

## Frequently Asked Questions (FAQs) on FAL-2024-03

These FAQs are in reference to FAL-2024-03 – which covers Guidance for Addressing Interactions with Indian Tribes in Funding Opportunity Announcements/Other Transaction Solicitations and Financial Assistance and Other Transaction Agreements.

### What to consider in planning

1. Do the requirements of FAL-2024-03 apply to Requests For Proposals and Requests For Information?
  - No. This FAL addresses only financial assistance activities and does not apply to acquisitions or requests for information.

### What to consider during evaluation and selection

2. Do the requirements for documentation of Tribal awareness and Tribal letters of support apply when a Tribe is the applicant?
  - Yes. The requirements apply when:
    - a. A Tribe's application impacts itself, or
    - b. when a Tribe's application potentially impacts another Tribe.

A Tribe that is an applicant must provide a letter of support if required, or , provide evidence of awareness of the application by the Tribe's authorized representatives when a project potentially impacts a Tribe's resources or reserved rights.

The "Example Funding Opportunity Announcement Language" in FAL-2024-03 has questions to assess if there are Tribal impacts, and a Tribe that is an applicant should respond to these questions as if there could be potential impacts to Tribes other than the applicant.
3. Is the potential geographic location of the proposal, especially for Funding Opportunities with construction activities, the main determining factor in whether it may potentially impact Indian Tribes?
  - Yes. The geographic location of a proposal should be the primary factor when assessing the impacts of construction activities to Tribes.. When assessing the impact of a proposed project's geographic location, it is best practice to determine which, if any, historic homelands and current-day Indian Lands ([Indian Lands \(geoplatform.gov\)](https://www.indianlands.gov/)) are located near the site to identify which Tribes could be potentially impacted. This information can then be used to identify what Tribal resources or reserved rights could be impacted by a project. Notwithstanding the above, other factors may also have potential impacts on Indian Tribes. For example, Tribes that are downstream or downwind of projects could potentially be impacted.
4. Program Officials and Contracting Officers/Grants Officers (COs/GOs) are not always trained to assess if a proposal could potentially impact Indian Tribes. Who can Fund Opportunity teams reach out to for additional assistance?

- Program Officials and CO/GOs should first consult with their Office's representative(s) on the Tribal Energy Steering Committee (TESC). TESC is established through [DOE Order 144.1](#) and includes Tribal liaisons from across the agency. TESC conducts regular training and information-sharing on Tribal issues, including Tribal consultation. Including TESC members in the review creates an early opportunity for Tribal liaisons to become aware of potential needs for Tribal consultation, and allows lessons learned through the implementation of this FAL to be shared and acted upon. Congressional and Intergovernmental Affairs (CI) and Indian Energy (IE) are also available as a resource by emailing [Tribalconsultation@hq.doe.gov](mailto:Tribalconsultation@hq.doe.gov).
5. If an applicant does not submit a letter of support or provide evidence of awareness of the application by the Tribe's authorized representative(s) based on the applicant's assumption that no project activities would impact tribal lands, will DOE be expected to assess the application to ensure that this is accurate? How would this be determined by the Funding Opportunities team? What kind of assessment would need to be done? Is there assistance available?
- Yes, Funding Opportunities teams should evaluate whether an applicant's claims or assumptions are accurate.
  - Funding Opportunities teams should start by determining the geographic location of the project relative to Tribal lands. When assessing geographic location, it is best practice to determine the historic homelands.
    - The Tribal Directory Assessment tool, which assesses both ancestral and current Indian lands, is a useful tool: [TDAT \(hud.gov\)](#)
    - Current day Indian Lands can also be viewed through the BIA: [Indian Lands \(geoplatform.gov\)](#). The above information can then inform what potential treaty rights and reserved rights need to be researched to check for potential impacts.
  - For assistance, program officials and CO/GOs should first consult with the Office's Tribal Liaison or representative(s) on the TESC (typically the office's Tribal liaison)
6. Do Tribal letters of support or evidence of Tribal authorized representative awareness that are submitted by an applicant need to be scored?
- No. Tribal letters of support or evidence of awareness submitted by an applicant are not required to be scored. FAL-2024-03 states that the Evaluation and Selection Plan must describe how the submitted information by the applicant will be evaluated and scored, but it is not a requirement that the information submitted by the applicant be scored.
  - Program offices can reject applications prior to review where applicants fail to include letters of support, if required, or evidence of awareness in cases where there are potential impacts to Indian Tribes and the FAL requirements were included in the Funding Opportunity.
  - Program offices may incorporate scoring of the Tribal letters of support as part of the Community Benefits Plan or other sections of the Funding Opportunities.

7. If an applicant determines an Indian Tribe(s) will be impacted, then FAL-2024-03 requires the applicant to provide information on how it will engage with the Indian Tribe(s). Does this information need to be evaluated during merit review or by other DOE entities?
  - No. Information on how an applicant will engage with Tribes does not need to be evaluated during merit review. This information is intended to assist DOE with any Tribal Consultation that is required resulting from an award. This information is not required to be shared or approved by other DOE offices, but the information may be requested by other offices like CI and IE.

## Selection notices

8. What is the timeframe needed to notify CI and IE prior to the selection announcement? Can the Tribal notifications run concurrently with the OMB and 301 Congressional notifications?
  - The notification to CI and IE on potential Tribal impacts of a selection is to inform the offices of the potential for Tribal consultation and allow for any needed preparation. These notifications are separate from notifications to OMB or Congress. It is recommended to notify CI and IE at the same time as 301 Congressional notices unless a shorter timeline has been agreed upon during a past consultation between a program and an impacted Tribal government, in which case that time frame should be considered.

## What to include in the agreement

9. FAL-2024-03 has requirements for award terms, even if the funding opportunity associated with an award was published prior to issuance of FAL-2024-03. Will there be any additional guidance for award teams in the applicability of the term and how to guide recipients or selectees?
  - Regardless of whether the funding opportunity announcement included specific language on Tribal engagement or consultation, the award term in FAL-2024-03 should be used. The award term requires the assistance of the award recipient in meeting any DOE obligation to consult with Indian Tribes. The requirement for Tribal consultation exists regardless of the information that was requested and reviewed in the application (Note that [DOE Order 144.1](#), which has been in effect since 2009, already establishes requirements for Tribal consultation across the agency. The Order applies to DOE employees even though the award is a grant or cooperative agreement). The award term extends responsibility for Tribal engagement to the award recipients to assist carrying out this Order. The award terms can be modified.
  - As questions come in from program offices, we will address them as appropriate.

## Post Award

10. FAL-2024-03 could result in increased interactions between Indian Tribes and DOE. Who would be the DOE representative in these scenarios? What are the parameters around these types of interactions?
  - [DOE Order 144.1](#) already sets forth the parameters and requirements for interacting with Indian Tribes, and FAL-2024-03 does not change these requirements. The FAL-2024-03 implements safeguards to help identify when the Order may apply and ensure award applicants and recipients consider potential Tribal impacts, engage appropriately with Tribes,

and as applicable assist DOE in its engagement and consultation responsibilities. Program officials and CO/GOs should first consult with their Office's representative(s) on the TESC. TESC is established through and includes Tribal liaisons across the agency. CI and IE are also available as a resource by emailing [Tribalconsultation@hq.doe.gov](mailto:Tribalconsultation@hq.doe.gov).