Jim Kackman
Public Works Director – Coeur d’Alene Tribe

P.L. 93–638 Contracting
Road Maintenance

NW Region Tribal Transportation Conference
P.L. 93–638 Contracting Road Maintenance
January 11, 2011
Agenda

- CFRs
- Responsibilities of the Tribe
- Setting up the contract
- Maintenance operations
  - Equipment Needed
  - Facilities Needed
  - Work Performed
  - Funding vs. Budgeting Requirements
Significant CFRs

- 25 CFR 170.2
- 25 CFR 170 Subpart G
  - 25 CFR 170.801
  - 25 CFR 170.802
  - 25 CFR 170.803
  - 25 CFR 170.804
  - 25 CFR 170.805
  - 25 CFR 170.808
  - 25 CFR 170.809
  - 25 CFR 170.810
  - Appendix A to Subpart G
25 CFR 170.809 – Can a tribe perform road maintenance under a self-determination contract or self-governance agreement?

- Yes. Any tribe may enter into a self-determination contract or self-governance agreement to conduct BIA or tribal transportation facility maintenance under ISDEEA and 25 CFR part 900 or 1000. The self-determination contract or self-governance agreement does not relieve BIA of its responsibility for maintenance.
25 CFR 170.801 – What is the BIA Road Maintenance Program?

- The BIA Road Maintenance Program covers the distribution and use of the funds provided by Congress in the annual Department of the Interior appropriations acts for maintaining transportation facilities.
(a) The following public transportation facilities are eligible for maintenance under the BIA Road Maintenance Program:

1. BIA transportation facilities listed in paragraph (b) of this section;
2. Non-BIA transportation facilities, if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding;
3. Tribal transportation facilities such as public roads, highway bridges, trails, and bus stations; and
4. Other transportation facilities as approved by the Secretary.

(b) The following BIA transportation facilities are eligible for maintenance under paragraph (a)(1) of this section:

1. BIA road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc.;
2. Highway bridges and drainage structures;
3. Airport runways and heliport pads, including runway lighting;
4. Boardwalks;
5. Adjacent parking areas;
6. Maintenance yards;
7. Bus stations;
8. System public pedestrian walkways, paths, bike and other trails;
9. Motorized vehicle trails;
10. Public access roads to heliports and airports;
11. BIA and tribal post-secondary school roads and parking lots built with IRR Program funds; and
(c) This part is designed to enable Indian tribes to participate in all contractible IRR and BIA Road Maintenance programs. The Secretary of the Interior will afford Indian tribes the flexibility, information, and discretion to design roads programs under self-determination contracts and self-governance agreements to meet the needs of their communities consistent with this part.

(d) The Secretaries recognize that programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian tribes’ self-determination and self-governance.

1. The tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

2. The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts and self-governance agreements for:

   (i) Use of the funds; and

   (ii) Satisfactory performance of all activities funded under the contract or agreement.
25 CFR 170.802 – How is road maintenance funded?

- (a) The U.S. Congress funds a BIA program for the maintenance of IRR transportation facilities as defined in this part through annual appropriations for the Department of the Interior.
- (b) The States, counties, and local governments fund the maintenance of IRR transportation facilities that they own or have agreed to maintain.
- (c) Tribal governments, at their discretion, may also provide for the maintenance of IRR transportation facilities.
25CFR170.804 – How is BIA's Road Maintenance Program related to the IRR Program?

BIA Transportation Program

- DOI Annual Appropriations
  - Tribal Priority Allocations (General Treasury Funds)

- Indian Reservation Roads Programs/HTF Title 23

- Other Title 23 Programs
  - Transportation Facility Maintenance (Including Road Maintenance)
  - Examples are:
    - Public Lands
    - Discretionary
    - Emergency Relief
    - Scenic Byways
    - High Priority Projects
    - Highway Safety
    - STP Enhancement

- IRR Planning
- IRR Program Admin.
- IRR Bridge Program
- IRR Construction
25 CFR170.805 – What are the local, tribal, and BIA roles in transportation facility maintenance?

- (a) State, county, and local governments normally perform the maintenance of their IRR transportation facilities.
- (b) Tribes may perform or provide for their maintenance responsibilities by formal agreement or other contracts with any other, State, county, or local government.
- (c) BIA's responsibility includes preparing annual budget requests under 23 U.S.C. 204(c) that include a report of the shortfalls in each BIA Region in appropriations of BIA Road Maintenance dollars.
25 CFR 170.808 – Can BIA Road Maintenance Program funds be used to improve IRR transportation facilities?

- No. BIA Road Maintenance Program funds cannot be used to improve roads or other IRR transportation facilities to a higher road classification, standard, or capacity.
25 CFR 170.810 – To what standards must an IRR transportation facility be maintained?

IRR transportation facilities must be maintained, subject to availability of funding, in accordance with the IRR TFMMS. The Secretary will develop these standards with the input of the IRR Program Coordinating Committee. The Secretary must accept as interim standards any tribal maintenance standards that meet or exceed applicable Federal standards. Interim standards must include any of the following:

- (a) Appropriate National Association of County Engineers maintenance standards;
- (b) AASHTO road and bridge maintenance manuals, latest edition; or
- (c) Other applicable Federal, State, tribal, or local government maintenance standards as may be negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.
Appendix A to Subpart G—List of Activities Eligible for Funding Under BIA Transportation Facility Maintenance Program

The following activities are eligible for BIA Transportation Facility Maintenance Program. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA Transportation Facility Maintenance Program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
15. Developing, implementing, and maintaining an IRR Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
22. Paying the cost of closing of transportation facilities due to safety or other concerns.
23. Maintaining airport runways, heliport pads, and their public access roads.
24. Maintaining and operating BIA public ferry boats.
25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.
26. Making temporary highway alignment or relocation changes for emergency reasons.
27. Maintaining other IRR intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.
Maintenance Projects/Activities

- Chip Seals
- Striping
- Sign Repair
- Ditch Maintenance
- Culvert Cleaning & Replacement
- Snow & Ice Removal
- Pavement Patching
- Surface Blading
- Equipment Maintenance
Responsibilities of Tribe

- Assume all responsibilities of the Federal Agency (BIA)
WHEREAS, The Coeur d'Alene Tribal Council has been empowered to act for and on behalf of the Coeur d'Alene Tribe, pursuant to the revised Constitution and By-Laws, adopted by the Coeur d'Alene Tribe by referendum November 10, 1984, and approved by the Secretary of the Interior, Bureau of Indian Affairs, December 21, 1984; and

WHEREAS, the Coeur d'Alene Tribal Government has been constituted to promote a strong reservation community and reaffirm its commitment to fulfilling its sovereign will through balanced environmental, social, and community development; and

WHEREAS, the Coeur d'Alene Tribe of Indians, under the 1975 Education and Self Determination Act (p.L. 93-638), shall contract the Road Maintenance Program of the Bureau of Indian Affairs (B.I.A.) Branch of Roads Construction and Maintenance Program, beginning October 10, 2003, and

WHEREAS, the Tribal Council is requesting an amendment to the Single Line Agreement to include the Road Maintenance program with the attached scope of work, and

WHEREAS, the Coeur d'Alene Tribe Road Maintenance Program become fully established to adequately maintain all existing BIA/IRR roadway maintenance requirements and to meet the increasing backlog of roadway maintenance, and request that the Department of Interior fully fund the Tribe's equipment needs as well as a comprehensive road management program; and

NOW THEREFORE BE IT RESOLVED, the Coeur d'Alene Tribe hereby requests the Bureau of Indian Affairs, Department of Interior to Contract 93-638 the Roads Maintenance program to the Coeur d'Alene Tribe and add the program to the Tribe's Single Line Agreement with the additional request to adequately fund the necessary equipment and supplies to properly maintain the program, and;

BE IT FURTHER RESOLVED, that the Coeur d'Alene Tribal Chairman and Vice-Chairman or Secretary Treasurer is authorized to sign all documents necessary to carry out this request.

CERTIFICATION

The foregoing resolution was adopted at a meeting of the Coeur d'Alene Tribal Council held at the Tribal Headquarters, 850 A Street, Plummer, Idaho on October 10, 2002 with the required quorum present by a vote of 6 FOR 0 AGAINST 0 ABSTAIN 0 OUT.

Ernest L. Stensgar, CHAIRMAN
COURT D'ALENE TRIBAL COUNCIL

Norma Jean Louie, SECRETARY
COURT D'ALENE TRIBAL COUNCIL
COEUR D'ALENE TRIBE
ROADS MAINTENANCE

SCOPE OF WORK

The Roads Maintenance program will comply with the 58 BIAM and shall preserve the roads and bridges that provide access to reservation lands, jobs, schools, and health care facilities of the Coeur d'Alene reservation.

The Roads Maintenance program will employ qualified staff to provide for grading roadway surfaces, cleaning ditches, filling potholes, and repairing pavements and administration of this program to appropriate standards as funding will allow.

Road maintenance activities will be prioritized depending upon weather conditions, i.e. school bus routes, etc. with Council approval.

Program management activities will be coordination within the transportation division, local, state, and federal programs where applicable.

Annual assessments will be conducted and any required BIAM reporting requirements will be adhered to.

The roads will be assessed annually, and plans to improve, repair and build new roads will be documented following the 58 BIAM.
self-Determination

Mr. Ernest L. Stensgar, Chairman
Coeur d'Alene Tribe
P.O. BOX 408
Plummer, ID 83851

Dear Mr. Stensgar

Your 2003 contract application entitled "Roads Maintenance" was received on October 30, 2002. It will be reviewed in order to determine if there are any declination or funding issues. Your application will be approved if no declination issues exist and if funds are available.

Should you have any questions, please contact me at (503) 231-6760.

Sincerely,

[Signature]

Timothy R. Brown
Awarding Official
BIA-2001-L1-00005

Enclosure

cc: Coeur d'Alene Field Office
ROAD MAINTENANCE PROGRAM

SCOPE OF WORK

A. Programs to be performed by Contractor. The Contract shall conduct programs and services to address Tribal priorities and needs as determined by the Tribal Council. Programs to be conducted shall include any and all programs authorized by law, for which funds have been appropriated to the BIA or made available from other agencies through the BIA. Funds made available may be utilized to acquire other resources to further the objectives of this agreement. The Contractor shall operate the following program:

Road Maintenance:

1. The services to be performed by the contractor include preserving the Bureau's Indian Reservation Roads (IRR) system of roads and bridges that provide access to the reservation lands, jobs, schools, and health care facilities, i.e., the transportation system that helps provide a foundation for tribal economic development and self-determination.

2. The Contractor is to preserve and upkeep roads, structures and rights-of-ways as nearly as possible or practicable to its "as constructed" conditions thus insuring the health, safety, and economic use of the traveling public.

3. The work shall consist of: Regular maintenance as defined in the latest AASHTO Road Maintenance Handbook for Physical Maintenance and Traffic Services that included performing surface pavement patching, surface blading and sweeping, shoulder maintenance, weed control, repair to bridge railing, ditch cleaning, culvert pipe cleanout, removing small slides, repairing minor flood damage, sign replacement, snow and ice removal and other incidental routine work.

Heavy maintenance is further defined as work done in repairing highway and bridge damage normally expected from seasonal and occasionally unusual natural occurrences.

B. Emergency Relief for Federally Owned Roads (ERFO). Under conditions of natural disaster impacting BIA roads and bridges, the Contractor may be eligible for emergency funds to repair and/or replace roads and bridges on the IRR system. When it is felt that such a condition exists, as defined in the FHWA Manual on Emergency Relief for Federally Owned Roads, E.R.F.O., the Contractor shall notify the Regional Roads Engineer of such a condition and provide the information outlined therein.
C. Maintenance Management System. The Contract will provide the required daily operator's log information to comply with 58 BIAM management requirements.

D. Interagency Cooperation. The Contractor will respond to request to share workforce personnel and equipment. Scheduling will be for the mutual benefit of Indian Reservation within the Northwest Region. Travel costs will usually be by government travel personnel expenses from the accepting Agency. Borrowing of personnel and equipment for use may be by inkind reimbursement.
ISSUES

- ROW Ownership
- Adequate Funding
- Differing Expectations
### Equipment

<table>
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<tr>
<th>Year</th>
<th>Make</th>
<th>Model</th>
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<tbody>
<tr>
<td>1975</td>
<td>International</td>
<td>Dump Truck</td>
</tr>
<tr>
<td>1975</td>
<td>Dodge</td>
<td>Water truck</td>
</tr>
<tr>
<td>1996</td>
<td>Kenworth</td>
<td>T800 Dump Truck</td>
</tr>
<tr>
<td>2006</td>
<td>Sterling</td>
<td>Dump Truck</td>
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<tr>
<td>2005</td>
<td>Trailmax</td>
<td>TD-20-T</td>
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<tr>
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<td>Ford</td>
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<td>2002</td>
<td>Sterling</td>
<td>Elgin Sweeper</td>
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<tr>
<td>2006</td>
<td>Dodge</td>
<td>R35 (1 Ton-Ram)</td>
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<tr>
<td>1976</td>
<td>Dodge</td>
<td>Pickup</td>
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<tr>
<td>1972</td>
<td>General</td>
<td>Dump Truck (Small)</td>
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<td>John Deere</td>
<td>544 J Loader</td>
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<tr>
<td>1985</td>
<td>Komatsu</td>
<td>Excavator</td>
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Facilities

Old Sand Shed

New Equipment Storage Building

New Sand Shed
Funding Versus Budget Requirements

- The funding received from the BIA for FY 2010 was $67,467.00
- The Tribe’s Road Maintenance Program cost $440,000 to run in FY 2010.
Jim Kackman
Public Works Director
Coeur d’Alene Tribe
(208) 686–2066
jkackman@cdatribe-nsn.gov