Cooperative Agreement Quick Guide and Frequently Asked Questions

Land Buy-Back Program for Tribal Nations

November 2014

Introduction

The Department of the Interior (DOI or the Department) is interested in partnering with tribes to gain their direct participation in the Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program) to improve the overall effectiveness of the Program on their reservations. One of the ways the Program plans to accomplish this is by utilizing cooperative agreements.

A cooperative agreement is a type of financial assistance award similar to a grant. It is a legal instrument representing the relationship between the Federal Government (i.e., the Buy-Back Program) and a recipient (i.e., a tribe). Its principle purpose is to transfer a thing of value (primarily funding in this case) to a recipient to carry out a public purpose of support or stimulation, as authorized by the Federal Government.[1] When completing the activities under a cooperative agreement, substantial involvement is expected between the parties.

Unlike a grant, a cooperative agreement entails "substantial involvement" on the part of the Department during the award period. Examples of "substantial involvement" from DOI may include participation and collaboration with the tribe in carrying out the Application Narrative, reviews / approvals of one stage of work before the next can begin, and / or assistance with selection of project staff.[2]

It is important to note that a cooperative agreement is not necessary for a tribe to partner with the Buy-Back Program to complete land consolidation activities. For example, a cooperative agreement would not be necessary for a tribe that is not seeking funding for activities in support of land consolidation on its reservation. If a tribe is unsure of whether to apply for a cooperative agreement, it should contact the Buy-Back Program.

The Cooperative Agreement Application Package

To enter into a cooperative agreement with the Buy-Back Program, a tribe must submit an application. A tribe's cooperative agreement application package must include all of the following documents to be considered for funding:

- Scope of Work Checklist[3]
- Application Narrative[4]
- The following SF-424 Application Forms:
  - *SF-424 Application for Federal Assistance*
  - *SF-424(A) Budget Information for Non-Construction Programs*
  - *SF-424(B) Assurances for Non-Construction Programs*
- Tribal Authorization
- Tribal Priority Tract Listing

Sections I through V of this guide provide an overview of each of these documents; however, please refer to the Cooperative Agreement Application Instructions for more information on these documents and how to prepare an application. The Buy-Back Program staff is also available to assist and answer questions.

[1] 505 Departmental Manual (DM) 2, Section 2.9 at B(1).

[2] 505 DM 2, Section 2.9 at B(3)(a).

[3] Formerly known as the "Scope of Work Template"

[4] Formerly known as the "Statement of Work"

I. Scope of Work Checklist

The Scope of Work Checklist is a high-level checklist form that a tribe will complete as part of its application. It describes the three phases of the Buy-Back Program's land consolidation process (outreach, land research, and valuation), as well as eight phase-specific tasks (such as pre-offer outreach) that a tribe may elect to perform through a cooperative agreement[5]. The tribe will "check off" the phase-specific tasks it would like to perform. Tribes will only "check off" those tasks they are willing and able to perform. The Program will take responsibility for tasks left unchecked in the Checklist.

Tribes should complete the Scope of Work Checklist following initial discussions with the Buy-Back Program.

II. Application Narrative

The Application Narrative is a comprehensive and detailed document in which a tribe describes how it proposes to perform and meet the requirements of the tasks it proposes to undertake in the Scope of Work Checklist. Similar to a grant proposal, the Application Narrative is the document where a tribe provides detailed narrative, timeframe, and budgetary information on the anticipated activities and associated costs under a cooperative agreement with the Buy-Back Program. While the Scope of Work Checklist identifies what activities the tribe proposes to perform, the Application Narrative is where the tribe describes how the tribe proposes to perform them.

Please see the Cooperative Agreement Application Instructions for additional information on preparing a satisfactory Application Narrative.

III. Standard Application Forms

In addition to the Scope of Work Checklist and the Application Narrative, tribes must also complete and submit the following three standard, government-wide required federal financial assistance application forms as part of their cooperative agreement application packages:

- SF-424 Application for Federal Assistance
- SF-424A Budget Information for Non-Construction Programs
- SF-424B Assurances for Non-Construction Programs

IV. Tribal Authorization

The cooperative agreement application package must be accompanied by a tribal authorization approving the tribe's participation in the Buy-Back Program. While many tribes utilize tribal resolutions to conduct official business, not all tribes employ this format. Therefore, the tribal authorization should take the form of whatever means by which tribal business is conducted.

Please see the Tribal Authorization Guidance and Sample Language document for additional information, including sample authorization language.

V. Tribal Priority Tract Listing

[5] A fourth land consolidation phase, the Acquisition Phase, will be completed by the Buy-Back Program. The Acquisition Phase consists of mailing offer packets to owners, receiving and processing completed offers and posting payments to Individual Indian Money accounts.

Tribes must provide the Buy-Back Program with a listing of those fractional interests within their reservations that are priorities for potential purchase so that the Program can attempt to purchase them, to the extent feasible. As part of the application preparation process, the Buy-Back Program can provide data and other information to the tribe to help in the development of its priority tract listing. The tribe may submit a draft list with the cooperative agreement application. However, in those cases, it is important to identify the submitted listing as a draft. A final tribal priority tract listing will be required after the cooperative agreement is awarded.

Awarding of the Cooperative Agreement

To award a cooperative agreement to a tribe, the Program completes the Cooperative Agreement Template with information from the tribe's submitted application package. The purpose of this award document is to provide the legal instrument through which funding can be provided to a tribe to carry out the agreed upon Program activities. An authorized tribal official must sign the Cooperative Agreement Template to acknowledge that the tribe understands the terms and conditions of the agreement. Upon signature, the tribe must return the signed agreement to the Buy-Back Program so that it can obligate the funds. A copy of the final award documents, including the signed and obligated cooperative agreement, will be sent to the tribal point of contact after obligation.

Frequently Asked Questions

I. General

- How will the Department consider tribes' application packages for cooperative agreements?
- Can my tribe apply for a cooperative agreement?
- Can my tribe use a Self-Determination contract (i.e. the Public Law (P.L.) 93-638) or a Self-Governance compact instead of a cooperative agreement for Program activities?
- Can my tribe work with other tribes to implement the Buy-Back Program?
- What is the estimated timeframe for my tribe's cooperative agreement (i.e., how long will the Program operate on my reservation)?

II. Activities

- What are some typical activities that my tribe may perform under a cooperative agreement?
- Are there activities that my tribe cannot perform under a cooperative agreement?
- What support will the Program provide to my tribe during the land consolidation phases?
- Can my tribe obtain outside assistance for the responsibilities outlined in the Scope of Work Checklist?
- What will the Program monitor after a cooperative agreement is in place?

III. Funding

- How much funding can my tribe request in its cooperative agreement application?
- After the Department approves my tribe's cooperative agreement, when and how will we receive funding?
- Is my tribe able to immediately receive a portion of the administrative funding and invest it in an interest-bearing account?
- What portion of the Trust Land Consolidation Fund will be used to fund my tribe's cooperative agreement?
- Can my tribe request additional funding after a cooperative agreement has been awarded?
- Can my tribe request indirect costs as a part of its cooperative agreement application?
- Can my tribe be reimbursed for costs incurred prior to the award of the cooperative agreement?

IV. Miscellaneous

- If my tribe fails to fulfill its responsibilities under its cooperative agreement, what are the consequences?

- Can my tribe hire full-time staff to carry out aspects of the Program?
- If my tribe procures supplies and equipment with cooperative agreement funds to assist with Program implementation, who owns the items once the cooperative agreement ends?
- Who can I contact for more information?

I. General

1. How will the Department consider tribes' application packages for cooperative agreements?

The Department uses several criteria to consider proposed cooperative agreements. These criteria may include:

- Completeness of the application package;
- The tribe's capacity to perform the tasks and meet the task-specific requirements outlined in the Scope of Work Checklist; and
- The tribe's proposed budget(s).

2. Can my tribe apply for a cooperative agreement?

Tribes should review and familiarize themselves with the cooperative agreement application documents and are encouraged to contact Buy-Back Program staff to discuss the documents before preparing or submitting an application.

It is important to note that a tribe is not required to enter into a cooperative agreement to participate in the Buy-Back Program. In certain cases, it may be unnecessary. If a tribe is unsure of whether or not to apply for a cooperative agreement, it should contact the Buy-Back Program to discuss the tribe's specific needs.

3. Can my tribe use a Self-Determination contract or a Self-Governance compact (i.e., agreements executed under Public Law (P.L.) 93-638) instead of a cooperative agreement for Program activities?

No, the Indian Land Consolidation Act (ILCA) authorizes the Department to enter into agreements with tribal governments to carry out Program activities; however, the provisions of the Indian Self-Determination and Education Assistance Act do not apply to these agreements.[6]

4. Can my tribe work with other tribes to implement the Buy-Back Program?

Yes, the Program will consider cooperative agreement applications from tribes seeking to work together to implement the Buy-Back Program; however, only one tribe can receive the cooperative agreement (i.e., can be listed on the cooperative agreement as the recipient). Tribes should detail planned tribal collaboration in the application package, to include the goals, risks, and benefits of such cooperation. An individual tribe may apply for and enter into a cooperative agreement with the Program, and that tribe can sub-award to other tribes, who then become sub-recipients under the agreement.

5. What is the estimated timeframe for my tribe's cooperative agreement (i.e., how long will the Program operate on my reservation)?

Agreement lengths will vary and depend on the unique needs of each reservation. In general, cooperative agreements awards will be made for a period of approximately twelve months, however, some awards may be for a longer period. The Department will work with the tribe to determine an appropriate timeframe

[6] 25 USC 2212, at (b)(3)(C).

based on its individual needs as part of the cooperative agreement award process. Some cooperative agreement awards may be extended based on the outcomes of the initial period of performance.

II. Activities

1. What are some potential activities that my tribe may perform under a cooperative agreement?

The Buy-Back Program divides the land consolidation process into four phases which are described in the November 20, 2014 Status Report and summarized below:

- **Outreach** refers to the process of communicating with landowners regarding the potential opportunity to sell their fractional interests and to address their questions and concerns. Outreach also includes planning, information sharing, and consultation with tribes.
- **Land research** includes the development of mapping, land use, and other data necessary to establish fair market value for the tracts containing fractional interests.
  Valuation is the process of appraising fractionated tracts to determine their fair market value.
- **Acquisition** is the process of extending offers to landowners in an effort to acquire interests from those interested in selling.

While the acquisition phase will be primarily carried out by the Buy-Back Program, there are eight phase-specific tasks that tribes may perform under a cooperative agreement among the three other phases; outreach, land research and valuation. These tasks are detailed in the Scope of Work Checklist. Tribes are encouraged to work with the Program to determine which activities they could undertake through cooperative agreements with the Department.

2. Are there activities that my tribe cannot perform under a cooperative agreement?

The acquisition phase will be carried out predominantly by the Buy-Back Program via a highly automated process. However, tribe's performing pre-offer and post-offer outreach will be directly supporting these acquisition efforts.

3. What support will the Program provide to my tribe during the land consolidation phases?

The Program will provide support by sharing materials across reservations and leveraging lessons learned from previous Buy-Back Program locations. For example, the Program may distribute outreach materials (e.g., brochures, handouts, and presentations) that a tribe can modify for implementation of the Program at its reservation. In addition, the Buy-Back Program will provide technical support to tribes by designating a point of contact to answer questions or field suggestions that the tribe may have during the timeframe the Buy-Back Program is active at that location.

4. Can my tribe obtain outside assistance for the responsibilities outlined in the Scope of Work Checklist?

Yes, a tribe may use an outside contractor to perform activities funded by a cooperative agreement. All proposed costs, including contractor costs, should be detailed in the tribe's application package. Tribal procurement procedures must comply with applicable procurement regulations governing the cooperative agreement (43 C.F.R. § 12.76).

5. What will the Program monitor after a cooperative agreement is in place?

It is the Department's policy to ensure the fiscal and programmatic integrity of all its financial assistance programs through proactive monitoring. The Program will monitor awarded cooperative agreements to ensure that tribes carry out funded activities in a manner consistent with the award terms and conditions.

To assist the Department in fulfilling its monitoring responsibilities, tribal recipients of cooperative agreements must comply with financial and performance reporting requirements as detailed in the agreement terms and conditions. These requirements will include the submission of quarterly financial and performance reports. Tribes must use the SF-425 Federal Financial Report for financial reporting. Although there is no standard format for performance reports, at the minimum, the reports must include the following:

- A description of whether objectives were met for the period, including a cost breakdown;
- An explanation for any unmet objectives; and
- Additional information as needed (e.g., analysis of cost overruns).

Final financial and performance reports must be submitted within 90 calendar days of the end of the cooperative agreement. The tribe may also be responsible for providing other reports and related data to the Program upon request or as specified in the cooperative agreement.

III. Funding

1. How much funding can my tribe request in its cooperative agreement application?

The Cobell Settlement limits the amount of funding that may be used for administrative expenses in order to maximize the amount available for purchasing fractional interests. Consequently, cost-efficiency is an important consideration for the Program when entering into cooperative agreements with tribes. While there is no minimum or maximum request amount, most individual cooperative agreement awards are not expected to exceed $500,000.

2. After the Department approves my tribe's cooperative agreement, when and how will we receive funding?

Tribal recipients of cooperative agreements must use the U.S. Department of Treasury's Automated Standard Application for Payments (ASAP) system to request funds. Unless a tribe is already enrolled in ASAP under the Office of the Secretary's Agency Locator Code (14010001), the tribe must enroll regardless of whether it is already using ASAP for other funding agreements, such as Bureau of Indian Affairs (BIA) agreements. Once a tribe has submitted its ASAP enrollment forms to the Department (which will be provided to the tribe by the Program) and the Buy-Back Program has initiated system enrollment, the ASAP system will electronically contact the tribe with information on the steps required to complete the enrollment process.

After the cooperative agreement is obligated, a tribe may request advance payments via ASAP on an as-needed basis, however, advance payment requests should be limited to the amount needed and timed in accordance with tribe's immediate cash requirements pursuant to the applicable regulations (43 C.F.R § 12.61).

All costs to be charged by tribes against the cooperative agreements must be allowable, reasonable, allocable and in accordance with the approved cooperative agreement budget. Tribes may not use Program funds for any other activities, including activities related to Self-Determination contracts or Self-Governance compacts.

3. **Is my tribe able to immediately receive a portion of the administrative funding and invest it in an interest-bearing account?**

   Neither the Cobell Settlement Agreement nor the Claims Resolution Act of 2010 express authority to invest portions of the Trust Land Consolidation Fund (Fund). Funds awarded through a cooperative agreement will be partially advanced or fully reimbursed, as deemed appropriate, to the tribe via ASAP. The applicable regulations (43 C.F.R. § 12.61) require that recipients minimize the time elapsing between receipt of the funds and their disbursement, thus investment of awarded funds would not be practical. In addition, pursuant to 43 C.F.R. §12.61, interest earned on advanced funds in excess of $100 must be remitted to the Federal awarding agency.

4. **What portion of the Trust Land Consolidation Fund will be used to fund my tribe's cooperative agreement?**

   The Cobell Settlement Agreement limits the amount that may be expended on administrative costs for implementing the Buy-Back Program to 15% of the total Fund, or $285 million. The Program will award cooperative agreements from this portion of the Fund. The Department will determine an individual tribe's cooperative agreement funding based on the tribe's application and the specific needs for the Program (e.g., capacity to complete mass appraisals, level of outreach required).

   The Department will apply any portion of the administrative funds not expended in the administration of the Program back to the purchase fractional interests in trust or restricted land.

5. **Can my tribe request additional funding after a cooperative agreement has been awarded?**

   Yes, cooperative agreements can be modified after the award to add additional funding when necessary and appropriate. The Department is committed to working closely with tribes to ensure that the Buy-Back Program is as successful as possible, and is therefore committed to remaining flexible. In addition to being able to modify awards, the Buy-Back Program may award multiple cooperative agreements to a tribe when appropriate.

6. **Can my tribe request indirect costs as a part of its cooperative agreement application?**

   Yes, tribes may request indirect costs as part of their cooperative agreement applications; however, the Buy-Back Program has capped the amount that will be paid at no more than 15% of the modified total direct costs.[7] The Settlement limits the amount of funding that may be used for administrative expenses in order to maximize the amount available for purchasing fractional interests. Consequently, cost-efficiency is a key component of the Program's success. The Department has considered tribal input received to date and has seriously explored various options for what indirect costs might be charged to implement the Buy-Back

[7] Modified Total Direct Costs are defined as costs excluding capital expenditures and distorting items such as pass through funds, major subcontractors, etc. http://www.doi.gov/ibc/services/indirect_cost_services/FAQs.cfm

Program. To help ensure that the Program stays within the established cost limit, the Program has capped the amount of indirect costs it will pay as a part of cooperative agreements.

Tribes with negotiated indirect cost rates[8] over 15% may request no more than a 15% indirect costs rate in their cooperative agreement application. Tribes with negotiated indirect cost rates of less than 15% can request no more than their current negotiated rate. Please note that tribes requesting indirect costs as part of their application are requested to submit a copy of their most recent negotiated indirect cost rate agreement to the Buy-Back Program.

7. **Can my tribe be reimbursed for costs incurred prior to the award of the cooperative agreement?**

   Pre-award costs, or costs that are incurred prior to the award of the cooperative agreement, are not permissible without prior written approval from the Buy-Back Program. Absent approval to incur pre-award costs, tribes may only charge costs incurred during the award period to the cooperative agreement, as detailed in the cooperative agreement award.

IV. Miscellaneous

1. **If my tribe fails to fulfill its responsibilities under its cooperative agreement, what are the consequences?**

   The tribe and the Department will always seek to negotiate a cooperative agreement that will achieve successful implementation of the Program. In addition, the required quarterly cooperative agreement performance reports provided by the tribe, as well as reports by the Program, will allow the parties to troubleshoot significant issues or problems. However, as outlined in the Cooperative Agreement Template, if a tribe fails to comply with any term of its agreement, the Buy-Back Program may take one or more of the following actions:

   - Temporarily withhold cash payments pending correction of the deficiency by the tribe;
   - Disallow all or part of the cost of the activity or action not in compliance;
   - Wholly or partly suspend or terminate the current award;
   - Withhold further awards for the program; or
   - Take other remedies that may be legally available.

2. **Can my tribe hire full-time staff to carry out aspects of the Program?**

   Yes, tribes may hire full-time staff to carry out aspects of the Program and charge the staff costs against the cooperative agreement, if included and detailed in the application and approved by the Buy-Back Program. Approved staff costs may only be charged against the cooperative agreement for the duration of the award. Therefore, hired staff would most likely need to be temporary or term positions, unless the tribe plans to continue funding the positions after the cooperative agreement ends.

3. **If my tribe procures supplies and equipment with cooperative agreement funds to assist with Program implementation, who owns the items once the cooperative agreement ends?**

[8] The Department of the Interior's Interior Business Center, Indirect Cost Services, negotiates and issues indirect cost rates for tribal governments which are formalized in the tribe's indirect cost rate agreement.

If the supplies and equipment were purchased with funding made available through a cooperative agreement from the Buy-Back Program, ownership and disposition are governed by 43 C.F.R. 12, Subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," specifically, 43 C.F.R. § 12.72 Equipment and 43 C.F.R. § 12.73 Supplies.

4. Who can I contact for more information?

The Buy-Back Program has a small team of dedicated advisors available to assist with cooperative agreements. Tribes can contact:

Genevieve Giaccardo, Senior Advisor on Tribal Relations
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