the identity of fire program components or functions to be retained by Bureau.
- d. When applicable, the identity of fire program tasks or functions to be performed by the Indian tribe and those retained by the Bureau.
- e. When applicable, the identity of any fire program operational standards waived by the Indian tribe and the identity of the alternative standard to be used.

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