



Procurement and Contract Management

VIRTUAL TRAINING

AUGUST 21-22, 2025



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

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

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

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

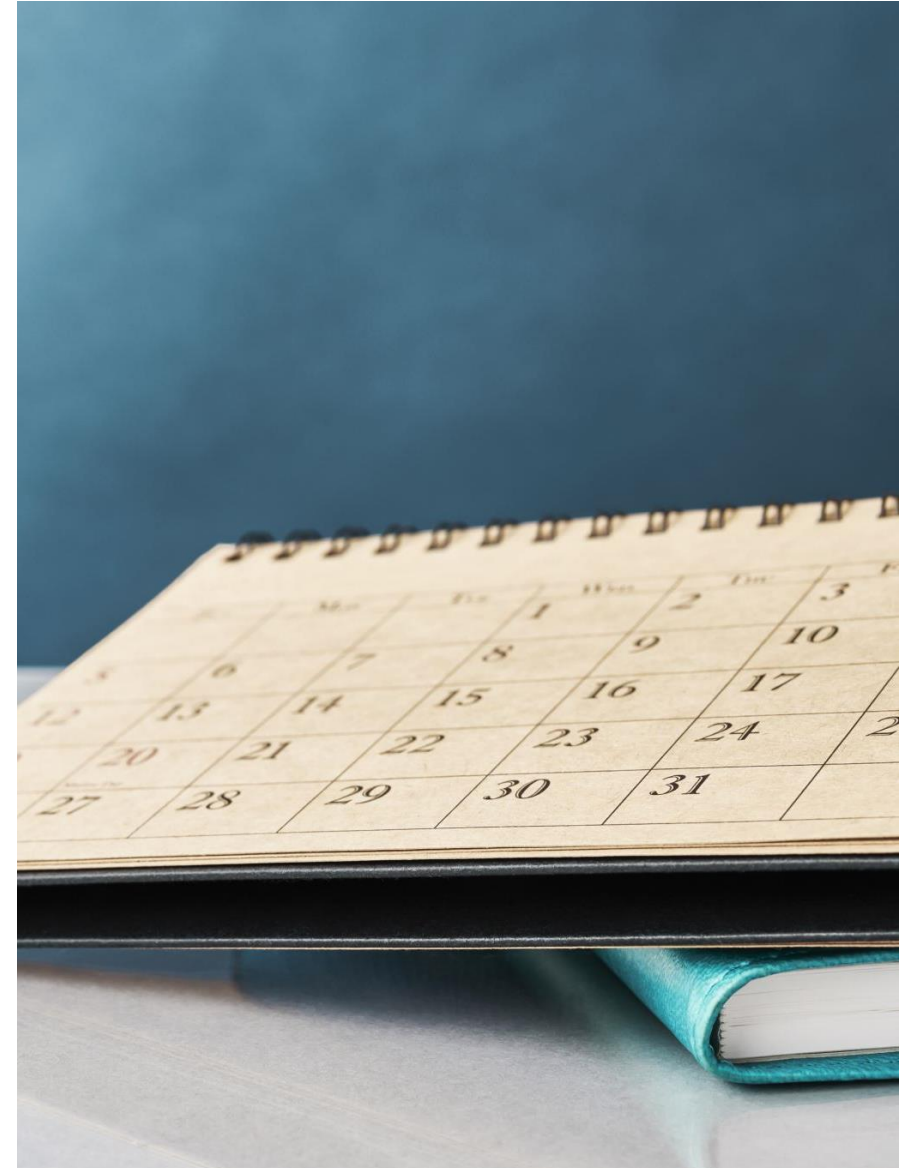
I started Cheryl A. Causley and Associates in
March of 2019 providing Training & Technical
Assistance throughout the Lower 48 and Alaska.



Agenda

9:00 AM To 3:00 PM PDT

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



Training Objectives

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

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

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



Course Description

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

UNDERSTANDING INDIAN COUNTRY PROCUREMENT



Uniqueness of Tribal Procurement

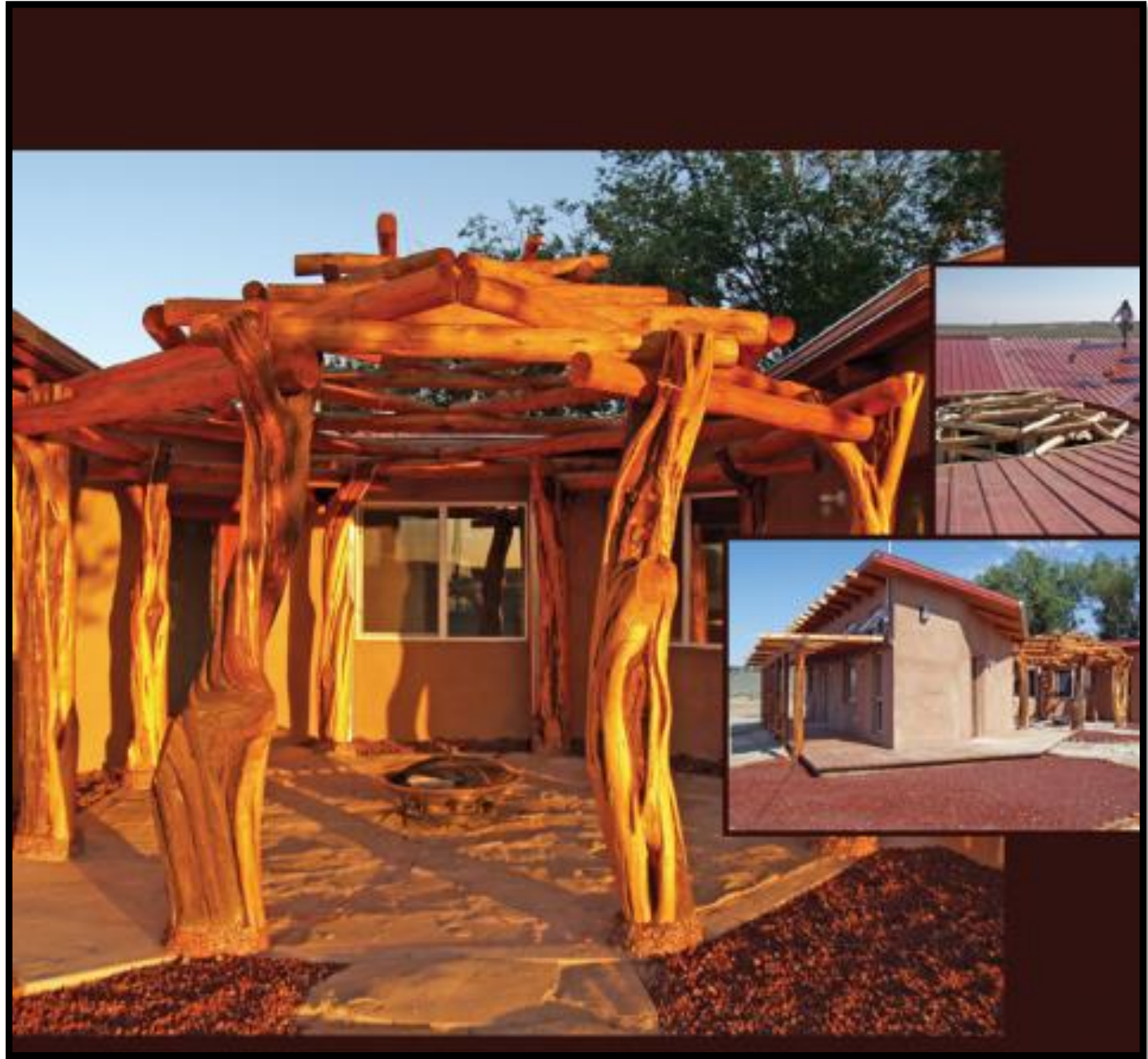
Tribal Procurement reflects:

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



Special Circumstances

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



Tribal Requirements

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

Other Special Legal Issues

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



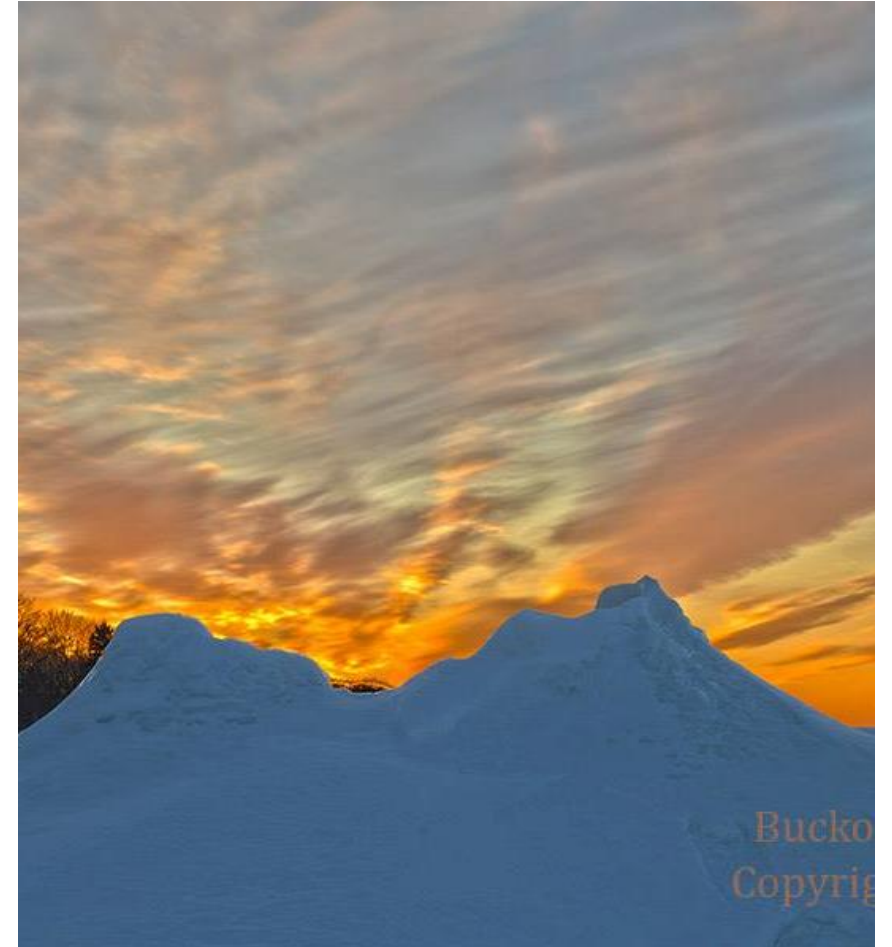
A Few More Special Factors

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



Other Circumstances Impacting Procurement

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



INTRODUCTION TO PROCUREMENT



Benefits of Proper Procurement

Cost
Efficiency

Reduce Risk

Consistency

Avoid Outside
Interference

Promote
Competition

Comply With
All
Requirements

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

Goals for Procurement Activities

Obtain highest quality for reasonable price

Comply with requirements

Maintain documentation

Facilitate delivery

Understand process

Implement planning process

Fundamentals of Procurement

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

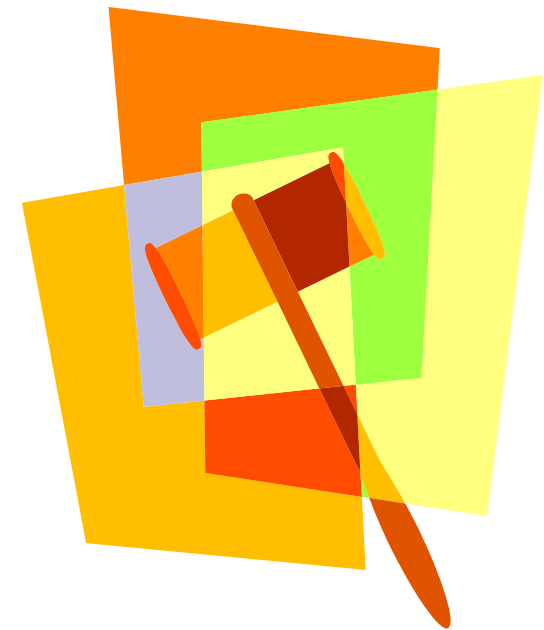


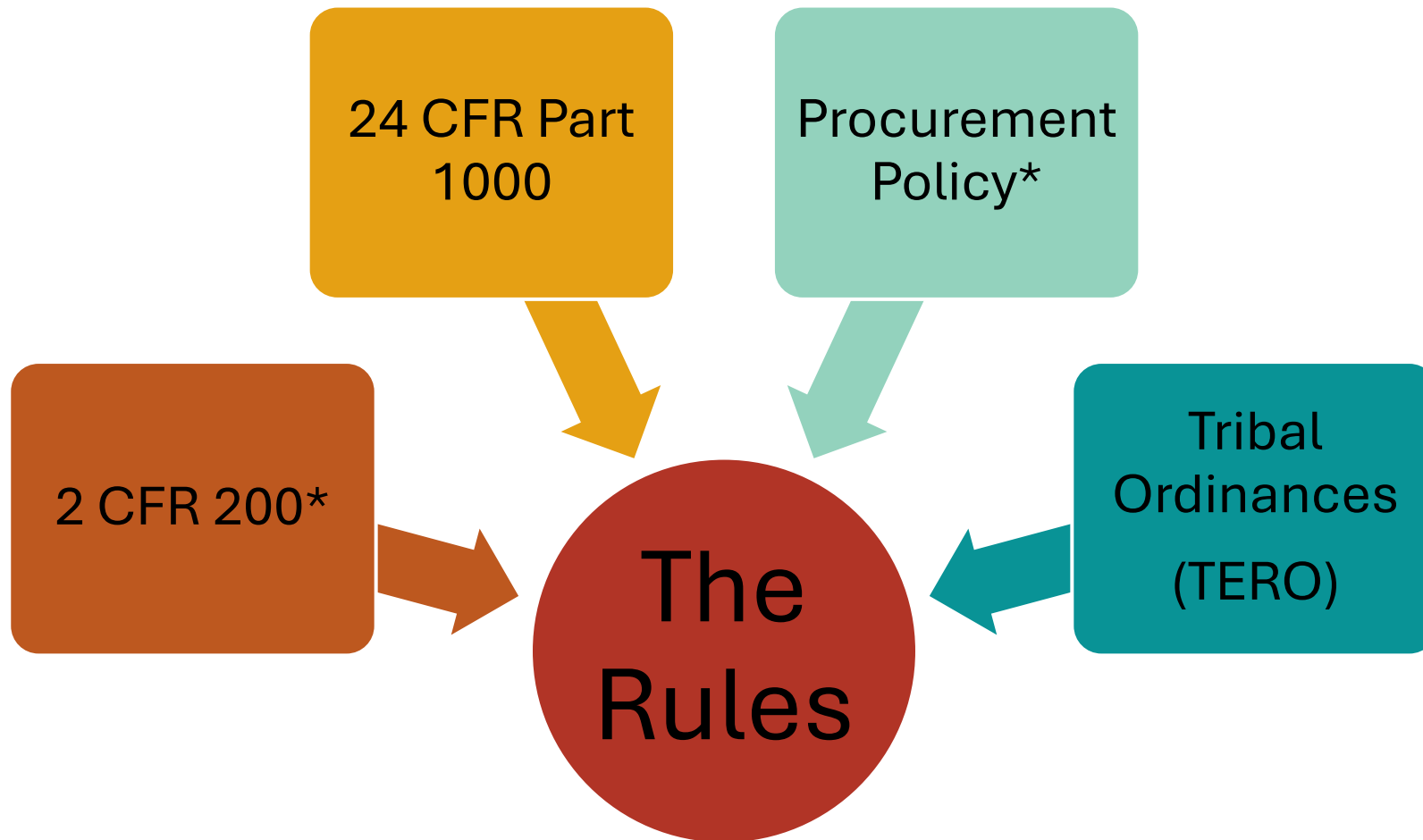
The Procurement Environment

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

Procurement Requirements

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





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

PROCUREMENT REGULATIONS



Principal Regulations

- **24 CFR § 1000.26:** List of administrative requirements under NAHASDA including selected sections of 2 CFR part 200 that apply and exemption provisions for self-governance tribes
- **2 CFR Part 200:** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Sections § §.317 to §.326 deal specifically with procurement.



Laws, Regulations, and Other Directives

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

The primary procurement regulation applicable to all recipients, regardless of size, is 2 CFR §200.317- §200.326.

24 CFR §1000.26(a)(11)(i) NAHASDA Statute Section 203(g)

- (i) ***De minimis procurement.*** A recipient shall not be required to comply with 24 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.
- (g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES- Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000.

Laws, Regulations, and Other Directives

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

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

Laws, Regulations, and Other Directives

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

Laws, Regulations, and Other Directives

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

§ 200.318 General Procurement Standards



§ 200.318 General Procurement Standards

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

§ 200.318 General Procurement Standards

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

§ 200.318 General Procurement Standards

(c) Conflict Of Interest

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

§ 200.318 General Procurement Standards

(c) Conflict Of Interest

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

§ 200.318 General Procurement Standards

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

§ 200.318 General Procurement Standards

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

§ 200.318 General Procurement Standards

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

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

§ 200.318 General Procurement Standards

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

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

§ 200.318 General Procurement Standards

(j) Time-and-materials type contracts.

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

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

§ 200.318 General Procurement Standards

(j) Time-and-materials type contracts.

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

§ 200.318 General Procurement Standards

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

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



2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS



Uniform Guidance: What is it?

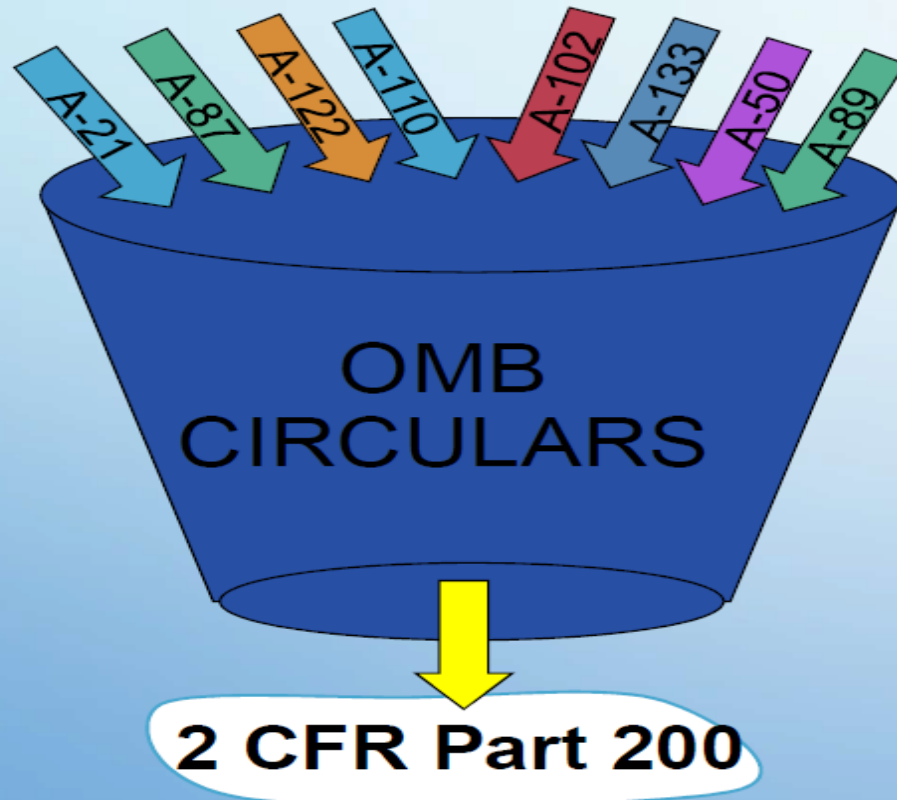
Code of Federal Regulations: § 2 CFR 200



Title 2: Grants and Agreements

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

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



75% reduction!

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

SUBPARTS AT A GLANCE

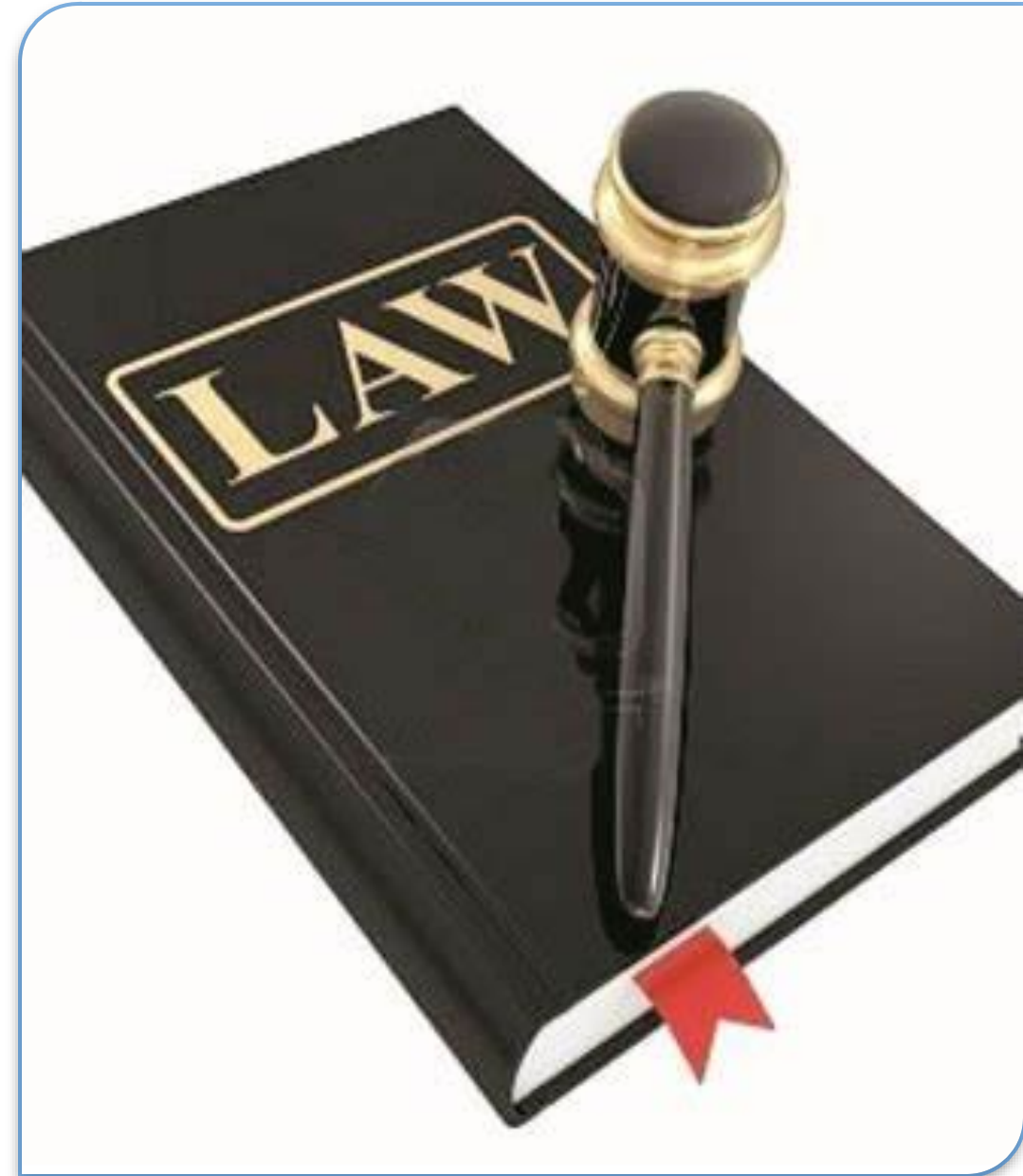
Subpart A (§200.0-§200.1)	➤ Acronyms and Definitions
Subpart B (§200.100-§200.113)	➤ General Provisions
Subpart C (§200.200-§200.217)	➤ Pre-Federal Award Requirements & Contents of Awards
Subpart D (§200.300-§200.346)	➤ Post Federal Award Requirements
Subpart E (§200.400-§200.476)	➤ Cost Principals
Subpart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

2 CFR Part 200

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

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

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



Uniform Administrative Requirements

2 CFR Part 200

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



2 CFR Part 200

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

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

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



§ 200.310 Insurance coverage.

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

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



Summary of Key Changes

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

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

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

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

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

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

Subpart F retains 'non-federal entity'.

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

Update 1

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

Update 2

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

Update 3

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

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

Update 4

Reference: § 2 CFR 200.333

Fixed amount subawards

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

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

Update 5

Reference: § 2 CFR 200.501 Audit Requirements

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

Update 6

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

§ 200.318 (a)

General Procurement Standards

Documented procurement procedures.

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

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



Policies &
Procedures

2 CFR 200 Subpart B: General Provisions

§200.112 Conflict of interest.

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

§200.113 Mandatory disclosures.

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

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

§ 200.318 (b) General Procurement Standards

Oversight of contractors.

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

See also § 200.501(h).

§ 200.322 Domestic Preferences for Procurements

- Tribes and TDHEs should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). **The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.**
 - “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
 - Waived – projects =< \$250,000 (current Simplified Acquisition Threshold)
 - There may also be other waivers – see [PIH 2025-06](#) and PIH 2024-34 Revised

200 Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards

- - In accordance with the Federal Grant and Cooperative Agreement Act, Federal award agencies must identify the appropriate instrument for the federal award to the nonfederal entity - For NAHASDA, HUD uses a Grant Agreement to award IHBG funds to Tribes/TDHEs.
 - Suspension and Debarment - Nonfederal entities are subject to non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689 and 2 CFR Part 180.
 - These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

2 CFR 200 Subpart D: Post Federal Reward Requirements

The non-Federal entity is responsible for complying with all requirements of the Federal award. These include:

- §200.302 Financial management. Investment, Cash Management, Accounting System
- §200.303 Internal controls.
- §200.313 Equipment, Property Inventory, Control, Disposition, Retention
- §200.334 Records retention requirements (3 Years)
- **The financial management system of each non-Federal entity must provide for the following:**
 - §200.335 Requests for transfer of records
 - §200.336 Methods for collection, transmission and storage of information
 - §200.337 Access to records
 - §200.338 Restrictions on public access to records

The Procurement Policy

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

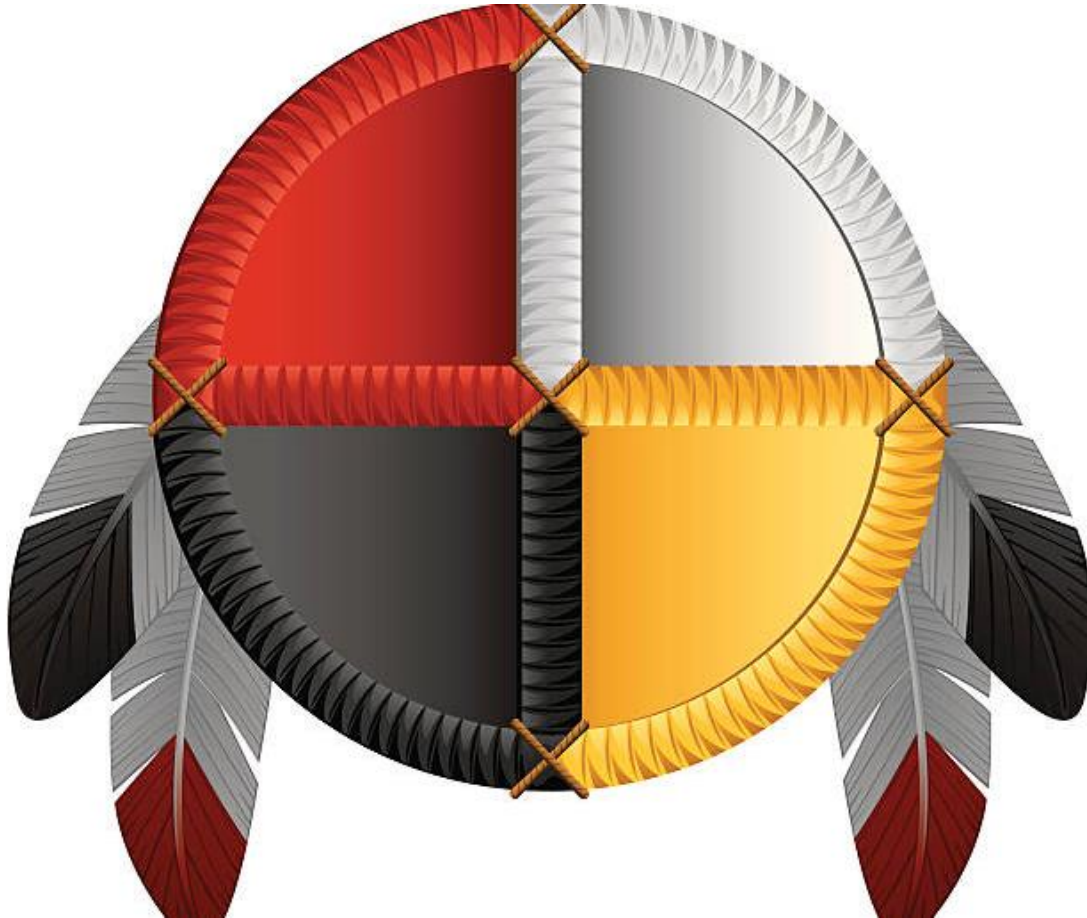
*Please make sure your policy is reviewed & updated, with proof of adoption by Board.

§200.317- § 327 PROCUREMENT STANDARDS §200.318 General Procurement Standards

(c) Conflicts of interest.

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

Violations of Standards of Conduct



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

PROCUREMENT

Principals & Methods



Staffing and Training

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

Delegation of Authority

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

Responsibility of the Contracting Officer

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

Responsibility of the Contracting Officer

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

Contracting Officer's Representative (COR)

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

Contracting Officer's Representative (COR)- Responsibilities

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

Contracting Officer's Representative (COR)- Responsibilities

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

Contracting Officer's Representative (COR)- Responsibilities

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

Contracting Officer Signature/Obligation of Funds



Contracting Officer Signature/Obligation of Funds

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

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

Contracting Officer Signature/Obligation of Funds

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

LUNCH TIME
12 PM To 1 PM PDT



Sample Contract File Arrangement- 10 Files



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

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

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

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

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

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

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

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

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

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

Utilizing Federal Supply Sources in Procurement



General Statement

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

Newest Guidance PIH 2025-11 Federal Supply Sources



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

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

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

NOTICE PIH 2025-11

Issued: April 30, 2025

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

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

SUBJECT: Federal Supply Sources**1. PURPOSE**

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

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

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

2. BACKGROUND

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

§ 200.318 General Procurement Standards

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



Cooperative Purchasing

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

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

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



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Cooperative Purchasing



Can Be Used to Procure:

- Material
- Equipment
- Some services

What are the GSA Programs?

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



General Services Administration



What can they do for you?

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

Who can use them?

- Tribes
- TDHEs

Section 3 Requirements



Section 3 Requirements

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

24 CFR § 1000.42

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

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

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

Native Preference



NAHASDA PROCUREMENT CAVEAT

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

Tribal Action

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

Native Preference

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

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



Native Preference

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

Implementing Native Preference in Procurement

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

Let's Take a Break!

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INDIAN PREFERENCE REQUIREMENTS



The Indian Self-Determination and Education Assistance Act

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


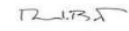


Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974.

Indian Preference Final Rule

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

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

 Office of Native American Programs Office of Public & Indian Housing		No. 2013-07 (R) July 11, 2013
RECIPIENT GUIDANCE	<hr/>	
	PROGRAM: Indian Housing Block Grant (IHBG)	
	FOR: All Tribal Government Leaders and Tribally Designated Housing Entities	
	 FROM: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PH	
	TOPIC: Indian and Tribal Preferences in Employment and Contracting in IHBG	
<hr/>		
<p>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.</p>		
<p>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.</p>		
<p>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.</p>		
<p>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.</p>		

Implementing Indian Preference

Certify policies and procedures
 (§1000.52)

Preference clauses must be
incorporated into contracts

Include Indian Preference
reference in notices and
advertisements



Importance of Indian Preference

Provides special opportunities for Indian contractors in selection

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

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

NOT required to hire an Indian individual / firm

Preference in Solicitation Process



Required by Federal
(and often tribal) law

Clarify preference
standards in your
procurement policy

Clarify preference
standards from the
outset

Indian Preference is Different From Other Preferences

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



Where Indian Preference Is Applied



In selection of contractors or vendors

In the contractor's selection of subcontractors and suppliers

During employment and training by contractors

Qualifying Bidders, Proposers, Vendors



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

Do not rely on determinations and certifications made by others.

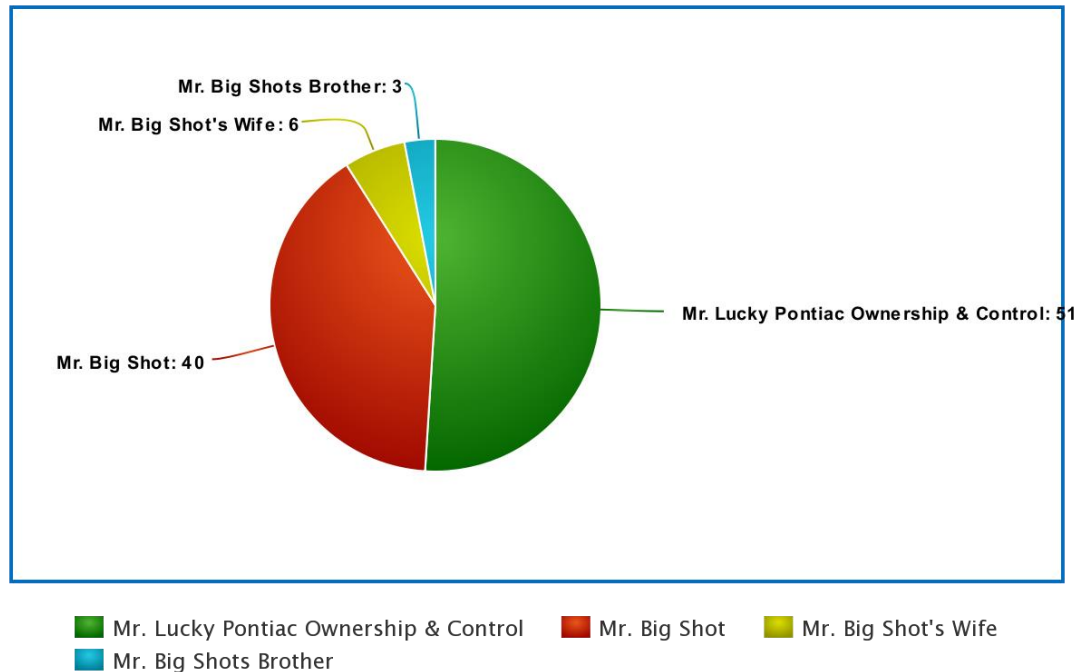
Who is Eligible for Indian Preference?

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

51% Ownership AND 51% Control

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

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



meta-chart.com

Preference Must Be Requested

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

Parties seeking preference must request preference

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



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Various Ways to Determine Eligibility

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

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

Shall include a determination that bidder is a responsible contractor.

INDIAN PREFERENCE REQUIRED DOCUMENTS

INDIAN PREFERENCE
POLICY

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

INDIAN PREFERENCE
DETERMINATION LETTER

COMPLAINTS POLICY FROM
METHODS OF PROVIDING
FOR INDIAN PREFERENCE

Indian Preference Policy

Indian Preference Policy

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

Any Tribal Indian Housing Authority

Name of TDHE

INDIAN PREFERENCE QUALIFICATION APPLICATION

_____ herein submits to _____
Name of Applicant Name of TDHE
the following application seeking to qualify as a 51% or more Indian-owned and -
controlled economic enterprise or tribal organization so it can be eligible for
Indian preference in _____ selection and award of
Name of TDHE
contracts, subcontracts, employment and training. This application must be
submitted in a timely manner and by a date prescribed by _____
Name of TDHE
in order for the Applicant to be considered eligible for Indian preference.
Applicant may be required to periodically resubmit this application from time to
time.

Re: Determination on Request for Indian Preference

Dear _____:

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

☐ Qualified

☐ Disqualified

Indian Preference Complaint Procedure

- 1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference
- The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.
- (a) Each complaint shall be in writing, signed, and filed with the recipient.
- (b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.
- (c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint and immediately acknowledge its receipt.
- (d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

When Feasible...

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



Common “Fronting” Practices

Disguise how little profit tribe or member receives

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

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



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Document, Document, Document

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



Reserve the Right to Reconsider

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

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

Applying Indian Preference

24 CFR 1000.52(a)

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

OR solicit bids from Indian owned & controlled entities only

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

The Two-Stage Method

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

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

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

Applying Indian Preference

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

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

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

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

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

Indian Preference Sealed Bidding

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

Indian Preference Small Purchase

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



X Factor Example



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

The “X-Factor”

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

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

X Factor

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

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

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

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

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

X Factor

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

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

New Adjusted bid results would be:

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

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

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

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

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

X-FACTOR EXERCISE



Attachment A

Using the X-Factor for Indian Preference (Optional)

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

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

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

BIDS RECEIVED

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

FIRM B (Indian Owned) \$80,000

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



Attachment A

Using the X-Factor for Indian Preference (Optional)

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

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

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

BIDS RECEIVED

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

FIRM B (Indian Owned) \$210,000

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



If you should need anything Else!

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