

# DOI Self Governance Planning (continued)

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# Non-BIA Programs

Federal Register Notice [25 U.S.C. 405(c)]

The Secretary of the Interior is required to publish annually:

1. A list of non-BIA programs, services, functions, and activities (PSFAs) that are eligible for inclusion in Funding Agreements negotiated under the Self-Governance Program; and
2. Programmatic targets for these Bureaus.

# Non-BIA Bureaus Included

- Bureau of Land Management
- Bureau of Reclamation,
- Office of Natural Resources Revenue
- National Park Service
- Fish and Wildlife Service
- U.S. Geological Survey
- Office of the Special Trustee for American Indians

# Non-BIA Programs Eligible Categories

- Under 25 U.S.C. § 403(b)(2)  
any non-BIA PSFA administered by Interior that is otherwise available to Indian Tribes or Indians can be administered by a Tribal Government through a Self-Governance Funding Agreement; and
- Under 25 U.S.C. § 403(c)  
the Secretary may include other PSFAs that are of special geographic, historical, or cultural significance to a Self-Governance Tribe.

# Selection to Negotiate

- Pursuant to 25 CFR § 1000.30, a Tribe may be selected to negotiate a Funding Agreement with a non-BIA Bureau under 25 U.S.C. § 403(b)(2) without having or negotiating a Funding Agreement with the BIA under 25 U.S.C. § 403(b)(1).
- Pursuant to 25 CFR § 1000.31, a Tribe may be selected to negotiate a non-BIA Funding Agreement with special geographic, historical, or cultural significance at the same time that it negotiates a Funding Agreement with BIA under 25 U.S.C. § 403(b)(1) and/or a non-BIA Bureau under 25 U.S.C. § 403(b)(2).

# “Geographic”

The term generally refers to

- all lands presently “on or near” an Indian Reservation, and
- all other lands within “Indian Country” as defined by 18 U.S.C. § 1151.

# “Geographic”

- In addition, the term includes
  1. Lands of former Reservations;
  2. Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act;
  3. Judicially established aboriginal lands of a Tribe or a Consortium; and
  4. Lands and waters pertaining to Indian rights to natural resources, hunting, fishing, gathering and subsistence activities, provided or protected by treaty or other applicable law.

# “Historical”

The term generally relates to

- programs or lands having a particular history that is relevant to the Tribe.
- For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

# “Cultural”

The term generally relates to

- programs, sites, or activities as defined by individual Tribal traditions and
- may include, for example:
  - (1) Sacred and medicinal sites;
  - (2) Gathering of medicines or materials such as grasses for basket weaving; or
  - (3) Other traditional activities, including but not limited to subsistence hunting, fishing, and gathering.

# Non-Competitive Awards & Contracting Preference

- PSFAs eligible for non-BIA Self-Governance Funding Agreements must be awarded non-competitively.
- There is a contracting preference if there is a special geographic, historical, or cultural significance to the PSFA administered by the non-BIA Bureau. The non-BIA Bureau has discretion to include the PSFAs in a Funding Agreement on a non-competitive basis.

# Planning- BIA Funding Mechanisms

- Funding Agreements are Annual or Multi-Year in duration, legally binding, and mutually enforceable written agreements negotiated and entered into between a Self-Governance Tribe and OSG.
- Each Funding Agreement must specify the programs and applicable funding to be:
  - 1) Kept by BIA to perform inherently Federal functions;
  - 2) Transferred to the Tribe; and
  - 3) Retained by the BIA to carry out functions the Tribe could have assumed but elected to leave with the BIA.

# Planning- BIA Funding Mechanisms

- Examples of funds that may be included in a FA
  1. Tribe's P.L. 93-638 contract amounts;
  2. Negotiated amounts of previously undistributed funds or new programs on the same basis as they are made available to other Tribes;
  3. Non-recurring funding;
  4. Applicable special project funding;
  5. Construction funding (facilities, transportation);
  6. BLM Fire Preparedness;
  7. Approved P.L. 102-477 Plan;
  8. Competitive Grants; and
  9. Congressional earmarked funding.

# Planning- BIA Funding Mechanisms

- Methods typically used by BIA for determining the amount of funds to be included in the Funding Agreement:
  1. Formula driven: Determined by first identifying the residual funds to be kept by BIA to operate inherently federal functions and then applying a distribution formula to identify the remaining eligible funding for each program involved; and
  2. Tribal specific: Determined on a Tribe-by-Tribe basis.

# Planning- Funding Mechanisms

Reprogramming documents and OSG's Authority to Obligate (ATO) award documents will identify funds that are

- **Recurring**

Likely that appropriations will be continued in the next year and the program by its purpose and design, will be operated continuously. The cumulative sum of recurring allocations is called the recurring base.

- **Non-recurring**

Awarded on a one-time-only basis and are not guaranteed to be funded in subsequent fiscal year(s).  
(i.e. Project funds)

# Planning- Funding Mechanisms

## P.L. 102-477

- Guaranteed to receive the same amount of money for each program that it would receive if it operated each of the programs separately
- No additional funds are received for participating in 477
- Tribe must evaluate various options for service delivery and funding

(Note: Day 2 P.L. 102-477 covered in more detail)



# Planning- Funding Mechanisms

## (TTP) Tribal Transportation Program Options

1. BIA Direct Service
2. BIA 638 Contract
3. Tribal Transportation Program Agreement
  - BIA TTPA = “G2G Agreement”
  - FHWA TTPA = “Program Agreement”
4. SG Funding Agreement
  - OSG SG Funding Agreement
  - FHWA SG Funding Agreement



# Planning- Funding Mechanisms

## (TTP) Tribal Transportation Program Resources

- Tribal Transportation Program Delivery Guide - 2017
- SGCE Website <http://www.tribalsef.gov.org>  
in partnership with Hobbs, Straus, Dean and Walker, LLP

FAST ACT Webinar

FAST ACT PowerPoint