Contract Administration and Procurement

Part 1: Overview

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Introductions

- Introduce yourselves at your table and include the following information:
  - Name
  - Tribe/TDHE
  - Role
  - One procurement challenge you hope to get help solving during this training
  - Choose one member from your table to report out on themes in the challenges

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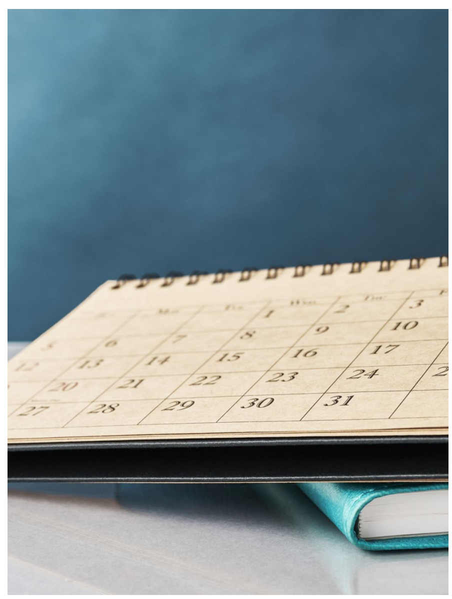
Agenda Day One

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



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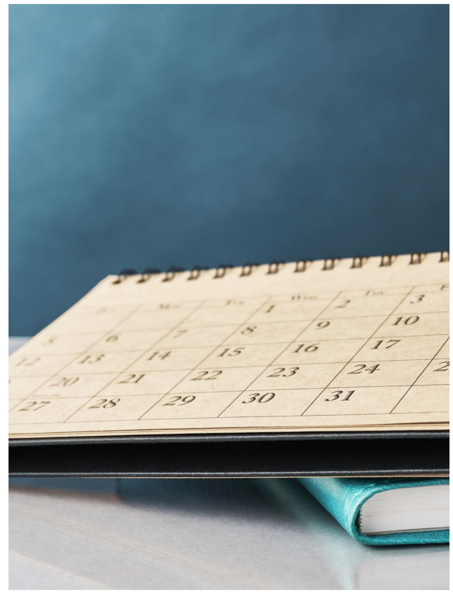
Agenda Day Two

- Day One Recap
- Procurement Selection Methods
  - Micro and De Minimis
  - Simplified
  - Formal
- Selection Exercise
- Cost/Price Analysis
- Procurement Procedures and Documentation
- Case Study



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Course Description

This course provides an overview of procurement requirements for Tribal housing programs administering Indian Housing Block Grant (IHBG) funds under NAHASDA.

Participants will learn how to conduct compliant, efficient procurements, apply 2 CFR Part 200 requirements, and strengthen procurement management practices.

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Training Objectives

By Wednesday afternoon, you should be able to:

✓ Choose the correct procurement method

✓ Document a procurement file that survives monitoring

✓ Apply Indian Preference correctly

✓ Identify conflict-of-interest situations

✓ Determine when noncompetitive procurement is allowed

✓ Conduct basic cost and price analyses

✓ Recognize common HUD procurement findings

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Procurement Myth or Reality

Answer the multiple-choice questions 1-5 on the Procurement Myth or Reality sheet at your table by using your phone's camera on the QR code for each question.

We will look at the answers for the group when we are finished.

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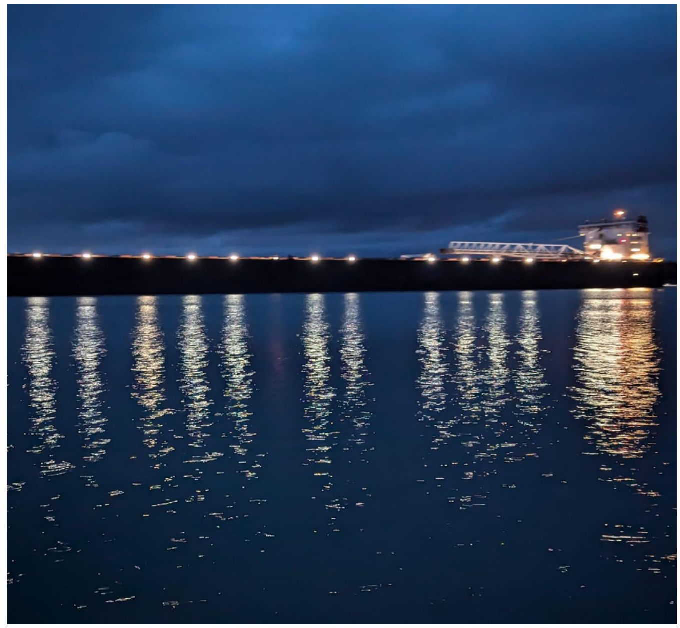
INTRODUCTION TO PROCUREMENT



Why Procurement Matters

- One of the most important financial and legal functions of a Tribal housing program
- Applies to purchases of all sizes
- Ensures fair competition and responsible use of public funds
- Creates a clear record demonstrating compliance and value

Benefits of Proper Procurement

- Cost Efficiency
- Reduce Risk
- Consistency
- Avoid Outside Interference
- Promote Competition
- Comply With All Requirements

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

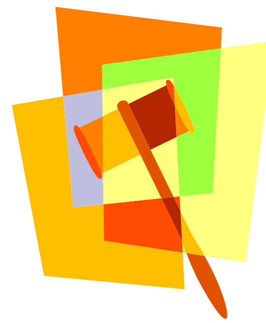
- Fair and competitive process
- Reasonable and low price from a responsive and responsible contractor / vendor
- Open and public process

Public Funds Require Public Accountability

- Procurement decisions must be documented
- Procurement records may be subject to public disclosure
- Higher standards apply than in the private sector
- Housing programs must act in the public interest

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



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UNDERSTANDING INDIAN COUNTRY PROCUREMENT

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Uniqueness of Tribal Procurement

Tribal Procurement reflects:

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

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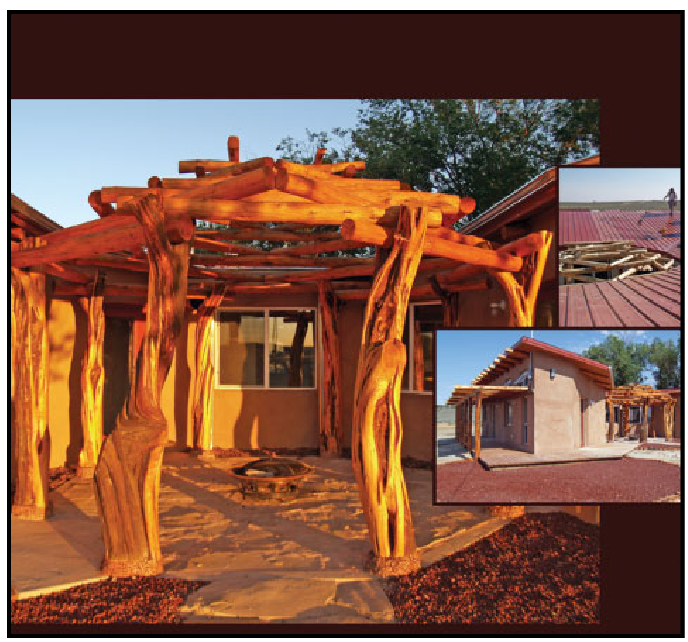
Special Circumstances

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



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Tribal Requirements

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

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Other Special Legal Issues

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

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Additional Tribal Procurement Considerations

- Tribal politics and community relationships
- Self-employed individuals and small local businesses
- Tribally owned companies and enterprises
- Organizational conflicts of interest
- The appearance of impartiality matters

*2 CFR 200.318©(2) – Organization Conflicts of Interest

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Other Circumstances Impacting Procurement

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

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Part 2: Regulations

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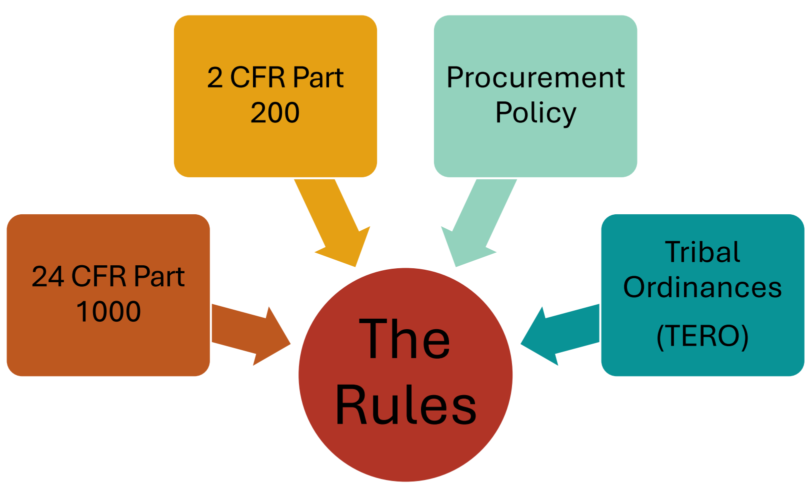

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24 CFR 1000

Indian Housing Block Grant Program Requirements

24 CFR 1000

		Part / Section
▼ **Title 24**	Housing and Urban Development	
▼ **Subtitle B**	Regulations Relating to Housing and Urban Development	100 – 4199
▼ **Chapter IX**	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development	900 – 1699
▼ **Part 1000**	Native American Housing Activities	1000.1 – 1000.558
▶ **Subpart A**	General	1000.1 – 1000.66
▶ **Subpart B**	Affordable Housing Activities	1000.101 – 1000.162
▶ **Subpart C**	Indian Housing Plan (IHP)	1000.201 – 1000.246
▶ **Subpart D**	Allocation Formula	1000.301 – 1000.342
▶ **Subpart E**	Federal Guarantees for Financing of Tribal Housing Activities	1000.401 – 1000.436
▶ **Subpart F**	Recipient Monitoring, Oversight and Accountability	1000.501 – 1000.558
Appendix A to Part 1000	Indian Housing Block Grant Formula Mechanics	
Appendix B to Part 1000	IHBG Block Grant Formula Mechanisms	

24 CFR 1000.26 - Administrative Requirements

- Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards".
- There are several exceptions 2 CFR 200 provided in § 1000.26. These will be covered when discussing 2 CFR 200.

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24 CFR 1000.28: Self-Governance Tribes

- § 1000.28 states that a self-governance Indian Tribe may be exempted from § 1000.26 if it can certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26.
- For purposes of this section, a self-governance Indian tribe is an Indian Tribe that participates in Tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).
- To certify as a Self-Governance Tribe, a federally recognized Tribe must successfully complete a formal planning phase, demonstrate three fiscal years of financial stability, and submit a formal tribal resolution.

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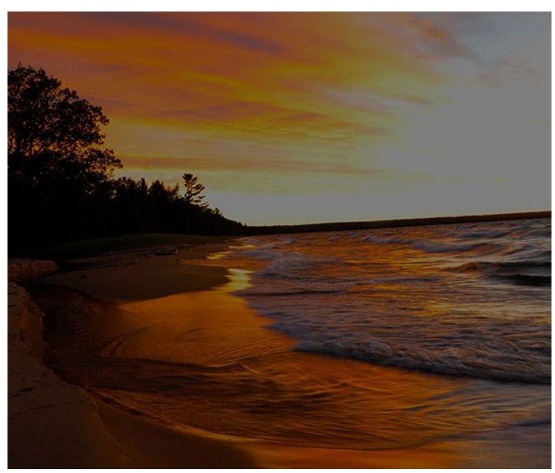
2 CFR 200

Federal Uniform Administrative Requirements

2 CFR Part 200

- Provides broad, basic standards and principles
- Defers to recipients to define the components of the financial management system such as policies, procedures, and staffing.
- Defining, designing, installing, and implementing adequate 'management systems' therefore becomes the essential work of the Tribal councils, boards, and management.



24 CFR Part 200: Administrative Requirements, Cost Principles, and Audit Requirements

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2 CFR 200 Exceptions

The following are relevant tribal exceptions to 2 CFR 200 as defined in 24 CFR 1000.26:

- 200.302(a) which applies specifically to States
- 200.305 which requires that program income be expended first
- 200.306, which restricts the use of funds for matching
- 200.307, which restricts the use of Program Income
- 200.313-314, which requires proceeds of sale of equipment and supplies be returned to the federal government
- 200.318-326, which are modified to define de minimis procurement and allows for utilizing federal supply sources
- 200.326, which allows tribes to use different bonding requirements

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Procurement Requirements in 2CFR 200

Procurement Standards 200.317 – 200.327

§ 200.317 Procurements by States and Indian Tribes.
§ 200.318 General procurement standards.
§ 200.319 Competition.
§ 200.320 Procurement methods.
§ 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.
§ 200.322 Domestic preferences for procurements.
§ 200.323 Procurement of recovered materials.
§ 200.324 Contract cost and price.
§ 200.325 Federal agency or pass-through entity review.
§ 200.326 Bonding requirements.
§ 200.327 Contract provisions.

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2 CFR 200.318 Procurement Standards

- Document procurement procedures in writing
- Oversight of contractors
- Conflict of interest
- Avoidance of unnecessary or duplicative items
- Procurement arrangements using sourcing
- Use of excess and surplus Federal property
- Use of value engineering clauses
- Responsible contractors
- Procurement records
- Time and material type contracts
- Settlement of contractual and administrative issues
- Examples of labor and employment practices

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Procurement Standards
(a) Must Have Written 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.

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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), Audit Requirements with respect to Contractors.

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Procurement Standards
(c)(1) Conflict Of Interest

- 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.

*"Board Member" added in 2 CFR 200 Update, April 2024.

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Procurement Standards
(c)(1) Conflict Of Interest (continued)

- 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*.

*"Board Member" added in 2 CFR 200 Update, April 2024.

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Procurement Standards
(c)(2) Conflict Of Interest

- 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.

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Procurement Standards
(d) Unnecessary/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.

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Procurement Standards
(e) 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.
- See PIH 2025-11 – Federal Supply Sources

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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.

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Procurement Standards
(g) Value Engineering

- 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.

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.

*Added by 2CFR 200 Update in April 2024.

Procurement Standards
(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.

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Procurement Standards
(j) Time-and-materials type contracts

- 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.

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Procurement Standards
(j) Time-and-materials type contracts

- 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.

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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.

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Update April 2024 2 CFR 200.317 Procurements by States and 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. If Davis-Bacon and/or BABA applies, those requirements must be dealt with appropriately in solicitation documents and resulting contracts.
- All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in § 200.318 through §200.327.

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Update April 2024 2 CFR 200.501 Audit Requirements

A non-Federal entity that expends $1,000,000 (increased from $750,000) 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.

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Domestic Preferences for Procurements Related to "Infrastructure" Projects

References: 2 CFR 200.322, 2 CFR Part 184, M-22-11, PIH 2024-35 (Revised) and PIH 2025-06

- 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

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Build America, Buy America (BABA)

References: 2 CFR 200.322, 2 CFR Part 184, M-22-11, PIH 2024-35 (Revised) and PIH 2025-06

- 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

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Build America, Buy America (BABA)

References: 2 CFR 200.322, 2 CFR Part 184, M-22-11, PIH 2024-35 (Revised) and PIH 2025-06

- 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

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Build America, Buy America (BABA)

References: 2 CFR 200.322, 2 CFR Part 184, M-22-11, PIH 2024-35 (Revised) and PIH 2025-06

- 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

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Incorporating BABA in Overall Project Management

If applicable, check for and document BABA compliance at each stage of an Infrastructure Project.

Ensure that BABA requirements are considered during and incorporated into the design phase for any project. If a contractor will be overseeing the design and construction contracts, the TDHE should ensure that the contractor takes these actions.

Monitor each stage of the Infrastructure Project, from the planning and design phase through the completion, to ensure that the Infrastructure Project complies with BABA.

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Part 3: Policy and Authority

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The Procurement Policy

- Per 2CFR 200.318(a), “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”.
- Per 2CFR 200.318(b), “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.
- It is normal practice to establish and follow a written procurement policy which includes the procedures described above. The policy should be approved by the Council/BOC with delegation to management and staff to carry out the policies described therein.

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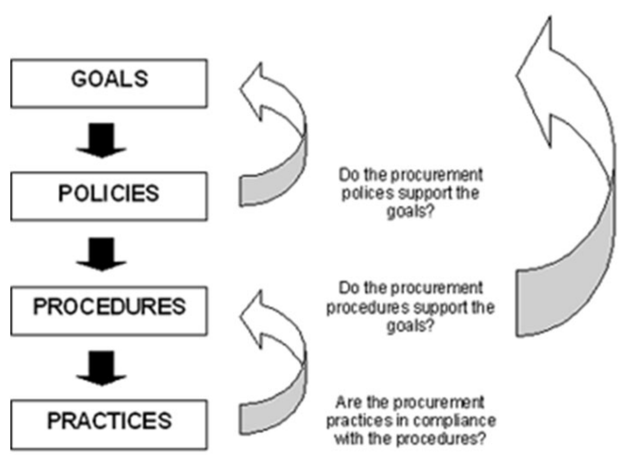
Procurement Policy

2 CFR 200.318: The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award.



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Sample Procurement Policy

NAIHC Sample Procurement Policy

Procurement Authority

- **Overall Responsibility**. Generally, the procurement policy delegates responsibility for procurement functions by the Council/BOC to the Executive Director or Tribal Administrator, with authority to assign all or a portion of that responsibility to positions or individuals based on the organization and staffing of the Tribe/TDHE.
- **Contracting Officer**. A person with authority for procurement activities is often referred to as the Contracting Officer when he/she performs that function, regardless of any other job or position title he/she may have.
- **Limits of Authority**. 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 or any other limits (e.g., types of contracts the individual may award such as small purchases).

Contracting Officer: Primary Responsibilities

The primary responsibilities of the Contracting Officer, or other designee, are to:

- Use sound judgment in accomplishing the procurement activities of the tribe/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.

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Contracting Officer: Specific Duties

The specific duties of the Contracting Officer, or other designee, are to:

- 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, 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.

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Staffing and Training

- The Tribe/TDHE should ensure that all employees administering procurement have training and experience commensurate with the requirements of their duties.
- The tribe/TDHE should develop training and experience standards for their procurement positions and periodically review their procurement operations to ensure that procurement personnel meet those standards.
- Tribes/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.

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Contracting Officer Signature/Obligation of Funds

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

The signature of the Contracting Officer on tribe/TDHE contracts is a legal commitment and requires continuing performance by the Tribe/ 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.

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Unauthorized Procurements

- **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.
- All employees should be trained to avoid implying consent for a procurement for which they are not authorized to give. All actions that could be misinterpreted as committing a tribe/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.*"

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Part 4: Preferences and Special Requirements

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Preferences and Special Requirements: Roadmap

- Legal Foundation
- Why Preference Matters
- Who Qualifies
- Documentation and Complaints
- How Preference Is Applied

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Native Preference: Legal Foundation

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NAHASDA PROCUREMENT CAVEAT

- NAHASDA contains procurement provisions that differ from Part 200
- Tribal preference may supersede Indian preference
- Tribal prevailing wage may supersede Davis-Bacon
- Alternative bonding approaches may be allowed
- Program-specific NAHASDA regulations control when they conflict with Part 200

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How Tribal Preference Is Established

- Tribe adopts a Tribal Preference law, code, ordinance, regulation, or policy
- TDHE adopts policies implementing Tribal Preference
- Preference may apply to:
  - Employment
  - Contracting and procurement
  - Training opportunities
  - Reductions in force and layoffs
- Tribal Preference may favor Tribal members over other Indians when authorized by Tribal law

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Native Preference Under NAHASDA

When Tribal Preference Exists:

Apply the Tribe's employment and contracting preference laws, ordinances, regulations, or policies.

When Tribal Preference Does Not Exist:

Apply Indian Preference under Section 7(b) of the Indian Self-Determination and Education Assistance Act.

Section 7(b) Indian Preference Requirements

To the greatest extent feasible:

Employment & Training

- Provide employment and training opportunities to Native Americans and Alaska Natives

Contracting

- Provide preference to Indian-owned organizations and enterprises in contract awards

Subcontracting

- Encourage preference for Indian-owned subcontractors and suppliers

Implementing Native Preference in Procurement

- Indian Preference applies to procurements funded with IHBG funds
- Preference does **not** require award to an Indian-owned firm
- Housing programs must establish a system for providing preference
- Preference must be applied consistently and documented
- Policies and procedures should clearly describe how preference will be implemented

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The Indian Self-Determination and Education Assistance Act (ISDEAA)

- Enacted in 1975 (Public Law 93-638)
- Supports Tribal self-governance and self-determination
- Authorizes Tribes to administer federal programs and funding
- Provides the legal foundation for Indian Preference through Section 7(b)

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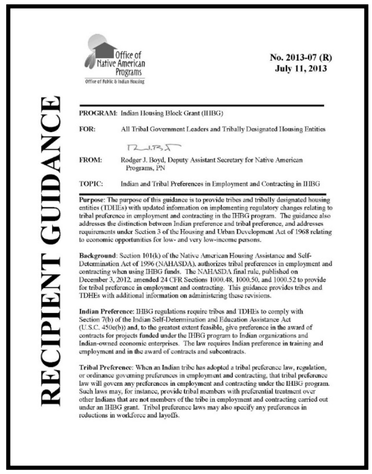
Indian Preference Final Rule

- Recognized Tribal Preference under NAHASDA
- Clarified how preference may be applied in employment and contracting
- Updated HUD regulations at 24 CFR Part 1000
- Provides the framework used by Tribes and TDHEs today

** 24 CFR §§1000.48, 1000.50, 1000.52*



RECIPIENT GUIDANCE

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, PN

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.

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Native Preference: Why Does It Matter?

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Why Indian Preference Matters

- Expands economic opportunities in Tribal communities
- Supports Indian-owned businesses and enterprises
- Creates employment and training opportunities
- Helps retain housing dollars in Tribal economies
- Does not guarantee contract award

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Implementing Indian Preference

- Certify policies and procedures under 24 CFR §1000.52
- Include preference clauses in contracts
- Reference Indian Preference in notices and advertisements
- Explain how preference will be applied before bids or proposals are submitted

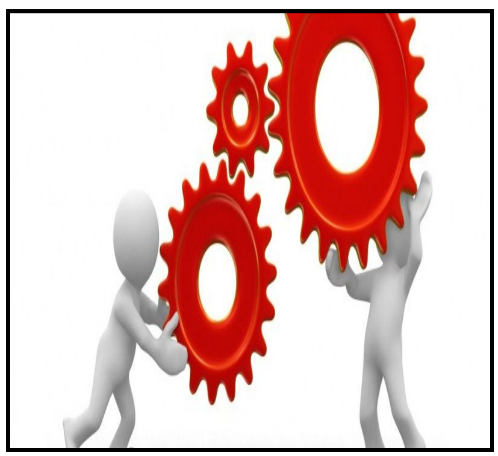

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Table Discussion:

What has been the biggest benefit—or biggest challenge—of implementing Indian Preference in your community?

Communicating Preference Requirements

- Preference requirements should be clearly stated
- Preference standards should be included in procurement policies
- Solicitations should explain how preference will be applied
- Vendors should understand the rules before submitting bids or proposals

Native Preference: Who Qualifies?

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Indian Preference Is Unique

- Not based on race or ethnicity
- Based on Tribal political status recognized under federal law
- Authorized by Congress
- Supports Tribal self-determination and economic opportunity

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Where Indian Preference Is Applied

- ✓ Contract awards
- ✓ Subcontractors
- ✓ Suppliers
- ✓ Employment opportunities
- ✓ Training opportunities

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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.

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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

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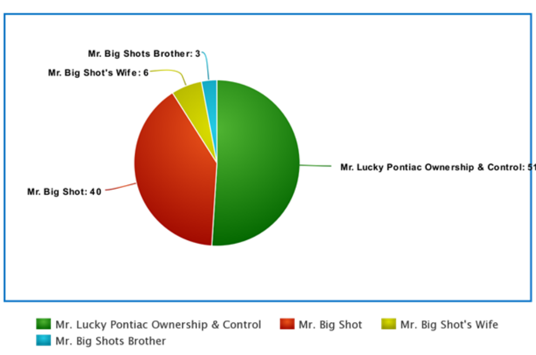
51% Ownership AND 51% Control



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.

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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.

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INDIAN PREFERENCE REQUIRED DOCUMENTS

- INDIAN PREFERENCE POLICY
- INDIAN PREFERENCE QUALIFICATION APPLICATION
- INDIAN PREFERENCE DETERMINATION LETTER
- COMPLAINTS POLICY FROM METHODS OF PROVIDING FOR INDIAN PREFERENCE

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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.

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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.

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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

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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.

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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

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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

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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

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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…)

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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

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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)

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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)

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Indian Preference Simplified Acquisition

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

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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:

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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

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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.

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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.

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X-FACTOR EXERCISE

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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:

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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

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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

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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:

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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

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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

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Part 5: Methods – Micro and Small Purchases

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Day One: Recap

Part 1: Tribal Procurement Context

Part 2: Regulatory Framework

Part 3: Procurement Policy, Authority & Internal Controls

Part 4: Preferences & Special Requirements

Day Two: Topics

Part 5: Micro Purchases & Simplified Acquisition

Part 6: Formal & Non-Competitive Procurement

Part 7: Cost and Price Analysis

Part 8: Procurement Procedures & Documentation

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METHODS OF PROCUREMENT 2 CFR 200.320

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Procurement Methods

Policy

2 CFR 200

- Informal
  - Micro-Purchase
  - Simplified Acquisition
- Formal
  - Sealed Bids
  - Proposals
- Non-competitive

Methods of Procurement (Based on Price)

(a) Less than $15,000 or up to $50,000 with self-certification

- **Micro Purchases**
- No solicitation required
- Price must be reasonable

(b) $15,000 - $350,000

- **Simplified Acquisition**
- Must obtain adequate number of solicitations (more than one)

More than $350,000 (c) and (d)

- **Sealed bids** preferred for construction
- **Competitive proposals** used when sealed bids not appropriate

Procurement Methods at a Glance

Method	Dollar Range
De Minimis	Under $5,000
Micro Purchase	Not exceeding $15,000 (or approved higher threshold)
Simplified Acquisition	Above Micro and not exceeding SAT ($350,000)
Sealed Bids or Competitive Proposals	Required if exceeding SAT
Noncompetitive	Limited circumstances only

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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**

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Blanket Purchase Agreements (BPAs)

BPAs are pre-established purchasing agreements with commonly used vendors.

They simplify recurring purchases and often provide discounted pricing.

Common examples include:

- Hardware stores
- Office supply vendors
- Plumbing and electrical suppliers
- Fuel providers
- To promote competition, BPAs should be solicited periodically from multiple qualified vendors.

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Blanket Purchase Agreements (BPAs)

Using a BPA

- Authorized purchasers and spending limits should be clearly identified.
- Purchases are made as needed under the BPA.
- Vendors provide receipts or delivery tickets for each purchase.
- Purchases are reconciled and paid through periodic invoicing.
- If recurring purchases become substantial, consider a formal contract instead.

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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

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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

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Documentation for All Procurement

- Description of goods or services
- Basis for price reasonableness
- Procurement method selected
- Indian Preference documentation (if applicable)
- Debarment/suspension verification
- Purchase order, agreement, or contract

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De Minimis Procurement Threshold - NAHASDA Section 203(g)

- Applies to purchases of goods or services under **$5,000**
- Authorized by **NAHASDA §203(g)** and implemented at **24 CFR 1000.26**
- Exempt from procurement requirements in **2 CFR 200.318–200.326**
- **Indian Preference is not required** under **24 CFR 1000.48(c)**
- Tribe/TDHE should follow its procurement policy and maintain basic documentation

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Micro Purchase Threshold

Micro Purchase Thresholds

- Standard micro-purchase threshold: **$15,000**
- Tribes/TDHEs may self-certify a threshold up to **$50,000**
- No competitive quotations required
- Price must be reasonable
- Purchases should be distributed equitably among qualified suppliers
- **Authority:** 2 CFR 200.320(a)(1), PIH Notice 2026-08

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Micro-Purchase Threshold (2 CFR § 200.67)

What Is a Micro Purchase?

- A Micro Purchase is a procurement not exceeding the approved micro-purchase threshold.
- Current federal threshold: **$15,000**
- Tribes/TDHEs may self-certify up to **$50,000**
- Used for small purchases through informal procurement procedures

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Micro Purchase Threshold: Self-Certification Up to $50,000

To self-certify a higher threshold, the Tribe/TDHE must document:

- Threshold amount requested
- Justification for the threshold
- Supporting documentation demonstrating acceptable risk management

Examples include:

- Low-risk auditee status, or
- Internal institutional risk assessment

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

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.

Micro Purchase Threshold PIH 2026-08

- 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 (2026-08 Appendix A)
- Internal Controls Monitoring Plan (PIH 2026-08 Appendix B)
- Cash Management Monitoring Plan (PIH 2026-08 Appendix C)

Thresholds Above $50,000

- Require written approval
- Additional documentation and risk assessment required
- ONAP guidance applies
- Approval remains valid until underlying circumstances change

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

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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 2026-08 provides additional information for Tribes and TDHEs who wish to use a higher amount.

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Micro Purchase Threshold
PIH 2026-08

- 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 may allow Tribes and TDHEs who are not required to have a single audit to request an increased micro purchase threshold with the above information.

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De Minimis vs. Micro Purchase

Topic	De Minimis Procurement	Micro Purchase
Dollar Threshold	Under $5,000	Not exceeding $15,000 (or approved higher threshold)
Authority	NAHASDA §203(g)	2 CFR 200.320(a)(1)
Competition Required	No	No
Price Must Be Reasonable	Yes	Yes
Indian Preference Required	No	Yes
2 CFR 200.318–200.326 Applies	No	Yes
Documentation Required	Basic documentation	Procurement file documentation
Can Be Used Under Tribal Policy	Yes	Yes

Purchases under $5,000 may qualify as either a De Minimis Procurement or a Micro Purchase, depending on the Tribe's procurement policy. Indian Preference applies to Micro Purchases but not to De Minimis Procurements.

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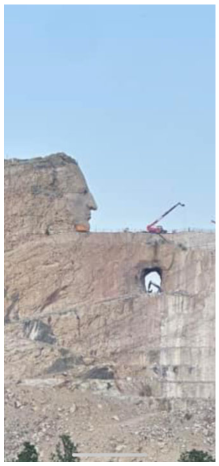
IHBG DE MINIMIS Procurement Exemption



- Under NAHASDA, Tribes and TDHEs may use the statutory **De Minimis Procurement Exemption** for purchases under **$5,000**.
- Purchases under $5,000 may be processed as either:
  - **De Minimis Procurement**, or
  - **Micro Purchase**
- The Tribe's procurement policy should identify which method applies.

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MICRO-PURCHASE METHOD

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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.

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Micro Purchase Requirements

- No competitive quotations required
- Price must be reasonable
- Must be below the approved micro-purchase threshold
- Document the purchase using an approved purchasing method
- Do not split purchases to avoid procurement thresholds
- Distribute purchases equitably among qualified suppliers
- Apply Indian Preference

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Prohibition Against Bid Splitting

Prohibition Against Bid Splitting

- Procurement requirements may not be divided into smaller purchases to avoid procurement thresholds.
- A Tribe or TDHE may not split a larger purchase into multiple transactions in order to:
  - Use a less restrictive procurement method;
  - Avoid competition requirements; or
  - Avoid other applicable procurement requirements.

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Bid Splitting Examples

❌ Three separate purchases of $14,000 for a single $42,000 project

❌ Four purchases of $4,000 to avoid Small Purchase procedures

✅ Separate purchases for unrelated needs occurring at different times

Key Point: Determine the procurement method based on the total requirement—not the size of individual invoices.

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SIMPLIFIED ACQUISITION METHOD

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Simplified Acquisition Threshold 2 CFR 200.320(a) (2)(ii)

- Current SAT: **$350,000**
- Used for procurements not exceeding the SAT
- Designed to streamline purchasing while maintaining competition
- Threshold may be adjusted periodically

Key Question: Is the procurement under or over the SAT?

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Simplified Acquisition Method

Optional method available when procurement does not exceed the Simplified Acquisition Threshold

Exceeding the Micro-Purchase Threshold up to the Simplified Acquisition Threshold (SAT)

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Simplified Acquisition Method

Can Be Used to Procure:

- Office supplies
- Vehicles
- Rehabilitation Contractors
- Professional Services
- Equipment

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Principles of Simplified Acquisition Method

- Must be competitive
- Less formal than sealed bids or competitive proposals
- Quotes may be obtained verbally, electronically, or in writing
- All vendors must receive the same information
- Must remain below the SAT
- Follow your procurement policy

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Simplified Acquisition

- Procurement not exceeding the SAT
- Obtain an adequate number of quotations
- Solicit qualified sources
- Quotes may be verbal, written, or electronic
- Determine price reasonableness
- Apply Indian Preference
- Document the procurement file

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Solicitation: Obtaining Quotations

- Quotations may be obtained verbally, electronically, or in writing
- All vendors should receive the same scope of work and requirements
- Verbal quotations should be documented
- Competition helps establish price reasonableness
- Recurring purchases exceeding the SAT should use a formal procurement method

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Competition: What Is Adequate?

Your procurement policy should define:

How many quotes are required

How quotes will be documented

When fewer quotes are acceptable

Examples:

Email quotations

Website pricing

Written quotations

Documented verbal quotes

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Award

Price Reasonableness

Before awarding a Simplified Acquisition:

- The price must be determined to be fair and reasonable.
- Price reasonableness may be established through:
  - Catalog or market pricing
  - Competitive quotations
  - Comparison to similar recent purchases
- Document the basis for the price accepted.
- **Key Point:** If it isn't documented, auditors will assume it didn't happen.

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If Award is Based on Price

- When award is based solely on price, the contract should be awarded to the lowest responsive and responsible vendor whose price is reasonable.
- If Indian Preference applies, award should be made in accordance with the Tribe's Indian Preference policy.
- The procurement file should document the basis for award.

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If Award Is Not Based on Price

- If factors other than price will be evaluated, use the **Competitive Proposals** method.
- Issue an **RFP** that clearly identifies:
  - Evaluation criteria
  - Rating factors
  - Available points
- Indian Preference may be incorporated into the evaluation process in accordance with the Tribe's Indian Preference policy.

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Documentation

Requirements

Maintain records including:

- Solicitation
- Quotes received
- Basis for selection
- Price reasonableness determination
- Indian Preference documentation
- Purchase order or contract
- Receipt and payment documentation

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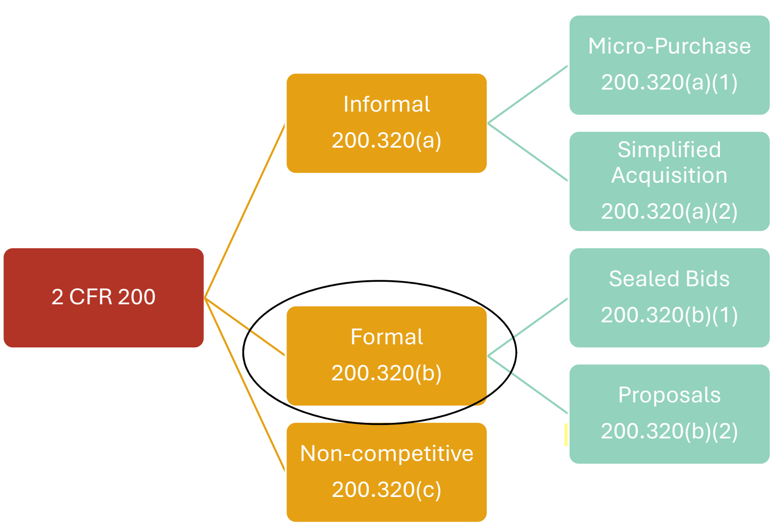
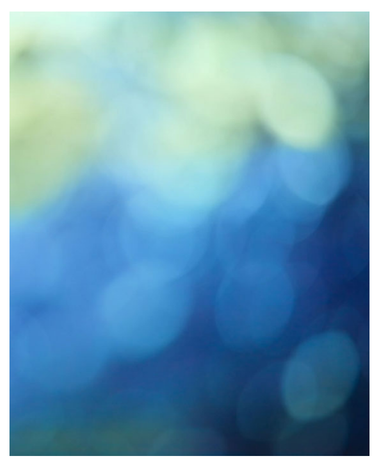
Part 6: Methods – Formal Procurement

Procurement Methods





Competition is key!

- Per 2 CFR 200.319, all procurement transactions under Federal awards must be conducted in a manner that provides ***full and open competition***. Examples of restrictive actions include, but are not limited to:
  - Unreasonable qualification requirements on firms.
  - Requiring unnecessary experience and excessive bonding.
  - Non-competitive awards to consultants on retainer contracts.
  - Specifying only a brand name product.
  - Organizational conflicts of interest.
  - Any arbitrary action in the procurement process.
- Per 2 CFR 200.319(b) contractors that assist with drafting specifications, statements of work, or IFB's must be excluded from competing for the procurement.
- Per 2 CFR 200.319(d), Tribes and Tribally Designated Housing Entities (TDHEs) must have written procedures for procurement transactions Identify any additional requirements to be fulfilled and factors to be evaluated.

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The Need for Increased Competition

There are many reasons that Tribes look to increase competition for bids or proposals. The most common needs include:

- Lowering the price/cost of goods or services.
- Looking for new services/goods with no current providers.
- Increasing the number of responses.

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Possible Constraints to Bidding

- IFB or RFP is unclear or poorly written
- Inadequate time allowed to bid
- Unrealistic project timelines
- Native preference or TERO requirements
- Inexperience working with Tribes
- Federal requirements (bonding, BABA, wage restrictions)

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Two Types of Formal Procurement

- Sealed Bids
  - o Also referred to as “invitation for bids” or “IFB.”
  - o Contract award is based on lowest bid.
  - o Must be compliant with 2 CFR §200.320(b)(1).
- Proposals
  - o Also referred to as “request for proposals“ or “RFP.”
  - o Contract award is based on highest scoring proposal with cost being one of the weighted criteria.
  - o Must be compliant with 2 CFR §200.320(b)(2).

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Sealed Bidding or Request for Proposals?

Sealed Bidding

- Primary Purpose: traditional construction projects
- Clear specifications
- Goal: lowest prices

Request for Proposals

- Primary Purpose – services and Design-Build construction projects
- Broad specifications
- Goal: best alternative

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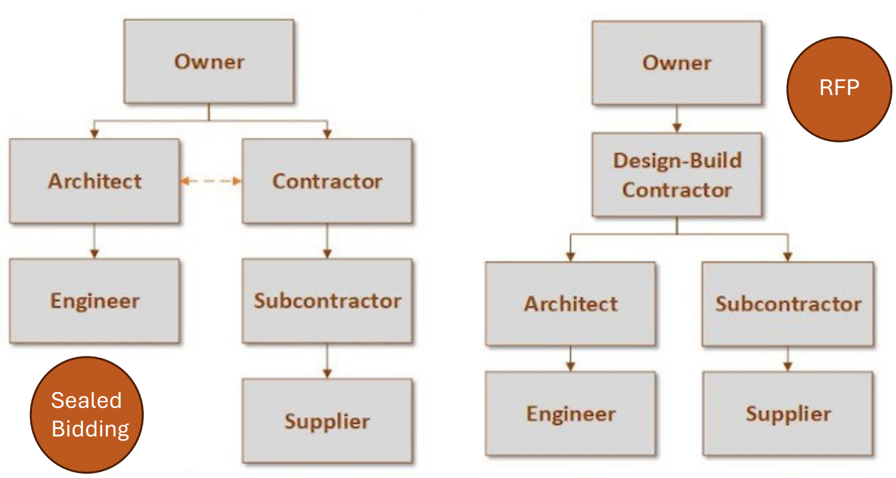
Construction Project – Two Procurement Methods



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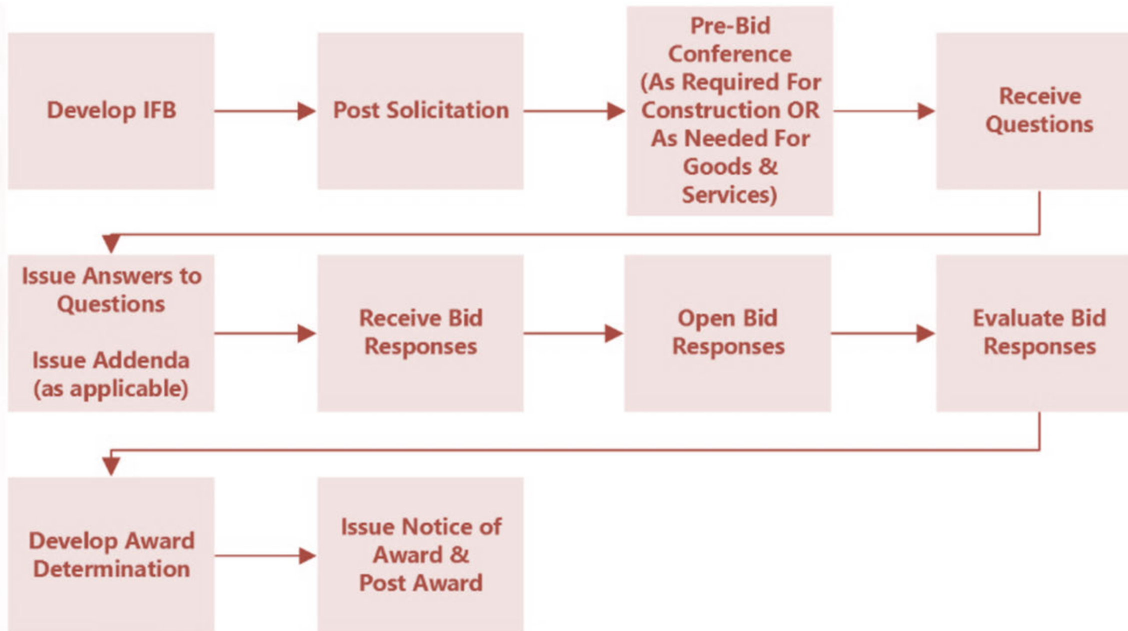
Sealed Bidding

Sealed Bids: 2 CFR 200.320(b)(1)

- Used mostly for construction contracts.
- Used when the cost estimate is *more than* the $350,000 Federal Simplified Acquisition Threshold or lower threshold specified in the procurement policy.
- Dependent upon good specifications.
- Two or more bidders willing in the open market.
- Awarded based on *price*.
- Fixed-price contract.



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Sealed Bidding – Pros and Cons

Advantages

- **Transparency**: Open and fair process reduces chances for corruption.
- **Competition**: Confidential bids encourage contractors to drive down prices.
- **Cost-effective**: Public benefits from lower-cost projects.
- **Simple evaluation**: Straightforward criteria reduces bias and subjectivity.
- **Straightforward rules**: All contractors can understand the simple rules of the process.

Disadvantages

- **Lack of flexibility**: Little room for negotiation.
- **Narrow focus on price**: Emphasis on price instead of quality.
- **Time-consuming**: Lengthy bidding process delays project start.
- **May stifle innovation**: Contractors are rarely allowed to propose new solutions or ideas.
- **Potential disputes**: Possibility for contractor protest may cost time and money.

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Notices

- A public notice can be used with any procurement, but it is required for formal procurements (IFB and RFP).
- The Tribe/TDHE may formally advertise the solicitation in the local, regional, state or national newspaper and/or post the notice to the Tribe/TDHE's webpage, where other procurements are normally shared.
- The goal of any procurement is to receive at least two or more responsive bids from responsible bidders. If necessary, the Tribe/TDHE may need to increase its public notice viewing area to state or national newspapers to receive adequate responses. The Tribe/TDHE must also make every effort to ensure maximum competition is achieved.

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IFB Components

1. The period during which bids will be accepted.
2. The way in which a bid shall be submitted (form of bid).
3. The place where a bid shall be submitted.
4. Bonding requirements.
5. Native Preference information.
6. Include or incorporate by reference:
   - A full description of the procurement items sought.
   - The full scope of work.
   - The required contractual terms and conditions.
   - Wage determinations.

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Bid Documents

1. Plans
2. Specifications (scope of work)
3. Estimates
4. Form of bid
5. Form of contract
6. Incorporated into contract by reference
7. Request for Native Preference form

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Statement of Work vs. Scope of Work

Statement of Work

- Describes goals and deliverables.
- Outlines project plan.

Scope of Work

- Part of statement of work.
- Specific steps to achieve goals.

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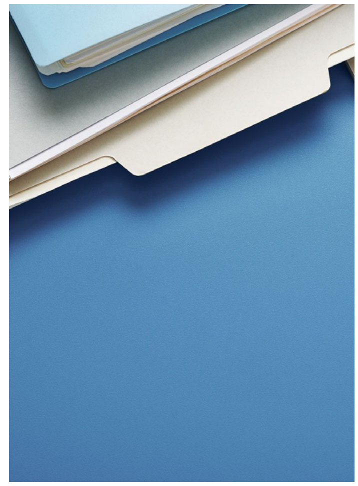
Statement of Work Format

Part I. General Information
- A. Introduction
- B. Background
- C. Scope
- D. Applicable Documents

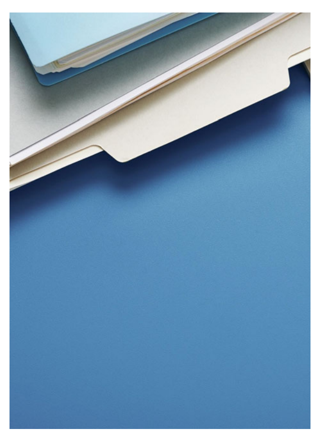
Part II. Work Requirements
- A. Technical Requirements
- B. Deliverables

Part III. Supporting Information
- A. Place of Performance
- B. Period of Performance
- C. Security
- D. Special Considerations



Statement of Work Documents

- **Purpose:** This section of an SOW outlines the purpose and specific goals of the project.
- **Scope of Work:** The scope of work section describes project tasks, the tools required to perform the tasks and plans to achieve the project goals.
- **Location of work:** This section provides the details regarding where work is to be accomplished and where tools can be accessed.
- **Schedule:** This section lays out the timeline of a project in detail, including the start date and completion date.
- **Deliverables:** This section lists deliverables and due dates throughout the project.
- **Measure of success:** In this section, clients specify criteria for a successful project.
- **Requirements:** This section details the various tools and equipment needed to ensure a successful project.
- **Payment:** This section covers project costs and terms of payment.



IFB Format

1. Cover letter
2. Face page
3. Price form
4. Specifications/statement of work
5. Mandatory clauses (see 2 CFR 200 Appendix II)
6. Instructions to bidders, such as Form HUD-5369
7. Attachments such as wage determinations

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IFB Revisions

- Must be formalized in writing (addendum) and advertised.
- Provided to every prospective bidder who received IFB, with acknowledgement required.
- If revision is less than 7 days prior to bid deadline, the bid opening should be postponed.

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Pre-Bid Conference

A pre-bid conference is an opportunity to get set expectations and make sure contractors understand the project and bid procedure. **Although hosting a conference is not required, it leads to a smoother bidding process.**

Typically, these conferences occur on site. In-person meetings give contractors a chance to tour the building site and better understand the work. You can also host a virtual conference or opt for a hybrid model.

By allowing contractors an opportunity to see the project site and ask questions, it is more likely they will submit a bid.

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Example Invitation for Bids (IFB)

Seminole Tribe of Florida

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Example Invitation for Bids (IFB)

Muckleshoot Tribe

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Request for Proposals

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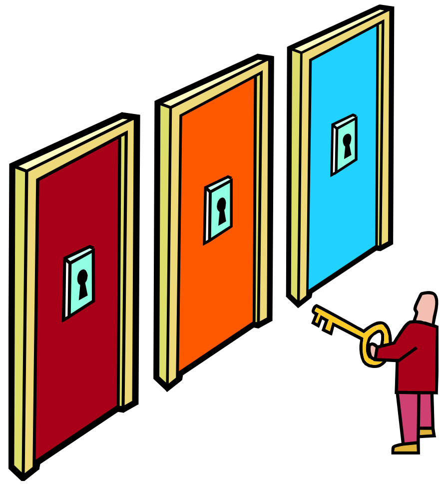
When to Use RFP

- ❑ Sealed bidding not feasible.
- ❑ More than one firm submitting proposal.
- ❑ Either fixed-price or cost-reimbursement.
- ❑ Award to be based on factors other than price (for example Design-Build).



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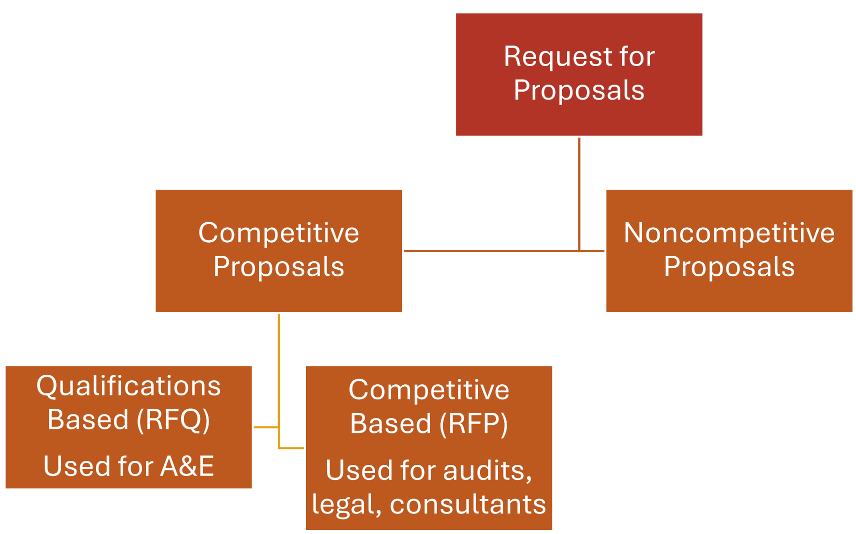

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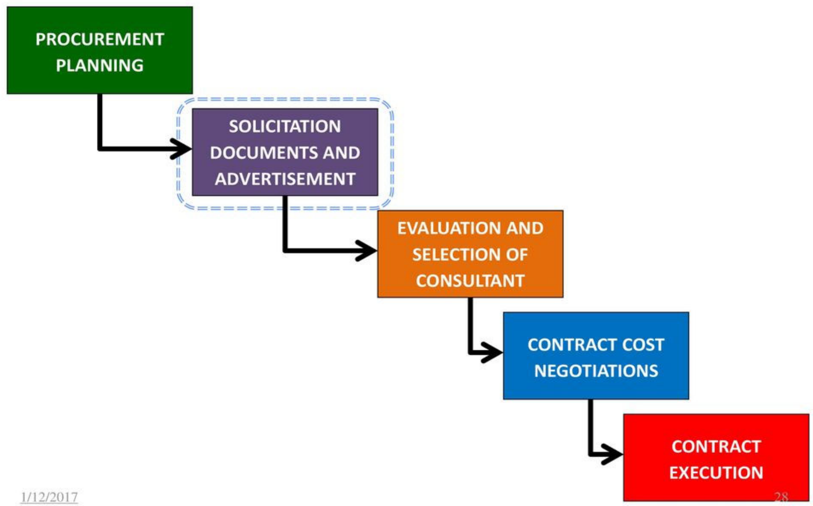
Procurement Process



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Request for Proposals

- Cover Letter
- Face Page
- Price Form
- Statement of Work
- Mandatory Clauses
- Required Certifications
- Instructions
- Evaluation Factors

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Evaluation Factors - Example

Quality of proposal	15 points
General experience	20 points
Experience with Native Orgs	25 points
Experience in Tribe's area	30 points
Native Preference	10 points
TOTAL points	100

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Example RFP for Design-Build Project

[Native Village of Eyak]

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Example RFP for Construction Project

Shoalwater Bay Tribe

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Example RFP for Audit Services

Baranof Island Housing Authority

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Request for Qualifications (RFQ) Procurement

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Request for Qualifications

- A **Request for Qualifications (RFQ)** is a process used in procurement to compare the expertise of vendors. It is a written request for proposers or bidders to compete for a project based on their experience and ability to perform the project.
- The RFQ document contains background information and context about the need or problem to be solved and questions for vendors to answer.
- The response to an RFQ is not a bid, but rather a detailed description of the vendor's skills and experience. RFQs are commonly used in construction projects to evaluate and shortlist potential contractors, subcontractors, architects, and consultants

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Example RFQ Request for Qualifications

Gary, Indiana

Gary Housing Authority

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Group Activity

Determine the procurement method:

Purchase	Method
$4,000 office furniture	
$5,000 playground equipment	
$150,000 rehab contractor	
$325,000 construction	

Why did you choose that method?

What documentation is required?

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The Contract

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The Objectives of a Contract

Profit.co | Supply Chain Operations

- Detail significant dates (delivery, commencement, termination of contract)
- Address potential risks and liabilities
- Outline the future expectations of both parties

- Outline & define the type of goods exchanged
- Clearly state the costs & prices
- Explain all terms and conditions

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Contracts

Key components of construction contracts

- **Agreement:** Terms of the contract
- **Scope of work:** Tasks and deliverables
- **Conditions:** Provisions applicable to the project
- **Specifications:** Technical requirements
- **Schedules and costs:** Project timeline and breakdown of costs

INTUIT Enterprise Suite

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Procedures for Negotiation in Construction Contracting

- Contracting Officer (CO) should evaluate bids/proposals and associated cost or pricing data and compare to Tribe/TDHE estimate.
- When bid/proposal price is significantly different than Tribe/TDHE estimate, the CO shall make sure both the contractor and the Tribe/TDHE estimator completely understand the scope of work.
- If negotiations reveal errors in the Tribe/TDHE estimate, the estimate shall be corrected and the changes documented in the contract file.
- If negotiations reveal errors in the contractor's bid/proposal, the Tribe/TDHE shall follow procedures described in procurement policy with respect allowing changes to a bid/proposal, and/or shall reject the bid/proposal and select the next lowest or highest scoring bid/proposal.

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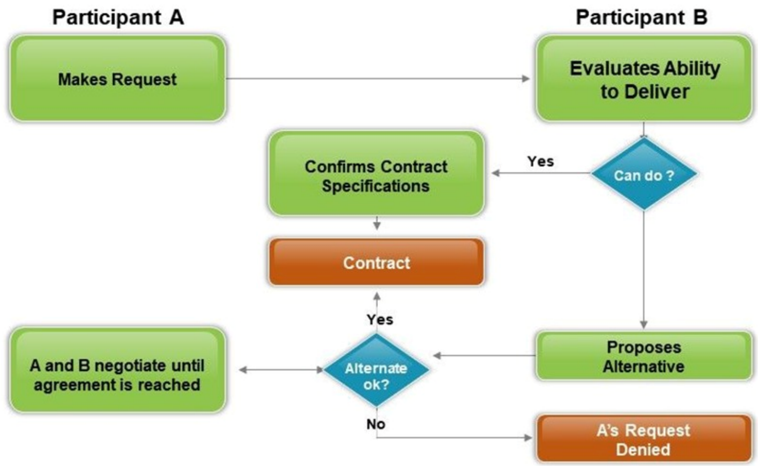
Contract Changes and Alternates



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BABA and Contractor Procurement

- Tribal Recipients should include BABA language in all applicable contracts and agreements with subrecipients, contractors, developers and subgrantees, as well as in any procurement bid documents to ensure BABA compliance by subgrantees, developers and/or contractors.
- Including BABA requirements in the bid process (in detail) will streamline implementation. It will help ensure that all parties are aware of and meet BABA requirements during design, construction, and recordkeeping.

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BABA Sample Contract Language

"Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act. Pub. L. 117-58, 41 U.S.C. § 8301 note, the Tribal Recipient of the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the "Buy America Preference" or "BAP") for all construction, alteration, maintenance, or repair of public infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Accordingly, this agreement shall be carried out in accordance with BABA."

Example Construction Contract

Stockbridge-Munsee Contract

Example Construction Contract

Shoalwater Bay

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Noncompetitive Method

2 CFR 200.320(c)

The noncompetitive procurement method may only be used if one of the following circumstances applies:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- 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
- After soliciting several sources, competition is determined inadequate.

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Part 7: Cost/Price Analysis

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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***

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Requirements
2 CFR 200.324(a)

A cost or price analysis is required by the Uniform Guidance, which are the administrative standards that apply when federal funds are being used by local governments.

Pursuant to **2 C.F.R. 200.324(a)**, a 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 primary purpose of this analysis is to ensure the recipient does not pay unreasonably high prices to third party contractors.

Additionally, the analysis serves to avoid excessively low pricing, which can result in substantial cost overruns.

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ANSWERS TO BASIC QUESTIONS

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.

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ANSWERS TO BASIC QUESTIONS

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).

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Performing a Cost or Price Analysis

1

Develop an independent estimate prior to soliciting bids or proposals

2

Compare received offers against the independent estimate and, if applicable, to other offers to determine that the pricing is reasonable.

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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.

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How Cost-Price Analysis Applies to Different Procurement Methods

Sealed Bidding

- Procurement of supplies, equipment, and construction are typically accomplished using sealed bidding.
- Sealed bidding is the preferred method for the procurement of equipment, supplies, services or construction that exceeds $350,000. Proposals are also allowed.
- 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 or when the bid price varies significantly from the cost estimate).

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How Cost-Price Analysis Applies to Different Procurement Methods

Proposals

- Competitive proposals are most often used when acquiring professional, consulting, and architect/engineering (A/E) services.
- 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.

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How Cost-Price Analysis Applies to Different Procurement Methods

Noncompetitive Procurement

- Award of contracts by noncompetitive procurement follows a process like that used for competitive proposals.
  - The procurement must be evaluated.
  - Technical and cost aspects may be negotiated.
  - The offeror must be determined to be responsible at the time of award.
- Because there is no price competition, cost analysis is required. Costs or price must be determined to be reasonable.

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Price vs. Cost Analysis

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

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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

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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?

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Part 8: Procedures and Documentation

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PROCUREMENT PROCEDURES

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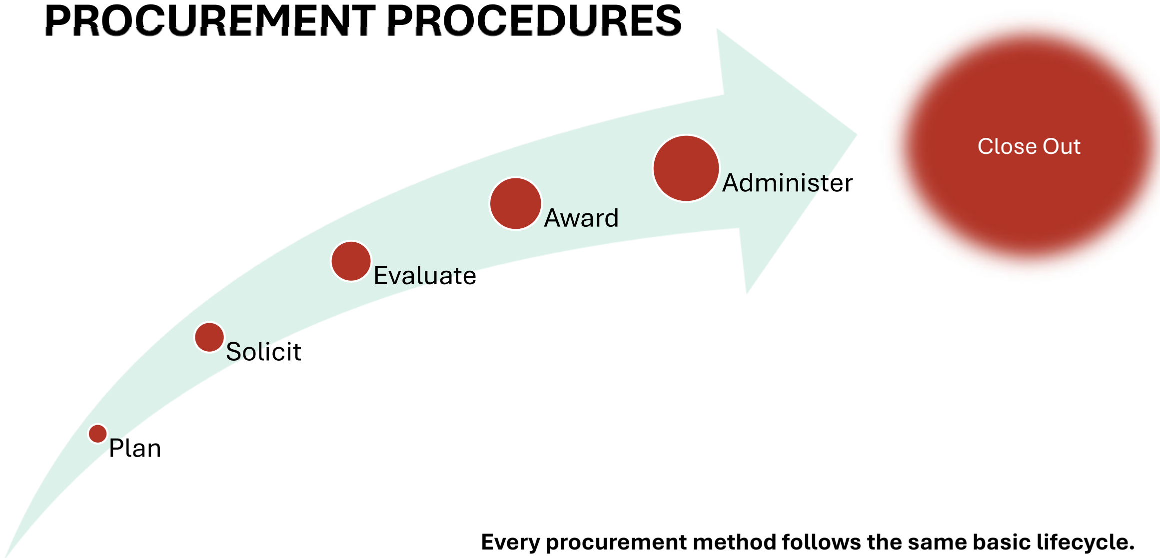
PROCUREMENT PROCEDURES



Every procurement method follows the same basic lifecycle.

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Why Procedures Matter

- Ensure fair and open competition
- Support Indian Preference requirements
- Protect Tribal and federal funds
- Create an auditable procurement file
- Reduce monitoring findings

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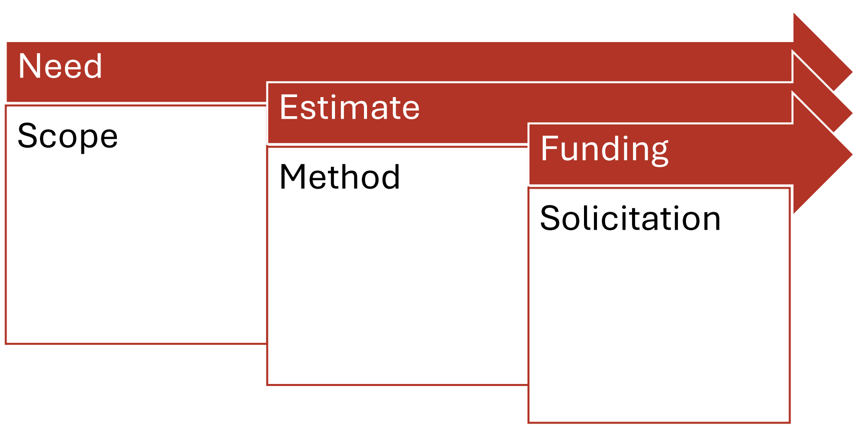
PROCUREMENT PROCEDURES



Good procurement begins long before bids are received.

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Method Selection Decision Points

- Is there an emergency?
- Is the purchase below the SAT?
- Are specifications clear and complete?
- Will award be based on lowest price or best value?
- Can adequate competition be obtained?

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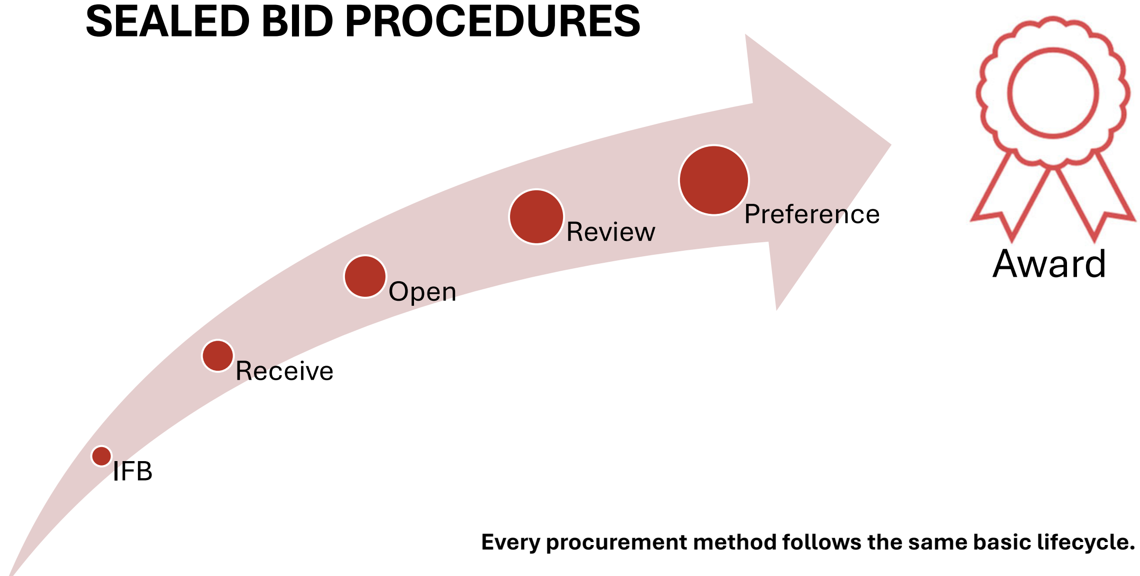
SEALED BID PROCEDURES



Every procurement method follows the same basic lifecycle.

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Sealed Bids: Common Findings

- Incomplete specifications
- Poor responsiveness review
- Failure to document responsibility determination
- Improper application of Indian Preference

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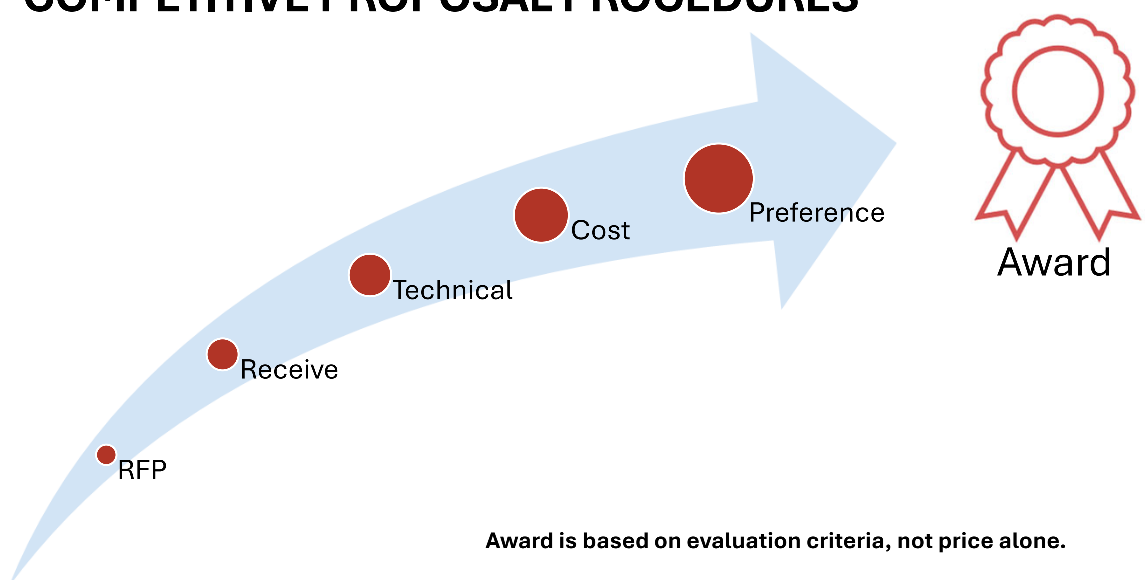
COMPETITIVE PROPOSAL PROCEDURES



Award is based on evaluation criteria, not price alone.

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Competitive Proposals: Best Practices

- Publish evaluation factors in the RFP
- Use a scoring matrix
- Document evaluator comments
- Retain all scoring records

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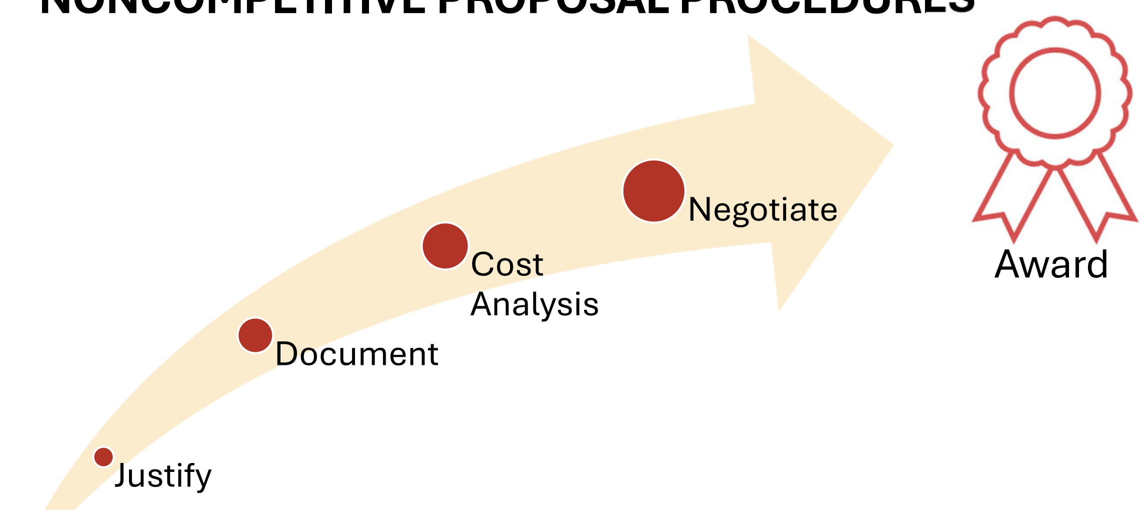
NONCOMPETITIVE PROPOSAL PROCEDURES



Use only when competition is not feasible.

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Allowable Noncompetitive Circumstances

- Single source
- Public exigency or emergency
- HUD authorization
- Inadequate competition after solicitation

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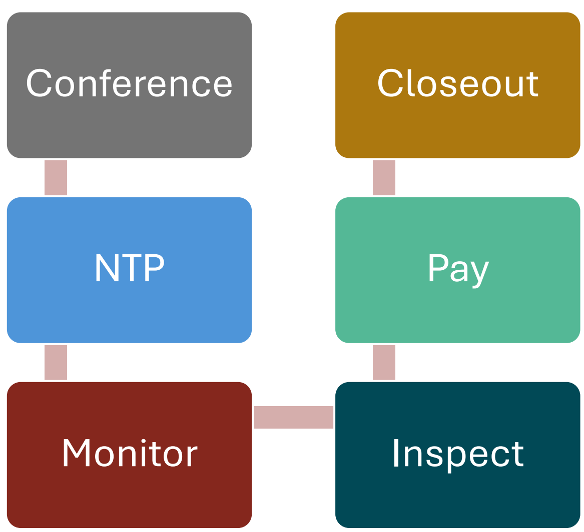
POST-AWARD CONTRACT ADMINISTRATION



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Procurement File Documentation

- Planning Documents
- Independent Cost Estimate
- Solicitation Records
- Quotes, Bids, Proposals
- Evaluation Documents
- Contract and Modifications
- Inspections and Payment Records

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Sample Contract File Arrangement-10 Files

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Why Important?

HUD MONITORING

AUDIT

FINDINGS

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FOLDER NUMBER-NAME	CONTENTS
# 1 – Bid Folder	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.

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FOLDER NUMBER-NAME	CONTENTS
# 2 – Award Folder	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.

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FOLDER NUMBER-NAME	CONTENTS
# 3 – Specifications	1. Copy of contract specifications. 2. Copy of any bidding addendums. 3. Copy of drawings.
# 4 – Contract Registers	1. Copy of contract register. 2. Copy of change order register. 3. Copy of contract progress schedules
# 5– Change Orders	Copy of all change orders in numerical order, including: 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 Fact 4. Supporting documents.
# 6– Contract Payments	1. Copy of all contractor payment requests. 2. Supportive documentation.

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FOLDER NUMBER-NAME	CONTENTS
# 7– Contractor Payrolls	Copy of all contractor payroll reports.
# 8– Submittals	1. Copy of contractor submittal log. 2. Copy of all contractor submittals
# 9– Daily Logs	Copy of all daily logs.
#10 – General Correspondence & Closeout Documents	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.

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Key Takeaways

- Choose the correct procurement method
- Document every major decision
- Apply Indian Preference consistently
- Maintain a complete procurement file
- Think like an auditor reviewing the file

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Case Study

Summarizing Key Points of Training

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Questions?

Thank you!

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