

U.S. Environmental Protection Agency, Region 9
Drinking Water Tribal Set-Aside Program
2023 Guidelines and Procedures for Applying for Assistance

EPA Region 9 is pleased to issue these guidelines and procedures for applying for assistance from the Drinking Water Tribal Set-Aside (DWTSA) program. This program provides funding for federally recognized tribes within EPA Region 9 for public drinking water system infrastructure. Funds are awarded through direct grants to tribes or interagency agreements with the Indian Health Service (IHS). The funding will be used to address the most significant public health threats for public water systems.

President Biden signed the Bipartisan Infrastructure Law (BIL) on November 15, 2021, which included over \$50 billion to strengthen the nation’s drinking water and wastewater systems. The BIL includes more than \$868 million to address tribal drinking water and wastewater infrastructure needs over fiscal years 2022-2026.¹ These guidelines will be utilized to consider project awards utilizing new BIL funding programs for drinking water projects.

Approximately \$18 million in FY23 funds may be available to support eligible projects, including up to \$5 million in base DWTSA funds and up to \$13 million in supplemental BIL funds. The region also expects to receive up to \$5 million to address emerging contaminants in drinking water and \$19 million to investigate and remove lead service lines. EPA plans to develop additional criteria to prioritize projects that meet the eligibility criteria for those new programs. EPA will be seeking input from Tribes related to these proposed criteria later this year.

Matching funds are not typically required; however, in cases where commercial entities and/or non-tribal populations receive water from the public water system, EPA may require the tribe to provide a funding contribution proportional to the water demand of the commercial entity and/or non-tribal populations. Similarly, for projects whose costs are correlated with water usage, a funding contribution may be required for water systems using over 150 gallons per capita per day, with the contribution proportional to the amount over 150 gallons per capita per day used. Additionally, given the limited funds available under this program and EPA’s goal to maximize the number of projects it can fund, EPA may work with applicants to explore the availability of funding from other federal agencies, tribal or third-party sources to contribute to the total project cost.

This assistance will be awarded under Section 300j-12 of the Safe Drinking Water Act, 42 U.S.C. §1452. The Catalog of Federal Domestic Assistance Number is 66.468.

¹ [Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law Memo](#), p. 3

Important Dates:

November 30, 2022 **EPA must receive proposals by this date**, including the proposal form, tribal government endorsement, and preliminary engineering reports (PERs) or planning project proposals with supporting documents. **Proposals received after November 30, 2022, will not be considered for funding.**

E-mail one electronic copy of the proposal and any documentation to:
Nancy Sockabasin, sockabasin.nancy@epa.gov.

Electronic files exceeding 8MB must be separated into emails not exceeding 8MB each. If you have difficulty submitting electronic documentation, contact Nancy Sockabasin.

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|-------------------|--|
| December 2022 | EPA will initiate a 90-Day tribal consultation period to consider additional project prioritization criteria for BIL Programs to address emerging contaminants in drinking water (EC) and lead service line (LSL) replacements. |
| January 2023 | EPA will notify each applicant of the draft proposal priority and whether the project is selected to continue with the application process. |
| February 2023 | EPA will conclude tribal consultation for new EC and LSL BIL Program criteria. |
| March 2023 | Applicants can submit comments on their draft project prioritization. For projects selected to continue with the application process, applicants must submit responses to any EPA comments, and submit any additional documentation or endorsements that EPA requests. |
| April-August 2023 | EPA notifies applicants of the final ranking and funding decision, along with guidance letters for projects to be funded by grant. |
| May-August 2023 | Tribe submits grant application, or Indian Health Service submits draft Memorandum of Agreement and signed Project Summary (exact dates will be included in funding decision notification letters). |
| September 2023 | EPA awards funds for selected projects. |

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I. Description of Program

EPA Region 9 is pleased to issue these 2023 guidelines and procedures for applying for assistance from the Drinking Water Tribal Set-Aside program. This program provides funding for federally recognized tribes within EPA Region 9 for public water system infrastructure. Funds are awarded through direct grants to tribes or interagency agreements with the Indian Health Service. The funding will be used to address the most significant public health threats posed by inadequate public drinking water system infrastructure. Approximately \$18 million may be available in FY23 to support drinking water infrastructure under the base DWTSAs and BIL supplemental funding. In addition, the region is also soliciting project proposals that address emerging contaminants in drinking water and lead service line replacements under new BIL funded programs. This assistance will be awarded under Section 300j-12 of the Safe Drinking Water Act, 42 U.S.C. §1452.

A. Program History

The 1996 amendments to the Safe Drinking Water Act (SDWA) provide for a Drinking Water State Revolving Fund. The SDWA contains a provision setting aside 1.5% of the annual appropriation for drinking water systems that serve Indian tribes.² In FY10 and subsequent years, EPA's budgets increased the tribal set-aside from 1.5% to 2%, and in FY16 a funding floor of \$20 million was added to the national tribal set-aside. EPA anticipates that future budgets will retain the 2% increase and \$20 million floor.

EPA Headquarters issued national guidelines for this program in 1998³. The national guidelines gave each EPA region significant flexibility in developing regional funding procedures. EPA Region 9 formed a Regional Tribal Operations Committee (RTOC) DWTSAs workgroup with tribal representatives to develop these procedures to meet tribal needs, consistent with the objectives of the SDWA and the national guidelines.

In December 2013, EPA Headquarters issued revisions to the national guidelines that can be found at <https://www.epa.gov/tribaldrinkingwater/drinking-water-infrastructure-grants-tribal-set-aside-program>. These revised national guidelines necessitated some changes to the Region 9 guidelines document. EPA Region 9 amended the guidelines in 2014 in coordination with the RTOC DWTSAs workgroup and consultation with tribes located in Region 9.

The Bipartisan Infrastructure Law (BIL) was signed on November 15, 2021, which included over \$50 billion to strengthen the nation's drinking water and wastewater systems. The majority of the BIL funding will flow through the Clean Water and Drinking Water State Revolving Funds (SRFs). The BIL specifically provides more than \$868M to address tribal drinking water and wastewater infrastructure needs over fiscal years 2022-2026 through the DWTSAs and Clean Water Indian Set-Aside programs (CWISA).

² 42 U.S.C. 300j-12(i)(1) 42 U.S.C. 300j-12(i)(1)

³ [Drinking Water Infrastructure Grants – Tribal Set-Aside Program Final Guidelines \(October 1998\)](#)

On May 27, 2022, EPA's Office of Water issued the following implementation memo for Tribal Water Infrastructure Appropriations in the BIL:

<https://www.epa.gov/infrastructure/investments-tribal-communities>. The memo provides guidelines on how the agency will allocate and administer DWTSA funds appropriated under the BIL. EPA anticipates developing additional communication, including project prioritization, for projects related to emerging contaminants and lead service line replacements.

B. What types of projects can be funded through this program?

Infrastructure projects funded through the DWTSA must address the most significant threats to public health associated with public water systems that serve tribal populations. Eligible projects (or portions of projects) must ensure compliance with the National Primary Drinking Water Regulations under 40 CFR Part 141, or otherwise further the health protection objectives of SDWA.⁴ As stated in the national guidelines, eligible infrastructure improvement projects can:

- Rehabilitate/develop sources (excluding reservoirs, dams, water rights);
- Install or upgrade treatment facilities;
- Install or upgrade storage facilities, including finished water reservoirs;
- Install or replace transmission and distribution pipes;
- Replace aging infrastructure if replacement is needed to maintain compliance or further the health protection goals of the SDWA;
- Install new transmission, distribution or service lines to connect existing homes to a public water supply;
- Water efficiency projects (e.g., installation of meters);
- Expansion, consolidation, or development of a new public water system (limited circumstances, see below); and
- Develop preliminary engineering reports (PERs).

New BIL programs to address emerging contaminants in drinking water and lead service line replacements include additional eligibilities that are more fully described in EPA's March 2022 BIL Implementation memo.⁵ Under these new appropriations, projects must be otherwise DWTSA eligible and their primary purpose must be to address emerging contaminants in drinking water or be a lead service line replacement project or associated activity directly connected to the identification, planning, design or replacement of lead service lines. Eligible project examples under these new programs include:

- Completing pre-development activities (such as determining if and where contamination exists) for per- and polyfluoroalkyl substances (PFAS) and other emerging contaminants.
- Conducting initial, special (non-routine/noncompliance) monitoring to establish a baseline understanding of a contaminant of concern.
- Developing project planning and preliminary engineering documents for PFAS and other emerging contaminants projects.
- Designing projects to address PFAS and other emerging contaminants.
- Developing or updating lead service line inventories, including locating and mapping lead service lines.
- Providing technical assistance to small water systems undertaking lead service line inventories or construction projects.

⁴ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

⁵ https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf

- Conducting non-routine lead sampling (not for compliance purposes).

Addendum 99-1 to the national guidelines allows funding for the creation of new community water systems to address existing public health problems caused by unsafe drinking water provided by individual wells or surface water sources. The policy also allows the creation of new regional community water systems which consolidate several existing systems that have technical, financial, or managerial difficulties. Before funding the creation of a new system, EPA must ensure that all potentially affected parties have been notified and that the tribe has considered alternative solutions to addressing the problem. According to the national guidelines, new systems may be funded only if the following conditions are met:

- Options for connection with adjacent public water systems have been fully explored and deemed unreasonable by the EPA Region;
- Upon completion of the project, the entity created must meet the federal definition of a community water system;
- Funding is limited to projects where an actual public health problem exists with documented health risks;
- The project must be limited in scope to the specific geographic area affected by the health risk; and
- The project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility - growth cannot be a substantial portion of the project.

DWTSA funding can also be used to develop a preliminary engineering report, and for work to secure rights of way (though DWTSA funds cannot be used to purchase real property).

The national guidelines also allow EPA to consider funding unscheduled “emergency” projects after EPA uses its prioritization method to rank projects for a year.⁶ Such projects can include those where some type of failure was unanticipated or the result of natural disaster or an emergency and may require immediate attention to protect public health. In these cases, EPA has the authority to fund the emergency project provided it meets the requirements of the Drinking Water Tribal Set Aside Program.

The Water Infrastructure Improvements for the Nation (WIIN) Act provided EPA with the flexibility to utilize DWTSA funding to provide “operations and maintenance training and operator certification services to Indian Tribes.” Eligible recipients of funds for these activities include tribal organizations and intertribal consortia. Funding for operation and maintenance activities is not eligible under this new flexibility. While the WIIN Act does not establish any funding minimums for these activities, a maximum of 30% of the annual DWTSA allocations by region may be used for this purpose⁷. Region 9 has utilized this new flexibility in fiscal years 2017-2022 to fund operator certification training and exam services provided by the Inter-Tribal Council of Arizona and the Navajo Nation EPA. We anticipate utilizing this flexibility in future funding cycles to support critical operations and maintenance training and operator certification services to Tribes and will consider proposals that include these activities.

⁶ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

⁷ April 18, 2017 Memo from Anita Thompkins, Director of the Drinking Water Protection Division, Office of Ground Water and Drinking Water: <https://www.epa.gov/tribaldrinkingwater/amendments-drinking-water-infrastructure-grants-program-required-water>

The [National Water Reuse Action Plan \(WRAP\)](#) was released on February 27, 2020 in coordination with other federal agencies. The WRAP is a collaborative effort among the water user community to consider water reuse and water reclamation from various sources. The plan addresses the treatment and reuse of water for beneficial purposes such as augmenting drinking water supplies. Water reuse projects that address health deficiencies at tribal public water systems may be eligible for funding under the DWTSA program. For additional information and examples of projects, please review the [Water Reuse Action Plan](#) website: <https://www.epa.gov/waterreuse/water-reuse-action-plan>.

C. What types of projects cannot be funded through this program?

According to §1452(a)(2), the Safe Drinking Water Act specifically disallows projects for:

- Monitoring;
- Operation and maintenance;
- Projects intended primarily for future growth; and
- Land acquisition (unless the land is integral to the project and is from a willing seller (§1452(k)(1)(A)(i)).

According to §1452(g)(2), the Safe Drinking Water Act specifically disallows projects for:

- Supplementing the Public Water System Supervision Program;
- Administering or providing technical assistance through source water protection programs; and
- Developing and implementing a capacity development strategy.

According to §1452(k), the Safe Drinking Water Act specifically disallows projects for:

- Loans to water systems to acquire land or a conservation easement;
- Loans to any community water system to implement source water protection measures in delineated areas;
- Loans to any community water system to assist them with source water protection;
- Technical or financial assistance to any water system to carry out a capacity development strategy; and
- Implementation of a wellhead protection program.

According to the national guidelines, funding is not allowed for:

- Dams, or rehabilitation of dams;⁸
- Water rights;⁹
- Reservoirs (except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the treatment facility property);¹⁰
- Projects that serve mainly commercial uses, including livestock watering;
- Projects needed primarily for fire protection;¹¹
- Compliance monitoring; and
- Projects for tasks that are considered routine operation and maintenance.

⁸ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

⁹ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

¹⁰ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

¹¹ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 16

D. Program Link to EPA's Strategic Plan

Projects funded under this program support the strategic measures expressed by Goal 5 (Ensure Clean and Safe Water for All Communities), Objective 5.1 (Ensure Safe Drinking Water and Reliable Water Infrastructure), of the EPA Strategic Plan for 2022-2026 related to the provision of safe drinking water to tribal communities. The program fits within the EPA Strategic Plan and its long-term performance goals: Goal 5.1.2 to reduce the number of community water systems in Indian country still in noncompliance with health-based standards since March 31, 2021 from 110 to 70 and Goal 5.1.5 to provide 2,203 Tribal, small, rural, or underserved communities with technical, managerial, or financial assistance to improve operations of their drinking water or wastewater systems by September 30, 2026. In addition, the program will help to increase the number of American Indian and Alaska Native homes provided access to safe drinking water in coordination with other federal agencies.

II. Award Information

EPA intends to award approximately \$18 million in FY23 funding to support eligible projects, including up to \$5 million in base DWTSA funds and up to \$13 million in supplemental BIL funds. The region also expects to receive up to \$5 million to address emerging contaminants in drinking water and \$19 million to investigate and remove lead service lines. Projects may range in size from \$30,000 to over \$2 million. Over the history of the program, the average cost of funded construction projects is approximately \$600,000. Tribes may request that projects be awarded as either a grant to the tribe or an interagency agreement with the Indian Health Service.

EPA reserves the right to partially fund proposals by funding discrete activities, projects, or phases of proposals, and may work with applicants to explore the availability of funding from other federal agencies, tribal, or third-party sources to contribute to the total project cost. Funding for project proposals is not guaranteed and is subject to the availability of funds. EPA is not bound by any estimates in these guidelines and reserves the right to reject all proposals or applications and make no awards.

The national guidelines provide EPA with the authority to transfer funds between the Clean Water Indian Set Aside (CWISA) funds and the DWTSA Programs.¹² The Office of Ground Water and Drinking Water (OGWDW) and the Office of Wastewater Management (OWM) calculate each region's allotment and indicate the maximum amount of funding available for transfer within each EPA region. Any transferred clean water infrastructure funds must be used to fund projects that are related to drinking water and will provide the greatest public health benefit to tribes. The proposed projects to be funded through a transfer must be on IHS's Sanitary Deficiency System list. Any transfers must first be approved by the OGWDW and the OWM.

In accordance with national DWTSA program guidelines to address project cost efficiency, if a project selected for funding has a cost per tribal home served equal to or greater than \$132,000, the EPA Region 9 regional administrator must be notified.¹³

¹² U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 18

¹³ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 23

III. Eligibility Information

A. Who is eligible to receive funding under this program?

Only federally recognized Indian tribes within EPA Region 9 may submit proposals.¹⁴ Funds will be awarded in either grants to tribes or interagency agreements with IHS. Region 9 covers the States of Arizona, California, Hawaii, and Nevada as well as the Pacific Islands of American Samoa, Commonwealth of the Northern Mariana Islands, and Guam.

If a tribe receives a grant, the tribe may issue a contract or subaward using grant funds to carry out the project. In such cases, the tribe must comply with the federal procurement requirements, federal regulations pertaining to subawards, and the EPA Sub award Policy. The tribe is the EPA grant recipient and is ultimately responsible to EPA for proper management of the funds. The plan for the tribe's use of the grant funds must be identified in the grant award document.

B. Which water systems are eligible to receive funding?

1. Only public water systems that are community water systems or non-profit, non-community water systems are eligible to receive funding.¹⁵
 - A public water system is defined as an entity that supplies water for human consumption and has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It may include collection, treatment, storage, and distribution facilities.
 - A public water system is classified either as a community water system or a non-community water system. A community water system means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A non-community water system means any public water system that is not a community water system.
2. The system must serve an Indian tribe.¹⁶ Funding can be provided to improve any eligible public water system, whether or not it is owned by a tribe, on or off-reservation, or serving tribal communities living on or off-reservation. Since tribes will be applying for funds on behalf of the water system, EPA will assume that the water system serves a tribe, as required by the SDWA, and the requested improvements are a high tribal priority. In cases where commercial entities and/or non-tribal populations receive water from the public water system, EPA may require the tribe to contribute funds to the project proportional to the water demand of the commercial entity and/or non-tribal populations.
3. Systems that are in significant noncompliance with any requirement of the National Primary Drinking Water Regulations will not be eligible for funding unless the project which is being funded will ensure compliance.¹⁷ Monitoring and reporting requirements must also be met to maintain compliance with the SDWA.

¹⁴ 42 U.S.C. 300j-12(i)(1)

¹⁵ 42 U.S.C. 300j-12(a)(2)

¹⁶ 42 U.S.C. 300j-12-(i)(2)

¹⁷ 42 U.S.C. 300j-12(a)(2)

4. Any system to be assisted with DWTSA funding must be operated by adequately trained and certified operators. Please note that public water systems subject to the Surface Water Treatment Rule and community and non-transient non-community water systems subject to the Disinfection/Disinfectant Byproducts Rule must be operated by qualified personnel meeting requirements specified by EPA. EPA determines that a qualified operator is an operator certified at the appropriate level of the water system to be in compliance with the SDWA.
5. Tribes will only receive funding for a project if they can demonstrate that the utility has, or will develop, the technical, financial, and managerial capacity to properly maintain the water system.¹⁸

C. What is capacity and why is it important?

The national guidelines state that the DWTSA program only funds drinking water infrastructure projects at public water systems that have the technical, managerial and financial capacity to ensure compliance with the requirements of the Safe Drinking Water Act per requirements in §1452(a)(3)(A)(i). The investment in physical infrastructure is only one part of ensuring safe drinking water delivery. Lack of proper operation and maintenance may lead to deterioration of the infrastructure and unsanitary conditions. Proper staffing, management, financial planning, and funding are crucial to ensure that operation and maintenance are adequate. Therefore, capacity is a threshold eligibility factor for funding.

EPA characterizes the three elements of technical, financial, and managerial capacity to properly run the water system as follows:

1. **Technical capacity** refers to the physical infrastructure of the water system (i.e. the capability of the system components to provide water that meets the requirements of the SDWA), and the technical knowledge of the system personnel and their ability to use that knowledge to adequately operate the system. Evidence of adequate technical capacity includes:
 - a. Employment of certified operator (as appropriate for system including proposed infrastructure)

An operator must be certified at the appropriate level to operate the public water system, including the infrastructure proposed in the project. A tribe or the water system serving the tribe must provide copies of the operator's certification prior to award of DWTSA funds. Customers of any public water system need to be provided with an adequate supply of safe, potable drinking water. To attain this, it is essential that public water system operators are trained and certified and that they have knowledge and understanding of the public health reasons for drinking water standards. Without qualified and trained operators, public health cannot be adequately protected.

¹⁸ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 19

b. Adequate staff to operate the system

It is important to allow sufficient time for staff to examine the system, conduct preventive maintenance, ensure that conditions remain sanitary, address problems as quickly as possible to avoid a loss of pressure, prevent a lack of water, continue proper operation, etc. This can be done by a variety of methods, but public health and the water system must be priorities of the operator(s).

c. Ability to adequately survey system

Operating a system requires regular inspections of the facilities (including the inside and outside of storage tanks, pump houses, and well heads), flushing gate valves regularly, etc. To achieve this, the operator needs to have access to vehicles when facilities are not located within immediate walking distance.

d. Availability of the tools and measurement devices necessary to perform routine operation and maintenance on the system

Operators must have the ability to address a problem and conduct routine maintenance, such as changing leaky gaskets, flushing valves, fixing chlorinators, and measuring chlorine and fluoride levels.

e. Existence of as-builts

The existence of as-builts allows operators to properly conduct necessary maintenance activities such as flushing the system regularly, locating shut-off gate valves to isolate a water line break, and locating water lines for excavation.

f. Ongoing training and safety programs

Ongoing training allows operators to sharpen their skills and better address system operations. Safety programs are necessary because a water system can be a dangerous place: high voltage areas and confined spaces are present, slippery surfaces exist, high structures must be climbed, and potentially dangerous treatment chemicals must be handled.

2. **Financial capacity** includes the ability of the system to maintain sufficient revenues to cover operation costs and the effective management of those resources to operate the system. Evidence of adequate financial capacity includes:

a. Adequate written budget (and process in place) to pay for staff, chemicals, power, maintenance, monitoring

Financial capacity is key to proper operation and maintenance. A written budget is the first step. Though often smaller systems cost more per user than large systems (because of economies of scale), most ground water systems are relatively inexpensive for a necessary utility. Drinking water costs in many areas exceed \$30-\$50 per household connection per month. It is important for communities to make

enough funds available to properly operate and maintain the system. Users must also pay their bills to ensure the financial stability of the system. The systems should have procedures in place to encourage prompt customer payment.

b. Capital replacement plan (or identification of capital replacement needs)

This ensures that money is set-aside from the budget to address expected repairs that happen on a regular basis, such as pump maintenance and replacement, and tank clean-outs. If these are not set aside in the budget, it may lead to a budget shortfall when the items need replacement.

c. Annual operating budget identified (whether through user charges or general fund) at beginning of year

To ensure continued operation at a reasonable cost, a budget must be developed that shows income, operation and maintenance costs, and short-lived asset reserves. This allows the system to address expenses in a reasonable manner as opposed to expending greater amounts when the unforeseen emergency arises (e.g., a pump due for replacement breaks down over the weekend, creating a need to expedite shipment and pay overtime).

An annual operating budget is also required when a tribe requests funding for preliminary engineering report (PER) development. This operating budget only needs to consider the existing infrastructure under operation by the public water system. Changes to the operating budget that may result from future infrastructure improvements should be reflected in the PER.

d. Record keeping for budget, use, operations, and equipment

For consistently efficient operations, it is necessary to maintain records to anticipate budget expenses and equipment needs ahead of time.

e. Drinking water program accounting system

The accounting system for the public water system must have the capability to record, track and report the public water system's revenues and expenses separate from other program activities. Expenses or revenues associated with the utility should be managed in a separate accounting system or tracked through separate line items within the tribe's accounting ledger. Prior to award of DWTSA funds, a written certification is required from the governing body of the public water system that its accounting system meets these requirements. The ability to track operating funds is an important element in demonstrating a utility's managerial and financial capacity.

3. **Managerial capacity** includes such things as ownership accountability, the ability of management to adequately staff the system with qualified personnel, an understanding of the regulatory requirements involved in operating a water system, and the ability to interact well with customers and regulators. Evidence of adequate managerial capacity includes:

- a. All monitoring required by the SDWA is consistent and up to date

While monitoring itself does not correct health problems, it is necessary to determine the quality of water and ensure protection of public health. Though not eligible for funding, monitoring is required by law.

- b. System management

The responsibilities of the managers must be well-defined and in written form. The "checks and balances" on those with responsibility for the system should also be well-defined and in written form (e.g. water board, tribal council review). The division/delegation of responsibility will clearly be more complex with a water utility or larger water system than with a small water system.

- c. Development and implementation of source water protection plan

Source water protection is necessary to ensure that once the water source is developed, it remains safe for human consumption.

EPA will also analyze other forms of capacity when considering project proposals. For example, tribes must demonstrate that they have the ability (either in-house or with the assistance of the IHS or another appropriate agency) to meet EPA's project management requirements and properly oversee the construction project.

D. How does capacity affect eligibility?

It is important to note that a utility's capacity will not affect a project's placement on the funding priority list. EPA will prioritize projects solely using the methodology presented in Section VII. EPA will assess capacity only if a project is high enough on the priority list to be selected to proceed with the funding process. EPA's assessment of the utility's capacity may include the review of its compliance status and recent sanitary survey reports. If EPA determines that a utility does not have adequate capacity to operate and maintain the system, the system owner must agree to take appropriate steps to ensure that the utility develops the appropriate level of capacity. Appropriate steps may include some or all of the following:

- Training and certifying existing system personnel or hiring trained and certified personnel;
- Developing a source water protection plan;
- Developing an infrastructure replacement plan;
- Instituting a long-term program to provide any needed operation and maintenance;
- Conducting an analysis of the system's financial health;
- Developing an annual operating budget and effective accounting system;
- Adopting a rate structure that will provide the system with sufficient resources to adequately maintain and operate the system;
- Establishing a reserve fund to replace infrastructure reaching the end of its useful life; or
- Establishing an entity to manage and operate the system.

Tribes wishing to receive more information about improving the technical, managerial, and financial capacity of their systems, or other project management skills should contact their EPA Program Manager (see Section IX).

E. Are Matching Funds Required?

Matching funds are not typically required; however, in cases where commercial entities and/or non-tribal populations receive water from the public water system, EPA may require the tribe to contribute funds to the project proportional to the water demand of the commercial entity and/or non-tribal populations.

Similarly, for projects whose costs are correlated with water usage, a funding contribution may be required for water systems using over 150 gallons per capita per day, with the contribution proportional to the amount over 150 gallons per capita per day used.

Additionally, given the limited funds available under this program and EPA's goal to maximize the number of projects it can fund, EPA may work with applicants to explore the availability of funding from other federal agencies, tribal or third-party sources to contribute to the total project cost.

IV. Step 1: Proposal Submission Information

To minimize the workload to tribes, the proposal submission process will be divided into three steps. The first step is the submittal of the initial project proposal package including: a) the project form (Attachment 1); b) the tribal government endorsement; and, c) the preliminary engineering report (standardized template in Appendix A), if applicable.

A. Project Proposal Due Date

The tribal government endorsement, the Project Proposal Form, and preliminary engineering report (PER), if applicable, **must be received by November 30, 2022** and submitted to the following address. **Proposals received after November 30, 2022 will not be considered for funding.**

E-mail one electronic copy of the proposal and any documentation to:
Nancy Sockabasin, sockabasin.nancy@epa.gov.

Electronic files exceeding 8MB must be separated into emails not exceeding 8MB each. If you have difficulty submitting electronic documentation, contact Nancy Sockabasin.

B. Project Proposal Contents

1. **Project Proposal Instructions** - A tribe may submit more than one project proposal under these guidelines and each project proposal will be separately reviewed and considered for funding. Additionally, tribes that submitted a project proposal during a previous funding cycle that did not receive funding can submit, by the proposal deadline, a written request that the project be reconsidered under this round of funding.

The Project Proposal Form is included as Attachment 1. Additional documents may be attached as necessary to ensure that EPA receives complete information to evaluate the project proposals. The project proposal should include completed feasibility studies, preliminary engineering reports, rights-of-way documentation, and environmental documents if available. See below for specific directions.

- a. Service Area Information - list the total population served by the public water system(s), the number of connections, the number and percentage of metered connections, and the per capita, per day water consumption of the water system.
- b. Project Description - give a general description of the overall project and the specific components proposed. Also, describe the problems the project will address including any violation of drinking water standards and any aesthetic water quality problems (e.g., taste, odor, color, clarity).
- c. Project Cost - list each project component by the number of the health problem it addresses. Use the Health Category chart presented in Section VII for the appropriate number. Also note the number of connections that will benefit from each component of the proposed project. For example, for a pipeline rehabilitation project, list the number of connections served by that pipeline. For a treatment plant modification, list the total

number of connections served by that treatment plant.

d. Signature - The form must be signed by a person certifying that the information supplied is accurate.

2. **Tribal Government Endorsement** - The proposal must be submitted with a tribal resolution or a tribal government endorsement of the proposal (i.e., the tribal leader's signature on the letter transmitting the proposal). If requesting reconsideration of a previous project proposal, a tribal government endorsement of the project must be submitted with the request, if not already on file at EPA.
3. **Planning/Preliminary Engineering Report (PER) Projects** - While most of the funds will be awarded to construct water infrastructure projects, EPA recognizes that in some cases tribes have serious concerns about the quality of their drinking water, yet the best solutions have not yet been identified. To address these cases, funds can be requested for the development of a PER. To request funding to complete a PER for a project, applicants must submit a detailed project proposal, a description of the health deficiency that needs to be addressed, a proposed budget and a timeline for completion of the PER. Applications must include a completed project proposal form (Attachment 1) and a tribal government endorsement described in items 1 and 2 above. The outcome of the planning project must be the development of a PER that utilizes the standardized PER template found in Appendix A. Applicants for planning projects are expected to demonstrate the same technical, managerial and financial capacity requirements as applicants for construction projects.
4. **Construction Projects** – To receive consideration for construction funding, a PER that follows a standardized template must be submitted with the project proposal form. The standardized PER makes it easier for tribes to receive funding from more than one federal source and simplifies coordination between federal agencies.

A PER should clearly describe the system's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The level of effort and depth of analysis required for the PER are proportional to the size and complexity of the proposed project. See Appendix A for a standardized PER template. Include copies of any completed environmental documents, if available.

If EPA determines that a project's PER is not adequate, EPA may award funds to complete a more comprehensive PER rather than construction funding. Once the project has an adequate PER, the tribe can submit (or resubmit) a proposal for construction funding during the next funding cycle.

To receive consideration for construction funding, the applicant must demonstrate that all necessary rights of way have been or will be secured prior to award of funds. EPA may award funds for work to secure rights of way, though DWTSAs funds cannot be used to purchase real property.

5. **Budgets** - For construction project budgeting purposes, the following allowances for tribal administration, contingencies, engineering, inspection and other technical support services are based on the following percentages of estimated construction costs.

Tribal administration.....2.5%
Contingencies.....5.0%
Technical support services.....15% (including engineering, inspection and technical support)

If the engineering, inspection, administration, and technical support costs exceed the above allowances, the applicant must provide written documentation to support the increased costs. This approach is consistent with our December 2013 revised national program guidance.¹⁹ Only actual costs incurred under the approved budget will be paid.

For planning project budgeting purposes, project proposals and budgets should identify the entity that will be performing each planning activity. In general, the administrative and technical support costs should be captured in the individual line item costs for each planning activity.

6. **Documents to Support your Proposed Health Category Ranking:** - Your submittal should include documents that support your proposed health category ranking. Examples of such documentation include:
- a. Water use records that demonstrate a water supply deficiency
 - b. Documentation of water line breaks or water outages in the community
 - c. Lab records that demonstrate an exceedance of a primary or secondary Maximum Contaminant Level
 - d. Photographs or reports that depict a sanitary deficiency or defect in your drinking water infrastructure.

C. Draft Prioritization

EPA will use the information in the proposal package to place projects on a draft priority list using the funding factors described in Section VII. After EPA prioritizes the project proposals received, each tribe will be informed of the health category and numerical score, if applicable, of its proposal(s). EPA will also notify the tribes whether they will move forward with step two of the funding process. The number of projects selected to move forward with the funding process will be dependent on the amount of funding available and the costs of the top projects. In **January 2023**, a draft project prioritization letter will be sent to each tribe that submitted a project proposal. Tribes on the fundable portion of the draft priority list will receive comments on the proposal and requests for supporting documentation enclosed with the project prioritization letter. EPA will also request a statement from the tribal chairperson or a tribal resolution committing to the regular operation and maintenance of facilities and equipment installed under this project, in accordance with manufacturer recommendations. Additionally, if deficiencies in technical, financial, or managerial capacity are identified, EPA may choose not to fund the project or request a commitment to address these deficiencies. Documentation should be submitted along with other requested supporting documentation.

¹⁹ U.S. EPA Final Tribal Set-Aside Guidelines (national), p. 11

V. Step 2: Comments on Draft Prioritization and Final PERs

Tribal comments on the draft prioritization for all projects will be due in **March 2023**. For projects on the fundable portion of the draft priority list, Tribes must submit the following by **March 2023**: response to any EPA comments, a revised PER as necessary, and any additional supporting documentation or endorsement requested by EPA. Applicants for direct grants must submit a project management checklist.

A. Comments on the Draft Prioritization List

Each tribe will receive a draft ranking for each project proposal submitted. The tribe may submit additional information on the project to support a higher ranking. EPA will consider any additional information provided when finalizing the priority list.

B. Preliminary Engineering Report

The tribe must also address any EPA comments on the preliminary engineering report (PER). If the comments are substantial in nature, the PER may need to be revised. If the comments are minor, a brief addendum to the PER addressing each of the comments may suffice.

VI. Step 3: Grant Application/Interagency Agreement Process

Between **April-August 2023**, EPA will notify each applicant of the project's final ranking. Tribes with projects on the fundable portion of the final priority list that meet the capacity threshold eligibility factors will proceed with Step 3, the formal grant application or interagency agreement process. Invitations to apply (or submit a Memorandum of Agreement and Project Summary) is not a guarantee of funding. Deadlines must be met and the workplan and budget and grant application, or Interagency Agreement request must be approved by the EPA Project Officer and Grants Specialist. For grants, the EPA Region 9 Grants Management Officer will make the final award determination. For interagency agreements, the EPA Region 10 Grants Management Officer will make the final award determination.

For projects to be funded by grants, guidance letters will be sent out in **April-May 2023**, depending on the availability of funds. These letters will include: 1) the amount of funding available for the project, 2) links to the grant application packet for grant-funded projects, 3) any final comments on the PER, and 4) the date by which the completed grant application must be submitted to EPA. For projects to be funded by interagency agreements, the letter will include the date by which the Memorandum of Agreement and Project Summaries prepared by Indian Health Service must be submitted to EPA.

A. Grant/IAG Application

For projects funded through a grant, the federal Standard Form 424 (SF-424) grant application, other required forms, as well as a workplan and budget must be submitted via grants.gov by **May 2023** or other date established by EPA. For projects funded through interagency agreements, Memorandums of Agreement and Project Summaries prepared by Indian Health Service must be received by EPA in **May 2023** or other date established by EPA.

B. Environmental Results

As part of the grant application process, environmental outputs and outcomes for the project must be identified in the workplan with a plan for measuring and tracking progress towards these goals. In addition, grant conditions concerning the reporting of environmental outputs and outcomes will be included in the award document. See Appendix C for these and other sample grant conditions.

Expected outputs are either a PER to determine a feasible method to address a public health concern, or the design and construction of drinking water infrastructure to provide access to safe water.

Expected outcomes are improved public health protection by providing tribal households with access to safe drinking water which complies with all health-based regulations under the SDWA.

VII. Funding Allocation Methodology

EPA will select projects for funding from a priority list created from a two-step prioritizing process. The national guidelines require that the highest health risks be addressed first. Therefore, in the first step of the prioritizing formula, EPA will categorize proposed projects by the public health problem to be resolved. If a project has more than one component, each component will be placed into one of the following health categories. If funding cannot be provided for all eligible projects within the same health category, further prioritization will occur based on the considerations described in Step 2.

EPA will utilize the following methodology to prioritize project selection for both base and BIL supplemental funding in FY23. EPA plans to develop additional criteria to prioritize projects that meet the eligibility criteria under the BIL supplements for emerging contaminants in drinking water and lead service line replacements. EPA will be seeking input from Tribes related to these proposed criteria later this year.

VIII. Ranking Criteria

Step One: Health Categories

Higher Priority***	Category 1	Documented waterborne disease outbreak attributable to the water system.
	Category 2	Unfiltered surface water or ground water under the influence of surface water.
	Category 3	Filtered surface water and ground water under the influence of surface water that violates surface water filtration or disinfection regulations.
	Category 4	Significant deficiency or sanitary defect involving sewage, or disinfection facilities that have defects, or uncovered distribution reservoirs, or documented inadequate pressure potentially causing cross-connection contamination, or other major microbial health hazards.
	Category 5*	Water supply deficiency that presents a serious health risk because the water system serves 30 or fewer gallons per person per day, which may include insufficient water supply resulting in water outages occurring for an extended period that could not be corrected through operational improvements.
	Category 6**	Arsenic contamination exceeding the MCL. 6A: 50 ppb and above 6B: 25-49 ppb 6C: 11-24 ppb
	Category 7**	All other chemical contamination (excluding arsenic) exceeding a MCL or action level. 7A: Twice the MCL and above 7B: 1.5 times the MCL and above 7C: Above the MCL
	Category 8*	Water supply deficiency that may include insufficient water supply resulting in water outages occurring for an extended period that could not be corrected through operational improvements. For projects to address insufficient water supply, conservation efforts must be made before funding may be awarded if per capita water consumption is over 150 gallons per person per day, and a funding contribution may be required that is proportional to the amount over 150 gallons per person per day used.
Lower Priority	Category 9**	9A: Systems meeting existing MCLs but not future MCLs or action levels; 9B: Systems currently meeting MCLs, but with recent results approaching an MCL for a chemical contaminant, as determined by EPA; 9C: Systems exceeding the secondary standard for iron or manganese; 9D: Systems that have a system defect, operational defect, or a potential health hazard that are not a significant deficiency or sanitary defect; 9E: Other suggested improvements not addressing a health risk.

* Qualification for Categories 5 and 8 will be based on water supply information requested in the Project Proposal Form including available well capacity, storage capacity, and frequency of documented water outages.

** Categories 6, 7, and 9 have been broken into subcategories. Projects within the subcategory A are highest priority, followed by projects within subcategories B, C, D and E.

*** The order of the categories changed beginning in FY2015, and all categories have been assigned numbers that replace the former letters.

Step Two: Prioritizing System (Maximum Total Points: 42):

Criterion		Points
1) Consolidation		
a) Project consolidates more than two systems		5
b) Project consolidates only two systems		3
2) Secondary Standards		
Project will solve taste, odor, color and/or clarity problems		3
3) Population Served (for consolidation projects, use the population of the system being prioritized in the health category)		
a) Less than 100 people		5
b) 100 to 249 people		4
c) 250 to 499 people		3
d) 500 to 749 people		2
e) 750 to 999 people		1
4) Tribal Population Served		
a) At least 90% of population served is tribal		7
b) 75% to 89% of population served is tribal		4
5) Tribal Ownership		
a) System is tribally owned		5
6) Grant Amount Per Connection		
a) Less than \$2,500 per household		6
b) \$2,500 to \$4,999 per household		5
c) \$5,000 to \$9,999 per household		4
d) \$10,000 to \$19,999 per household		3
e) \$20,000 to \$29,999 per household		2
f) \$30,000 to \$49,999 per household		1
7) Additional Benefits		
a) System has water and/or energy conservation measures		2
b) System has or is implementing source and/or wellhead protection programs		2
c) System has metering and billing by water usage		2
8) Total Estimated Grant Amount		
a) Less than \$200,000		5
b) \$200,000 to \$399,000		4
c) \$400,000 to \$599,000		3
d) \$600,000 to \$799,000		2
e) \$800,000 to \$1,000,000		1

IX. Award Administration Information

Regulations governing the award and administration of grants can be found at 2 C.F.R. Parts 200 and 1500, and 40 C.F.R. Part 33.

Quarterly Progress Reports are required for all projects. Quarterly reports should describe project activities and provide the EPA Project Officer with information about project development including the status of the timeline and budget for meeting the environmental outputs and outcomes.

Financial Status Reports (FSRs) – For grants, an interim FSR is required annually and a Final FSR must be submitted within 90 days after grants expire.

Terms and Conditions: Examples of Grant Programmatic Conditions and Interagency Agreement Programmatic and Administrative Conditions are included in Appendix B. Sample Grant Administrative Conditions can be found online at <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2018>

Environmental Reviews conducted by IHS under interagency agreements with EPA: For interagency agreements between EPA and IHS, IHS shall be the lead agency in environmental review.

Environmental Reviews conducted by EPA under drinking water infrastructure grants awarded directly to Tribes: Generally speaking, drinking water infrastructure grants awarded directly to Tribes are exempt from the procedural requirements of the National Environmental Policy Act (NEPA) based on the doctrine of functional equivalence. However, EPA may conduct an environmental review of a project funded under a drinking water infrastructure grant under the Agency's Voluntary NEPA Policy. EPA makes the decision to invoke the Voluntary NEPA Policy on a case by case basis. In cases in which EPA conducts a voluntary NEPA analysis, the NEPA process may include public participation, mitigation measures (e.g. monitoring measures), etc. Any voluntary NEPA review must be conducted prior to award of projects for construction; however, a voluntary NEPA analysis can be funded for a planning project with the preparation of an Environmental Information Document.

Federal Cross-Cutting Authorities: For interagency agreements, IHS shall be the lead agency responsible for complying with the Federal cross-cutting authorities (e.g. the National Historic Preservation Act, the Endangered Species Act, etc.). For grants EPA awards directly to Tribes, the recipient must comply with the applicable Federal cross-cutting authorities before the grant is awarded.

Greening Grants Policy: EPA has implemented Grants Policy Issuance (GPI) 17-01, *Sustainability in EPA Assistance Agreements*, that encourages voluntary efforts to incorporate sustainability practices into EPA grant funded programs and projects. When grant workplans are developed, EPA Project Officers will work with tribal staff to identify potential ways for the tribe to carry out EPA funded work in an environmentally sustainable way. The Policy includes numerous examples of sustainability practices, including environmentally preferable purchasing, green building, green meetings, and alternatives to travel.

X. Agency Contacts

For general information about this program, please contact:

Nancy Sockabasin
Drinking Water Tribal Set-Aside Program Coordinator
U.S. Environmental Protection Agency
75 Hawthorne Street (WTR-4)
San Francisco, CA 94105
Phone: 415-972-3772
E-mail: sockabasin.nancy@epa.gov

To discuss specific information about your water system, please contact your EPA program manager.

Karl Banks, Program Manager (415) 972-3557
Nevada, Owens Valley, Northeastern California

Jason Gambatese, Program Manager (415) 972-3571
Sacramento and Ukiah Areas, Fresno Area, Palm Springs Area

Karly Ho, Program Manager (415) 972-3458
Las Vegas Area, Northern Colorado River

Adam Ramos, Program Manager (415) 972-3450
Navajo Nation

Andrew Sallach, Program Manager (415) 972-3503
San Carlos, White Mountain, Tonto Apache, Northwestern California

Jeffrey Tsai, Program Manager (415) 972-3459
Phoenix Area, Yavapai, CRIT, Hopi

Greg Gholson, Program Manager (415) 947-4209
Yuma Area, San Diego County

Nancy Sockabasin, Program Manager (415) 972-3772
Tohono O'odham Nation

XI. References

Sections of these guidelines were adopted from materials produced by the following agencies:
California Department of Health Services (Project Selection Criteria - Health Categories)
Rural Community Assistance Corporation (Capacity Checklists)
Indian Health Service (Capacity Checklists)
South Dakota Department of Environment and Natural Resources (Capacity Checklists)
U.S. EPA, Region 8

Appendix A: Preliminary Engineering Report Template

A project submitted for funding must have a completed preliminary engineering report (PER) that follows a standardized template. The standardized PER makes it easier for tribes to receive funding from more than one federal source and simplifies coordination between federal agencies.

A PER should clearly describe the system's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The analysis of alternatives must compare construction costs and operation and maintenance costs.

Additionally, a PER must include a rough calculation of per-capita, treated water demand. One of the following calculation methods may be selected:

1. Actual gallons per residential connection as documented from meter readings / census-reported persons per home
2. Total residential treated water demand / population served
3. Other method as approved by EPA

If this calculation yields a per-capita usage greater than 150 gallons per person per day, then a full analysis of water consumption is required.

The level of effort and depth of analysis required for the PER are proportional to the size and complexity of the proposed project.

The linked [PER template](#) must be used.

Appendix B: Sample Grant Programmatic Conditions

- A. **Performance Reporting.** The recipient agrees to submit quarterly project performance reports to the EPA Project Officer beginning three months after initiation of the agreement that include information for the following:
1. A comparison of actual accomplishments to the objectives established in the assistance agreement work plan for the period. Where the output of the project can be quantified, a computation of the cost per unit of output must be provided if requested by EPA;
 2. The reasons why established goals were not met, if appropriate; and
 3. Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the recipient must inform EPA or subrecipient as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

The quarterly progress reports shall also include a written report on all tasks currently in progress and planned for the next quarter. The quarterly reports shall be due thirty (30) days following the end of the quarter. Quarters shall be defined as January-March, April-June, July-September, and October-December.

- B. **EPA Access.** EPA, Inspectors General, and the U.S. Government Accountability Office or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts in accordance with 2 CFR §200.336. The right also includes timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to such documents.
- C. **Procurement.** All procurement actions under this grant must comply with the procurement requirements in 2 CFR Part 200, *Procurement Standards*; 2 CFR Part 1500, and 40 CFR Part 33

Recipient must also ensure that every purchase order or other contract includes any clauses required by Federal statutes, regulations, and Executive Orders pursuant to 2 CFR §200.326.

- D. **Toxic and Hazardous Substances.** The recipient shall implement all mitigation measures pursuant to 29 CFR 1926.1101 to minimize asbestos exposure.
- E. **As-builts.** The recipient shall prepare up-to-date “as-builts” of the project and submit copies to the EPA Project Officer upon completion of the project.
- F. **Changes of Scope.** Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the recipient's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment. The recipient must obtain EPA written approval before implementing changes which alter the project performance standards; change the scope or objectives of the project or substantially alter the design of the project; significantly delay or accelerate the project schedule; substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.
- G. **Budget category changes.** Prior written approval is required for all budget category transfers from non-construction to construction or vice-versa or within such categories, and for requests for no-cost extensions.
- H. **Unforeseeable changes.** The recipient shall notify the EPA Project Officer at any point in time should any significant developments arise, such as those that might alter or delay the project, as soon as the recipient becomes aware of such developments.
- I. **Plan of Operation.** The Recipient shall provide a draft plan of operation covering at least five years for the project(s) funded by this grant. The draft plan of operation shall address development of: operation and maintenance manuals; and an adequate budget for operations, staffing, route maintenance, and replacement costs. The plan of operation must be finalized and implemented (as applicable) prior to the completion of the grant funded projects. A draft plan of operation shall but submitted at 75% of expenditure of grant funds.
- J. **Project Performance Standards: One-Year Report.** On the date one year after the initiation of operation of the project, the recipient shall certify to the EPA Project Officer whether the project meets the project performance standards. If the EPA Project Officer or the recipient concludes that the project does not meet the project performance standards, the recipient shall submit the following: (1) A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards (including the quantity of infiltration/inflow proposed to be eliminated), and an

estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance; (2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and (3) The scheduled date for certifying to the EPA Project Officer that the project is meeting the project performance standards. The recipient shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.

- K. **Applicability.** The recipient agrees that it will expeditiously initiate and complete the project work for which assistance has been awarded under this agreement in a timely manner and in accordance with all applicable provisions of 2 CFR Part 200, and applicable EPA policies. The recipient warrants, represents, and agrees that it and its contractors, subcontractors, employees, and agents will comply with: (1) all applicable provisions of 2 CFR Part 200, and applicable EPA policies; and (2) any special conditions set forth in this assistance agreement or any assistance amendment.
- L. **Archeological Resource.** Should the discovery of a potential archeological or historical resource occur during construction, all work in the area of the find will stop and a qualified archeologist will be called in to evaluate the situation and make recommendations to the EPA Project Officer. The EPA Project Officer will then determine what will be necessary for construction to proceed.
- M. **Termination.** This award may be terminated for failure of the Recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. The EPA Project Officer will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.
- N. **Cross-Cutting Requirements.** The recipient must comply with federal cross-cutting requirements. These requirements include, but are not limited to the Disadvantaged Business Enterprises requirements found at 40 CFR Part 33; nondiscrimination statutes, including Title VI of the Civil Rights Act of 1964, and EPA's implementing regulations found at 40 C.F.R. Parts 5 and 7; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti-Kickback Act (40 USC 276c); and Section 504 of the Rehabilitation Act of 1973, as implemented by Executive Orders 11914 and 11250.

O. Cybersecurity:

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable Tribal law and policy cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

Sample Interagency Agreement Programmatic and Administrative Conditions

Interagency Agreement between the U.S. Environmental Protection Agency and the Indian Health Service for [Tribal Drinking Water Facilities] Construction

I. ADMINISTRATIVE TERMS AND CONDITIONS

This Interagency Agreement (IA) provides for the coordination between the Environmental Protection Agency (EPA) Region 9 Drinking Water Infrastructure Grants – Tribal Set Aside (DWIG-TSA) Program and the Indian Health Service (IHS) Sanitation Facilities Construction Program. This IA applies to funds appropriated to the EPA under section 1452(i) of the Safe Drinking Water Act, which the EPA intends to transfer to the IHS under this IA.

If the actual cost of providing the facilities is less than the amount in the Project Documents, the IHS Area Office and the EPA Region, in consultation with the Tribe, will coordinate the disposition of the remaining funds. The parties may decide to increase the scope or identify another project for funding, or the IHS may return the unused funds to the EPA. Any project changes agreed to by the parties must be reflected in the IA through an amendment prior to expiration of the IA and before allocating funds to a new project, unless the IHS decides to return the funds to the EPA. If the parties cannot come to agreement, the IHS will return the funds to the EPA.

Funds transferred by EPA to the IHS under this IA may only be used in agreements authorized by Indian Sanitation Facilities Act, 42 U.S.C. 2004a. IHS Area Offices may use up to 15 percent of the IA project funds allocated to them to support management and oversight of each project funded by this IA.

The IHS is approved to purchase equipment in accordance with its equipment management policies. The IHS will determine that the equipment is in the best interest of the government and is necessary for the performance of the projects under this IA. Disposition of the equipment will be subject to IHS equipment management policies or as specified in the Project Documents with no further accountability to EPA.

A. Resolution of Disagreements

Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

If a dispute related to funding remains unresolved for more than 30 calendar days after the parties have engaged in an escalation of the dispute, disputes will be resolved in accordance with

instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10, available at <http://www.fms.treas.gov/tfm/index.html>.

B. Duration of Agreement and Termination Procedures

This agreement shall continue in effect until IHS or EPA provides written notice of termination, or when a project (or projects) funded under this agreement are completed or are no longer needed for the purpose identified in the Project Documents. Any funds that are obligated up to and on the date of termination will remain obligated to the project(s) identified in this agreement. Notice shall be given to the other party at least 60 days in advance of a termination date.

As per section 4.3.2 of EPA's "Interagency Agreement Policies, Procedures, and Guidance Manual 2008" the total duration of the project period for an IA may not exceed 7 years unless (1) there is statutory or regulatory authorization for a longer period, (2) a signed waiver from an EPA Director, Office of Grants & Debarment (OGD), or designee, granting an exception is obtained, or (3) in the case of an allocation (appropriation) transfer, a shorter period is mandated, i.e., 5 years. This durational limitation includes both the original period of performance and any extensions. The initial determination of the appropriate length of the project period should take this limitation into account. (For example, an IA between IHS and EPA normally has a 5-year term. The IA can be extended upon approval of the parties for up to two more years for a total IA term of 7-years. An IA cannot be extended beyond the 7-year limit unless a waiver is granted by the EPA Director, Office of Grants & Debarment.) To exceed the 7-year policy limitation, a waiver request must be submitted in writing by the appropriate EPA Senior Resource Official to OGD. The OGD Director, or designee, may approve waivers on a class or individual basis because of national security concerns, circumstances of unusual or compelling urgency, unique programmatic considerations, or because the waiver would be in the public interest.

C. Sufficient Progress

EPA expressly reserves the right to terminate the IA for failure to make sufficient progress so as to reasonably ensure completion of the project within the project period (as defined in Section I.B.), including any extensions. EPA will measure sufficient progress by examining the performance required under the Statement of Work, the time remaining for performance, and/or the availability of funds necessary to complete performance. Prior to exercising this right to terminate, EPA will follow the resolution procedures cited Section I.A.

D. Cost Collection upon Cancellation

If the EPA cancels the order, the IHS is authorized to collect costs incurred prior to cancellation of the order plus termination costs, up to the total payment amount provided for under the agreement.

E. IAs with Contracts or Procurement

The IHS will use its administrative policies and procedures including those under the Buy Indian Act provisions for direct federal acquisition, to implement and execute projects funded under this IA.

F. Fiscal and Project Reporting Requirements

The IHS will update its Sanitation Tracking and Reporting System (STARS) quarterly and provide a report in STARS that may be accessed by the EPA. The report will include at minimum, project-specific estimated expenditures and actual milestones achieved to date and will be available to the respective EPA Regional DWIG Program Coordinator and to the EPA Financial Management Center. The STARS will be updated by the 30th day following the end of a quarter, beginning with the first full reporting period after funds are received by the IHS.

G. Audit Findings

If an audit determines that any direct or indirect costs in a project funded under this IA are unallowable, the parties to this IA will be notified immediately following resolution of the audit and the IHS project account will be credited for ineligible costs.

II. PROGRAMMATIC TERMS AND CONDITIONS

A. Authority and Purpose

The activities under this IA are being executed by the EPA pursuant to the Safe Drinking Water Act section 1450 (b), 42 USC 300j-9(b) and 1452(i), 42 USC 300j-12(i). The services and facilities will be provided to the Tribe by the IHS under the Transfer Act, 42 U.S.C. 2001; Indian Sanitation Facilities Act, 42 U.S.C. 2004a; and Title III of Indian Health Care Improvement Act, as amended, 25 U.S.C. 1632.

B. EPA Responsibilities

1. The EPA Regional Office shall designate a representative to coordinate its participation in projects (Regional Program Coordinator). This representative shall formally advise the respective IHS Area Office of this designation.
2. As resources permit the EPA shall provide to the IHS and Tribes technical assistance as needed to successfully meet applicable program requirements.
3. The EPA Regional Office will ensure that the proposed projects are in accordance with the Safe Drinking Water Act, annual national guidance and the Drinking Water Infrastructure Grants Tribal Set-Aside Program Final Guidelines October 1998 and the Addendums.
4. EPA Regional Office will ensure that water collection and analysis methodologies (as applicable) are in accordance with the IHS/EPA jointly developed Quality Assurance Project Plan (QAPP).
5. EPA is responsible for any distribution within the EPA of the final technical and financial report provided to the respective EPA Regional Program Coordinator after the construction phase completion.
6. The EPA will not be a signatory on any Project Summaries or Memorandums of Agreement.

7. Where appropriate, EPA Regions shall provide comments to IHS Area Offices on the design and planning documents associated with projects funded by the IA within 30 days of receiving said documents.
8. EPA Regions shall monitor construction progress with: data from the IHS database, discussions with the IHS Area Offices and field site visits as necessary to ensure the level of expended funds is reasonable given the reported milestone dates. The EPA will consult with the IHS Area Office quarterly to discuss project status.
9. The EPA Regions will participate in the final project inspection, as deemed necessary and resources permitting. At project completion, the EPA Region will review the final technical and financial reports provided by the IHS Area Office and will initiate the necessary EPA close-out process.
10. The EPA Regions will acknowledge and respond to IHS Area invitations to participate in project activities within 10 days of receipt.

C. IHS Responsibilities

1. The IHS shall implement and execute projects funded under this IA using its administrative policies and procedures as described in the Indian Health Manual, Part 5, Chapter 2, Memorandum of Agreement.
2. Project Documents (Project Summary/ Memorandum of Agreement or Arrangements as described in 42 U.S.C. 2004a) will be developed by the IHS Area Office, in consultation with the respective Tribes and respective EPA Regional Office.
3. Unless otherwise stipulated in the project documents, the IHS shall be the lead agency in assuring compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other applicable Federal requirements only if the EPA funds are deposited in the IHS financial system (UFMS).
4. Quarterly progress reports will be available to EPA through the IHS STARS system as stated in I.F., Fiscal and Project Reporting Requirements. Should the need arise and if the agencies mutually agree, the report may be supplemented.
5. The EPA Regional Office shall be formally notified of and invited to participate in the conceptual design meeting, the final plans and specification review, and the final inspections for projects in which EPA funds are utilized. IHS shall notify the EPA at least 30 business days prior to these events to allow optimal participation. Notification will be by e-mail.
6. As applicable, upon completion of each project under this IA, all rights title and interest to the provided sanitation facilities shall be transferred to the Tribe or to a responsible entity identified by the Tribe in accordance with the Project Documents. Each respective IHS Area Office shall make such arrangements as they determine necessary for the ownership and operation and maintenance of the completed facilities.

7. For each project funded under this IA, a final technical and financial report shall be provided no later than 365 days after construction phase completion to the respective EPA Regional Program Coordinator. Electronic copies of the report shall be provided to the EPA representatives identified above in Fiscal Reporting Requirements.

8. The water sampling umbrella Water Sample Collection and Analysis Quality Assurance Project Plan (QAPP) for Tribal Drinking Water and Wastewater Infrastructure Projects, developed jointly between EPA and IHS, will be implemented by IHS as applicable.

9. For an EPA funded project for a pilot water treatment study or for a specific hydraulic network model calibration, the IHS will prepare an individual project specific Quality Assurance Project Plan (QAPP) in accordance with EPA Guidance for Quality Assurance Project Plans (QA/G-5) (EPA 2001) which can be found at <http://www.epa.gov/QUALITY/qs-docs/r5-final.pdf>. The QAPP must be submitted for review and approval by the EPA OW QA Officer through the EPA IA Project Officer, who must approve D-6 the Quality Assurance procedures or standards in writing. EPA will have 60 calendar days to approve the QAPP submitted by IHS, after that time the QAPP will be considered final.

10. Restrictions on FY17 Funding for Corporations with Unpaid Federal Tax Liabilities and Felony Convictions

This interagency agreement (IA) obligates and transfers or advances EPA funds appropriated under Public Law 115-31 (the Consolidated Appropriations Act, 2017). As a result, this IA is subject to the provisions contained in the Consolidated Appropriations Act, 2017, Public Law 115-31, Division E, Title VII, Sections 745 and 746, regarding unpaid federal tax liabilities and federal felony convictions, which also have been included in prior appropriations acts.

The IHS is also subject to the same sections of the Act, in accordance with Department of Health & Human Services acquisition policies. The IHS will forward to the EPA Award Official, within 45 days, any documentation supporting an award where a written determination was made by the agency debarring and suspending official that suspension or debarment was considered but is not necessary to protect the interests of the Government.

11. Advance Payment for Indian Health Service Interagency Agreements

This Interagency Agreement is handled through Advance Payment and is tracked in IHS' Sanitation Tracking and Reporting System (STARS). Therefore, the reporting instructions in Administrative Condition F, *Fiscal and Project Reporting Requirements*, and Programmatic Condition C, *IHS Responsibilities*, Section 4, should be followed closely.

Financial Inquiries may be emailed to CFC_Fed_Pay@epa.gov or sent to the following address:

**U.S. EPA CFC
ATTN: Elizabeth McGuffey
26 W. ML King Dr.
Cincinnati, OH 45268-7002**