



Memorandum

Indian Health Service
Rockville MD 20857

TO: Area Sanitation Facilities Construction (SFC) Program Directors

FROM: Mark A. Calkins March 13, 2026
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Director, Division of Sanitation Facilities Construction

SUBJECT: SFC Program, Interim Guidance Memo (IGM) #2026-02
Applicability and Allowability of Gross Receipts Taxes (GRT) Under Public Law
(PL) 86-121 Sanitation Facilities Construction Projects

I. PURPOSE

This memorandum establishes interim guidance regarding the applicability and allowability of State and Tribal Gross Receipts Taxes (GRT) in connection with sanitation facilities construction (SFC) projects funded under Public Law 86-121 and implemented through Memorandum of Agreement (MOAs) between IHS and Tribes.

This IGM is issued to ensure consistency across Areas, maintain compliance with federal cost principles, reduce audit risk, and provide clear direction to Tribes prior to procurement. IHS policy on the use of the PL 86-121 MOA is published in the [Indian Health Manual, Chapter 2, Part 5](#). As described in the IHS MOA policy, the DSFC program maintains MOA Guidelines to provide additional guidance to Area programs on the implementation of the MOA. This IGM supplements the MOA Guidelines.

II. STATE GROSS RECEIPTS TAX (NM GRT AND SIMILAR TAXES)

Based on controlling federal law and Office of the General Counsel (OGC) guidance:

- State gross receipts taxes, including New Mexico GRT, are generally preempted and do not apply to PL 86-121 SFC projects performed on trust land for the benefit of Tribal members.
- Procurement documents for PL 86-121 projects shall not include State GRT as an allowable or reimbursable project cost.
- Payment requests submitted to IHS may not include amounts attributable to State GRT.

III. TRIBAL GROSS RECEIPTS TAX

IHS recognizes and respects Tribal sovereignty, including the authority of Tribes to enact and impose taxes within their jurisdiction.

However, under 2 C.F.R. Part 200 and applicable federal cost principles:

- Federal funds may not be used to pay Tribal taxes that support general governmental operations.
- Federal funds may not be used to reimburse self-imposed taxes that disproportionately burden federal programs.
- Tribal Gross Receipts Taxes assessed on PL 86-121 projects are generally not allowable or reimbursable costs unless specifically determined otherwise by OGC.

Accordingly:

- Procurement documents shall not contain a separate line item for Tribal GRT.
- MOAs shall not state or imply that Tribal GRT is reimbursable.
- Requests for payment may not include amounts identified as Tribal GRT.
- IHS retains the authority to disallow or recover payments made for unallowable costs.

IV. CONTRACT PRICING AND UNIT COSTS

PL 86-121 SFC construction contracts shall be structured as fixed-price, competitively procured contracts consistent with standard federal procurement principles.

Contractors may structure their bids using standard industry practices and may incorporate general business costs, overhead, risk allocation, and other internal cost considerations into unit pricing at their discretion.

However:

- IHS shall not direct contractors to include Tribal GRT in pricing.
- IHS shall not require disclosure of internal cost buildup for fixed-price bids.
- IHS shall not approve, acknowledge, or certify Tribal GRT as an allowable project cost.

The legal compliance threshold is whether IHS has approved or reimbursed an unallowable cost as a tax. IHS is purchasing construction services at an agreed contract price—not reimbursing specific internal cost components.

VIII. SUMMARY OF ALLOWABLE AND UNALLOWABLE PRACTICES

A. ALLOWABLE

The following practices are permitted under this policy:

- Fixed-price, competitively procured construction contracts.
- Contractor unit pricing developed using standard industry practices.
- Inclusion of general business costs, overhead, profit, and risk allocation within unit pricing at the contractor's discretion.
- Tribal imposition of taxes under Tribal law (without federal reimbursement).
- Consultation with DSFC and OGC regarding unique circumstances.

B. NOT ALLOWABLE

The following practices are prohibited:

- Separate line items for Tribal Gross Receipts Tax in solicitations or contracts.
- MOA language stating or implying Tribal GRT is reimbursable.
- Payment requests identifying amounts attributable to Tribal GRT.
- Written direction requiring contractors to include Tribal GRT in pricing.
- Federal reimbursement of Tribal GRT absent specific written OGC determination.
- Reimbursement of State GRT for projects performed on trust land.

V. REQUIRED AREA ACTIONS

Area Offices shall:

1. Review existing MOAs and procurement templates to ensure compliance with this guidance.
2. Remove any language suggesting Tribal GRT is reimbursable.
3. Ensure solicitations do not contain a GRT line item.
4. Train SFC and OEHE staff on payment review procedures to prevent explicit reimbursement of unallowable tax costs.
5. Elevate any Tribal request for explicit reimbursement of Tribal GRT to Headquarters DSFC and OGC prior to action.

VI. TRIBAL CONSULTATION AND COMMUNICATION

When discussing this issue with Tribal leadership, Areas should:

- Affirm respect for Tribal sovereignty and taxing authority.
- Clarify that the issue concerns federal cost allowability, not Tribal authority.
- Encourage early consultation if a Tribe believes unique circumstances warrant further review.

The objective is to ensure compliance with federal law while maintaining collaborative government-to-government relationships.

VII. EFFECTIVE DATE

This IGM is effective immediately and applies to all new and pending PL 86-121 SFC procurements unless superseded by future OGC guidance.

If there are questions regarding implementation, please contact DSFC Headquarters for further clarification.

End IGM