

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

#### **Grant Program to Build Tribal Energy Development Capacity (TEDC)**

**AGENCY:** Bureau of Indian Affairs, Interior, Assistant Secretary-Indian Affairs (ASIA), Office of Indian Energy and Economic Development (IEED)

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary - Indian Affairs for the Department of the Interior (Assistant Secretary), through the Office of Indian Energy and Economic Development (IEED), Division of Energy and Mineral Development (DEMD) is soliciting grant proposals from federally recognized Indian Tribes, Alaska Native Villages, regional or village corporations, tribal organizations, and Tribal Energy Resource Development Organizations to build tribal capacity for energy resource development or management under the Department of the Interior's Tribal Energy Development Capacity (TEDC) grant program. For this program, capacity building refers to developing organizational structures, business entity structures, or developing or enhancing regulatory functions, all related to tribal energy development for the purpose of strengthening tribal capacity for development and management of energy projects.

Specifically, funding is provided for two critical capacity-developing activities:

- 1) To build capacity through the establishment of organizational structure(s) and/or business entity structure(s) capable of engaging in commercial energy development or management activities, including but not limited to: leasing property, meeting lending requirements, entering into standard business contracts, and forming joint venture partnerships. These structures include: tribal business charters under federal law

Section 17 Corporations, corporations formed under state or tribal incorporation codes, and Tribal Utility Authorities formed under federal, state or tribal code.

2) To provide funding for the development or enhancement of key regulatory activities, including but not limited to the establishment of tribal policies, enactment of tribal regulations for leasing of surface land for energy development pursuant to the HEARTH Act, establishment of legal infrastructure for business formation, enactment of ordinances related to regulating and developing energy resource(s), and adoption of 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.

**DATES:** Submit grant proposals by 5:00pm Central Daylight Savings Time, 10/09/2017.

Grant proposals must be received by this date to be considered. Any request for assistance must be received by 08/09/2017. Please label all solicitations and your email submission title as - Grant Program to Build Tribal Energy Development Capacity (TEDC).

**ADDRESSES:** The preferred method of submitting grant proposals is to email them to IEEDGrants@bia.gov, **Attn: Tribal Energy Development Capacity**. Complete submissions must be received by the deadline established in the **DATES** section above (10/09/2017).

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the application process, please contact Chandler Allen at IEEDgrants@bia.gov or call (720) 407-0607 or JoAnn Metcalfe, Grant Specialist, 703 390 6410 or jo.metcalfe@bia.gov.

**Online Information:** There is additional information about TEDC grants on our website, <https://www.bia.gov/WhoWeAre/AS-IA/IEED/DEMD/TEDCP/index.htm>.

There you will find frequently asked questions, best practices for creating proposals and Tribal resolutions, and general information about technical assistance which DEMD can provide upon written request.

## **GUIDELINES AND INSTRUCTIONS**

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### **A. Background**

The Office of Indian Energy and Economic Development's Division of Energy and Mineral Development administers the Tribal Energy Development Capacity (TEDC) grant program. This solicitation seeks proposals for the development of tribal energy development and management capacity. The energy project can be existing or planned, tribally owned or privately owned. The TEDC can assist tribes in developing internal energy capacity to comply

with TERA's, the HEARTH Act, or for projects unrelated to either of those programs.

TERA's and the HEARTH Act are discussed in the Authorizing Statute section below.

In past years, DEMD has received more TEDC grant proposals than could be funded for that year. Therefore, applicants compete for funding, and DEMD has discretion to award funds to a limited number of the highest-rated proposals. DEMD has established ranking procedures with defined criteria for rating proposal merits so that awards are as fair and equitable as possible.

TEDC grants are based on non-recurring appropriations in the Federal budget. These funds are provided on a year-to-year basis, and may or may not be provided in future years.

Authorizing Statutes for this program include:

- The Snyder Act of November 2, 1921, 25 U.S.C 13, 42 Stat. 208, P.L. 67-85; 90 Stat. 2233, P.L. 94-482
- The Indian Reorganization Act of 1934, 25 U.S.C. 461 et seq., 48 Stat. 984, P.L. 73-383; P.L. 103-263
- The Indian Self-Determination and Education Assistance Act, 25 U.S.C 450, 88 Stat. 2203, P.L. 93-638, P.L. 100-472; 102 Stat. 2285, P.L. 103-413
- Indian Mineral Development Act of 1982, 25 U.S.C 2106, 86 Stat. 1940, P.L. 97-382
- Umatilla Basin Project Act, 16 U.S.C. 1271 et seq., P.L. 100-557
- Energy Policy Act of 2005, 25 U.S.C 3501, (P.L. 102-486, Title XXVI – The Energy Policy Act of 1992, § 2601, as amended P.L. 109-58, Title V, § 503(a), Aug. 8, 2005, 119 Stat. 764)

The Energy Policy Act of 2005 (25 U.S.C. 3501 et seq.) requires the Secretary to,

“establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations.” It also requires the Secretary to, “provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land....”

IEED's Division of Energy and Mineral Development (DEMD) implements the Indian Energy Resource Development Program under Title V of the Energy Policy Act of 2005 to assist Indian tribes in the development of energy resources and to further the goal of Indian self-determination. This includes the TEDC grant program for the benefit of Indian tribes that wish to build capacity to develop conventional or renewable energy resources on Indian lands. The TEDC grant program helps tribes in assessing, developing, or obtaining the managerial, organizational and technical capacity needed to develop energy resources on Indian land and to properly account for resulting energy production and revenues, as provided for in Title V, Section 503, of the Energy Policy Act.

Under the Energy Policy Act, Title XXVI – Indian Energy (25 U.S.C. § 3502), the Secretary shall, "(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues; (B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land."

Currently, the Secretary's capacity determination relies on a review of five factors:

- 1) The scope of administrative or regulatory activities the tribe seeks to assume
- 2) The history of the tribe's role in energy resources development, including negotiations and approval of energy related leases, business agreements, and rights-of-way
- 3) The administrative expertise to regulate energy resource development, including oversight of environmental compliance
- 4) The financial capacity to maintain the technical capacity to evaluate proposals or implement activities
- 5) Past performance in administering contracts and grants associated with those activities (25 C.F.R. 224).

Title V, Section 503 of the Act also amended Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to provide for Tribal Energy Resource Agreements (TERAs). TERAs are agreements between federally-recognized Indian tribes and the Secretary that allow the 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. TEDC grants are, therefore, particularly useful to tribes that may wish to pursue a TERA, since the funds are used to help fulfill one of the key requirements for TERA approval -- 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 a TEDC grant for energy resource development on Indian land under other options available to tribes, such as

Indian Mineral Development Act (IMDA) Agreements or self-determination contracts or compacts.

This program is also designed to complement the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012, Pub. Law No. 112-151, which makes a voluntary, alternative land leasing process available to tribes for surface leases. Once the Assistant Secretary approves tribal leasing regulations submitted under the HEARTH Act, a tribe may enter into surface leases of tribal trust or restricted land without the approval of the Bureau of Indian Affairs, including surface leases for development of energy projects. The HEARTH Act does not apply to mineral leases. The TEDC program is intended to provide the tools needed to regulate and/or maximize the economic impact of energy development for federally recognized tribes and enable them to take advantage of the regulatory flexibility and the opportunity for self-determination afforded by the HEARTH Act.

#### **B. Paperwork Reduction Act Statement**

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 3642, Washington, D.C. 20240.

**C. General Requirements for TEDC grant proposals:**

1. TEDC grant proposals must be submitted in digital format and received by the date in the DATES section. (5:00pm Central Daylight Savings Time, 10/09/2017)
2. Proposals should be presented succinctly, yet in enough detail to allow the TEDC grant evaluation team to quickly and thoroughly understand the purpose, scope and objectives of the proposal. TEDC grant proposal itself is limited to 20 pages.
3. Projects proposed under the TEDC grant program must be capable of being completed within one year of a grant award.
4. TEDC grant projects may not duplicate previous or ongoing energy resource development capacity building projects.
5. TEDC grant projects may not include any activities that duplicate efforts of other projects for which federal funds have previously been awarded.
6. Tribes currently under Bureau of Indian Affairs (BIA) sanction resulting from noncompliance with the Single Audit Act will not be eligible for consideration of a grant award. Tribes that are currently under BIA sanction at Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for a TEDC grant award. Tribes at sanction Level 1 will be considered for funding.
7. TEDC grant proposals will be deemed incomplete, or, at a minimum, points will be deducted, if all mandatory components are not included.

**D. Definitions for Purpose of TEDC Grants:**

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 a grant, loan, or other 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 Rancheria
  - (b) any land not located within the boundaries of an Indian reservation, pueblo, or Rancheria, 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.

**E. Purpose of TEDC Grants:**

TEDC grants are intended to help Indian tribes and tribal energy resource development organizations meet the following development capacity goals as they relate to assessing, developing, or obtaining tribal energy resource development capabilities for energy resource(s) they intend to or are developing on Indian land:

1. Determine the tribe's current business and/or regulatory capacity for energy resource development
2. Determine which business and/or regulatory capacities for tribal energy development need enhancement
3. Determine what process(es) and/or procedure(s) may be used to eliminate capacity gaps
4. Develop energy development capacity including business, policy, regulation and code development, which includes but is not limited to the development of legal infrastructure for business formation, secured transactions codes, tribal utility authorities, and the chartering of tribal business entities under the applicable law
5. Determine how the process(es) and/or procedure(s) will be implemented.

**F. Activities eligible for TEDC grant funding:**

Examples of activities eligible for TEDC grants include, but are not limited to, capacity development related to assessing, developing, and obtaining the business and/or regulatory capabilities needed to maximize the economic impact of energy resource development on Indian land:

- Eligible 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
  - Tribal utility authority feasibility studies and formation
- Eligible regulatory development 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.

**G. Activities ineligible for TEDC grant funding:**

- Establishment or operation of a tribal government office (i.e. Tribal Department of Energy, Tribal Division of Energy, etc.)
- Training
- Hiring employees to work in a tribal office
- Academic research projects
- Strategic energy plan formulation
- Weatherization activities
- Energy resource study, energy efficiency study or any other energy development related

study

- Purchase of office equipment
- Purchase of software
- Purchase of resource assessment data
- Research and development of speculative or unproven technologies
- Payment of fees or procurement of any services associated with energy assessment or exploration or development activity
- Payment of tribal salaries for employees not directly involved in conducting project specific activities and payment of salaries beyond the one-year project
- Purchase or lease of project equipment such as computers, vehicles, field gear, etc.
- Attending conventions or travel to foreign countries
- Conducting studies related to meeting NEPA requirements for project development
- Contract negotiation fees
- Any other activities not authorized by the tribal resolution or by the approved proposal

#### **H. Evaluation and Ranking Criteria**

The DEMD TEDC program will have a grant evaluation team that will review grant proposals on a competitive basis. The competitive review will be based upon how well applicants meet the 6 proposal mandatory component requirements. **Mandatory Components 1 & 2 will be evaluated on a complete/non-complete basis, again these are mandatory components, if not completed the proposal will not be reviewed. Components 3-6 will be scored out of 100 points, each individual component being scored out of 25 points. Please use the following as a *checklist* for your proposal package:**

**Component 1 - Tribal Resolution—(If not completed proposal will not be evaluated)**

Provide a duly enacted and current tribal resolution or other formal official action of the tribe's governing entity. This document should be signed by a duly authorized tribal official representing the tribe's governing body or evidence of the authority of a tribal energy resource development organization to apply for grants.

**Component 2 - Designated Tribal Project Lead—(If not completed proposal will not be evaluated)**

The TEDC grant proposal must identify a designated tribal representative to oversee the project work, make authorized decisions during the course of the project, and be responsible for submitting quarterly and final progress reports, plus financial status reports, as discussed later in this announcement. This person will be referred to as the “Tribal Project Manager”.

**Include the following contact information:**

- Name of the designated tribal project lead
- Mailing address
- Telephone number
- E-mail address.

**Component 3 - TEDC Grant Project Description—25 points**

Proposals must be as clear and concise as possible, with a project proposal, statement of work, and description of deliverable products not to exceed 20 letter-sized pages.

Visual materials, including charts, graphs, maps, photographs and other pictorial

presentations are included in the 20-page limit. While the TEDC grant proposal itself is limited to 20 pages, an applicant may use appendices for supplemental materials.

Items required in a proposal:

- (a) Applicant point of contact, including name, title, mailing address, telephone and fax numbers, and e-mail address
- (b) Name and title of responsible party(ies) for technical execution and administration of the project
- (c) Amount of funding requested for the project
- (d) Description of the identified energy resource(s)
- (e) Scope of work describing the proposed project
- (f) Objectives of the proposal describing how the proposed project will contribute to the development of business and/or regulatory capacity to develop the energy resources identified
- (g) Method of measurement of meeting stated objectives of the proposed project
- (h) Description of deliverable products the proposed project will generate
- (i) Completion date for proposed project, dates for quarterly progress reports, and date for final report (see Section I- Post-Award Requirements below)
- (j) Resumes of key personnel (tribal or tribal energy resource development organization's employees, consultants, subcontractors) who will work on the proposed project, including information on

expertise

**Component 4 - Existing and Prior Energy Resource Development Experience—25**

**points**

- (a) Provide a brief description of the tribe's current business and/or regulatory capacity for energy development.
- (b) Provide a brief description of which business and/or regulatory capacities need enhancement, such as:
  - 1) Tribal code, regulation, or ordinance development or enhancement
  - 2) Tribal business formation activities
  - 3) Tribal Utility Authority formation activities
  - 4) Financial and revenue management
  - 5) Land and lease management (including evaluation, negotiation, and enforcement of terms)
  - 6) Regulatory monitoring (federal, state, and tribal environmental and safety regulations)
- (c) List of all previous or on-going energy resource development capacity building projects for which the tribe or tribal energy resource development organization has received federal funds, the source of the funds (e.g., Department of the Interior, Department of Energy; U.S. Department of Agriculture, or U.S. Environmental Protection Agency, etc.), the year(s) for which funds were awarded, and whether such projects were completed and completion dates.

**Component 5 - Planned Energy Capacity Development—25 points**

- (a) Provide a detailed description of the planned business and/or regulatory capacity development activities (this should be a detailed Scope of Work, SOW)
- (b) Provide a description of the types of personnel needed to complete the scope of work (this should be consistent with Key Personnel)

**Component 6 - Detailed Budget Estimate—25 points**

- (a) Provide a detailed narrative *and* line-by-line budget
- (b) Provide in the budget a breakdown for the proposal's line items that involve several components or contain numerous sub-functions to include, at a minimum:
  - 1) Itemized costs for all contracted personnel and consultants, their respective positions and time (staff hour) allocations for the proposed functions of the project or part(s) of the project
  - (2) Documentation that clearly identifies the qualifications and utilization of any proposed consultants
  - (3) Itemized travel estimates

**I. Award Notification Process**

- 1) The TEDC grant evaluation team will forward the ranked proposals to the Division Chief of DEMD for approval.
- 2) The Division Chief will notify in writing tribes and tribal energy development organizations of selection or non-selection of proposals for awards. Annual funding decisions are final.

## **J. Funding and Transfer of Funds**

DEMD's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S. Government for any payment may arise until funds are made available to the Contracting Officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the Contracting Officer.

All Payments under this agreement will be made by the U.S. Government by electronic funds transfer (through the Treasury Automated Standard Application for Payment ASAP system). The recipient must submit an official invoice to the Bureau of Indian Affairs Grant Officer and Project Manager via email to the contacts listed in your agreement.

After the invoice is reviewed and approved, payment will be processed. Invoices should be based on progress and should not be submitted more than once a month. All payments will be deposited in accordance with the banking information designated for the applicant in the System for Award Management (SAM).

## **K. Post-award requirements**

Applicants awarded grants for TEDC projects must adhere to the following requirements:

- 1) Expend TEDC grant funds only on approved project functions. Tribes and tribal energy resource development organizations are subject to forfeiture of any remaining funds in the project year as well as sanctions against award of any future year TEDC grant funding for expenditures which are not approved

- 2) Prepare and submit quarterly financial and narrative reports (which may consist of a summary of events, accomplishments, problems, and/or results) to the TEDC Program Coordinator Chandler Allen by the due dates in the award document
- 3) Complete the TEDC project within one year of the award date
- 4) Prepare and submit a final report, including all deliverable products generated by the TEDC project within two weeks of completion of the TEDC project or the anniversary of the award date, whichever comes first
- 5) Provide all reports and deliverable products and data generated by the TEDC project to the DEMD project monitor named in the award letter for the project by providing one digital form and two printed copies to DEMD at:  
Department of the Interior, Division of Energy and Mineral Development,  
Attention: TEDC Grant Program, 13922 Denver West Parkway-Suite 200,  
Lakewood, Colorado 80401–3142

#### **L. Submission of Proposal**

Submit proposals in digital form to the following electronic address:

[IEEDgrants@bia.gov](mailto:IEEDgrants@bia.gov). Save files with filenames that clearly identify the file being submitted.

For example: (Name of Tribe) TEDC Proposal, (*Name of Tribe*) Tribal Resolution, etc. File extensions must clearly indicate the software application used for preparation of the documents, (i.e., wpd, doc, pdf).