

III. Program Agreements (PA)

Overview. Prior to SAFETEA-LU, Indian Tribal governments worked directly with the BIA or the DOI, Assistant Secretary of Indian Affairs in implementing the TTP program.

Since SAFETEA-LU, Indian Tribal governments have a choice in administration of the TTP program. As a result, under 23 U.S.C. 202(a), the Secretary of Transportation is authorized to enter into agreements with an Indian Tribal government to carry out a highway, road, bridge, parkway, or transit program or projects. This allows Tribes the option of working directly with the FHWA in the administration of their TTP program. In addition, the BIA can also enter into an agreement with a Tribal government to carry out their transportation program. (See Figure 3.1 below)

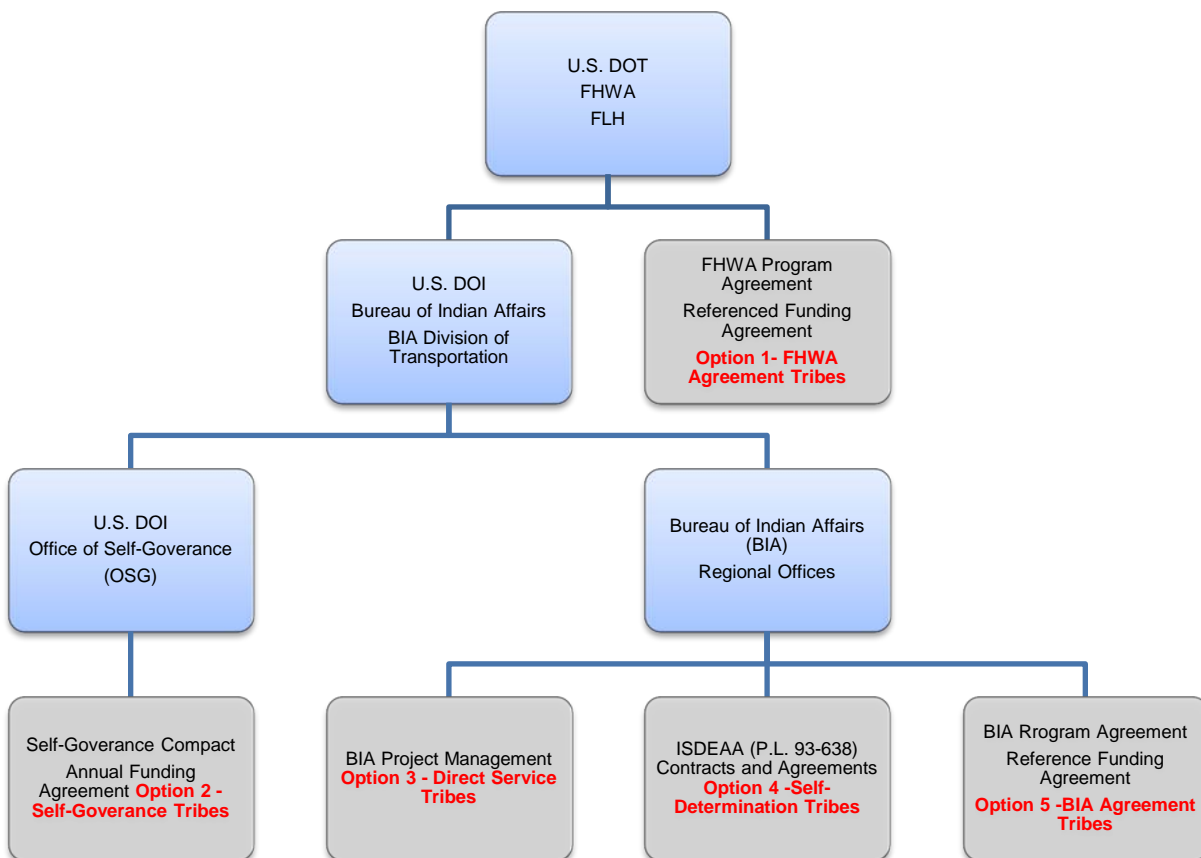


Figure 3.1: The five options the Indian Tribal governments have in administration of the TTP Program.

Tribes that intend to work directly with the FHWA or the BIA in the administration of their transportation program must enter into a Program Agreement. Tribes must demonstrate to the satisfaction of the Secretary of Transportation “financial stability and financial management capability during the three fiscal years immediately preceding the fiscal year for which the request is being made.”

Under 23 U.S.C. 202(b)(7)(F), “an Indian Tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the three fiscal year period . . . shall be conclusive evidence of the financial stability and financial management capability.”

Federal law, the standard FHWA Program Agreement, and the BIA Program Agreement, gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP Program (25 CFR 170.911- 25 CFR 170.914). Under 25 U.S.C. 450e(b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP Program. In addition, under the standard FHWA Program Agreement or the BIA Program Agreement, the Tribe’s employment rights and contracting preference laws, including Tribal preference laws, apply to work performed under the particular Agreement.

Finally, in exercising responsibility for carrying out the eligible programs and projects, the Tribe, through assurances to the FHWA or the BIA, will certify they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering, and construction activities performed.

Below is a list of some respective regulations related to the implementation and oversight of the program:

- 23 CFR 625 – Design Standards for Highways
- 23 CFR 630 – Preconstruction Procedures
- 23 CFR 650 – Bridges, Structures, and Hydraulics
- 23 CFR 661 – Indian Reservation Road Bridge Program
- 23 CFR 710 – Right-of-Way
- 23 CFR 771 – Environmental Impact and Related Procedures
- 25 CFR 170 – Indian Reservation Roads Program
- 29 CFR 1910 – Occupational Safety and Health Standards
- BIA NEPA
- Government Performance and Results Act

A. Definitions:

Program Agreement (PA) – A standardized document between the FHWA or the BIA and a Tribe which authorizes the Tribe to perform the planning, research, design, engineering, construction, and maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to a Tribe or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170. (See Appendix A - [Exhibit 3.1 – Program Agreement](#))

FHWA Tribal Coordinator – The main FHWA point of contact located near Tribes which leads the coordination between Tribal Government and FHWA Headquarters for the Program Agreement and Reference Funding Agreement. This person also has the primary function to provide technical assistance, management, and coordination required for improving tribal transportation system, including planning, design, and construction functions, and overall tribal transportation system safety.

BIA Federal Point of Contact (FPOC) – The main BIA Regional Road Engineer located in the nearest field office or region to a Tribe leading the coordination between a Tribal government and a BIA Region for the Program Agreement and Reference Funding Agreement. This person also has the primary function to provide technical assistance, management, and coordination required for

improving tribal transportation system, including planning, design, and construction functions, and overall tribal transportation system safety.

Tribal Resolution or Authorizing Document – A document provided to the FHWA or the BIA by a Tribe stating the Tribe’s intent to enter into a “Program Agreement” with the FHWA or the BIA (See Appendix A - [Exhibit 3.2 –Example Tribal Resolution](#)).

Financial Management Documentation – A letter submitted to the FHWA or the BIA by a Tribe attesting to the lack of material audit exceptions for the prior three fiscal year period.

Assurances - A positive declaration from a Tribe intended to give confidence to the FHWA or the BIA that projects and/or other program areas implemented by the Tribe are being carried out in accordance with all Federal requirements.

B. Statutory/Regulatory Requirements

- 23 U.S.C. 202(a)

C. Guidelines, Procedures, and Process

1. The “Onboarding” process for Tribes intending to enter into a Program Agreement (PA).

a. For Tribes wishing to work with FHWA, the following process is followed:

- (1) Through a Notice of Intent, a Tribal government shall notify FHWA of its desire to work directly with the FHWA and enter into an FHWA Program Agreement for the administration of its Tribal Transportation Program. The Tribe’s Notice of Intent should be emailed to ttp_hq@dot.gov
- (2) FHWA will assign a Tribal Coordinator to work through the on-boarding process with the Tribe.
- (3) The FHWA Tribal Coordinator will provide an e-mail reponse to the Tribe’s signatory of the Notice of Intent, with a cc: to the Tribe’s Transportation Director. The e-mail will contain the following information:
 - A confirmation of receipt of the letter of intent.
 - A pdf file of this chapter of the Program Delivery Guide which discusses the on-boarding process steps.
 - A request for the additional documentation that will be required by FHWA from the Tribe before further action can be taken, including:
 - Sample Tribal resolution, if Tribal Resolution has not been previously submitted by the Tribe (see Appendix A - [Exhibit 3.2 –Example Tribal Resolution](#)).
 - The FHWA Program Agreement template (see Appendix A - [Exhibit 3.1](#))
 - FHWA Referenced Funding Agreement template (see Appendix A - [Exhibit 4.1](#));
 - The FHWA Program Agreement Orientation presentation;
 - The FHWA Tribal Transportation Program brochure; and
 - The link to the Program Delivery Guide at <http://flh.fhwa.dot.gov/programs/ttp/guide/>.

- Tribal audits:
 - **If the Tribe has received more than \$500,000 of Federal funding** the past fiscal year, the Tribe's financial single audit summary reports for the previous three fiscal years that were conducted in accordance with: 1) the auditing standards applicable to financial audits (Government Auditing Standards, issued by the Comptroller General of the United States); and 2) the compliance requirements in OMB Circular A-133 *Compliance Supplement and the Single Audit Guidelines*. The Tribe shall provide all the findings and discussions related to the Tribe's DOT program, as well as for the Tribe's other Federal programs. The Tribe shall also provide the corrective action plans and implementation schedules that were developed for any material findings identified in the Audits;
 - **If the Tribe has received less than \$500,000 of Federal funding** the past fiscal year, the Single Audit documentation identified above may or may not be available. In these cases, the Tribe must provide copies of any internal or external financial review/audits that have taken place over the past three years as well as any corrective action plans and implementation schedules that were developed.
 - Auditor's letters attesting to the finding or lack of material audit exceptions for the past three fiscal year period;
 - The Tribe's organizational charts for their Transportation and Financial Departments; and,
 - The Tribe's written Financial, Contracting, and Property Management Procedures.
- (4) After providing the above information to the Tribe, the FHWA Tribal Coordinator will conduct a webinar/conference call with the Tribe's representatives. The intent of this contact is to discuss the orientation presentation, review the language of the Program Agreement, establish a primary point of contact (POC) for future correspondence, ensure that the tribe's roles and responsibilities are understood, identify any remedial actions that could take place for non-performance, and answer any questions that the Tribe may have.
- (5) FHWA will review the submitted Tribal information, discuss the Tribe's on-going projects and contracts with the BIA Regional Office or OSG, and make a determination of the Tribe's financial stability and management capabilities. FHWA may ask for additional documentation in order to determine eligibility for entering into the Program Agreement.
- (6) Upon approval, FHWA will prepare the final FHWA Program Agreement (PA). Any major change to the PA template will require a FHWA legal review. The PA and the Automated Clearing House (ACH) Bank Form (SF 3881) will then be sent by email to the Tribe for completion and signature by Tribal Leadership. The ACH Bank Form (SF 3881) in Appendix A, Exhibit 5.1 and at <http://www.gsa.gov/portal/forms/download/116290>
- (7) The Tribe will return the signed PA and completed ACH Bank Form to the FHWA Tribal Coordinator for FHWA signature and processing.

- (8) After the PA is signed by the Tribe and FHWA, the Referenced Funding Agreement (RFA) process will begin. See [Chapter IV - Referenced Funding Agreements \(RFA\)](#).
- (9) At this time, the Tribal Coordinator will schedule a meeting with the Tribe, BIA, and OSG (if required) to review the funding and project status of the Tribe's active BIA contracts or compacts to determine the best course of action for each (ie: continue, close out, fund transfer) as well as agency stewardship, oversight, and reporting responsibilities.

a. For Tribes wishing to work with the BIA, the following process is followed:

- (1) Through a Notice of Intent, a Tribal government shall notify the BIA of its desire to work directly with the BIA and enter into an BIA Program Agreement for the administration of its Tribal Transportation Program.
- (2) The BIA FPOC provides an email to the Tribe of the process as outlined below, including all forms.
- (3) The Tribe provides the BIA FPOC with a Tribal Resolution or Authorizing Document (See Appendix A - [Exhibit 3.2 –Example Tribal Resolution](#)).
- (4) The FPOC sends the document to appropriate BIA office for approval, and the FPOC notifies the BIA Regional Road Engineer of the Tribe's intent to enter into a Program Agreement. For a Tribe currently participating in a self-governance compact (either individually or as part of a consortium) the FPOC notifies the Office of Self-Governance (OSG), Department of the Interior, that it has received a letter of intent from the Tribe.
- (5) Once the Tribal Resolution or Authorizing Document is received and reviewed by BIA, the FPOC requests the Tribe to ask their auditors to prepare a letter attesting to the lack of material audit exceptions for the prior three fiscal year period and a copy of the audit. BIA doesn't necessarily need the full report, but any findings and discussions related to their DOT program, as well as for All-Federal programs in which the DOT is included.

The audit information is then sent to the BIA FPOC who forwards it to the appropriate BIA office for review.

- (6) The appropriate BIA office reviews the audits and makes a determination of their financial stability.
- (7) Once the audit is reviewed and approved by the BIA, a Program Agreement (also called a "G2G Agreement) is sent by the BIA to the Tribal leadership for signature. (**Note:** Any major change to the Program Agreement will require a BIA legal review.)

In addition, the BIA sends to the Tribe the Automated Clearing House (ACH) Bank Form (SF 3881), which documents the Tribe's direct deposit account for TTP funds from FHWA. The form is shown in Appendix A - [Exhibit 5.1](#), and can be obtained at <http://www.gsa.gov/portal/forms/download/116290>

- (8) The Tribe completes both documents and returns them to the BIA FPOC. The BIA FPOC then forwards the documents to the appropriate BIA office.

- (9)** When BIA and the Tribe have both signed the PA, a Referenced Funding Agreement (RFA) with appropriate year funding amount is sent by the BIA FPOC to the Tribe for signature.
- (10)** The signed RFA is returned to the BIA FPOC who then forwards the documents to the appropriate BIA office.
- (11)** Once the BIA and the Tribe have both signed RFA, the funding is sent by BIADOT to the Tribe's established account.