



Procurement and Contract Management

Virtual Training

April 8-9, 2026



This training is offered by the U.S. Department of Housing and Urban Development (HUD) and the Office of Native American Programs, under a cooperative agreement with FirstPic, Inc.

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Greetings My Name is Cheryl Causley

My Anishinaabe name is Red Bird Woman, I am Loon Clan, and I come from the Place of the Pike (GNÓOZHEKAANING) Bay Mills Indian Community, Bay Mills is a Reservation located at the Top of Michigan and our waters Border Canada, and we are Ojibwe/Chippewa.

I served as Director of Housing for my Tribe for over 28 Years and during that time frame, I served as the Chairperson of the Great Lakes Indian Housing Association (GLIHA) for 7 years.

I was also honored to serve on the Board of Directors of the National American Indian Housing Council (NAIHC) for 16 years first as Secretary and then as Vice Chair. I then served (2) Two-year terms as Chairwoman.

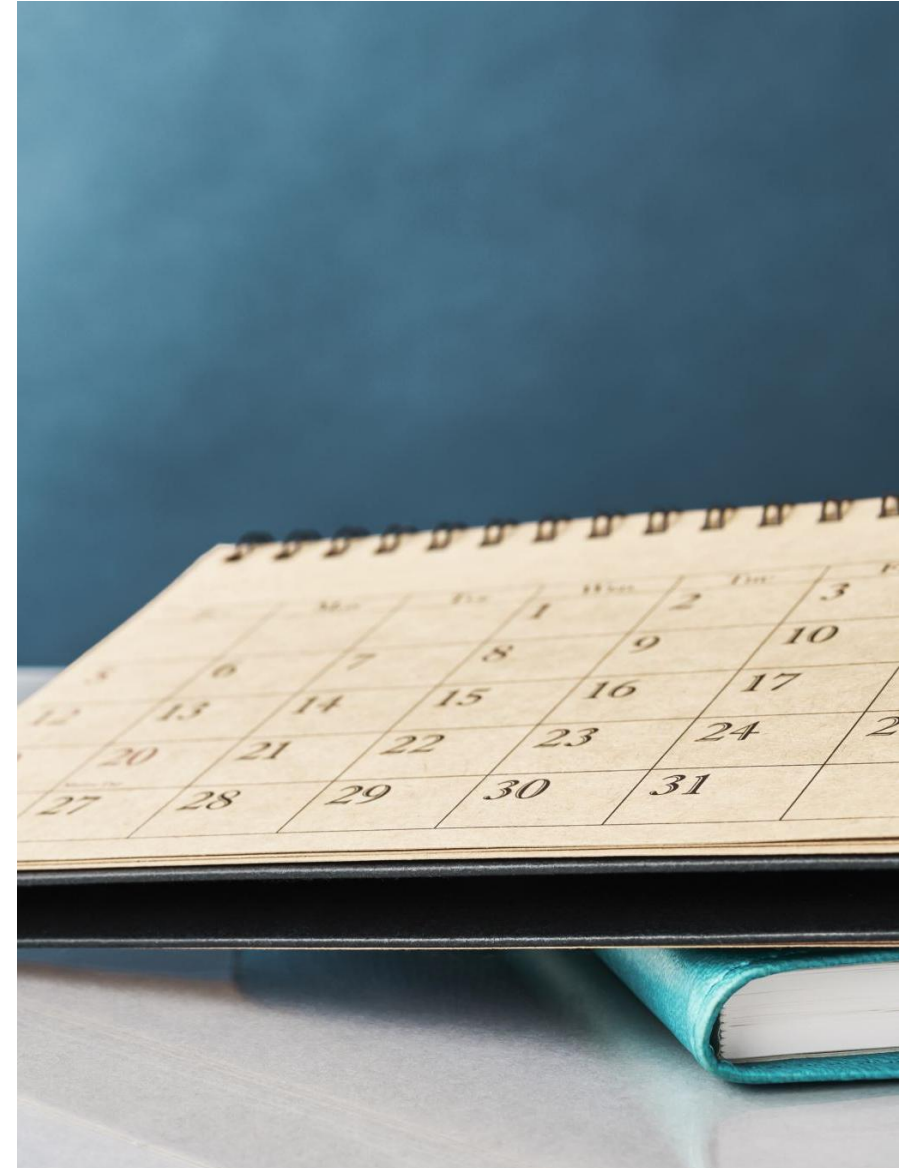
I started Cheryl A. Causley and Associates in March of 2019 providing Training & Technical Assistance throughout the Lower 48 and Alaska.



Agenda

9:00 AM To 3:00 PM PDT

- Welcome & Introductions
- Training Objectives & Course Description
- Understanding Indian Country Procurement
- Introduction to Procurement
- Procurement Regulations & Terms
- 2 CFR 200 Uniform Administrative Requirements
- Lunch 12-1
- Procurement Principals and Methods
- Native & Indian Preference Requirements
- Indian Preference Exercise



Training Objectives

To assist you as a NAHASDA Recipient to effectively and efficiently conduct Housing procurement and comply with requirements imposed by HUD (Uniform Requirements at 2 CFR part 200) and other funding sources. After completing this training, students will have:

- An understanding of the TDHE management and operations in relation to procurement
- An increased knowledge of the concepts and basics of procurement

Improved capabilities and proficiency of job skills in the performance of procurement functions of the local housing entity.



Course Description

This course will cover the administrative requirements that pertain to procurement using Indian Housing Block Grant (IHBG) funds distributed to tribes and tribal housing programs in accordance with the Native American Housing Assistance and Self-Determination Act (NAHASDA). During this course, students will learn how to conduct procurement effectively and efficiently and to comply with requirements imposed by HUD and other funding sources. We will discuss the skills required to perform the responsibilities related to sound procurement management and the methods for complying with 2 CFR 200.

UNDERSTANDING INDIAN COUNTRY PROCUREMENT



Uniqueness of Tribal Procurement

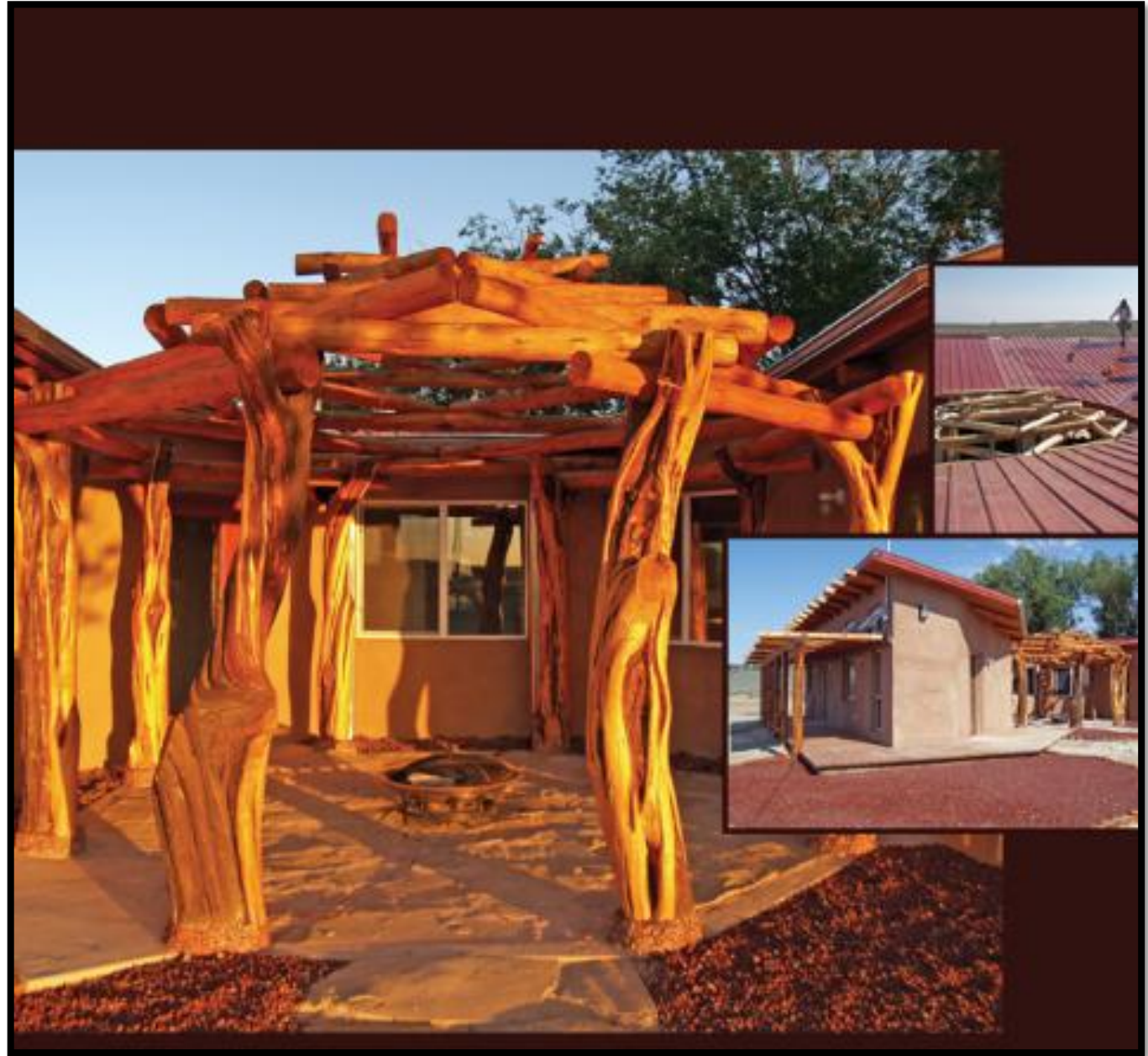
Tribal Procurement reflects:

- Fundamentals of government procurement
- Impact of other Tribal and geographic factors



Special Circumstances

- Tribal laws
- Tribal political structure
- Location
- Economic conditions



Tribal Requirements

- Tribal law
- Federally directed Indian preference
- Tribal licensing
- Tribal Employment Rights Organization (TERO)

Other Special Legal Issues

- Sovereign Immunity and Waivers
- Trust Land Status
- Tribal Courts
- Federal Rules (e.g., environmental reviews)



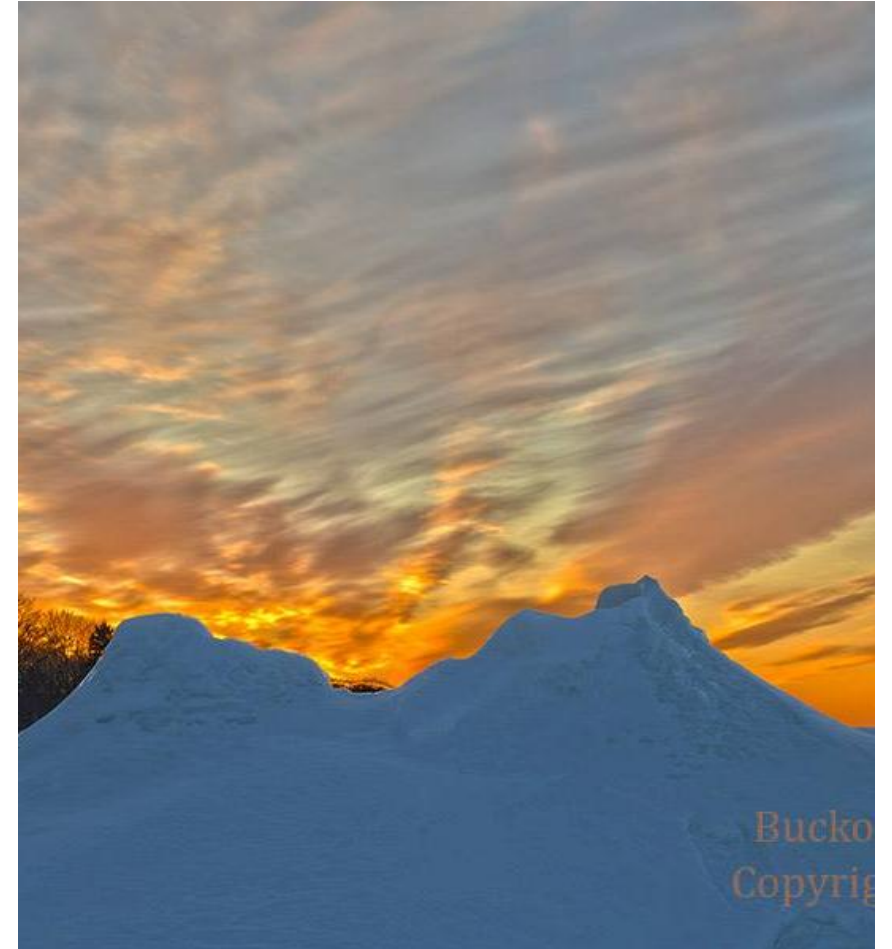
A Few More Special Factors

- Tribal politics
- Self-employment
- Tribally owned companies
 - 2 CFR 200.318(c)(2) Organizational Conflict of Interest may apply
- If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest.
- Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.



Other Circumstances Impacting Procurement

- Isolated communities
- Limited suppliers, contractors, and work force
- Harsh climates



INTRODUCTION TO PROCUREMENT



Benefits of Proper Procurement

Cost
Efficiency

Reduce Risk

Consistency

Avoid Outside
Interference

Promote
Competition

Comply With
All
Requirements

Indian Country Procurement

- The procurement of supplies and services is perhaps one of the most important financial and legal functions performed by recipients. The responsibilities and accountability for housing administrators and procurement personnel are very stringent and apply to all purchases large or small.
- One of the primary functions of the procurement process is to establish a clear, detailed record for each procurement activity that demonstrates the highest quality product, or service was obtained for the least cost while providing fair access to the competition for all potential competitors.

Goals for Procurement Activities

Obtain highest quality for reasonable price

Comply with requirements

Maintain documentation

Facilitate delivery

Understand process

Implement planning process

Fundamentals of Procurement

- Fair and competitive process
- Reasonable and low price from a responsive and responsible contractor / vendor
- Open and public process

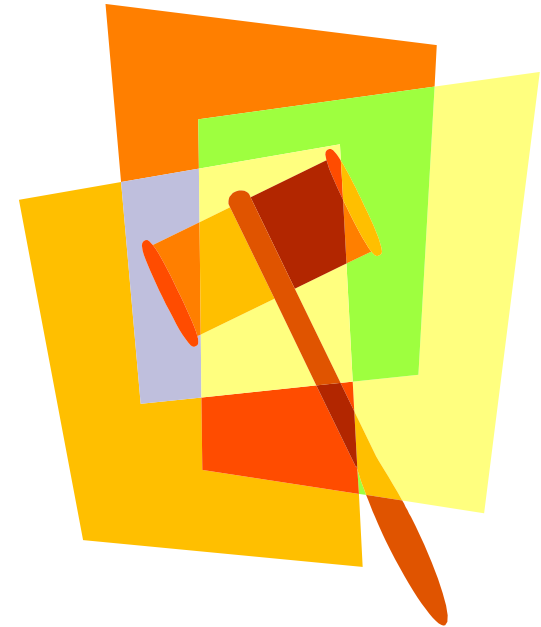


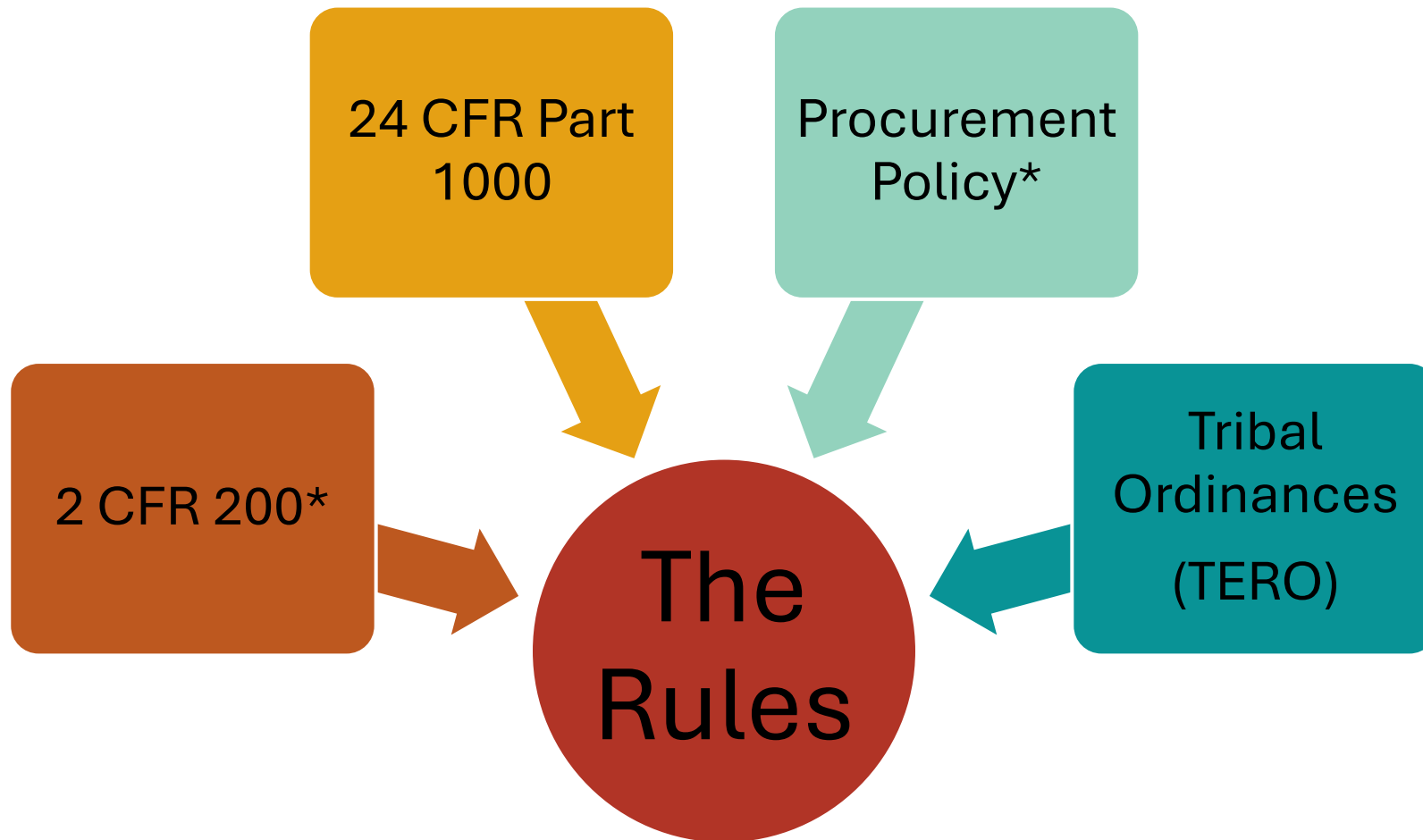
The Procurement Environment

- Because the awarding of contracts by the public sector involves the use of funds collected from the public, a higher standard is applied to procurement documentation than is the case with private industry.
- While private sector firms are generally entitled to keep information relating to their purchases private, the same is not true in the public sector. Once the contracts are awarded, the procurement information must be considered public record to the extent provided for in applicable federal, state, local, or Tribal law and must be available to the public as provided for in our statutes.
- Recipients are responsible for spending public funds in the public interest and should act in accordance with that responsibility.

Procurement Requirements

- HUD requirements accompanying NAHASDA funding
- Recipient's policies
- Tribal law
- Other Federal and (sometimes) state law
- Other agencies or lenders funding your program





*Per 2 CFR 200.317, Tribes must follow same the same policies and procedures used for procurements with non-Federal funds. If these don't exist, must follow 2 CFR 200.318 through 200.327. In addition, to policies/procedures, must also always follow 2 CFR 200.321, 200.322, 200.323, and 200.327.

PROCUREMENT REGULATIONS



Principal Regulations

- **24 CFR § 1000.26:** List of administrative requirements under NAHASDA including selected sections of 2 CFR part 200 that apply and exemption provisions for self-governance tribes
- **2 CFR Part 200:** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Sections § 8.317 to §.327 deal specifically with procurement.



Laws, Regulations, and Other Directives

24 CFR §1000.26 requires that recipients comply the requirements and standards of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (with noted exceptions).

The primary procurement regulation applicable to all recipients, regardless of size, is 2 CFR §200.317- §200.327.

24 CFR

§1000.26(a)(11)(i)

NAHASDA Statute

Section 203(g)

- (i) ***De minimis procurement.*** A recipient shall not be required to comply with 2 CFR § 200.318 through § 200.327 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.
- (g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES- Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000.

Laws, Regulations, and Other Directives

In addition, several sections of 24 CFR Part 1000 also pertain to procurement and contract administration regarding conflicts of interest, debarred contractors, and Indian preference, including the following:

- §1000.12 Nondiscrimination
- §1000.14 Relocation and Real Property Acquisition
- §1000.16 Labor Standards
- §1000.18 Environmental Review Requirements
- §1000.20 Environmental Reviews-Tribal Responsibility
- §1000.21 Environmental Review – Waivers
- §1000.22 Environmental Reviews-Eligible Cost
- §1000.24 Environmental Reviews-HUD Assistance

Laws, Regulations, and Other Directives

- §1000.26 NAHASDA Administrative Requirements
- §1000.28 Self-Governance Tribes
- §1000.30 Conflicts of Interest-Prohibitions
- §1000.32 Conflicts of Interest-Exceptions
- §1000.34 Conflicts of Interest-Exception Factors
- §1000.36 Conflicts of Interest-Records Retention
- §1000.38 Flood Insurance Requirements
- §1000.40 Lead Based Paint Requirements
- §1000.42 Applicability of Section 3 requirements

Laws, Regulations, and Other Directives

- §1000.44 Debarred, Suspended, or Ineligible Contractors
- §1000.46 Drug Free Workplace
- §1000.48 Indian or Tribal Preference Requirements-IHBG Activities
- §1000.50 Tribal or Indian Preference Requirements-Grant Administration
- §1000.52 Tribal or Indian Preference Requirements-Procurement
- §1000.54 Indian Preference-Complaint Procedures
- PIH Notice 2023-01 Recent changes to the Federal Micro-Purchase & Simplified Acquisition Thresholds

§ 200.318 General Procurement Standards



§ 200.318 General Procurement Standards

(a) *Documented procurement procedures.* The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in § 200.317 through §200.327.

§ 200.318 General Procurement Standards

(b) *Oversight of contractors.* Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

§ 200.318 General Procurement Standards

(c) Conflict Of Interest

(1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

§ 200.318 General Procurement Standards

(c) Conflict Of Interest

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

§ 200.318 General Procurement Standards

(d) *Avoidance of unnecessary or duplicative items.* The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

§ 200.318 General Procurement Standards

(e) *Procurement arrangements using strategic sourcing.* When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

§ 200.318 General Procurement Standards

(f) Use of excess and surplus Federal property. The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) Use of value engineering clauses. When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

§ 200.318 General Procurement Standards

(h) *Responsible contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) *Procurement records.* The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

§ 200.318 General Procurement Standards

(j) Time-and-materials type contracts.

(1) The recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

§ 200.318 General Procurement Standards

(j) Time-and-materials type contracts.

(2) Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient or subrecipient awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

§ 200.318 General Procurement Standards

- (k) *Settlement of contractual and administrative issues.* The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law to the Federal, State, or local authority with proper jurisdiction.

Let's Take 10 or 15
Minutes....



2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS



Uniform Guidance: What is it?

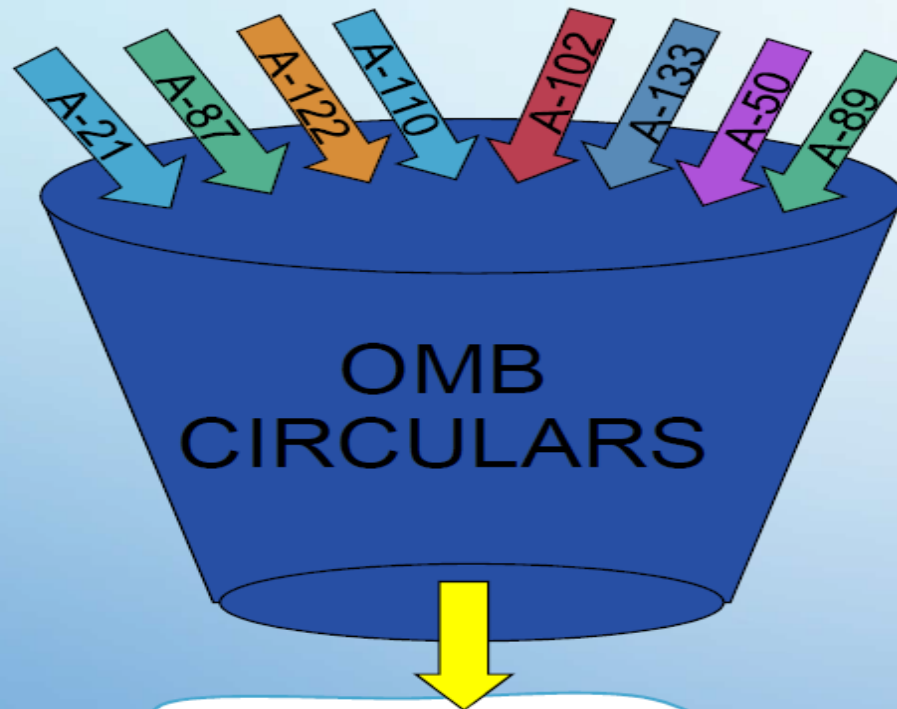
Code of Federal Regulations: § 2 CFR 200



Title 2: Grants and Agreements

PART 200— “UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS”

- Now commonly referred to as the “Uniform Guidance” for Federal Awards (2 CFR Part 200).
- Replaces, consolidates and streamlines eight Federal regulations into a single guide
- Applies to ALL Federal grants and to certain other types of Federal awards



2 CFR Part 200

75% reduction!

- **A-21** Cost Principles for Educational Institutions
- **A-87** Cost Principles for State, Local and Indian Tribal Governments
- **A-122** Cost Principles for Non-Profit Organizations
- **A-110** Uniform Administrative Requirements for Grants and Other Agreements
- **A-102** Grants and Cooperative Agreements With State and Local Governments (Part 85)
- **A-133** Audits of States, Local Governments and Non-Profit Organizations
- **A-50** Audit Follow up
- **A-89** Catalog of Federal Domestic Assistance

SUBPARTS AT A GLANCE

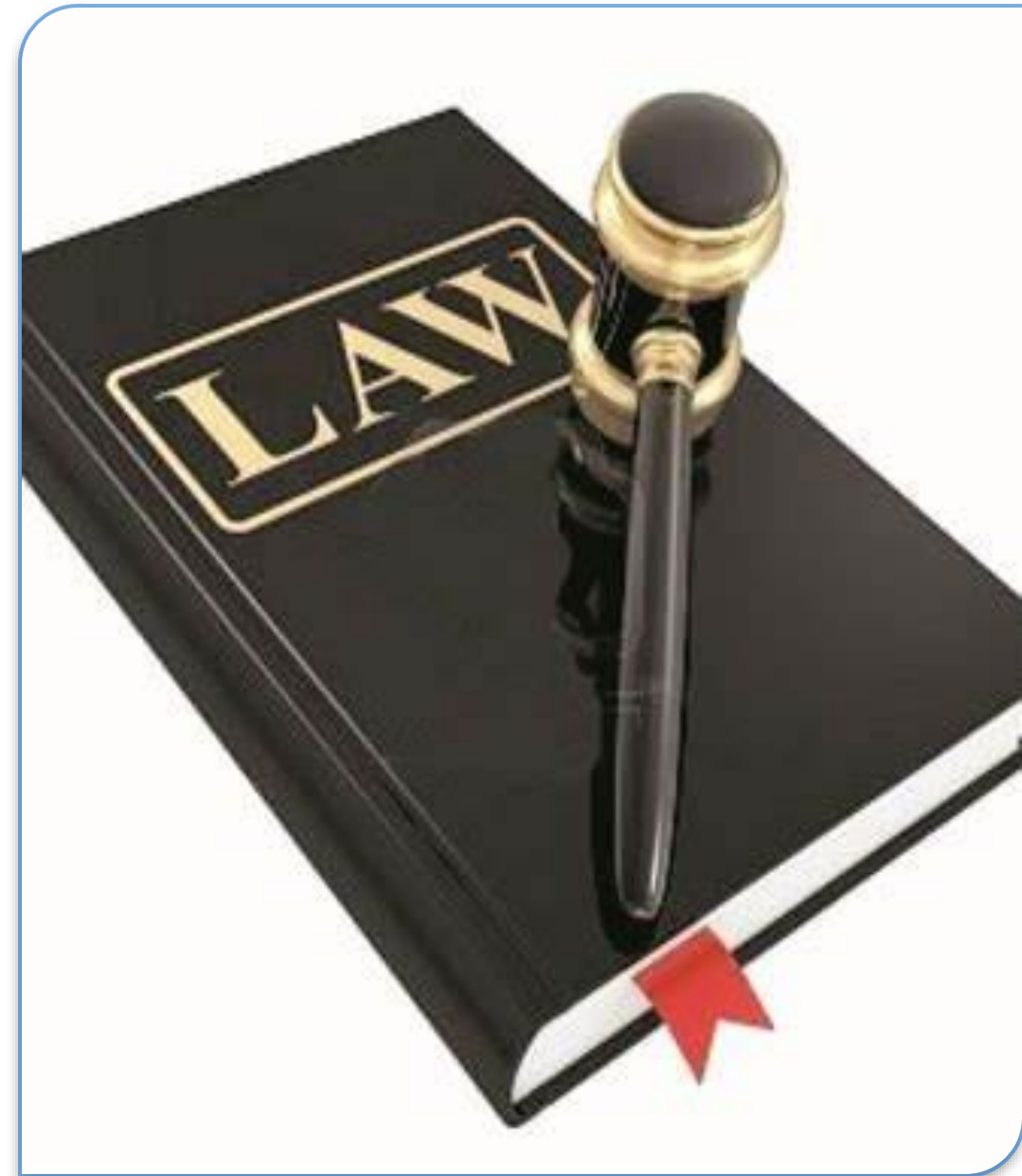
Subpart A (§200.0-§200.1)	➤ Acronyms and Definitions
Subpart B (§200.100-§200.113)	➤ General Provisions
Subpart C (§200.200-§200.217)	➤ Pre-Federal Award Requirements & Contents of Awards
Subpart D (§200.300-§200.346)	➤ Post Federal Award Requirements
Subpart E (§200.400-§200.476)	➤ Cost Principals
Subpart F (§200.500-§521)	➤ Audit Requirements
12 Appendices-I through XII	

2 CFR Part 200

These OMB uniform administrative requirements and cost principles represent standards entities must meet and implement by their respective administrative or management systems.

From these standards, we can deduct and organize the core management systems in the following categories:

- Accounting
- Property Management
- Procurement Management
- Personnel and Travel Management
- Records Management



Uniform Administrative Requirements

2 CFR Part 200

Management systems

- Written policies
- Written procedures
- Insurance
- Drug-Free Workplace
- Procurement
- Reporting & Recordkeeping
- Conflict of Interest
- Audit
- Allowable, Unallowable costs
- Mandatory Disclosures



2 CFR Part 200

The OMB uniform administrative requirements and cost principles do not provide specific procedural requirements or required components for our management systems but instead issue broad basic standards. The IHBG recipient, as a non-Federal entity, is responsible for creating the details (e.g., policies, people, operational procedures, forms and/or documentation) of an adequate management system.

Defining, designing, installing, and implementing adequate 'management systems' therefore becomes the essential work of the executive director and management.

eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards



§ 200.310 Insurance coverage.

The recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property and equipment owned by the recipient or subrecipient. Insurance is not required for Federally owned property unless required by the terms and conditions of the Federal award.

The NAHASDA Program Mandates ADEQUATE INSURANCE regardless. Refer to § 1000.136- §1000.140 and Program Guidance 2014-03 dated March 20, 2014—Insurance requirements under the IHBG Program.



Summary of Key Changes

Issued April 22, 2024, by the United States Office of Management and Budget (OMB).

- Revisions to 2 CFR Part 200 (Uniform Guidance) – first significant update since 2013.

- Effective date: Awards issued on or after Oct. 1, 2024.

- Subpart F – Audit requirements effective for fiscal years starting on or after Oct. 1, 2024.

- Key changes include updates to indirect cost rate, thresholds, cybersecurity measures, and audit thresholds.

- Non-federal entity replaced by recipient/subrecipient in Subparts A-E;

Subpart F retains 'non-federal entity'.

- Transitional issues still pending, further guidance expected from OMB.

Update 1

- Increased Autonomy for Tribes
- Tribal governments can now use their own internal procurement standards
- Reference: § 2 CFR 200.317 Procurements by States and Indian Tribes
- When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §200.318 through §200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: § 200.321, §200.322, §200.323, and §200.327. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in § 200.318 through §200.327.

Update 2

- Board members now included in conflict-of-interest rules
- Reference: § 2 CFR 200.318(c)
- (1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

Update 3

- Contractor classification under Fair Labor Standards Act (FLSA)
- Reference: § 2 CFR 200.318(h)

(h) *Responsible contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

Update 4

Reference: § 2 CFR 200.333

Fixed amount subawards

Threshold increased from \$250,000 to \$500,000

With prior written approval from the Federal agency, the recipient may provide subawards based on fixed amounts up to \$500,000. Fixed amount subawards must meet the requirements of § 200.201.

Update 5

Reference: § 2 CFR 200.501 Audit Requirements

- Procurement Standards and Best Practices
- Increased threshold for single audits
- (from \$750,000 to \$1 million)
- Simplifying audit processes for smaller IHBG recipients
- (a) *Audit required.* A non-Federal entity that expends \$1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

Update 6

- New guidance in § 2 CFR 200 (April 2024) highlights the importance of cybersecurity protections in federal awards.
- Applies especially when procurement involves:
 - Cloud services
 - Data storage/handling vendors
 - Technology or IT system purchases
- **Best Practice:** Include cybersecurity standards or attestations in your procurement documents

§ 200.318 (a)

General Procurement Standards

Documented procurement procedures.

The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services.

These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §200.318 through §200.327



Policies &
Procedures

2 CFR 200 Subpart B: General Provisions

§200.112 Conflict of interest.

Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal agency or pass-through entity in accordance with the established Federal agency policies.

§200.113 Mandatory disclosures.

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

EXCEPTION – Per 24 CFR 1000.26 (a) (1), 200.113 applies, except that, in lieu of the remedies described in § 200.338, HUD shall be authorized to seek remedies under subpart F.

§ 200.318 (b)
General
Procurement
Standards

Oversight of contractors.

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

See also § 200.501(h).

§ 200.322 Domestic Preferences for Procurements

- Tribes and TDHEs should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). **The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.**
 - “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
 - Waived – projects =< \$350,000 (current Simplified Acquisition Threshold)
 - There may also be other waivers – see [PIH 2025-06](#) and PIH 2024-34 Revised

The Procurement Policy

TDHEs are required to establish and follow a written procurement policy. The policy need not contain detailed working-level procedures but should require establishment of such procedures to carry out the policy. Some TDHEs prefer to combine the policy and procedures into a single publication for the convenience of staff.

*Please make sure your policy is reviewed & updated, with proof of adoption by Board.

Violations of Standards of Conduct



Disciplinary action will be taken to remedy violations of this code and may include verbal or written warning, formal reprimand, suspension, or dismissal. The level of disciplinary action will depend on the severity of the violation, the individual's prior behavior, and the nature of the individual's position. Notice the Any Tribal Indian Housing Authority communicates the requirements of this code during orientation, at trainings, in the bylaws of the Board of Commissioners, and in its personnel and procurement policies.

PROCUREMENT

Principals & Methods



Staffing and Training

Your Housing Entity should ensure that their procurement employees have training and experience commensurate with the requirements of their duties. Your Housing Entity should develop training and experience standards for their procurement positions and periodically review their procurement operations to ensure that procurement personnel meet those standards. TDHEs should consider any changes in the procurement environment (e.g., new laws, regulations, market conditions, or buying needs and practices of the TDHE) when assessing the qualifications of personnel and the need for additional training.

Delegation of Authority

- Generally, the procurement policy delegates responsibility for procurement functions to the Executive Director, with authority to assign all or a portion of that responsibility to positions or individuals based on the organization and staffing of the TDHE.
- A person with authority for procurement activities is referred to as the Contracting Officer when he/she performs that function, regardless of any other job or position title he/she may have.
- TDHEs shall establish policies for the delegations of procurement authority (e.g., to the Executive Director). These policies should be included in the TDHE's written procurement policy. Delegations of procurement authority should clearly state the limits of the authority delegated in terms of dollar value of individual obligations the person may make and any other limits (e.g., types of contracts the individual may award such as small purchases). Delegations should also state whether the recipient may further re-delegate any of the authority and, if so, how much.

Responsibility of the Contracting Officer

Regardless of the authority delegated, it is the responsibility of the Contracting Officer to:

- Use sound judgment in accomplishing the procurement activities of the TDHE;
- Ensure that bidders and contractors receive fair, impartial, and equitable treatment;
- Ensure that contract actions comply with all applicable Federal, State and Tribal laws and rules and with the TDHE's approved procurement policy; and
- Seek the best value and greatest overall benefit for the TDHE in response to the needs desired.

Responsibility of the Contracting Officer

- Request and consider the advice of specialists as appropriate.
- Develop and issue solicitations for supplies, services and construction.
- Analyze bids and proposals.
- Conduct negotiations, as appropriate.
- Sign all contracts, modifications, purchasing agreements, purchase orders, and other purchase documents.
- Monitor performance.
- Issue a final decision in case of disputes.
- Terminate contracts, as appropriate.
- Initiate and complete administrative actions.
- May delegate some responsibility to a chosen representative.

Contracting Officer's Representative (COR)

While a separate position of COR is not mandatory, the following are some of the general and broad responsibilities the COR would assume, if designated by the Contracting Officer:

Contracting Officer's Representative (COR)- Responsibilities

- The COR SHOULD:
- Define work requirements.
- Prepare Cost Analysis.
- Prepare Invitation for Bids.
- Prepare Request for Proposals.
- Assist in the pre-award phase.
- Act as the technical representative of the Contracting Officer.
- Direct work of contracts (cannot modify the contract).
- Provide on-going coordination and technical assistance to the Contracting Officer.

Contracting Officer's Representative (COR)- Responsibilities

The COR SHOULD:

- Inspect, evaluate and accept the contractor's work.
- Establish a system for conducting progress and final inspections.
- Advise the Contracting Officer when situations arise that may modify, disrupt or hinder performance.
- Document file on all transactions (including phone calls).
- Monitor and track payments.
- Assist with contract close-out

Contracting Officer's Representative (COR)- Responsibilities

- The COR SHOULD NOT:
- Issue contract changes.
- Deviate from terms of contracts.
- Manage contractors' efforts.
- Supervise or otherwise control contractors' employees.
- Perform any other function that would violate provisions of the contract.

Contracting Officer Signature/Obligation of Funds



Contracting Officer Signature/Obligation of Funds

Each contract or purchase action (e.g., new contract, modification, interagency agreement, purchase order, etc.) that obligates the TDHE to pay a contractor or vendor must be signed or otherwise authorized by an individual to whom the TDHE has expressly delegated the authority to make such an obligation.

The signature of the Contracting Officer on TDHE contracts is a legal commitment and requires continuing performance by the TDHE under the terms and conditions of the contract. Performance includes such duties as monitoring contractor performance and acceptance or rejection of contractors' requests for changes in performance, specifications, or price.

Contracting Officer Signature/Obligation of Funds

- Caution: If an individual is not an authorized Contracting Officer, that individual must not bind the TDHE by making an implied contract such as by making a promise or stating an intent to purchase, either orally or in writing.
- Under the laws of agency and apparent authority, the TDHE may be liable for, or bound by, the acts of a TDHE employee, if such person (who is not a Contracting Officer) appears to an offeror to have been given authority by the TDHE. Therefore, all actions that could be misinterpreted as committing the TDHE to purchase should be clarified with a statement such as, “*this request for price quotation is not an offer to buy and should not be assumed as such.*”

LUNCH TIME
12 PM To 1 PM PDT



Sample Contract File Arrangement- 10 Files



FOLDER NUMBER-NAME	CONTENTS
# 1 – CONTRACT BID FOLDER	<ol style="list-style-type: none"> 1. In house list of contractors that legal notice was sent to. 2. Copy of actual notice that appeared in the paper. 3. Bill from newspaper for legal notice. 4. Copy of Bid Forms. 5. Copy of Bid Bonds. 6. Copy of signed “Representations, Certifications, and Other Statements of Bidders”. 7. Copy of Indian or Tribal preference documentation. 8. Copy of Non-Collusive Affidavits. 9. Copy of bid tabulation sheet. 10. Letter of recommendation to award contract. 11. Copy of independent cost estimate for proposed contract.

FOLDER NUMBER-NAME	CONTENTS
# 2 – CONTRACT AWARD FOLDER	<ol style="list-style-type: none">1. Copy of cost or price analysis.2. Documentation to support the rational for award of the contract.3. Documentation to support that the contractor was cleared from the Suspended and Debarred listing.4. Copy of Performance Bond.5. Copy of Payment Bond.6. Evidence of deposit of a cash escrow of not less than 20 percent of the total contract price.7. Letter of credit for 25 percent of the total contract price.8. Letter of credit for 10 percent of the total contract price.9. Copy of Signed contract.10. Copy of insurance certificates.11. Copy of pre-construction checklist.

FOLDER NUMBER-NAME	CONTENTS
# 3 – Specifications	<ol style="list-style-type: none">1. Copy of contract specifications.2. Copy of any bidding addendums.3. Copy of drawings.

FOLDER NUMBER-NAME	CONTENTS
# 4 – Contract Registers	<ol style="list-style-type: none">1. Copy of contract register.2. Copy of change order register.3. Copy of contract progress schedules

FOLDER NUMBER-NAME	CONTENTS
# 5– Change Orders	Copy of all change orders in numerical order, including: <ol style="list-style-type: none">1. Copy of change order documents.2. Copy of cost or price analysis.3. Documentation to support the rational for award of the change order. – Finding of Fact4. Supporting documents.

FOLDER NUMBER-NAME	CONTENTS
# 6– Contract Payments	<ol style="list-style-type: none">1. Copy of all contractor payment requests.2. Supportive documentation.

FOLDER NUMBER-NAME	CONTENTS
# 7– Contractor Payrolls	1. Copy of all contractor payroll reports.

FOLDER NUMBER-NAME	CONTENTS
# 8– Submittals	<ol style="list-style-type: none">1. Copy of contractor submittal log.2. Copy of all contractor submittals

FOLDER NUMBER-NAME	CONTENTS
# 9– Daily Logs	1. Copy of all daily logs.

FOLDER NUMBER-NAME	CONTENTS
#10 – General Correspondence & Closeout Documents	<ol style="list-style-type: none">1. Miscellaneous correspondence.2. Copy of final inspections and punch lists.3. Contract closeout documents.4. Copy of all warranties.5. Copy of all operation and maintenance manuals.

Utilizing Federal Supply Sources in Procurement



General Statement

- EXCEPTION – Per 24 CFR 1000.26 (a) (11), Sections § 200.318 through § 200.326 apply, as modified in this paragraph:
 - i. **Utilizing Federal supply sources in procurement.** In accordance with Section 101(j) of NAHASDA, recipients may use Federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

Newest Guidance PIH 2025-11 Federal Supply Sources



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

NOTICE PIH 2025-11

Administrators, Offices
of Native American Programs;
Tribes; Tribally Designated
Housing Entities

Issued: April 30, 2025

Expires: This Notice remains in effect until
amended, superseded, or rescinded.

Cross References: [Office of Native American
Programs Program Guidance 2013-10\(R\)](#)

SUBJECT: Federal Supply Sources

1. PURPOSE

The purpose of this Notice is to provide information to Tribes and Tribally Designated Housing Entities (TDHEs) about Federal supply sources and other General Services Administration (GSA) services available under Section 101(j) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA).

On January 20, 2025, President Trump issued an Executive Order titled *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis*. This Executive Order directs Executive Departments and Agencies to take actions to lower the cost of housing, expand the housing supply, and eliminate unnecessary administrative expenses. In furtherance of the Executive Order, this Notice provides updated guidance to Tribes and TDHEs carrying out activities, programs, and projects under NAHASDA on how to access pre-negotiated discounted rates for goods and services currently offered through Federal supply sources.

This Notice replaces [Office of Native American Programs Program Guidance 2013-10\(R\)](#).

2. BACKGROUND

Tribes and TDHEs carrying out activities, programs, and projects under NAHASDA may procure goods and services at pre-negotiated discounted rates currently offered by vendors to

§ 200.318 General Procurement Standards

- (f) *Use of excess and surplus Federal property.* The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs



Cooperative Purchasing

Intergovernmental Procurement
or Joint Purchasing (2 CFR
200.318(e))

General Service
Administration's e-Buy (a
federal request for quote
system)

Government excess and surplus
property acquisition (2 CFR
200.318(f))



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Cooperative Purchasing



Can Be Used to Procure:

- Material
- Equipment
- Some services

What are the GSA Programs?

- Vehicle Leasing
- Used Government Property
- Purchase Card/Travel Cards
- Federal Supply Schedules
- Information Technology



General Services Administration



What can they do for you?

- Federal Agency
- Buying Arm of the Government
- Leverage Federal Purchasing Power

Who can use them?

- Tribes
- TDHEs

Section 3 Requirements



Section 3 Requirements

Section 3 of the Housing and Urban Development Act of 1968 requires that, to the greatest extent feasible, opportunities for training and employment arising from Federal funding be provided to low-income persons residing in the program service area.

24 CFR § 1000.42

Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

- (a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.
- (b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds \$200,000.
- (c) *Tribal preference.* Recipients meet the section 3 requirements when they comply with employment and contract preference laws adopted by their tribe in accordance with section 101(k) of NAHASDA.
- (d) *Applicability.* For purposes of section 3, NAHASDA funding is subject to the requirements applicable to the category of programs entitled "Other Programs" that provide housing and community development assistance (12 U.S.C. 1701u(c)(2), (d)(2)).

Contracting Procedures

For activities exceeding the threshold, the tribe/TDHE should describe in its Procurement Policy how it will provide contracting opportunities for low-income individuals. For example, a list of low-income contractors in the service area may be maintained along with a procedure to notify said contractors of opportunities as they become available.

Native Preference



NAHASDA PROCUREMENT CAVEAT

The Part 200 regulations apply in connection with any federally funded project. NAHASDA procurement differs from Part 200 in a few respects, including providing for tribal preference (i.e., (List Your Tribes Name) preference) to supersede Indian preference, permitting tribal prevailing wage determinations to supersede Davis Bacon and permitting alternatives to construction bonds. The Part 200 regulations provide that program-specific regulations (i.e., the NAHASDA regulations) trump the Part 200 regulations. (List Your Tribes name) Preference applies only to construction projects funded under NAHASDA or the Self-Determination Act.

Tribal Action

- Tribe passes adopts law, code, or regulations regarding Tribal Preference.
- TDHE adopts policies (personnel, procurement, etc.) regarding preference.
- Such law or policy may provide preferential treatment
 - Over other Indians that are not members of the tribe in employment and **Contracting**.
 - In reductions in workforce and layoffs.

Native Preference

In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA.

In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of the Indian Self- Determination and Education Assistance Act (25 U.S.C. 450e(b)).



Native Preference

- Section 7(b) provides that any contract, subcontract, grant or sub-grant entered for the benefit of Native Americans/Alaska Natives shall require that, to the greatest extent feasible:
 - Preferences and opportunities for training and employment in connection with the administration of such contracts, or subcontracts, be given to Native Americans/Alaska Natives.
 - Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Native-owned economic enterprises, as defined in Section 3 of the Indian Financing Act of 1974.

Implementing Native Preference in Procurement

-
- Indian Preference must be applied to all purchases made with IHBG funds. Indian preference does not require that all purchases be made from Native-owned firms – it only means there must be a system in place for giving preference. The following are the applicable regulations for implementing preference:

Let's Take a Break!

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INDIAN PREFERENCE REQUIREMENTS



The Indian Self-Determination and Education Assistance Act

The Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638) authorized the Secretary of the Interior, the Secretary of Health, Education, and Welfare, and some other government agencies to enter into contracts with, and make grants directly to, federally recognized Indian tribes. The tribes would have authority for how they administered the funds, which gave them greater control over their welfare.

Section 7(b) of The Indian Self-Determination




Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974.

Indian Preference Final Rule

The Final Rule amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting.

Program Guidance 2013-07 (R) dated July 11, 2013, provides additional information on administering these revisions.

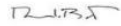


Office of
Native American
Programs
Office of Public & Indian Housing

No. 2013-07 (R)
July 11, 2013

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities



FROM: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PH

TOPIC: Indian and Tribal Preferences in Employment and Contracting in IHBG

Purpose: The purpose of this guidance is to provide tribes and tribally designated housing entities (TDHES) with updated information on implementing regulatory changes relating to tribal preference in employment and contracting in the IHBG program. The guidance also addresses the distinction between Indian preference and tribal preference, and addresses requirements under Section 3 of the Housing and Urban Development Act of 1968 relating to economic opportunities for low- and very low-income persons.

Background: Section 101(k) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), authorizes tribal preferences in employment and contracting when using IHBG funds. The NAHASDA final rule, published on December 3, 2012, amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting. This guidance provides tribes and TDHES with additional information on administering these revisions.

Indian Preference: IHBG regulations require tribes and TDHES to comply with Section 7(b) of the Indian Self-Determination and Education Assistance Act (U.S.C. 450e(b)) and, to the greatest extent feasible, give preference in the award of contracts for projects funded under the IHBG program to Indian organizations and Indian-owned economic enterprises. The law requires Indian preference in training and employment and in the award of contracts and subcontracts.

Tribal Preference: When an Indian tribe has adopted a tribal preference law, regulation, or ordinance governing preferences in employment and contracting, that tribal preference law will govern any preferences in employment and contracting under the IHBG program. Such laws may, for instance, provide tribal members with preferential treatment over other Indians that are not members of the tribe in employment and contracting carried out under an IHBG grant. Tribal preference laws may also specify any preferences in reductions in workforce and layoffs.

RECIPIENT GUIDANCE

Implementing Indian Preference

Certify policies and procedures
 (§1000.52)

Preference clauses must be
incorporated into contracts

Include Indian Preference
reference in notices and
advertisements



Importance of Indian Preference

Provides special opportunities for Indian contractors in selection

Mandates additional preference that contractors must offer Indian laborers, subcontractors, and suppliers

Economic opportunities for Indians, tribes, recipients, and your communities

NOT required to hire an Indian individual / firm

Preference in Solicitation Process



Required by Federal
(and often tribal) law

Clarify preference
standards in your
procurement policy

Clarify preference
standards from the
outset

Indian Preference is Different From Other Preferences

- Not racially or affirmative action based
- Political Status of Recipients, Tribes and Tribal Members
- Arises under different Federal Law



Where Indian Preference Is Applied



In selection of contractors or vendors

In the contractor's selection of subcontractors and suppliers

During employment and training by contractors

Qualifying Bidders, Proposers, Vendors



Specifically determine if the individuals and entities are qualified to receive Indian preference.

Do not rely on determinations and certifications made by others.

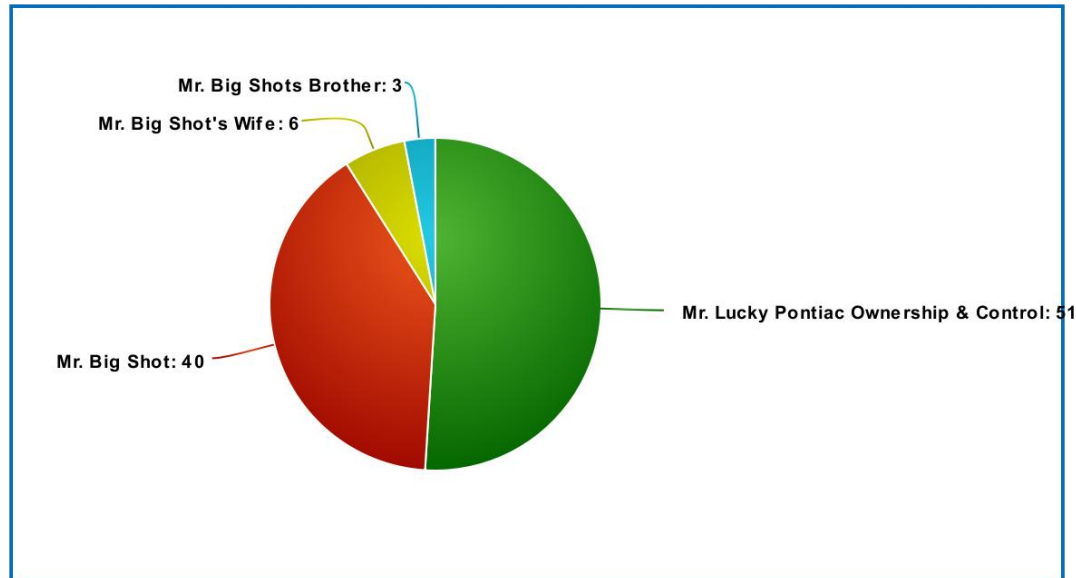
Who is Eligible for Indian Preference?

- Members of federally recognized tribes
- Federally recognized tribes
- Entities at least 51% owned AND controlled by such members or tribes

51% Ownership AND 51% Control

Control includes voting rights, management, decision making, and allocation of profits.

Entity owned by a tribe, or a tribal member must show evidence of 51% ownership AND 51% control.



■ Mr. Lucky Pontiac Ownership & Control ■ Mr. Big Shot ■ Mr. Big Shot's Wife
■ Mr. Big Shots Brother

meta-chart.com

Preference Must Be Requested

Advise all bidders, proposers, and vendors Indian preference is required in contract awards

Parties seeking preference must request preference

When feasible, provide interested parties with an Indian Preference Qualification Application



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Various Ways to Determine Eligibility

There is a variety of approaches based on the size, regularity, and nature of the procurement. The more thorough the process, the better.

On large procurements, make the determination prior to the submission of the bid or proposal (pre-qualify firms).

Shall include a determination that bidder is a responsible contractor.

INDIAN PREFERENCE REQUIRED DOCUMENTS

INDIAN PREFERENCE
POLICY

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graph TD; A[INDIAN PREFERENCE POLICY] --> B[INDIAN PREFERENCE QUALIFICATION APPLICATION]; B --> C[INDIAN PREFERENCE DETERMINATION LETTER]; C --> D[COMPLAINTS POLICY FROM METHODS OF PROVIDING FOR INDIAN PREFERENCE];
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INDIAN PREFERENCE
QUALIFICATION
APPLICATION

INDIAN PREFERENCE
DETERMINATION LETTER

COMPLAINTS POLICY FROM
METHODS OF PROVIDING
FOR INDIAN PREFERENCE

Indian Preference Policy

Indian Preference Policy

1. Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)), which provides for Indian preference, shall apply to all procurement in excess of the micro-purchase threshold funded in with NAHASDA funds. In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA. In the absence of tribal employment and contract preference laws, the TDHE/Tribe shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.
2. All preferences shall be publicly announced in the IFB and RFP and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, TDHE/Tribe shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years after the end of the program year during which the funds were expended.
3. Contractors applying for eligibility for Indian preference shall submit the following:
 - a. Evidence showing that the majority ownership of the firm consists of one or more persons who are members of a federally recognized Indian tribe. A certificate of Indian blood or census card from each owner will suffice.
 - b. Evidence showing that the owners claiming tribal membership are actively involved in the management of the firm and participate proportionately in the profits. A statement from the owners will suffice.
 - c. Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.
4. If the TDHE/Tribe or its prime contractor determines an applicant ineligible for Indian preference, the TDHE/Tribe or prime contractor shall notify the applicant in writing before contract award.

Any Tribal Indian Housing Authority

Name of TDHE

INDIAN PREFERENCE QUALIFICATION APPLICATION

_____ herein submits to _____
Name of Applicant Name of TDHE

the following application seeking to qualify as a 51% or more Indian-owned and -
controlled economic enterprise or tribal organization so it can be eligible for
Indian preference in _____ selection and award of

Name of TDHE

contracts, subcontracts, employment and training. This application must be
submitted in a timely manner and by a date prescribed by _____

Name of TDHE

in order for the Applicant to be considered eligible for Indian preference.
Applicant may be required to periodically resubmit this application from time to
time.

Re: Determination on Request for Indian Preference

Dear _____:

The Any Tribal Indian Housing Authority has made the following general contracting pre-qualification determination for _____ and has asked me to communicate this decision to you. Pre-qualification would entitle you to Indian preference in our bid letting and award of the general construction contracts on projects _____. In order to qualify for this preference the TDHE had to determine that you satisfied each of its Indian preference requirements. These standards require that you be 1) an Indian-owned firm; 2) an Indian-controlled firm; 3) a firm with a general financial and managerial capability to do the work; 4) a reputable, responsible firm; and that you have 5) timely submitted a properly completed Pre-qualification Application.

Qualified

Disqualified

Indian Preference Complaint Procedure

1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference

- The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.
- (a) Each complaint shall be in writing, signed, and filed with the recipient.
- (b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.
- (c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint and immediately acknowledge its receipt.
- (d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

When Feasible...

- Use Indian Preference Qualification Application and require supporting documentation
- Establish panel of at least three staff or Board members to evaluate and decide eligibility
- Make independent verification and inquiry



Common “Fronting” Practices

Disguise how little profit tribe or member receives

Indian tribe or member appears on paper as 51% owner, but management/control are with non-Indian

Less than truthful in explaining resources that each owner brings to entity



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Document, Document, Document

- Carefully record decision in writing
- Make a brief decision in writing
- Be prepared to provide further explanation to anyone you disqualify
- Explain to any disqualified party that they may still submit a bid or proposal



Reserve the Right to Reconsider

Reserve the right to disqualify anyone (even if you have already qualified them) right up until the award of the contract in case you become aware of new information and/or the entity's structure changes

Add contract provisions for termination if the entity loses its Indian ownership or control during the contract period

Applying Indian Preference

24 CFR 1000.52(a)

TDHE certifies that they have policy that will afford Indian preference that is consistent with ISDEA 25 USC 450e(b) (The Indian Self-Determination and Education Assistance Act)

OR solicit bids from Indian owned & controlled entities only

OR use two-stage method (more...)

The Two-Stage Method

1 – Solicit **statements of intent** from Indian owned & controlled entities

2 – If two or more are received from qualified entities, then solicit bids/proposals from Indian owned & controlled entities only

- Otherwise, solicit bids/proposals from all entities using your established method of applying Indian preference

Applying Indian Preference

If any method of Indian preference results in only one bid or proposal being received, then

Re-advertise using any approved method of Indian preference under (a), OR

Re-advertise to all entities using X-factor or other points for preference, OR

Ask HUD-ONAP for approval (remember, you must justify in writing)

Indian Preference Sealed Bidding

- Must Adopt policies granting preference in procurement to Native-Controlled firms; Or
- Limit Procurement to Native-Controlled firms; Or
- Use Two-Stage Preference
 - Stage 1: Invite Native Controlled firms to submit statement of intent
 - Stage 2: If more than One respond, limit to Native Controlled
- If fewer than Two Native Controlled firms respond:
 - Try again; or
 - Advertise without limitations; or
 - Use non-competitive method (requires Hud Approval)

Indian Preference Simplified Acquisition

- No formal process required
- Must still make **EVERY EFFORT** to grant Indian Preference



X Factor Example



Attachment A

Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	X = lesser of:
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$32,000
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000

The first step is to determine whether there are a sufficient number (more than one) of responsible Native-owned vendors who can supply the goods and services. If there are, the solicitation should be limited to Native-owned firms only. In this case, look at the price and other qualifications and award as appropriate. If there are not sufficient responsible Native-owned vendors, obtain price quotes from all sources. Once gathering price quotes from all sources, compare and award is based upon your Indian Preference policy.

The “X-Factor”

One example of a method to implement Native Preference is the use of the “X-Factor”. This method states that if the Native-owned firm is no higher than X% (the “X-Factor”) over the lowest responsive (non-Native) bidder, the Native-owned firm is awarded the purchase. The percentage to be used is based on the size of the lowest non-Native bid, starting at 10% for bids below \$100,000 and then decreasing to 1.5% for bids greater than \$7 million. The following table describes this method:

- When the lowest non-Native responsive bid is: Use the following factor for X:
- Less than \$100,000 10% of that bid or \$9,000
- At least \$100,000 but less than \$200,000 9% of that bid or \$16,000
- At least \$200,000 but less than \$300,000 8% of that bid or \$21,000
- At least \$300,000 but less than \$400,000 7% of that bid or \$24,000
- At least \$400,000 but less than \$400,000 6% of that bid or \$25,000
- At least \$500,000 but less than \$1 million 5% of that bid or \$40,000
- At least \$1 million but less than \$2 million 4% of that bid or \$60,000
- At least \$2 million but less than \$4 million 3% of that bid or \$80,000
- At least \$4 million but less than \$7 million 2% of that bid or \$105,000
- \$7 million or more 1.5% of the lowest responsive bid

X Factor

For example, a tribe received 3 bids for modernization work:

Contractor A (non-Native): \$60,000

Contractor B (Native-owned) \$65,000

Contractor C (non-Native) \$70,000

Since the lowest non-Native bid (Contractor A) is under \$100,000, a factor of 10% is used.

X Factor

- **When the lowest non-Native responsive bid is:** **Use the following factor for X:**
- Less than \$100,000 10% of that bid or \$9,000
- At least \$100,000 but less than \$200,000 9% of that bid or \$16,000
- At least \$200,000 but less than \$300,000 8% of that bid or \$21,000
- At least \$300,000 but less than \$400,000 7% of that bid or \$24,000
- At least \$400,000 but less than \$400,000 6% of that bid or \$25,000
- At least \$500,000 but less than \$1 million 5% of that bid or \$40,000
- At least \$1 million but less than \$2 million 4% of that bid or \$60,000
- At least \$2 million but less than \$4 million 3% of that bid or \$80,000
- At least \$4 million but less than \$7 million 2% of that bid or \$105,000
- \$7 million or more 1.5% of the lowest responsive bid

Take the lowest bid \$60,000 x 10% = **\$6,000**
Adjust Lowest Bid = (\$60,000
+\$6,000)=\$66,000

New Adjusted bid results would be:

Contractor A (non-Native): \$66,000 (adjusted by X Factor)

Contractor B (Native-owned) \$65,000 (**New Low Bidder**)

Contractor C (non-Native) \$70,000

Since the Native-owned bid of \$65,000 is lower than the adjusted low bid, the Native-owned bid (Contractor B) would be accepted (assuming the firm is responsive and responsible).

NOTE: Only the lowest non-Native responsive bid is adjusted.

X-FACTOR EXERCISE



Attachment A

Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	X = lesser of:
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$32,000
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000

Using the X- Factor who get's the contract?

BIDS RECEIVED

FIRM A (Non-Indian) \$70,000

FIRM B (Indian Owned) \$80,000

FIRM A (Non-Indian)
because \$ 77,000
(\$70,000 plus X-Factor of
\$ 7,000)
10% of Bid Is less than
the \$ 80,000 Bid of the
Indian Owned firm.
Therefore, a contract
would be awarded to Firm
A in the amount of
\$70,000



Attachment A

Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	X = lesser of:
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$32,000
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000

Using the X- Factor who get's the contract?

BIDS RECEIVED

FIRM A (Non-Indian) \$200,000

FIRM B (Indian Owned) \$210,000

FIRM B (Indian Owned)
because \$ 216,000
(\$200,000 plus X-Factor
of \$ 16,000)
8% of Bid Is greater than
the \$ 210,000 Bid of the
Indian Owned firm.
Therefore, a contract
would be awarded to Firm
B in the amount of
\$210,000

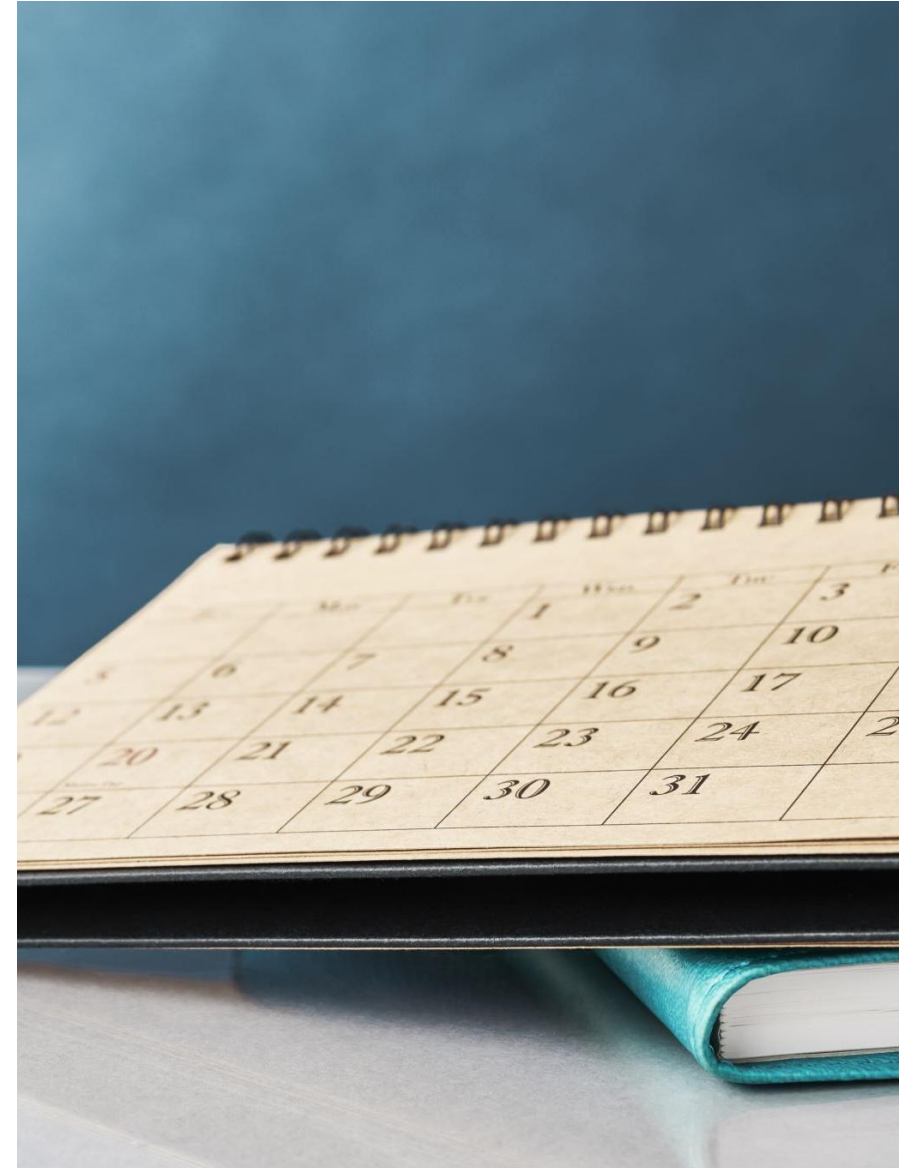




Agenda

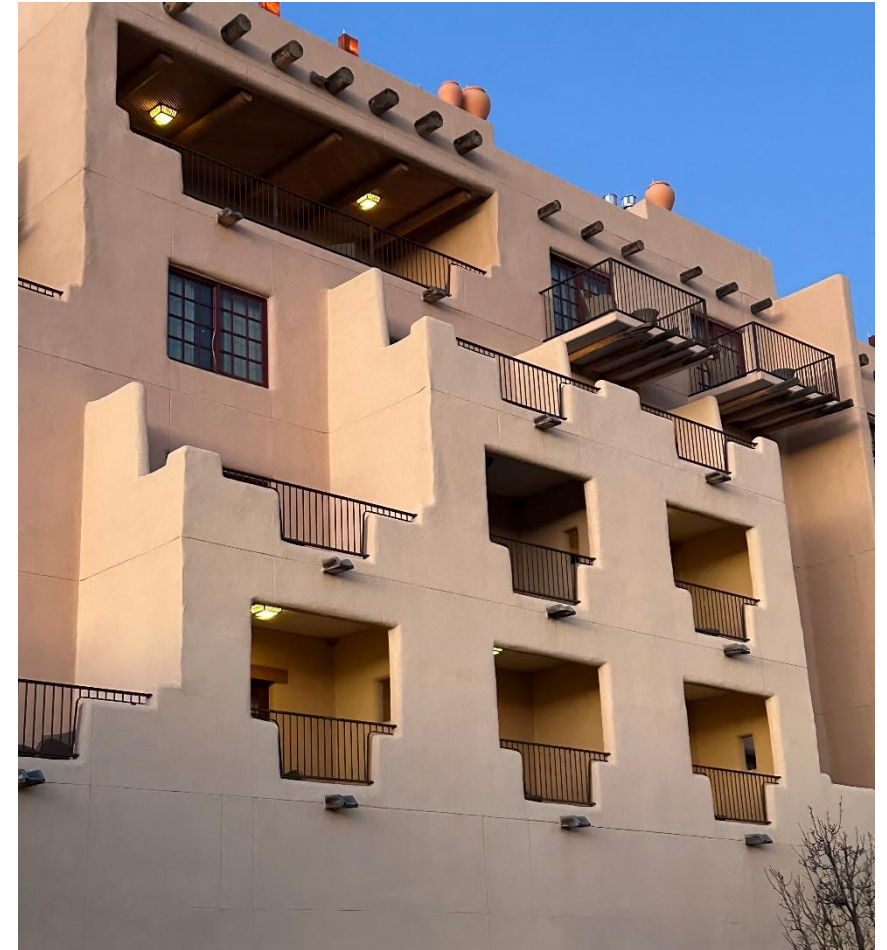
9:00 AM To 3:00 PM PDT

- Welcome & Introductions
- Training Objectives & Course Description
- Methods of Procurement
- Lunch 12-1
- Price & Cost Analysis
- Procurement Procedures
- Bid letting-Exercises



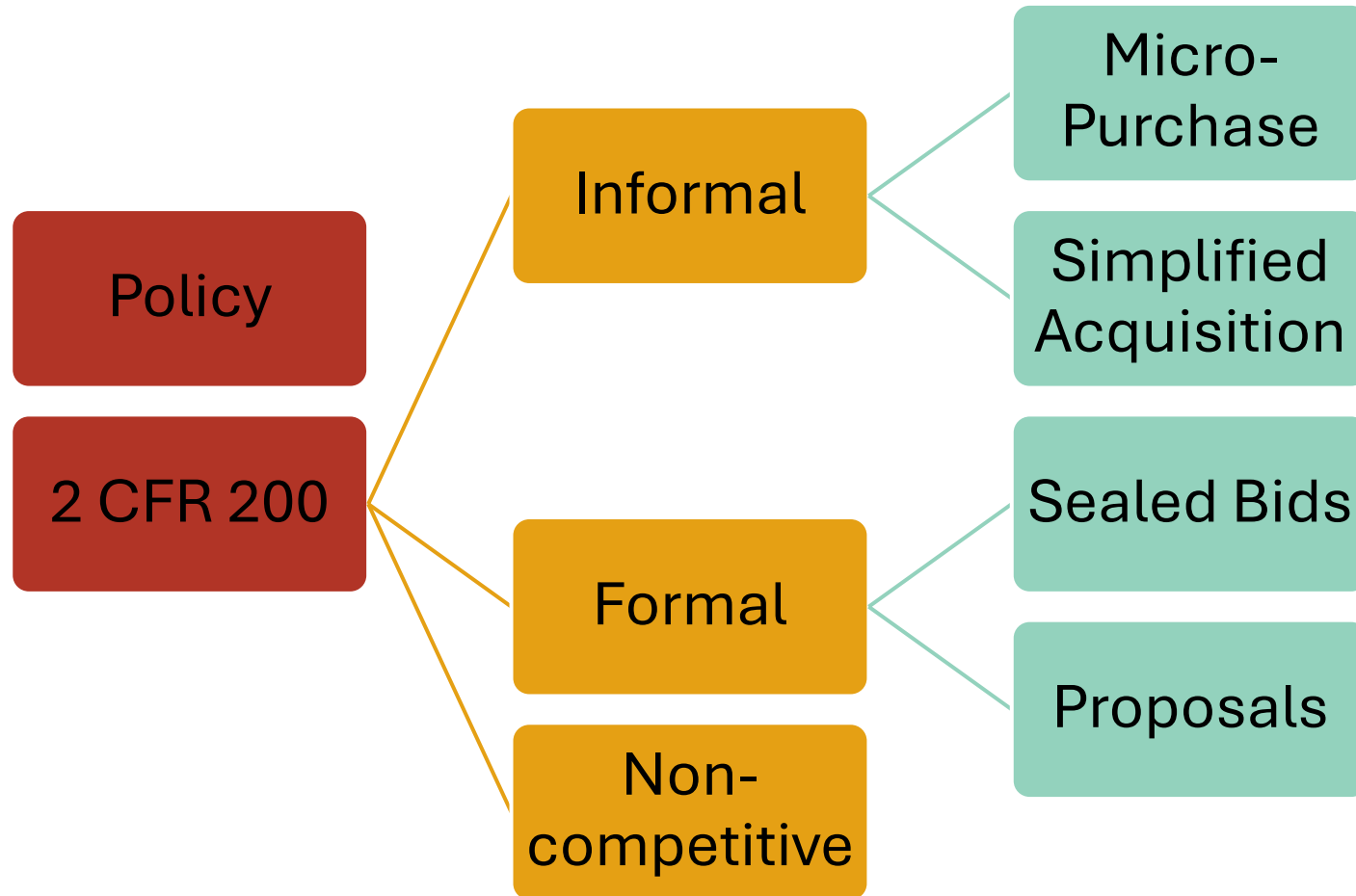
Training Objectives

- To assist you as a NAHASDA Recipient to effectively and efficiently conduct Housing procurement and comply with requirements imposed by HUD (Uniform Requirements at 2 CFR part 200) and other funding sources. After completing this training, students will have:
 - An understanding of the TDHE management and operations in relation to procurement
 - An increased knowledge of the concepts and basics of procurement
 - Improved capabilities and proficiency of job skills in the performance of procurement functions of the local housing entity.

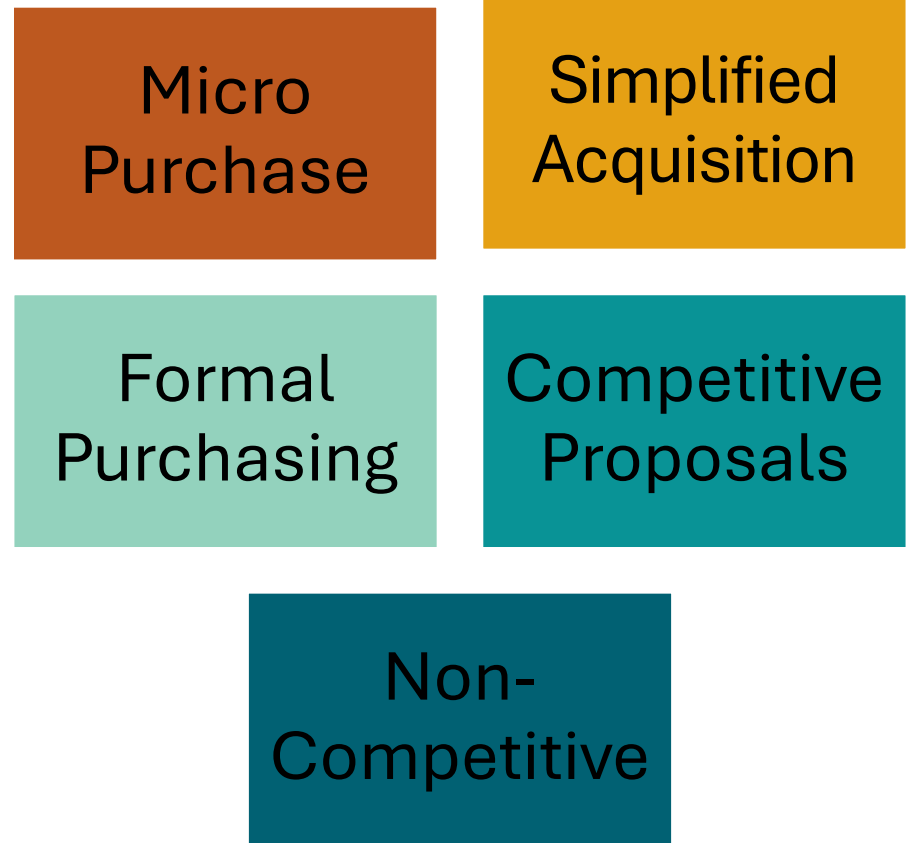


METHODS OF PROCUREMENT 2 CFR 200.320

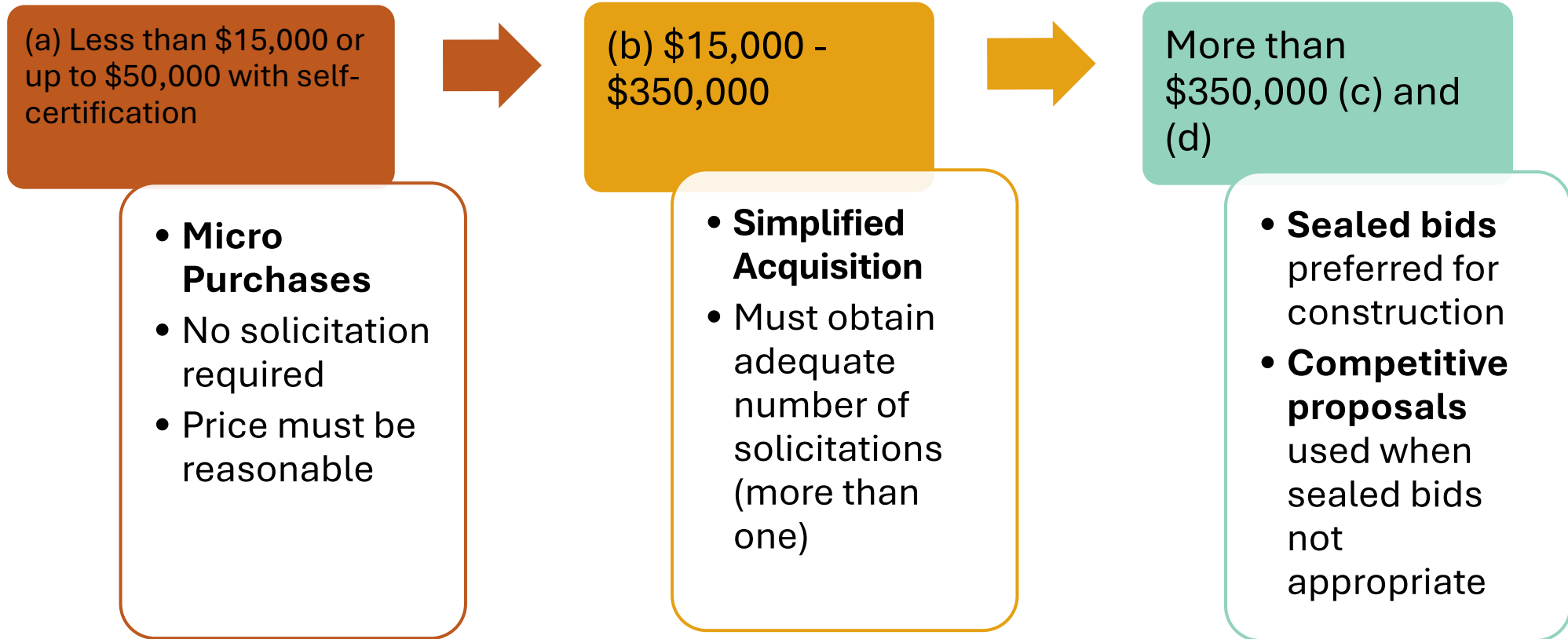
Procurement Methods



Methods of Procurement (2 CFR 200.320)



Methods of Procurement (based on price)



Contracting Planning Procedures Checklist

No.	Question	Yes	No
1.	Are grant funds available to fund the proposed contract?	<input type="checkbox"/>	<input type="checkbox"/>
2.	Has a market survey been conducted and documented to determine if there are contractors available to satisfy the requirement?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Have in-house delegations been made for grantee contractual responsibility?		
	Administrative	<input type="checkbox"/>	<input type="checkbox"/>
	Technical/Project	<input type="checkbox"/>	<input type="checkbox"/>
4.	Has the procurement method been determined?		
	Small Purchases	<input type="checkbox"/>	<input type="checkbox"/>
	Competitive, Sealed Bidding	<input type="checkbox"/>	<input type="checkbox"/>
	Negotiation	<input type="checkbox"/>	<input type="checkbox"/>
	Sole Source Contracting	<input type="checkbox"/>	<input type="checkbox"/>
5.	Has the Statement of Work been developed?		
	Design Specifications for a Competitive, Sealed Bid, or	<input type="checkbox"/>	<input type="checkbox"/>
	Statement of Work for a Negotiated contract	<input type="checkbox"/>	<input type="checkbox"/>
6.	If the contract is to be competitively negotiated, have Evaluation Criteria been developed?	<input type="checkbox"/>	<input type="checkbox"/>
7.	If the contract is to be negotiated on a sole source basis, has a Sole Source Justification been prepared?	<input type="checkbox"/>	<input type="checkbox"/>

Basic Steps for All Procurement Methods

1. Establish **parameters** (e.g., quantity, price, scope of work)
2. Do a **cost or price analysis** (except Micro- and Small Purchases)
3. **Solicit** bids, proposals or price quotes
4. **Receive** bids, proposals or price quotes
5. **Evaluate** bids, proposals or price quotes
6. **Award**
7. Enter into contract or purchase **agreement**

Documentation for All Procurement

- Description of the item or service needed
- Price is reasonable/budgeted
- Method of procurement to use
- Indian Preference
- Vendor is not debarred or suspended
- Purchase order or contract

De Minimis Procurement Threshold - PIH Notice 2023-01

- De Minimis procurement means a purchase of supplies or services using NAHASDA funds, of goods or services under \$5,000.
- Under a De Minimis procurement, the Tribe/TDHE does not have to comply with the requirements of 2 CFR 200.318 through 200.326.
- Information regarding de minimis procurement is included in 24 CFR 1000.26
- Under 24 CFR 1000.48 (2) (c), Indian preference is not required under the de minimis procurement

Micro Purchase Threshold

PIH 2023-01

A Tribe or TDHE may establish a threshold higher than the \$10,000* threshold by self certifying a threshold up to \$50,000.

The Tribe/TDHE must maintain documentation to support the self certification, and it must be made available to ONAP or auditors upon request.

- *FAR changed micro purchase threshold to \$15,000 effective October 1, 2025

Micro Purchase Threshold PIH 2023-01

The self certification must include the following:

- Identification of the threshold amount;
- Justification for the threshold amount; and
- Supporting documentation of any of the following:
 - Qualification as a low-risk auditee in most recent audit or
 - An annual internal institutional risk assessment described below to identify, mitigate, and manage financial risks.

2 CFR 200.320 (a) (1) Micro-Purchases

2 CFR 200.318 (a) (1) (iv)

Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

2 CFR 200.320 (a) (1) Micro-Purchases

2 CFR 200.318 (a) (1) (iv) continued

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

2 CFR 200.320 (a) (1) Micro-Purchases

2 CFR 200.318 (a) (1) (v)

Non-Federal entity increase to the micro-purchase threshold over \$50,000.

Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.

The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

PIH Notice 2023-01 provides additional information for Tribes and TDHEs who wish to use a higher amount.

Micro Purchase Threshold PIH 2023-01

- To conduct an internal institutional risk assessment to support a higher threshold, Tribes and TDHEs must use and maintain all of the following recipient versions of ONAP's Monitoring Plans provided on Codetalk:
- Financial and Fiscal Management Monitoring Plan (PIH 2023-01 Appendix A)
- Internal Controls Monitoring Plan (PIH 2023-01 Appendix B)
- Cash Management Monitoring Plan (PIH 2023-01 Appendix C)

Micro Purchase Threshold

PIH 2023-01

- Request for a higher limit must be made in a letter format and approved in writing by ONAP
- Self Certification elements must be included with the request
- Increased threshold is valid until there is a change in status in which justification was approved

Note – ONAP allows Tribes and TDHEs who are not required to have a single audit to request an increased micro purchase threshold with the above information.

Simplified Acquisition Threshold

2 CFR 200.320(a) (2)(ii)

- ***Simplified acquisition threshold*** means the dollar amount *in aggregate* below which a non-Federal entity may purchase property or services using small purchase methods.
- Non-Federal entities adopt simplified acquisition procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold.
- The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908.
- As of this date, the simplified acquisition threshold is \$350,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

MICRO-PURCHASE METHOD



Bucko Teeple
Copyright 2013

Micro Purchase Threshold (2 CFR § 200.67)

- *Micro-purchase* means an individual procurement transaction for supplies or services, the **aggregate amount** of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a recipient's or subrecipient's small purchases using informal procurement methods as set forth in §200.320

- *Micro-purchase threshold* means the dollar amount at or below which a recipient or subrecipient may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, except as provided in §200.320, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs.
- *A Tribe or TDHE may establish a threshold higher than the micro-purchase threshold of \$15,000 by self-certifying a threshold amount up to \$50,000 on an annual basis.*

2 CFR 200.320 (a) (1) Micro-Purchases

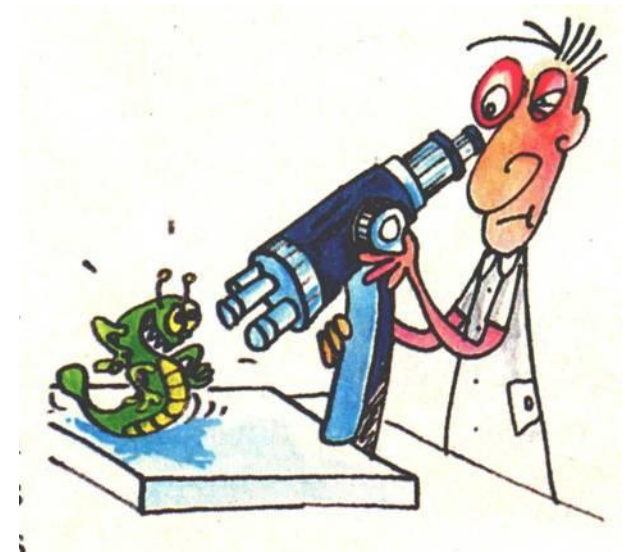
Updated December 2021

Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or Tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

Micro Purchases: 2 CFR 200.320(a)(1)

Micro purchases – if price is considered reasonable, no competitive solicitation required if price does not exceed:

- \$15,000 in aggregate for procurement using federal funds
- \$50,000 in aggregate if requested and approved in writing
- To the maximum extent practicable, Micro purchases should be distributed equitably among qualified suppliers



Micro-Purchases (include in policy)

- Applies to all purchases below established threshold when a reasonable cost is available
- Documented with an authorized purchase order or other formal method
- Purchases cannot be broken into smaller transactions to meet the Micro-Purchase threshold
- To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers

Prohibition Against Bid Splitting

- The Contracting Officer shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (commonly called ‘bid splitting’ or “unbundling”) merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds.

IHBG DE MINIMIS Procurement Exemption



- Under the IHBG Program, for procurements of goods and services valued less than \$5,000, recipients may continue to operate under the existing statutory *de minimis* procurement exemption in section 203 (g) of NAHASDA.
- NOTE: Micro-purchase and *de minimis* exceptions are two different methods for simplifying purchasing. Recipients can develop procurement policies that choose between the two options for purchases under \$5,000. However, Tribal preference requirements will apply to all micro-purchases regardless of the value but will not apply to *de minimis* procurements.

NAHASDA STATUTE

(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES-

Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000.



SIMPLIFIED ACQUISITION METHOD



Simplified Acquisition Method

Optional method available when procurement is less than the Simplified Acquisition Threshold



Simplified
Acquisition
Method

Can Be Used to Procure:

Office supplies

Vehicles

Rehabilitation Contractors

Professional Services

Equipment

Principles of Simplified Acquisition Method

Must be competitive

Less formal, Can be done by phone/Fax, You must be bidding Apples to Apples

Apply along with either bids / quotes or proposal / RFP methods

NAHASDA permits this method, when purchase amount is under \$350,000 in aggregate.

Establish your threshold in your Procurement Policy- And follow it

Simplified Acquisition

Purchases up to lesser of local or Federal thresholds (currently \$350,000)

Must attempt to obtain “adequate” number of quotes, as defined in your procurement policy

Solicitation can be verbal, written, or digital

Select lowest price (exception: Native Preference)

Document procurement

Key Elements

- No public advertising
- Need to have an adequate number of qualified bidders / proposers
- At a minimum, use a written checklist in solicitation so each bidder has the same information



Key Elements

- Can do by phone / fax /website/ e-mail/ or in person
- If solicitation is conducted by phone, questions must be uniform and consistent for all potential bidders
- Cannot divide large contracts to award multiple small contracts
- Any lack of competition requires HUD's written approval based on 24 CFR 1000.52

Solicitation

General

If price quotations are sought verbally, the selection factors must be provided to those solicited.

Requirements for services aggregating greater than \$350,000 (or a lower threshold established by the recipient to conform to Tribal law) must not be broken down into several purchases that are less than the limit merely to permit contract award under the small purchase method.

If there is a recurring need for services or supplies which is estimated to go over the \$350,000 limit (or lower threshold applicable to the recipient), sealed bidding or competitive proposal procedures should be used rather than small purchase procedures. In all cases, the price paid for small purchases must be fair and reasonable. The most effective way of accomplishing this task is to solicit competitive quotes.

Competition

Competitive quotes may be solicited by telephone, letter, internet or other informal procedure provided that the manner of solicitation provides for participation by an adequate number of competitive sources.

Competitive quotations should be solicited from an adequate number of qualified sources in order to promote competition to the maximum extent. The competition requirement is based on **2 CFR §200.319**.

Award

Before awarding a simplified acquisition, the price must be determined to be fair and reasonable. A reasonable price can be determined based on catalog or market prices or by comparison with other recent competitive purchases of the same item.

The procurement file should be documented with the basis for the price accepted. If available, copies of any commercial price lists should be kept available for use by procurement personnel.

If Award is Based on Price

Where the contract award is based on price alone (not subject to negotiation), the contract should be awarded to the qualified Indian-owned vendor with the lowest quote if it is reasonable. If the procurement was not restricted to Indian-owned vendors, the contract should be awarded to the vendor with the lowest responsive quotation (again, if it is reasonable), while implementing the Indian Preference policy.

If Award is not Based on Price

If the award is to be based on factors other than price alone, use the Competitive Proposals method. Issue a Request for Proposals (RFP) that includes evaluation criteria and rating points that will be used to evaluate the merits of each quotation. If the procurement is not restricted to Indian owned vendors, a determined percentage of the total number of available rating points may be reserved for the provision of Indian preference.

Documentation



Although the total dollars obligated by simplified acquisition may be small in comparison with formal contracts, the items bought using these procedures are often as important as any of the large contracts.



Consequently, it is important to maintain proper records of simplified acquisitions. A copy of the signed purchase order should be attached to all relevant documentation, such as the procurement request, basis for price reasonableness, acknowledgment of receipt of goods and/ or services and payment authorization.

Let's Take 10 or 15
Minutes....



Blanket Purchase Agreements (BPAs)

Blanket Purchase Agreements (BPA's) are similar to charge accounts and provide monthly invoicing. They are established by negotiating agreements for discounted purchases with commonly used vendors.

Examples include: a hardware store; a plumbing supply house; an electrical supply vendor; a gasoline supplier; an office supply store; etc. In order to avoid the appearance of sole source procurement several of each of these types of firms should be considered as sources and purchase agreements should be solicited on a regular basis. The following steps are taken in implementing a BPA procedure:

Blanket Purchase Agreements (BPAs)

Individuals authorized to purchase and the total dollar limit for each purchase are specified in a letter to each firm. Such letters must be updated as often as personnel changes or other conditions require.

- Purchases are made either by calling the supplier to order the needed items or by visiting the supplier. For each purchase the supplier furnishes, a delivery or sales ticket describing the items and showing the cost, date delivered, and the name of the person making the purchase. The tickets are accumulated until the end of the month and compared with a monthly invoice from the vendor. A check is issued for full payment on a monthly basis.
- If the BPA is being used for repeated purchases of the same item totaling a significant dollar amount, consider awarding a formal contract for such item.

Blanket Purchase Agreements (BPA)

Negotiate	Negotiate BPAs after soliciting several firms
Select	Select firm offering best discounts
Write	Write BPA for specific period of time
Purchase	Purchase using requisitions/Purchase Orders
Pay	Pay Monthly

Blanket Purchase Agreements (BPA)

- IHBG recipients are eligible for GSA Services
- Surplus Property Donations
- Fleet Vehicle Sales
- Pre-Competed Contracts for IT Solutions
- GSA Vehicle Buying Program (saves 26% off sticker price)
- GSA Global Supply Catalog

Formal Procurement Methods

Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section:



Sealed Bid Method



Sealed Bids: Prequalification

- Try to pre-qualify contractors for Indian preference
- Data must be maintained and periodically updated to reflect changes
- Check list of debarred/suspended contractors (www.sam.gov)



Sealed Bids



For Construction, Use a Project Manual

- “Front End” Documents
 - Invitation
 - Bid Forms
 - Special Conditions
 - Contract Form
 - General Conditions
- Technical Specifications
- Plans and Drawings

Invitation For Bids Solicitation

Must be publicly advertised

Can also be personally solicited

Seek as many bidders as you can

Can amend or cancel by
addendum

Can limit to list of pre-qualified
bidders

Sealed Bid Method

- Also called bid letting, Invitation for bids, solicitation of quotes
- Preferred method for conventional construction contracts
- Specifications and invitation are very important
- Publicly advertised (unless small purchase or cooperative purchasing is used)



Sealed Bids

2 CFR 200.320(b)(1)

What are they?

- Contractors submit their bid amounts / quotes and confirm compliance with specifications
- Contractors must be responsive and responsible to be considered
- Price is “sole factor” and is a fixed amount
- Award to responsive and responsible bidder with lowest bid after preferences applied

When to Use Sealed Bidding

Use sealed bidding when...

- Your estimated cost exceeds the small purchase threshold, or for purchasing construction services; and
- Your project specifications are available; and
- You have two or more responsible and willing bidders; and
- You have a firm, fixed price contract; and
- Your selection can be based on price

Pre-Bid Conference

After the IFB is issued and before bids are due, the Contracting Officer may hold a pre-bid conference with prospective bidders to discuss the IFB. A pre-bid conference is normally conducted only for large or complex procurement. Notice of the conference must be included in the IFB. The timing of the conference should allow bidders enough time to review the IFB and revise their bids before bid opening. At the conference, the Contracting Officer should state that nothing at the conference will change the terms of the IFB unless a subsequent amendment is issued. A summary or transcript of the conference should be sent to all those on the solicitation mailing list, not just those who attended.

Restricted Solicitations

The IFB may be restricted to qualified Indian-owned vendors. However, the IFB should not be so restricted unless there is a reasonable expectation that the required minimum numbers of qualified Indian-owned vendors are likely to submit bids. The procedures in **24 CFR §1000.52** and the applicable Procurement Policy must be followed, in deciding whether to restrict solicitations to qualified Indian owned economic enterprises and Indian organizations.

24 CFR §1000.52 What Tribal or Indian preference requirements apply to IHBG procurement? (About 1 ½ pages)

Sealed Bids

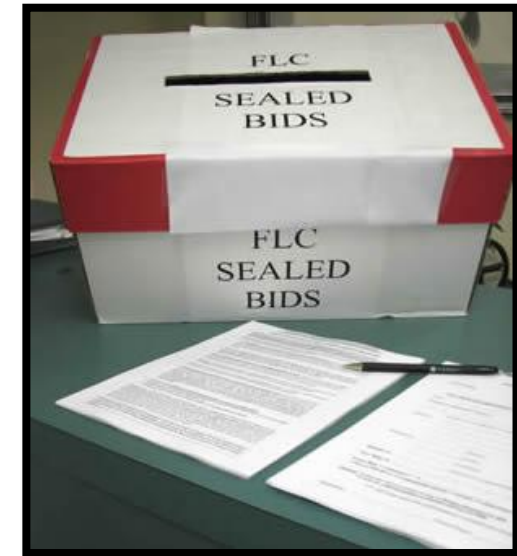
For Construction, Use a Project Manual

“Front End” Documents

- Invitation
- Bid Forms
- Special Conditions
- Contract Form
- General Conditions

Technical Specifications

Plans and Drawings



Solicitation, Invitation, or Request for Quotes

- Must be publicly advertised
- Can also be personally solicited
- Seek as many bidders as you can
- Can amend or cancel by addendum
- Can limit to list of pre-qualified bidders

Preference for Procurements Related to Public Infrastructure

- Tribes and TDHEs should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). **The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.**
 - “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
 - Waived – projects \leq \$350,000 (current Simplified Acquisition Threshold)
 - There may also be other waivers – see [PIH 2025-06](#) and PIH 2024-34 Revised

Build America Buy America (BABA)

- Prior to starting the project, the Tribe/TDHE should determine if the project will be considered Public Infrastructure and subject to BABA
- If the project involves construction, maintenance, alteration, and repair of 1-4 dwelling units, the project is not subject to Buy America Preference (BAP)
- Construction, maintenance, alteration, and repair of 5 or more dwelling units will be considered Public Infrastructure and subject to BAP

Build America Buy America (BABA)

- Awards and subawards at or below \$2,500,000 are exempt from BABA if
 - The total award is less than \$2,500,000 AND
 - The award does not exceed \$2,500,000 for the life of the project
- Tribal recipients may purchase non compliant manufactured products when expending HUD Federal Financial Awards that were obligated on or before September 30, 2026.
- PIH 2024-35 (Revised) Appendix C includes a checklist the Tribe/TDHE can use to determine whether BAP applies

Build America Buy America (BABA)

- Tribal Recipients are responsible for assessing each project funded with Federal funds subject to BABA to determine if the BAP applies and documenting compliance.
- BAP requirements apply to the procurement of Covered Materials used in infrastructure projects.
 - Iron and Steel
 - Manufactured Products AND
 - Construction Materials
- Covered Materials must be sourced from producers and workers in the United States

Amending the Solicitation

If a change to the IFB becomes necessary after it has been issued, the change must be formalized by issuing a written amendment (sometimes referred to as an "addendum"). A copy of the amendment must be mailed to each prospective bidder who was sent the basic IFB along with required acknowledgment required. If an amendment needs to be issued within seven days before the scheduled bid opening date, the bid opening should be postponed long enough to permit the potential bidders to fully analyze the change and submit timely bids.

Opening Bids

The bid opening process should be similar to the following outline:

a) Each bid must be date-stamped upon receipt and secured in a locked bid box, cabinet, or safe until the time appointed for bid opening.

b) Sealed Bids must be opened on the scheduled date and time shown on the solicitation. During a bid opening, the bids and each bidder's name and bid price will be read aloud.

c) The bidder's name and bid price must be recorded and made available for public inspection. This record must also be placed in the procurement file.

d) No commitment may be made to any bidder at bid opening.

e) Any questions or disagreements should not be considered at the bid opening.

f) A bid received after the time specified for bid opening may not be opened. It must be recorded as a late bid and retained unopened in the contract file.

Contract Award Process

After the Contracting Officer evaluates each timely bid, the responsive and responsible bidder that submits the lowest bid and meets all specified requirements is normally awarded the contract.

Determining Responsiveness

- The first step in the contract award process is to review the low bid for responsiveness. A bid cannot be considered for award if it is not responsive to the essential requirements of the solicitation. A determination that a particular bidder is non-responsive should be documented in the contract file.

Bidders, Proposers, and Contractors (Vendors) Must Be Both...

- Responsive and
- Responsible



Responsive...

Bidder, proposer, or vendor responding to a solicitation provides **all of the documents and information required by recipient**

Responsible...

Bidder, proposer, or vendor has the **capacity and capability** to perform the work and/or provide the goods properly and on time.



Contract Award Process



Determining Price Reasonability



Prior to awarding any contract the Contracting Officer must determine in writing that the prices to be paid are reasonable.



Determining Contractor Responsibility



Prior to awarding any contract, the Contracting Officer must determine, in writing, that the contractor is responsible to perform the contract. In determining responsibility, the Contracting Officer should consider the factors described in 2 CFR Part 200.

Contract Award Process

Rejection of Bids

Rejection of any bid during the evaluation process must be fully documented and all reasons for the rejection stated. Any bid may be rejected if the Contracting Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual items as well.

Discounts

If specified in the IFB, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is the lowest. Prompt payment discounts should ordinarily not be used to determine the low bid, because there is no guarantee that such discounts will be taken.

Contract Award Process

- Firm Bid Rule

Under the "firm bid" rule, one of the principles that sealed bidding is based upon, the bidder is legally bound by the bid as submitted after the bids have been opened. The only exception to this rule is an obvious mistake in the bid, such as a misplaced decimal.

- Equal Bids

In the event that two or more low bids are equal in all respects, the award should be decided by drawing lots or other random means of selection. However, in the event of a tie bid, the Contracting Officer may give preference for small, or minority businesses and award based on low bidder's status (consistent with State, local, or tribal law). This option is permissible, provided that this condition is disclosed in the solicitation.

Award and Contract for Competitive Sealed-Bids:

- Award and Contract
 - Only to responsive and responsible bidder
 - Reasonable price
 - May not be the lowest bidder
- Use appropriate contract forms and methods after obtaining legal advice



Awarding a Contract

- Award to responsive and responsible bidder with lowest bid after preferences applied
- Compare with cost/price analysis
- Comply with preferences
- Cannot negotiate – bid is considered best and final offer.
- Can reject any and all bids for good reason

Purpose and Importance of Contracts

- Clearly define expectations for all parties of the contract
- Incorporates terms that protect your right to get goods or services delivered promptly and properly
- Dispute avoidance
- Dispute resolution provisions



Contract

- Ensure all solicitation and pre-contract terms have been complied with
- Contract may be one page invoice or dozens of pages
- Executed by contracting officer
- Use recipient-approved contract form (e.g., by AIA, AGC, HUD) or get legal advice before signing



After Execution of Contract

- In some cases, issue a Notice to Proceed
- Ensure contractor compliance with start-up obligations
- Administration transferred from procurement officer to contract manager



LUNCH TIME
12 To 1 PM PDT



COMPETITIVE PROPOSALS METHOD



COMPETITIVE PROPOSALS METHOD

The primary alternative to using sealed bidding for contracts above the small purchase threshold is the competitive proposals method of procurement, the chief advantage of this approach is that it allows the TDHE/Tribe to hold discussions with each offeror to ensure that there is a complete understanding of the work to be undertaken. The competitive proposals technique is considerably more complex than sealed bidding and requires the ability to devote staff resources to the evaluation of proposals. No public bid opening is held because proposals submitted by offerors are kept in confidence and not released to anyone who has not been granted access by the Contracting Officer.

COMPETITIVE PROPOSALS METHOD

The primary difference between sealed bidding and competitive proposals is the finality of initial offers. Under competitive proposals, alterations and prices may be made after proposals are opened. Such changes are not allowed in sealed bidding. Under the competitive proposal's method, an offer may be withdrawn at any time before award and discussions with competing offerors and changes in their proposals (including price) are allowed.

Professional services and cost reimbursement contracts will usually be handled using competitive proposals as they will not be awarded based solely on the lowest price or cost. The procurement file should indicate the reason for choosing competitive proposals rather than sealed bidding procedures.

Competitive Proposals METHOD

Proposals include a list of evaluation factors and their relative importance (e.g., points scale)

Used to procure goods and services when price is not the only factor

Solicitation is request for proposals

Competitive Proposals METHOD

Can Be Used to Procure:

Examples

Architects

Accountants

Attorneys

Developers

Computer systems

Consultants

Banking Services

Competitive Proposals METHOD

Specifications may not be fully prescribed

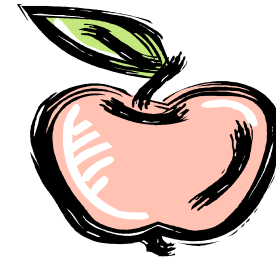
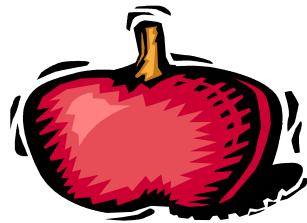
Turnkey development / construction

Acquisition of pre-built housing



Competitive Proposals

Jonathan Apples to McIntosh Apples



Competitive Proposals

Price is NOT the Only Factor!

NAHASDA allows price not to be a factor in certain architect/engineering contracts (2 CFR 200.320(2)(iv))

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.



Competitive Proposals

2 CFR 200.320(b)(2)

- Used to procure goods and services when *price is not the only factor*
- Request for Proposal must include a list of evaluation factors and their relative importance (e.g., points scale)
- Indian Preference must be one of the factors
- Solicitation is request for proposal

Solicitation of Proposals

- Advertised publicly
- Commonly fewer specifications
- Selection criteria with points scale
- Incorporate applicable preferences



Using Point System

- Everything (except certain preferences) has a range of possible points
- Use a panel of knowledgeable evaluators
- Individual and independent evaluations are recommended
- Verify and evaluate preferences



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Sample Criteria With Point Scale

- 1. Knowledge and experience of financial and accounting standards for Indian housing programs including, but not limited to, 24 CFR part 1000.26, 2 CFR part 200 subpart E, and HUD PIH Notice 2025-01 “Determining and Using Program Income Under NAHASDA”, and generally accepted government accounting practices.....**Up to 25 pts.**
- 2. Prior experience in Indian Housing programs.....**Up to 20 pts.**
- 3. Evaluation of performance by existing and former clients (including evaluation from advertising TDHE if applicant has previously worked for the TDHE).....**Up to 15 pts.**
- 4. Fees charged (including both the rates charged and the efficiency of the accountant or firm based on prior experience).....**Up to 15 pts.**
- 5. Evaluation of Indian Preference in Training, Employment and Contracting. **Up to 10 pts.**
- 6. Indian Preference for Indian Owned Firms.....**0 or 15 pts.**

Maximum 100 Points

Opening and Evaluating Proposals

- Best to open all at the same time
- No public opening
- Assess each proposal
- Determine who is responsive and responsible
- Evaluate, often using point scale



Proposal Evaluation

Proposals received should be date and time stamped and held unopened in a secure place until the established due date. Proposals shall not be opened publicly. After the closing date, all proposals received shall be shown only to TDHE/Tribe personnel who have been authorized as having a legitimate interest in them.

Information in the proposals should not be released to anyone who has not been authorized by the Contracting Officer.

Proposal Evaluation

For the purpose of conducting negotiations, proposals should initially be classified as acceptable, potentially acceptable (having a reasonable chance of being selected for award), or unacceptable. This decision should be made after evaluation of both technical and cost/price proposals so that each proposal is examined in its entirety and the relative rankings of each offeror are compared. Offerors determined by the Contracting Officer to be acceptable or potentially acceptable are considered to be within the competitive range and have a reasonable chance of receiving a contract award. This decision shall be in writing and included in the procurement file. Offerors whose proposals are unacceptable shall be notified promptly with the appropriate rationale for such action and excluded from the remainder of the procurement.

Proposal Evaluation

- A written plan for evaluating technical and cost proposals should be established and evaluation panel members designated before the RFP is issued. Failure to take this action prior to the solicitation may give the appearance of favoritism towards one or more contractors. A specific evaluation plan must be developed for each competition.
- Normally, the cost or price evaluation will be handled exclusively by the Contracting Officer. The technical evaluation requires a detailed evaluation plan including a rating sheet for each offeror, listing each of the evaluation criteria and the weight assigned. The rating description should be clearly stated (for example, a rating of "Excellent means 20 out of 20 available points for a particular evaluation factor; "Good" means 15 of 20 points; etc.). The technical evaluator should assign both numerical ratings and narrative justifications to support the ratings given.

What's in an RFP?

- Cover Letter
- Face Page (Professional Introduction to Proposal)
- Statement of Work (SOW)
- Mandatory clauses
- Price Form
- Required certifications
- Instructions to bidders
- Evaluation Factors

Proposal Evaluations



- Sealed until deadline
- Private, not public
- Initial determination
- Acceptable
- Evaluation
- Price (By Contracting Officer)
- Technical (By Committee)
- Use ratings in RFP

§ 200.319: Competition

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, **contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.**



§ 200.319: Competition

All procurement transactions under a Federal award must provide for full and open competition.

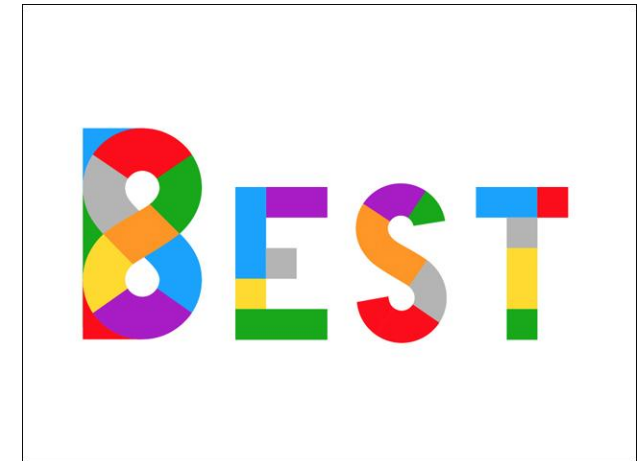
Contractors who are involved in drafting specs, statements of work, RFPs or IFBs **must be excluded.**

Auditors involved in the development of Indirect Cost Proposals are excluded from performing both if the amount of Indirect costs collected in the prior year exceeded \$1,000,000.

- No overly restrictive requirements allowed (unreasonable qualifications, unnecessary experience, excessive bonding)
- Cannot award noncompetitive contracts to consultants
- Potential bidders may not work together to establish pricing

Award of Contract

Award to responsive and responsible proposer with the highest number of points (whose proposal is most advantageous to Recipient based on price AND criteria published in solicitation)



Award of Contract

- Can reject any and all proposals for sound and documented reason
- Negotiations of a contract are allowed, but under limited circumstances and must be documented
- Cost or price analysis required, and contract often based on hourly rates.



§ 200.319: Competition

(c) Examples of situations that may restrict competition include, but are not limited to:

- (1) Placing unreasonable requirements on firms for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.



Contract Award

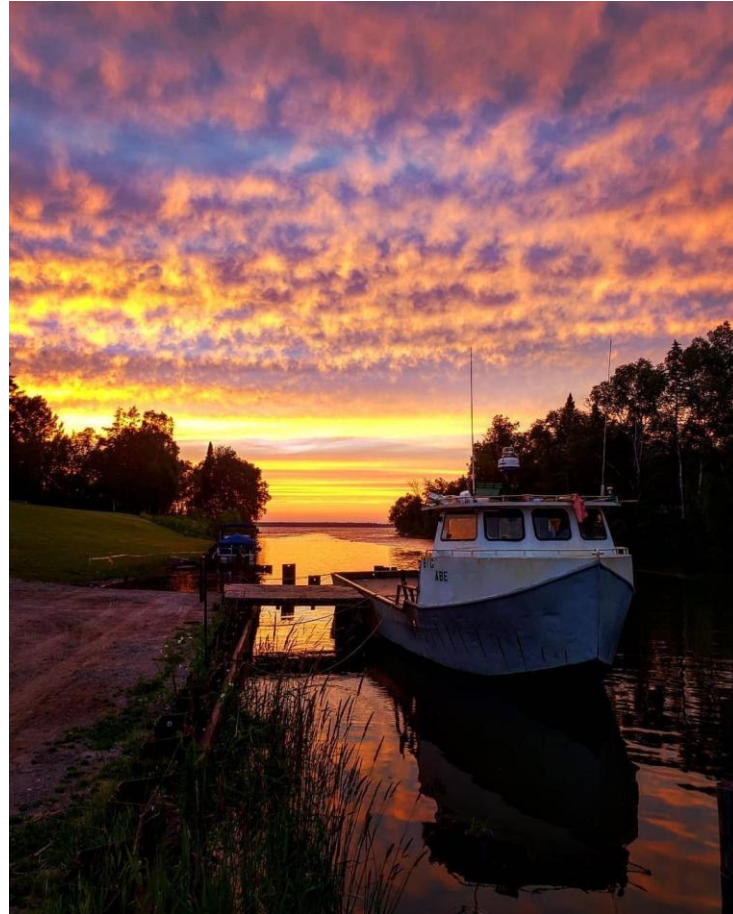
- Negotiation
- Highest scoring (one or more)
- Best and Final Offers
- Award without discussion
- Determine Price Reasonableness
- Determine Contractor Responsibility
- Notice of Award



When to Use Competitive Proposals

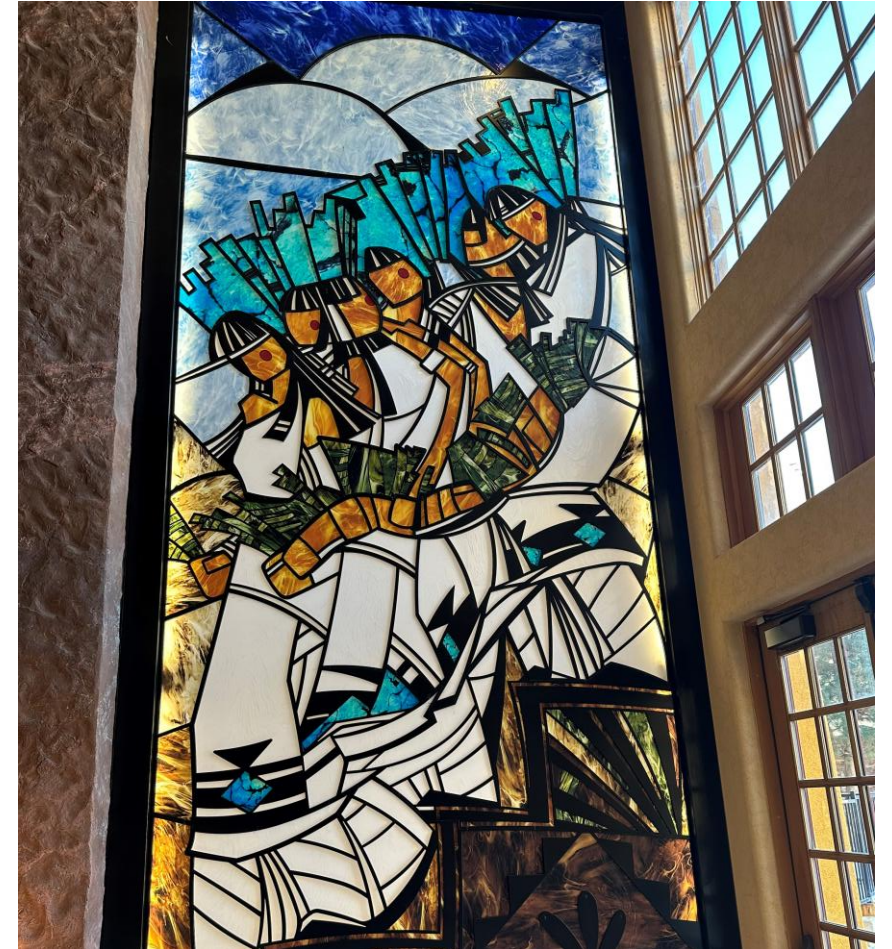
- Sealed bidding not feasible
- More than one firm submitting proposal
- Either fixed-price or cost reimbursement
- Award to be based on other than price

NON-COMPETITIVE METHOD



§ 200.320 (c): Noncompetitive Proposals

- (c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:
 - (1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The procurement transaction can only be fulfilled by a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
 - (4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
 - (5) After soliciting several sources, competition is determined inadequate.



Non-Competitive Method Can be used...

Only in extraordinary situations

Only when other methods are
infeasible

Often requires special
approval from HUD

MUST document reason for
use

Noncompetitive Procurement – §200.320(c)

Under certain very limited circumstances procurements of \$10,000 and more can be made without soliciting quotes. These circumstances include the following:

- **Sole Source** -the item is available only from a single source. For example, repair of a computer may only be done by the manufacturer.
- **Emergencies** – the situation poses an immediate threat to the health or safety of a resident, or an immediate threat to the building structure. Examples include a heating system failure during very cold conditions, or a broken water pipe. The emergency will not permit a delay resulting from competitive solicitation.
- **The Federal awarding agency or pass-through entity** expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.
- **Inadequate Competition** -after solicitation of a number of prices, quotes or bids, competition is determined inadequate.

Non-Competitive Method

2 CFR 200.320 (c)

Can Be Used...

- If the procurement qualifies as a micro purchase
- The item is only available from a single source
- There is an emergency, and the item or service is needed now
- After solicitation from a number of sources, competition is determined to be inadequate
- HUD or other funding agency specifically allows for a non competitive award
- Reason for use **MUST** be documented
- HUD approval is often needed to award a noncompetitive procurement

Non-Competitive Method

- Negotiate with a single source
- Provide preferences when feasible
- Cost analysis is required



HUD Approval

What HUD May Want When its Approval is Required:



- Cost analysis
- May request to review all procurement materials prior to award of a contract
- Written reasons why award cannot be made through competition

Emergency

- Immediate threat to health/safety
- Heating system failure

Sole Source

- Only 1 source
- Specific software or repair firm

HUD Approval

- Limited circumstances
- Continuation of project

Lack of Competition

- Repeated attempts to get quotes unsuccessful

Remember: Document, document, document!

PRICE AND COST ANALYSIS

“Independent Cost Estimate”



Is Proposed Price Fair and Reasonable.

Prior to awarding a contract, the determination must be made that the proposed price is fair and reasonable. This is accomplished by performing a cost or price analysis prior to contract award. The type of analysis will vary depending on the method of procurement and the estimated dollar value of the contract.



Definitions

- **Cost** refers to how much the contractor will have to pay to perform the contract.
- **Price** refers to how much the contractor will charge to perform the contract.
- **Profit** is what is left over after the contractor has paid all of its costs.
- **Price Analysis** is the most common technique for evaluating the price of procurement. Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements.
- **Cost Analysis** is a review and evaluation of the separate elements of cost that make up the contractor's cost proposal.

- ***Cost + Profit = Price***

How Cost-Price Analysis Applies to Different Procurement Methods

Simplified Acquisition

When using the simplified acquisition method of procurement, price analysis is conducted by obtaining price or rate quotes from an adequate number of qualified sources and comparing the quotes or rates to prior purchases of a similar nature. These situations are typical of many procurements and do not require a more formal cost analysis.

How Cost-Price Analysis Applies to Different Procurement Methods

Sealed Bidding

Purchase of supplies, equipment, and construction are typically accomplished using sealed bidding. Sealed bidding is mandatory for the procurement of equipment, supplies, services or construction that exceeds \$350,000. The reasonableness of the price is established by a comparison of an independent cost estimate and the competitive bids received. No further price analysis is required (however, cost analysis is required in certain situations when only one bid is received).

How Cost-Price Analysis Applies to Different Procurement Methods

Competitive proposals are most often used when acquiring professional, consulting, and architect/engineering (A/E) services. In order to determine the reasonableness of costs under these types of contracts, the Contracting Officer will need to ask the offerors to submit the elements of their costs, i.e., a cost breakdown. As such, the Contracting Officer should perform a cost analysis and will need to apply the cost principles.

How Cost-Price Analysis Applies to Different Procurement Methods

Noncompetitive Proposals

If procurement by noncompetitive proposals has been justified under one of the circumstances in 2 CFR S200.320(c), no cost analysis is required for the effort of trying to determine cost reasonableness. According to 2 CFR S200.320(c), “procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
- (2) The procurement transaction can only be fulfilled by a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- (4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
- (5) After soliciting several sources, competition is determined inadequate.

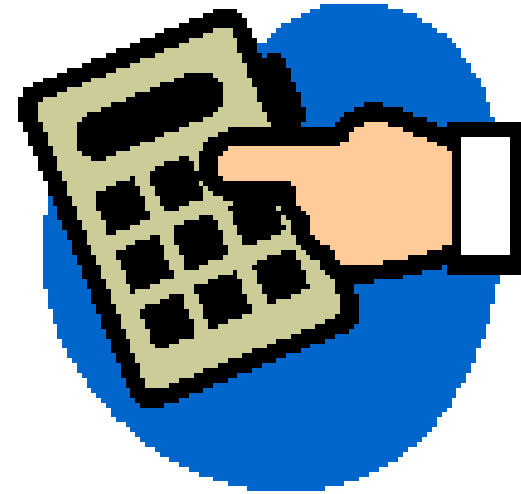
Price vs. Cost Analysis

Cost Analysis Needed When...

- Elements of costs (i.e., professional, consulting, or A/E service contracts)
- With non-competitive proposal method
- After soliciting, only one bid received with determination of inadequate competition
- A change order to the contract affecting price

Price vs. Cost Analysis

Price analysis used in all other instances to determine reasonableness of proposed contract price



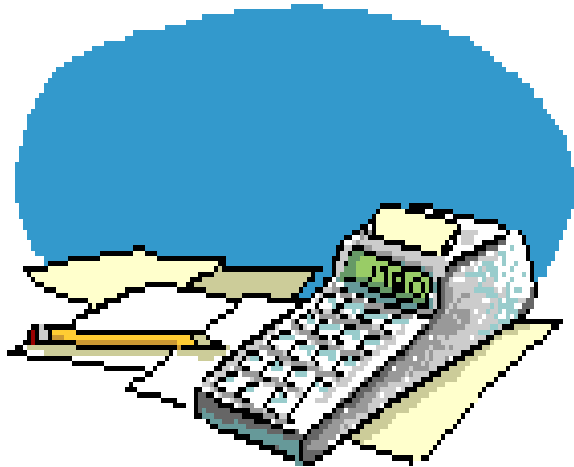
Cost Analysis Techniques

Do independent cost estimate **before** receiving bids or proposals

Verify pricing and evaluate cost proposal, including:

- Necessary and reasonableness of costs
- Technical appraisal (e.g., by an engineer)
- Application of correct indirect cost rates, direct labor rates, etc.
- Evaluate fair and reasonable profit

Cost Analysis Techniques



Compare contractor costs against:

- Actual costs (if the same contractor)
- Previous cost estimates from the same firm or others for same or similar items
- Technique to be used to perform the work (are costs consistent with proposed approach?)

§ 200.324 Contract cost and price.

- (a) The recipient or subrecipient must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.
- (b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under subpart E of this part. The recipient or subrecipient may reference its own cost principles as long as they comply with subpart E of this part.
- (c) The recipient or subrecipient must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

Contract Cost and Price

2 CFR § 200.324

- Cost analysis is encouraged for Micro and Small purchases. Must at least document the amount TDHE considers reasonable.
- Should start with independent cost estimates before bids or proposals.
- Cost estimates are not disclosed (confidential information).

Price Analysis Techniques

Reasonable?

Compare proposed prices received in response to solicitation

Compare past prices and contracts for same or similar items / services

Apply “yardsticks” (i.e., \$/sq. ft., \$/lb. ,or other units) to find differences

Compare competitive pricing lists, cost estimating publications, published market prices, etc.

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS

What is price analysis?

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements that it is composed of.

What is cost analysis?

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directed related to the requirement and ultimately, reasonable.

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS



Is cost or price analysis always required?



Yes. HUD's regulations require grantees to perform a cost or price analysis for *every* procurement action, including contract modifications (e.g., "change orders"), using HUD grant funds.



When do I perform a price analysis?



You use price analysis whenever you are comparing lump sum prices, not cost estimates - received from contractors in a competitive pricing situation (e.g., when sealed bids are obtained).

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS

What qualifies as competition?

Generally, competition means two or more responsible (e.g., not debarred or suspended, etc.) offerors ("bidders"), competing independently, submit priced offers that satisfy the grantees contract requirement. Obviously, the greater the number of offers received, the greater the competition and ideally, the better the pricing.

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS

When do I perform a cost analysis?

Cost analysis is used whenever you do not have price competition. A cost analysis is required when:

.Using the *competitive proposal* (or "negotiated") method of contracting, e.g., for acquiring professional, consulting or architect/engineering (A/E) services. Under the competitive proposal method, offerors are required to submit cost proposals that show the elements (e.g., labor, materials, overhead, profit) of their proposed costs or price.

.Negotiating a contract with a *sole source*, i.e., not soliciting competitive bids or offers. When a sole source is appropriate and justified, you must obtain a complete cost breakdown from the sole source contractor and perform an analysis using the cost principles to establish a fair and reasonable price or estimated cost.

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS

After soliciting competitive sealed bids, you receive only one bid, and it differs substantially from your independent estimate of the contract price. If you determine that the bid is unreasonable and decide to not recompetete (e.g., market survey tells you that you wouldn't get competition), then you may formally cancel the solicitation and negotiate a contract price with the single bidder. In that case, you must obtain a cost breakdown of the single bid price and use cost principles to determine if that price is reasonable.

QUICK GUIDE TO COST AND PRICE ANALYSIS FOR HUD GRANTEES AND FUNDING RECIPIENTS

Negotiating a modification (including change orders) to any type of contract, if the modification changes the work authorized under the contract, and changes the price or total estimated cost, either upwards or downwards. You must obtain a detailed breakdown of the contractor's proposed cost - not a lump sum proposal - before negotiating the change in contract price.

CAUTION: Modifications that change the work beyond the scope of the contract must be justified. If the out-of-scope change cannot be justified, you must procure the work competitively.

Could there ever be a situation where I don't have price competition, and I don't have to perform a cost analysis?

Yes. There are two situations:

The price can be established on the basis of catalog or market prices of commercial products or services sold in substantial quantities to the general public. A product is considered to be "sold in substantial quantity" when the regular sales volume is large enough to constitute a real commercial market. Services are considered to be "sold in substantial quantity" when the contractor/vendor customarily provides them, using his/her regularly employed personnel and using equipment (if any is needed) regularly maintained solely to provide the services.

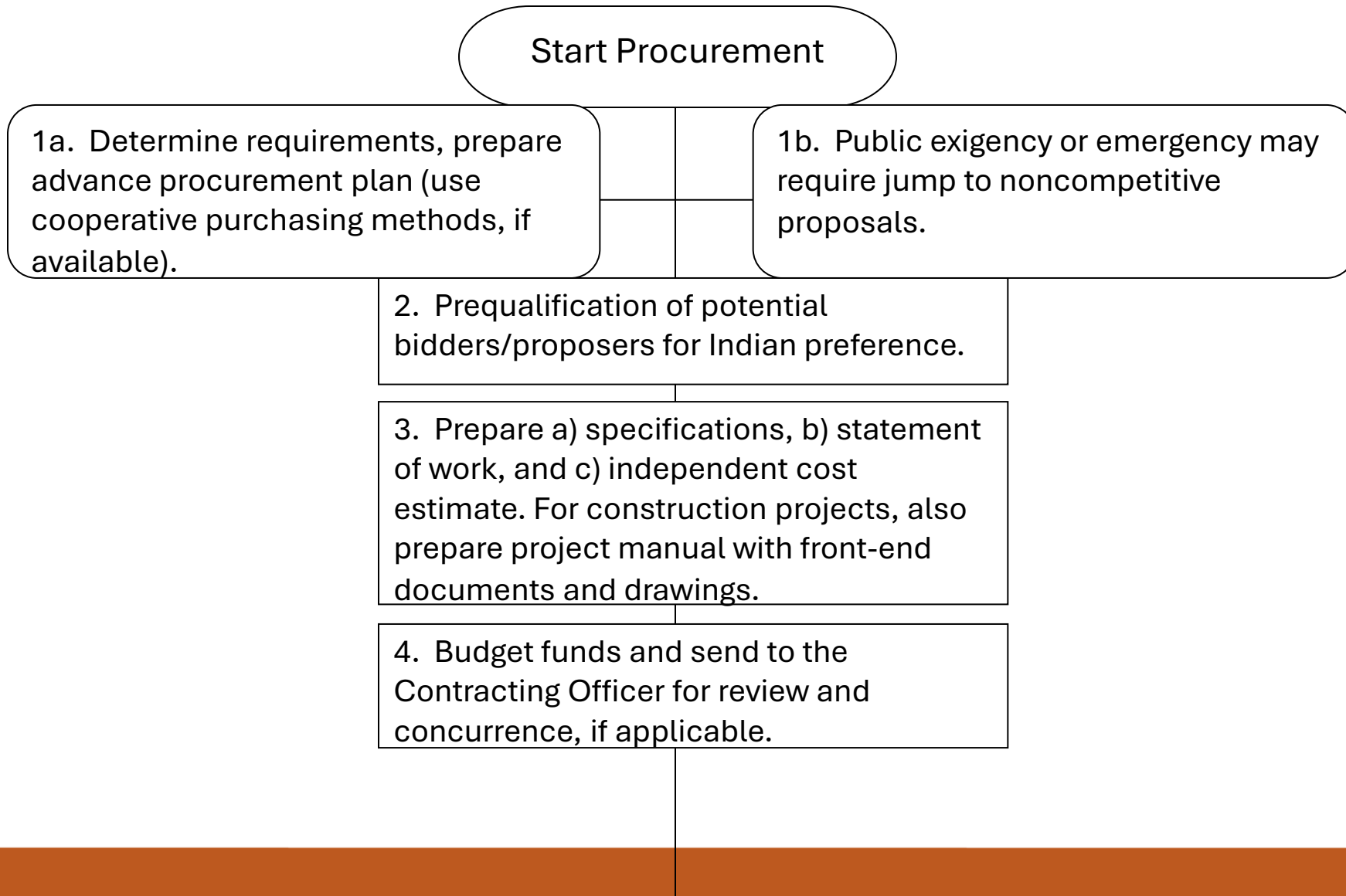
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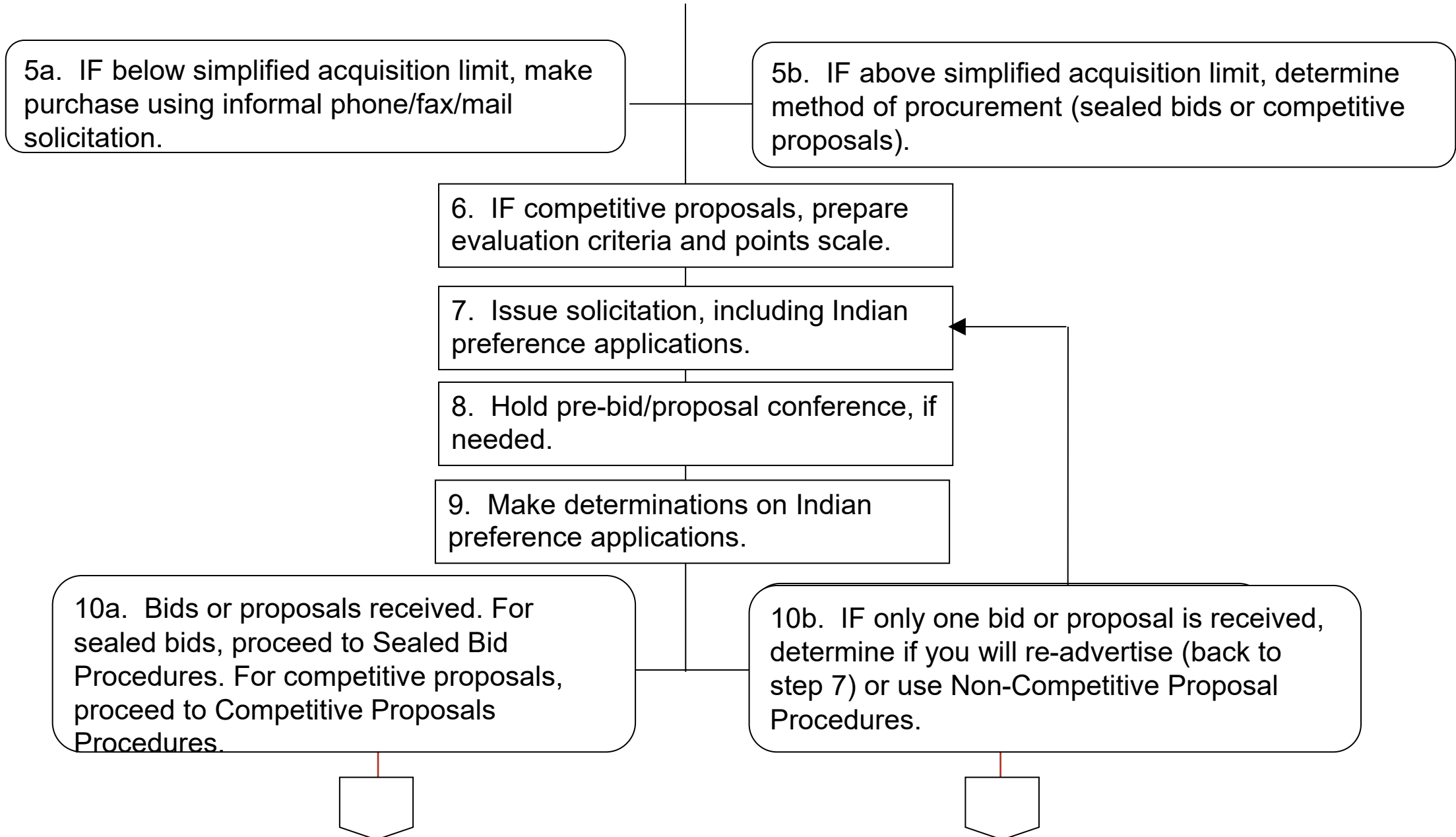
The price is set by law or regulation.

PROCUREMENT PROCEDURES



PROCUREMENT PROCEDURES





Sealed Bid Procedures

SB1. Conduct public bid opening.

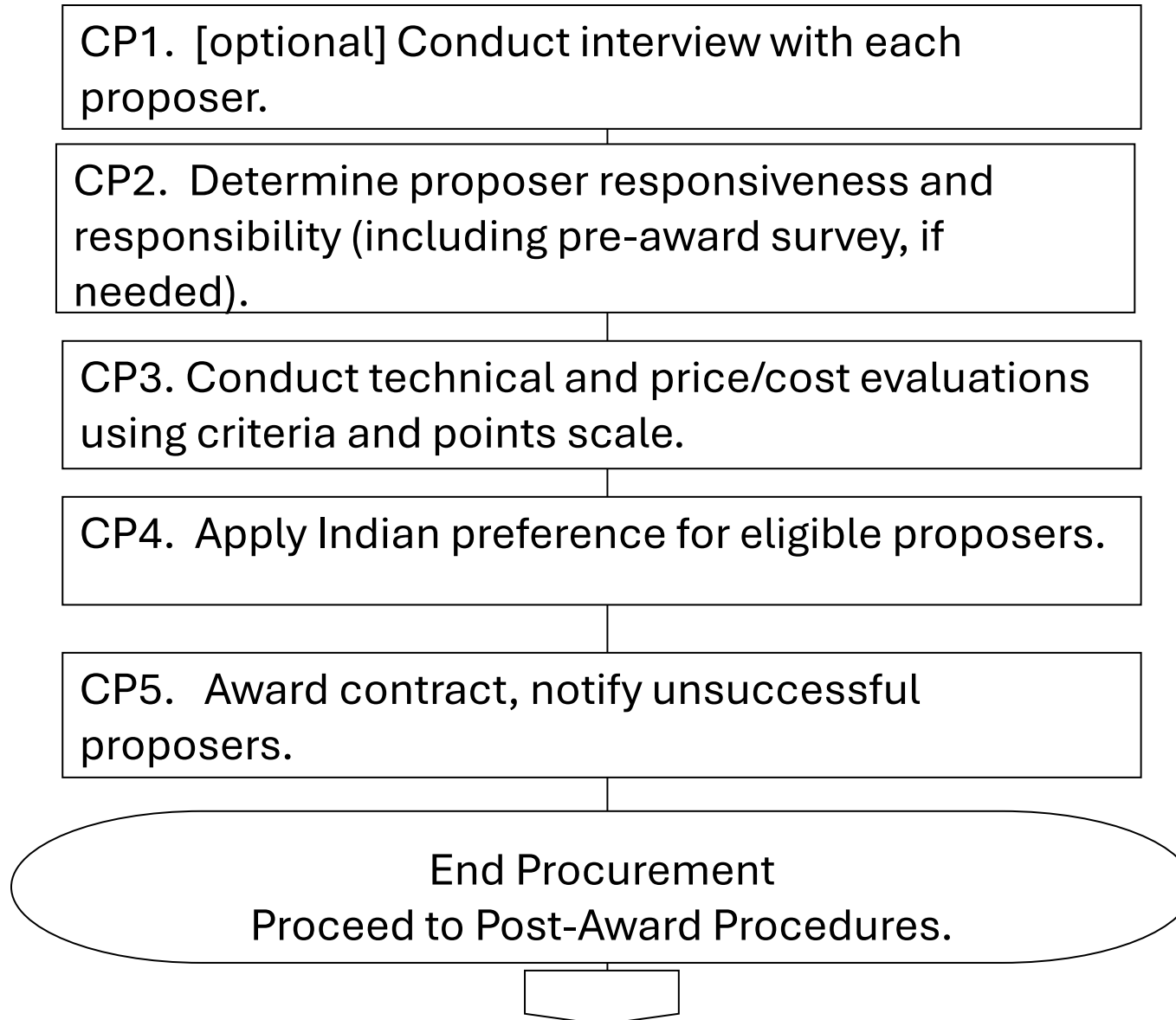
SB2. Review bids for responsiveness and responsibility (including pre-award survey, if needed).

SB3. Apply Indian preference for eligible bidders.

SB4. Award contract, notify unsuccessful bidders.

End Procurement
Proceed to Post-Award Procedures.

Competitive Proposals Procedures



Non-Competitive Proposals
Procedures

NC1. Written determination that award of contract is infeasible by any other procurement method and one of the following also applies:

- Item is available only from a single source
- Public exigency/emergency
- HUD authorizes (may require pre-award review)
- Competition determined inadequate after solicitation of several sources

NC2. Determine offer or responsiveness and responsibility (incl. pre-award survey, if needed).

NC3. Analyze technical proposal, if any.

NC4. Conduct cost analysis.

NC5. Conduct negotiations.

NC6. Receive and evaluate revised proposal, if any.

NC7. Award contract

End Procurement
Proceed to Post-Award Procedures.

POST-AWARD PROCEDURES

1. Hold post-award conference

2. Issue notice to proceed, if applicable

3. Monitor contractor performance/compliance

4. Receipt of supplies, services, or construction.

5. Inspection of supplies, services, or construction.

6. Acceptance of supplies, services, or construction.

7. Payment for work completed and accepted.

8. Exercise any applicable options for additional quantity or time period.

9. Contract completion.

10. Contract closeout.

Bid Letting Exercises



Scenario: Hawk Feather TDHE

You, the Hawk Feather TDHE, have placed a solicitation for the supply of 25 specialized heat pumps in one national paper and one local paper for 2 weeks. You believe there is only one manufacturer that has this equipment that does not require an outdoor condensing unit. You are operating under a procurement policy that employs all the options under 24 CFR 1000.52 (in Procurement Regulations section). The bidding was open to Indian-owned economic enterprises and non-Indian companies. After the 2 weeks, you received only one bid from a non-Indian owned company. You made the decision to re-advertise the proposal for an additional 2 weeks in the same two papers.

After the second advertisement you only received one bid. This bid was from the same contractor who responded to the first advertisement. For the bid you received, the contractor has a good record of prior performance, is not on the debarred list of contractors, and you feel that they have an excellent proposal for employment and training of other Indians. You have performed a cost analysis for the project that you feel is very sound. The bid received is below your projected cost analysis but within a realistic range.

- Decide on what method of procurement you would use and why?
- Describe what steps would you take to make this award and why?

ANSWERS

Decide on what method of procurement you would use and why?

It was already decided that the sealed bid method of procurement would be used because the procurement of the heat pumps is based principally on price. If the estimated price for the 25 heat pumps based on the TDHE's cost analysis would have been less than the TDHE's simplified acquisition threshold amount, then the TDHE could have had the option of using the small purchase method of procurement and requested quotes rather than bids.

Describe what steps would you take to make this award and why?

The contract would be awarded to the sole responsive and responsible bidder because the bid was less than the projected cost based on the cost analysis. The invitations for bids should be included in the procurement file documenting the TDHE's attempt to receive competitive bids. The TDHE's contracting officer should also include a memo in the files documenting the reason for using the sealed bid method of procurement

Scenario: Blue Moon TDHE

You, the Blue Moon TDHE, conducted a cost analysis of your six-unit rehabilitation project and determined it would cost approximately \$122,000. To arrive at this estimate, the TDHE requested a quote from Lucky's Hardware (the only hardware store on the reservation) for the lumber and supplies, which totaled \$50,000. On May 10, 2025, the TDHE published an Invitation for Bids in the local newspaper, which was restricted to Indian contractors. The public opening of sealed bids was held on May 14, 2025.

Three Indian contractors submitted bids, K&D Construction, Larry Bird, and Brown & Co. K&D's bid was for \$128,500; Larry Bird submitted a bid for \$129,680, but did not include the bond required for the project; and Brown & Co. submitted a bid for \$126,300. All three bidders qualified for Indian preference, have adequate performance records, and none of them are on the debarred list of contractors. All three bids included a photocopy of the quote the TDHE received from Lucky's Hardware for lumber and supplies for \$50,000. Blue Moon awarded the contract to K&D Construction and then negotiated the contract down to \$126,000.

You are the TDHE Compliance Officer and are conducting a review/self-monitoring of this procurement activity to prepare for a HUD management audit. What findings and/or observations will you make in your report?

You are the TDHE Compliance Officer and are conducting a review/self-monitoring of this procurement activity to prepare for a HUD management audit. What findings and/or observations will you make in your report?

- The TDHE could have considered using the small purchase method of procurement rather than the sealed bid method if the estimated amount of \$122,000 is less than the TDHE's established simplified acquisition threshold. The quote from Lucky's Hardware should not have been included in the invitation for bids. The bid from Larry Bird should have been determined to be non-responsive because it didn't include a bid bond. The TDHE should not have negotiated the price down with K&D Construction. If the \$126,300 bid from Brown & Co. was within the TDHE's budget for the project, the contract should have been awarded to Brown & Co. because it was the lowest responsive bid. Or, the TDHE could have decided that all bids will be rejected as they exceeded \$122,000 estimated project cost based on the TDHE's cost analysis.



Scenario: Tall Grass TDHE

You, the Tall Grass TDHE, are constructing six new housing units. Two of the new housing units will be going to family members of the Tribal Administrator, who is pressuring the TDHE to get those units completed as quickly as possible since winter is rapidly approaching. Citing this as an emergency situation, the TDHE makes a phone call to Black Contracting, a local non-Indian contractor known for getting projects done ahead of schedule and hires them to build the two units.

For the remaining four units, the TDHE advertised for bids from Indian contractors only in a regional newspaper on September 1, 2024. Bid opening was to be held on September 25, 2024, at 10 a.m. Four contractors submitted bids prior to the bid opening; however, Bob Smith Construction arrived with his bid at 10:10 a.m. John Smith, the Contracting Officer and brother of Bob Smith, accepted all bids. All of the bidders qualified for Indian preference, have adequate performance records, and none of them are on the debarred list of contractors. The contract is awarded to Hall & Co., the low bidder.

You are the TDHE Compliance Officer and are conducting a review/self-monitoring of this procurement activity to prepare for a HUD management audit. What findings and/or observations will you make in your report?

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- The construction of the two units shouldn't have been determined an emergency, and the non-competitive method of procurement shouldn't have been used. The Tribal Administrator should not have been involved in the procurement process due to a conflict of interest. Indian preference was not implemented in the procurement process for the construction of the two units.

Regarding the procurement process used in the construction of the four units, the bid from Bob Smith Construction should have been rejected as it was submitted after the 10 a.m. deadline.

John Smith, the TDHE's contracting officer, should have determined that all six units should have been constructed under one contract. John Smith has a conflict of interest under 2 CFR 200 and should have recused himself from the bid process.

Questions

