



FINANCIAL ASSISTANCE LETTER/ OTHER TRANSACTION LETTER

This Financial Assistance Letter and Other Transaction Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by the procurement professionals of DOE, primarily Contracting, Grants and Agreements Officers, and other officials of DOE that participate in the acquisition process. Other parties are welcome to its information, but definitive interpretation of its effect on DOE solicitations, Notice of Funding Opportunities, Awards, and other related procedures and actions may only be made by DOE Contracting, Grants and Agreements Officers.

**Subject: Guidance on Identification of Potential Impacts of DOE Funded
Projects on Indian Tribes and Tribal Consultations**

Policies and Statutes:

[DOE Policy 144.1, U.S. Department of Energy Policy on Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations](#)

(2024) Outlines principles for government-to-government relationships, and consultation and engagement with American Indian Tribal governments and Alaska Native corporations.

[DOE Order 144.1A, Department of Energy \(DOE\) Requirements for Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations Pursuant to DOE Policy 144.1](#)

(2024) Communicates Departmental, programmatic, and field responsibilities for consultation and engagement with American Indian governments and Alaska Native corporations.

[Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments.](#)

Establishes regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications.

Alaska Native Claims Settlement Act ([85 Stat. 688](#)) [[43 U.S.C. § 1601, et seq.](#)]

Resources:

[Tribal Treaty Rights Consultation Best Practices Flow Chart \(bia.gov\)](#)

Quick guide on steps to follow to determine if Tribes could be affected and how to carry out consultation if needed.

[Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making \(bia.gov\)](#)

[Tribal Treaties Database \(okstate.edu\)](#)

Search treaties by specific Tribes to evaluate if Tribal treaty rights are affected.

[Bureau of Indian Affairs, U.S. Domestic Sovereign Nations: Land Areas of Federally-Recognized Tribes Indian Lands \(doi.gov\)](#)

GIS tool useful for identifying Indian Lands and Reservations which may be impacted. See the following for the parent website: [BOGS | Web Maps \(geoplatform.gov\)](#)

[DOI Tribal Leader Directory](#) – List of Tribal Leaders, addresses and contact information. A regularly updated database useful for identifying who to contact for Tribal consultation and engagement.

[Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites](#)

Interagency guidance with best practices including safeguarding information on sacred sites from FOIA.

When is this Financial Assistance Letter (FAL)/Other Transaction Letter (OTL) effective?

The guidance provided in this FAL/OTL is effective on the date issued. This FAL/OTL is not to be retroactively applied. This FAL/OTL rescinds FAL 2024-03/OTL 2024-01 dated April 5, 2024, and remains in effect until cancelled or superseded.

Who is the point of contact?

The Grant Officers (GOs) and Agreement Official (AOs) should consult with legal counsel on any questions regarding the definitions or applicability of the FAL/OTL to an Indian Tribe.

For Department of Energy (DOE), contact the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition Management at DOE_OAPMPolicy@hq.doe.gov.

For National Nuclear Security Administration (NNSA), contact NNSA Office of Policy

and Oversight Division, Policy & Oversight Branch (NA-PAS-111), at (505) 845-5639 or reina.serino@nnsa.doe.gov.

Who is the intended audience?

DOE GOs and AOs. DOE as used in this FAL/OTL includes NNSA.

What is the purpose?

The purpose of this FAL/OTL is to provide guidance to GOs and AOs during the planning and issuance of a Notice of Funding Opportunity (NOFO)/Other Transaction (OT) solicitation and the selecting and awarding of financial assistance and OT agreements to evaluate if projects may potentially impact Indian Tribes. This guidance applies to the pre-award process for applicants as well as the post-award process for recipients/awardees. Further, this FAL/OTL provides guidance on consultation and engagement with Indian Tribes if projects submitted to DOE are determined to potentially impact Indian Tribes. The requirements within this FAL/OTL also apply to applications submitted by Indian Tribes, both when an Indian Tribe's application impacts itself or when an Indian Tribe potentially impacts another Indian Tribe. This FAL/OTL does **not** apply to situations where state recognized Tribes are potentially impacted or are applicants.

What types of actions are affected by this FAL/OTL?

This FAL/OTL applies to all financial assistance and OT agreements, where the project may potentially impact Indian Tribes as defined in 25 U.S.C. § 5304 (e), the Indian Self Determination and Education Assistance Act (ISDEAA):

“Indian tribe” or “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including an 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.

For purposes of this FAL/OTL, the term “Federally recognized Indian Tribe” means those Tribes recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including Alaska Native villages.

For purposes of this FAL/OTL, the term “Alaska Native Corporation” means Alaska regional, or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act.

The GO/AO should consult with legal counsel on any questions regarding the definition or applicability of the FAL/OTL to an Indian Tribe. Accordingly, the modifications to NOFOs/OT solicitations and award terms described herein should only be considered if this FAL/OTL applies based on this consultation with legal counsel and in view of the other factors described herein. As

such a review is necessary, this FAL/OTL is not to be retroactively applied.

When the Indian Tribe is the applicant or recipient/awardee, the GO/AO should use this guidance in conjunction with DOE O 144.1A *Department of Energy Requirements for Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations Pursuant to DOE Policy 144.1* (DOE Order 144.1A) for assistance in any required consultation(s).

What is the background?

Federally recognized Indian Tribes, including federally recognized Tribes in Alaska, are sovereign governments recognized by the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. To this end, all executive departments and agencies are expected to engage in regular, meaningful, and robust consultation with the governments of Federally recognized Indian Tribes when undertaking Federal actions that may have Tribal impacts. In addition to Federally recognized Indian Tribes, Alaska Native Corporations (ANCs) play a significant role in managing land and minerals on behalf of Alaska Native shareholders pursuant to the Alaska Native Claims Settlement Act. This FAL/OTL applies to both Federally recognized Indian Tribes and ANCs (as defined in 25 U.S.C. 5304 (e), and as appropriate herein referred to collectively as “Indian Tribes”). If there is any conflict between the governments of Federally recognized Indian Tribes and ANCs during financial assistance agreements, then special consideration should be given to the input of Federally recognized Indian Tribes and their roles as Tribal governments.

During the planning process, DOE must evaluate if projects proposed through a NOFO/OT solicitation may have the potential to impact Indian Tribes, as described below. If a NOFO/OT solicitation has potential impacts to Indian Tribes, then DOE must include appropriate language in the NOFO/OT solicitation to address this matter. Indian Tribes are typically impacted through their resources and reserved rights, which often include impacts to Indian reservations, as well as extending beyond reservation boundaries pursuant to treaties, statutes, case law and other applicable requirements (herein collectively and alternately referred to as “impact(s) on” or “impacts to” Indian Tribes”). Tribal resources and reserved rights include, but are not limited to:

- Tribal land(s), including Indian Reservations and other Indian Land
- historic homelands from which Tribes were removed, including:
 - cultural sites
 - sacred sites
 - burial sites
- water rights
- mineral and other subsurface rights
- fishing rights
- hunting rights

Further, DOE O 144.1A provides requirements applicable to DOE employees on consultations and interactions with American Indian and Alaska Native Tribal governments. While the Order is not directly applicable to recipients/awardees of financial

assistance or other transaction agreements, GOs, AOs, and other DOE employees involved in the award and administration of these agreements must comply with applicable requirements in the Order and with the guidance in this FAL/OTL. Further, GOs and AOs must operate consistent with DOE Policy 144.1, *U.S. Department of Energy Policy on Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations* (DOE Policy). Formal government-to-government consultation with Indian Tribes is a DOE responsibility; applicant and recipient interactions with Indian Tribes do not constitute or substitute for such consultation.

This FAL/OTL is intended to compliment the consultation requirements of the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) by ensuring applicants and recipients are proactively identifying and addressing Tribal impacts. If there are any conflicts or duplicative efforts between this FAL/OTL and NEPA, or this FAL/OTL and NHPA, then NEPA and NHPA shall take precedence.

What guidance is included in this FAL/OTL?

The following guidance is provided to GOs and AOs when planning, soliciting, and awarding agreements.

I. Confidentiality of information

Special attention should be given to the timing of information shared with the potentially affected Indian Tribe(s). Any information provided to the potentially affected Indian Tribe(s), shall be clearly marked as “pre-decisional” or “selection information” or other appropriate designation and any existing markings on the information must be complied with when determining whether to share. A nondisclosure agreement will be necessary with the Indian Tribe(s) prior to DOE sharing any application or awardee information which could be considered sensitive. Accordingly, in this case, the cognizant GO/AO shall consult with local legal counsel and the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property prior to the sharing of any sensitive data.

Similarly, DOE must provide special attention to the information it obtains from Indian Tribes. DOE may consider but is not required to sign a nondisclosure agreement if the Indian Tribe(s) requires such an agreement prior to sharing any information the Indian Tribe(s) considers business sensitive, trade secrets, proprietary, or otherwise confidential information. To the extent practicable, DOE should ensure that notes, recordings, and transcriptions do not contain sensitive Indigenous Knowledge, as identified by Tribes, unless Tribes have consented to such documentation. Information documented by DOE may be subject to the Freedom of Information Act (FOIA), therefore DOE and Indian Tribes should expect that records created during or otherwise stemming from interactions may be required to be released if requested under the FOIA.

II. What to consider in planning

GOs/AOs should discuss with program officials, including any relevant Tribal liaison (see DOE O 144.1A), and consider what, if any, Tribal resources or reserved rights (see examples

above) could potentially be impacted. If projects supported under a NOFO/OT solicitation are considered to be highly unlikely to impact Indian Tribes (e.g., have no substantial direct effect on Indian Tribes or otherwise do not impact an Indian Tribe's resources or reserved rights) then no additional language should be needed in the NOFO/OT solicitation (GO/AOs should still be cognizant of proposed projects which could impact Indian Tribes during evaluation, selection, and award in all NOFOs/OT solicitations).

GOs and AOs are encouraged to consult with the Office of Congressional and Intergovernmental Affairs (CI) Tribal Liaison (TribalConsultation@hq.doe.gov) and the Office of Indian Energy (IE) (IndianEnergy@hq.doe.gov) if there is uncertainty as to potential impacts to Indian Tribes or to request assistance to determine the appropriate action to be taken under this FAL/OTL (e.g., a project such as a national satellite image survey of solar installations that could have negligible impacts to numerous Indian Tribes, thus rendering consultation with all impacted Indian Tribes a significant burden.)

III. What to put in the NOFO or OT solicitation

GOs/AOs must include requirements for applicants on their responsibilities, both pre- and post- award, regarding Tribal engagement, if there are potential impacts to Indian Tribes. The GO/AO should review the technical application instructions for any necessary revisions (see example at end of FAL/OTL).

The NOFO/OT solicitations must include:

- Guidance which helps the GOs/AOs to determine if the applicant's application could potentially impact Indian Tribes and therefore warrants DOE employees' engagement or Tribal consultation under DOE O 144.1A. GOs/AOs are encouraged to tailor questions to be relevant in the context of the NOFO/OT solicitation and to the types of eligible applicants. These questions are generally directed at entities other than Indian Tribes as the recipient or awardee.
- A requirement for applicants to document any efforts the applicant has taken to identify, and has or would take to identify, address, or mitigate any potential impacts to Indian Tribe(s). It is recommended that the documentation not be required at the time of application but should be available if DOE requests it.
- Instructions for Concept Papers must require the applicant to provide initial information on proposed project location, identify any potential impacts on Indian Tribes, and describe how the applicant would engage with a potentially impacted Indian Tribe(s).
- Requirements for applicants to document the awareness and support, if supporting documentation is required, of each Indian Tribe which is potentially impacted by the proposed project:
 - For any project potentially impacting an Indian Tribe's resources or reserved rights, program offices must require documentation that an authorized representative of the Indian Tribe has been made aware of the application. The documentation must, at a minimum, demonstrate the authorized representative(s) is aware of the nature of the project and how it potentially impacts the Indian Tribe(s). The authorized representative

- must be an elected official or designated leader according to the traditions, constitution, or charter of the Indian Tribe, or someone with relevant delegated authority within the Tribal government (e.g., Chief, Chairman, Chairwoman, Governor, Nation Representative, President, Chief Executive Officer, Chief Financial Officer, Speaker of the Council, Speaker of the Congress) and hold their position at the time the application is submitted. This requirement still applies when the impacted Indian Tribe is the applicant.
- For any project intended to be sited on Tribal land, or intersecting with Tribal subsurface rights, documentation of Tribal support is required at the time of application. This requirement still applies when the impacted Indian Tribe is the applicant.
 - For any projects not intended to be sited on Tribal land(s), or intersecting with Tribal subsurface rights, but that may have potential impacts to Tribal resources or reserved rights, documentation of Tribal support is strongly encouraged at the time of application or during negotiation of award, and depending on the nature of the impact, may be required if selected for negotiation of an agreement.
 - Program offices may choose one or both of the following forms of documentation of Tribal support, if supporting documentation is required, from a duly authorized Tribal government official or body:
 - A letter of support, signed by an authorized representative on behalf of the Indian Tribe. This option is recommended for short NOFO/OT solicitation application windows. The authorized representative shall be an elected official or designated leader according to the traditions, constitution, or charter of the Indian Tribe, or someone with relevant delegated authority within the Tribal government (e.g., Chief, Chairman, Chairwoman, Governor, Nation Representative, President, Chief Executive Officer, Chief Financial Officer, Speaker of the Council, Speaker of the Congress, Tribal administrator) and shall hold their position at the time the application is submitted or open for negotiation. A Tribal Council Resolution, Board resolution (including the Board of Directors of an ANC) or similar documentation passed by the legislative body of the Tribal government or Board of Directors of an ANC. This option is recommended when significant cost share is committed by an Indian Tribe, or when it is beneficial to demonstrate significant community support.
 - All documents should expressly support the proposed projects. GOs/AOs may use judgement to resolve issues of conflicting support between Indian Tribes or when Tribal support is contingent on certain elements of the application.
 - Applicants can find contact information for Tribal leaders in the BIA Tribal Leaders Directory (<https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>).
- An explanation that data from an application that may potentially impact Indian Tribe(s) may be shared with the potentially impacted Indian Tribe(s), and that

the applicants may include a Notice of Restriction on Disclosure and Use of Data marking identifying any business sensitive, trade secrets, proprietary, or otherwise confidential information. Such properly marked information shall be used or disclosed only for evaluation purposes, where such evaluation includes a determination of whether the proposed project impacts an Indian Tribe(s). Further, the explanation must state that when it is determined an Indian Tribe(s) would likely be impacted, then a workplan must be submitted by the applicant outlining how the applicant or awardee, if an agreement is made, will conduct Tribal engagement.

- An explanation that data delivered under award that may potentially impact Indian Tribe(s) may be shared with the potentially impacted Indian Tribe(s), subject to any restrictions included on properly marked data per the award terms.
- Information on how the information provided by the applicants will be evaluated and scored.

Noncompetitive actions should also consider the above items.

IV. What to consider during evaluation and selection

The Evaluation and Selection Plan must describe how the submitted information will be evaluated and scored. This includes initial review, merit review and other reviews included for that NOFO/OT solicitation. The GO/AO, with the assistance of program officials, will carefully review the application initially to:

- determine if Indian Tribe(s) are potentially impacted and if the application warrants Tribal support documentation,
- confirm that the application is compliant with the required information identified in the NOFO/OT solicitation document,
- if the required information is not submitted, the GO/AO will consult with legal counsel for next steps. The applicant may be required to provide clarifying information before or after selection.

Note that many proposed projects may impact multiple Indian Tribes and the GO/AO should take care to determine that documentation has been gathered from all potentially impacted Indian Tribes.

If the merit review criteria include evaluation of the potential impacts on Indian Tribes, the GO/AO, the program official and the selection official must determine how that information will be evaluated. Subject matter experts may be used as peer reviewers and/or the merit reviewers may be briefed on how to evaluate potential Tribal impacts.

V. Selection notices

CI and IE must be notified (TribalConsultation@hq.doe.gov, IndianEnergy@hq.doe.gov) in advance of issuing any selection notices where the selected applications, if funded, would potentially impact one or more Indian Tribes.

The GO/AO must coordinate with CI and IE, to determine the appropriate actions needed, if any, prior to any public announcement or applicant notification. Notification to the potentially impacted Indian Tribe(s) may be required in addition to the standard notifications to Congress prior to any public announcement or applicant notifications.

VI. What to consider during negotiation of a selected application or a noncompetitive agreement

For any application that may impact an Indian Tribe(s), GOs/AOs will work with CI and IE to ensure that the applicant has undertaken all required actions and to determine if any DOE actions are needed. DOE must engage or consult with potentially impacted Indian Tribe(s) in accordance with DOE O 144.1A (or latest version of Order), unless the potentially impacted Indian Tribe is the applicant. If an Indian Tribe requests engagement or consultation, DOE will, to the maximum extent practical, accommodate the request in a timely matter.

Resource to conduct preliminary analysis can be found here;
https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf.

VII. What to include in the financial assistance or OT agreement

The agreement should include a special term or condition that defines the recipient/awardees responsibility to engage with any potentially impacted Indian Tribe(s) regarding their project.

- **Sample agreement term/article**

If any activities anticipated to take place under this agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304 (e), then the recipient/awardee agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. Approval by DOE must be obtained before any activities take place that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights. The recipient/awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

Definitions

- Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).
- Indian Tribe is as defined in 25 U.S.C. § 5304 (e)).

VIII. Example Notice of Funding Opportunity/OT Solicitation Language

Impacted Indian Tribes Documentation (if applicable)

This section requires applicants to ascertain potential impacts to Indian Tribes¹, including Alaska Native village or regional or village corporations, other than the applicant. For any application that potentially impacts Indian Tribes, including when the potentially impacted Indian Tribe is the applicant, this section specifies the documentation required at the time of application, during negotiation and prior to award.

For any project that potentially impacts Indian Tribes, applicants are required to submit documentation demonstrating that an authorized representative² of each potentially impacted Indian Tribe is, at a minimum, aware of the nature of the application and its potential impacts to the relevant Indian Tribes. The notified authorized representative must be holding their position while the award is open for applications, and documentation must demonstrate affirmative awareness of the application (e.g. a delivery record from certified mail, a reply by the authorized representative).

For any project intended to be sited on Tribal land(s)³ [or intersecting with Tribal subsurface rights], applicants are required to submit documentation demonstrating support from the relevant Indian Tribes at the time of application. Documentation of support submitted at the time of application will be considered to also demonstrate awareness of an Indian Tribe (specified above). Documentation may include either:

- A letter of support from Tribal leadership. The letter must be signed by an authorized representative² of the Indian Tribe. The signer(s) must be holding their position while the award is open for applications or negotiations.
- A Tribal Council Resolution, Board resolution (including the Board of Directors of an Alaska Native Corporation (ANC)), or similar act passed by the legislative body of the Tribal government or Board of Directors of an ANC, expressing support for the project.

¹ Indian Tribe is as defined in 25 U.S.C. § 5304 (e)).

² An authorized representative must be an elected official or designated leader according to the traditions, constitution, or charter of the Indian Tribe, or someone with relevant delegated authority within the Tribal government. Examples include: Chief, Chairman, Chairwoman, Governor, Nation Representative, President, Chief Executive Officer, Chief Financial Officer, Speaker of the Council, Speaker of the Congress, Tribal administrator.

³ Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).

For projects not intended to be sited on Tribal land(s) [or intersecting with Tribal subsurface rights], but that may have other potential impacts on Tribal resources or reserved rights, letters of support or resolutions of support are strongly encouraged and, depending on the nature of the impact, may be required if selected for negotiation of an agreement. Applicants are encouraged to reach out to Indian Tribes as early as possible in the application process to give Indian Tribes ample time to evaluate and respond.

The following resources may be useful to help determine if a project may impact an Indian Tribe(s) resources or reserved rights and the appropriate contacts. These resources are not exhaustive, and many Indian Tribes have resources or reserved rights which extend beyond their Tribal reservation or land, or are covered within treaties, statutes, or case-law. Applicants are encouraged to do additional research:

- Map of Indian Lands: <https://bia-geospatial-internal.geoplatform.gov/indianlands>
- Tribal Treaties Database: <https://treaties.okstate.edu/>
- Directory of federally recognized Tribes and Tribal leaders: <https://www.bia.gov/service/tribal-leaders-directory>
- Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and other similar rights in federal regulatory actions: https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf

To help determine if an Indian Tribe's resources or reserved rights may be impacted by the project, applicants must address the following elements. If the applicant is an Indian Tribe, these elements should be addressed to ascertain impacts to Indian Tribes other than the applicant. Applicants do not need to reveal specific details about sacred sites such as specific location or specific ceremonies:

[Program offices are encouraged to customize this section based on the nature of the NOFO/OT solicitation, to determine if Indian Tribes are impacted by the proposed project]

- [For research and development NOFOs/OT solicitations that quantify resource potential or model resource availability:] Identify any [specific resources] which will be [quantified/modeled] on or near Tribal land, traditional homelands, Tribal historic sites, sacred sites, or in areas where an Indian Tribe maintains rights to [specific resources]. Identify which Indian Tribe(s) may be impacted? Explain any instances of uncertainty or confidentiality.”
- [For demonstration and deployment NOFOs/OT solicitations, generally:] Identify any elements of the project that will occur on or near Indian land, Tribal historic sites, or sacred sites and describe its potential impacts to Indian Tribes. Identify the potentially impacted Indian Tribe(s).
- [For subsurface resource NOFOs/OT solicitations, (e.g., carbon sequestration, oil & gas, geothermal, critical minerals, groundwater):] Identify any Tribal mineral rights, subsurface, or water rights at or near the

proposed project location. Explain any relevant studies already performed, such as groundwater studies? Identify which Indian Tribe(s) might be impacted. Explain any instances of uncertainty and any potential for subsurface resource migration which has been considered.

- [For hydropower, offshore wind, or other water related projects:] Identify any Tribal resources or reserved rights (e.g., water, fishing, or other treaty rights) which could be impacted by the proposed project. Identify any Tribal historic sites, sacred sites, or Tribally relevant vistas, which could be impacted by the project. Identify the potentially impacted Indian Tribe(s) and explain any sources of uncertainty or confidentiality.
- [For infrastructure (e.g., transmission and pipeline projects):] Identify any Indian Land (as defined in 25 U.S.C. § 3501), traditional homelands, or Tribal historic and sacred sites which will be crossed, or adjacent to the proposed infrastructure. Identify which Indian Tribe(s) might be impacted and explain any instances of uncertainty or confidentiality.
- Identify any [other] proposed actions which may impact an Indian Tribe(s) resources or reserved rights. Tribal resources and reserved rights include, and are not limited to, an Indian Reservation or Land (as defined in 25 U.S.C. § 3501) [or intersecting Tribal sub-surface rights], historic homelands from which they were removed, cultural sites, sacred sites, water rights, mineral and other subsurface rights, fishing rights, and hunting rights. Identify the Tribe(s) potentially impacted and any sources of uncertainty or confidentiality.
- Explain any actions taken by the applicant to mitigate or address any potential impacts identified above, including engaging with the potentially impacted Indian Tribe(s), in the application.

Applicants are required to document any efforts taken to identify any potential impacts to Indian Tribes, Indian lands, Alaska Native regional and village land, traditional homelands, Tribal rights, or Tribal historic sites, or sacred sites. This includes any correspondence with Indian Tribes. These documents should be available on request to DOE.

An applicant's failure to submit documentation of an Indian Tribe's awareness, or a letter of support, when required as described above, may constitute grounds for determining an application ineligible, non-responsive to the NOFO/OT solicitation, not subject to further review and/or not otherwise subject to selection or award.

Any data from an application that may potentially impact Indian Tribe(s) may be shared with the potentially impacted Indian Tribe(s). Applicants should include a Notice of Restriction on Disclosure and Use of Data identifying any business sensitive, trade secrets, proprietary, or otherwise confidential information. Such information shall be used or disclosed only for evaluation purposes, where such evaluation includes a determination of whether the proposed project affects an Indian Tribe(s).

Data delivered under award that may potentially impact Indian Tribe(s) may be shared

with the potentially impacted Indian Tribe(s), subject to any restrictions included on properly marked data per the award terms.

If an applicant determines an Indian Tribe(s) will be impacted, the applicant must provide information on the project location, potential impacts and how the applicant will engage with Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. Approval by DOE must be obtained before any activities take place that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly, in addition to any engagement by applicant.