



# **Tribal Infrastructure Board Guidelines & Procedures**

November 4, 2016

## **1. Tribal Infrastructure Act**

In 2005, the Tribal Infrastructure Act (Act) was signed into law (§6-29-1 to §6-29-9 NMSA 1978). The primary purposes of the Act are threefold: one, to ensure adequate financial resources for infrastructure development for tribal communities; two, to provide for the planning and development of infrastructure in an efficient and cost-effective manner; and three, to develop infrastructure in tribal communities to improve the quality of life and encourage economic development.

## **2. Tribal Infrastructure Board**

To accomplish these purposes the Act created a thirteen (13) person Tribal Infrastructure Board (Board), consisting of nine voting members and four non-voting members. Pursuant to the Act, the Board is comprised of the Cabinet Secretaries from the New Mexico Indian Affairs Department (IAD or Department), the Department of Finance and Administration (DFA), the New Mexico Environment Department (NMED), the Department of Health (DOH) and the Executive Director of the New Mexico Finance Authority (NMFA), or their designees. There are four tribal Board members, appointed by the Governor, who represent the Pueblos, Navajo Nation, Mescalero Apache Tribe and the Jicarilla Apache Nation. The four non-voting representatives of the Board include one representative from the federal Bureau of Indian Affairs, SW Regional Office; one representative from the Navajo Regional Office; one representative from the Albuquerque Area Indian Health Services and one representative from the Navajo Area Indian Health Services.

The Board is responsible for:

1. Adopting rules governing terms, conditions and priorities for providing financial assistance to tribes.
2. Developing application and evaluation procedures, forms and qualifications for applicants and projects.
3. Providing financial assistance to tribes for qualified projects.
4. Authorizing funding for qualified projects, including:
  - a. Planning, designing, constructing, improving, expanding or equipping water and wastewater facilities, major water systems, electrical power lines, communications infrastructure, roads, health infrastructure, emergency response facilities and infrastructure needed to encourage economic development.
  - b. Developing engineering feasibility reports for infrastructure projects and inspecting construction of qualified projects.
  - c. Providing special engineering services.
  - d. Completing environmental assessments or archaeological clearances and other surveys for infrastructure projects.
  - e. Acquiring land, easements or rights of way. <sup>1</sup>

The Board shall meet at the call of the chair or whenever four voting members submit a request in writing to the chair, but not less than twice each calendar year.

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<sup>1</sup> Although the Act allows qualified projects to include paying legal costs associated with development of qualified projects, the Severance Tax Bonding Act prohibits use of severance tax bond proceeds for paying indirect project costs. Therefore, severance tax bond proceeds may not be used to fund qualified project legal costs.

### 3. Definitions

**Act** – Tribal Infrastructure Fund Act.

**Board** – New Mexico Tribal Infrastructure Board.

**Capacity** – An Applicant’s demonstrable compliance with requirements for grant funding within the past three years, as attested by IAD.

**Certification**- the tribe must certify project compliance with all applicable state and federal regulations requirements.

**Closed Project** - a TIF project that has completed all requirements per the IGA.

**Construct** – build a structure or space including fixtures and other built-ins, but not including furnishings or moveable equipment; may include demolition and the design and planning process but does not include acquisition of underlying land; may include the use of modular and prefabricated buildings; may include the cost of commissioning a building for energy efficient green building standards, as required by law .

**Design** - The process including location and feasibility studies, architectural drawings and plans, engineering, archaeological and environmental surveys or clearances, zoning, design activities necessary for energy efficient buildings, and all other steps incidental to creating a plan for a final product.

**DFA** – New Mexico Department of Finance and Administration.

**EO** – Executive Order 2013-006 – Requires uniform audit and budget compliance criteria as a pre-requisite to the state granting funds.

**IAD**- New Mexico Indian Affairs Department.

**ICIP** – New Mexico Infrastructure Capital Improvement Plan.

**Improvement** – The construction, reconstruction, replacement, rehabilitation, repair, renovation, remodel, expansion, upgrade, development, purchase, equipment, furnishing, or installation of infrastructure, which, when final, will be put to beneficial use.

**Indirect Project Costs** – includes costs not directly related to a capital asset, such as penalty fees or damages other than pay for work performed, attorney fees, administrative fees, and other costs not directly related to the creation of a capital asset. Indirect costs may also include other types of costs determined in the sole discretion of the SBOF.

**Infrastructure**- water and wastewater systems, major water systems, electrical power lines, communications, roads, health and emergency response facilities and infrastructure needed for economic development.

**IGA** – an intergovernmental grant agreement between IAD and a tribe that establishes the terms and conditions for the disbursement of money for the project approved by the Board.

**Leveraging** – A tribe’s contribution to a particular effort, described as a dollar amount. Leveraging may include cash match and in-kind support that contributes directly toward the particular project that is the subject of the application. A cash match may be from any secured source of funds: tribal, federal, or state government; philanthropic organizations; etc. In-kind support may include the value of land, staff time for project management, staff time for grant administration, and other justifiable expenses. Leveraging may include funds for necessary project costs that cannot be paid with severance tax bond revenues, i.e., indirect costs, either as cash match or in-kind support.

**NOFA** – Notice of funding availability.

**NOO** – Notice of Obligation: a DFA-created form utilized for the purpose of obligating funds for a project.

**Open Project** – a TIF qualified project that has not been closed out by IAD.

**Plan** – A document establishing the process for future implementation of the design and/or construction of a qualified project; to include preliminary engineering reports (PERs), feasibility studies, water use plans, and similar plans. When Severance Tax Bond proceeds fund TIF, plans that do not demonstrate the end cost of a final capital asset are not eligible TIF projects..

**Project** – The components of infrastructure improvements for which 1) the applicant is currently seeking TIF funds or 2) the applicant has previously submitted an application and received an award of TIF funds.

These components may include planning, design, and construction efforts, separate or combined, in a variety of different project delivery methods.

**Project Completion** – Project completion means the date the project is completed, the date the project’s bond proceeds are fully expended, the date the project’s bond proceed balances revert pursuant to applicable law, or the date on which the agency to which the proceeds are authorized determines that the project will not proceed as identified in an IGA, whichever occurs first.

**TRC**- TIF Review Committee.

**Reversion** – The process whereby any unexpected balance for a qualified project reverts to the TIF within six (6) months of project completion as identified in the IGA.

**SBOF** – New Mexico State Board of Finance.

**Scoring Metric** – the measures by which the TRC scores projects.

**Tribe** - a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or in the case of the Navajo Nation, each chapter

**TIF** – Tribal Infrastructure Fund.

**TIFA** – Tribal Infrastructure Fund Application.

## **4. Funding**

### **4.1 Tribal Infrastructure Trust Fund**

To accomplish the goals of the Act, the Tribal Infrastructure Trust Fund was created and is funded by monies appropriated by the State legislature, donated or otherwise accrued. The Trust Fund is invested by the State Investment Officer in the same manner as the state land grant permanent funds. Trust Fund monies are not to be expended except to make an annual distribution to the Tribal Infrastructure Project Fund.

### **4.2 Tribal Infrastructure Project Fund**

The Act also created the Tribal Infrastructure Project Fund, which is administered by DFA. The Project Fund consists of distributions made from the Trust Fund, monies appropriated by the Legislature or otherwise allocated to the Project Fund, and income from investments made from the Project Fund.

## **5. Tribal Infrastructure Projects**

Tribal infrastructure project means a qualified project under the Act.

The Board is responsible for certifying to the State Board of Finance the need for issuance of bonds for qualified projects. Proceeds from the sale of the bonds are appropriated for the purposes certified by the Board to the SBOF. Any unexpended balance from proceeds of severance tax bonds issued for qualified projects shall revert to the severance tax bonding fund within six months of project completion.

## **6. Tribe and Project Eligibility**

Pursuant to the Act, Tribes are eligible to apply to the Board for funding to be used within the State of New Mexico to meet needs specifically provided for within the Act.. Projects must be entered into the ICIP prior to applying for TIF funds. Each tribe must be in compliance with EO 2013-006 to be eligible to apply for funding.

## **7. Terms & Conditions**

The Board has set forth terms and conditions that apply to all Tribes applying for project funding.

1. Tribes awarded TIF funding shall obligate at least 5% of the bond proceeds for the project within 6 months of the date of bond sale.
2. Tribes awarded TIF funding shall obligate at least 85% of the bond proceeds within 3 years of the date of bond sale
3. All projects, except for projects delineated within an application as planning projects, must be completed within thirty-six (36) months from the date of the execution of the IGA.
4. All projects delineated in the application as “planning projects” must be completed within twenty-four (24) months of the date of execution of the IGA.
5. Each tribe may apply for up to 15% of the total annual TIF allocation for a project. The Board reserves the right to alter this cap based on fund availability. The Board’s alteration of this cap must be made at a Board meeting no later than the second quarter of each calendar year.
6. Tribes awarded TIF funding are to attend TIF trainings required by IAD.

## **8. Outreach & Education**

Annually, IAD will generate and distribute a NOFA to tribes. IAD will provide TIF Application Workshops throughout the year to provide guidance to tribes regarding TIF guidelines and procedures and the TIFA process.

## **9. Application for Project Funds**

### **9.1 Tribal Infrastructure Fund Application (TIFA)**

Tribes seeking to apply for TIF funding must submit a TIFA. Project readiness documents associated with each TIFA shall be submitted with the application.

IAD will notify each applicant of receipt of the TIFA. IAD will review the application and supporting documents for eligibility, entity capacity, completeness, readiness, scope and budget. IAD staff may request additional information from the tribe as needed. Each complete TIFA submitted by the deadline is placed on an application listing for Board review.

### **9.2 TIF Review Committee (TRC)**

The TRC is a TIF Board Committee comprised of members of the Board and/or staff designated from the various agencies represented on the Board along with appropriate infrastructure experts as may be deemed necessary. The Board Chair appoints the TRC chair. The TRC convenes and conducts an in-depth review of all project applications along with all supporting documentation based on the selection criteria set forth in the scoring metric. Tribal entities with top-ranking proposals are invited to make a short presentation to the Board outlining the proposed projects at a meeting of the Board.

### **9.3 Scoring Metric**

The TRC considers the following criteria and point system comprised of four (4) categories and a total of one hundred (100) possible points for each formal TIF project application:

1. **Critical Need** (30 possible points): Projects that demonstrate a high degree of critical need with an emphasis on addressing specific health, safety, welfare, or economic development needs in accordance with the Act.
2. **Readiness** (30 possible points): Projects are ready to proceed, clearly demonstrating all components and the ability to complete the project within the time allotted for the grant.

3. **Capacity** (25 possible points): The Applicant has demonstrated timely expenditure and compliance with requirements for grant funding.
4. **Leveraging** (15 possible points): Projects are supported by a high percentage of funds in relation to the amount of the TIF funding.

The Board votes on TIF awards in open meetings of the Board. The ability of the Board to make awards of grants under the Act is contingent upon the existence of sufficient funds in the Project Fund. The Board's decision regarding TIF project awards shall be accepted by the applying tribe and shall be final.

## **10. Intergovernmental Agreement Process**

Following Board approval of a qualified project, IAD and the tribe will enter into an IGA. Receipt of funds is contingent upon a tribe's compliance with the terms and conditions of the IGA.

## **11. Payment of Project Expenses & Reporting**

The Board must safeguard State assets through the effective management and administration of grants allocated from the Project Fund. TIF projects are completed on a reimbursement basis according to agreements between IAD and DFA.

### **11.1 Safeguarding Funds**

IAD is responsible for safeguarding funds. This will be accomplished by:

1. Recognizing and recording all transactions.
2. Assuring that resources are expended only for authorized purposes as stipulated in the IGA, Scope of Work, Budget and NOO.
3. Complying with legislation, rules and regulations.
4. Establishing accountability.
5. Ensuring that all processes are completed timely, accurately, completely, economically, efficiently, and effectively.
6. Disbursing funds using only the methods and procedures authorized by state law, rules and regulations.

The tribe shall request payment by submitting a Request for Payment, in such form as IAD may prescribe. Payment requests are subject to the following procedures:

1. The tribe must submit one original of each Request for Payment.
2. Each request for payment must contain a notarized certification that:
  - a. The information contained in the request is accurate.
  - b. The expenditures included in the request are valid and for proper purposes under the IGA.
  - c. The expenditures included in the request have been paid or, if the expenditures have been incurred but not yet paid, the tribe's representation that the expenditure will be paid within fifteen (15) calendar days of receiving payment from the Department.
  - d. None of the expenditures included in the request have been previously reimbursed.
  - e. The Project activity is in full compliance with the IGA.
  - f. Such other representations as IAD may reasonably require.

All notarized certifications must be made by the tribe's designated representative; a person designated by such representative in writing on an IAD prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.

## **11.2 Deadlines**

Requests for payment shall be submitted by the tribe to IAD in the form prescribed by IAD. IAD has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the tribe are otherwise in compliance with the IGA. Notice of Obligation (NOO) and BOF's Bond Disbursement Rule 2.61.6.

## **11.3 Severance Tax Bond Project Requirements**

Pursuant to the Severance Tax Bonding Act, Section 7-27-10.1(C), the SBOF shall allocate a certain percentage of the estimated severance tax bond capacity each year for tribal infrastructure projects, and SBOF will issue severance tax bonds in the annually allocated amount for use by the Board to fund tribal infrastructure projects.

The underlying appropriation for the Project may be a severance tax bond, which requires the project to meet requirements of both the Act and the Severance Tax Bonding Act (Sections 7-27-1 et seq., NMSA 1978). Rules that govern the TIF project use of severance tax bond proceeds may change as determined by the SBOF. The SBOF may set conditions on release of bond proceeds related to satisfaction of the State Constitution's anti-donation clause or other issues in the SBOF's sole discretion. The SBOF's conditions may be updated periodically based on new information, changes in law, or for other reasons. IAD's obligation to reimburse a tribe is contingent upon the SBOF's release of bond proceeds.

IGAs are subject to the SBOF's Bond Project Disbursements rule, 2.61.6 NMAC. Only direct project costs are allowable expenses for qualified projects. Indirect project costs, as determined by the SBOF may not be reimbursed from severance tax bond proceeds.

## **11.4 Reports**

### **11.4.1 Periodic Reports**

In order that the IAD may adequately monitor Project activity, the tribe shall submit periodic reports to IAD for the Project. Periodic reports shall be submitted in accordance with the requirements in the IGA and per any additional requirements established by IAD.

### **11.4.2 Paper Quarterly and Final Report**

The tribe shall submit to IAD and DFA quarterly reports and a final report for the project on a form provided by IAD and contain such information as IAD may require. IAD shall provide Grantee with a minimum of thirty (30) days advance, written notice of any change to the quarterly and final report format or content. The quarterly reports shall be due within ten (10) days after the last day of each quarter, beginning with the first full quarter following execution of and IGA by IAD and ending upon the submission of a final report for the project. The final report must be submitted within twenty (20) days after the project's closeout.

## **11.5 Requests for Additional Information/Project Inspection**

During the term of the IGA and during the period of time during which the tribe must maintain records, IAD may request such additional information regarding the Project as it deems necessary and conduct, at reasonable times and upon reasonable notice, onsite inspections of the project.

## **12. Project Oversight**

### **12.1 Project Oversight**

TIF project oversight is provided by the IAD. Project oversight includes:

1. Administrative/Managerial/Technical Oversight by IAD Infrastructure Manager
2. Financial Oversight by IAD Chief Financial Officer
3. Legal Oversight by IAD General Counsel
4. Document Processing by other IAD staff

The purpose of project oversight is to ensure that the project undertaken meets:

1. The scope of work for the project granted by the Board
2. The laws and regulations of the State of New Mexico as they apply to sovereign tribal lands
3. The requirements of the IGA
4. Time period required by the IGA

### **12.2 Document Review**

The following documents are received by IAD during the course of a project:

1. Professional Service Contracts, Purchase Orders and other Contracts for the Issuance of NOO
2. Plans and Specifications
3. Preliminary Engineering Report
4. Environmental Documents
5. Planning Report for Planning Project Plans and Specifications
6. Bid Tabulations
7. Change Orders
8. Pay Applications and Invoices
9. Quarterly and Final Project Reports
10. Monthly CPMS Updates
11. Close-out documents
12. Tribal Audit, per EO 2013-006

### **12.3 State Site Visits**

On-site visits are made during the course of project activities to monitor progress being made, to verify that work is in accordance with the IGA and State requirements, and to maintain good coordination and understanding between the tribe and the State. Reports are written to document these visits with information to include date visited, people contacted, work observed, project status and pictures.

### **12.4 Meetings and Communications**

Meetings and communications are conducted with the tribe whenever appropriate to advise the tribe on any issues involved with administration of grant, including reporting, payment procedures, deadlines, etc. These take place by telephone, e-mail or in person. These are opportunities for the IAD to assist the tribe in building capacity to manage grants.



Upon reasonable advance notice by the Board or a member of the Board, IAD staff should provide a Board-funded project update at the next Board meeting. The project update at a minimum should include IGA executed date, amount expended, award balance, project status, project goals/milestones, expected project completion date and IGA expiration date.

### **12.5 Trainings**

Trainings are conducted as needed with multiple tribes, to assist with their project management. For the TIF program, these include any TIF trainings IAD designates as required. Required trainings are to be attended, by at least one fiscal representative and one project representative of the tribe. Additional non-required trainings or short talks are provided as requested by tribes.

### **13. Change in Scope of Work**

Should a tribe request a change in an agreed scope of work subsequent to the execution of an IGA, the tribe is required to submit written justification for why the agreed existing scope of work should be changed.

The project sponsor is required to provide to IAD for review and recommendation to the Board:

1. A rationale indicating why the existing scope of work needs to be changed;
2. A rationale for the newly proposed scope of work;
3. Information clearly indicating project costs for the newly proposed scope of work;
4. Documentation illustrating the proposed scope of work schedule.

The changed SOW must be sent to the IAD where the new SOW will be reviewed to ensure that it is within the legislative intent of the Act and for recommendation to the Board for review/approval.

The tribe will be notified and may be required to present the request at a Board meeting. In any event, the ability of the Board to make awards of grants under the Act is contingent upon the existence of sufficient funds in the project fund. The Board's decision as to whether sufficient funds are available shall be accepted by the applying tribe and shall be final.

### **14. Change Orders**

A change order is work that is added to or deleted from the original scope of work of a TIF project. After the original scope (or contract) is formed, complete with the total amount and the specific work to be completed, a tribe may determine that the original plans do not best represent their definition for the finished project.

Accordingly, the tribe may suggest an alternate approach. With this in mind, the TIF Board acknowledges that there may be several causes for change orders to be created. These include but are not limited to:

1. Incorrect estimate of the project's work;
2. The discovery of obstacles or possible efficiencies that require deviation from the original plan;
3. The project team being incapable of completing required deliverables within budget, and additional time, or resources must be added to the project;
4. Additional features or options perceived and requested during the course of the project.

Change orders for TIF projects must describe the new work to be done (or not done in some cases), and the time required to complete the new work. Requests for change orders must be submitted to IAD for consideration and may be approved by IAD.

### **15. Early Termination on Incomplete Projects**

If the Board in its discretion determines that a project is not moving forward in any significant way or at a reasonable pace, the IGA and the project award may be terminated in accordance with the terms of the IGA and funding for the project will revert to the appropriate fund.

### **16. No-Cost Extension**

Grantees requesting a no-cost extension must submit written notification to IAD staff at least 60 days in advance of the project date. Under extenuating circumstances the Board will consider a no-cost extension on a case-by-case basis. Extenuating circumstances include, but are not limited to, Events of Force Majeure. "Events of Force Majeure" include risks beyond the reasonable control of a grantee, incurred not as a product or result of the negligence or malfeasance of a grantee, which have a materially adverse effect on the ability of the grantee to perform its obligations.

The written notification submitted by the project sponsor must provide:

1. Full justification for why the project will not be not completed in the allotted time
2. Information clearly indicating all executable project deliverables completed
3. Information clearly indicating project costs to date and payments made
4. A specific plan of action for the completion of all outstanding executable project deliverables within the extension period
5. A specific budget indicating the project amount spent to execute deliverables completed
6. An anticipated budget for the completion of all outstanding project deliverables
7. Documentation illustrating the proposed project schedule including start and finish dates and any contingencies

Project sponsors requesting a no-cost extension are required to present their request at a Board meeting, presenting the information submitted along with additional information deemed necessary. Failure to submit a written notification with backup material 60 days prior to the project end date may result in the forfeiture of a no-cost extension.

### **17. Project Close-Out**

Projects are required to be formally closed-out by the IAD, and the tribe. A close-out report and CPMS update must be submitted by the tribe prior to the final disbursement request. The close-out report shall include a narrative description of the project's accomplishments, a final project disposition, a Project Close-Out Financial Status Report, and any other information deemed necessary.

### **18. Exceptions to the TIF Board Guidelines and Procedures**

Upon written request to the Board, exceptions to these Board Guidelines and Procedures will be considered on a case-by-case basis, provided that, no exceptions will be granted that would otherwise violate applicable laws, rules and regulations.