

Office of Tribal Transportation Surplus and Excess Property Frequently Asked Questions

1. Under what statutory authority may Tribes in a Federal Highway Administration (FHWA) TTP Agreement receive legal title to excess or surplus personal property?

Pursuant to 23 U.S.C. 202(b)(7), FHWA Tribal Transportation Program (TTP) Agreements are in accordance with the Indian Self Determination Education and Assistance Act (ISDEAA), Public Law 93-638, which allows a Federal agency to transfer legal title of any excess or surplus personal property to Tribes (*see* 25 U.S.C. 5392; 25 CFR 900.105). Further, 23 U.S.C. 207(l)(6) was added to title 23 by the FAST Act under the section titled “Tribal transportation and self-governance program.” This paragraph provides that 25 U.S.C. 458aaa-11 (now 25 U.S.C. 5392), which addresses access to excess and surplus personal property, applies to USDOT compacts and funding agreements. Pursuant to both 23 U.S.C. 202(b)(7) and 25 U.S.C. 5392, FHWA has the authority to transfer legal title of excess or surplus personal property and equipment to the Tribes.^[1]

2. Are there Federal regulations that govern the process for Tribes to acquire excess or surplus personal property from other Federal agencies?

Yes, 25 CFR 900.102 through 900.106 contains procedures for acquisition and donation of excess or surplus property to Indian Tribes or Tribal organizations. These regulations govern 93-638 contracts, pursuant to the ISDEAA. While FHWA TTP Agreements are not 93-638 contracts, FHWA looks to these regulations for guidance as applicable.

3. Under which government programs may an Indian Tribe conducting business with the FHWA Office of Federal Lands Highway request excess or surplus personal property?

The FHWA Office of Federal Lands Highway may facilitate the transfer of excess and surplus personal property to a Tribe to enhance capacity of the Tribe to deliver activities eligible under the TTP Agreement. Such authority applies only to the General Services Administration’s (GSA’s) Federal Excess Personal Property Utilization Program and GSA’s Federal Surplus Personal Property Donation Program, found at GSAXcess.gov.

4. What conditions must a Tribe meet to enter or maintain an agreement with FHWA concerning the acquisition of surplus property?

A Tribe that has entered into a Tribal Transportation Program Agreement with FHWA or a USDOT Self-Governance Agreement must also meet the following conditions before requesting a surplus property MOU:

- timely reporting for the previous two years;
- three years of single audits without unresolved findings; and
- an established property management system.

5. Is it appropriate to contact the Property Custodian for more details on excess or surplus personal property listed on the Property Data Sheet?

Yes, if you need more information about excess or surplus personal property listed on GSAXcess.gov, please contact the Property Custodian using the information that is listed.

6. Is there a way to examine excess or surplus property before requesting a transfer?

You can contact the Property Custodian to determine if a site visit to view the excess or surplus personal property is possible.

7. What if the Tribe requests excess or surplus personal property and, before acquiring the property, determines that it is not needed?

If the Tribe initiates a transfer request and later determines that it does not have use for the excess or surplus personal property, the Tribe must contact the GSA Area Property Manager and FHWA as soon as possible to have the request terminated. The Tribe should not pick up property unless it will be utilized for the TTP.

8. What is the cost to the Tribe to acquire surplus or excess personal property? Will the Tribe incur a cost for shipping?

Usually, the only cost to take custody of excess or surplus personal property is the shipping cost or costs associated with picking up the property. The Tribe is responsible for all operation and maintenance costs. There may also be costs associated with disposal or return of the property once the Tribe is finished using it, if title was not transferred to the Tribe. Although rare, an agency that is transferring excess or surplus personal property may require a payment of some portion of the current value.

In addition to shipping costs, if a Tribe chooses to use a [State Managed Personal Property Center^{\[2\]}](#) instead of using GSAXcess.gov via FHWA, then the Tribe will be charged a processing fee (usually a percentage of the property's value).

9. Does the Tribe own the property it acquires through the GSAXcess program?

Title to any transferred excess or surplus personal property vests in the Indian Tribe or Tribal organization upon taking possession (25 CFR 900.105).

The Tribe takes ownership of excess or surplus personal property when a standard form FHWA-1363-T showing transfer of ownership from the Federal Government to the Tribe has been executed. For motor vehicles, an SF-97 also is required to transfer ownership and legal title.

10. May the Tribe sell transferred property if it is no longer needed by the Tribe?

If the Tribe has legal title to the property, the Tribe may sell it if it is no longer needed by the Tribe. The intent of this arrangement is to acquire personal property that will support delivery of

the TTP and increase the Tribe's capacity to deliver transportation projects. Excessive acquisition of property for quick sale is not the intent of the program and will impact FHWA's ability to approve future acquisitions.

11. May the Tribe modify transferred property to add or remove accessories?

If the Tribe has legal title to the transferred property, modifications can be made at any time.

12. If transferred property is of little value other than scrap, may the Tribe part out the property for Tribal use?

If the Tribe has title, the Tribe may dispose of the property subject to FAQ #9 above.

13. When does GSA consider transferred property to be at the end of its useful life, and what happens to that property?

If the Federal Government holds title to the property, that the abandonment and destruction of transferred property is governed by 41 CFR 102-36.305 through 102-36.330, which applies only if title has not transferred to the Tribe.

14. What is the process for acquiring excess and surplus personal property through the GSAXcess.gov website?

To obtain excess and surplus property listed on GSAXcess.gov, a Tribe should:

- Print the item's description page for the Tribe's records. (Once the property transfer is approved by FHWA, the item's description page is no longer available on GSAXcess.gov.)
- Use the "Add to Cart" and "checkout" buttons on an item's GSAXcess.gov description page.
- Submit the property request in the FHWA TTP Property Tracking System at the unique link provided to you by email after registering at <https://flh.fhwa.dot.gov/programs/ttp/property>. Describe the property, the benefit and capacity building that the property will provide to activities under the FHWA TTP Agreement, and an indication of the entity that the Tribe prefers hold title to the property. This system will notify FHWA of the Tribe's request and will produce a standard form FHWA-1363-T. The form will be sent to you by email.
- The FHWA-1363-T form must be signed by the Tribe's property screener and a representative of the Tribe authorized to make financial commitments. The fully signed document should be sent to FHWA Tribal Coordinator for approval.
- Wait for FHWA to approve the property transfer on GSAXcess.gov. The Tribe should receive an email showing Ordering Agency Approval. Note that FHWA has 10 days to make this approval or the transfer will be canceled automatically.
- The Tribe must wait for GSA to issue a property transfer order via SF-122. (The Tribe should receive an email with the transfer order attached.) The Tribe may then contact the Property Custodian and arrange for pickup of the property.

15. How does the Tribe coordinate pickup of the transferred property at the different excess property sites, such as military bases and other yards?

The Tribe must call the Property Custodian after the property transfer order is in place. The security protocols for the specific Federal property will be identified by the Property Custodian, such as gaining access to a military installation.

16. How does the Tribe acquire an Activity Address Code (AAC) and GSAXcess.gov account?

To gain credentials allowing the screening of surplus and excess personal property, the Tribe will need to apply for an AAC and GSAXcess.gov account. To begin the process, the Tribe must send a formal letter to the FHWA Tribal Transportation Coordinator (sponsoring Federal employee) requesting an AAC and GSAXcess.gov account. A template for this letter can be found by registering for the FHWA TTP Property Tracking System at <https://surveys.max.gov/313263>. The letter must include the following information for the Tribe:

- full name of each Tribal employee who will be designated as a property screener;
- email, telephone, fax, and address for each Tribal employee who will be designated as a property screener;
- full name, email, and title of the authorized signatory (person with authority to sign financial documents on behalf of the tribe);
- official name of Tribe;
- mailing and billing address;
- physical address for freight delivery (if not a formal street address – describe a location);
- name of FHWA Tribal Transportation Coordinator;
- a description of the Tribe’s personal property management system; and
- a copy of the Tribe’s property management policies showing controls that prevent unauthorized use, ensure proper use and maintenance, and describe disposal processes.

The FHWA Tribal Transportation Coordinator will send the request to the Property Officer at the FHWA HAMS. The FHWA Property Officer will acquire an AAC for the Tribe and provide the six-digit code to the Tribal Coordinator. The Tribal Coordinator will provide the Tribe’s letter and AAC code to the FHWA HAMS. When the requested account is created, an automated email notification will be sent to the Tribal employee.

17. Which Tribal Departments may use transferred property?

Property that FHWA approves for transfer to a Tribe must be primarily for use by the Tribal Transportation Department.

18. Can the Tribe acquire property that is not EXCLUSIVELY for Tribal Transportation Department use?

The FHWA can acquire excess or surplus personal property for an Indian Tribe only if the Tribe has demonstrated that the property is appropriate for use to support an activity authorized under the FHWA TTP Agreement.

19. May a Tribe acquire excess or surplus personal property and allow other Tribes to use it?

Yes. Tribes may establish equipment pools and share transferred property with the transportation departments of other federally recognized Tribes. However, the Tribe that acquired the property will remain responsible for reporting and inventory requirements under the TTP, regardless of the location of the property. Therefore, FHWA recommends that the Tribes establish written agreements to provide for maintenance responsibility and other terms of use.

20. What insurance is the Tribe required to purchase before using surplus and excess property?

The Tribe should put in place prudent measures to cover liability that may result from the use of acquired property.

21. What are the reporting requirements for transferred property?

The Tribe must account to FHWA as follows:

1. On an annual basis via an electronic reporting system, the Tribe must report on all of its inventory transferred under this Program with an original acquisition value in excess of \$5,000. Access to the reporting system will be provided by the FHWA Tribal Transportation Coordinator on or about October 1 of each year. After FHWA provides access to this system, the Tribe will have 90 days to complete reporting.
2. Allow FHWA staff to inspect the transferred property and property management system at the Tribe's facility upon request. This inspection will usually be conducted by the FHWA Tribal Transportation Coordinator during site visits.

Footnotes

[1] "Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession." 25 CFR 900.105(a).

[2] <https://www.gsa.gov/acquisition/government-property-for-sale-or-disposal/personal-property-for-reuse-sale/for-federal-agencies/storing-excess-property/state-managed-personal-property-center-contacts>