

Notice of Funding
Assistant Secretary-Indian Affairs
Office of Indian Energy and Economic Development
FY 2016 Tribal Energy Development Capacity
Program

The Assistant Secretary of Indian Affairs for the Department of the Interior (Assistant Secretary), through the Office of Indian Energy and Economic Development (IEED), announces funding for awards to federally-recognized Indian Tribes, Alaska Native villages, regional or village corporations, tribal organizations, and Tribal Energy Resource Development Organizations to develop tribal capacity to regulate and manage energy resources.

These awards are intended to complement the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act (25 U.S.C. § 415), which restores the authority of tribes to develop and implement tribal laws governing the leasing of tribal surface trust lands for business and other purposes. The funding described in this Notice is intended to enable eligible recipients to take advantage of the opportunity for self-determination afforded by the HEARTH Act by building capacity through the establishment of organizational structure(s) and/or business entity structure(s) capable of engaging in commercial energy development or management activities. Such activities include but are not limited to leasing property, meeting lending requirements, entering into standard business contracts, and forming joint venture partnerships. Structures established include tribal business charters under federal law (IRA Section 17 Corporation), and corporations formed under state or tribal incorporation codes.

The awards will also support tribal development or enhancement of key regulatory activities, including but not limited to: forming a tribal electrical utility authority; establishing tribal policies; enacting tribal regulations for leasing of surface land for energy development pursuant to the HEARTH Act; establishing legal infrastructure for business formation; enacting ordinances related to regulating and developing energy resource(s); and adopting a secured transactions code or a memorandum of understanding, compact, or letter of intent with the state to register liens attached pursuant to this code.

These awards will also assist eligible recipients seeking to enter into Tribal Energy Resource Agreements (TERAs) pursuant to Title V, Section 503 of the Energy Policy Act of 2005 (Public Law 109-58) (Act), which requires the Secretary of the Interior to oversee the review, evaluation, and implementation of Tribal Energy Resource Agreements (TERA). TERAs are agreements between federally-recognized Indian tribes and the Secretary of the Interior that allow a tribe at its discretion, to enter into leases, business agreements, and rights-of-way for energy resource development on tribal lands without further review and approval by the Secretary. The Act and

the implementing regulations provide that the Secretary must determine that a tribe has the capacity to regulate the development of its energy resource(s) before approving a TERA. The awards contemplated in this notice could be used to help fulfill one of the key requirements of TERA approval help demonstrating capacity to perform the administrative and technical functions included in a TERA.

Tribes that are not considering entering into a TERA may also benefit from these awards should they choose to develop their energy resources on Indian land pursuant to the Indian Mineral Development Act (IMDA) Agreements or through self-determination contracts or compacts.

Examples of capacity building activities include, but are not limited to assessing, developing, and obtaining the managerial, organizational and technical ability needed to maximize the economic impact of energy resource development on Indian land:

- Business infrastructure activities:
 - Establishing tribal business charters under federal, state, or tribal law with a focus on energy resource development;
 - Adopting a secured transactions code or, if the tribe has already adopted a secured transactions code, entering into a memorandum of understanding, compact, or letter of intent with the state to include within the state's registry liens attached pursuant to that code.
- Regulatory activities:
 - Developing or enhancing tribal policies, codes, regulations, or ordinances related to regulating and developing energy resource(s), including land lease regulations enacted pursuant to the HEARTH Act for energy development purposes or for business purposes attendant to an energy project;
 - Developing capacity for reviewing proposals for leases, business agreements, or rights-of-way;
 - Developing capacity for negotiating and reviewing leases, business agreements, or rights-of-way;
 - Developing capacity for evaluating the environmental effects of energy resource development projects the applicant may enter into, including those related to cultural resources;
 - Developing capacity for monitoring the compliance of a third party with the terms and conditions of any leases, business agreements, and rights of-way the applicant may enter into; establishing or managing energy development-related departments or administrative divisions within the tribe or tribal energy resource development organization;

- Developing energy development-related technical, scientific, and/or engineering expertise within the tribe or tribal energy resource development organization;
- Developing capacity for accounting for energy resource production and revenues;
- Developing a tribal electrical utility authority.

Awards will be made either as a direct service to tribes or pursuant to the Indian Self-Determination and Education Assistance Act (ISDA or the Act), 25 U.S.C. section 450, *et seq.* Tribal organizations, as defined at 25 U.S.C section 450b(l), are eligible for funding. All proposals must have tribal resolution(s) supporting their requests in order to receive funding. IEED will review and fund all eligible proposals received by 9:00 p.m. E.S.T. on July 8, 2016. Any award under this announcement does not guarantee future funding of any kind, including funding associated with future IEED economic development feasibility study announcements. Overall project costs may exceed the amount of the IEED contribution. Funds provided under a self-determination contract may be used to meet matching or cost participation requirements under other federal and non-federal programs.

Proposals are due by July 8, 2016 by 9:00 p.m. E.S.T. Contract proposals must contain the information required by 25 CFR 900.8. Send tribal resolutions and completed proposals electronically in one file to: Ms. Rebecca Naragon, Attn: Tribal Energy Development Capacity at IEEDgrants@bia.gov. For technical assistance questions, please contact Mr. Chandler Allen at Chandler.Allen@bia.gov.

CONTRACT PROPOSAL CONTENT REQUIREMENTS

25 CFR 900.8 requires that initial contract proposals contain the following information:

- (a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.
- (b) If the tribal organization is not an Indian tribe, the proposal must also include:
 - (1) A copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).
 - (2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.
- (c) The full name(s) of the Indian tribe(s) proposed to be served.
- (d) A copy of the authorizing resolution from the Indian tribe(s) to be served.
 - (1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.
 - (2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference

to that resolution.

- (e) The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.
- (f) The date of submission of the proposal.
- (g) A brief statement of the programs, functions, services, or activities that the Indian tribe or tribal organization proposes to perform, including:
 - (1) A description of the geographical service area, if applicable, to be served.
 - (2) The estimated number of Indian people who will receive the benefits or services under the proposed contract.
 - (3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.
 - (4) A description of the proposed program standards;
 - (5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.
 - (6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted,
 - (7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and
 - (8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in subpart F, subject to any waiver that may have been granted under subpart K.
- (h) The amount of funds requested, including:
 - (1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization's share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional, or national level.
 - (2) An identification of the amount of direct contract support costs, including one-time start-up or pre-award costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:
 - i. Personnel (differentiating between salary and fringe benefits);
 - ii. Equipment;
 - iii. Materials and supplies;
 - iv. Travel;
 - v. Subcontracts; and
 - vi. Other appropriate items of cost.
 - (3) An identification of funds the Indian tribe or tribal organization requests to recover for indirect contract support costs. This funding request must include either:
 - i. A copy of the most recent negotiated indirect cost rate agreement; or

- ii. An estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.
- (4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any pre-award costs, including the amount and time period covered or to be covered; and
- (5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.
- (i) The proposed starting date and term of the contract.
- (j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.
- (k) The extent of any planned use of Federal personnel and Federal resources.
- (l) Any proposed waiver(s) of the regulations in this part; and
- (m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.

ACTIVITY STANDARDS

Activity standards must be met in any Contract Proposal submitted under 25 CFR 900.8. The following section outlines the activity standards for funding a proposal. All proposals will be evaluated for their responsiveness to the activity standards.

Identification of the funds requested should contain:

- The reasons for the proposal;
- Total funds requested;
- A justification of all reasonably anticipated costs;
- Itemized data collection and analysis costs;
- A discussion of direct cost items;
- A discussion of any contingencies;
- A spreadsheet for budget elements;
- Resumes of attorneys or other qualified personnel intended to conduct business infrastructure or regulatory activities and a statement of the qualifications of those personnel; and

- A description of all deliverable products the proposed project will generate.

The funding described in this Notice is intended to enable eligible recipients to take advantage of the opportunity for self-determination afforded by the HEARTH Act, assist them to enter into TERAs, and develop their energy resources on Indian land pursuant to the Indian Mineral Development Act (IMDA) Agreements or through self-determination contracts or compacts, as opposed to providing:

Salaries or fringe benefits for tribal employees;
Establishing or operating a tribal office/ and/or purchase of office equipment;
Purchasing or leasing equipment or hardware such as drilling equipment, computers and vehicles;
Paying legal fees;
Paying application fees associated with permitting;
Academic research projects;
Training;
Conducting studies related to meeting NEPA requirements for project development; and
Attending conventions or travel to foreign countries.

Office of Management and Budget (OMB) Control Number and Compliance with the Paperwork Reduction Act

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076-0177, which currently expires on August 31, 2017. It is estimated that responses to this request will take approximately 40 hours per application and approximately one and half hours to complete the progress reports per response. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number. Please send any comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Regulatory Affairs – Indian Affairs, 1849 C Street, N.W., Mail Stop 3071, Washington, D.C. 20240.

Definitions for Purposes of this Notice:

1. **Indian Tribe.** The term "Indian tribe" for purposes of this announcement means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to

the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

2. **Tribal Energy Resource Development Organization.** The term "tribal energy resource development organization" for purposes of this announcement means an organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for assistance under 25 U.S.C. 3502.
3. **Indian land.** The term "Indian land" for the purposes of this announcement means:
 - (a) any land located within the boundaries of an Indian reservation, pueblo, or rancharia;
 - (b) any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held:
 - i. in trust by the United States for the benefit of an Indian tribe or an individual Indian;
 - ii. by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or
 - iii. by a dependent Indian community; and
 - (c) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

Note:

All products generated by proposals funded by IEED belong to the tribe and cannot be released to the public without the tribe's written approval. Products include regulations, business structures, codes, ordinances and other legal infrastructure. The IEED does not contemplate the release of copies of detailed proprietary data or reports to any individual, private company or government agency without the tribe's written permission. However, any information in the possession of IEED or submitted to IEED, including final work product, constitute government records and may be subject to disclosure to third parties under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of the Interior's FOIA regulations at 43 CFR part 2, unless a FOIA exemption or exception applies or other provisions of law protect the information.

TEDC funding is subject to annual appropriations by Congress, so IEED can only fund single-year projects. IEED is aware that some projects require several years to implement. Therefore, if a tribe has received TEDC funding in a previous year, the tribe may submit a TEDC proposal for the current year.