**Q and A’s developed by Operations Workgroup**

**Proposed from inclusion in Construction Section**

**ENVIRONMENTAL** [*Based on environmental provisions of 42 CFR 137 and 25 CFR 170]*

**§ xxx.100 Are eligible activities (PSFAs) carried out under the TTSGP required to comply with federal environmental laws?**

Yes. Eligible activities carried out with funds through the TTSGP must meet the requirements of NEPA, NHPA and other applicable provisions of federal cultural resource and environmental statutes.

**§ xxx.101 Is the Secretary responsible for final review and approval of h federal cultural resource and environmental statutes for PSFAs performed under TTSGP compacts and funding agreements?**

Yes, although Tribes may conduct environmental review activities in accordance with these regulations, the Secretary remains responsible to ensure compliance with federal cultural resource and environment statutes for all PSFAs included in a compact or funding agreement.

**§ xxx.102 What Federal environmental responsibilities remain with the Secretary when a Self-Governance Tribe conducts Federal environmental reviews for eligible activities (PSFAs) under 23 USC 207 ?**

**(a)** The Secretary is responsible for ensuring policies and procedures meet the requirements of NEPA, NHPA, and related environmental laws. As part of this responsibility, the Secretary may accept tribal environmental review and cultural resource plans and procedures that meet or exceed federal standards.

**(b)** As resources permit, at the request of the Self-Governance Tribe, the Secretary will provide technical assistance to the Self-governance tribe to assist the Self-governance Tribe in carrying out Federal environmental responsibilities.

**§ xxx.103 What procedures does a Self-Governance Tribe follow to conduct environmental reviews for eligible activities (PSFAs) under the TTSGP?**

Self-Governance Tribes comply with environmental laws by following, at the tribe’s election:

**(a)** their own environmental review procedures; or

**(b)** the procedures of DOT.

*Tribes want one process with a known POC in OST for final review and approval.*

**§ xxx.104 Are Self-Governance Tribes required to comply with Executive Orders to fulfill their environmental responsibilities under section 1121 of the FAST Act?**

No, unless specifically identified and included in the compact or funding agreement, a Tribes may at their option, choose to voluntarily comply with Executive Orders.

**§ xxx.105 Can DOT funds be used for tribal environmental review of eligible activities (PSFAs)?**

Yes, unless specifically prohibited by the regulations identified for the program funds received.

**§ xxx.106 Must tribes conduct any further environmental review for eligible activities (PSFAs) after DOT has approved the environmental documentation?**

Unless specifically required by the Secretary due to statutory changes to the funding programs, no additional environmental review or documentation is required.

**CARRYOVER FUNDS**

**§ xxx. May a Self-Governance Tribe carryover from one year to the next any funds that remain at the end of the funding agreement?**

Yes, pursuant to 23 USC 207 (*l*) (3), a Self-Governance Tribe may carryover from one year to the next any funds that remain at the end of the funding agreement.

**DESIGN AND CONSTRUCTION**

**§ xxx. What design and construction standards may Tribes use under Tribal Self-Governance (PSFAs) under the TTSGP?**

Self-Governance Tribes must utilize design and construction standards by following, at the Tribe’s election:

**(a)** Applicable Federal, State, Regional, or Municipal design and construction standards; or

**(b)** Tribal design and construction standards which are consistent with or exceed applicable Federal, State, Regional, or Municipal design and construction standards.

**FINANCE PROPERTY AND PROCUREMENT**

**§ xxx. What is the purpose of this subpart for Tribes use under Tribal Self-Governance (PSFAs) under the TTSGP?**

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

**§ xxx. What requirements are imposed upon Indian tribes or tribal organizations by this subpart?**

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and subpart.

**§ xxx. What provisions of Office of Management and Budget (OMB) circulars or the “common rule” apply to self-determination contracts?**

The only provisions of OMB Circulars and the only provisions of the “common rule” that apply to self-determination contracts are the provisions adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

**§ xxx. Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?**

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

**§ xxx. What is the difference between a standard and a system?**

1. Standards are the minimum baseline requirements for the performance of an activity. Standards establish the “what” that an activity should accomplish.
2. Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are “how” the activity will be accomplished.

**§ xxx. When are Indian tribe or tribal organization management standards and management systems evaluated?**

1. Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.
2. Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A-128.

**§ xxx. How long must an Indian tribe or tribal organization keep management system records?**

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

**(a)** Financial records*.* Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

**(b)** Procurement records*.* Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

**(c)** Property management records*.* Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

**(d)** Litigation, audit exceptions and claims*.* Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action and all appeals has been completed.

**LIMITATION OF COSTS**

**§ xxx. Is a Self-Governance Tribe obligated to continue performance under a compact or funding agreement if the Secretary does not transfer sufficient funds?**

No, if a Self-Governance Tribe believes that the total amount of funds provided for a specific PSFA in a compact or funding agreement is insufficient, the Self-Governance Tribe must provide reasonable written notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement in a quantity sufficient for the Self-Governance Tribe to complete the PSFA, as jointly determined by the Self-Governance Tribe and the Secretary, the Self-Governance Tribe may suspend performance of the PSFA until such time as additional funds are transferred.

**PROGRAM INCOME**

**§ xxx.xxx May an Indian tribe or tribal organization participating in the TTSGP retain program income earned pursuant to a compact and funding agreement?**

Yes, program income earned by an Indian tribe or tribal organization shall be treated as supplemental funding to that negotiated in the funding agreement. The Indian tribe or tribal organization may retain all such income. . Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe or tribal organization is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

**§ xxx.xxx May an Indian tribe or tribal organization participating in the TTSGP expend program income earned pursuant to a compact and funding agreement?**

Yes, program income earned by an Indian tribe or tribal organization may be expended in the current year or in subsequent years. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe or tribal organization is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

**§ xxx.xxx Is interest earned on funds provided under a compact or agreement considered program income?**

No, interest earned on funds provided under a compact or agreement becomes the property of the Indian tribe or tribal organization and is not considered program income. Program income also does not include rebates, credits, discounts, and interest earned on any of them.

**§ xxx.xxx May the Secretary reduce funds provided under a funding agreement to account for interest earned by the Indian tribe or tribal organization?**

No. An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year.

**PROMPT PAYMENT ACT**

**§ xxx. Does the Prompt Payment Act apply to funds transferred to a Self-Governance Tribe in a compact or funding agreement?**

Yes, the Prompt Payment Act, [39 U.S.C. section 3901](https://www.law.cornell.edu/uscode/text/39/3901) *et seq.,* applies to the transfer of all funds due under a compact or funding agreement authorized under the FAST Act.

**REPORTING**

**§ XXX.XXX Are there reporting requirements for Tribes participating in the TTGSP?**

Compacts and funding agreements negotiated between the Secretary and a Self-Governance Tribe may include a provision that requires the Self-Governance Tribe to report on program status and services delivery. These reports shall include reporting from each program assumed under a Compact and Funding Agreement. Reports will be limited to data required by statute and are only intended to impose minimal burdens on the Tribe.

**§ XXX.XXX What are the purposes of the Tribal reporting requirements?**

Tribal reports enable the Secretary to confirm that the Tribe is complying with the statutory reporting requirements of each of the programs assumed by the Tribe. This information will be used to assist the Secretary in advocating for tribal transportation systems, budget formulation, other reporting required by statute, and sharing of best practices.

Unless specifically required by statute, the Secretary shall not require the reporting of any tribal information that is confidential, proprietary or commercial in nature.

**§ XXX.XXX Where do Tribes submit the required reports?**

Tribes shall submit the required reports to the DOT Office of Self-Governance as set forth in the funding agreement.

**§ XXX.XXX Are there any other reports a Tribe must submit to other DOT administrations, bureaus or programs?**

No. Unless authorized by statute, agreed to by the tribe, or included in a Compact or Funding Agreement, no additional reporting is required.

**§ XXX.XXX May a Self-Governance Tribe participate in a voluntary transportation data collection effort with the DOT?**

Yes, in order to share information with the Secretary about tribal unmet needs, potential program improvements, best practices and budget formulation, Indian Tribes and tribal organizations may participate, at their option, in transportation data collection efforts.

FUND TRANSFER AGREEMENTS (202(a)(9)

**§XXX.XXX What is the purpose of this subpart?**

This subpart provides information about the process and requirements for the contribution or the transfer of funds from states, counties, other local subdivisions of states, MPOs, RPOs and other federal agencies for design, construction, maintenance, traffic safety initiatives and any other form of improvement for tribal transportation facilities.

**§XXX.XXX May funds received from outside USDOT be included in TTSGP compacts and funding agreements?**

Yes, at the request of the Indian tribe and the contributing governmental entity, the Secretary shall include in TTSGP compacts and funding agreements any funds contributed or received from states, counties, other local subdivisions of states, MPOs, RPOs and other federal agencies (to the extent authorized by federal law) for design, construction, maintenance, traffic safety initiatives and other forms of improvement for tribal transportation facilities.

**§XXX.XXX How should a Tribe, State or other entity advise the Secretary that funds are available to be included in TTSGP compacts and funding agreements?**

Tribes, States or any other entity that wishes to initiate a fund transfer or contribution should send a written notice to the Secretary’s designated representative for the Tribe or tribal organization that will receive the funds, advising that funds are available to be added to the TTSGP compact and funding agreement. Most often, funds will become available from a State or other entity because the Tribe successfully applied for a competitive grant or is otherwise an eligible subrecipient of the funds. Any funds that are intended for design, construction, maintenance, traffic safety initiatives and any other form of improvement for tribal transportation facilities may proceed through this process.

**§XXX.XXX What happens after the Secretary is advised that funds are available to be included in TTSGP compacts and funding agreements?**

The Secretary’s designated representative shall promptly begin working with the entity contributing the funds and the Tribe or tribal organization receiving the funds to develop an appropriate agreement under the authority of 23 U.S.C. 202(a)(9) which allows contributed funds to be used to construct and improve tribal transportation facilities. Upon execution of this agreement, the Secretary and the Tribe shall develop a concise funding agreement amendment to add these funds to the TTSGP compact and funding agreement. The Secretary shall complete the amendment process and transfer the funds to the Tribe within 30 days after receiving the funds from the contributing entity.

**§XXX.XXX What information is included in the amendment to add contributed funds to TTSGP compacts and funding agreements?**

The amendment should briefly set out the roles and responsibilities of the Secretary and the Indian tribe or tribal organization to make use of the funds for the project or other purposes intended by the contributing state or other entity. The amendment shall not include any waiver of tribal sovereign immunity or any provision to indemnify the contributing entity because the contributing entity shall have no responsibility to oversee or account for the funds after the contribution is made.

**§XXX.XXX What audit and program management standards apply to fund contributions included in TTSGP compacts and funding agreements?**

As provided in 23 U.S.C. § 202(a)(9)(B), any funding contribution received from a State, county, local subdivision shall be credited to appropriations available for the tribal transportation program. Therefore, the Indian tribe or tribal organization may manage and account for the contributed funds in the same manner as any other funds received under their TTSGP compact and funding agreements.

**§XXX.XXX How may states, counties and other potentially contributing entities learn about the option of contributing funds to Indian tribes and tribal organization under 23 U.S.C. § 202(a)(9)?**

The Secretary shall provide training and conduct informational webinars at reasonable intervals to educate state, county, municipal, MPO and RPO transportation professionals of this fund contribution authority and encourage its use for the benefit of all parties. **(Potentially expand scope of Q&A and include in the roles and responsibilities of the Secretary**)

**DO WE WANT TO CREATE REGS FOR THE ALTERNATIVE FUND TRANSFER AUTHORITY UNDER 23 U.S.C. § 207(d)(2)(ii)** (**Transfers of state funds)**

**Financial, Property and Procurement Management Systems and Standards**

General

**§ XXX.XXX — What is the purpose of this subpart?**

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out TTSGP compact or funding agreement TTSGP compacts and funding agreements. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

**§ XXX.XXX — What program management requirements apply to Indian tribes or tribal organizations participating in the TTSGP?**

When carrying out TTSGP compact or funding agreement TTSGP compacts and funding agreements, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet the minimum standards set forth in this subpart, unless one or more of the standards have been waived, in whole or in part,CROSS REFERENCE THE WAIVER PROVISION IN THIS REGULATION.

INCLUDE THE STATUTORY INCORPORATION PROVISION THAT DEEMS OMB and other guidance inapplicable.

**§ XXX.XXX — What provisions of 2 CFR Part 200 apply to TTSGP compacts and funding agreements?**

Tribes and tribal organizations are required to comply with the provisions of 2 C.F.R Part 200, including the provisions that make special accommodation for the operation of programs under the ISDEAA. Tribes are not required to comply with any provision of 2 CFR Part 200 that is not made expressly applicable to tribes administering PFSAs under the ISDEAA.

**§ XXX.XXX – Are Indian tribes and tribal organizations required to comply to any other DOT or OMB guidances, policies, or circulars?**

No, unless agreed to by the Indian tribe or tribal organization in its TTSGP compact or funding agreement.

TTSGP compact or funding agreement TTSGP compact or funding agreement TTSGP compact or funding agreement

**§ XXX.XXX — Do these standards apply to the contractors of an Indian tribe or tribal organization?**

An Indian tribe or tribal organization has the authority to require that its contractors comply with some or all of the standards in this subpart when contractors are retained to assist the Indian tribe or tribal organization in carrying out a TTSGP compact or funding agreement.

"Contractors" – this term may need definition – broad meaning is intended (anyone with agreement with tribe to perform services)

**§ XXX.XXX — What is the difference between a standard and a system?**

**(a)** Standards are the minimum baseline requirements for the performance of an activity. Standards establish the “what” that an activity should accomplish.

**(b)** Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are “how” the activity will be accomplished.

**§ XXX.XXX — How are an Indian tribe's or tribal organization's mmanagement standards and management systems of evaluated?**

Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Single Agency Audit Act.

[BE SURE TO REVIEW THE FOLLOWING WITH ADMIN ON ELIGIBILITY PROCESS

**§ XXX.XXX — When does the Secretary review the management systems of an Indian tribe or tribal organization participating in the TTSGP?**

**(a)** When the Indian tribe or tribal organization submits an initial request to enter into a TTSGP contract, the Indian tribe or tribal organization shall demonstrate to the Secretary that it has the management systems in place to meet the standards set forth in this subpart. The Secretary shall confirm in writing within ## days that the Indian tribe or tribal organization's management systems are sufficient to meet the standards in this subpart. DENIAL process?]

**§ XXX.XXX — How long must an Indian tribe or tribal organization keep management system records?**

The Indian tribe or tribal organization must retain records as required in 2 C.F.R. § 200.333.

Standards for Financial Management Systems

**§ XXX.XXX — What are the general financial management system standards that apply to an Indian tribe carrying out a TTSGP compact or funding agreement?**

An Indian tribe shall expend and account for TTSGP funds in accordance with all applicable tribal laws, regulations, and procedures.

**§ XXX.XXX — What are the general financial management system standards that apply to a tribal organization carrying out a TTSGP compact or funding agreement?**

A tribal organization shall expend and account for TTSGP funds in accordance with the procedures of the tribal organization.

**§ XXX.XXX — What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a TTSGP compact or funding agreement?**

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a TTSGP compact or funding agreement and the Act; and

(b) Permit the tracing of TTSGP funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the TTSGP compact or funding agreement.

**§ XXX.XXX — What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?**

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) Financial reports. The financial management system shall provide for accurate, current, and complete disclosure of the financial results of TTSGP compact or funding agreement activities.

(b) Accounting records. The financial management system shall maintain records sufficiently detailed to identify the source and application of TTSGP compact or funding agreement funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) Internal controls. The financial management system shall maintain effective control and accountability for all TTSGP funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the TTSGP compact or funding agreement.

(d) Budget controls. The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each TTSGP compact or funding agreement.

(e) Allowable costs. The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of TTSGP compact or funding agreement costs based upon the terms of the TTSGP compact or funding agreement.

**§ XXX.XXX — What requirements are imposed upon the Secretary for financial management by these standards?**

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the TTSGP compact and funding agreement.

Procurement Management System Standards

**TO BE DEVELOPED AS HOMEWORK**

Procurement Management System Standards

**§ XXX.XXX — When procuring property or services with TTSGP funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?**

Indian tribes and tribal organizations shall have standards that conform to the standards in this subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial TTSGP compact proposal or as a waiver request to an existing compact.

**§ XXX.XXX — If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?**

(a) The Indian tribe or tribal organization shall ensure that its vendors and contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts funded by a TTSGP compact or funding agreement.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for “major procurement transactions.”

(2) As provided in sections 7 (b) and (c) of the Indian Self-Determination and Education Assistance Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a TTSGP compact or funding agreement.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

**§ XXX.XXX — What procurement standards apply to subcontracts?**

Each contract funded by a TTSGP compact or funding agreement shall at a minimum:

(a) Be in writing;

(b) Identify the interested parties, their authorities, and the purposes of the contract;

(c) State the work to be performed under the contract;

(d) State the process for making any claim, the payments to be made, and the terms of the contract; and

(e) Be subject to sections 7 (b) and (c) of the Indian Self-Determination and Education Assistance Act.

**§ XXX.XXX — What Federal laws, regulations, and Executive Orders apply to an Indian tribe's or tribal organization's contractors?**

Certain provisions of the Act, the Indian Self-Determination and Education Assistance Act, as well as other applicable Federal laws and regulations may apply to contracts funded by TTSGP compacts and funding agreements. As a result, contracts should contain a provision informing the recipient that their award is funded with TTSGP funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws and regulations. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the TTSGP compact or funding agreement and, if so identified, these requirements should be identified in the Indian tribe's or tribal organization's contracts funded from TTSGP compacts and funding agreements.

**Property Management System Standards**

**§ XXX.XXX — What is an Indian tribe or tribal organization's property management system expected to do?**

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a TTSGP compact or funding agreement or acquired with TTSGP compact funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

**§ XXX.XXX — What type of property is the property management system required to track?**

The property management system of the Indian tribe or tribal organization shall track:

(a) Personal property with an acquisition value in excess of $5,000 per item;

(b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and

(c) Real property provided by the Secretary for use under the contract.

**§ XXX.XXX — What kind of records shall the property management system maintain?**

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

**§ XXX.XXX — Should the property management system prescribe internal controls?**

Yes. Effective internal controls should include procedures:

(a) For the conduct of periodic inventories;

(b) To prevent loss or damage to property; and

(c) To ensure that property is used for an Indian tribe or tribal organization's TTSGP compact or funding agreement(s) until the property is declared excess to the needs of the PSFAs assumed under the TTSGP compact, consistent with the Indian tribe or tribal organization's property management system.

**§ XXX.XXX — What are the standards for inventories?**

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

**§ XXX.XXX — What maintenance is required for property?**

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the Indian tribe or tribal organization and the Secretary in any express warranties or guarantees covering the property.

**§ XXX.XXX — What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the TTSGP compact or funding agreement?**

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with TTSGP funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the TTSGP compact shall be included in the funding agreement.

**§ XXX.XXX — Do the same accountability and control procedures described above apply to Federal property?**

Yes, except that requirements for the inventory and disposal of Federal property are different.

**§ XXX.XXX — How are the inventory requirements for Federal property different than for tribal property?**

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

**§ XXX.XXX — How does an Indian tribe or tribal organization dispose of Federal personal property?**

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the PSFAs assumed under the TTSGP compact.

[CHECK ADMIN WORKGROUP]

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Standards for Financial Management Systems

§ 900.42 — What are the general financial management system standards that apply to an Indian tribe carrying out a TTSGP compact or funding agreement?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§ 900.43 — What are the general financial management system standards that apply to a tribal organization carrying out a TTSGP compact or funding agreement?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§ 900.44 — What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a TTSGP compact or funding agreement?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a TTSGP compact or funding agreement and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the TTSGP compact or funding agreement.

§ 900.45 — What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) Financial reports. The financial management system shall provide for accurate, current, and complete disclosure of the financial results of TTSGP compact or funding agreement activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the TTSGP compact or funding agreement.

(b) Accounting records. The financial management system shall maintain records sufficiently detailed to identify the source and application of TTSGP compact or funding agreement funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) Internal controls. The financial management system shall maintain effective control and accountability for all TTSGP compact or funding agreement funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the TTSGP compact or funding agreement.

(d) Budget controls. The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each TTSGP compact or funding agreement.

(e) Allowable costs. The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of TTSGP compact or funding agreement costs based upon the terms of the TTSGP compact or funding agreement and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary. Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

§ 900.46 — What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the TTSGP compact or funding agreement and the annual funding agreement.

Procurement Management System Standards

§ 900.47 — When procuring property or services with TTSGP compact or funding agreement funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 — If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for “major procurement transactions.”

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a TTSGP compact or funding agreement.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 — What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

(a) Be in writing;

(b) Identify the interested parties, their authorities, and the purposes of the contract;

(c) State the work to be performed under the contract;

(d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and

(e) Be subject to sections 7 (b) and (c) of the Act.

§ 900.50 — What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under TTSGP compact or funding agreement TTSGP compacts and funding agreements. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the TTSGP compact or funding agreement and, if so identified, these requirements should be identified in subcontracts.

Property Management System Standards

§ 900.51 — What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a TTSGP compact or funding agreement or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 — What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

(a) Personal property with an acquisition value in excess of $5,000 per item;

(b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and

(c) Real property provided by the Secretary for use under the contract.

§ 900.53 — What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 — Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

(a) For the conduct of periodic inventories;

(b) To prevent loss or damage to property; and

(c) To ensure that property is used for an Indian tribe or tribal organization's TTSGP compact or funding agreement(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 — What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 — What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 — What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 — Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 — How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

§ 900.60 — How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

**FORCE ACCOUNT**

**§XXX.XXX May Indian tribes and tribal organization use Indian labor, tribal force account procedures and standard tribal self-governance procurement procedures when carrying out construction projects under TTSGP compacts and funding agreements?**

Yes, with respect to 23 U.S.C. 202(a)(10), the Secretaries of Transportation and the Interior have determined that Indian tribes and tribal organizations are in compliance with this statutory mandate if they have established tribal procurement management standards that are consistent with the requirements of 25 C.F.R. Part 900, Subpart F or the procurement regulations set out in this Part. At the discretion of an Indian tribe or tribal organization, tribal labor and tribal force account procedures may always be used on any tribal transportation project pursuant to 23 U.S.C. 202 (a)(3).

**§XXX.XXX What should an Indian Tribe do if it wishes to use a procurement procedures other than the use of Indian labor, tribal force account procedures and standard tribal self-governance procurement procedures when carrying out construction projects under TTSGP compacts and funding agreements?**

(1) If the Tribe wishes to use a procurement method that is not provided for in its established procurement management standards or its tribal force account procedures for a particular tribal transportation project, the Secretary shall promptly review and respond to a written request from the Indian tribe or Tribal organization justifying the alternative procurement method. In making this decision, the Secretary shall work within the project procurement schedule and comply with the liberal construction requirements of 25 C.F.R. 170.2(h) and the federal obligations set forth in 25 C.F.R. 170.103.

**(2)** The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request for an exemption other than that required by law or regulation.

**SURPLUS AND EXCESS EQUIPMENT**

**§XXX.XXX What is the purpose of this subpart?**

This subpart provides information and requirements for the transfer of title for USDOT property and equipment, the donation of Federal excess and surplus property to Indian tribes or tribal organizations carrying out TTSGP compacts and funding agreements, as well as the procedures used for the acquisition of property with funds provided under such agreements.

**§XXX.XXX How will the Secretary exercise discretion to acquire and donate USDOT excess property and excess and surplus Federal property of another Federal Agency to an Indian tribe or tribal organization?**

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of USDOT excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a TTSGP compact and funding agreement is authorized. The Secretary shall assist the Indian Tribes or Tribal Organizations to resolve any barriers to full implementation that may arise to the fullest extent possible.

**Government-Furnished Property**

**§XXX.XXX How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a TTSGP compact or funding agreement?**

(a) If the Indian Tribe or tribal organization is assuming a USDOT program that has property or equipment:

**(1)** The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a TTSGP compact or funding agreement.

**(2)** The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.

**(3)** The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

**(b)** For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

**(1)** The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

**(2)** The Secretary shall determine the presence of any hazardous substance activity, as defined in [41 CFR 101](https://www.law.cornell.edu/cfr/text/41/101)-47.202.2(b)(10).

**§XXX.XXX Is government-furnish property received from the Department of the Interior to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary of the Interior?**

Yes, in accordance with 25 U.S.C. 450j-1(f)(1)-(2).

**Property purchased with TTSGP compact funds**

**§XXX.XXX Who takes title to property purchased with funds under a TTSGP compact or funding agreement?**

The Indian tribe or tribal organization takes title to such property, unless the Indian tribe or tribal organization chooses to have the United States take title. In that event, the Indian tribe or tribal organization must inform the Secretary of the purchase and identify the property and its location in such manner as the Indian tribe or tribal organization and the Secretary deem necessary. A request for the United States to take title to any item of tribally-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

**§XXX.XXX What should the Indian tribe or tribal organization do if it wants tribally-purchased real property to be taken into trust?**

The Indian tribe or tribal organization shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. If the request to take tribally-purchased real property into trust is submitted to the Secretary of Transportation, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

**§XXX.XXX May the Secretary acquire title to property purchased from funds provided under a TTSGP compact or funding agreement?**

Yes, but only when a TTSGP compact, or portion thereof, is retroceded, reassumed, terminated, or expires, and the Secretary is required to transfer control of the compacted program to the Secretary of the Interior for continued service to the affected Indian tribe. Under such circumstances, the Secretary shall have the option to take title to any item of property purchased with funds provided under a TTSGP compact or funding agreement:

**(1)** Whose title has been transferred to an Indian tribe or tribal organization;

**(2)** That is still in use in the program; and

**(3)** That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

**(b)** If property referred to in [paragraph (a)](https://www.law.cornell.edu/cfr/text/25/900.93#a) of this section is shared between one or more ongoing portions of the compact and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the Indian tribe or tribal organization using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

**§XXX.XXX Is real or personal property purchased with Tribal Transportation Program funds provided under a TTSGP compact or funding agreement to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary of the Interior?**

Yes, in accordance with 25 U.S.C. 450j-1(f)(1)-(2).

**USDOT Excess Property**

**§XXX.XXX What is USDOT excess property?**

USDOT excess property means property under the jurisdiction of the USDOT that is excess to any USDOT modal administrations’ needs and the discharge of their responsibilities.

**§XXX.XXX How can Indian tribes or tribal organizations learn about USDOT excess property?**

The Secretary shall not less than annually send to Indian tribes and tribal organizations a listing of all excess USDOT personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

**§XXX.XXX How can an Indian tribe or tribal organization acquire excess USDOT property?**

**(a)** The Indian tribe or tribal organization shall submit to the Secretary a request for specific property that includes a statement of how the property is intended for use in connection with a TTSGP compact or funding agreement. The Secretary shall expeditiously process the request and shall exercise discretion in a way that gives maximum effect to the request of Indian tribes or tribal organizations for the donation of excess USDOT property.

**(b)** If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the requestor whose request is received on the earliest date. If two or more requests are received on the same date, the Secretary shall award the item to the requestor with the lowest transportation costs to deliver the excess USDOT property for use by the Indian tribe or tribal organization. The Secretary shall make the donation as expeditiously as possible.

**(c)** If more than one request for the same parcel of real property is submitted, the Secretary shall award the property to the Indian tribe or tribal organization whose reservation, trust land or fee land is closest to the real property requested. **[USDOT wishes to review further to consider requiring notice to potentially impacted tribes]**

**§XXX.XXX Who takes title to excess USDOT property donated to an Indian tribe or tribal organization?**

The Indian tribe or tribal organization takes title to donated excess USDOT property. The Secretary shall provide the Indian tribe or tribal organization with all documentation needed to vest title in the Indian tribe or tribal organization.

**§XXX.XXX Who takes title to any land that is part of excess USDOT real property donated to an Indian tribe or tribal organization?**

**(a)** If an Indian tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for an Indian tribe, the Indian tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the Indian tribe or tribal organization.

**(b)** If an Indian tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for an Indian tribe, the requestor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

**(1)** If the donation request is submitted to the Secretary of Transportation, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the Indian tribe or tribal organization's request and the Indian tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

**(2)** The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

**§XXX.XXX May the Secretary elect to reacquire excess USDOT property whose title has been transferred to an Indian tribe or tribal organization?**

Yes, but the only circumstances where the Secretary may elect to acquire title to USDOT property purchasedis when the TTSGP compact or portion thereof is retroceded, reassumed, terminated, or expires, and the Secretary is required to transfer control of the compacted program to the Secretary of the Interior for continued service to the affected Indian tribe. Under such circumstances, the Secretary shall have the option to take title to any item of USDOT excess property:

**(1)** Whose title has been transferred to an Indian tribe or tribal organization;

**(2)** That is still in use in the program; and

**(3)** That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

**§XXX.XXX Is excess USDOT real property to which an Indian tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?**

Yes, in accordance with 25 U.S.C. 450j-1(f)(1)-(2). [**USDOT to provide technical assistance to Committee on O&M funding sources for USDOT property – OFIAM]**

**Excess or Surplus Government Property of Other Agencies**

**§XXX.XXX What is excess or surplus government property of other agencies?**

**(a)** “Excess government property” is real or personal property under the control of a Federal agency, other than USDOT, which is not required for the agency's needs and the discharge of its responsibilities.

**(b)** “Surplus government property” means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration (GSA).

**§XXX.XXX How may an Indian tribe or tribal organization receive excess or surplus government property of other agencies?**

**(a)** Upon the execution of a TTSGP compact, the Secretary shall promptly notify GSA to request that the Indian or tribal organization be provided the required authority to use to GSAxcess to identify and select excess or surplus property.

**(b)** The Indian tribe or tribal organization shall file a request for specific property with the Secretary, and shall state how the property is appropriate for use for any purpose for which a TTSGP compact and funding agreement is authorized.

**(c)** The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in § [cite to earlier regulation] of this subpart.

**(d)** Upon approval of the Indian tribe or tribal organization's request, the Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate, by submitting the necessary documentation in order to acquire the requested property prior to the expiration of any “freeze” placed on the property by the Indian tribe or tribal organization.

**(e)** The Secretary shall specify that the property is requested for donation to an Indian tribe or tribal organization pursuant to authority provided in 23 U.S.C. §207(*l*)(8) (i.e. the Fast Act provisions incorporating the Title I provisions).

**(f)** The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

**§XXX.XXX Who takes title to excess or surplus Federal property donated to an Indian tribe or tribal organization?**

**(a)** Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession.

**(b)** Legal title to donated excess or surplus Federal real property shall vest in the Indian tribe or tribal organization upon acceptance by the Indian tribe or tribal organization of a proper deed of conveyance.

**(c)** If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for an Indian tribe, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of an Indian tribe.

**(1)** If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the Indian tribe or tribal organization.

**(2)** If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

**(i)** The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

**(ii)** If the donation request of the Indian tribe or tribal organization is submitted to the Secretary of Transportation, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the Indian tribe's resolution.

**(iii)** The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

**(iv)** The Secretary shall not require submission of any information other than that required by Federal law and regulation.

**§XXX.XXX If a TTSGP compactor portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus federal property of other agencies that was donated to an Indian tribe or tribal organization?**

No. The applicable Federal statutes do not grant the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to an Indian tribe or tribal organization.

**§XXX.XXX What property to which an Indian tribe or tribal organization obtains title under this subpart is eligible for replacement funding?**

Yes. Government-furnished property, tribally-purchased property and excess USDOT property donated to an Indian tribe or tribal organization to which an Indian tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.