



Tribal Infrastructure Board Guidelines & Procedures

November 10, 2014

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 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 and paying legal costs associated with development of qualified projects.

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.

3. Definitions

BIA - Bureau of Indian Affairs

BOF - Board of Finance

Certification- the Tribal entity must certify that all applicable state and federal regulations and requirements are being complied with

Closed Project - a TIF project that has been closed out and shows no cash balance on the IAD database

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 (i.e. LEED certification), as required by law

Design - planning process including location and feasibility studies, architectural drawings and plans, engineering, archaeological and environmental surveys or clearances, zoning, design activities necessary if seeking LEED certification, and all other steps incident to creating a plan for a final product

DFA – New Mexico Department of Finance and Administration

Intergovernmental Grant Agreement (IGA) – a contract between the State of New Mexico Indian Affairs Department and the tribal entity that allows the disbursement of grants from the Tribal Project Infrastructure Fund

IAD- New Mexico Indian Affairs Department

IHS - Indian Health Service

INS - Infrastructure Needs System

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

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

Plan - Establish the process for future implementation of a project; similar to “design” however less tangible and more conceptual

Project – a complete Planning, Design or Construction effort toward making improvements to infrastructure, such as water and wastewater systems, major water systems, electrical power lines, communications, roads, health and emergency response facilities and infrastructure needed for economic development

Project Phase – this occurs when a project is broken up into a number of specific phases, each of which is a designated group of activities resulting in the completion of specific deliverables or the meeting of project milestones

PRC- Project Review Committee

TCPL – Tribal Comprehensive Project List generated by the infrastructure needs system of all TIF applications submitted

Tribe and/or Tribal Entity - a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions

TIF – Tribal Infrastructure Fund

TIP – Tribal Infrastructure Portal

TPIF – Tribal Project Interest Form

4. Funding

4.1 Tribal Infrastructure Trust Fund

To accomplish the goals of the Act, the Tribal Infrastructure Trust Fund was created within the State Treasury. The Trust Fund is funded by monies appropriated by the State Legislature, donated, or otherwise accrued. The Trust Fund is to be invested by the State Investment Officer in the same manner that state land grant permanent funds are invested. 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 the NM Department of Finance and Administration (DFA). The Project Fund is created in the State Treasury and 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. Severance Tax Bonds for Tribal Infrastructure

Pursuant to the Severance Tax Bonding Act, Section 7-27-10.1(C), the board of finance division shall allocate five percent (5%) of the estimated senior severance tax bonding capacity each year for tribal infrastructure projects, and state board of finance will issue severance tax bonds in the annually allocated amount for use by the Tribal Infrastructure Board to fund tribal infrastructure projects.

6. Tribal Infrastructure Projects

Tribal infrastructure project means a qualified project under the Tribal Infrastructure Act. For organizational and evaluative purposes the Board has established three categories of qualified projects. These include:

- Planning
- Design
- Construction

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

7. Entity Eligibility

Pursuant to the Act, only a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions is eligible to apply for funding for a planning, design, or construction project within the state of New Mexico. Each federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico is limited to applying for one project within each project category in a funding cycle. With the exclusion of Navajo Nation chapters located within New Mexico, a project application submitted by a governmental entity or subdivision of an Indian nation, tribe, or pueblo will be considered as the one project application permitted by that Indian nation, tribe, or pueblo within a particular project category.

8. Terms & Conditions

The Board has set forth terms and conditions that apply to all tribal entities applying for project funding from the Tribal Infrastructure Fund (TIF).

1. Each Indian nation, tribe or pueblo located wholly or partially in New Mexico is limited to applying for one “planning” project, one “design” project, and one “construction” project in a funding cycle.
2. Each tribal entity must be in compliance with Executive Order 2013-006.
3. Funded planning and design projects must be completed within 24 months or less from the date of the execution of the Intergovernmental Agreement (IGA).
4. Funded construction projects must be completed with 30 months or less from the date of the execution of the Intergovernmental Agreement (IGA).
5. Only direct project costs are allowable expenses for qualified TIF projects. Since TIF funding is limited by the Severance Tax Bonding Act and the SBOF Bond Disbursement Rule, TIF funds shall not be used to pay indirect project costs.
6. The cost of the proposed project must be within the following established caps:
 - a. Planning- no cap
 - b. Design- no cap
 - c. Construction- 15% of the total TIF allocation available
7. Tribal entities awarded TIF funding are required to attend a TIF Implementation Workshop.

9. Project Fund Distribution

The Board has set a goal that at least ten percent (10%) of the total available TIF allocation annually be set-aside specifically for planning projects. The balance of the total TIF allocation available will be used to fund qualified projects in any category.

10. Outreach & Education

Annually, the IAD will generate and distribute a Notice of Funding Availability (NOFA) to eligible entities. IAD will provide three (3) TIF Application Workshops annually to provide guidance to tribal entities regarding TIF guidelines and procedures and the Tribal Infrastructure Fund application process.

11. Application for Project Funds

11.1 Tribal Infrastructure Fund Application (TIFA)

Tribal entities eligible for funding under the Act seeking to obtain consideration for TIF funding for infrastructure “planning” and/or “design”, and/or “construction” projects are required to submit a Tribal Infrastructure fund Application (TIFA). Project readiness documents associated with each TIFA shall be submitted with an application.

IAD will notify receipt of the TIFA and review the application and readiness to proceed documents for regulatory and statutory eligibility, entity capacity, completeness, readiness, scope and budget. IAD staff may request additional information from the tribal entity as needed. Each complete TIFA submitted by the application deadline is placed on the Tribal Comprehensive Project List (TCPL) of applications.

11.2 Project Review Committee

The PRC is a TIF Board Sub-Committee comprised of members of the TIF Board and/or staff designated from the various agencies represented on the Board along with appropriate infrastructure experts as may be deemed necessary. The TIF Board Chair will appoint a PRC chair. The PRC 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 TIF Board outlining the proposed projects at a meeting of the TIF Board.

11.3 Scoring Metric

The project evaluation criteria to be utilized by the PRC requires that the following criteria be considered with a point system comprised of five (5) categories and a total of 100 possible points for each formal TIF project proposal:

	Category	Possible Points
1	Health, Safety & Welfare	30
2	Project Readiness	25
3	Cost to Benefit	10
4	ICIP Ranking	15
5	Matching Funds	20
	TOTAL	100

In evaluating proposals, TIF project evaluation criteria requires that priority be given to:

- a. Projects that demonstrate a high degree of critical need with an emphasis on addressing specific health and safety issues
- b. Projects with a high priority listing in the tribal entity's most recent Infrastructure Capital Improvement Plan (ICIP) submitted to DFA
- c. Projects with a high percentage of matching funds in relation to the amount of TIF funding requested for the proposed project
- d. Projects that demonstrate a high degree of benefit in relation to the TIF funding requested for the proposed project
- e. Viable, fundable and ready-to-proceed operable phases of a project

The Board votes on TIF awards at a meeting of the TIF 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 as to TIF project awards shall be accepted by the applying entity and shall be final.

12. Intergovernmental Agreement Process

The IAD will take appropriate steps to initiate an IGA with the tribal entity after state board of finance certification and sale of the severance tax bond fund, compliance with Executive Order 2013-006, review and approval of the Scope of Work and establishment of the budget in the SHARE financial system. The IGA is then forwarded to the tribal entity for signature. Upon signing, the IGA is sent back to IAD, where it is signed by the IAD Cabinet Secretary resulting in a fully executed contract. Budget and purchase documents are prepared by IAD in collaboration with the New Mexico Department of Finance and Administration. Please note this process takes an average of 45-90 days.

13. Payment of Project Expenses & Reporting

The Tribal Infrastructure 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.

13.1 Safeguarding Funds

Safeguarding 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 Notice of Obligation (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.

To safeguard assets, monies must be disbursed using only the methods and procedures authorized by state law, rules and regulations.

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

1. The tribal entity must submit one original and one copy 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 Agreement.
 - c. The expenditures included in the request have been paid or, if the expenditures have been incurred but not yet paid, the tribal entity'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 Agreement.
 - f. Such other representations as the Department may reasonably require.

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

13.2 Deadlines

Requests for Payment shall be submitted by the tribal entity to the Department on the earlier of:

1. Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred, if total unreimbursed expenditures at calendar quarter end exceed \$25,000; or
2. July 15 of each year for all unreimbursed expenditures incurred during the previous State fiscal year, which runs from July 1 to June 30; provided, however, that if Requests for Payment cannot be submitted by July 15 despite Grantee's good faith and reasonable efforts to do so, the Department may allow the Grantee to:
 - a. Submit a good faith and documented estimate of its unreimbursed expenditures by July 15; and
 - b. Submit Requests for Payment with all required supporting documentation by a later date established by the Department in accordance with deadlines promulgated by the Department of Finance and Administration Financial Control Division.
3. Twenty (20) days from date of Early Termination; or
4. Twenty (20) days from the Reversion Date

The Department 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 tribal entity are otherwise in compliance with the IGA. Notice of Obligation (NOO) and BOF's Bond Disbursement Rule 2.61.6

13.3 Severance Tax Bond Project Requirements

The underlying appropriation for the Project is a severance tax bond, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department.

Tribal entity understands that:

1. The Department's failure to inform the tribal entity of a BOF imposed condition does not affect the validity or enforceability of the condition.
2. The BOF may in the future impose further or different conditions upon the Project.
3. All BOF conditions are effective without amendment of the Agreement.
4. All applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s).
5. The Department's obligation to reimburse the tribal entity from the Project is contingent upon the then current BOF conditions being satisfied.
6. All applicable BOF conditions must be satisfied prior to the Project's Reversion Date.

The Agreement for the Project is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

13.4 Reports

13.4.1 Periodic Reports

In order that the Department may adequately monitor Project activity, the tribal entity shall submit to the Department Periodic Reports for the Project. An example is attached hereto as Exhibit 1. Periodic reports shall be submitted by entering such Project information as the Department may require directly into a Capital Project Monitoring System database maintained by the Department of Finance and Administration. The Periodic Report shall be due monthly on the 30th of each month.

13.4.2 Paper Quarterly and Final Report

The Grantee shall submit to the Department and the Department of Finance and Administration Quarterly Reports and a Final Report for the Project. The Quarterly and Final Reports shall be submitted on a form provided by the Department and contain such information as the Department may require. The Quarterly and Final Report form is attached hereto as Exhibit 2. The Department 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 this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paper Final Report must be submitted within twenty (20) days after the Project's closeout.

13.5 Requests for Additional Information/Project Inspection

During the term of the Agreement and during the period of time during which the tribal entity must maintain records, the Department 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.

14. Project Oversight

14.1 Project Oversight

TIF project oversight is provided by the IAD.

Project oversight includes:

1. Administrative/Managerial/Technical Oversight by Infrastructure Manager
2. Financial Oversight by Chief Financial Officer
3. Legal Oversight by General Counsel
4. Document Processing by Financial Coordinator and/or Business Operations Specialist

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

1. The scope of work for the project granted by the TIF 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

14.2 Document Review

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

1. Professional Service Contracts, Purchase Orders and other Contracts for the Issuance of Notice of Obligation
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. Grantee Audit, per EO 13-006

14.3 State Site Visits

On-site visits are made during the course of project activities. The purpose of these visits are to monitor progress being made, to verify that work is in accordance with the grant and State requirements, and to maintain good coordination and understanding between the grantees and the State.

Reports are written to document these visits with information to include date visited, people contacted, work observed, project status and pictures.

14.4 State Update of CPMS

IAD updates the CPMS are due quarterly, by the 15th day after the end of each quarter. Updates include project status, financial information and goals/milestones. Grantees are required to update CPMS monthly by the 30th day of each month. Updates include project status, financial information and goals/milestones

14.5 Meetings and Communications

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

IAD staff provides a TIF Board funded project update at each TIF 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.

14.6 Workshops

Workshops are conducted as needed with multiple grantees, to assist with their project management. For the TIF program, these include a mandatory TIF Implementation workshop. Additional workshops or short talks are provided as requested by the grantees.

15. Change in Scope of Work

Should a project sponsor request a change in an agreed scope of work subsequent to the execution of an Intergovernmental Grant Agreement (IGA) the project sponsor 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 TIF 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 TIF Board for review/approval.

The project sponsor will be notified and may be required to present the request at a Tribal Infrastructure 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 entity and shall be final.

16. 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 project sponsor may determine that the original plans do not best represent their definition for the finished project.

Accordingly, the project sponsor 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 the IAD for consideration and may be approved by the IAD.

17. 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. Funds made available as a result of early termination may be reallocated to another qualified project in accordance with State Board of Finance processes.

18. No-Cost Extension

Grantees requesting a no-cost extension must submit written notification to the IAD staff at least 60 days in advance of the project end 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 Tribal Infrastructure 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.

19. Project Close-Out

Projects are required to be formally closed-out by the IAD, and the tribal entity. A close-out report and CPMS update must be submitted by the tribal entity 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.

20. Exceptions to the TIF Board Guidelines and Procedures

Upon written request to the TIF Board, exceptions to these TIF 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.