



Development Planning: Part 2

Day 1

July 14, 2026

Virtual Training

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

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Introductions

Lorna Fogg
Vice-President, Finance &
Development



- Who I am:

- o RTHawk is 100% owned by a member of the Standing Rock Sioux Tribe.
- o We are a relationship driven company.
- o I have been in the Affordable Housing Industry since 1995.
- o I helped bring the LIHTC program to Indian Country.
- o I worked for an LIHTC investor for over seven years.

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Introductions

Jason Adams
ACE Housing & Development, LLC



- Who I am:

- o Over 30 years of experience in Indian Housing.
- o Executive Director experience
- o Three NAHASDA Negotiated Rulemaking committees
- o Experience with all types of Indian Housing development

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Introductions

• Please use chat to tell us who are you:

- o Name
- o Title
- o Length of employment
- o Organization you work for

Agenda

ONAP TRAINING
Development Planning
(Part 2)



TRAINING AGENDA
July 14 & 15, 2026 | 9:00am – 4:00pm Central Time
There will be breaks throughout the training

DAY 1: TUESDAY, JULY 14

9:00am-12pm Welcome and Introductions, and Agenda
Section 1: Concept Phase
Section 2: Predevelopment
- Procurement
- The Team

12pm-1:00pm LUNCH BREAK

1:00pm-4:00pm Section 2: Predevelopment
- Site Issues and Control
- Timeline
- Environmental Issues
- Preliminary Plans, Cost Estimates
- Market Analysis – Market Study

DAY 2: WEDNESDAY, JULY 15

9:00am-12pm Review of day 1
Section 2: Predevelopment
- Appraisals
- Construction Delivery Methods
- Preliminary Budgets
Section 3: Development
- Overview
- Contract Documents

12pm-1:00pm LUNCH BREAK

1:00pm-4:00pm Section 3: Development
- Contract Documents cont.
- DQI Requirements
- Timeline
- Release of Funds – Environmental
- Advertise for Bids
- Funding, Loan Closing

Wrap up and Q&A

Development Planning Training Series: Description

This course reviews the housing development process in Native communities from project formation to property management. Three sessions will be delivered covering the following:

- o Development Process Overview
- o Project Development Phase
- o Project Operations

Participants will learn how to design and implement a housing development strategy, tailored to community needs and today's financing environment. Different housing development approaches, such as rental, lease purchase, and homeownership will be discussed. Innovative financing strategies, site selection issues, contracting, construction management, and loan packaging will be examined. Operations and management issues, including financing, marketing, pre-leasing, leasing, and management will also be explored. The risks and rewards of several Native development models will be examined to illustrate today's housing development process.

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Section 1: Concept Phase

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Concept

Internal Capacity

Identify Needs

Available Land

Timeline

Define Goals

Preliminary Budgets

Start Policy Development

Start Housing Counseling

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Assess Capacity – Demonstrate Experience

Management

- Program policies
- Financial capacity
- Development capacity
- Organizational capacity
- Facilities and equipment
- Standard operating procedures (SOP)

Financial Management

- Budget
- Cost allocation
- Allowable costs
- Chart of accounts, classification of costs
- Reporting
- Monitoring
- Procurement standards

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Identify Housing Needs

- Rental – New
- Rental - Rehab
- Homeownership - New
- Homeownership L/P
- Purchase Existing Home Now
- Homeownership Owner Build
- Employee Housing
- Elderly
- Homeless
- Emergency Shelter

Need 30 VLI & 30 LI Now

60 units – in disrepair

10 Ready Now

15 Ready

35 Mortgage Ready

5 Mortgage ready

None

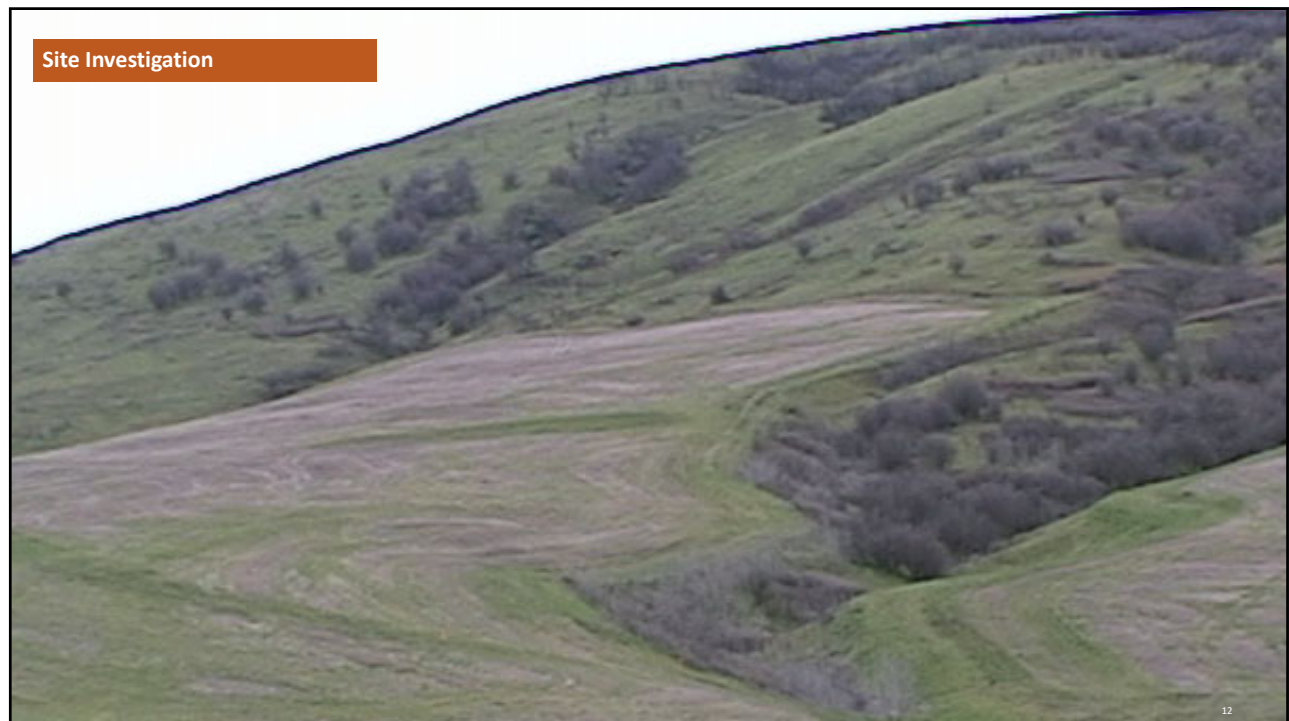
20 living alone

35

At capacity

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Preliminary Budget – Soft Costs

- Architectural
- Engineering
- Environmental Part 58 & 50
- Phase 1 and 2 ER
- Land Survey
- Land Option
- Soil Testing
- Archeological

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Preliminary Budget – Hard Costs



**Infrastructure
Site Improvements**

**New Construction
Acquisition
Rehabilitation**



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Define the Project Goal

- Build 20 single family homes as Lease with option to purchase
 - \$30,000 + families
 - 3-year L/P
 - Must take out mortgage within 3 years
- Build 20 low-income single-family homes
- Build 15 low-income rentals with option to purchase after 15 years

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Identify Programs, Policies to Be Developed

Down payment assistance

Lease with option to purchase

Housing counseling policy

Procurement policy

Curriculum material

Intake, selection

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Establish a Housing Counseling Program

Tribe designates entity to operate housing

Board of Commissioners reaffirms

Tribe re-evaluates mortgage and foreclosure ordinance to broaden scope to include various loan products



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Draft Policy to Legitimize Program

- Draft a housing counseling policy to
 - o Facilitate the development of qualified applicants for mortgage-based homeownership
 - o Enable families to meet the financial obligations associated with renting or purchasing a home
 - o Enable families to improve home maintenance skills

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Establish Organizational Structure for Program



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Adopt PATHWAYS Curriculum



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Credit Counseling

- Develop capacity to directly access tri-merged reports
- Develop tracking component
- Acquire Fannie Mae Online Counselor
- Strengthen capacity to provide credit counseling

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One-On-One Counseling

- Client Action Plan
- Budgeting
- Affordability
- Credit
- Advocacy
- Down Payment Assistance
- Housing program options
- Loan application process
- BIA & land documents
- Saving for down payment
- Home maintenance
- Asset building



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10% Home Buyer Education

90% 1-On-1

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Identify Types of Housing Counseling to Provide



Client Intake Meeting

Group Instruction

One-On-One Counseling

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Market & Outreach

- Newsletter
- Flyers
- Monthly calendar
- Brochures
- Home Fair
- Presentations at community meetings/General Council
- Radio announcements
- Notices in Tribal and surrounding newspapers
- Public hearings

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Identify Financing Options



[Down Payment Assistance](#)

*Application Fee
DP/Buy Down Assistance
Appraisal, Closing Costs, Etc.*



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Section 2: Predevelopment

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Predevelopment

Procurement	Market Analysis - Market Study
The Team	Appraisals
Site Issues and Control	Construction Delivery Methods
Timeline	Preliminary Budgets
Environmental Issues	Ongoing Policy Development
Preliminary Plans, Cost Estimates, Surveys, Soil Testing	Ongoing Housing Counseling

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NAHASDA Procurement Requirements

- Regulations – 24 CFR Part 1000.26
- Section 7(b) of the Indian Self-Determination and Educational Assistance Act
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR part 200

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Must Ensure . . .

- Treat all prospective sources in a fair and equitable manner
- Maximize full and open competition
- Maintain arm's length relationships with contractors
- Ensure the price is fair and reasonable
- Provide an opportunity for appeal and remedy
- Ensure the contractor is responsive and responsible

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OMB Uniform Guidance Subpart D - Post Federal Award Requirements

- Sections 200.317 –200.327 describes
 - o Applicable procurement standards
 - o Methods of procurement that are allowed, and
 - o Lists specific items that must be included in contracts under federal awards.

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General Procurement Standards 200.318 - 200.326

- Purchase complies with the Tribe's documented procedures.
 - o Procurement records must be maintained sufficiently to detail the history of procurement.
- Rationale for method of procurement
 - o Selection of contract type
 - o Contractor selection or rejection
 - o Basis for contract price

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Contract Cost and Price

- Must prepare cost/price analysis for every procurement (including contract changes)
- Should start with independent cost estimates before bids or proposals are solicited
- Cost estimates are not disclosed to prospective bidders (confidential information)

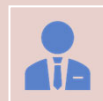
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General Procurement Standards



A contract administration system



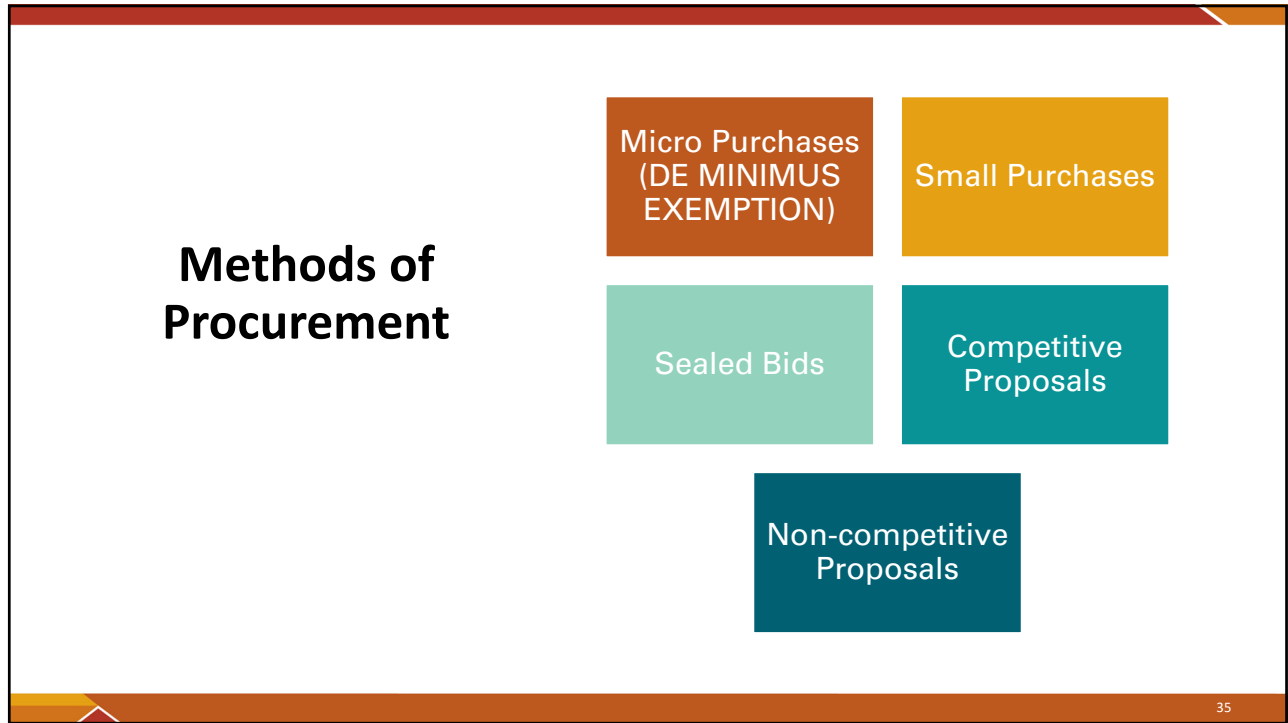
A written code of conduct governing the grantee or sub-grantee's employees.



Policies and procedures in place that avoid purchase of unnecessary or duplicative items.

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Micro Purchases

- Current threshold - \$15,000.00
- DE MINIMUS EXEMPTION OF GOODS AND SERVICES
 - A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.

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Small Purchases

- Existing term for supplies and services purchases, where the aggregate dollar amount is under \$350,000.
- Price or rate quotations must be obtained from an adequate number of qualified sources.
- Must obtain quotes from more than one vendor.
- Quotes can be written, verbal, or internet searches but must be documented.

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Sealed Bids: Formal Advertising

- Supplies and services purchases where aggregate dollar amount > \$350,000.
- Bids publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- Preferred method for construction projects involving federal grant funds.

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Sealed Bids

- Prepare Invitation for Bids (IFB) when the following conditions are present:
 - o A complete adequate, and realistic specification or purchase description is available;
 - o Two more RESPONSIBLE bidders are willing and able to compete effectively for the business; and
 - o The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price

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Sealed Bids

Sealed bid process works well for construction.



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Main Components of Sealed Bid

- Develop Specifications and cost estimate
- Issue an IFB to potential contractors
- Conduct a Pre-bid Conference
- Receive Bids
- Publicly open sealed bids
- Declare an apparent low bidder
- Review and award to low bidder who is fully responsive and responsible
- Sign Contract

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Competitive Proposals

- Supplies and services purchases where the aggregate dollar amount > \$350,000.
- Used when conditions not appropriate for the use of sealed bids such as:
 - when there is more than one source submitting an offer and either a fixed-price or cost-reimbursement type contract is awarded.
- Entities must have written method for conducting technical evaluations of the proposals received and for selecting recipients.

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Qualifications-Based Procurement



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Components of RFP

- Develop statement of work, cost estimate, and technical evaluation criteria for award
- Issue RFP which details evaluation criteria
- Conduct a pre-proposal conference (optional)
- Receive and evaluate proposals
- Narrow field to technically proficient proposals
- Request additional information if necessary
- Select proposal that provides best value
- Negotiate price
- Award contract after technical and price analysis
- Sign contract

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Non-Competitive Bids: Sole Source

- Applies to supplies and services purchased for any dollar amount
- Only allowable when
 - o The item is only available from a single source.
 - o The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
 - o The federal awarding agency expressly authorizes non-competitive proposals in response to a written request.
 - o Competition is deemed inadequate after solicitation from multiple sources.

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Sample Scoring Sheet

ARCHITECTURAL/ENGINEERING RATING				
NAME OF FIRM:				
ADDRESS:				
	CRITERIA	MAX. POINTS	AWARDED POINTS	COMMENTS
A	Points will be awarded for firms adequately documenting their status as an Indian owned economic enterprise as defined 24 CFR 1000.48	15		
B	Points will be awarded for firm's statement detailing its employment and training opportunities for Indians in relation to this project	10		
C	Points will be awarded based on the cost differential between proposals	25		
D	Overall experience of the design team to provide services as it relates to residential projects	5		
E	Current capability of design team's staff to handle the full scope of the project	5		
F	Overall experience of the firms in designing and administering HUD projects.	5		
G	Credibility and quality of reference demonstrating experience in residential projects similar to this proposed project.	5		
H	Specific quality of firm's experience in residential housing design and achieving a high quality completed construction product.	10		
	CRITERIA	MAX POINTS	AWARD POINTS	COMMENTS
I	Firm's ability to respond in a timely, cost effective manner to the Housing Authority's consulting needs	15		
J	Dollar amount of subcontracts to be awarded to Indian organizations or Indian owned economic enterprises for this project.	5		
TOTAL POINTS				

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Activity: Assign Points for Evaluating an RFP for an Architect.

CATEGORY	COMMENTS	POINTS
Indian Owned & Operated		
Minority/Female Controlled		
Evidence of the Firm's Ability to Perform Work, as indicated by: Financial Capability Professional and technical profiles of the principals and the staff		
Evidence of the Firm's Ability to Perform Work, as indicated by: • Financial Capability • Professional and technical profiles of the principals and the staff		
Past Performance in terms of quality of work and compliance with performance schedules. Provide references for a minimum of three recently completed similar projects including contact names and phone numbers.		
HUD Indian Housing Experience		
Price		
TOTAL		100

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NAHASDA Indian Preference Requirements

- NAHASDA Title I—Block Grants and Grant Requirements, Sec. 101 (k) establishes the legal basis for Tribal preference:

*(k) Tribal Preference in Employment and Contracting-
Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian Tribe under this Act that is intended to benefit 1 Indian Tribe, the Tribal employment and contract preference laws (including regulations and Tribal ordinances) adopted by the Indian Tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).*

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NAHASDA Indian Preference Requirements

- Applicable NAHASDA Indian preference regulations
 - o §1000.48 Are Indian or Tribal preference requirements applicable to IHBG activities?
 - o §1000.50 What Tribal or Indian preference requirements apply to IHBG administration activities?
 - o §1000.52 What Tribal or Indian preference requirements apply to IHBG procurement?
 - o §1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference?
- Let's take a look.

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Program Guidance No. 2013-07 (R)

- Updates on how to administer 2014 NAHASDA regulatory changes regarding Tribal preference in employment and contracting
- Addresses distinction between:
 - o Indian preference and Tribal preference, and
 - o requirements under Section 3 – not applicable, 1000.42.

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Program Guidance No. 2013-07 (R)

- Tribe may adopt a Tribal preference law, regulation, or ordinance governing preferences in employment and contracting under IHBG program.
 - o provide Tribal member with preferential treatment over other Indians that are not enrolled members,
 - o may specify any preferences in reductions in workforce and layoffs,
 - o Tribal law would prevail over requirement of 7b of the Indian Self-Determination and Education Assistance Act and of Section 3.

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Implementing Indian Preference in Procurement

- Options
 - o Certify to HUD that your policy meets 7(b) requirements
 - o Limit solicitation to Indians Owned Firms Only
 - o 2-Stage Process:
 - Request Indians submit “notice of intent” to bid
 - If more than one indicates intent, limit to Indians

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Two-Stage Process

- Intent to apply
- Based on results indicating Indian contractors in the area, restrict solicitation to qualified Indian-owned and operated businesses.
 - If competition is lacking, re-advertise without limits
 - If only one bid is received, ONAP approval is required
- Comply with TERO and/or Tribe requirements for licensing if applicable.

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Predevelopment

Procurement

The Team

Site Issues and Control

Timeline

Environmental Issues

Preliminary Plans, Cost
Estimates, Surveys, Soil Testing

Market Analysis - Market Study

Appraisals

Construction Delivery Methods

Preliminary Budgets

Ongoing Policy Development

Ongoing Housing Counseling

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The Players During the Design Phase

- Owner & Development Coordinator
- BIA/IHS/Tribe Land Office
- Surveyor
- Architect/Engineers
 - Mechanical
 - Electrical
 - Structural
- Civil – Sometimes separate contract
- Surveyor – Often Sub-Consultant of Civil Engineer
- Cost Estimator
- Soils Testing Firm
 - Geotechnical Engineer
- Appraiser
- Lawyer – For Contract Development

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Designing the Project

- Boundary & topographic surveys
- Engineering study – all infrastructure/utilities
- Phases
 - Schematics
 - Preliminary Design
 - Final Design
 - Specifications
 - Plan Review (code compliance)
 - Wage Determination, if applicable
- Permitting

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Conventional Construction A/E Services

- Pre-design services
- Site and building designs (but may re-use plans)
- Cost estimate
- Design documents
- Technical Specifications
- Contract documents (often with Recipient's lawyer)
- Final as-built drawings

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Other Services Available Through A/Es

- Plan Checkers
- Inspectors
- Testing Labs
- Other Specialists
- Construction Services
- Warranty Services

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Lunch Break

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Predevelopment

Procurement	Market Analysis - Market Study
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Timeline	Preliminary Budgets
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Preliminary Plans, Cost Estimates, Surveys, Soil Testing	Ongoing Housing Counseling

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Site Conditions

- Subsoil conditions may differ from the geotechnical report
- Construction Contracts should have specific provisions
- As-built conditions may differ from the as-built drawings



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Land Ownership in Indian Country

- Program requirements and processing procedures vary depending upon land status
- Types of land ownership:
 - o Tribal trust
 - o Allotted trust
 - o Fee simple
- Land ownership verified by Tribe via Land Status & Jurisdiction Form

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Essential Provisions of Tribal Mortgage Law

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Mortgage Ordinance Provisions

- Land assignment requirements
- Lease – Clarifies whether a Tribal member will obtain a lease on an existing land assignment or whether the lease replaces the land assignment
- Mortgage – Allows a Tribal member to mortgage the lease to obtain a home loan.
- First priority – Stipulates that the mortgage is the first debt that must be paid (over any other liens that might exist on the land) in the event the home is sold to a new borrower
- Recording – Mandates that a recording of the lease and mortgage be conducted
- Foreclosure and eviction – Allows the lender to foreclose in the event of default and provides for eviction
- Pre-foreclosure requirements – Requires the lender to contact the borrower, the Tribe and/or TDHE prior to accelerating the loan.

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Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act)

- Creates voluntary, alternative land leasing process available to Tribes
- Requires Tribal leasing regulations consistent with BIA regulation & approved by BIA
- Authorizes Tribes to negotiate & enter leases without additional approvals by BIA
- HEARTH Act restores Tribes' inherent authority over the use of their own lands

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The terms “fee title” or “fee simple title” generally indicate the owner is entitled to dispose of the entire property or various interests in the property without hindrance.

**Fee Simple Absolute
Land
Homeownership on
Fee Land**

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Fee Land Requirements

Purchasing on fee land vs. trust land differs in the following areas:

Taxes	Appraisals
Foreclosure	Title and title insurance

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Title Searches

- County records show
 - Who owns it/holds title/holds the deed
 - Who has owned it in the past
 - All the “encumbrances” or conditions that apply to the property
- Title Companies also maintain these records – called “title plants”



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Title Report

- Shows all recorded documents for the property such as:
 - o Liens for unpaid taxes
 - o Mechanics' Liens and other liens
 - o Easements
 - o Subdivisions
 - o Covenants, Conditions & Restrictions (CCR's)
 - o Regulatory Agreements/Deed Restrictions
 - o Deeds of Trust (Debt)
 - o Land Leases

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HUD 184 Lending on Fee Simple Land

- Lease not required
- Title policy is required
- Property must be in designated Indian Operating Area
- Tribal Certification on Land Status & Jurisdiction Form

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Trust Land

TRIBAL TRUST

- Land or interest in land held in trust by BIA for a Tribe
- Land may not be encumbered or alienated (leasehold)
- Tribal Status Report (TSR) from BIA required
- BIA approval on the form of leasehold

ALLOTTED TRUST

- Land or interest in land held in trust by the United States for the benefit of individual Indians
- Tribe has no interest in land, although there might be right of first refusal.
- The allottee or owner may choose to use the land as collateral for a mortgage and consequently risk permanent loss of the land in the case of default and subsequent foreclosure
- BIA approval required

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Mortgaging on Trust Land

- The following factors apply to mortgaging on trust land:
 - o Tribal Status Report
 - o Leasehold interest must be established between borrower and Tribe prior to loan application
 - o TSR from BIA (preliminary and final)
 - o Parties to lease — BIA, Tribe, borrower, HUD ONAP approval/review
 - o Compliance with BIA leasing regulations
 - o 50- year term when using a lease

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Tribal Trust Land

- Eligibility: Only those who are eligible under the laws and customs of the Tribe for residential purposes.
- Approval must be obtained from Tribal governing body.
- All residential leases for a leasehold mortgage must comply with BIA Residential Leasing Regulations.

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Mortgaging Allotted Trust Property

- Individual allotted trust land can be used to secure a loan.
- Approval required
 - BIA
 - Other individuals with an interest in the land.
- Certified TSR needed to determine exact ownership of the land.

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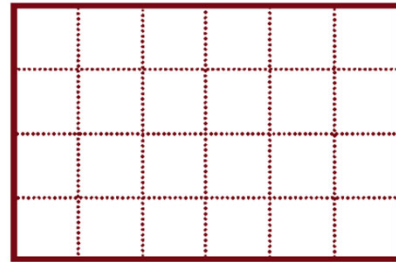
Allotted Trust Property & Mortgages

- Fractionated land or undivided
- Divided land

Figure A: Undivided or Fractionated Land



Figure B: Divided Land



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Fractionated Land Mortgaging Options

- Fractionated allotted trust property that is not divided among all the owners.
- Mortgaging options:
 - o Subdivide the property among all the owners
 - o Obtain a gift deed or purchase the allotment from all owners of the undivided allotment.
 - o Obtain consent to mortgage the undivided allotment from all owners.
 - o Lease allotment owned by others

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HUD 184 Lending - Individual Allotted Trust Land

- Lease not required
- BIA approval to mortgage is required
- Fractionated ownership
- Title Status Report (TSR) with recorded mortgage and approval
- Foreclosure can result in loss of land

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Title Status Report (TSR)

- A report issued by the BIA after a title examination that shows
 - o The proper legal description of a tract of Indian land;
 - o Current ownership, including any
 - Applicable conditions, exceptions, restrictions, or insurances of record; and whether
 - The land is in unrestricted, restricted, trust, or other status as indicated by the records in a BIA Land Titles and Records Office.

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Land Status and Jurisdiction Form

LAND STATUS AND JURISDICTION FORM
SECTION 184 INDIAN HOUSING LOAN GUARANTEE PROGRAM
HUD, OFFICE OF NATIVE AMERICAN PROGRAMS

NOTE TO BORROWERS, TRIBES, AND LENDERS: *This form is intended as a model only. Lenders and/or tribes may elect to use this or any other complete format to submit information about land type.*

APPLICANT NAME: Nez Perce Tribal Housing Authority
CO-APPLICANT NAME: NA
LENDER: Washington Mutual
BORROWER'S TRIBE: Nez Perce Tribe of Idaho
PROPOSED PROPERTY ADDRESS/LOCATION:
 See Exhibit A
LAND STATUS:

TRIBAL TRUST LAND (Attach a copy of a letter or other document from the tribe indicating the tribe's intention to permit the applicant to develop this site.) (See Exhibits B-D: Resolution, Land Use Map, Administrative Action).

FEE SIMPLE LAND (Attach a copy of a map or legal description indicating that this land is within the IHA operating area.)

ALLOTTED OR INDIVIDUAL TRUST LAND (Attach a copy of BIA document indicating that this land is held in trust for the applicant)

DOES THE TRIBE HAVE A TRIBAL COURT SYSTEM:

YES NO

IF YES, DOES THE TRIBAL COURT SYSTEM HAVE JURISDICTION TO HEAR FORECLOSURE AND/OR EVICTION CASES FOR THE PROPOSED SITE:

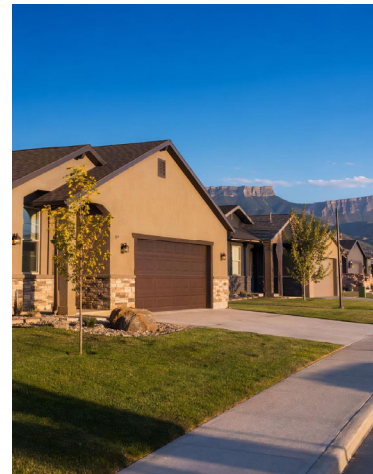
YES NO

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Trust Land and Foreclosure Procedures

- Foreclosure on Tribal trust different is different from the process on fee land.
- The lender which made, insured, or guaranteed the mortgage loan may assume title to the leasehold interest without Tribal approval of such transfer.
- Those who subsequently purchases or rents the leasehold property must be approved by Tribe
- Tribe's interest is ensured by a right of first refusal provision in the lease.
- Typically, foreclosure on allotted land results in loss of the land.



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Purpose of a Life Estate Code

- Code or lease provision
- Provides passage of lease to lessee's heir
 - With a will
 - Without a will
 - With option for selling interest to Tribe

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Homesite Lease

- Identify the types of residential activities that are allowed under the lease.
- Identify who has first right of refusal.
- Are subleases permitted under the lease? Cite the section.
- Are assumptions permitted under the lease? Cite the section.
- Who is the Lessee?
- Who is the Lessor

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Predevelopment

- Procurement
- The Team
- Site Issues and Control
- Timeline
- Environmental Issues
- Preliminary Plans, Cost Estimates, Surveys, Soil Testing

- Market Analysis - Market Study
- Appraisals
- Construction Delivery Methods
- Preliminary Budgets
- Ongoing Policy Development
- Ongoing Housing Counseling

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Implementation Schedule

Project phases by quarter, 2026–2027

Project Phase	2026				2027			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1. Concept & Site Planning								
2. Needs & Capacity Assessment								
3. Environmental Review (NEPA)								
4. Predevelopment & Procurement								
5. Construction & Implementation								
6. Certification & Closeout								
7. Monitoring & Audit (ongoing)								

■ Active phase duration Timeline reflects a representative 2026–2027 rollout and is subject to funding and approvals.

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Predevelopment

Procurement

The Team

Site Issues and Control

Timeline

Environmental Issues

Preliminary Plans, Cost
Estimates, Surveys, Soil Testing

Market Analysis - Market Study

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Construction Delivery Methods

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Ongoing Policy Development

Ongoing Housing Counseling

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Key Environmental Information

- Use of NAHASDA funds requires an environmental record using 24 CFR Part 58 or 50
- Level of environmental depends on the nature of the project.
 - o Environmental record
 - o Exemption
 - o Categorical Exclusion
 - o Environmental Assessment (EA)
 - o Environmental Impact Statement (EIS)
- When using LIHTC or HOME funds, a Phase 1 is required.
- Environmental studies are a soft cost and are considered exempt

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What Activities Are Exempt?

- Exempt = exempt from NEPA and related laws and authorities
- Types of activities include (see §58.34):
 - Environmental studies, development of plans or strategies
 - Administrative and management services
 - Public services that will not have a physical impact or result in physical changes – e.g., employment, crime prevention, childcare, health, drug abuse, counseling, etc.

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Categorical Exclusions

- Activities that do not require an EA or EIS under NEPA (except in extraordinary circumstances).
- Examples: Downpayment assistance or accessibility improvements
- Activities that are categorically excluded under NEPA may be subject to NEPA-related authorities.

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Environmental Assessment (EA)

- If not exempt or categorically excluded, an EA is required.
 - Primarily projects that involve new construction, major rehabilitation, or conversion of uses
 - Make a Finding
 - Finding of No Significant Impact (FONSI)
 - Finding of Significant Impact (FSI)

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Environmental Impact Statements (EIS)

- Most involved level of review.
- Must perform an EIS when a project
 - Will have a potentially significant impact on human environment.
 - Is of a certain size – e.g., involves more than 2,500 housing units.
- EISs are extremely rare for HUD-funded projects!

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What Activities Are Covered?

- Type of activities include [listed at 58.35(a)]
 - o Acquisition/Rehabilitation of public facilities and improvements (other than buildings) when:
 - Facilities are in place
 - Same use
 - No more than 20% change in size or capacity
 - o Special projects for removal of barriers that restrict mobility and accessibility of handicapped and elderly persons

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What Activities Are Covered?

- Types of activities include (see §58.34):
 - o Inspections and testing of properties for hazards or defects
 - o Purchase of insurance
 - o Engineering or design costs
 - o Technical assistance and training
 - o Payment of principal and interest on loans made or obligations guaranteed by HUD (i.e., Title VI loans)

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HUD Approval and Release of Funds Process

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When Are Public Notices Required?

- Categorical exclusions subject to §58.5 (that do not convert to exempt)
- Environmental Assessments (EA)
- Environmental Impact Statements (EIS)

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Notifications for Categorical Exclusions Subject to §58.5

- Notice of Intent to Request Release of Funds (§58.45 and 58.70)
- Determine the period for receiving public comment
 - 7 calendar days when published, or
 - 10 calendar days when posted and mailed.
 - The first day of the comment period begins 12:01 am the day following publication or posting/mailing.

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Notifications for the Environmental Assessment

- Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds (§§58.43, 48.45 and 58.70)
- Make inclusions required for a combined notice. Indicate that:
 - o Notice is intended to satisfy two separate procedural requirements.
 - o Public comments should specify which part of the notice they are referring to
- Determine the period for receiving public comment
 - 15 calendar days when published, or
 - 18 calendar days when posted and mailed.
 - The first day of the comment period begins 12:01 am the day following publication or posting/mailing.

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Overview

- Complete
 - o Soil testing
 - o Surveys
 - o Engineering studies
- Conduct preliminary plan reviews and revisions
- Prepare cost price analysis
- Approvals of design
- Board of Commissioners
- Land department
- Preliminary development budget

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Price vs. Cost Analysis

Cost Analysis Needed When...

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

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Price 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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RS Means Residential Cost Data & Others

- Cost per SF models for residential construction
- Common assembly costs residential systems
- Unit Cost of more than 8,000 items
- It is an average cost of 30 largest U.S. cities; consequently, it works best in suburban/urban areas, use with care in other localities
- Have to pay for them, but costs can be much less than paid consultants

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Market Analysis vs Market Study



Market analysis is a broad look at the local housing market and housing needs.

Answers the question "What do we need?"



A Market Study is one type of market analysis that will test the viability of a proposed project, and is:

Site specific

Project specific

Answers the question "Is this the right project?"

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When Is Market Analysis Required?

- Developers/TDHE's should always conduct own analysis in-house
- May pay to have a professional Market Analysis prepared for a whole community and all income levels
- Useful information for Tribal Comprehensive Plans

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Market Analysis Components

- Market area
 - o Catchment area for project
 - Boundaries (political, social, natural)
 - Experience
- Target population
 - o Who are potential residents?
 - o Incomes
 - o Household size
 - o Other (language, family structure)
 - o Trends
- Define housing product
 - o Rents
 - o Unit size/mix
 - o Amenities
 - o Location

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Market Analysis Components

- Competition
 - o Where do potential residents live currently?
 - o Other housing options vs. proposed project?
- Assess comparables
 - o Rents
 - o Unit size
 - o Amenities
 - o Location
 - o Condition
 - o Vacancy & turnover rates
 - o Other (e.g. overcrowding)

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Who Requires a Market Study?

- All Low-Income Housing Tax Credit projects
- Banks and CDFI's (for most projects)
- Public lenders
 - States
 - Title VI
 - Section 184 Loan Guaranty
- Usually required with the funding application

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Who Performs the Market Study?

- Market Analysts
- Appraisers
 - May save \$ if use same consultant for appraisal and market study

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Content of a Housing Market Study

- Executive Summary
- Project Description
- Location & Market Area Definition
- Population & Households
- Employment & Economy
- Existing Rental Housing Stock
- Local Perspective of Rental Housing Market and Housing Alternatives
- Analysis
- Other Requirements

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Executive Summary

- Site & surrounding area description
- Summary of the project
- Statement of key conclusions
- Statement of analyst's opinion of market feasibility
- Recommendations &/or modifications
- Summary of market strengths/weaknesses
- Summary of positive & negative factors that will affect the property's sales

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Overall Project Description

- Proposed number of units by
 - number of bedrooms and baths,
 - income limit as a percent of AMI,
 - unit size in square feet,
 - utility allowances for Tenant Paid Utilities,
 - proposed rents, and
 - Target Population, including income restrictions and any special needs set-asides.
- The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking;

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Location/Market Area

- Primary (PMA) and Secondary (SMA) Market Areas map
- Site characteristics
- Support services
- Marketability of the proposed development.
- Visibility and accessibility of the site.

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Population & Households

- Total population, age and income target data
 - o current year estimates\
 - o Five-year projection. Provide a breakdown of Households by tenure for 1990 Census, 2000 Census, current year and five-year projection.
- An analysis of trends
- Breakdown households by
 - o incomes in \$5,000-\$10,000 increments
 - o household size
 - o tenure

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Employment & Economy

- Employment by industry sector with comparison to the larger geographic area, (city, county, labor market area, MSA)
- List major employers
- Historical unemployment rate
- Show employment growth
- Typical wages by occupation
- Commuting patterns for workers (#)

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Economic & Demographic Profile

- County's economic basis
- Average annual job growth rate .
- Any downturns in the county's general economy
- The State Department of Labor employment projections
- Average annual wage of County employees
- The market area gains in renter households per year
- Suitability of project's proposed units for market renters
- Project appeal to households with incomes between \$5,700 and \$32,600 who comprise 37% of market area households.

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Existing Housing Stock

- History of building by housing type
- Building trends vs. household trends
- Comparable properties
- Size of housing market
- Comparison of all to subject property
- Discuss availability of housing options
- Vacancy rates
- Waiting Lists



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Questions??
See you tomorrow!

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Development Planning: Part 2

Day 2
July 15, 2026
Virtual

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Appraisals for Trust Property

- The unique nature of the reservation setting creates challenges to appraising trust property.
- Federal agencies have established rules to provide uniformity in conducting appraisals.

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Appraisals for Trust Property - BIA

- On September 22, 2016, BIA proposed rules that
 - Establish minimum qualifications to accept appraisals and valuation,
 - Allows the Secretary to accept appraisals and valuations without additional review or approval under certain circumstances
- The final rule took effect on July 26, 2017 (see 43 CFR Part 100)

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References: HUD & FHA

- For guidance in determining the exact methods of appraisal for trust land), see HUD Handbook 4150.2 (Appendix C) at <https://www.hud.gov/hudclips/handbooks/housing-4150-2>
- HUD Section 184 Loan Guaranty Processing Guidelines thoroughly addresses the subject: <https://www.hud.gov/section184>

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Validity Period

- Appraisals on existing and proposed and under construction properties are good for 120 days.
- Cost approach recommended method for determining value.
- Lenders and appraisers are referred to HUD Handbook 4150.2

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Methodology – Trust/Allotted

- Apply cost-based approach
 - Generally use the Marshall and Swift handbook (www.cotality.com/products/marshall-swift)
- On existing homes where comparable sales data is available, use a market approach
- Review of plans, specifications, and other related construction exhibits and contracts as part the appraisal

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Fee Simple Methodology

- Appraisers use
 - o The market method of appraisal including a review of comparable sales.

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Approaches to Value

- Cost Approach
 - o Cost approach is often the primary indication of value based on the unique nature of the reservation setting.
 - o The value of the site is zero or a small leasehold value.
 - o Appraiser should enter the statement "subject is on Tribal Trust Land with annual rent not capitalized" in comments.
 - o If a market exists and the land was purchased, the value is estimated via traditional methods.

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Approaches to Value

- Cost approach requires more documentation than a typical market appraisal.
- An appraiser must communicate each analysis, opinion and conclusion in a manner that is not misleading."
- An appraisal on trust land may rely more on the cost approach, or data developed from other Tribes. HUD will accept the report if the appraiser has documented the search, information developed and conclusions clearly for the intended users to understand.

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Factors Impacting Delivery Method Selection

- Your capacity as Owner
- The project schedule
- Your risk tolerance
- Your desire to control the design
- Your policies, requirements, and procedures
- Local circumstances

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The Design-Bid-Build Delivery Method

A Linear Process

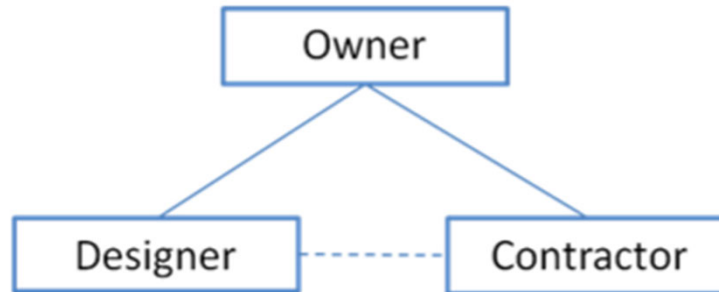


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The Design-Bid-Build Delivery Method

Organization Chart



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Design-Bid-Build Advantages

- Historically standard method – accepted by Federal Agencies and Grantors
- Well-understood with clearly defined roles
- Owner retains most control over design – when compared to other delivery methods
- Bid process straight-forward and defensible

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Design-Bid-Build Disadvantages

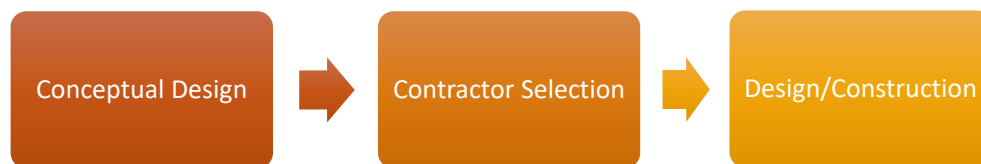
- No contractor input in design – A/E may have limited ability to assess cost and schedule implications of design decisions
- Can create adversarial relationships
- Typically takes more time than other delivery methods (design must be complete before any construction can commence)
- Owner exposed to contractor change orders and claims
- Low Bid Contractor may not be one you want to work with
- If bid comes in higher than expected – can result in lengthy delays for re-design/rebidding process

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Design-Build (DB) Delivery Method

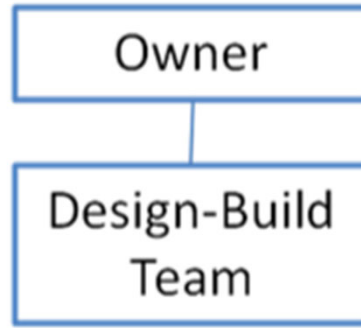
Process



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Design-Build



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Design-Build Pro's

- Opportunity to save time and money
- Owner does not have to act as referee between competing parties
- Single point of accountability for owner

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Design-Build (DB) Disadvantages

- Requires HUD Approval
- Efficiencies cannot be achieved with some federal design review processes (i.e. BIA)
- Owner dependent on transparency from DB firm
- Owner must be very responsive to take advantage of DB method
- Documented Procurement typically done using Request for Proposal (RFP) process – requiring a lot of front end work by owner and clear/defensible selection process
- Owner has less control of design
 - Initial scope/preliminary design must be clearly communicated in RFP

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Construction Management Agency (CMA) Services

- Owner hires Construction Management Agency firm to assist with design, contractor selection, and construction activities

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Force Account Method

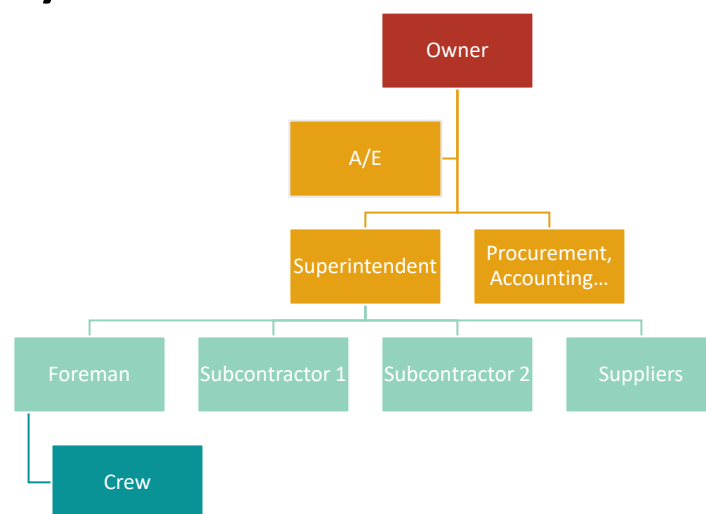
- A construction method where the Recipient performs general contracting and often some or all subcontracting responsibilities, employing its own work force

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Force Account Delivery Method

Organizational Chart



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Force Account Delivery Method

- Force Account use requires prior HUD notification as follows:
 - o ICDBG: must indicate in your ICDBG application that you planned to use force account
 - o IHBG: must indicate in your Indian Housing Plan (IHP)
 - o Force account work is approved when your application or plan is found in compliance

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Written Force Account Plan

- Used for
 - o New Construction
 - o Rehab of existing units
 - o Re-construction after casualty loss
- Includes
 - o Cost estimating/budget
 - o Management team
 - o Labor requirements
 - o Subcontractor requirements (if any)
 - o Schedule
 - o Relocation requirements pursuant to 24 CFR 1000.14 (if any)

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Capacities Required for Force Account

- Owner accepts responsibility
- Has to have general contractor abilities;
 - Preparing Specs and Scope of Work
- Capacity to do work required
- Management capability
- Experienced labor force
- Procurement of all subcontractors, suppliers

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Force Account - Advantages

- Can hire locally, build Tribal workforce
- May be cheaper – particularly if you are in a remote location

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Force Account Crew Issues

- Standing crews
- Core crew
- Personnel practices
- Firing ability
- Drug testing
- Training
- Inventory control
- Community relationships



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Force Account - Disadvantages

- Significant management capacity and effort required
- Lots of procurement required – may delay project
- No other guaranteeing or responsibly party – high risk
- Workflow may not allow you to keep your crews busy
- More expensive if labor force is untrained

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Preliminary Budgets

- By the end of the Predevelopment phase, you should have a good estimate of all your costs by
 - o Sources
 - o Uses
 - o Operating Expenses
- Good planning involves identifying when you are going to need the funding.
- Using different funds means using different requirements and restrictions.
- Awareness of when your funds will be available is key to having cash flow for your project.

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Budgeting by Phases

- First, list all the uses of funds by need
 - Sources
 - Uses
 - Operating Expenses
- Good planning involves identifying when you are going to need the funding.
- Using different funds means using different requirements and restrictions.
- Awareness of when your funds will be available is key to having cash flow for your project.

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Section 3: Development

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Release of Funds - Environmental

Advertise for Bids

Funding, Loan Closing

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Development Phase Overview

This is the phase where everything is finalized :

- ✓ ER Release of Funds (ROF) from HUD ONAP
- ✓ Source Identification
- ✓ Business & Financial Packaging
- ✓ Finalize property acquisition
- ✓ Secure Permanent Finance
- ✓ Secure Construction Financing
- ✓ Finalize Plans, specs, and contract documents
- ✓ Operations plan and policies
- ✓ Secure Contractor-bidding & reference checks
- ✓ Secure Cooperative Agreement

The Project is a GO!

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Construction Contracts

“There is one day when all parties in a construction project are in full agreement – the day the contract is signed”

- Don't wait until problems arise before you take a hard look at the contract documents

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How Proper Contracting Helps Your Program

- Compliance with Requirements (Yours, HUD's and Other Funders)
- Allocate Risk
- Avoid Corruption
- Operate in a Consistent Manner
- Avoid Outside Interference
- Promote Fair and Open Competition

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Contracts

- Specifics of the Construction
- Quality Standard
- Warranty of the Builder
- Conflict Resolution
- Timeline of the Construction
- Contract Price
- Inspection Guidelines
- Pertinent Notes or Clauses

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Construction Contracts

- When are they developed?
 - Need to be provided as part of Invitation for Bids in Design-Bid-Build Projects
 - Standard agreements are available through HUD, the AIA, Association of General Contractors, and others
 - These agreements should be modified to meet your needs if used

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Project Manual in Conventional Construction

- Follows Development Plan
- Produced by A/E, Attorney and Recipient
- Along with drawings makes up construction contract
- Prepared prior to bid letting

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Project Manual (Construction Contract)

Contains:

- Front End documents
- Technical specifications
- Index to drawings

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Project Manual: Front End Documents

- Index
- Addenda
- Invitation for Construction Bids
- Instruction to Bidders (sometimes)
- Contract Forms
- Special Conditions (sometimes)
- General conditions

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Project Manual: Technical Specification

- From concrete to masonry, to wood, to electrical, to mechanical

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Project Manual: Drawings

The project manual should have as part of the document a reference to attached plans or drawings that represent the work to be done under the contract. The plans should be provided by your A&E with their professional seal stamped on the plans. A detailed set of plans are available for your viewing during the breaks.

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Contents

INDEX

- Important
- Seldom done well

AGENDA

- Inserted in front
- Include changes to
 - Bid conditions
 - Specifications
 - Plans

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Invitation for Bids (and Typical Attachments)

- Public advertisement
- Plans center
- Project manual drawings
- Pre-qualification for Indian Preference
- Pre-bid conference; time and place if mandatory
- Designated date, time, and location for formal bid opening

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Instruction to Bidders (and Typical Attachments)

- Proposal for lump sum bid
- Bid bond
- Statements regarding Indian Preference
- Previous participation certificate
- Non-Collusive Affidavit

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Contract Forms (and Typical Attachments)

- Construction progress schedule
- Agreement to store material off site
- Performance and payment bond
- Irrevocable letter of credit
- Cash monitoring/disbursement escrow
- Davis Bacon wage or approved Tribal wage rates

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General Conditions

- Contractor's performance requirements
- Includes most instructions for administration of contract
 - Party Responsibilities
 - Pay requests
 - Dispute Clauses
 - Quality control
 - Interactions between parties
 - Changes in work
 - Closeout
 - Warranty

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Indemnification

- Indemnify – to guarantee against any loss which another might suffer
- The transfer of risk to others is usually by contract and incorporates an indemnification provision.
 - You will require your contractor to provide proof of insurance to indemnify for insurable events
 - Where the risk of loss is transferred to others by contract, as in the case of a subcontract, it will also include an insurance requirement to "back-up" the insurable hold harmless provisions in the contract.
- Even broad indemnification cannot always protect owner from owner's own negligence.

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Warranty

- **Express Warranty** - General and Specific Warranties are both “express warranties”
- **Implicit Warranty** - These warranties are separate from other express warranties required of suppliers and subcontractors for specific portions of the work (i.e. 15-year roof warranty)
- What to look for
 - o Time Limits
 - o General Warranty not tied to specific warranty
 - o Definition of when warranty starts (i.e. Substantial Completion)

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Warranty

- **General Warranty**
 - o Materials and equipment of good quality and new
 - o Conform to the requirements of Contract Documents
 - o Free from defects
 - o Subject to State Statute of Limitations (i.e. 6+ years)
- **Specific Warranty**
 - o One year after date of Substantial Completion, Contractor will fix all defective work at their own cost
 - o Often paired with an 11-month inspection
 - o Do not tie Specific Warranty together with General Warranty - which has a long duration

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Delays – Best Practices for Owner

- No damages for delay - only an extension of time
- No damages or time extensions due to contractor's breach
- Exceptions:
 - o Force Majeure (should be clearly defined and a limited definition – labor/TERO disputes contractor played a part in, weather that is not out of the ordinary)
 - o Owner's Convenience
 - o Owner's Breach of Contract
 - o Other Contractors (also should be a limited definition, i.e. owner hired contractors)

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Delays

- Liquidated damages
- Contractor liability for owner expenses

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Liens

- Mechanical Lien – Definition: *“A charge or claim upon the property of another individual as security for a debt that is created in order to obtain priority of payment of the price or value of work that is performed and materials that are provided in the erection or repair of a building or other structure.”*
- Laws vary by state
- No liens allowed on Federal and Trust Property – this is why Payment Bonds are used on public projects

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Liens

- Payment Application
 - o Lien Waivers – require partial and final lien waivers
 - o Require lien waiver from Contractor for each payment application
 - o Include lien waiver from each subcontractor for payments from prior payment application
 - o Get final lien waiver at the end
 - o If any liens are filed, get lien releases to remove them
- Include clause indicating that contractor shall keep project free from any liens and will indemnify owner and pay all costs related to liens

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Changes (Change Order Process)

- Changes are inevitable
- Process should be clearly defined
 - Who has authority to authorize
 - In writing ONLY
 - Requirement to continue the work (despite disagreement on whether something is a change)
 - No payment for changes without Change Order
 - Predetermine markups for changes (i.e. x% for overhead, x% for materials, x% for subcontractor work, etc.)
 - No Cumulative Impact Claims

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Lunch Break

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Navigating Contract Requirements Under the Uniform Guidance 2 CFR 200



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Contract Definitions

- 2 CFR Part 200.1 defines *Contract* as a legal instrument by which a nonfederal entity purchases property or services needed to carry out the project or program under a Federal award.
- 2 CFR Part 200 references § 41 *CFR Part 60-1.3*, which defines *Contract* as any Government contract or subcontract or any federally assisted construction contract or subcontract.

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2 CFR 200.327 Contract Provisions

- The nonfederal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for Nonfederal Entity Contracts

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§ 200.327 Contract Provisions

- Appendix II of 2 CFR 200
- (C) Equal Employment Opportunity Clause - Federally assisted construction contracts (41 CFR Part 60-1.3) must include the equal opportunity clause provided under 41 CFR 60-1.4(b)
 - New threshold "... applies to all contracts that meet the definition of "federally assisted construction contract."
- (E) Contract Work Hours and Safety Standards Act
- (G) Clean Air Act

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Small & Minority Businesses, Women's Businesses, Labor Surplus Area Firms

- §200.321 requires affirmative steps to assure that small businesses, minority businesses, women's business enterprises, Veteran-owned businesses, and labor surplus area firms are used when possible .
- §200.321(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

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§ 200.326 Bonding Requirements

- Program Specific Requirement of 24 CFR §1000.26 (a)(12), NAHASDA
- Other acceptable methods to provide performance and payment assurance may include:
 - o Cash escrow deposit not less than 20 percent of contract price...
 - o Letter of credit for 25 percent of the total contract price...
 - o Letter of credit for 10 percent of the total contract price...with compliance for procedures for monitoring disbursements by the contractor...[NOTE: 10% is not an available option for ICDBG per 24 CFR Part 1003.501(a)(8)]

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Termination of Contract

- **All contracts in excess of \$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

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Contract Violations/Breaches

- **Contracts for more than the simplified acquisition threshold** currently set at \$350,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

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CONTRACT PROVISIONS	THRESHOLD \$ AMOUNT
Indian Preference Section 7b	\$5,000
Equal Employment & Certification of Nonsegregated facilities	\$10,000
Davis-Bacon	\$2,000
Copeland Anti-kickback Act	\$2,000
Bonding	\$250,000
Clean Air & Federal Water Pollution Control Act	\$150,000
Debarment, Suspension-Executive Orders 12549 & 12689	All contracts
Termination for Cause & Convenience	\$10,000
Violations/Breaches	\$150,000
Sm, Labor Surplus Area, Women Owned Businesses	All contracts
CWHSS	\$100,000
Byrd Anti Lobbying Amendment	\$100,000

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IFB and RFP's Include

- Statement of work which includes project specifications (number of units, location, any features such as cultural aspects or design features)
- Native American Preference (is always a factor in selection)
- Special site or environmental conditions
- Contract type – Firm fixed price
- Clear specific selection criteria to help prevent any possible protests.
- Date, time and location where bids are due and opened.
- Explain the services to be performed, the materials and methods to be used, and the schedule of completion.
- Instructions to bidders

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Always

- Conduct an open and competitive process for soliciting contractor's bids.
- Evaluate bids on the basis of price, qualifications, and Indian preference.

THEN

- Conduct a pre-construction conference to ensure all parties understand their responsibilities.
- Monitor the progress of the work through regular on-site inspections.

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Opening Bids

- Bids should be date stamped
- Only at a designated time and place
- Bids are sealed and opened publicly
- More formal process for construction projects
- Read bid amounts out loud
- Hold all bids under advisement/no decision
- Can extend opening by addendum

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Awarding a Contract

- Award to responsive and responsible bidder with lowest bid
- Compare with price analysis
- Comply with preferences
- Carefully scrutinize and document
- Can reject any and all bids for good reason
- Apply all standards evenly
- Do not negotiate

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Contractors Must Be Qualified, Responsive, and Responsible

- **Responsible:** Must have financial and technical capacity to perform and a satisfactory record of success
- Cannot participate if debarred
- May utilize list of pre-qualified bidders and proposers
- Bonds and sureties are required for facilities and improvement contracts

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Cancellation of Solicitations/Rejecting “Any and All” Bids and Proposals

- Authorized in Procurement Policy
- Discretionary
- State in invitation for bids and RFPs
- Sound and documented reasons

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Award and Execution of Contract

- A/E and Attorney confirms contractor's responsiveness to requirements set forth in contract documents:
 - o Performance and payment security (including bonds)
 - o Evidence of Insurance
 - o Bid guarantee
 - o Indian preference plan
 - o Work schedule
 - o Execute contract
 - o License to do business on the Tribal reservation, if applicable

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Award and Execution of Contract

- Letters to contractor selected
- Reserve other bids
- Execute contract
- Performance and payment security (including bonds)
- Evidence of Insurance

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Development

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Why Are Labor Standards Crucial?

- Standards guarantee fair wages and compensation for workers
- Helps provide a level playing field for bidders
- Local grantee must ensure and document compliance
- Transgressions endanger future funding
- Required by IHBG program and other federal laws

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Key Federal Statutes

- Davis Bacon Act
- Contract Work Hours and Safety Standards Act
- Copeland Act

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IHBG & Davis Bacon Act (40 U.S.C. 276a.-5)

- Enacted 1931, amended 1935 & 1964
- DB requires construction contracts over \$2,000 comply with Davis-Bacon Act
- Act is “site-based”
- Includes alteration, repair, painting & decorating
- NO unit threshold for IHBG
- If Tribe has its own Tribally Determined Wage Rate Ordinance – Exempt from Davis Bacon Act

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Davis Bacon Act

- Construction work financed
- Soft costs do not trigger DB
- Force account workers are exempt if a Tribal wage ordinance is in place
- All laborers and mechanics employed by contractors or subcontractors
- Requires payment of at least prevailing wages
- Requires weekly payment of wages
- Usually applied through “Related Acts”

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Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. 327-333)

- Enacted 1962
- Payment for all contract work exceeding 40 hours per week at 1½ times regular rate of pay
- Applies to contracts exceeding \$100,000
- Liquidated damages for violations (\$10 per/day, per/violation)

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Copeland Act

- Enacted in 1934 (40 U.S.C. 276c)
- Prohibits “kickbacks”
- Requires contractors to submit certified payrolls with a signed “statement of compliance” each week, when DB applies
- Regulates deductions from wages:
 - o FICA, federal & state taxes
 - o Bona fide prepayment of wages
 - o Court ordered payments, fringe benefit plans, etc.

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Davis Bacon Wage Determinations

- Must be included in bid documents and contract
- Established by geographic area
- May be modified periodically
- Published for four types of construction
- Classify (and pay) for the work performed, NOT according to the level of skill or experience of worker

sam.gov/wage-determinations

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Davis Bacon Wage Determinations “Lock-In” Rules

- Competitive bidding:
 - o Modifications published less than 10 days before bid opening are not applicable if there is not sufficient time to notify bidders
 - o Lock-in at bid opening provided contract is awarded within 90 days
 - o Must update wage determination if contract award is more than 90 days
 - o Grantee must verify that wage rates are current

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Grantee Compliance/Monitoring

- On-site employee interviews should be used as a proactive enforcement tool
- Grantees are encouraged to conduct interviews to projects or groups of workers where violations are suspected or alleged
- Each employer must:
 - o Maintain full documentation, including payrolls and related records, for at least 3 years following project close-out or dispute resolution whichever is greater.
- Interviews can be used to support a specific on-going investigation
- Fewer on-site interviews may be conducted randomly but HUD considers focusing a far more effective means of utilizing on-site interview resources

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Davis Bacon Compliance - Laborers & Mechanics

- Laborer / Mechanic: anyone performing construction work on the project
- Supervisors are covered if they spend $\geq 20\%$ their time performing manual work
- Project Superintendents if they do work in listed trades, they must be paid the appropriate wage listed on the Wage Determination

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Prime Contractor

- Submits certified payrolls for own employees
- Provides subs with forms and guidance
- Ensures access to employees on site
- Responsible for restitution to underpaid employees
- Posters

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Subcontractor

- Submits certified payrolls each week
- Instructs lower-tier subs of responsibilities
- Reviews Wage Decisions, requests additional classifications
- Ensures access to employees on-site

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HUD Labor Relations References

- Labor Relations Forms
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
- HUD Office of Labor Relations:
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
- HUD Regulations: <https://www.ecfr.gov/current/title-24>

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Other Sources

- Davis Bacon Wage Determinations: <https://sam.gov/wage-determina>

Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

- GSA's On-Line Debarment List:
<https://sam.gov/content/exclusions>

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Development

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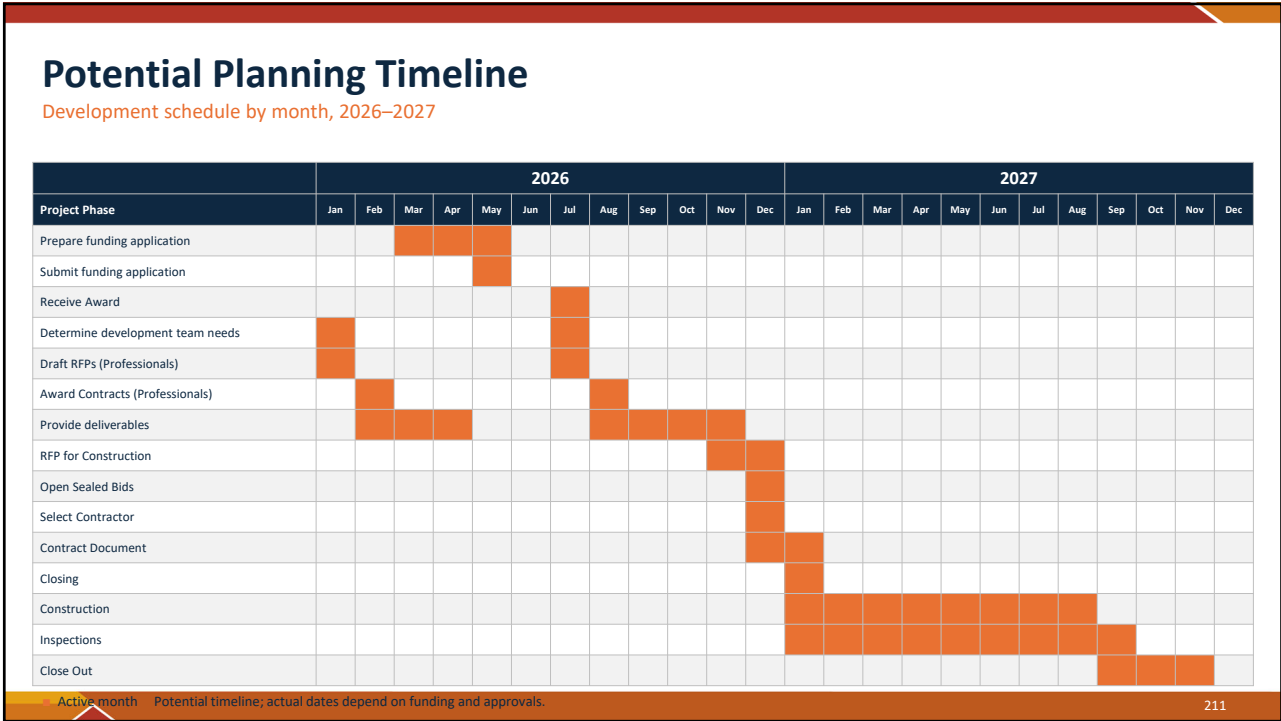
Timeline

Release of Funds - Environmental

Advertise for Bids

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Development

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- Timeline
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- Advertise for Bids

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- Ongoing Housing Counseling

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Advertise for Bids

- Required step before construction can begin
- Advertise publicly for the required notice period (newspaper and procurement sites)
- Bid package must include plans, specs, and the applicable Davis-Bacon wage decision
- Hold a pre-bid conference and site walkthrough
- Open sealed bids publicly, then award to the lowest responsive, responsible bidder



Release of Funds

HUD must clear the environmental review and authorize use of grant funds before bids are awarded and construction begins.

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Financing Request Terms

- Amount of loan
- Type of loan/grant/equity (construction, permanent, soft second, grant, end-loan mortgages, tax credit equity, etc.)
- Term of loan (how long)
- Rate desired
- Loan fees
- Amortization schedule
- Prepayment penalties

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Potential Financing Documents



- Uniform Residential Loan Application (URLA)
- Mortgage Credit Analysis Worksheet
- Appraisal
- Land status/jurisdiction form
- Complete credit package
- Sales contract or Builders Agreement
- Land status/jurisdiction form
- Native American Identification
- Executed Lease
- Title Status Report applicable
- Verification of Funds
- Market Study
- Organizational Capacity
- Partnership Agreement

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Section 4: Construction Phase

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Construction

Overview	
Commence Construction	
Construction Management	
Contract Administration	
	Finalize Policies
	Ongoing Housing Counseling

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Overview

This phase requires completion of the following tasks:

- Construction management
 - Budget, work, schedule, and payments
 - Indian preference monitoring
 - DOL monitoring
- Contract Administration
- Marketing and pre-leasing
- Operations plan and policy in place
- Staffing up
- Housing counseling & public meetings

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Construction

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Commencement of Construction

- Pre-construction conference
- Notice to proceed
- Schedule of amounts/values
- Initial progress schedule
- Mobilization payment
- Off site storage agreement
- TERO Plan
- Schedule regular meetings
- Review Contract Terms and Responsibilities

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Construction

Overview**Commence Construction****Construction Management****Contract Administration****Finalize Policies****Ongoing Housing Counseling**

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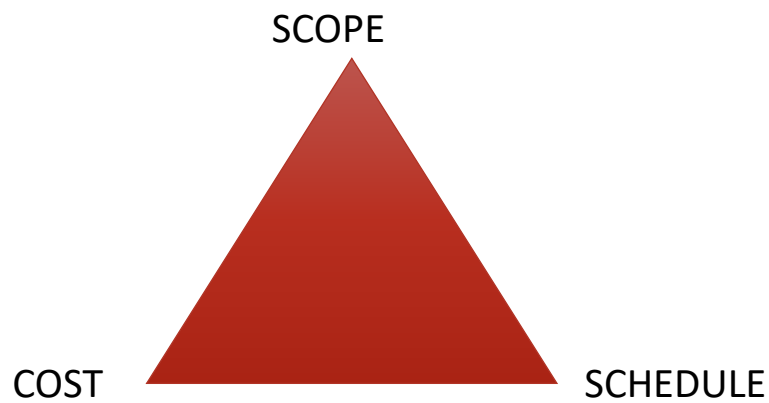
Construction Progress Meeting

- Regularly scheduled meetings to discuss:
- Safety
- Quality of the work
- Schedule (3 Week Look-Ahead)
- Conformance to the contract specifications
- Status of completed work
- Status of Change Orders and Submittals
- Observed issues and timeframes for resolving

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Basics of Construction Management



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The Players During the Construction Phase

- Owner (Contracting Officer/Project Manager)
- Construction Manager – If applicable
- General Contractor
- Architect/Engineers – Construction Phase Services
- Special Inspections and Testing Firm
- Commissioning Agent (CxA) - optional
- Other inspectors – fire marshal, state plumbing inspector, state electrical inspector (if applicable)

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Owner Responsibilities

- | | |
|---|--|
| <ul style="list-style-type: none"> • Execute Contract • Approve Schedule • Manage Inspection Processes and Material Testing • Coordinate Project Meetings • Ensure Contractor Following Safety Plan • Approve Changes • Make Payments • Approve Colors/Products | <ul style="list-style-type: none"> • Monitor Subcontractor, Supplier, Employee Payments • Manage Disputes • Accept the Work • Coordinate with Maintenance Staff (O&M Training) • Communicate with the Tribe/Board/Community |
|---|--|

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Construction Manager

- A third party hired to represent the interest of the Recipient by administering the construction contract and managing the work

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General Contractor

- Performs construction by providing material and labor
- Manages subcontractors and is responsible for providing and coordinating them

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Subcontractor

- Contractor's contractors
- Contractor provides list

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Architect and Engineers

- Attend Construction Meetings
- Review Submittals and Shop Drawings
- Respond to Requests for Information from Contractor
- Review Change Orders
 - o Often – provide cost estimations for change order work
- Conduct Inspections of the work
 - o Regular Intervals (i.e. monthly)
 - o At critical times (i.e. Mechanical and Electrical inspections following rough-ins, prior to sheetrock)

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Special Inspections & Testing Firm

- Responsible for quality assurance for materials as indicated in the specifications
- Generally hired by the owner
- Typical Responsibilities include:
 - o Soil Compaction Testing
 - o Concrete testing for each pour
 - o Inspection of wood and structural/reinforcing steel elements
 - o Weld inspections
 - o Sprayed on fire-resistant materials inspections

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Construction

Overview**Commence Construction****Construction Management****Contract Administration****Finalize Policy****Ongoing Housing Counseling**

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Contract Administration

Recipient hires staff to ensure that

- The suppliers, contractors and service providers implement the contract in accordance with its terms and conditions;
- Contract supplies, services, or construction are delivered in an acceptable manner within contract AND grant award terms and conditions; and
- Staff is available to observe, inspect, and document work progress.

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Contract Administration

- Begins when construction contract is executed and ends when all close-outs are completed;
- And, evidence as a minimum that:
 1. The correct quantity has been received,
 2. The goods, works or services meet the technical standards defined in the contract,
 3. Any variations to the contract are well documented and accounted for,
 4. The goods, works or services have been delivered or completed on time, or that any delay has been noted and appropriate actions taken as indicated in the contract, and
 5. All required manuals or documentation have been received.

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Monitoring

- Inspector
- Contracting Officer
- A/E observations
- Contractor/Sub-contractor employee interviews related to job classification and pay scale (especially critical for Davis Bacon determined wage contracts)

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Daily Construction Log

- Maintained by the Owner's Representative (Inspector and/or CM) to stay continuously and fully informed on:
 - o Progress
 - o Quality
 - o Delays or problems
- Include photos as well

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Inspection and Acceptance

- Notify Contractor of deficiencies
 - Advise promptly correct
 - Failure to correct may be a breach of contract
- If Contractor does not replace defective work
 - May replace and charge
 - Terminate for default (extreme case only)

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The Change Order (CO) Process

- A written contract amendment between the Recipient and Contractor authorizing a change in the work that may cause an adjustment in the contract price or time of completion.

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Change Order

- Change Orders can come from the owner or contractor
- A typical process:
 - Contractor issues a Request for Information (RFI) for a design clarification
 - Architect generates response
 - If cost/schedule implications, Contractor prices change and submits a Proposed Change Order
 - Architect Reviews Proposed Change Order costs and scope
 - Contractor Revises Proposed Change Order per any comments and submits a Change Order to owner
 - Owner Reviews Change Order and decides how to proceed

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Change Order

- Execute the change order BEFORE the work is performed – No changes without written consent
- Important to understand impact of change on rest of work
 - Require contractor to report both cost and schedule implications when requesting a change order

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Change Orders Require Cost Analysis

- Because there is a lack of competition, requires cost analysis
- Common to request this service as part of the A/E Construction Administration Services
- Change orders should have predefined mark-ups for materials, subcontractors, etc.

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§200.302 Financial Management

- (b)(5) Comparison of expenditures with budget amounts for each Federal award.
- (b)(6) Written procedures to implement the requirements of §200.305 Payment.
- (b)(7) Written procedures for determining the allowability of costs in accordance with Subpart E (Cost Principles) and the terms and conditions of the Federal award.

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Retainage

- Retainage is a portion of the agreed upon contract price deliberately withheld until the final payment to assure that contractor or subcontractor will satisfy its obligations and complete a construction project.
- Typical Retainage: 5%

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Pay Request Form

- Summary of
 - Work completed to date
 - Amount due to contractor
- Review and confirmation by...
 - By Architect, Inspector and Contracting Officer
 - Can mark up
- May need concurrence from funding source (not needed from HUD in the NAHASDA program)

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Schedule Management - Timely Completion

- Owner should be aware of schedule problems
 - Daily Inspections
 - Weekly Construction Meetings
- Contractor is responsible for completing work within time established in the contract
 - Liquidated damages
 - Delay or default section
 - No damage for delay clause
 - Excused delay

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Excused Delays (Beyond Control and Without Fault or Negligence)

- Acts of God or Public enemy
- Acts of government
- Acts of another Contractor
- Fires and floods
- Unusually severe weather conditions
 - Prompt Notice of Delay required
- Must be formalized in a change order

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Close-Out Process

- Contractor provides written notification of work completion and requests a final inspection
- Owner schedules inspection (10 days) after notification (include Contracting Officer, Contractor and A/E)
- Post inspection meeting to determine whether the work has been completed in accordance with the construction contract
- Require (in the contract documents) O&M manuals for all equipment and systems installed
 - Even better – require training session for Maintenance Staff from installer/supplier on complicated systems

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Closeout and Warranty Issues (Partial or Complete)

- Punch List
- Certificates
- Warranties

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Handling Disputes

- Provisions must be in contract
- Owner's "team" must work together
- Nature varies in size and scope
- Immediately analyze and address the issue
- Written record should be prepared establishing the facts of the issue
- Maintain all correspondence, Findings of Fact, reports, meeting minutes, daily job records, photos, etc. for each dispute in the event of litigation

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Dispute Resolution

- Claim
- A/E
- Contract Officer Determination
- Arbitration
- Alternative dispute resolution
- Litigation

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Damages

- Liquidated
- Actual
- Consequential

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Questions??

Thank you!!

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