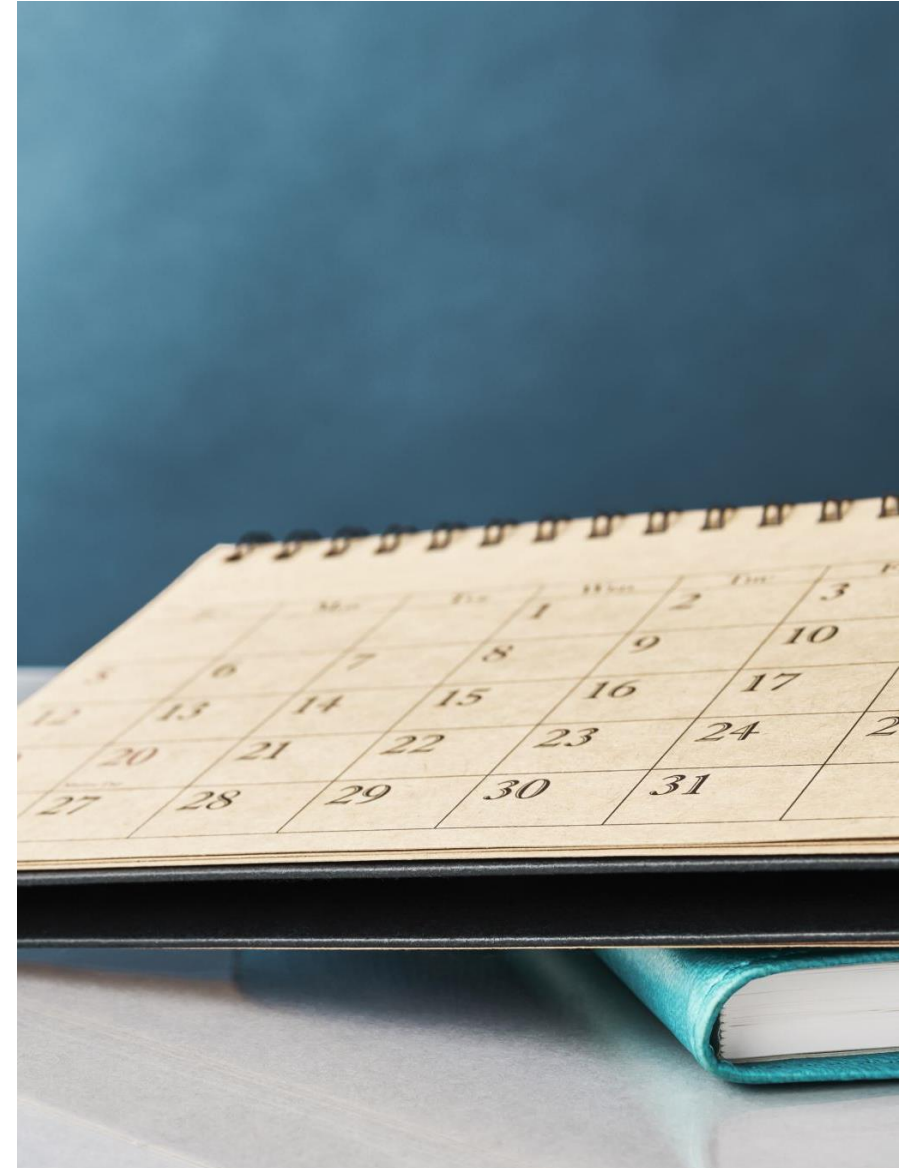


Agenda

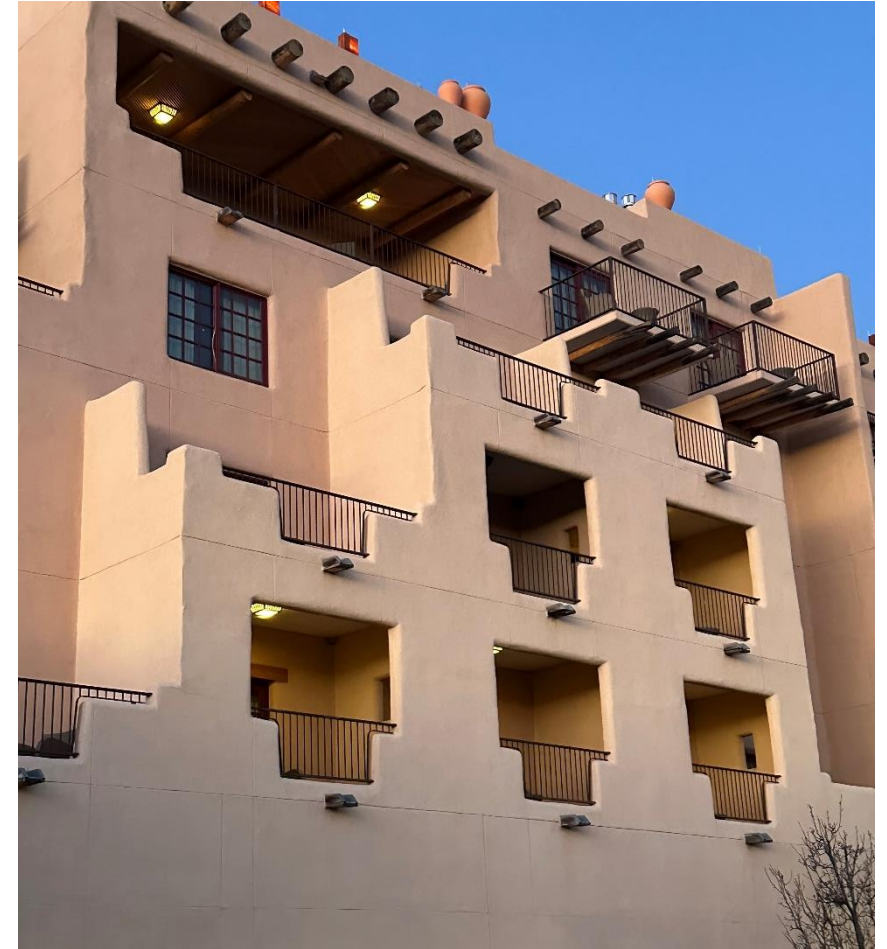
9:00 AM To 3:00 PM PDT

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



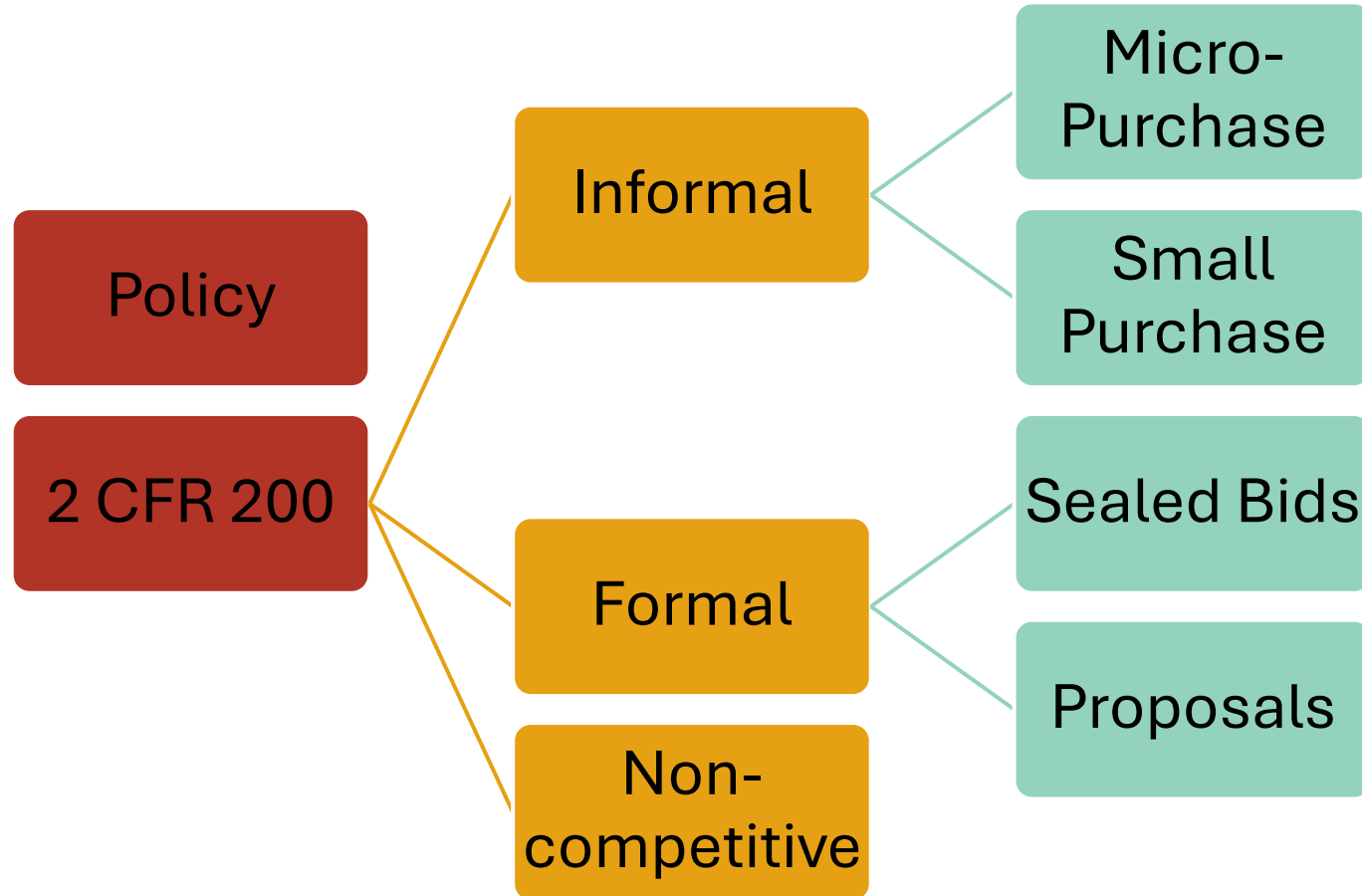
Training Objectives

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

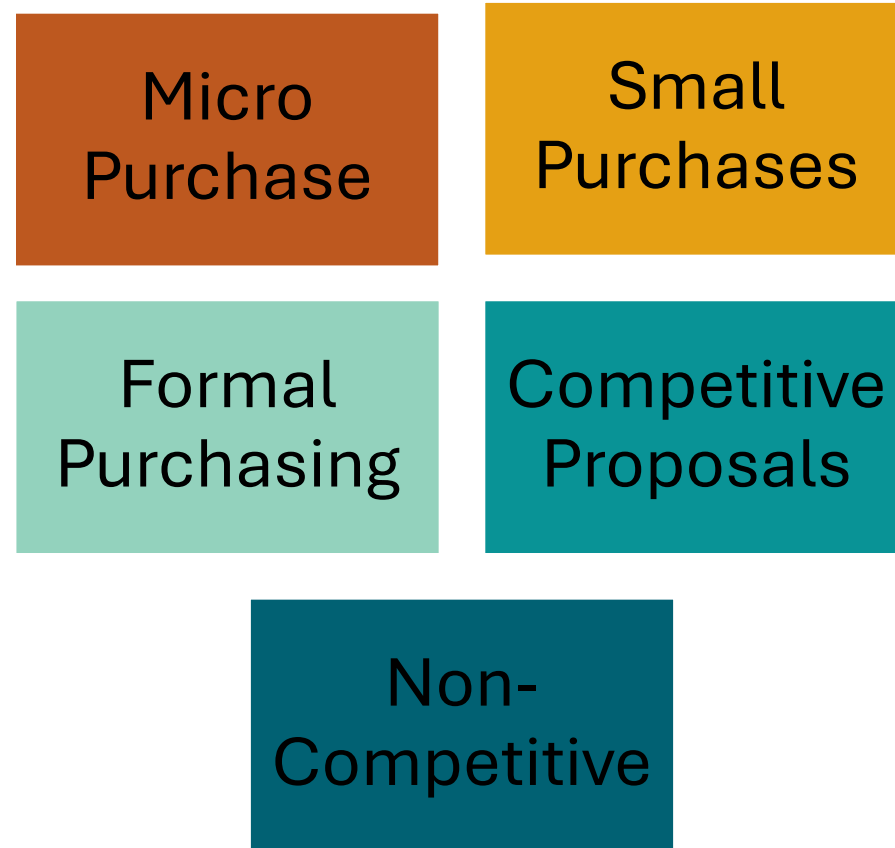


METHODS OF PROCUREMENT 2 CFR 200.320

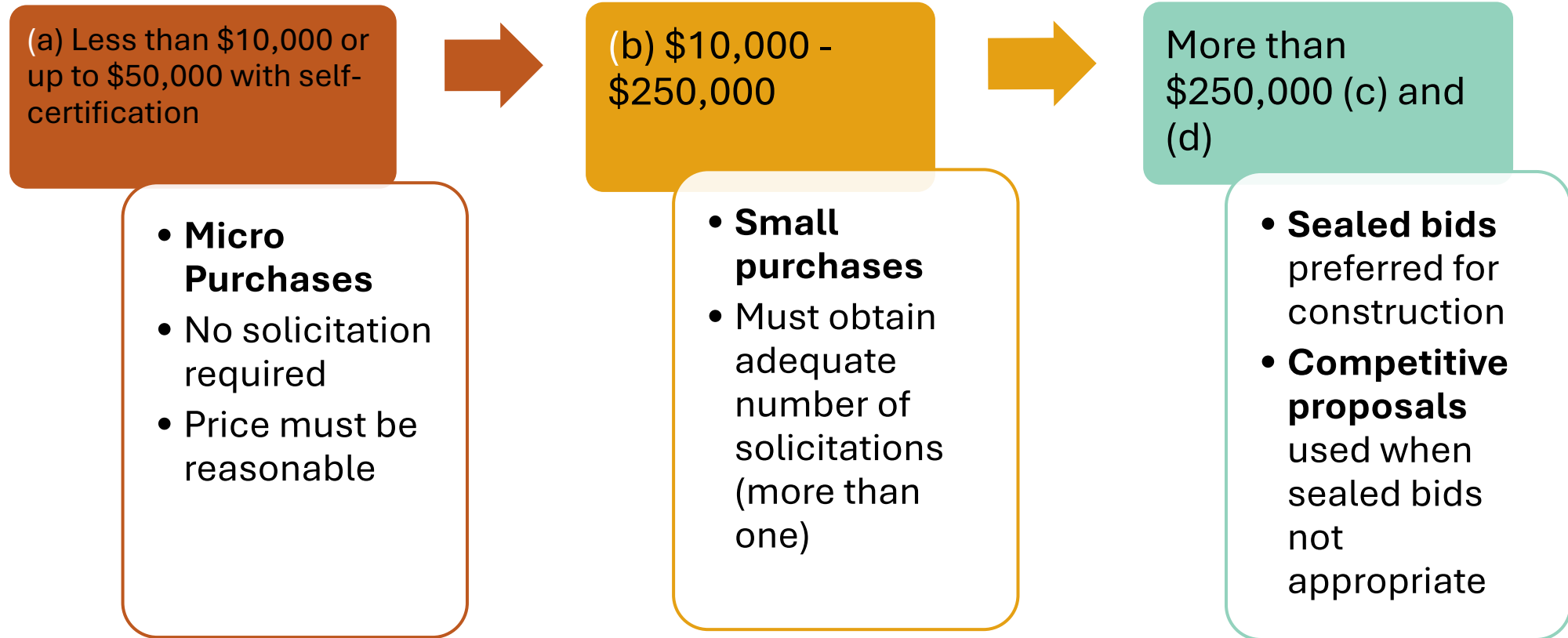
Procurement Methods



Methods of Procurement (2 CFR 200.320)



Methods of Procurement (based on price)



Contracting Planning Procedures Checklist

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

Basic Steps for All Procurement Methods

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

Documentation for All Procurement

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

De Minimis Procurement Threshold - PIH Notice 2023-01

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

Micro Purchase Threshold

PIH 2023-01

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

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

Micro Purchase Threshold PIH 2023-01

The self certification must include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Micro Purchase Threshold

PIH 2023-01

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

Micro Purchase Threshold

PIH 2023-01

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

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

Simplified Acquisition Threshold

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

- ***Simplified acquisition threshold*** means the dollar amount *in aggregate* below which a non-Federal entity may purchase property or services using small purchase methods.
- Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold.
- The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908.
- As of this date, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

MICRO-PURCHASE METHOD



Bucko Teeple
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Micro Purchase Threshold (2 CFR § 200.67)

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

- *Micro-purchase threshold* means the dollar amount at or below which a recipient or subrecipient may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, except as provided in §200.320, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs.

- *A Tribe or TDHE may establish a threshold higher than the micro-purchase threshold of \$10,000 by self-certifying a threshold amount up to \$50,000 on an annual basis.*

You must comply with all the requirements of PIH NOTICE 2023-01.

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

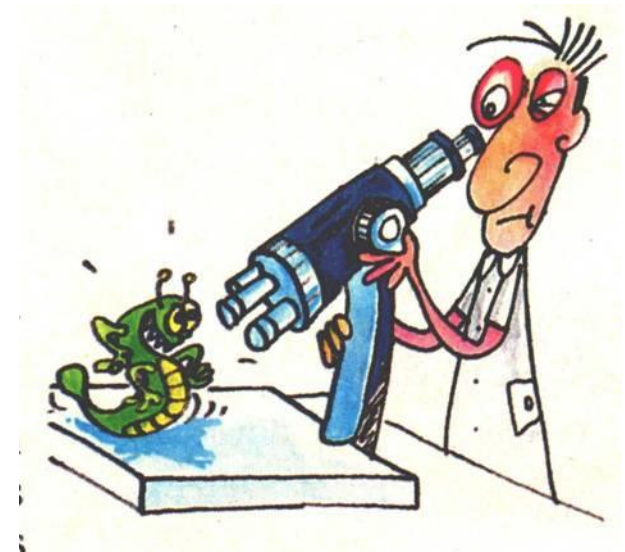
Updated December 2021

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

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

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

- \$10,000 in aggregate for procurement using federal funds
- \$50,000 in aggregate if requested and approved in writing
- To the maximum extent practicable, Micro purchases should be distributed equitably among qualified suppliers



Micro-Purchases (include in policy)

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

Prohibition Against Bid Splitting

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

IHBG DE MINIMIS Procurement Exemption



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

NAHASDA STATUTE

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

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



SMALL PURCHASE METHOD



Small Purchase Method

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



Small Purchase Method

Can Be Used to Procure:

Office supplies

Vehicles

Rehabilitation Contractors

Professional Services

Equipment

Principles of Small Purchase Method

Must be competitive

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

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

NAHASDA permits this method, when purchase amount is under \$250,000.

Establish your threshold in your Procurement Policy- And follow it

Small Purchases

Purchases up to lesser of local or Federal thresholds (currently \$250,000)

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

Solicitation can be verbal, written, or digital

Select lowest price (exception: Native Preference)

Document procurement

Key Elements

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



Key Elements

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

Solicitation

General

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

Requirements for services aggregating greater than \$250,000 (or a lower threshold established by the recipient to conform to Tribal law) must not be broken down into several purchases that are less than the limit merely to permit contract award under the small purchase method.

If there is a recurring need for services or supplies which is estimated to go over the \$250,000 limit (or lower threshold applicable to the recipient), sealed bidding or competitive proposal procedures should be used rather than small purchase procedures. In all cases, the price paid for small purchases must be fair and reasonable. The most effective way of accomplishing this task is to solicit competitive quotes.

Competition

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

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

Award

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

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

If Award is Based on Price

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

If Award is not Based on Price

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

Documentation



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



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

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



Blanket Purchase Agreements (BPAs)

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

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

Blanket Purchase Agreements (BPAs)

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

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

Blanket Purchase Agreements (BPA)

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

Blanket Purchase Agreements (BPA)

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

Simplified Acquisitions

- (i) *Simplified acquisition procedures.*

The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate.

- (ii) *Simplified acquisition thresholds.*
The recipient or subrecipient is responsible for determining an
- appropriate simplified acquisition threshold based on internal controls, an evaluation of risk,
- and its documented procurement procedures, which may be lower than, but must not exceed,
- the threshold established in the FAR.

Formal Procurement Methods

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



Sealed Bid Method



Sealed Bids: Prequalification

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



Sealed Bids



For Construction, Use a Project Manual

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

Invitation For Bids Solicitation,

Must be publicly advertised

Can also be personally solicited

Seek as many bidders as you can

Can amend or cancel by
addendum

Can limit to list of pre-qualified
bidders

Sealed Bid Method

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



Sealed Bids

2 CFR 200.320(b)(1)

What are they?

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

When to Use Sealed Bidding

Use sealed bidding when...

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

Pre-Bid Conference

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

Restricted Solicitations

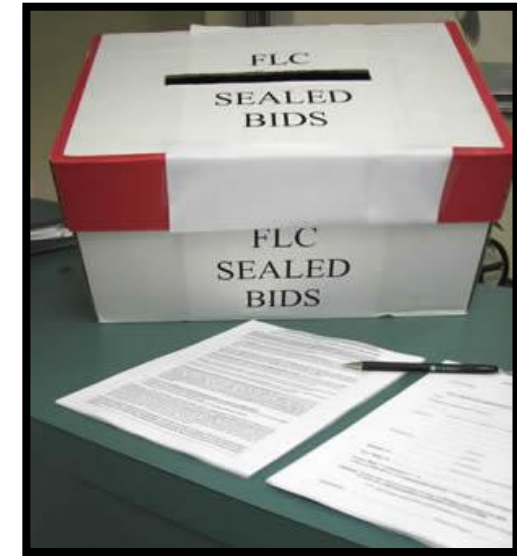
The IFB may be restricted to qualified Indian-owned vendors. However, the IFB should not be so restricted unless there is a reasonable expectation that the required minimum numbers of qualified Indian-owned vendors are likely to submit bids. The procedures in **24 CFR §1000.52** and the applicable Procurement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

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

Sealed Bids

For Construction, Use a Project Manual

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



Solicitation, Invitation, or Request for Quotes

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

Preference for Procurements Related to Public Infrastructure

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

Build America Buy America (BABA)

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

Build America Buy America (BABA)

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

Build America Buy America (BABA)

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

Amending the Solicitation

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

Opening Bids

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

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

b) Sealed Bids must be opened on the scheduled date and time shown on the solicitation.

During a bid opening, the bids and each bidder's name and bid price will be read aloud.

c) The bidder's name and bid price must be recorded and made available for public inspection.

This record must also be placed in the procurement file.

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

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

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

Contract Award Process

- After the Contracting Officer evaluates each timely bid, the responsive and responsible bidder that submits the lowest bid and meets all specified requirements is normally awarded the contract.
- Determining Responsiveness
 - The first step in the contract award process is to review the low bid for responsiveness. A bid cannot be considered for award if it is not responsive to the essential requirements of the solicitation. A determination that a particular bidder is non-responsive should be documented in the contract file.

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

- Responsive and
- Responsible



Responsive...

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

Responsible...

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



Contract Award Process



Determining Price Reasonability



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



Determining Contractor Responsibility



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

Contract Award Process

Rejection of Bids

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

Discounts

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

Contract Award Process

- Firm Bid Rule
- Under the "firm bid" rule, one of the principles that sealed bidding is based upon, the bidder is legally bound by the bid as submitted after the bids have been opened. The only exception to this rule is an obvious mistake in the bid, such as a misplaced decimal.
- Equal Bids
- In the event that two or more low bids are equal in all respects, the award should be decided by drawing lots or other random means of selection. However, in the event of a tie bid, the Contracting Officer may give preference for small, or minority businesses and award based on low bidder's status (consistent with State, local, or tribal law). This option is permissible, provided that this condition is disclosed in the solicitation.

Award and Contract for Competitive Sealed-Bids:

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



Awarding a Contract

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

Purpose and Importance of Contracts

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



Contract

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



After Execution of Contract

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



LUNCH TIME
12 To 1 PM PDT



COMPETITIVE PROPOSALS METHOD



Bucks Team
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COMPETITIVE PROPOSALS METHOD

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

COMPETITIVE PROPOSALS METHOD

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

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

Competitive Proposals METHOD

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

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

Solicitation is request for proposals

Competitive Proposals METHOD

Can Be Used to Procure:**Examples**

Architects

Accountants

Attorneys

Developers

Computer systems

Consultants

Banking Services

Competitive Proposals METHOD

Specifications may not be fully
prescribed

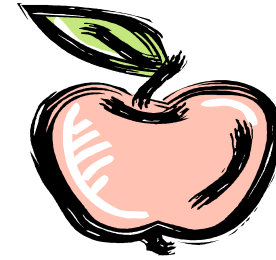
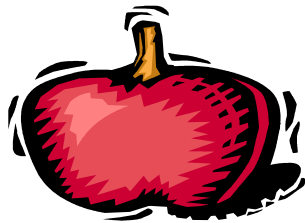
Turnkey development /
construction

Acquisition of pre-built housing



Competitive Proposals

Jonathan Apples to McIntosh Apples



Competitive Proposals

Price is NOT the Only Factor!

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

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



Competitive Proposals

2 CFR 200.320(b)(2)

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

Solicitation of Proposals

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



Using Point System

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



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Sample Criteria With Point Scale

Knowledge and experience of financial and accounting standards for Indian housing programs including, but not limited to, 24 CFR part 1000.26, 2 CFR part 200 subpart E, and HUD PIH Notice 2025-01 “Determining and Using Program Income Under NAHASDA”, and generally accepted government accounting practices.....**Up to 25 pts.**

- 2. Prior experience in Indian Housing programs.....**Up to 20 pts.**
- 3. Evaluation of performance by existing and former clients (including evaluation from advertising TDHE if applicant has previously worked for the TDHE).....**Up to 15 pts.**
- 4. Fees charged (including both the rates charged and the efficiency of the accountant or firm based on prior experience).....**Up to 15 pts.**
- 5. Evaluation of Indian Preference in Training, Employment and Contracting. **Up to 10 pts.**
- 6. Indian Preference for Indian Owned Firms.....**0 or 15 pts.**

Maximum 100 Points

Opening and Evaluating Proposals

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



Proposal Evaluation

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

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

Proposal Evaluation

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

Proposal Evaluation

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

What's in an RFP?

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

Proposal Evaluations



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

§ 200.319: Competition

- (a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.
- (b) To ensure objective contractor performance and eliminate unfair competitive advantage, **contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.**



§ 200.319: Competition

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

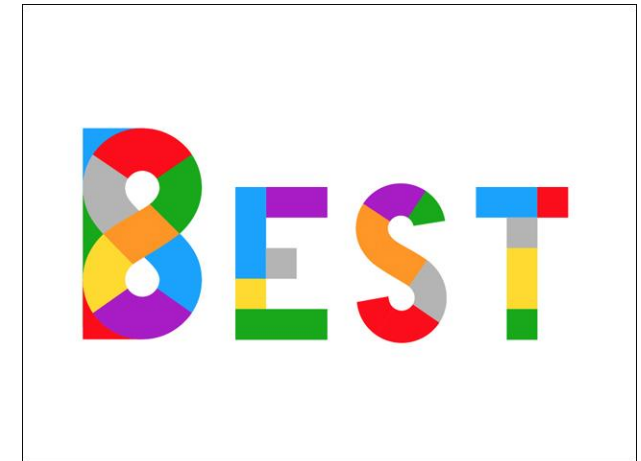
Contractors who are involved in drafting specs, statements of work, RFPs or IFBs **must be excluded.**

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

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

Award of Contract

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



Award and Contract

Award and Contract:

- Only to responsive and responsible bidder

- Reasonable price

- May not be the lowest bidder

Use appropriate contract forms and methods after obtaining legal advice



Award of Contract

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



Contract Award

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



When to Use Competitive Proposals

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

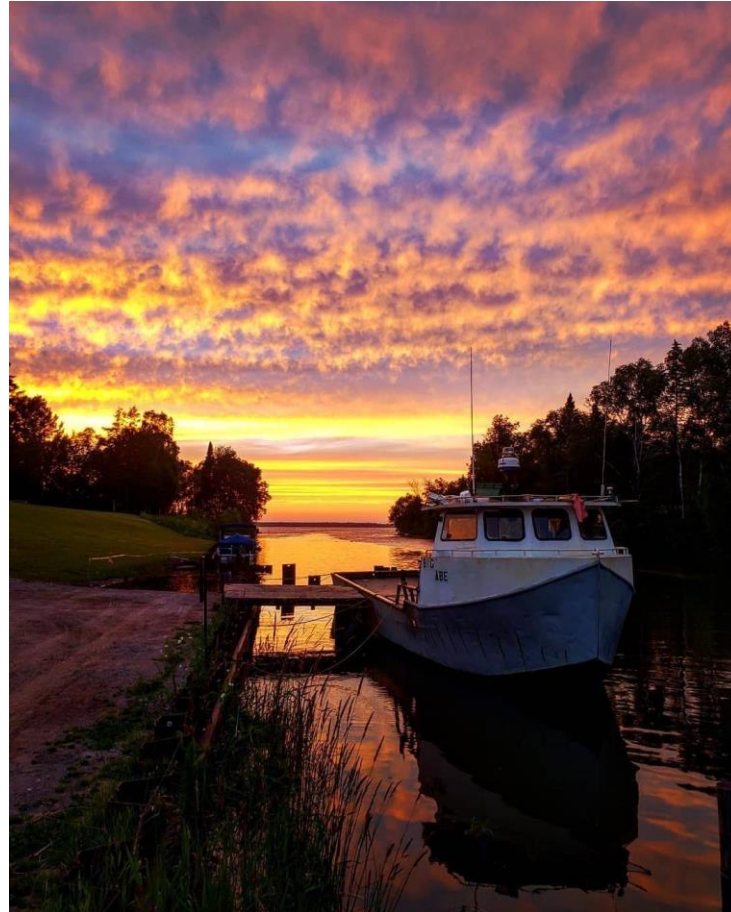
§ 200.319: Competition

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

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

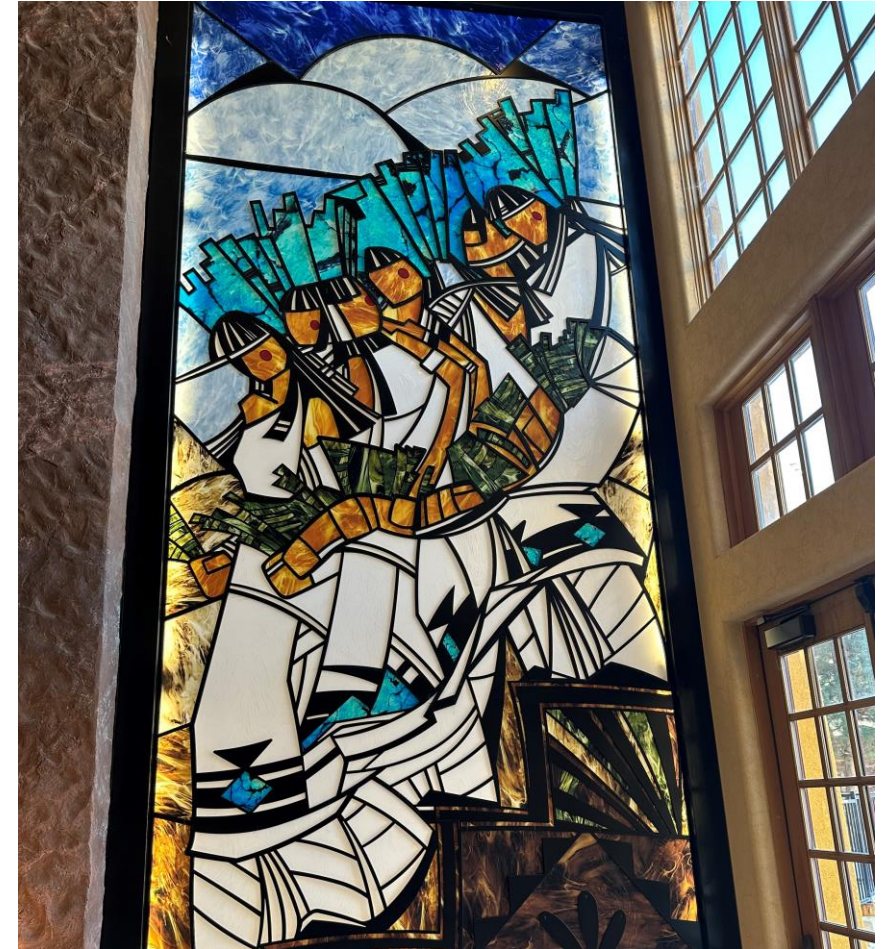


NON-COMPETITIVE METHOD



§ 200.320 (c): Noncompetitive Proposals

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



Non-Competitive Method Can be used...

Only in extraordinary situations

Only when other methods are infeasible

Often requires special approval from HUD

MUST document reason for use

Noncompetitive Procurement – §200.320(c)

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

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

Non-Competitive Method

2 CFR 200.320 (c)

Can Be Used...

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

Non-Competitive Method

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



HUD Approval

What HUD May Want When its Approval is Required:



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

Emergency

- Immediate threat to health/safety
- Heating system failure

Sole Source

- Only 1 source
- Specific software or repair firm

HUD Approval

- Limited circumstances
- Continuation of project

Lack of Competition

- Repeated attempts to get quotes unsuccessful

Remember: Document, document, document!



PRICE AND COST ANALYSIS

“Independent Cost Estimate”



Is Proposed Price Fair and Reasonable.

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



Definitions

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

How Cost-Price Analysis Applies to Different Procurement Methods

Small Purchases

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

How Cost-Price Analysis Applies to Different Procurement Methods

Sealed Bidding

Purchase of supplies, equipment, and construction are typically accomplished using sealed bidding. Sealed bidding is mandatory for the procurement of equipment, supplies, services or construction that exceeds \$250,000. The reasonableness of the price is established by a comparison of an independent cost estimate and the competitive bids received. No further price analysis is required (however, cost analysis is required in certain situations when only one bid is received).

How Cost-Price Analysis Applies to Different Procurement Methods

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

How Cost-Price Analysis Applies to Different Procurement Methods

Noncompetitive Proposals

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

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

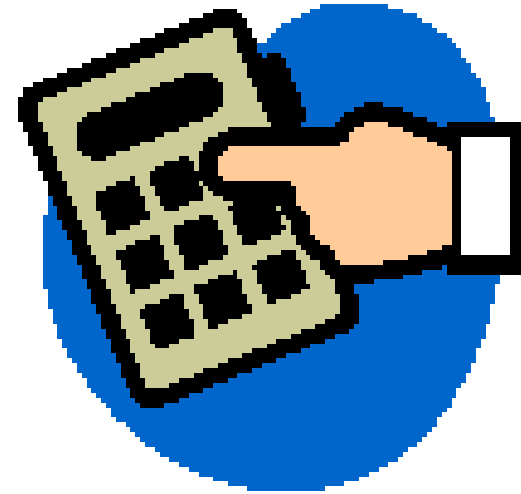
Price vs. Cost Analysis

Cost Analysis Needed When...

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

Price vs. Cost Analysis

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



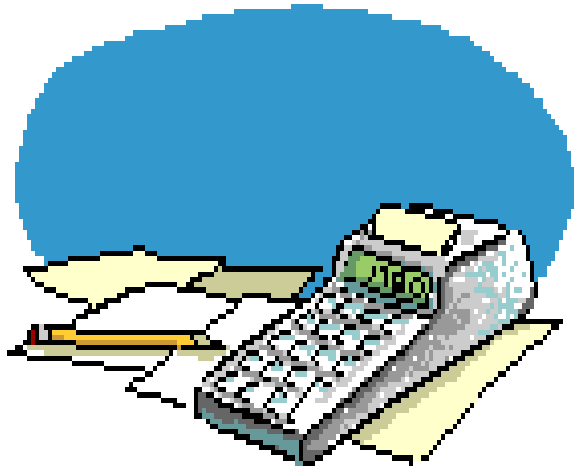
Cost Analysis Techniques

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

Verify pricing and evaluate cost proposal, including:

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

Cost Analysis Techniques



Compare contractor costs against:

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

§ 200.324 Contract cost and price.

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

Contract Cost and Price 2 CFR § 200.324

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

Price Analysis Techniques

Reasonable?

Compare proposed prices received in response to solicitation

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

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

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

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

What is price analysis?

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

What is cost analysis?

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

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



Is cost or price analysis always required?



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



When do I perform a price analysis?



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

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

What qualifies as competition?

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

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

When do I perform a cost analysis?

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

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

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

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

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

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

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

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

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

Yes. There are two situations:

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

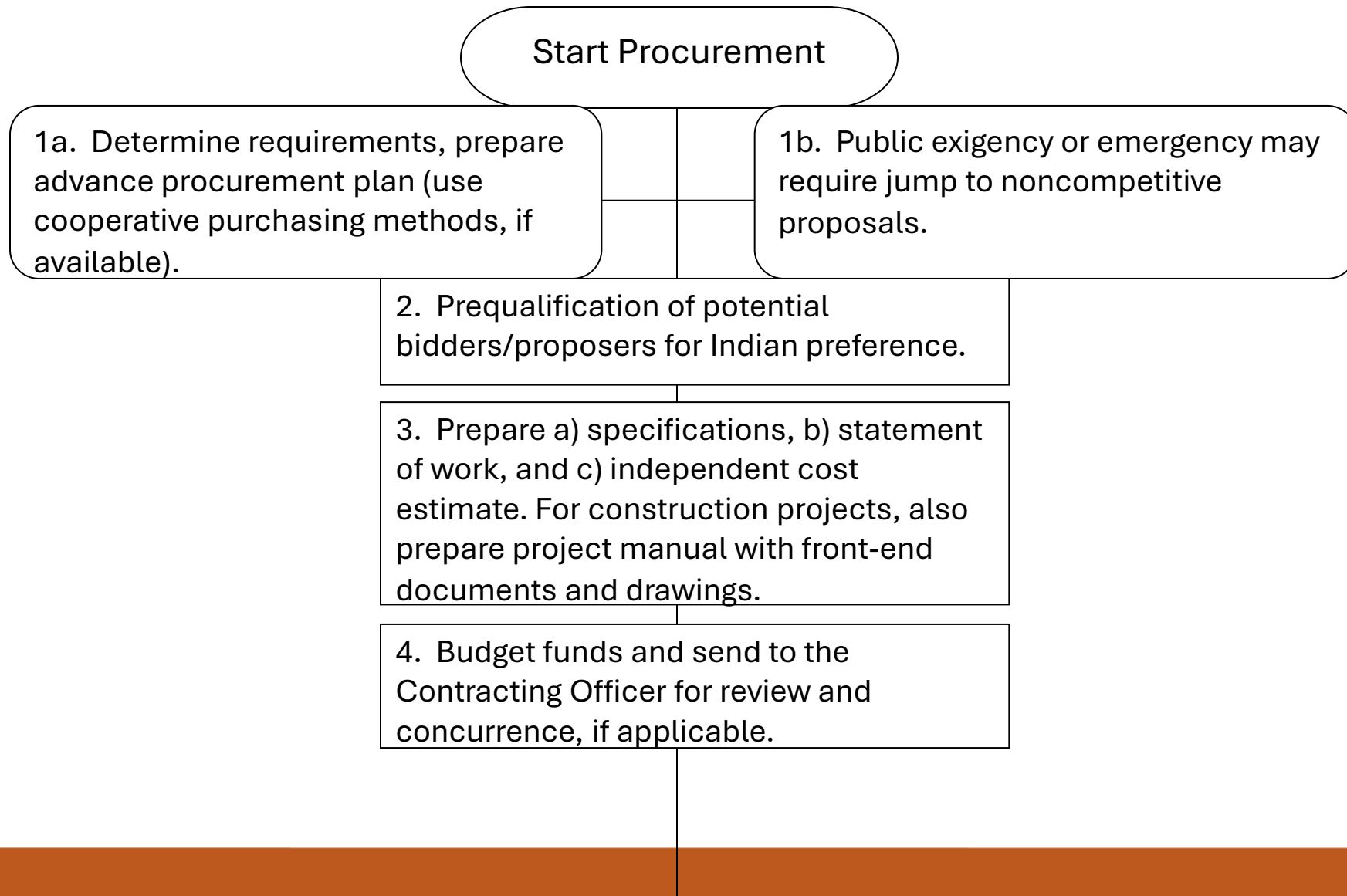
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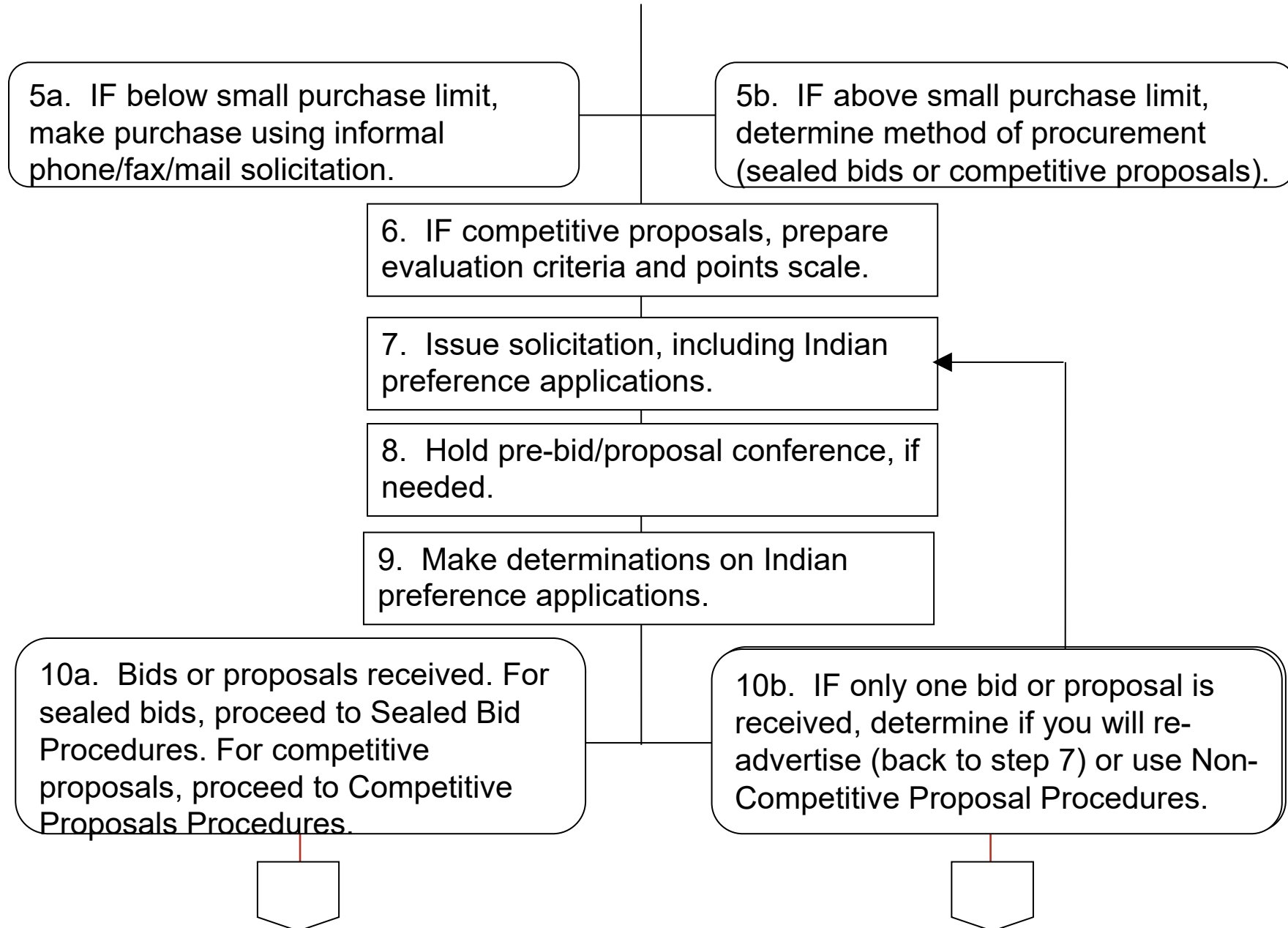
The price is set by law or regulation.

PROCUREMENT PROCEDURES

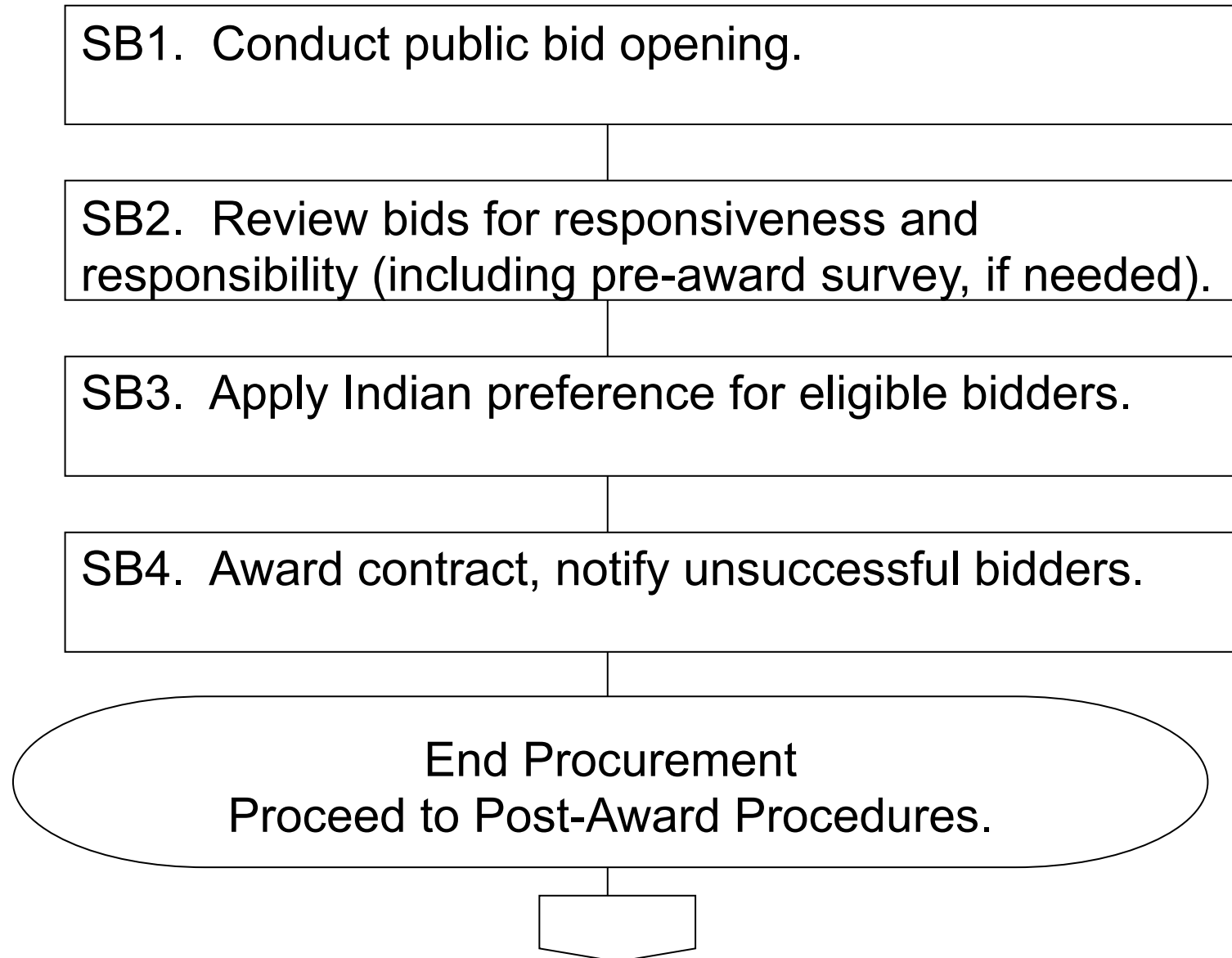


PROCUREMENT PROCEDURES

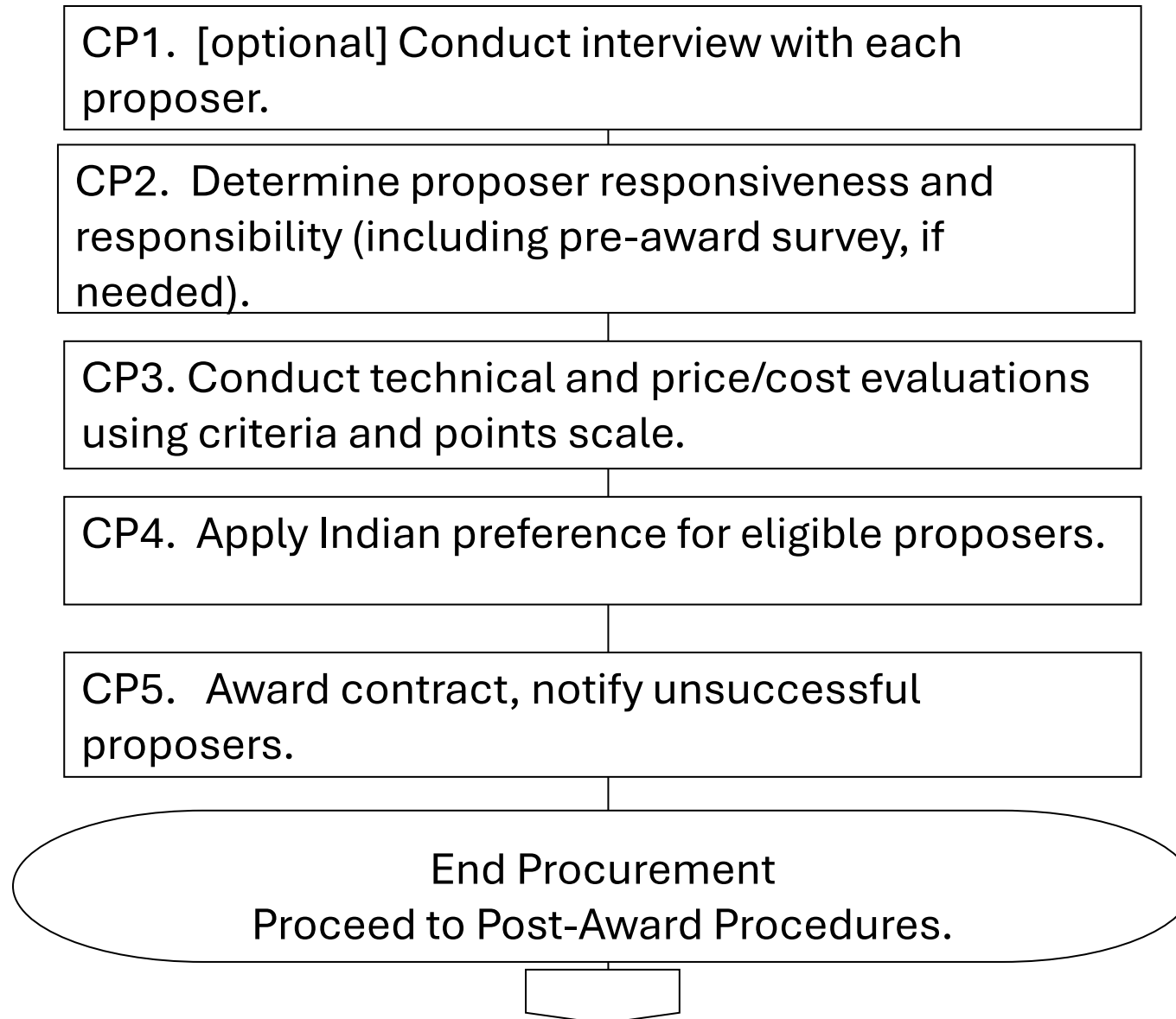




Sealed Bid Procedures



Competitive Proposals Procedures



Non-Competitive Proposals Procedures

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

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

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

NC3. Analyze technical proposal, if any.

NC4. Conduct cost analysis.

NC5. Conduct negotiations.

NC6. Receive and evaluate revised proposal, if any.

NC7. Award contract

End Procurement
Proceed to Post-Award Procedures.

POST-AWARD PROCEDURES

1. Hold post-award conference

2. Issue notice to proceed, if applicable

3. Monitor contractor performance/compliance

4. Receipt of supplies, services, or construction.

5. Inspection of supplies, services, or construction.

6. Acceptance of supplies, services, or construction.

7. Payment for work completed and accepted.

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

9. Contract completion.

10. Contract closeout.

Bid Letting Exercises



Scenario: Hawk Feather TDHE

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

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

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

ANSWERS

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

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

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

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

Scenario: Blue Moon TDHE

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

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

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

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

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



Scenario: Tall Grass TDHE

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

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

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

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

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

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

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

Questions



If you should need anything Else!

A business card for Cheryl A. Causley and Associates. The background is a photograph of a dark, mountainous landscape under a night sky with vibrant green and yellow aurora borealis. The text is white and positioned in the upper and middle sections of the card.

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