



November 2016

INDIAN ENERGY DEVELOPMENT

Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development

Accessible Version

Why GAO Did This Study

Indian tribes and their members hold considerable energy resources and may use these resources to provide economic benefits and improve the well-being of their communities. However, GAO and others have found that Indian energy development is hindered by several factors, such as a complex regulatory framework, BIA workforce challenges, and limited access to energy markets.

Tribes and their members determine how to use their energy resources. In doing so, they work with multiple federal agencies with various roles in the development process—including a regulatory role, a role as provider of technical and financial assistance, or as a purchaser of energy.

GAO was asked to evaluate issues related to Indian energy development. This report examines, among other things, (1) federal efforts to help overcome factors that hinder development, (2) BIA's efforts to address workforce challenges, and (3) federal efforts to implement a preference authority to purchase energy from tribes. GAO analyzed federal data and documents and interviewed tribal and federal officials.

What GAO Recommends

GAO is making 10 recommendations, including that the Secretary of the Interior identify resources and a funding model for the Energy Subgroup, involve other agencies in the Service Center so it is a single point of contact for the regulatory process, and require BIA to undertake workforce planning activities. GAO is also recommending that the Administrator of the GSA develop implementing guidance relating to purchasing energy from tribes. Interior, DOE, and GSA concurred with GAO's recommendations.

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Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development

What GAO Found

Two key federal initiatives led by the Department of the Interior (Interior)—the interagency White House Council on Native American Affairs' Energy Subgroup (Energy Subgroup) and Interior's Indian Energy Service Center (Service Center)—were implemented to help improve collaboration and the effectiveness of federal efforts to fulfill management responsibilities for Indian lands, assist tribes in developing their energy resources, and overcome any related challenges. However, the Energy Subgroup and the Service Center have not incorporated leading collaborative practices, which may limit the effectiveness of these initiatives to address the factors that hinder Indian energy development. For example, GAO found the following:

- **Energy Subgroup:** Participating agencies have dedicated few staff and financial resources to the Subgroup and have not identified resources needed or a funding model—a leading practice to sustain collaborative efforts. Some participating agency officials noted that the effectiveness of the Subgroup is limited without dedicated resources. They also stated that key activities completed to date by the Subgroup are the result of agencies voluntarily applying budgetary resources to specific activities. Without dedicated resources and a funding model to support its activities, the extent to which the Energy Subgroup will be able to effectively accomplish its goals is unclear.
- **Service Center:** Interior has recognized the need for collaboration in the regulatory process and described the Service Center as a central point of collaboration for permitting that will break down barriers between federal agencies. However, some regulatory agencies, such as the Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Army Corps of Engineers have not been included as participants. Without the involvement of key regulatory agencies, the Service Center will be limited in its ability to improve efficiencies in the regulatory process for Indian energy development.

GAO and others have previously reported that Interior's Bureau of Indian Affairs (BIA) has longstanding workforce challenges that have hindered Indian energy development. In this review, GAO found that BIA has high vacancy rates at some agency offices and that the agency has not conducted key workforce planning activities, such as an assessment of work skills gaps. These workforce issues further contribute to BIA's inability to effectively support Indian energy development. Federal internal control standards recommend agencies identify the key skills and competencies their workforces need to achieve their goals and assess any skills gaps. Until BIA undertakes such activities, it cannot ensure that it has a workforce with the right skills, appropriately aligned to meet the agency's goals and tribal priorities.

A provision in the Energy Policy Act of 2005 authorizes the federal government, the largest single consumer of energy in the nation, to give preference to tribes for purchases of electricity or other energy products. However, the General Services Administration (GSA), the federal agency with primary responsibility for purchasing energy, has not developed guidance to implement this provision government-wide; doing so could help to increase tribal access to the federal government's energy purchasing programs.

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Abbreviations

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
Council	White House Council on Native American Affairs
DOE	Department of Energy
DOD	Department of Defense
Energy Subgroup	White House Council on Native American Affairs' Energy Subgroup
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
FWS	U.S. Fish and Wildlife Service
GSA	General Services Administration
HUD	U.S. Department of Housing and Urban Development
IE	Office of Indian Energy
IEED	Office of Indian Energy and Economic Development
Interior	Department of the Interior
NEPA	National Environmental Policy Act
ONRR	Office of Natural Resources Revenue
OST	Office of the Special Trustee for American Indians
Service Center	Indian Energy Service Center
USDA	U.S. Department of Agriculture

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November 10, 2016

The Honorable John Barrasso
Chairman
Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

Development of energy resources is vital for the livelihood, well-being, and long-term economic sustenance of some Indian tribes and their members, in part because energy development provides opportunities to improve poor living conditions and decrease high levels of poverty.¹ Tribes and their members determine how to use Indian energy resources to meet the needs of the community. However, if the resources are held in trust or restricted status, the Department of the Interior's (Interior) Bureau of Indian Affairs (BIA)—through its 12 regional offices, 85 agency offices, and other supporting offices—generally must review and approve leases, permits, and other documents required for development.² Other federal agencies—such as the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and the Environmental Protection Agency (EPA)—also have regulatory roles and involvement with energy development.

Although tribes are pursuing a variety of opportunities to develop their energy resources, federal mismanagement of Indian resources and other factors hindering development of Indian energy resources have been reported for nearly a decade by Interior's Inspector General, us, and others. For instance, in 2012, Interior's Inspector General found that weaknesses in BIA's management of oil and gas resources contributed to a general preference by industry to acquire oil and gas leases on non-

¹Depending on the tribe's preference, Indian tribes may be referred to as tribal nations, bands, villages, pueblos, rancherias, and communities. Members are individuals who are enrolled citizens or members of a tribe. In this report, we use these terms interchangeably depending upon a tribe's preference.

²Trust resources are held for the beneficial interest of the tribe or a member, and restricted resources are owned by the tribe or a member but subject to restrictions on alienation. Trust and restricted resources generally cannot be leased without approval of the Secretary of the Interior, who has generally delegated this authority to BIA.

Indian lands over Indian lands.³ In addition, in June 2015, we reported that BIA staff limitations, a complex regulatory framework that involved multiple agencies, tribes' limited access to capital and energy markets, and other factors also hindered Indian energy development.⁴ At that time, we recommended that Interior take four actions to help address BIA's management shortcomings related to incomplete data and oversight of its internal process for reviewing and approving energy-related documents. BIA generally agreed with our recommendations and stated that it was taking some actions in response to them. BIA also stated that the formation of its Indian Energy Service Center (Service Center) would help to increase coordination among the numerous regulatory federal agencies involved with Indian energy development and would make the agency more efficient in its management role.

In June 2013, Executive Order 13647 established the White House Council on Native American Affairs (Council) to improve the coordination of federal programs and the use of available resources, and to make the federal government work more efficiently to find solutions to the challenges facing tribes and their members. The Council established five subgroups, including an Energy Subgroup, to discuss current initiatives and identify interagency solutions. The Energy Subgroup is co-chaired by the Secretaries of Energy and the Interior and comprises 11 key federal agencies that could help tribes to achieve their energy goals. The General Services Administration (GSA) is one of the agencies included in the Energy Subgroup because it is responsible for purchasing energy for the federal government—the largest consumer of energy in the United States. To encourage the federal government to work with tribes to meet its energy needs, the Energy Policy Act of 2005 included a provision authorizing federal agencies to give preference to tribal entities when purchasing electricity and energy products.⁵

You asked us to review federal efforts to assist Indian energy development. This report examines (1) whether the actions of the Energy Subgroup and Service Center have helped to overcome long-standing

³Office of Inspector General, Department of the Interior, *Oil and Gas Leasing In Indian Country: An Opportunity For Economic Development*, Report No. CR-EV-BIA-0001-2011 (Washington, D.C.: 2012).

⁴GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, [GAO-15-502](#) (Washington, D.C.: June 8, 2015).

⁵Pub. L. No. 109-58, § 2602(d) (2005); 25 U.S.C. § 3502.

factors hindering development, (2) BIA's efforts to address workforce challenges that hinder Indian energy development, (3) the progress of federal agencies to implement the preference authority to purchase energy from tribes, and (4) any additional opportunities stakeholders identified that federal agencies could take to help overcome factors hindering Indian energy development.

To examine actions taken by the Council and Service Center that may overcome long-standing factors that have hindered Indian energy development, we reviewed documentation and interviewed key officials associated with these efforts. The factors that have hindered Indian energy development are found in our prior work, as well as reports from Interior's Inspector General, the Commission on Indian Trust Administration and Reform and congressional testimony.⁶ The factors include shortcomings in BIA's management of Indian energy development as well as additional factors that are generally outside of BIA's management responsibilities, such as a complex regulatory framework and infrastructure limitations. For the Council's Energy Subgroup, we reviewed the Subgroup's enabling documentation relevant to our review, which established policy goals and workgroups, as well as a document that reported the Energy Subgroup's key activities. We interviewed federal officials representing key agencies participating in the Subgroup, including the Department of Energy's (DOE) Office of Indian Energy (IE), Interior, GSA, and the U.S. Department of Agriculture (USDA); the Executive Director of the Council; and the Special Assistant to the President for Native American Affairs. We assessed the extent to which these activities and processes met best practices for collaboration that we have identified in our prior work.⁷ For the Service Center, we collected and reviewed available documentation, including a memorandum of understanding establishing the Service Center, Interior's budget justification reports, congressional testimony, a transcript of an Interior

⁶[GAO-15-502](#).

⁷GAO, *Managing for Results: Implementation Approaches Used to Enhance Collaboration in Interagency Groups*, [GAO-14-220](#) (Washington, D.C.: Feb. 14, 2014); GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012); GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, [GAO-03-669](#) (Washington, D.C.: July 2, 2003); and GAO, *Mergers and Transformation: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, [GAO-03-293SP](#) (Washington, D.C.: Nov. 14, 2002).

tribal budget meeting, and documents that reported the Service Center's planned and completed tasks.

We also reviewed documents from an interagency planning meeting of the Indian Energy and Minerals Steering Committee that included representatives from BIA, BLM, Interior's Office of Natural Resources Revenue (ONRR), Interior's Office of the Special Trustee for American Indians (OST), and Interior's Office of Indian Energy and Economic Development (IEED) at which updates related to the Service Center were presented. We interviewed federal officials, including representatives from BIA and IEED. We also interviewed 8 of the 12 BIA regional directors and 10 of the 85 BIA agency offices to understand their role establishing the Service Center. The data we collected cannot be generalized to all BIA regional and agency offices. We selected BIA regional and agency offices that work directly with tribes that have a history of energy development or expressed an interest in energy development and that represent different geographic locations. Further, to obtain additional perspectives on the Service Center, we interviewed officials representing 30 tribal nations and representatives from two intertribal organizations. Because this was a nonprobability sample, our findings are not generalizable to other tribal nations. We assessed the extent to which Interior's activities and processes for developing and implementing the Service Center follow Interior's *Departmental Manual*,⁸ which identifies requirements for the creation of a new office; best practices for modernizing the federal permitting and review process identified by an interagency committee; and leading practices for permitting, collaboration, and organizational change that we have identified in our prior work.⁹

To examine BIA's efforts to address its workforce challenges, we reviewed documentation from BIA on the status of its workforce and any known gaps. We collected workforce data from 17 BIA agency offices that work directly with tribes that have a history of energy development or have expressed an interest in energy development. The data we collected cannot be generalized to all BIA agency offices. To assess the reliability of these data and this information, we (1) reviewed the data for obvious errors in completeness and accuracy, (2) interviewed BIA superintendents who were knowledgeable about the data, and (3) verified the results of our work with agency officials. We found the data to be

⁸*Department of the Interior's Departmental Manual*, 110 DM 8, effective May 5, 2015.

⁹[GAO-14-220](#), [GAO-12-1022](#), [GAO-03-669](#), and [GAO-03-293SP](#).

sufficiently reliable for our purposes. We interviewed 8 of the 12 BIA regional directors, the BIA director, and other BIA officials identified by BIA as relevant to workforce planning and management to identify actions taken to determine the status of its workforce. We interviewed consultants conducting a BIA workforce study to identify the scope and purpose of the study. We assessed the extent to which BIA's activities and processes met Office of Personnel Management standards, federal internal control standards, and leading practices for workforce planning that we have identified in our prior work.¹⁰

To identify the progress federal agencies have made to implement the preference authority for tribal energy purchases, we reviewed the provision contained in the Energy Policy Act of 2005, federal regulations, and guidance documents and interviewed federal officials from GSA and DOE. We spoke with GSA officials because the agency is involved with energy purchases for most government agencies. In addition, GSA is a member of the Federal Acquisition Regulatory Council. The Council helps direct and coordinate government-wide procurement policy and maintains the Federal Acquisition Regulation (FAR). We spoke with DOE officials because DOE developed agency-specific guidance to implement the preference authority.

To identify additional opportunities to address the factors that hinder Indian energy development, we reviewed federal documents and interviewed stakeholders, including tribal and federal officials. Specifically, we interviewed federal officials from BIA, IEED, DOE, DOE's Western Area Power Administration, USDA, GSA, and the U.S. Department of Housing and Urban Development (HUD) who may have a role associated with Indian energy development. We also interviewed officials from 30 tribal nations. We selected these tribes on the basis of their experience developing or planning to develop oil, gas, and renewable energy resources and to obtain views from tribes located in different geographic locations. Because this was a nonprobability sample, our findings are not generalizable to stakeholders not included in our review. To characterize stakeholders' views, we define the modifier "several" to mean representatives from six or more entities; "a few" means representatives

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014); GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003); and Office of Personnel Management, *The Human Capital Assessment and Accountability Framework: Systems, Standards, and Metrics* (Washington, D.C.: March 2006).

from three to five entities. We may not have identified all of the additional opportunities to address the factors that hinder Indian energy development, and as a result other opportunities may exist that we do not report. Rather, the opportunities we present are examples identified through stakeholder interviews and documentation provided in response to interviews.

We conducted this performance audit from July 2015 to November 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The U.S. Census Bureau reported in 2013 that American Indians and Alaska Natives were almost twice as likely to live in poverty as the rest of the population. A 2014 Interior report estimated that between 43 and 47 percent of American Indian families in South Dakota earned incomes below the poverty line, compared with a national average of about 23 percent for all Native American families.¹¹ In addition, according to DOE documents, Indian communities are more likely to live without access to electricity and pay some of the highest energy rates in the country—hindering economic development and limiting the ability of tribes to provide their members with basic needs, such as water and wastewater services and adequate health care. Considerable energy resources, including domestic mineral resources such as oil, gas, and coal, and resources with significant potential for renewable energy development, including wind, solar, hydroelectric power, geothermal, and biomass, exist throughout Indian country. Tribes may seek opportunities to use these resources as an option to create economic benefits that provide revenue for government operations and social service programs, create high-quality jobs, and offset power costs by increasing access to reliable and

¹¹U.S. Department of the Interior, Office of the Secretary, Office of the Assistant Secretary- Indian Affairs, *2013 American Indian Population and Labor Force Report* (Washington, D.C.: Jan. 16, 2014). The data in this report are from the 2010 Labor Force Survey of American Indians and Alaska Natives, combined with a larger set of statistics produced by the U.S. Census Bureau.

affordable energy for tribal buildings and individual homes.¹² For instance, in fiscal year 2015, the development of Indian-owned oil and gas resources generated more than \$1 billion in revenue for tribes and individual Indian mineral owners, according to Interior, making oil and gas resources one of the largest revenue generators in Indian country. In addition, tribes are taking advantage of renewable energy sources and developing projects that range from facility- and community-scale production, such as rooftop solar panels or a wind turbine to power a community center, to utility-scale production of hundreds of megawatts of electricity (see fig. 1).

Figure 1: Examples of Facility-, Community-, and Utility-Scale Solar Energy Projects on Tribal Lands



Facility-scale project

A 192-kilowatt solar photovoltaic system was installed on the Tonto Apache Tribe's Fitness and Recreation Center in Arizona. The installation was part of a 2014 project co-funded by a DOE grant.



Community-scale development

The Soboba Band of Luiseño Indians' 1-megawatt solar system will help power the tribal administrative building, preschool, and other community facilities, saving the tribe an estimated \$6.4 million in electricity costs over 20 years.



Utility-scale development

The first utility-scale solar project on tribal land, the 250-megawatt Moapa Southern Paiute Solar Project is intended to deliver enough energy to serve the needs of nearly 100,000 California homes through a 25-year power purchase agreement with the City of Los Angeles.

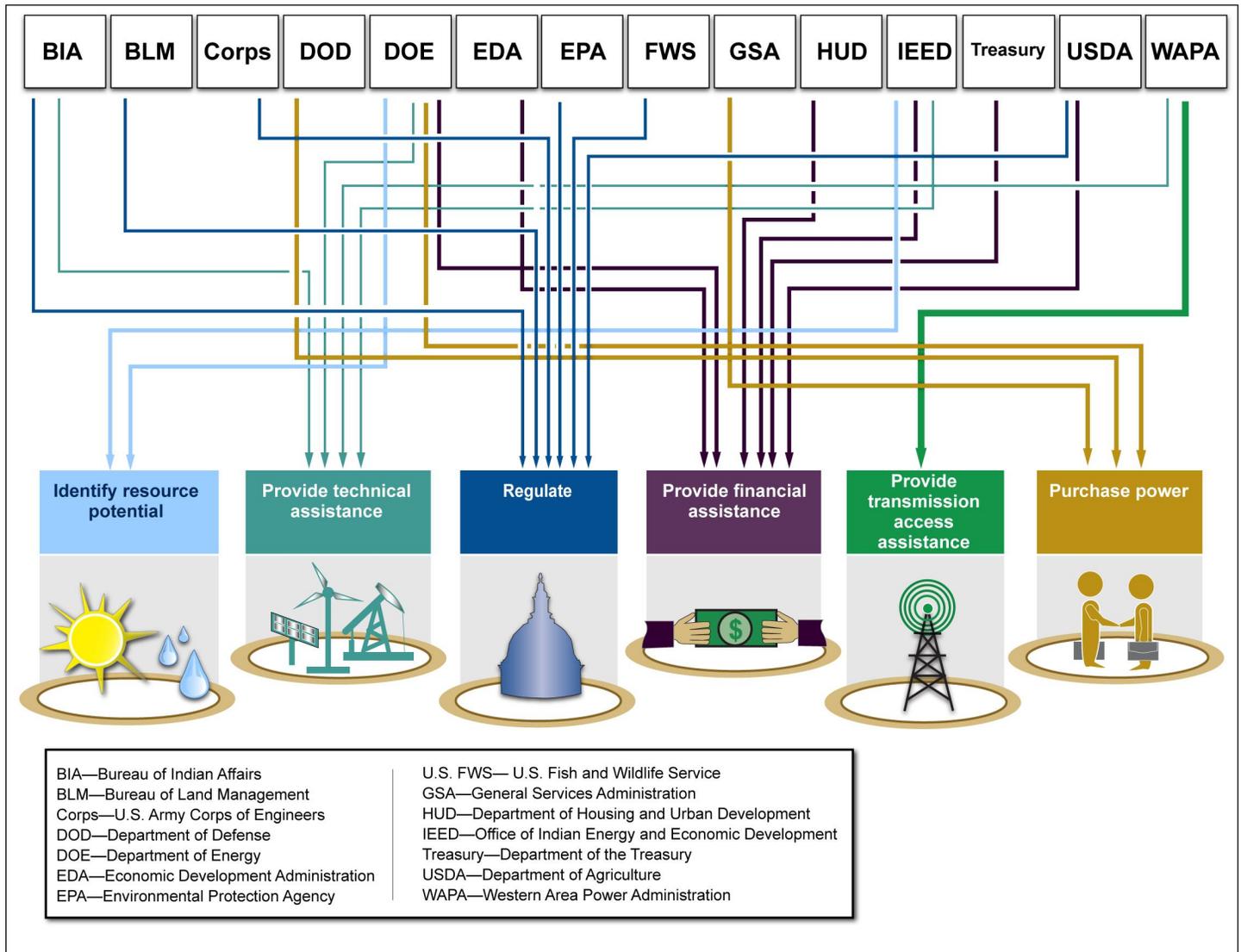
Source: Department of Energy (DOE). | GAO-17-43

¹²For the purposes of this report, we focus on federally recognized tribes. Federally recognized tribes have a government-to-government relationship with the United States and are eligible to receive certain protections, services, and benefits by virtue of their status as Indian tribes. The Secretary of the Interior is required by law to publish annually in the *Federal Register* a list of all Indian tribes that the Secretary recognizes as Indian tribes. See 81 *Fed. Reg.* 26286 (May 4, 2016). As of May 4, 2016, there were 567 recognized tribal entities.

However, the development of Indian energy resources can be a complex process involving a range of stakeholders, including federal, tribal, and state agencies. The specific role of federal agencies can vary on the basis of multiple factors, such as the type of resource, location of development, scale of development, ownership of the resource, and Indian tribe involved.¹³ Figure 2 shows various roles federal agencies may have in the development of Indian energy resources.

¹³For example, under the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act), federally recognized tribes can develop and implement their own regulations governing leasing of Indian lands for residential, business, and other purposes. 25 U.S.C. § 415. Upon approval of its regulations by the Secretary of the Interior, a tribe may negotiate and enter into leases of land for certain periods without further approvals by the Secretary. According to BIA data, BIA has approved tribal business regulations for 24 Indian tribes that may be applicable to wind or solar energy development.

Figure 2: Various Roles of Federal Agencies in the Development of Indian Energy Resources



Sources: GAO analysis of federal documentation.; GAO (images). | GAO-17-43

Note: The connecting lines between the federal agencies and the functions indicate that the agency may have a role in that function.

A short description of the agencies' roles follows.

Resource Identification. To develop energy resources, developers and operators must locate a suitable resource. To locate potential oil and gas resources, most operators use seismic methods of exploration.¹⁴ For renewable projects, developers conduct a feasibility assessment to evaluate the potential of the resource for development and determine the viability of the project, which may include evaluating market demand for power and financing opportunities. Both IEED and IE help tribes identify resource potential. For example, according to IE data, IE provided a tribe \$210,000 in 2012 to identify available solar and biomass energy resources, characterize solar and biomass energy technologies, and analyze the technical and potential economic viability of projects.

Technical and financial assistance. IE and IEED manage the federal government's financial and technical assistance programs dedicated to Indian energy development. IE provides federally recognized tribes and tribal entities financial and technical assistance to promote Indian energy development and efficiency, reduce or stabilize energy costs, and bring electrical power and service to tribal communities and the homes of tribal members. For example, in 2015, IE awarded technical assistance to an intertribal corporation for a survey of wind resources, a survey of transmission and environmental constraints, and market analysis for 16 potential wind turbine deployment sites. According to a DOE report, IE provided \$48 million to assist more than 180 tribal energy projects from 2002 through 2014. IE also offers education through webinars, forums, and workshops. IEED serves tribes and their members by providing technical and financial assistance for the exploration, development, and management of tribal energy resources. According to IEED officials, IEED provided about \$52 million to assist 340 tribal energy projects from 2002 through 2015. According to its data, IEED is assisting a tribal member to develop a 5,000-acre solar project by helping secure transmission line access with potential right-of-way landowners, and by meeting with county commissioners to gain support for the project.¹⁵ In some

¹⁴The seismic method of exploration introduces energy into the subsurface through explosions in shallow "shot holes" by striking the ground forcefully (with a truck-mounted thumper) or by vibration methods. A portion of the energy returns to the surface after being reflected from the subsurface strata.

¹⁵The development of Indian energy resources generally requires an operator or developer to cross Indian lands to access a development site or install pipelines or transmission lines needed to export the energy to market. According to BIA, a right-of-way is a legal right to cross land, including tribal land, individually owned Indian land, or government land, for a specific purpose, including but not limited to building and operating a line or road.

instances, both IE and IEED provide assistance for a project. For example, IE and IEED coordinated to help a tribal solar project. IEED provided an engineering design grant, and IE provided an installation grant and technical assistance.

For the past 6 years, IEED has also provided assistance on an as-needed basis to BIA agency offices by assigning staff for a period of time—generally a year or longer—to perform such tasks as organizing oil and gas records, clearing backlogs of energy-related documents, reviewing leases, and helping BIA agencies fulfill requirements under the National Environmental Policy Act (NEPA).¹⁶ For instance, according to a BIA official, IEED helped a BIA agency office by conducting 1,584 NEPA and right-of-way compliance inspections for energy-related activities involving oil and gas well pads, access roads, and pipelines. In another example, IEED helped a BIA agency office by reviewing environmental documents and conducting site surveys for 77 proposed oil and gas well pads.

Other federal agencies, including USDA, HUD, Commerce’s Economic Development Administration, and Treasury, can also provide financial assistance to tribes to explore and develop their energy resources. For example, according to its data, USDA awarded a \$500,000 grant through its Rural Energy for America Program in fiscal year 2015 to a tribal entity seeking to develop a hydroelectric project. Also, HUD data shows that in fiscal year 2015 a tribe used funds provided through HUD’s block grant program to extend transmission lines to communities that lack basic electrical service.

Regulate. Multiple federal agencies have a regulatory role associated with Indian energy development. For example, BIA approves seismic exploration permits for operators to identify oil and gas resources, maintains surface and mineral ownership records, identifies and verifies ownership of land and resources, and reviews and approves a number of energy-related documents—such as surface leases, mineral leases for the right to drill for oil and gas resources, and right-of-way agreements. In addition, BLM issues drilling permits to operators developing Indian oil and gas resources after receiving BIA concurrence to approve the permits. Further, EPA issues permits for air emissions that may be

¹⁶Under NEPA, federal agencies are required to evaluate the likely environmental effects of certain major federal actions, such as approving energy-related documents, by using an environmental assessment or, if the projects likely would significantly affect the environment, a more detailed environmental impact statement.

required for some oil and gas development, and FWS issues permits for incidental deaths of certain wildlife species, which may be needed for a wind project.¹⁷ If energy development affects navigable waters, the U.S. Army Corps of Engineers may need to issue a permit.

Provide transmission access assistance. Utility-scale renewable energy projects need to connect to the electric grid to transmit power generated from the project, along transmission lines, to a destination. DOE's Western Area Power Administration, along with other power administration agencies, is responsible for marketing and transmitting electricity across the United States and can help tribes to better understand transmission capacity, identify options for accessing available capacity on transmission lines, and assist with interconnection requirements. For example, according to officials from the Western Area Power Administration, it partnered with a tribal utility authority to resolve transmission congestion affecting a proposed 27-megawatt utility-scale solar project.

Purchase power. To be economically feasible, utility-scale renewable energy projects need a customer to purchase their power. The federal government is the nation's largest energy consumer. In fiscal year 2013, the government spent about \$6.8 billion on energy for over 3.1 billion square feet of buildings and facilities—an area about the size of 50,000 football fields.¹⁸ GSA has general statutory authority to enter into utility services contracts of up to 10 years for all federal agencies.¹⁹ GSA has delegated the authority to enter into contracts for public utility services to the Department of Defense (DOD) and to DOE for procurements by those agencies. The Energy Policy Act of 2005 encourages federal agencies to purchase electricity, energy products, and by-products from tribal entities. Specifically, the act includes a provision authorizing federal agencies to give preference to a tribe or tribal enterprise when purchasing electricity or any other energy or energy by-product as long as federal agencies do not pay more than the prevailing market prices or obtain less than prevailing market terms and conditions.

¹⁷Take permits may be required under several acts, including the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d, and the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544.

¹⁸GAO, *Energy Savings Performance Contracts: Additional Actions Needed to Improve Federal Oversight*, [GAO-15-432](#), (Washington, D.C.: June 17, 2015).

¹⁹40 U.S.C. § 501.

White House Council on Native American Affairs Energy Subgroup

The Council was established by executive order in June 2013. The executive order calls for the Secretary of the Interior to lead the Council, the Council to meet at least three times per year, and Interior to provide funding and administrative support to the Council. According to an Interior document, the Council will improve efficiencies by coordinating work across the federal government and use an “all-of-government approach” to find solutions that address tribal needs. To accomplish its goals, the Council includes five subgroups—(1) energy; (2) health; (3) education; (4) economic development and infrastructure; and (5) environment, climate change, and natural resources—to discuss current initiatives and identify interagency solutions.²⁰ The Energy Subgroup was formed in November 2013 with the Secretaries of Energy and the Interior as co-chairs. In May 2014, the Energy Subgroup identified nine additional federal agencies that should be included as participants and established policy goals for the Subgroup that, if accomplished, may help to overcome some of the factors that we previously identified as hindering Indian energy development.²¹ For example, in June 2015, we reported that tribes’ limited access to capital had hindered development.²² One of the Energy Subgroup’s goals is to evaluate, align and coordinate financial and technical assistance programs to leverage agency resources, funding, and expertise. Similarly, in June 2015, we found that the development of Indian energy resources is sometimes governed by multiple federal, tribal, and, in certain cases, state agencies and can involve significantly more steps, cost more, and take more time than the development of private and state resources.²³ One of the Energy Subgroup’s goals is to evaluate opportunities to streamline and accelerate regulatory processes.

According to DOE and Interior officials, since May 2014, the federal agencies that formed the Energy Subgroup have taken the following actions:

- IE and IEED signed a memorandum of understanding in June 2016 as a format for collaboration between the two agencies;

²⁰According to Interior officials, a subgroup that will focus on public safety and justice is in development.

²¹[GAO-15-502](#).

²²[GAO-15-502](#).

²³[GAO-15-502](#).

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- IE and IEED began to meet regularly in August 2015 to discuss projects involving both agencies and grant release dates, among other things;
 - IE, with input from numerous other agencies, developed a web-based tool that provides information about grant, loan, and technical assistance programs available to support tribal energy projects;
 - IE hosted events to encourage tribal engagement, such as the September 2015 *National Tribal Energy Summit: A Path to Economic Sovereignty*; and
 - IE, Interior, USDA, GSA, DOD, and Treasury convened a meeting to discuss opportunities to provide technical and financial assistance to a planned 1-gigawatt wind and transmission infrastructure project.

Indian Energy Service Center

In response to tribal requests for increased coordination and more efficient management of their resources from the numerous regulatory federal agencies involved with Indian energy development, in 2014, Interior took initial steps to form a new office, the Service Center, composed of staff from four Interior agencies—BIA, BLM, ONRR, and OST—with BIA as the lead agency. BIA’s fiscal year 2016 budget included \$4.5 million to form the Service Center in Lakewood, Colorado. According to Interior’s fiscal year 2016 budget justification, the Service Center is intended to, among other things, help expedite the leasing and permitting processes associated with Indian energy development. Among its accomplishments, the Service Center has (1) developed a memorandum of understanding among BIA, BLM, ONRR, and OST outlining the management and operation of the Service Center; (2) developed and conducted a training course on oil and gas development standard operating procedures for 462 Interior employees at eight locations across the country; and (3) hired several positions, including a Director and Deputy Director.²⁴

²⁴Memorandum of Understanding: Management and Operation of the Indian Energy Service Center, Lakewood Colorado. Signed by BIA, BLM, ONRR, and OST between Oct. 6, 2015 and Dec. 7, 2015.

The Effectiveness of the Energy Subgroup and Service Center in Helping Overcome Factors Hindering Indian Energy Development May Be Limited by Several Factors

The Energy Subgroup Has Not Fully Incorporated Leading Practices for Collaboration, Which May Limit Its Effectiveness

The Energy Subgroup has not fully incorporated leading practices that can help agencies enhance and sustain collaborative efforts, which may limit its effectiveness in addressing long-standing factors that hinder Indian energy development. Our prior work on issues that cut across multiple agencies, as Indian energy development does, has shown that collaborative approaches can increase the effectiveness of federal efforts. Our prior work has also found that agencies face numerous challenges in their efforts to collaborate.²⁵ To overcome differences in agency missions, cultures, and established ways of doing business, collaborative efforts, such as the Energy Subgroup, can use leading practices that have been shown to enhance and sustain these efforts. Specifically, in September 2012, we identified sustained leadership, dedicated resources and staff, and active participation of all relevant stakeholders, among other things, as leading practices for effective collaboration.²⁶ Specific leading practices the Energy Subgroup has not fully incorporated in its implementation efforts following.

Sustained leadership is uncertain. DOE has not designated a career employee of the federal government to serve as its co-chair of the Energy

²⁵GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); *Managing for Results: Barriers to Interagency Coordination*, [GAO/GGD-00-106](#) (Washington, D.C.: Mar. 29, 2000); *Rural Water Infrastructure: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region*, [GAO-10-126](#) (Washington, D.C.: Dec. 18, 2009); and [GAO-12-1022](#).

²⁶[GAO-12-1022](#).

Subgroup. Instead, DOE designated an appointed official to serve as the co-chair, and that individual may not remain in the position with the upcoming presidential transition. According to agency officials, their focus has been to complete more time-sensitive tasks, and selecting a long-term co-chair has not been a priority. Similarly, Interior originally designated an appointed official to serve as its co-chair of the Energy Subgroup, but in August 2016 Interior designated a senior-level career employee of the federal government to serve as co-chair, according to Interior officials. Interior officials also cited higher priorities as a reason for not identifying a career employee sooner, but these officials told us that the upcoming presidential transition increased the urgency to identify a long-term leader. The Executive Order establishing the Council allows for senior-level officials to perform Council duties, which may include either appointed or career employees. Our prior work has shown that turnover of political leadership in the federal government has often made it difficult to sustain attention to complete needed changes.²⁷ Our prior work has also shown that transitions and frequent changes in leadership weakened the effectiveness of a collaborative effort and that a lack of leadership further challenges an organization's ability to function effectively and to sustain focus on key initiatives.²⁸ Designating a senior-level career employee to lead the Subgroup can provide some assurance that leadership will remain consistent beyond this administration.

Collaborating agencies dedicated few resources and have not identified additional resources needed. Federal agencies have dedicated few staff and financial resources to the Energy Subgroup, have not identified the resources needed to accomplish its goals, and do not have an agreed-upon funding model. Our prior work has shown that collaborating mechanisms should identify the staff and financial resources needed to initiate and sustain their collaborative effort.²⁹ According to

²⁷GAO, *Small Business Administration: Leadership Attention Needed to Overcome Management Challenges*, [GAO-15-347](#) (Washington, D.C.: Sept. 22, 2015). This report found, among other things, that the Small Business Administration created a second Deputy Associate Administrator position to be held by a career employee to help ensure a greater level of continuity during transitional periods.

²⁸GAO, *Recovering Servicemembers and Veterans: Sustained Leadership Attention and Systematic Oversight Needed to Resolve Persistent Problems Affecting Care and Benefits*, [GAO-13-5](#) (Washington, D.C.: Nov. 16, 2012) and GAO, *Architect of the Capitol: Committed, Sustained Leadership Needed to Continue Progress*, [GAO-07-407](#) (Washington, D.C.: Feb. 28, 2007).

²⁹[GAO-06-15](#).

DOE, Interior, and USDA officials, the Energy Subgroup has been staffed on an “other duties as assigned” basis since its creation in November 2013. These officials said that this staffing model, which was also used by the other subgroups, makes it difficult to ensure continued participation by each federal agency because of competing demands for staff and resources. In 2015, more than 2 years after the Council was established, Interior hired a fulltime Executive Director—the only dedicated Council staff—to manage activities of the Council and all subgroups. Beyond the Executive Director position, participating agencies have not dedicated or identified future financial resources for the Energy Subgroup. A few federal officials told us the effectiveness of the Subgroup in accomplishing tasks is limited without dedicated resources. For instance, federal officials told us that the Energy Subgroup has not developed a 5-year strategic plan because no federal entity has dedicated the resources for key planning activities, such as a facilitated planning session that can define and articulate common outcomes. The executive order establishing the Council directs Interior to provide funding and support for the Council. However, according to Interior officials, dedicating resources to the Energy Subgroup would take away from other programs and services that directly support tribes and their activities.

Without dedicated resources, key activities completed to date are generally the result of individual federal agencies that voluntarily identified and applied their own budgetary resources to specific work activities. For example, DOE volunteered to use its own financial and information technology resources to develop a web-based tool that provides information about grant, loan, and technical assistance programs available to support tribal energy projects. According to a DOE official, the department voluntarily applied these resources because senior leadership determined the web-based tool was an important information source that could help tribes to identify federal financial assistance.

Our prior work has shown it is important for collaborative mechanisms to identify and leverage sufficient funding to accomplish their objectives and that funding models can vary.³⁰ In some instances, specific congressional authority or dedicated funding from Congress may be used for the interagency funding for collaborative mechanisms. In other instances, we found a collaborative mechanism can be supported by all participating agencies contributing funds as well as in-kind support. Identifying

³⁰[GAO-12-1022](#).

resources needed to accomplish its goals and establishing a funding model agreed upon by participating agencies may provide opportunities for the Energy Subgroup. If the Energy Subgroup does not identify resources and a funding model, it is unclear to what extent the Energy Subgroup's collaborative efforts can be effectively sustained to accomplish its stated policy goals.

The Energy Subgroup has not documented how participating agencies will collaborate. Our prior work found that agencies that articulate their agreements in formal documents strengthen their commitment to working collaboratively.³¹ A formal written agreement that includes goals, actions, responsible agencies, and time frames may be a tool to enhance and sustain collaboration. According to federal officials, the Energy Subgroup did not develop formal documentation because developing such documentation would have taken time and resources away from completing work deliverables. However, the lack of a formal agreement may have limited collaboration and involvement of some participating agencies. For example, federal officials told us that numerous Energy Subgroup agencies were actively involved in the effort to develop the web-based tool mentioned above but that after its completion there has been less collaboration between the various federal agencies because there was no longer a clear reason to work together. The Council, including the Energy Subgroup, was established to improve efficiencies by coordinating work across the federal government and using an “all-of-government approach” to find solutions that address tribal needs. However, most of the activities completed to date have been the result of collaboration between only IE and IEED—the only two agencies focused exclusively on Indian energy and also the only two that have a documented agreement to collaborate. The achievements of the Subgroup do not reflect the efforts of the other nine federal agencies that are its members. Without documenting how all members in the Subgroup are expected to collaborate, it is unclear how participating agencies will organize their individual and joint activities to address the factors that hinder Indian energy development.

³¹[GAO-12-1022](#).

BIA Did Not Fully Incorporate Leading Practices or Adhere to Agency Guidance in Forming the Service Center, Which May Limit Its Potential to Overcome Factors That Hinder Indian Energy Development

BIA, the lead agency responsible for forming the Service Center, did not follow some leading practices or adhere to agency guidance during early stages of developing the Service Center—which may impact its effectiveness in helping overcome the factors that have hindered Indian energy development.³² An interagency plan created in response to Executive Order 13604, Interior’s *Departmental Manual*, and our prior work offer leading practices that have been shown to enhance the effectiveness of collaborative efforts, improve permitting, and increase the likelihood of success for organizational change.³³ These practices include (1) creation of a lead agency or single point of contact to coordinate regulatory responsibilities by multiple agencies, (2) involvement by and active participation with all relevant stakeholders, and (3) clear identification and documentation of the rationale of key decisions. Specific leading practices that BIA did not fully incorporate when implementing the Service Center follow.

The Service Center has not been formed as a center point of collaboration for all regulatory agencies involved with energy development. In June 2015, we reported that the added complexity of the federal process, which can include multiple regulatory agencies, prevents many developers from pursuing Indian energy resources for development. Interior has recognized the need for collaboration in the regulatory process and described the Service Center as a center point of collaboration for permitting that will break down barriers between federal agencies.³⁴ In addition, the memorandum of understanding establishing the Service Center states that it will serve as a center point for collaboration with other federal departments for expediting oil and gas development and as a point of contact for other agencies to resolve development issues. The Service Center may increase collaboration between BIA and BLM on some permitting requirements associated with oil and gas development. This is because, according to BIA officials, only entities that participate in the Indian Energy and Minerals Steering

³²[GAO-12-1022](#), [GAO-03-669](#), and [GAO-03-293SP](#).

³³An interagency steering committee, developed in response to Executive Order 13604, calls for agencies to improve federal permitting and review processes. In 2014, the steering committee released the Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting.

³⁴Testimony of Lawrence S. Roberts, Principal Deputy Assistant Secretary, Indian Affairs, Department of the Interior, before the Committee on Indian Affairs, United States Senate, on “The GAO Report on Indian Energy Development: Poor Management By BIA Has Hindered Development on Indian Lands” on October 21, 2015.

Committee—BIA, BLM, ONRR, and OST—were included in the Service Center. According to BIA officials, no other federal agencies were included because of concerns that including them would delay establishing the Service Center. BIA has neither included a regulatory agency within Interior, FWS, as a partner in the Service Center nor identified opportunities to incorporate other regulatory agencies outside of Interior, such as EPA, USDA, and the Army Corps of Engineers, as partners. As a result, the Service Center has not been formed as the center point to collaborate with all federal regulatory partners generally involved with energy development nor is it a single point of contact for permitting requirements. According to a tribal chairman, issues raised by FWS often create significant delays in permit approvals, and Interior’s failure to include FWS as part of the Service Center is a great error.³⁵ Similarly, we reported in June 2015 that delays in the regulatory review and approval process can result in lost revenue and missed development opportunities.³⁶

Our prior work has shown that having a lead agency for permitting is a management practice that helps increase efficiencies for the permitting process.³⁷ In addition, the Quadrennial Energy Review Task Force recommended that, when possible, federal agencies should co-locate dedicated cross-disciplinary energy infrastructure teams that consist of environmental review and permitting staff from multiple federal agencies.³⁸ By not serving as a central point of contact or lead agency, the Service Center will be limited in its ability to improve efficiencies in the federal regulatory process to only those activities that can benefit from increased coordination between BIA and BLM.

³⁵Statement of Chairman Mark Fox, Mandan, Hidatsa and Arikara Nation, before the U.S. House of Representatives’ Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies, on American Indian/ Alaska Native Programs, March 24, 2015.

³⁶[GAO-15-502](#).

³⁷GAO, *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, [GAO-13-221](#) (Washington, D.C.: Feb. 15, 2013). In this report, we found that stakeholders identified the Federal Energy Regulatory Commission’s review and approval process for interstate pipeline applications as a more efficient and consistent model than some state permitting processes. Under its model, the Commission acts as a lead agency for coordinating federal authorizations.

³⁸Quadrennial Energy Review Task Force, “Energy Transmission, Storage, and Distribution Infrastructure” (Washington, D.C.: Apr. 21, 2015).

BIA did not involve key stakeholders in the development of the Service Center. Interior’s fiscal year 2016 budget justification stated that BIA was working with DOE to develop and implement the Service Center and leverage and coordinate with DOE-funded programs to provide a full suite of energy development-related services to tribes.³⁹ Further, BIA guidance states that it will seek the participation of agencies with special expertise regarding proposed actions.⁴⁰ However, BIA did not include DOE in a participatory, advisory, or oversight role in the development of the Service Center. Further, although IEED developed the initial concept and proposal for the Service Center, BIA did not include IEED in the memorandum of understanding establishing the Service Center. Our prior work has shown that involvement by all relevant stakeholders improves the likelihood of success of interagency collaboration.⁴¹ DOE and IEED possess significant energy expertise. By excluding these agencies from the development and implementation of the Service Center effort, BIA has missed an opportunity to incorporate their expertise into its efforts.

Moreover, BIA did not effectively involve employees to obtain their ideas and gain their ownership for the transformation associated with development of the Service Center—a leading practice for effective organizational change.⁴² Most of the BIA agency officials we met with told us they were not aware of implementation plans for the Service Center or its intended purpose. BIA identified its agency offices as the primary customers of the Service Center, yet BIA did not request their ideas or thoughts or identify potential employee concerns. Several BIA and tribal officials said they are concerned that the creation of a new office (the Service Center) may add another layer of bureaucracy to the process of reviewing and approving energy-related documents. We have previously reported that, as a leading practice, successful change initiatives include employee involvement to help create the opportunity to increase employees’ understanding and acceptance of organizational goals and objectives, and gain ownership for the changes that are occurring in the

³⁹Statement of Kevin K. Washburn, Assistant Secretary-Indian Affairs, Department of the Interior, before the U.S. House of Representatives’ Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs, on the President’s FY 2016 Budget Request for Indian Programs in the Department of the Interior, March 18, 2015.

⁴⁰Bureau of Indian Affairs Government-to-Government Consultation Policy (Washington, D.C.: Dec. 13, 2000).

⁴¹[GAO-12-1022](#).

⁴²[GAO-03-669](#) and [GAO-03-293SP](#).

organization.⁴³ Such involvement strengthens the transformation process by allowing employees to share their experiences and shape policies.⁴⁴ By not involving its employees in the development of the Service Center, BIA is missing an important opportunity to ensure the success of the changes that it hopes to achieve.

BIA did not document its basis for key decisions. The process BIA followed to develop the Service Center and the basis for key decisions it made are unclear because BIA did not document the rationale for key management decisions or the alternatives considered. According to Interior's *Departmental Manual*, agencies that propose a new office are to document the rationale for selecting the proposed organizational structure and to consider whether the new office contributes to fragmentation of the organization.⁴⁵ Our prior work has shown that effective organizational change is based on a clearly presented business-case or cost-benefit analysis and grounded in accurate and reliable data, both of which can show stakeholders why a particular initiative and alternatives are being considered.⁴⁶ BIA officials said they did not document the basis for key decisions because they were not aware of the requirement. In addition, a few Interior officials said that BIA did not present alternatives to the full Indian Energy and Minerals Steering Committee, even though it was making decisions about the structure and placement of the Service Center. Without documentation to justify the rationale behind key management decisions, it is unclear if the Service Center, as currently designed, is the best way to address the identified problem. Further, several tribal organizations and tribal leaders made recommendations related to the creation of the Service Center that are not currently reflected in BIA's implementation of the Service Center. For example, the Coalition of Large Tribes Resolution calls for the Service Center to be the central location for permit review and approval support for Indian energy development.⁴⁷ Without documentation of alternatives considered or key

⁴³GAO, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, [GAO-13-774](#) (Washington, D.C.: Sept. 24, 2013), and [GAO-03-669](#).

⁴⁴[GAO-03-669](#).

⁴⁵*Department of the Interior's Departmental Manual*, 110 DM 8, effective May 5, 2015.

⁴⁶GAO, *Streamlining Government: Questions to Consider When Evaluating Proposals to Consolidate Physical Infrastructure and Management Functions*, [GAO-12-542](#) (Washington, D.C.: May 23, 2012).

⁴⁷Coalition of Large Tribes Resolution 3-3-6-14.

management decisions, it is unclear whether these requests were appropriately considered. Our prior work has shown that fixing the wrong problems, or even worse, fixing the right problems poorly, could cause more harm than good.⁴⁸

BIA Has Not Incorporated Key Workforce Management Practices

In June 2015, we reported that BIA's long-standing workforce challenges, such as inadequate staff resources and staff at some offices without the skills needed to effectively review energy-related documents, were also factors hindering Indian energy development.⁴⁹ In this review, we found that BIA also has high vacancy rates at some agency offices, and it has not conducted key workforce planning activities that may be further contributing to its long-standing workforce challenges. Federal internal control standards, Office of Personnel Management standards, and our prior work identify standards or leading practices for effective workforce management. The standards and leading practices include the following: (1) possessing and maintaining staff with a level of competence that allows them to accomplish their assigned duties; (2) identifying the key skills and competencies the workforce needs to achieve current and future agency goals and missions, assessing any skills gaps, and monitoring progress towards addressing gaps; and (3) conducting resource planning to determine the appropriate geographic and organizational deployment to support goals and strategies. BIA has not taken steps to provide reasonable assurance it has staff with the skills needed to accomplish their assigned duties and has not conducted workforce planning activities consistent with these standards and leading practices.

Some BIA offices have high vacancy rates and may not have staff with the level of competence that allows them to review some energy development documents. We found that some BIA offices have high vacancy rates for key energy development positions, and some offices reported not having staff with key skills to review energy-related documents. For example, according to data we collected from 17 BIA agency offices between November 2015 and January 2016, vacancy rates ranged from less than 1 percent to 69 percent in those offices. Vacancy rates for the realty position—a key position to process leases

⁴⁸GAO, *National Protection and Programs Directorate: Factors to Consider when Reorganizing*, [GAO-16-140T](#) (Washington, D.C.: Oct. 7, 2015).

⁴⁹[GAO-15-502](#).

and other energy-related documents—ranged from no vacancies in five offices to 55 percent in one office. In some cases, these vacancies have been long-standing. For example, at the BIA Uintah and Ouray Agency, located in Utah, two of the six vacant realty positions have been vacant since September 2014. According to BIA officials, the high vacancy rates can be generally attributed to a number of factors, including: employee early-out and buy-out retirements in 2013, difficulties hiring qualified staff to work in geographically remote locations, and staff transfers to other positions. For example, several realty positions in BIA agency offices were vacated because staff transferred to positions in BIA's Land Buy-Back Program.⁵⁰ According to BIA officials, as of May 2016, the Land Buy-Back Program had hired 15 realty staff, 12 whom were from BIA regions and agency offices.

In addition to high vacancy rates at some offices, some BIA agency and regional offices may lack the expertise needed to review and approve energy-related documents. For example, BIA agency officials in an area where tribes are considering developing wind farms told us that they would not feel comfortable approving proposed wind leases because their staff do not have the expertise to review such proposals. Consequently, these officials told us that they would send a proposed wind lease to higher ranking officials in the regional office for review. Similarly, an official from the regional office stated that it does not have the required expertise and would forward such a proposal to senior officials in Interior's Office of the Solicitor. The Director of BIA told us that BIA agency offices generally do not have the expertise to help tribes with solar and wind development because it is rare that such skills are needed. In another example, a BIA agency office identified the need for a petroleum engineer to conduct technical reviews of oil and gas documents in a timely manner. However, the office has been unable to hire a petroleum engineer because it cannot compete with private industry salaries. According to BIA officials, additional staff resources and key skills related to energy development will be provided through the Service Center, once it is fully implemented.

⁵⁰To consolidate ownership of highly fractionated trust lands, in 2012, Interior created a land buy-back program for tribal nations to implement the land consolidation component of the *Cobell v. Salazar* settlement. This settlement provides \$1.9 billion to be used to purchase and consolidate fractionated interests in trust or restricted land. Consolidated parcels will be transferred to tribal governments for uses benefiting the tribes.

BIA has not identified key skills needed or skill gaps. The extent to which BIA does not have key skills throughout the bureau is unknown because BIA has not identified the key skills it needs and the extent to which it has skill gaps. BIA officials said that a skill gap assessment is not needed at this time because of the additional staff being hired through the Service Center. However, without key information on its workforce, as called for by Office of Personnel Management standards and our prior work, the agency risks hiring personnel that do not fill critical gaps, and the extent to which the Service Center will be able to address these gaps is unknown at this time. A BIA official also told us that in August 2015, the Assistant Secretary for Indian Affairs contracted with a consultant to develop a strategic workforce plan for BIA and the Bureau of Indian Education. However, according to a BIA official, the Bureau of Indian Education and BIA management are the primary focus of the work, and the resulting plan will not include agency offices, the level at which tribes generally interact with BIA for energy-related activities.

BIA does not have a documented process to provide reasonable assurance that workforce resources are appropriately deployed in the organization and align with goals. According to several BIA and tribal officials, the workforce composition of agency offices is not regularly reviewed to provide reasonable assurance it is consistent with BIA's mission and individual tribes' priorities and goals. BIA officials said that an agency office's workforce composition is routinely carried over from year to year, and positions are filled based on the budget, without consideration of existing workload needs or current tribal and agency priorities. A BIA official told us that this practice can result in a surplus of staff in some departments and staff shortages in others. In some of our meetings with BIA agency and tribal officials, we were told that BIA agency offices are not aware of tribal priorities, in part, because of poor relations between BIA agency offices and tribal leadership. Officials from one tribe said that because of concerns that BIA was not routinely seeking tribal input on priorities and goals, the tribe created a position to serve as a liaison between the BIA and tribal leadership. Among other things, the liaison routinely meets with both tribal leaders and BIA officials to ensure BIA is aware of tribal priorities and goals.

Without current workforce information on key skills needed for energy development, tribal goals and priorities, and potential workforce resource gaps, BIA may not have the right people with the right skills doing the right jobs in the right place at the right time and cannot provide decision makers with information on its staffing needs going forward.

DOE Developed Guidance for Giving Preference to Tribes When It Purchases Power, but Government-Wide Guidance Does Not Exist

In 2012 and 2013 respectively, DOE issued policy guidance and procurement guidance to give preference to tribes when DOE facilities contract to purchase renewable energy products or by-products, including electricity, energy sources, and renewable energy credits, but this guidance applies only to DOE, and GSA has not issued government-wide guidance. The purchase preference provision in the Energy Policy Act of 2005 authorizes federal agencies to give preference to a tribe or tribal enterprise when purchasing electricity or any other energy or energy by-product as long as federal agencies do not pay more than the prevailing market prices or obtain less than prevailing market terms and conditions.⁵¹ According to DOE documentation, several tribes had approached federal agencies to negotiate the sale of electricity from tribal renewable energy generation facilities, but negotiations had not resulted in federal purchases for a variety of reasons, including a lack of policy support and implementing guidance for the tribal preference provision. In response, DOE developed a policy to better enable the department to use the tribal preference provision. Under DOE's policy statement and procurement guidance, DOE facilities can use a purchase preference when a tribal nation holds a majority ownership position in a renewable energy project, provided that the agency does not pay more than the prevailing market price or obtain less than prevailing market terms and conditions. The guidance provides for limiting competition to qualified Indian tribes and tribal majority-owned organizations for the purchase of renewable energy, renewable energy products, and renewable energy by-products.

In contrast, GSA, the federal entity with general statutory authority to enter into utility service contracts of up to 10 years for all federal agencies, has not developed implementing guidance for the tribal preference provision contained in the Energy Policy Act of 2005, according to GSA officials. During our review, we identified one instance in which a tribe owned a majority position in a renewable energy project and submitted a bid in response to a GSA solicitation for energy. In this instance, GSA officials told us that they did not apply the tribal preference provision because GSA lacked implementing guidance. In addition, GSA officials said that the existence of the tribal preference provision and corresponding lack of implementing guidance created uncertainty and increased the time and costs associated with the solicitation review process. GSA officials also told us that they do not need to issue separate

⁵¹25 U.S.C. § 3502(d).

tribal preference provision guidance because DOE's guidance is comprehensive. However, the DOE guidance is intended only for DOE, and GSA has not adopted the guidance for any GSA purchases of energy products. Without GSA guidance on the tribal preference provision—even if that guidance mirrors DOE's guidance—it is unclear if GSA's procurement officials will have the information they need to apply the preference to its purchases.

We discussed our findings with members of the FAR Council, which is the regulatory body established to lead, direct, and coordinate government-wide procurement guidance and regulations in the federal government. According to officials, in response to our finding, the FAR Council plans to revisit the tribal preference provisions and survey agencies to seek their input on whether government-wide guidance to implement the preference should be included in the FAR. Officials said the FAR Council will consider agencies' input and determine if it should issue regulations implementing the preference authority. Additionally, the officials told us the FAR Council will examine DOE's guidance in this area, as well as GSA's plans to make other agencies aware of this preference and the DOE guidance in all future delegations for renewable energies.

Stakeholders Identified Additional Actions That Could Overcome Some Factors Hindering Development

Numerous federal agencies offer programs that could be used to assist tribes with energy development activities. However, a few stakeholders said impediments may limit or restrict tribal participation in some of these programs. Federal agencies could identify and seek to remove regulatory, statutory, and procedural impediments that limit or restrict tribal participation. For example, according to a 2016 DOE report, DOE's Title XVII loan program provides loan guarantees to accelerate the development of innovative clean-energy technology and has more than \$24 billion in remaining loan authority to help finance clean-energy projects. However, according to DOE officials, no tribes have applied to DOE's Title XVII loan program because various program requirements discourage tribal participation. For instance, according to officials, DOE considers whether applicants have prior experience and knowledge to execute the kind of project for which they are seeking a DOE loan guarantee. The officials told us that because tribes have not had significant development opportunities that would provide prior experience, this consideration limits tribes' abilities to compete with other applicants seeking limited resources.

A few stakeholders also told us that extensive time and monetary resources are required to apply for assistance from some federal

programs, making it difficult for some tribes to seek assistance. For example, DOE requires an application fee of \$50,000 for its Title XVII loan program. According to DOE officials, high application fees discourage some tribes from applying. Two other stakeholders told us that tribes and tribal entities dedicate significant financial resources and time to complete grant applications for federal programs. Because of this extensive resource commitment, combined with the low probability of receiving assistance, a few stakeholders said they are reluctant to seek federal assistance in the future.

Several stakeholders said the typical size of awards from IEED limit the type of projects that benefit from assistance. Projects that require significant funds are generally not awarded because officials want to fund numerous projects, according to Interior officials. For instance, according to a 2015 Interior report, a tribe requested \$321,000 from IEED to drill a geothermal well, but the request was rejected because of the expense relative to funds available. DOE and Interior officials told us they receive significantly more requests for assistance with viable projects than they can fund within existing budget levels. For instance, in 2015, IEED received 22 requests for assistance through its Tribal Energy Development Capacity Program and was able to fund 10 projects, according to IEED officials. In 2014, IEED received requests for \$27.5 million in assistance through its Energy and Mineral Development Program and was able to award \$9.5 million.

Conclusions

Recognizing the importance of a collaborative federal approach to help Indian tribes achieve their energy goals and to more efficiently fulfill regulatory responsibilities and manage some Indian energy resources, the President and Interior undertook two key initiatives, in the form of the Energy Subgroup and the Service Center. However, to be effective these initiatives rely on collaboration among federal agencies and programs, which can be difficult to achieve. Leading practices can help agencies enhance and sustain their collaborative efforts; however, federal agencies involved in both of these efforts have not incorporated some of these practices. The Energy Subgroup has not identified the resources it needs to achieve its goals or a funding model, and the roles of each partnering agency have not been identified and documented. In addition, BIA, in leading the creation of the Service Center, has not established a single point of contact or lead agency for regulatory activities; has not sought or fully considered input from key stakeholders, such as BIA agency office employees; and has not documented the rationale for key decisions. By following leading collaborative practices, both the Energy Subgroup and

the Service Center have the potential to more effectively assist tribes in overcoming the factors that hinder Indian energy development.

In addition, through the Service Center, BIA plans to hire numerous new staff over the next 2 years, which could resolve some of the long-standing workforce challenges that have hindered Indian energy development. However, BIA is hiring new staff without incorporating effective workforce planning principles. Specifically, BIA has not assessed key skills needed to fulfill its responsibilities related to energy development or identified skill gaps, and does not have a documented process to provide reasonable assurance its workforce composition at agency offices is consistent with its mission, goals, and tribal priorities. As a result, BIA cannot provide reasonable assurance it has the right people in place with the right skills to effectively meet its responsibilities or whether new staff will fill skill gaps.

The Energy Policy Act of 2005 authorization of a preference for tribal entities has the potential to increase tribal access to the largest single purchaser of energy in the United States—the federal government. However, GSA—the primary entity responsible for purchasing power for the federal government—has not developed guidance to implement the authority to provide a tribal preference government-wide. By developing such guidance, GSA would help ensure that contracting officials are aware of when the authority for a tribal preference is applicable and how it should be applied to future purchases of electricity and energy products.

Recommendations for Executive Action

We recommend that the Secretary of Energy, the Secretary of the Interior, and the Administrator of the General Services Administration, as appropriate, take the following 10 actions.

- We recommend that the Secretary of Energy designate a career senior-level federal government employee to serve as co-chair of the White House Council on Native American Affairs' Energy Subgroup.
- We recommend that the Secretary of the Interior, as Chair of the White House Council on Native American Affairs, direct the co-chairs of the Council's Energy Subgroup to take the following two actions:
 - (1) Identify appropriate resources needed for the Subgroup to accomplish its goals, as well as a funding model.
 - (2) Establish formal agreements with all agencies identified for inclusion in the Subgroup to encourage participation.

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- We recommend that the Secretary of the Interior direct the Director of the Bureau of Indian Affairs to take the following six actions:
 - (1) Include the other regulatory agencies in the Service Center, such as FWS, EPA, and the Army Corps of Engineers, so that the Service Center can act as a single point of contact or a lead agency to coordinate and navigate the regulatory process.
 - (2) Establish formal agreements with IEED and DOE that identify, at a minimum, the advisory or support role of each office.
 - (3) Establish a documented process for seeking and obtaining input from key stakeholders, such as BIA employees, on the Service Center activities.
 - (4) Document the rationale for key decisions related to the establishment of the Service Center, such as alternatives and tribal requests that were considered.
 - (5) Incorporate effective workforce planning standards by assessing critical skills and competencies needed to fulfill BIA's responsibilities related to energy development and by identifying potential gaps.
 - (6) Establish a documented process for assessing BIA's workforce composition at agency offices taking into account BIA's mission, goals, and tribal priorities.
 - We recommend that the Administrator of the General Services Administration develop implementing guidance to clarify how contracting officials should implement and apply the statutory authority to provide a tribal preference to future acquisitions of energy products.

Agency Comments

We provided a draft of this report for review and comment to the Secretary of the Interior, the Secretary of Energy, and the Administrator of the General Services Administration. All three agencies provided written comments. Interior agreed with all 8 recommendations directed to the agency and described some actions it intends to take. Interior's comments are reprinted in appendix I. DOE agreed with the 1 recommendation directed to the agency and provided technical comments. DOE's comments are reprinted in appendix II. GSA also agreed with the 1 recommendation directed to the agency and described

the actions it intends to take. GSA's comments are reprinted in appendix III.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 7 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretaries of the Interior and Energy, the Administrator of the General Services Administration, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or ruscof@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank Rusco". The signature is written in black ink and has a long, sweeping horizontal line extending to the right from the end of the name.

Frank Rusco
Director, Natural Resources and Environment

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 28 2016

Mr. Frank Rusco
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Rusco:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Indian Energy Development: Additional Actions by Federal Agencies are Needed to Overcome Factors Hindering Development (GAO-17-43)*. The Department appreciates GAO's evaluation of issues related to Indian energy development.

GAO is making eight recommendations to the Department. These findings and recommendations will enhance the Department's actions as it moves forward with assisting Tribes in the development of Indian energy resources.

GAO recommends the Secretary of the Interior, as Chair of the White House Council on Native American Affairs, direct the co-chairs from the Council's Energy Subgroup to:

Recommendation 1: Identify appropriate resources needed for the subgroup to accomplish its goals and a funding model.

Recommendation 2: Establish formal agreements with all agencies identified for inclusion within the subgroup to encourage participation.

Response: The Department concurs with the above recommendations and is taking steps with the co-chair on the the Energy Subgroup, the Department of the Energy, to identify appropriate resources needed to accomplish its goals along with a funding model and to establish formal agreements with all agencies identified for inclusion within the subgroup to encourage participation.

Recommendation 3: The Secretary of the Interior direct the Director of the Bureau of Indian Affairs (BIA) to include the other regulatory agencies, such as U.S. Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps), so that the Indian Energy Service Center

(Service Center) can act as a single point of contact or a lead agency to coordinate and navigate the regulatory process.

Response: The Department concurs. The Service Center will implement Memorandums of Understanding (MOUs) with appropriate bureaus and other federal agencies involved in the development of Indian energy and mineral resources, which will help to define roles and responsibilities regarding the development of those resources on trust lands. The Service Center will serve as a single point of contact to coordinate and navigate the regulatory processes involved.

In addition, the BIA has already established Federal Partners Groups at various Indian reservations. The composition of the groups include: BIA, the Bureau of Land Management (BLM), the Office of Natural Resources Revenue (ONRR), the Corps, FWS, and EPA as appropriate. These groups conduct Tribal listening sessions and provide field knowledge of energy and mineral issues, and are coordinated through the Indian Energy and Minerals Steering Committee (IEMSC).

Recommendation 4: Establish formal agreements with the Office of Indian Energy and Economic Development (IEED) and U.S. Department of Energy (DOE) that identify, at a minimum, the advisory or support role of each office.

Response: The Department concurs. The Service Center will implement formal agreements with IEED and DOE that identify the roles and responsibilities and define the advisory and/or support roles of each office regarding the development of Indian energy and mineral resources on trust lands. BIA recognizes that, in addition to the identification of potential energy resources, there must be organized coordination among participating agencies to fully manage and develop Indian energy and mineral resources.

Recommendation 5: Establish a documented process for seeking and obtaining input from key stakeholders, such as BIA employees, on the Service Center activities.

Response: The Department concurs. The Service Center will establish a process for the creation and prioritization of task orders in an effort to provide service and support to the agencies that it serves. This will include all key stakeholders involved in the management and development of Indian energy and mineral resources on trust lands.

Recommendation 6: Document the rationale for key decisions related to the establishment of the Service Center, such as alternatives and tribal requests that were considered.

Response: The Department concurs. The multi-agency team formed by the IEMSC developed a concept paper identifying tasks with which the Service Center would assist the agency or field offices, including estimated operating budgets, staffing needs, and costs to establish the Service Center. In addition to the team's effort, the BIA Director met with tribal leadership at Coalition of Large Tribes meetings, Great Plains Tribal Chairman's Association meetings, National Congress of American Indian meetings and at one-on-one meetings with tribal leaders. In order to gather input from stakeholders,

the team held a tribal listening session, received written comments, and conducted conference calls so that the IEMSC could make an informed decision about establishing a Service Center. The concept paper includes the organization chart with the Service Center Director reporting to the BIA Director, as agreed by the IEMSC. The IEMSC accepted and approved the concept paper as presented by the team.

Recommendation 7: Incorporate effective workforce planning standards by assessing critical skills and competencies needed to fulfill its responsibilities related to energy development, and identifying potential gaps.

Response: The Department concurs. The Service Center will identify and implement a workforce plan for the participating federal agencies regarding positions associated with the development of Indian energy and minerals on trust lands. The concept paper identified the Service Center staffing requirements intended to augment the existing staff at the agency or field level. Recognizing that field and agency offices currently employ staff who perform routine functions associated with processing oil and gas activities, the concept paper identified additional professional engineering and environmental science positions that would be available to agencies and field offices on an as needed basis. This would provide efficiencies to the local agency or field office as they may not have the need for a full-time scientific or technical resource. The Service Center will work with partner bureaus to assess critical skills and competencies needed for energy and mineral workforce standards.

Recommendation 8: Establish a documented process to assess its workforce composition at agency offices taking into account BIA's mission, goals, and tribal priorities.

Response: The Department concurs and is taking steps to establish a documented process to identify and assess the BIA Indian energy and mineral workforce composition consistent with BIA's mission, goals, and tribal priorities.

The Department is providing technical comments under separate cover.

If you have any questions or need additional information, please contact me.

Sincerely,



Elizabeth Klein
Principal Deputy Assistant Secretary
Policy, Management and Budget

Enclosure

Appendix II: Comments from the Department of Energy



Department of Energy
Washington, DC 20585

Mr. Franklin Rusco
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Rusco:

Thank you for providing a draft copy of the Government Accountability Office (GAO) report, "*Indian Energy Development: Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development (GAO-17-43)*."

DOE agrees and studies show that tribal lands have significant energy development potential, especially for clean and renewable energy. Such projects can significantly lower energy costs compared to conventional sources of electricity and high cost fuels, particularly in remote tribal communities. As the nation's energy sector continues to evolve, tribes have identified needs for greater access to technical assistance, workforce development, increased government financial assistance, and access to private capital as ways to address energy priorities in Indian Country.

Through our Indian Energy Policy and Programs Office, DOE has made progress in addressing these needs. However, current funding levels only address a small fraction of basic energy needs in Indian Country. One specific need that Indian Tribes and Alaska Natives have identified, as noted in your report, is enhanced access to credit through lower costs of debt financing and reduced lending origination fees for energy projects. DOE has previously proposed funding for the Tribal Indian Energy Loan Guarantee Program (TIELGP). Should Congress fund that proposal, DOE would be well positioned to provide debt financing for such projects.

In particular, regarding increased collaboration among federal agencies, we have reviewed the draft report, and provide the following response to the recommendation in the enclosure.

If you have any questions, please contact Mr. David Conrad, Office of Indian Energy on 202-586-7880.

Sincerely,

A handwritten signature in black ink that reads "David Conrad for".

Christopher C. Deschene
Director
Office of Indian Energy Policy and Programs

Enclosure



Response to Report Recommendations

Recommendation 1: *We recommend that the Secretary of Energy designate a career senior-level Federal government employee to serve as co-chair of the White House Council on Native American Affairs Energy Subgroup.*

Management Response: Concur

As the one of the Co-Chairs of the Energy Subgroup, we will work on assigning a Federal government employee to serve as staff co-chair of the White House Council on Native American Affairs Energy Subgroup.

Appendix III: Comments from the General Services Administration



The Administrator

November 4, 2016

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the draft report, *Indian Energy Development: Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development* (GAO-17-43). The U.S. Government Accountability Office (GAO) recommends that the GSA Administrator develop implementing guidance to clarify how contracting officials should implement and apply the statutory authority to provide a tribal preference to future acquisitions of energy products.

While additional guidance may be beneficial, the Federal Acquisition Regulatory (FAR) Council is the appropriate regulatory body empowered to issue government-wide acquisition policy. GSA will coordinate with the Office of Federal Procurement Policy, U.S. Department of Defense, and National Aeronautics and Space Administration to revisit the Energy Policy Act of 2005 and determine whether the FAR Council should issue government-wide guidance.

GSA appreciates GAO providing permission to share the draft GAO report with the FAR Council members.

If you have any additional questions or concerns, please contact me at (202) 501-0800, or Ms. Lisa A. Austin, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 208-0563.

Sincerely,

A handwritten signature in blue ink that reads "Denise T. Roth".

Denise Turner Roth
Administrator

cc: Frank Rusco, Director, Natural Resources and Environment (GAO)

1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Frank Rusco, (202) 512-3841 or ruscof@gao.gov

Staff Acknowledgments

In addition to the individual named above, Christine Kehr (Assistant Director), Patrick Bernard, Richard Burkard, Patricia Chen, Cindy Gilbert, Alison O'Neill, Daniel Purdy, and Jay Spaan made key contributions to this report.

Appendix V: Accessible Data

Agency Comment Letters

Comments from the Department of the Interior

Comments from the Department of Energy

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Natural Resources and Environment

U.S. Government Accountability Office 441 G Street, N.W.

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Sincerely,

Daryl Conrad for

Christopher C. Deschene

Director

Office of Indian Energy Policy and Programs

Page 2

Response to Report Recommendations

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Administration

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Denise Turner Roth

Administrator

cc: Frank Rusco, Director, Natural Resources and Environment (GAO)

Page 1

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Page 2

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The Department is providing technical comments under separate cover.

If you have any questions or need additional information, please contact me.

Sincerely,

Elizabeth Klein

Principal Deputy Assistant Secretary Policy, Management and Budget

Data Tables

Data Table for Figure 1: Examples of Facility-, Community-, and Utility-Scale Solar Energy Projects on Tribal Lands

Facility-scale project (Photo of Tonto Apache Fitness/Rec Center)	Community-scale project (Photo of Soboba Solar array)	Utility-scale project (Photo of Moapa solar array)
A 192-kilowatt solar photovoltaic system was installed on the Tonto Apache Tribe's Fitness and Recreation Center in Arizona. The installation was part of a 2014 project co-funded by a DOE grant.	The Soboba Band of Luiseño Indians' 1-megawatt solar system will help power the tribal administrative building, preschool, and other community facilities, saving the tribe an estimated \$6.4 million in electricity costs over 20 years.	The first utility-scale solar project on tribal land, the 250-megawatt Moapa Southern Paiute Solar Project is intended to deliver enough energy to serve the needs of nearly 100,000 California homes through a 25-year power purchase agreement with the City of Los Angeles.

Source: Department of Energy (DOE). | GAO-17-43

Data Table for Figure 2: Various Roles of Federal Agencies in the Development of Indian Energy Resources

Identify resource potential	Provide technical assistance	Regulate	Provide financial assistance	Provide transmission access assistance	Purchase power
<ul style="list-style-type: none"> DOE IEED 	<ul style="list-style-type: none"> BIA DOE WAPA IEED 	<ul style="list-style-type: none"> BIA USDA BLM Corps FWS EPA 	<ul style="list-style-type: none"> USDA HUD EDA DOE IEED Treasury 	<ul style="list-style-type: none"> WAPA 	<ul style="list-style-type: none"> GSA DOE DOD

Acronyms:

BIA—Bureau of Indian Affairs

BLM—Bureau of Land Management
Corps—U.S. Army Corps of Engineers
DOD—Department of Defense
DOE—Department of Energy
EDA—Economic Development Administration
EPA—Environmental Protection Agency
FWS—U.S. Fish and Wildlife Service
GSA—General Services Administration
HUD—Department of Housing and Urban Development
IEED—Office of Indian Energy and Economic Development
Treasury—Department of the Treasury
USDA—Department of Agriculture
WAPA—Western Area Power Administration

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