

# GAO Highlights

Highlights of [GAO-19-359](#), a report to the Vice Chairman, Committee on Indian Affairs, U.S. Senate

## Why GAO Did This Study

Tribal lands hold considerable energy resources—oil, gas, coal, wind, solar, geothermal, and biomass. Tribal energy projects can help tribes fund programs and services that improve tribal members' quality of life. Federal agencies are large consumers of energy in the United States, spending about \$6 billion in 2017 on energy for their facilities. Congress has provided a mechanism for agencies to support development and use of tribal energy by authorizing agencies to give preference to majority tribally owned suppliers when purchasing energy. GAO was asked to review federal efforts to use the preference.

This report examines, among other objectives, the extent to which GSA, DOD, and DOE have used the tribal energy preference. GAO reviewed available agency information on use of the preference and interviewed federal agency officials to understand how agencies would use the preference when entering into contracts with tribal suppliers.

## What GAO Recommends

To the extent that Congress wants to further encourage use of tribally owned energy sources, it should consider amending EPACT05 to provide more specific direction to federal agencies for implementing the tribal energy preference, to include consideration of additional incentives or requirements.

View [GAO-19-359](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov).

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## TRIBAL ENERGY

### Opportunities Exist to Increase Federal Agencies' Use of the Tribal Preference Authority

## What GAO Found

None of the three primary federal agencies with authority to enter into energy contracts—the General Services Administration (GSA) and the Departments of Defense (DOD) and Energy (DOE)—have used the tribal energy preference since it was established in the Energy Policy Act of 2005 (EPACT05). The section of the act that includes the preference provides federal agencies with mechanisms that can support development and use of tribal energy resources. The mechanisms include grants to assist tribes in developing their energy resources and authorization for agencies to give preference to majority tribally owned sources in federal energy purchases, so long as they pay no more than prevailing market prices and obtain no less than prevailing market rate terms and conditions. According to DOE, tribal lands account for 2 percent of U.S. land but contain about 6.5 percent of all utility-scale U.S. renewable energy potential.

GSA, DOD, and DOE officials identified five instances in the past when a tribe bid for a federal energy contract, and the agencies did not use the preference in any of those instances. GSA awarded a contract to tribes in two of the instances. In the first instance, the tribe submitted the best bid. In the second, GSA officials attempted to use the preference by limiting the energy contract solicitation solely to tribal sources, according to a stakeholder that worked on the project, but the GSA Administrator expressed concern about limiting competition in that manner. GSA instead used the small business preference authority, through which the tribe ultimately won the contract. DOD and DOE received the other three bids, which did not lead to contracts because either the cost was too high or the bid was not needed by the agency, according to agency officials. Federal officials noted that use of the preference is discretionary. EPACT05, which says agencies “may give preference,” does not require use of the preference, and the Federal Acquisition Regulation does not specifically address the preference.

In November 2016, GAO reported that one reason federal agency officials cited for not using the preference was uncertainty about how to do so. GAO recommended that GSA develop guidance to clarify use of the preference across the federal government. GSA agreed that such guidance would be beneficial but stated that the Federal Acquisition Regulatory Council is the regulatory body empowered to address this issue. In April 2017, GSA presented the council with a business case on the issue. However, GSA officials told GAO that the council determined that the preference has limited application government-wide because it mainly affects GSA, DOD, and DOE, and that, accordingly, the council declined to issue regulations and recommended GSA consider nonregulatory paths. GSA then added the preference language to the form it will use if it delegates purchasing authority in the future.

In 2018, federal agency officials told GAO they were uncertain how to use the preference. According to GSA and DOD officials, other statutes that authorize agencies to apply preferences for acquisition of goods and services from specific sources include more specific requirements in their statutory language, making them easier to apply. GSA officials noted that the Small Business Act, as amended, contains specific requirements and measurable goals that increase contracts awarded to small businesses. DOD officials stated that the agency might use the tribal energy preference if EPACT05 had similar requirements.