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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Grant Program to Build Tribal Energy Development Capacity**

**AGENCY: Bureau of Indian Affairs, Interior.**

**ACTION: Solicitation of Proposals.**

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**SUMMARY:** The Assistant Secretary - Indian Affairs for the Department of the Interior (Assistant Secretary), through the Office of Indian Energy and Economic Development (IEED), is soliciting grant proposals from Indian tribes to build tribal capacity for energy resource development or management under the Department of the Interior's (DOI) Tribal Energy Development Capacity (TEDC) grant program. This program is 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. The Office of Indian Energy and Economic Development will support a full spectrum of

diversity in renewable energy projects, in terms of scale, technology, geographic location and tribal representation. 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 (Indian Reorganization Act, 25 U.S.C. 477, Section 17 Corporation), and corporations formed under state or tribal incorporation codes.);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.

Under the Energy Policy Act of 2005, Congress appropriates funds on a year-to-year basis to DOI for grants to Indian tribes for use in assessing, developing, and obtaining the managerial, organizational and technical capacity needed to develop energy resources on Indian lands and properly accounting for energy resource production and revenues. **DATES:** Submit grant proposals by 5:00pm Central Daylight Savings Time, June 29, 2015. Grant proposals must be received by this date to be considered.

**ADDRESSES:** The preferred method of submitting grant proposals is to email them to

[IEEDGrants@bia.gov](mailto:IEEDGrants@bia.gov), Attention: Bernie Toyekoyah.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the application process, please contact Bernie Toyekoyah at [ieedgrants@bia.gov](mailto:ieedgrants@bia.gov) or call (405) 247-1652.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

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; and 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.

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.

\* A response is required to obtain and/or retain a benefit.

**General Requirements for TEDC grant proposals:**

1. TEDC grant proposals must be submitted in digital format or received by the date in the DATES section.
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.
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 sanction resulting from noncompliance with the Single Audit Act will not be eligible for consideration of a grant award.
7. TEDC grant proposals will be deemed incomplete, or, at a minimum, points will be deducted, if all mandatory components are not included.

**B. 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 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.

**C. Purposes of TEDC Grants:**

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

1. Determine the current level of the tribe's or tribal energy resource development organization's technical, administrative, organizational or management capacity for identified energy resource development activities;
2. Determine which technical, administrative, organizational or management capacities for tribal energy resource 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 policy, regulation and code development, which includes but is not limited to the development of legal infrastructure for business formation, secured transactions codes, and the chartering of tribal business entities under the applicable law; and
5. Determine how the process(es) and/or procedure(s) will be implemented.

#### **D. Activities eligible for TEDC grant funding:**

Examples of activities eligible for TEDC grants include, but are not limited to, assessing, developing, and obtaining the managerial, organizational and technical capacity 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 an energy resource development focus;
  - 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 attaching pursuant to that code.
  
- 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;
  - 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.

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

- Feasibility studies and energy resource assessments;
- Establishment or operation of a tribal office;
- Purchase of office equipment;
- Purchase of resource assessment data;
- Research and development of speculative or unproven technologies;
- Purchase or lease of equipment for the development of energy resources;
- 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;
- Contract negotiation fees; and
- Any other activities not authorized by the tribal resolution or by the approved proposal.

**F. TEDC Grant Proposal Mandatory Components:**

### **Component 1 - Tribal Resolution**

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- TEDC Grant Project Description**

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, including: capacity areas related to the identified energy resource on which the proposal's assessment(s) will focus and the approach and justification of the approach to be used in assessing, developing, or sustaining the tribe's or tribal energy resource development organization's capacity to manage energy resource development activities and to determine next steps to be taken to eliminate any identified capacity gaps;

- (f) Objectives of the proposal describing how the proposed project will contribute to the tribe's or tribal energy resource development organization's capacity in assessing, developing or obtaining the managerial, organizational and technical 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; and

Description of the tribe's or tribal energy resource development organization's current staff and/or tribal financial resources the applicant plans to apply to performance or completion of the objectives in its TEDC grant proposal.

### **Component 3 –Existing and Prior Energy Resource Development Experience**

- (a) Description and examples of the tribe's or tribal energy resource development organization's experience with energy resource development activities, including any previous or current capacity assessments and energy resource assessments; existing policies, codes and regulations associated with energy resource development; existing tribally owned business entities responsible for energy resource development; feasibility studies; and exploration for or development of specific energy resource(s);

(b) Description of the tribe's or tribal energy resource development organization's experience and level of existing capacity to manage and regulate energy resource development in areas which could include, but are not limited to:

- (1) Financial and revenue management;
- (2) Tribal code, regulation, or ordinance development or enhancement;
- (3) Technical, scientific, and engineering evaluation;
- (4) Land and lease management (including evaluation, negotiation, and enforcement of terms);
- (5) Production accounting;
- (6) Environmental review, monitoring, compliance, and enforcement; and
- (7) 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 Energy, U.S. Department of Agriculture, U.S. Environmental Protection Agency, or Department of the Interior, etc.), the year(s) for which funds were awarded, and whether such projects were completed and completion dates.

#### **Component 4 - Planned Energy Capacity Development**

(a) Description of the tribe's energy laws, regulations and codes that are designed to either regulate and/or maximize the economic impact of energy development.

This can include an adopted secured transactions code or, if the Tribe has already

adopted such a code, a memorandum of understanding, compact, or letter of intent with the state to register liens that attach pursuant to that code.

- (b) Description of the organizational structures and/or proper business entity structures capable of engaging in commercial energy development activities, including but not limited to leasing property, meeting lending requirements, entering into standard business contracts, and forming joint venture partnerships. Legal entities for business formation include tribal business charters under federal law (IRA Section 17 Corporation), and corporations formed under state or tribal incorporation codes.

Description of the types of personnel needed to manage and operate the business structure described above. This should include the education and/or training required for each personnel member.

#### **Component 5- Detailed Budget Estimate**

- (1) Provide a detailed, line-by-line budget, including all projected and anticipated expenditures under the TEDC grant proposal, covering the amount of funding requested.
- (2) 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:
  - (a) 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;

- (b) documentation of professional qualifications necessary to perform the work for tribal personnel to be funded and attach position descriptions;
- (c) documentation that clearly identifies the qualifications and utilization of any proposed consultants;
- (d) itemized consultant fees including a line item breakdown of costs associated with each consultant activity. If a consultant is to be hired for a fixed fee, itemize the consultant's expenses as part of the project budget;
- (e) itemized travel estimates by airfare, vehicle rental, training and conference fees (if any), and lodging and per diem, based on the current Federal Government per diem schedule;

#### **G. Evaluation and ranking criteria**

The DEMD TEDC grant evaluation team will review and evaluate grant proposals on a 100 point system based on the following factors (Mandatory Component 1, the Tribal Resolution will not be assigned points):

(1) Component 2- TEDC Grant Project Description- 20 points

The DEMD TEDC grant evaluation team will use the grant project description objectives, measurement methods, deliverables, and expressed commitment of Indian tribe or tribal energy resource development organization and/or resources to the project as part of its evaluation of the project proposal to determine how likely the project is to result in quantifiable results to the applicant in terms of managerial, organizational and technical capacity building to facilitate its future energy resource development. Include a *brief* description of the energy resource and its intended development plan and objectives.

(2) Component 3 – Existing Capacity and Prior Energy Resource Development Experience -  
30 points

This component will be evaluated based on the completeness of the following:

1. Include an accurate description of the applicant's baseline capacity to regulate and develop energy resources. The DEMD TEDC grant evaluation team will use (a) the tribe's or tribal energy resource development organization's existing policies, codes and regulations, including a secured transactions code, and a memorandum of understanding, compact, or letter of intent to register liens attaching pursuant to that code; and business entity structure (i.e. entities chartered under tribal, federal, or state incorporation codes ); and (b) prior energy resource development experience as part of its evaluation of the project proposal to determine the applicant's current level of capacity. If a proposal does not identify any existing policies, codes and regulations, business entity structures, or other kinds of legal infrastructure for energy business development, it should include as a substitute a strategic plan to enact, adopt, or add these missing components of business and legal infrastructure. Prior or current energy resource development and existing capacity will not, by itself, result in fewer or more assigned points. Only the quality and accuracy of the description of existing baseline capacity will be evaluated. Where capacity is lacking in a particular area, the proposal should provide a description of this capacity

gap. The strategic plan to fill that capacity gap will be evaluated in Component 4.

(3) Component 4- Planned Energy Capacity Development – 40 points

This component will be evaluated based on the completeness of the following:

- Description of the tribe's energy laws, regulations and codes, including regulations promulgated pursuant to the HEARTH Act, that are designed to either regulate and/or maximize the economic impact of energy development.
- Description of the organizational structures and/or proper business entity structures capable of engaging in commercial energy development activities, including but not limited to leasing property, meeting lending requirements, entering into standard business contracts, and forming joint venture partnerships. Legal entities for business formation include business charters under federal (IRA Section 17 Corporation), state, or tribal incorporation laws.
- Description of the type of personnel needed to manage and operate the business structure described above. This should include the education and/or training for each personnel member.

(4) Component 5- Detailed Budget Estimate - 10 points

The DEMD TEDC grant evaluation team will use the budget proposal as part of its evaluation of the project to determine whether the budget is reasonable and can produce the results outlined in the proposal under Component 2. A TEDC grant proposal budget that includes sound budget projections directly related to the project objectives will receive a more favorable ranking than those proposals that fail to provide appropriate budget projections or fail to reasonably relate budget projections to the project objectives.

## **H. 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.

## **I. 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, Division of Fiscal Services, 12220 Sunrise Valley Drive, Reston, VA 20191. 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).

## **J. 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 an quarterly financial and narrative reports (which may consist of a summary of events, accomplishments, problems, and/or results) to the TEDC Program Coordinator Kevin Tennyson 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; and
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: Energy and Mineral Development Program, 13922 Denver West Parkway—Suite 200, Lakewood, Colorado 80401–3142.

**K. 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. File extensions must clearly indicate the software application used for preparation of the documents, (i.e., wpd, doc, pdf).