



AMERICAN INDIAN ENVIRONMENTAL OFFICE

WASHINGTON, D.C. 20460

January 19, 2024

MEMORANDUM

SUBJECT: Intertribal Consortia Eligibility for EPA Funding Opportunities

FROM: Felicia Wright, Deputy Director

TO: EPA Deputy Assistant Administrators
EPA Deputy Regional Administrations
EPA Tribal Division Directors

The purpose of this memorandum is to reinforce EPA's long-standing policy with regard to intertribal consortia eligibility for EPA financial assistance agreements, including when consortia are organized as nonprofit organizations.

EPA is experiencing historic funding levels for financial and technical assistance opportunities with Tribal, state, local, and community partners. This includes funding to EPA under new statutory authorities (e.g., the Inflation Reduction Act of 2022) as well as increases in funding under existing statutory authorities for multiple EPA programs and grant authorities. Some of these funding authorities include federally recognized Tribal governments (Tribes) and intertribal consortia as eligible entities in new or in undefined ways either by statute or through program guidance extending eligibility to intertribal consortia. As a result, the American Indian Environmental Office (AIEO) has received several inquiries regarding the role and eligibility of intertribal consortia as applicants. This memorandum addresses the most common questions we have received and emphasizes a consistent approach for determining eligibility of intertribal consortia for EPA financial assistance agreements.

Programs and regions with specific questions on intertribal consortium eligibility, especially in the development of new programs, are encouraged to work with their Regional Council and AIEO, in partnership with the Office of General Counsel, to ensure appropriate and consistent application of this policy.

What is an Intertribal Consortium?

Per regulation at 40 CFR §35.504, an intertribal consortium, for the purpose of EPA funding opportunities, is defined as a partnership between two or more Tribes that is authorized by the

governing bodies of those tribes to apply for and receive assistance under one or more of the programs listed in 40 CFR §35.501 and other specified programs. Further, in 40 CFR § 35.501(b), the requirements in § 35.500 through § 35.518 of 40 CFR Subpart B also apply to grants to Tribes and intertribal consortia under environmental programs established after the subpart is effective, if specified in Agency guidance for such programs and unless otherwise prohibited by statute or regulation.

How does EPA work with Intertribal Consortia as applicants?

Consistent with EPA's regulatory authorities, it is EPA policy to approach the definition, eligibility, and documentation requirements of applicants consistently across all EPA funding opportunities. Accordingly, EPA is clarifying and reinforcing the following for consistent use by EPA:

- Definition of intertribal consortia,
- Approach for determining eligibility of intertribal consortia for funding opportunities, and
- Application of regulatory documentation requirements for intertribal consortia.

Using a consistent definition and approaches when working with intertribal consortia applies to all EPA funding programs, including funding opportunities not specified in 40 CFR §35.501, unless there is clear Congressional intent to the contrary.

The consistent application of EPA's definition, eligibility determination, and regulatory documentation requirements for intertribal consortia will benefit Tribes, intertribal consortia, and EPA through strengthened collaboration, work plans, and outcomes of intertribal consortia projects. These actions will ensure that the autonomy of individual Tribes of the intertribal consortia is respected in the grant process, that grants to intertribal consortia align with their member Tribes' own proposals, and that planned and funded activities are supported by all consortia member Tribes.

Program guidance, including grant guidance and competitive notices of funding opportunities under the Inflation Reduction Act (IRA), Bipartisan Infrastructure Law (BIL), and other EPA assistance programs, should establish that the eligibility and documentation requirements in 40 CFR §35.504 are applicable to intertribal consortia applicants. Per 40 CFR §35.504, an intertribal consortium must submit to EPA adequate documentation of: (1) the existence of the partnership between Tribal governments, and (2) authorization of the consortium by all its members (or in the case of the EPA Indian Environmental General Assistance (GAP) Program, all members that are federally-recognized Tribes) to apply for and receive the grant(s) for which the consortium has applied. In addition, all EPA financial assistance programs should include the definition found in EPA's grant regulations for consistency when intertribal consortia are eligible applicants.

AIEO identified flexibilities to reduce the administrative burden associated with documentation requirements when intertribal consortia are applying for and receiving GAP grants in the 2022 GAP Guidance on Financial Assistance Agreements. Programs are encouraged to consider these or similar flexibilities for intertribal consortia applicants.

What is meant by Intertribal Consortia applying “as a Tribe”

EPA has interpreted its statutory authorities to award grants to Tribes to include the authority to award grants to intertribal consortia absent clear Congressional intent to the contrary. When an intertribal consortium is not explicitly excluded from applying (and when they meet the other criteria for eligibility relevant to the particular funding opportunity), an intertribal consortium may apply for EPA grants as a Tribe, given they meet the regulatory documentation requirements. Generally, this means that an intertribal consortium applies for and receives funding from EPA “as a Tribe.” EPA’s intent is that Tribes that form intertribal consortia may be able to use limited resources more efficiently and address environmental issues more effectively than they could if each Tribe separately developed and maintained separate environmental programs.

Is an Intertribal Consortium a Nonprofit Organization?

An intertribal consortium may be organized as a nonprofit organization. Depending on the eligibility requirements of the funding opportunity, an intertribal consortium organized as a nonprofit organization may be eligible to apply for and receive funding as an intertribal consortium (i.e., as a Tribe) or as a nonprofit organization. An intertribal consortium that is organized as a nonprofit organization may be eligible and apply for EPA grants where nonprofit organizations are listed as eligible entities. When an organization is applying based on its eligibility as a nonprofit, and not based on its eligibility as an intertribal consortium, the eligibility and documentation requirements defined in 40 CFR Part 35 are not applicable.

Conversely, any organization applying as an intertribal consortium, regardless of whether the intertribal consortium has nonprofit status, is required to meet the eligibility and documentation requirements of intertribal consortia established in 40 CFR §35.504. For grant programs that do not include nonprofit organizations as eligible entities (such as, for example, GAP grants), the intertribal consortium applying as a nonprofit organization is not eligible for the grant.

Generally, nonprofit bylaws, tax status, and other similar documentation do not meet, and are not a substitute for, the documentation requirements defined in 40 CFR §35.504, although this documentation may be necessary to meet a separate eligibility requirement relating to nonprofit status depending on the statutory authority for the EPA financial assistance program.

What is the difference between applying for a grant as partners versus applying as an Intertribal Consortium?

Many EPA funding opportunities include partnerships, such as partnerships that are statutorily required for Tribes to be eligible for funding; these are not the same as partnerships for purposes of eligibility for intertribal consortia applicants and are not subject to the same eligibility and documentation requirements. For example, a Tribal applicant may identify collaborative partners – other Tribes, local jurisdictions, nonprofits, universities, and/or others – when applying for certain EPA funding opportunities if allowable in the program guidance or notice of non-competitive funding availability or notice of funding opportunity for competitive programs. Partnerships of this nature typically require letters of support.

Additionally, there may be statutory provisions governing the eligibility of partnerships for particular EPA funding programs. For example, section 138(b)(3) of the Clean Air Act provides that intertribal consortia are eligible for grants in their capacity as community based nonprofit organizations (CBOs) but Tribes themselves must enter into a partnership with CBOs to be eligible which makes a consistent approach to documenting intertribal consortia eligibility particularly important.

Is a Consortium that includes State Recognized Tribes Eligible for EPA Grants?

In general, the above definition of intertribal consortia means that all members of the intertribal consortium must be eligible for the grant in order for the intertribal consortium to apply for and receive the grant. As such, if a grant opportunity is only available to federally recognized Tribes, an intertribal consortium that has state recognized Tribes as members is not eligible to apply for and receive that grant.

Is an Alaska Native Corporation an Intertribal Consortium?

No. Alaska Native Corporations (ANCs) are unique entities in that they are state-chartered for-profit corporations established pursuant to the Alaska Native Claims Settlement Act of 1971 that are considered “Indian tribes” under some EPA grant statutes and the 2 CFR Part 200 Uniform Grant Guidance. The eligibility of ANCs to apply for and receive EPA program funds is statutorily dependent and may be subject to program specific policy and/or regulatory restrictions on eligibility. Programs should confer with the relevant funding office, Office of Regional Counsel and/or the Office of General Counsel, as appropriate, on questions regarding ANC eligibility. While ANCs are not the same as intertribal consortia, some EPA programs may consider applications for funding from intertribal consortia that include ANCs.

If you have any comments or questions, please feel free to contact me at wright.felicia@epa.gov or Lisa Berrios, AIEO Senior Advisor, at berrios.lisa@epa.gov.

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