

XX. Summary of Required Forms and Certifications

Overview. The Program Agreement signed between a Tribe and FHWA or BIA highlights several assurances either directly or by reference. Assurances are a positive declaration from a Tribe intended to give confidence to FHWA and BIA that projects and/or other program areas implemented by the Tribe are being carried out in accordance with all Federal requirements. Assurances come in many forms (agreements, certifications, etc.) but are usually documents signed by Tribes. These assurances are provided to FHWA or the BIA by the Tribe. Summary of the key assurances are:

Program Agreement (PA). This is a standardized document between FHWA or 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 Tribe or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170.

Referenced Funding Agreement (RFA). This is a document between FHWA and a Tribe which sets forth specific conditions for Fiscal Year funding under the Program Agreement. It includes the terms that identify the specific programs, functions, services and activities to be performed, the funds to be provided, the time and method of payment, and such other provisions to which the Parties agree.

Tribe Single Agency Audits. This is called the Single Audit, also known as the OMB A-133 audit. This is a rigorous, organization-wide audit or examination of an entity (a Tribe or Tribal Consortium) that expends \$500,000 or more of Federal assistance it receives, which includes TTP funds and all other Federal funds, Federal grants, and Federal awards. Usually performed annually, the Single Audit's objective is to provide assurance to the Federal government as to the management and use of such funds by recipients such as states, cities, universities, and non-profit organizations. The audit is typically performed by an independent certified public accountant (CPA) and encompasses both financial and compliance components. The Single Audits must be submitted to the Federal Audit Clearing house along with a data collection form, Form SF-SAC.

SF-425, Financial Reports (Semi-annual). This documents and records data to track and review how much TTP funds a Tribe is expending.

Indirect Cost Negotiation Agreement. This is a written agreement between the cognizant agency (DOI/BIA) and the Tribe. This agreement formalizes the negotiation process that established the Tribe's indirect cost rate.

Progress Reports (semi-annual) - Serve as a measure of progress achieved on a project and help identify programmatic and administrative problems that may need to be resolved.

Tribal Long Range Transportation Plan (LRTP). This is the documentation from the Tribe that under the guidance of 25 CFR 170, the Tribe provides the vision for meeting transportation needs; plans identify short and long-range transportation improvement strategies that will address current and future transportation needs that should be consistent with Tribal, Federal, and State government policies; plans address various capital investments and inventory current facilities necessary in preserving existing infrastructure and the transportation system as a whole. This is a prerequisite to the expenditure of Federal funds.

Tribal TTIP Certification Statement. This is an assurance to FHWA or the BIA that the Tribe developed the TTIP according to the planning requirements of 25 CFR 170, which include the

following: public involvement for the TTIP has been done; the TTIP is financially constrained; consultation and coordination has been done with States and/or MPO's for a regionally significant project; the TTIP is consistent with the LRTP; and, transportation facilities in the TTIP are on the National Tribal Transportation Facility Inventory.

Tribal Transportation Improvement Program (TTIP). This is a documentation of a multiyear financially constrained list of proposed transportation projects developed by a tribe from the tribal priority list from the long-range transportation plan (LRTP). The purpose of the TTIP is to document where reasonably anticipated or available funding source(s) will be used to implement the transportation project, thus ensuring the completion of that project. Transportation projects that are funded must be listed on an FHWA approved TTIP.

PS&E Package. This provides a mixture of assurances to FHWA or the BIA: Certified stamp on the plans by a State licensed professional engineer that the plans meet or exceed federal design, health, and safety standards; a copy of a PS&E certification letter by a State licensed civil engineer that the PS&E meets applicable health and safety standards as outlined in 25 CFR 170 Appendix B to subpart D; specification that ensure materials and construction techniques will meet acceptable standards; estimates that reasonably anticipate the project cost; certification of ROW clearances; certification that required environmental, archeological, and cultural clearance have been obtained; approved design exceptions; public hearing requirements met; utility agreements.

Tribes Certification on Public Authority Review. This is required only if the facility is owned or maintained by a public authority other than the Tribe or the BIA. It is a statement in writing certifying that the Tribe afforded the public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevents the Tribe from proceeding with the project.

Procurement. Some type of "written" procedures are needed to describe how the Tribe makes (a) small purchases; (b) sealed bids; (c) competitive proposals; (d) non-competitive proposals. A Tribe may adopt applicable FHWA or BIA procedures, or develop Tribal procedures which meet or exceed federal standards. These procedures will be used for equipment purchasing (cost or price analysis), construction (advertising for bids, award, and contraction), architectural/engineering services, etc. These procedures will be reviewed by the FHWA Financial Manager to ensure they meet federal policies and regulations. Two types are:

- a. Highway Construction Projects.** For contracts for highway construction, direct recipients or sub-recipients must use bidding methods that are effective in securing competition. Example bidding methods may be found in 23 CFR part 635 subpart A. A cost analysis will be necessary when adequate price completion is lacking in contract modifications or change orders unless price reasonableness can be established on the basis of a catalog or market price (49 CFR 18.36).
- b. Non-Highway Construction Projects.** For contract for goods and services (engineering and design), must comply with and be in accordance with procurement requirements in 49 CFR 18.36(b) through (i) (goods and services); A cost analysis must be performed when an offer or is required to submit the elements of estimates cost, e.g., under professional, consulting, and architectural engineering services contracts (49 CFR 18.36).

Construction. Documentation and records are an important part of assurances role which provides an account of the construction activity, quality of work, and accountability of federal funds. An important part of construction process is monitoring and evaluating project activities. The types of

monitoring documentation include: (a) Pre-construction conference; (b) Project Review and monitoring (inspection); (c) Final Inspection; (d) Project Acceptance; (e) Close out and Final Report. See **Chapter XIII Construction**.