

January 12, 2021
Alabama-Coushatta Tribe of Texas

Procurement and Contract Management

Delivered by:



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ONAP TRAINING

Procurement



AGENDA

January 12, 2021 | Alabama-Coushatta Tribe

**Procurement and Contracting for IHBG- and
ICDBG-Funded Activities**

Tuesday, January 12, 2021

- | | |
|------------|---|
| 9:00 a.m. | Welcome and Introductions |
| 9:15 a.m. | Learning Objectives and Workshop Overview |
| 9:30 a.m. | Understanding Indian Country Procurement |
| 9:45 a.m. | Introduction to Procurement |
| 10:15 a.m. | BREAK |
| 10:30 a.m. | Procurement Regulations and Terms |
| 11:15 a.m. | Procurement Principles and Methods |
| 11:30 a.m. | Indian Preference |
| 12:00 p.m. | LUNCH |
| 1:00 p.m. | Methods of Procurement |
| 2:30 p.m. | BREAK |
| 2:45 p.m. | Price and Cost Analysis |
| 3:15 p.m. | Procurement Procedures |
| 3:30 p.m. | Questions and Answers |
| 4:00 p.m. | Adjourn |

DISCLAIMER

Participants and users of this Manual and training are advised to consult with their procurement advisors, financial advisors, construction advisors, and attorneys as appropriate when applying and using the information and forms contained in this Manual. Because circumstances of particular procurements, contracts, and financial documents differ, local and tribal laws vary, and periodic changes are made to federal requirements, additional advice should be sought whenever using this material. The U.S. Department of Housing and Urban Development Office of Native American Programs, its contractor FirstPic Inc. or The National American Indian Housing Council, and the individual trainers who have participated in developing and delivering this material cannot and are not responsible or liable for individual utilization of this material.

DEFINITIONS OF SELECTED WORDS USED IN NAHASDA FUNDED PROCUREMENT AND CONSTRUCTION CONTRACTING

- A -

Acceptance – The act of an authorized representative of the owner acknowledging that the supplies, services or activity are in conformity with the contract requirements.

Addendums - (Addenda) Written information adding to, clarifying or modifying the bidding documents. The owner generally issues an addendum to the contractor during the bidding process and as such, addenda are intended to become part of the contract documents when the construction contract is executed.

Additional Services - Services provided over and above those designated as basic services in owner agreements with A/Es and CMs.

Advertisement – a public announcement in a newspaper soliciting bids or proposals.

Architect/Engineer (A/E) - the design professional hired by the owner to provide design and design-related services.

Agreement (also contract) - A legal document that binds two or more parties to specific and implied obligations, e.g., Contract.

Alternate Bid - Amount stated in the bid to be added or deducted from the base bid amount proposed for alternate materials and/or methods of construction.

Apparent Low Bidder - The bidder who has submitted the lowest competitive proposal as determined by a cursory examination of the bids submitted.

Application for Payment (Request for Payment for draw) - Contractor's written request for payment for completed portions of the work and, for materials delivered or stored.

Approved Changes - Changes of any nature in contract requirements which have been agreed upon through a change approval process and approved by the owner.

Architect - An individual who designs and supervises the professional design for the construction of buildings or other structures.

Architect-Engineer (A/E) – The design professional hired by the owner to provide design and design related services.

As-Built Drawings - Drawings marked up to reflect changes made during the construction process or after construction that amend the Contract Drawings to show the exact location, geometry, and dimensions of the constructed project.

- B -

Beneficial Occupancy - The point of project completion when the owner can use the constructed facility in whole or in part for its intended purpose even though final completion may not be achieved.

Bid - A binding offer, usually expressed in dollars to provide specific services within clearly stated requirements.

Bid Bond - A written form of security issued by a surety company guaranteeing that the bidder will sign the contract, if awarded the contract, for the stated bid amount.

Bid Date/Time - The due date and time set by the owner for receiving and opening bids.

Bid Documents (Project Manual) - The documents distributed to contractors by the owner for bidding purposes. They include drawings, specifications, form of contract, general and supplementary conditions, proposal forms, and other information including addenda.

Bid Form – One of the standard written forms furnished by owner to all bidders to be used to submit a bid.

Bid Opening - The actual process of opening and tabulating bids.

Bid Price - The stipulated sum stated in a bid.

Bidder's List – List of prospective contractors.

Bidding Documents - The entire set of documents that bidders must submit to owner.

Bid Shopping - Negotiations to obtain lower costs and prices both prior to submitting proposals and after signing contracts by playing suppliers and contractors' prices against each other.

Bid Tabulation - A summary sheet listing all bid prices.

Bond - (see Bid Bond, Contract Bond, Contract Payment Bond, Contract Performance Bond, Labor and Material Payment Bond, Performance Bond or Subcontractor Bond).

Bonding Company (Surety) - A licensed corporation that issues bid, performance, and payment bonds for construction project.

Building Inspector/Official - A government representative authorized to inspect construction for compliance with applicable building codes, regulations and ordinances.

Building Permit - A written document issued by the appropriate governmental authority permitting construction to begin on a specific project in accordance with drawings and specifications approved by the governmental authority.

- C -

Cardinal Changes – Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be initiated.

Changed Conditions - Conditions or circumstances, physical or otherwise, which surface after a contract has been signed and which alter the circumstances or conditions on which the contract is based.

Change Order - A written document between the owner and the contractor authorizing a change in the work or an adjustment in the contract sum or the contract time.

Change Order Proposal - A change order proposal is the written document before it has been approved by the Contractor and Owner.

Change Order Request - A written document issued by the owner requesting a change order.

Claim - A formal notice sent by a contractor to an owner asserting the fact that the terms of the contract have been breached and compensation is being sought by the contractor from the owner.

Clerk-of-the-Work - An individual employed by an owner to represent him on a project at the site of the work.

Closed Bid Method - A bidding process limited to either a class of bidders or a list of specific bidders.

CM (Construction Management or Construction Manager) - a firm that provides CM services or persons who work for a CM firm.

Codes - Prevailing regulations, ordinances or statutory requirements set forth by governmental agencies associated with building construction practices and owner occupancy, adopted and administered for the protection of public health, life safety and welfare.

Competitive Proposals – A procurement method in which contractors as a result of requests for proposals submit proposals that contain more than a price.

Conditions of the Contract - Term that refers to the General Conditions, Supplementary and Special Conditions of a construction contract.

Construct - To assemble and combine construction materials and methods to make a structure.

Construction Contract – Agreement between an owner and a builder or construction contractor to build or rehab improvements on land.

Construction Management (CM) - A project delivery system that uses a construction manager to facilitate the design and construction of a project by organizing and directing men, materials, and equipment to accomplish the purpose of the designer. A professional service that applies effective management techniques to the planning, design, and construction of a project from inception to completion for the purpose of controlling time, cost and quality.

Constructive Change Order – Informal requests for additional work or services caused by some act or omission to act on the part of the owner which causes a contractor extra work, delays, or money.

Consultant – A firm or individual hired to give advice.

Contract - An enforceable, written or verbal agreement between two or more parties.

Contract Date - 1) Usually on the front page of the agreement (2) If not on front page it may be the date opposite the signatures when the agreement was actually signed (3) or when it was recorded (4) or the date the agreement was actually awarded to the contractor.

Contract Document Phase - The final phase of design on an architectural project when construction documents are completed and bidding documents formulated.

Contract Document Review - A review of Bid and/or Contract Documents on a continuing basis or at short intervals during the pre-construction phase, to preclude errors, ambiguities, and omissions.

Contract Documents – All agreements between the owner and contractor.

Contract Period - The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.

Contract Sum - The total agreeable amount payable by the owner to the contractor for the performance of the work under the contract documents.

Contract Time - The time period set forth in the contract documents for completing a specific project; usually stated in working days or calendar days.

Contracting Officer – The official representative of the owner with specific authority to act on his behalf in connection with a specific contract.

Contractor - A company that contracts to perform or deliver services.

Contractor's Qualification Statement - A written statement of the Contractor's experience and qualifications submitted to the Owner during the contractor selection process. The American Institute of Architects publishes a standard Contractor's Qualification Statement form for this purpose.

Coordination Meeting - Meeting held in the field to review project status and coordinate scheduled activities.

Cost Estimate – A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit). Often done by contractors prior to bidding or performing work.

Cost Plus Contract - A form of contract where a contractor is reimbursed for costs in addition to being paid for services.

Cost-Reimbursement Contract – A contract in which the owner and contractor agree on an estimate of the contract amount. The owner agrees to reimburse the contractor for reasonable, allowable and allocable costs necessary to complete the work.

Critical Date Schedule - A schedule of milestones spanning from the start of construction to occupancy.

Critical Path Method (CPM) - A planning scheduling and control line and symbol diagram drawn to show the respective tasks and activities involved in constructing a specific project.

Cure Notice – A document issued by the contracting officer to the contractor specifying that the contract may be terminated by reason of default if the conditions endangering performance of the contract is not corrected within a specified number of days.

- D -

Daily Construction Report (Field Report) - A written document and record that has two main purposes: (1) they furnish information to selective off-site persons who need and have a right to know important details of events as they occur daily and hourly, and (2) they furnish historical documentation that might later have a legal bearing in cases of disputes. Daily reports should be as factual and impersonal as possible, free from the expression of personal opinions and feelings.

Design-Build (D-B) - A project delivery method where a design-build contractor (contractor-led D-B), A/E design professional (design-led D-B) or CM (CM-led D-B) is directly responsible for both the total project design and construction of the project. Design-Build liability can be explicitly conveyed through the contract documents or implicitly conveyed through the assumption of project-specific design liability, via performance specifications.

Direct Costs (Construction Costs) - The costs directly attributed to a work-scope, such as labor, material, equipment, and subcontracts but not the cost of operations overhead and the labor, material, equipment, and subcontracts expended in support of the undertaking.

Drawings (Plans) - Documents that graphically illustrates the design, location, geometry and dimensions of the components and elements contained in a specific project.

- E -

Engineer - A professional firm and/or individual who is professionally engaged in one of the engineering disciplines.

Escrow Account - Money put into the custody of the third party by the first party for disbursement to another party.

Estimate - To calculate approximately the amount, extent or value of something.

Estimating - A process of calculating the amount of material, labor and equipment required for a given project necessary to complete the work as specified.

Ethics - Rules or standards of performance and conduct.

Excusable Time Delay – Failure to perform, which under contract, the contractor is excused from without fault or negligence of the contractor.

- F -

Fast-Track or Fast-Tracking - The process of designing portions of a project while portions already designed are under construction.

Feasibility Phase - The conceptual phase of a project preceding the Design Phase used to determine from various perspectives whether a project should be constructed or not.

Fee Enhancement - The awarding of an additional fee, over and above the basic fee for services, based on the performance quality of the party providing the basic service.

Fiduciary - One who stands in a special relationship of trust, confidence, and responsibility regarding contracted obligations.

Field Order (FO) - A written order issued to a contractor by the owner, or owner's representative. A Field Order is an expedient process used in an emergency or need situation that in many cases does not involve an adjustment to the contract sum or an extension of the contract time.

Final Acceptance - The action of the owner accepting the work from the contractor when the owner deems the work completed in accordance with the contract requirements.

Final Completion - The point at which both parties to a contract declare the other has satisfactorily completed its responsibilities under the contract except for warranty responsibilities.

Final Design Phase - The designation used by engineers for the last portion of the design process prior to bidding.

Final Inspection - A final site review of the project by the owner usually with contractor and owner's authorized representative prior to issuing the final certificate for payment.

Final Payment - The last payment from the owner to the contractor of the entire unpaid balance of the contract sum as adjusted by any approved change orders.

Financial and Management Control System - A manual or computerized management control system used by the project team to guide the course of a project and record its status and progress.

Fixed Fee - A set amount often used for fees, prices and costs.

FF&E - furniture, fixtures and equipment

Float - A scheduling term indicating that an activity or a sequence of activities does not necessarily have to start or end on the scheduled date to maintain the schedule on the critical path. The difference between the early start and late finish of an activity, minus the activities duration.

Force Account Work – A phrase used in some government contracts where the owner performs general contracting and often, some or all sub-contracting responsibilities. The owner may also employ its own work force.

- G -

General Conditions - A portion of the contract documents stipulating the contractor's performance requirements.

General Contractor – An individual or company having "primary" responsibility for the work. A GC can perform work with its own contractors or can provide some or all services to owners through the use of subcontractors.

Guarantee - An agreement by which a party accepts responsibility for fulfilling an obligation that it or another party has.

- H -

- I -

Indefinite-Quantity Contract – A contract used when the exact number of deliverable items is not known at the time of contracting.

Indirect Costs (Soft costs) - Costs for items and activities other than those directly incorporated into the building or structure but considered necessary to complete the project.

Invitation for Bids (IFB) – A solicitation document which explains what the owner is buying and requests bids, proposals or quotas from potential contractors.

Invoice - A record or bill sent to a purchaser containing the items, charges of merchandise.

- J -

Joint Venture Partner - A two or more individuals or companies that come together in a legal partnership to provide greater financial strength, improved services or more acceptable performance qualifications.

- K -

K (the letter) - Used by lawyers as an informal abbreviation for Contract or Contracts.

- L -

Lien, Mechanic's – A legal right established usually under state laws to take and hold or sell an owner's property to satisfy unpaid debts to a qualified contractor for labor, materials, equipment or services to improve the property.

Lien Release (sometimes lien waiver) - A written release from contractors to owners and property owners that releases any mechanic lien or rights contractor and suppliers might have.

Liquidated Damages – A prefixed damages amount set by owner and concurred in by contract or that sets a per day amount that owner can collect for a contract or failures to complete a contract on time

Lump Sum Agreement - A written agreement in which a specific amount is set forth as the total payment for completing the contract.

- M -

Milestone – An activity with duration of zero (0) and by which progress of the project is measured. A milestone is an informational marker only; it does not affect scheduling and is used to delineate strategic events of signal importance to monitor progress on the construction milestone schedule.

Micro Purchase – Awards less than \$5,000 may be made without soliciting competitive quotations if the Contracting Officer considers the price to be reasonable (e.g., based on recent research, experience, or purchases).

- N -

Negotiation – Through an individual give and take bargaining process a contract or agreement is reached by an owner and contractor.

Noncompetitive Proposals – A procurement method where a contract is awarded by an owner to a single contractor without any other contractor being involved.

Not Damage for Delay Clause – A contract term that releases owner from damages resulting from owner caused delays and limits contractor to recovering time extensions for such delays.

Notice of Award - A letter from an owner to a contractor stating that a contract has been awarded to the contractor and a contract will be forthcoming.

Notice to Proceed - A notice from an owner directing a contractor to begin work on a contract.

- O -

Owner - An individual or an entity that owns or controls land.

- P -

Payment Bond - A written bond issued from a surety company to the owner, on behalf a contractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.

Payment Bond - (1) A written form of security from a surety (bonding) company to the owner, subcontractors and suppliers as third parties, on behalf of an acceptable prime or main contractor or subcontractor, guaranteeing payment to the owner in the event the contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract, and (2) to pay any claims against the owner from contractors and suppliers who have not been paid for labor, material, and equipment incorporated into the project.

Performance Bond - (1) A written form of security from a surety (bonding) company to the owner, on behalf of an acceptable prime or main contractor or subcontractor, guaranteeing payment to the owner in the event the contractor fails to perform all labor, materials, equipment, or services in accordance with the contract the face value of the performance bond. (2) The surety companies generally reserve the right to have the original prime or main or subcontractor remedy any claims before paying on the bond or hiring other contractors.

Performance Schedule (Including a Gantt Chart) - The schedule of projected and actual activities.

Plans – Drawings of improvements.

Policy – An official statement issued by a Board pronouncing an agency's basic requirements.

Pre-qualification - A screening process of perspective bidders wherein the owner gathers 1) background information from a contractor or construction professional to pre-qualify contractors as bidder or 2) organizational information to determine prior to a selection process whether a bidder or proposal is 51% or more owned and controlled by a member of a federally recognized tribe and thus entitled to Indian preference in the awarding process. Qualifying considerations include competence, integrity, dependability, responsiveness, bonding rate, bonding capacity, work on hand, similar project experience, and other specific owner requirements.

Prime Contract (or General Contract) - A contract directly between owner and contractor where contractor is expected to utilize subcontractor.

Prime Contractor (or General Contractor) - A contractor who has a contract with an owner and one or more subcontractors.

Professional Liability Insurance (also errors and omission insurance) - Insurance provided for design professionals, lawyers, accountants, construction managers and others that protects the owner against negligent acts by the insured.

Professional Services - Services and work provided by a professional, i.e. architect, engineer, and lawyer.

Progress Payment - Partial payments on a contractor's contract amount, periodically paid by the owner for work accomplished by the contractor to date.

Progress Schedule - A contractor line diagram showing proposed and actual starting milestone (often percentage of completion) and completion times.

Project - A word used to represent the overall scope of work, job or development.

Project Manual - An organized book setting forth the bidding requirements, conditions of the contract and the technical work specifications for a specific project that documents and augments the drawings.

Project Meeting - A meeting dedicated essentially to contractor performance and progress payments, involving supervisors from contractor home offices and the team's Level 2 and 3 Managers.

Project Representative (sometimes the Contract Officer) - A qualified individual authorized by the owner to assist in the administration of a specific construction contract.

Proposal - A written offer to the owner to perform the work where more than price is to be determined by the proposal.

Purchase Order (PO) - A written document from a buyer to a seller to purchase materials, services, equipment or supplies with acceptable purchase terms indicated.

Punch List - A list prepared by the owner or his/her authorized representative of items of work requiring immediate corrective or completion action by the contractor.

- Q -

Quote – An offer that just contains a price for work or goods specified by the owner.

- R -

Regulations – rules issued by government departments such as HUD that are authorized by statute and are a type of law.

Reimbursable Expense – A charge to the owner for specific costs which contractor has occurred that is to be paid 100 cent on the dollar.

RFP – A "Request for Proposal" made by owner under the competitive proposal procurement method.

Responsible Contractor – A contractor that does not have a record of failing to properly and promptly perform its contracts.

Responsive Contractor – a contractor in the bidding or proposal process that has submitted all documents required in the solicitation.

- S -

Sealed Bids – A government procurement method involving contractor proposals that contain price quotes which are publicly opened at the same time by an owner.

Schedule of Values - The breakdown of a lump sum price into sub-items and sub-costs for identifiable construction elements, which can be evaluated by examination for contractor progress payment purposes.

Schematic - A preliminary sketch or diagram representing the proposed intent of the designer.

Scope of Work – A description of work or goods to be delivered by a contractor.

Shop Drawings - Detailed information provided by material and equipment suppliers demonstrating that the item provided meets the requirements of the contract documents.

Site - The place where a structure or group of structures is or will be located.

Small Purchase – An optional procurement method that can be used with simpler rules for procurement under \$100,000.

Special Conditions - Amendments to the General Conditions that change standard requirements to unique requirements, appropriate for a specific project.

Specifications - A detailed, exact statement of particulars, especially statements prescribing materials and methods, and quantitative and qualitative and qualitative information pertaining to material, products, and equipment to be incorporated into a specific project.

Statute of Limitations - The period of time in which legal action must be brought for an alleged damage or injury.

Structural Systems - The load bearing frame assembly of beams and columns on a foundation.

Solicitation – The effort taken by an owner to get bids or proposals in the procurement process.

Subcontract - A written form of agreement between the prime or general contractor and another contractor or supplier for the satisfactory performance of services or delivery of material.

Subcontractor (or sub) - A qualified subordinate contractor who has a contract with the prime or main contractor.

Substantial Completion - The stage in the progress of the work when the work, or designated portion of the work, is sufficiently complete in accordance with the contract documents so that the owner can occupy or utilize the work for its intended use.

Superintendent - A job title usually reserved for the administrative level person who supervises the work of an on-site contractor.

Supplemental Conditions - Supplements or modifies the standard clauses of the general conditions to accommodate specific project requirements. (Synonymous with Supplementary Conditions)

Supplier (also known as material man) - An individual or firm who supplies and/or fabricates materials or equipment for a specific portion of a construction project but does not perform any labor on the project.

Surety (bonding company) - A licensed corporation that issues bid, performance, and payment bonds for construction project.

- T -

Technical Specifications (Specifications)]

Termination for Convenience – Owner’s termination of a contract that is not caused on contractor’s failure but instead the owner’s own need.

Termination for Default – Termination of a contract because the other party has materially breached the contract.

Testing - Applying standard procedures to determine if prescribed technical criteria have been met in performance.

Timely Performance - Compliance with a time requirement.

Time is of the Essence - A provision in a construction contract by the owner that punctual completion within the time limits or periods in the contract is a vital part of the contract performance.

Timely Completion - Completing the work of the contract before the date required.

- U -

Uniform Building Code (UBC) - The Uniform Building Code is one of the families of codes and related publications published by the International Conference of Building Officials (ICBO) and other organizations, such as the International Association of Plumbing and Mechanical Officials (IAPMO) and the National Fire Protection Association (NFPA), which have similar goals as far as code publications are concerned. The Uniform Building Code is designed to be compatible with these other codes, as together they make up the enforcement tools of a jurisdiction.

Unit Price Contract - A written contract wherein the owner agrees to pay the contractor a specified amount of money for each unit of work successfully completed as set forth in the contract.

Unit Prices - A predetermined price for a measurement or quantity of work to be performed within a specific contract.

- V -

Value Engineering - A technical review process; the close matching of engineering design to the value an owner derives from the design.

Vendor - One that sells materials or equipment.

- W -

Warranty – Binding assurance by a providing party that the work, material, or equipment provided will work and perform as promised.

Working Drawing - A drawing sufficiently complete with plan and section views, dimensions, details, and notes so that whatever is shown can be constructed and/or replicated without instructions but subject to clarifications.

Work Order (WO) - A written order, signed by the owner or his representative, of a contractual status requiring performance by the contractor without negotiation of any sort.

- X -

- Y -

- Z -

SELECTED PORTIONS OF NAHASDA-RELATED PROCUREMENT REGULATIONS

These regulations are located at 24 CFR Part 1000 *Implementation of NAHASDA*; 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Federal Procurement Regulations); and, 24 CFR Part 135 *Economic Opportunities for Low- and Very Low-Income Persons*.

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**TITLE 24--HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN
HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

PART 1000--NATIVE AMERICAN HOUSING ACTIVITIES

Subpart A—General

§1000.12 What nondiscrimination requirements are applicable?

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and HUD's implementing regulations in 24 CFR part 146.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8 apply.

(c) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301-1303), applies to Federally recognized Indian tribes that exercise powers of self-government.

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. The Title VI and Title VIII requirements do not apply to actions under NAHASDA by federally recognized Indian tribes and their TDHEs. State-recognized Indian tribes and their TDHEs may provide preference for tribal members and other Indian families pursuant to NAHASDA sections 201(b) and 101(k) (relating to tribal preference in employment and contracting).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012]

§1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (c)(1) of this section.

(d) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(e) *Appeals to the recipient.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.

(f) *Responsibility of recipient.* (1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

(3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term “displaced person” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term “displaced person” includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.* (1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe. Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

(f) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012]

§1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will

be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in §1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For purposes of this part, "grantee" as defined in 24 CFR part 85 has the same meaning as "recipient."

- (1) Section 85.3, "Definitions."
- (2) Section 85.6, "Exceptions."
- (3) Section 85.12, "Special grant or subgrant conditions for 'high risk' grantees."
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a).
- (5) Section 85.21, "Payment," except that HUD shall not require a recipient to expend retained program income before drawing down or expending IHBG funds.
- (6) Section 85.22, "Allowable costs."
- (7) Section 85.26, "Non-federal audits."
- (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.
- (9) Section 85.33, "Supplies."
- (10) Section 85.35, "Subawards to debarred and suspended parties."
- (11)(i) *General.* Section 85.36 of this title, "Procurement," except paragraph (a), subject to paragraphs (a)(11)(ii) and (a)(11)(iii) of this section.
 - (ii) *Bonding requirements.* There may be circumstances under which the bonding requirements of §85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:
 - (A) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;
 - (B) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or
 - (C) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.
 - (iii) *De minimis procurement.* A recipient shall not be required to comply with §85.36 of this title with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.

(iv) *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.

(12) Section 85.37, “Subgrants.”

(13) Section 85.40, “Monitoring and reporting program performance,” except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, “Financial reporting,” except paragraphs (a), (b), and (e).

(15) Section 85.44, “Termination for convenience.”

(16) Section 85.51 “Later disallowances and adjustments.”

(17) Section 85.52, “Collection of amounts due.”

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A-87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71523, Dec. 3, 2012]

§1000.28 May a self-governance Indian tribe be exempted from the applicability of §1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of §1000.26. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

§1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24 CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in §1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the “community” is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856).

[64 FR 50230, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000]

§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)).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71523, Dec. 3, 2012]

§1000.44 What prohibitions on the use of debarred, suspended, or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors apply.

[72 FR 73497, Dec. 27, 2007]

§1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply.

[76 FR 45168, July 28, 2011]

§1000.48 Are Indian or tribal preference requirements applicable to IHBG activities?

Grants under this part are subject to Indian preference under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) or, if applicable under section 101(k) of NAHASDA, tribal preference in employment and contracting.

(a)(1) Section 7(b) provides that any contract, subcontract, grant, or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) The following definitions apply:

(i) The Indian Self-Determination and Education Assistance Act defines “Indian” to mean a person who is a member of an Indian tribe and defines “Indian tribe” to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or

regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974, “economic enterprise” is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines “Indian organization” to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(b) If tribal employment and contract preference laws have not been adopted by the Indian tribe, section 7(b) Indian preference provisions shall apply.

(c) Exception for de minimis procurements. A recipient shall not be required to apply Indian preference requirements under Section 7(b) of the Indian Self-Determination and Education Assistance Act with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than \$5,000.

[77 FR 71523, Dec. 3, 2012]

§1000.50 What tribal or Indian preference requirements apply to IHBG administration activities?

(a) 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.

(b) In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference and opportunities for training and employment in connection with the administration of grants awarded under this part to Indians in accordance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

[77 FR 71523, Dec. 3, 2012]

§1000.52 What tribal or Indian preference requirements apply to IHBG procurement?

(a) 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.

(b) 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)).

(c) The following provisions apply to the application of Indian preference under paragraph (b) of this section:

(1) In applying Indian preference, each recipient shall:

(i) Certify to HUD that the policies and procedures adopted by the recipient will provide preference in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (An Indian preference policy that was previously approved by HUD for a recipient will meet the requirements of this section); or

(ii) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(iii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

(2) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(i) Readvertise the contract, using any of the methods described in paragraph (c)(1) of this section; or

(ii) Readvertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (c)(1) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A recipient, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Recipients may require prospective contractors to provide the following information before submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that, to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(d) A recipient shall not be required to apply Indian preference requirements under Section 7(b) of the Indian Self-Determination and Education Assistance Act with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than \$5,000.

[77 FR 71523, Dec. 3, 2012]

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

The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.

(a) Each complaint shall be in writing, signed, and filed with the recipient.

(b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

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Title 2: Grants and Agreements

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

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Subpart A—Acronyms and Definitions

ACRONYMS

§200.0 Acronyms.

ACRONYM	TERM
CAS	Cost Accounting Standards
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
CMIA	Cash Management Improvement Act
COG	Councils Of Governments
COSO	Committee of Sponsoring Organizations of the Treadway Commission
EPA	Environmental Protection Agency
ERISA	Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)
EUI	Energy Usage Index
F&A	Facilities and Administration
FAC	Federal Audit Clearinghouse
FAIN	Federal Award Identification Number
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FFATA	Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)
FICA	Federal Insurance Contributions Act
FOIA	Freedom of Information Act
FR	Federal Register
FTE	Full-time equivalent
GAAP	Generally Accepted Accounting Principles
GAGAS	Generally Accepted Government Auditing Standards

GAO	Government Accountability Office
GOCO	Government owned, contractor operated
GSA	General Services Administration
IBS	Institutional Base Salary
IHE	Institutions of Higher Education
IRC	Internal Revenue Code
ISDEAA	Indian Self-Determination and Education and Assistance Act
MTC	Modified Total Cost
MTDC	Modified Total Direct Cost
OMB	Office of Management and Budget
PII	Personally Identifiable Information
PMS	Payment Management System
PRHP	Post-retirement Health Plans
PTE	Pass-through Entity
REUI	Relative Energy Usage Index
SAM	System for Award Management
SFA	Student Financial Aid
SNAP	Supplemental Nutrition Assistance Program
SPOC	Single Point of Contact
TANF	Temporary Assistance for Needy Families
TFM	Treasury Financial Manual
U.S.C.	United States Code
VAT	Value Added Tax

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§200.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections.

§200.2 Acquisition cost.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

§200.3 Advance payment.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

§200.4 Allocation.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

§200.5 Audit finding.

Audit finding means deficiencies which the auditor is required by §200.516 Audit findings, paragraph (a) to report in the schedule of findings and questioned costs.

§200.6 Auditee.

Auditee means any non-Federal entity that expends Federal awards which must be audited under Subpart F—Audit Requirements of this part.

§200.7 Auditor.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

[79 FR 75880, Dec. 19, 2014]

§200.8 Budget.

Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

§200.9 Central service cost allocation plan.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

§200.10 Catalog of Federal Domestic Assistance (CFDA) number.

CFDA number means the number assigned to a Federal program in the CFDA.

§200.11 CFDA program title.

CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

§200.12 Capital assets.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

§200.13 Capital expenditures.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

§200.14 Claim.

Claim means, depending on the context, either:

(a) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(1) The payment of money in a sum certain;

(2) The adjustment or interpretation of the terms and conditions of the Federal award; or

(3) Other relief arising under or relating to a Federal award.

(b) A request for payment that is not in dispute when submitted.

§200.15 Class of Federal awards.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

§200.16 Closeout.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in §200.343 Closeout.

§200.17 Cluster of programs.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. “Other clusters” are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an “other cluster,” a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §200.331 Requirements for pass-through entities, paragraph (a). A cluster of programs must be considered as one program for determining major programs, as described in §200.518 Major program determination, and, with the exception of R&D as described in §200.501 Audit requirements, paragraph (c), whether a program-specific audit may be elected.

§200.18 Cognizant agency for audit.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in §200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site.

§200.19 Cognizant agency for indirect costs.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

- (a) For IHEs: Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.11.
- (b) For nonprofit organizations: Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.12.
- (c) For state and local governments: Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans, paragraph F.1.
- (d) For Indian tribes: Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposal, paragraph D.1.

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§200.20 Computing devices.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing,

transmitting and receiving, or storing electronic information. See also §§200.94 Supplies and 200.58 Information technology systems.

§200.21 Compliance supplement.

Compliance supplement means Appendix XI to Part 200—Compliance Supplement (previously known as the Circular A-133 Compliance Supplement).

§200.22 Contract.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see §200.92 Subaward).

§200.23 Contractor.

Contractor means an entity that receives a contract as defined in §200.22 Contract.

§200.24 Cooperative agreement.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(2) An agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

§200.25 Cooperative audit resolution.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(a) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(b) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(c) A focus on current conditions and corrective action going forward;

(d) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(e) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

§200.26 Corrective action.

Corrective action means action taken by the auditee that:

(a) Corrects identified deficiencies;

(b) Produces recommended improvements; or

(c) Demonstrates that audit findings are either invalid or do not warrant auditee action.

§200.27 Cost allocation plan.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

§200.28 Cost objective.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E—Cost Principles of this Part. See also §§200.44 Final cost objective and 200.60 Intermediate cost objective.

§200.29 Cost sharing or matching.

Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). See also §200.306 Cost sharing or matching.

§200.30 Cross-cutting audit finding.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

§200.31 Disallowed costs.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

§200.32 [Reserved]

§200.33 Equipment.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

§200.34 Expenditures.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(a) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:

- (1) Cash disbursements for direct charges for property and services;
- (2) The amount of indirect expense charged;
- (3) The value of third-party in-kind contributions applied; and
- (4) The amount of cash advance payments and payments made to subrecipients.

(c) For reports prepared on an accrual basis, expenditures are the sum of:

- (1) Cash disbursements for direct charges for property and services;
- (2) The amount of indirect expense incurred;
- (3) The value of third-party in-kind contributions applied; and
- (4) The net increase or decrease in the amounts owed by the non-Federal entity for:
 - (i) Goods and other property received;
 - (ii) Services performed by employees, contractors, subrecipients, and other payees; and
 - (iii) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

§200.35 Federal agency.

Federal agency means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

§200.36 Federal Audit Clearinghouse (FAC).

FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F—Audit Requirements of this part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: <http://harvester.census.gov/sac/>. Any future updates to the location of the FAC may be found at the OMB Web site.

§200.37 Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

§200.38 Federal award.

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

§200.39 Federal award date.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

§200.40 Federal financial assistance.

(a) For grants and cooperative agreements, *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

- (1) Grants;
- (2) Cooperative agreements;
- (3) Non-cash contributions or donations of property (including donated surplus property);
- (4) Direct appropriations;
- (5) Food commodities; and
- (6) Other financial assistance (except assistance listed in paragraph (b) of this section).

(b) For Subpart F—Audit Requirements of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

- (1) Loans;
- (2) Loan Guarantees;
- (3) Interest subsidies; and
- (4) Insurance.

(c) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in §200.502 Basis for determining Federal awards expended, paragraph (h) and (i) of this part.

§200.41 Federal interest.

Federal interest means, for purposes of §200.329 Reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

- (a) Federal share of total project costs; and
- (b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

§200.42 Federal program.

Federal program means:

- (a) All Federal awards which are assigned a single number in the CFDA.
- (b) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.
- (c) Notwithstanding paragraphs (a) and (b) of this definition, a cluster of programs. The types of clusters of programs are:
 - (1) Research and development (R&D);
 - (2) Student financial aid (SFA); and
 - (3) “Other clusters,” as described in the definition of Cluster of Programs.

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§200.43 Federal share.

Federal share means the portion of the total project costs that are paid by Federal funds.

§200.44 Final cost objective.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also §§200.28 Cost objective and 200.60 Intermediate cost objective.

§200.45 Fixed amount awards.

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b) and 200.332 Fixed amount subawards.

§200.46 Foreign public entity.

Foreign public entity means:

- (a) A foreign government or foreign governmental entity;
- (b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);
- (c) An entity owned (in whole or in part) or controlled by a foreign government; or
- (d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§200.47 Foreign organization.

Foreign organization means an entity that is:

- (a) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(b) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(c) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(d) An organization located in a country other than the United States not recognized as a Foreign Public Entity.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.48 General purpose equipment.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also Equipment and Special Purpose Equipment.

§200.49 Generally Accepted Accounting Principles (GAAP).

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

§200.50 Generally Accepted Government Auditing Standards (GAGAS).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.51 Grant agreement.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) Does not include an agreement that provides only:

- (1) Direct United States Government cash assistance to an individual;
- (2) A subsidy;
- (3) A loan;

- (4) A loan guarantee; or
- (5) Insurance.

§200.52 Hospital.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

§200.53 Improper payment.

(a) *Improper payment* means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) *Improper payment* includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

§200.54 Indian tribe (or “federally recognized Indian tribe”).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

§200.55 Institutions of Higher Education (IHEs).

IHE is defined at 20 U.S.C. 1001.

§200.56 Indirect (facilities & administrative (F&A)) costs.

Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.57 Indirect cost rate proposal.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) through Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals of this part, and Appendix IX to Part 200—Hospital Cost Principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.58 Information technology systems.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also §§200.20 Computing devices and 200.33 Equipment.

§200.59 Intangible property.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

§200.60 Intermediate cost objective.

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also §200.28 Cost objective and §200.44 Final cost objective.

§200.61 Internal controls.

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (a) Effectiveness and efficiency of operations;
- (b) Reliability of reporting for internal and external use; and
- (c) Compliance with applicable laws and regulations.

§200.62 Internal control over compliance requirements for Federal awards.

Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

- (a) Transactions are properly recorded and accounted for, in order to:
 - (1) Permit the preparation of reliable financial statements and Federal reports;
 - (2) Maintain accountability over assets; and
 - (3) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;
- (b) Transactions are executed in compliance with:
 - (1) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and
 - (2) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and
- (c) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

§200.63 Loan.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of §200.80 Program income.

(a) The term “direct loan” means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(b) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(c) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(d) The term “loan guarantee commitment” means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

§200.64 Local government.

Local government means any unit of government within a state, including a:

- (a) County;
- (b) Borough;
- (c) Municipality;
- (d) City;
- (e) Town;
- (f) Township;
- (g) Parish;
- (h) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (i) Special district;
- (j) School district;
- (k) Intrastate district;
- (l) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and
- (m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

§200.65 Major program.

Major program means a Federal program determined by the auditor to be a major program in accordance with §200.518 Major program determination or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with §200.503 Relation to other audit requirements, paragraph (e).

§200.66 Management decision.

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

§200.67 Micro-purchase.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

§200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

[79 FR 75880, Dec. 19, 2014]

§200.69 Non-Federal entity.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

§200.70 Nonprofit organization.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and
- (c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

§200.71 Obligations.

When used in connection with a non-Federal entity's utilization of funds under a Federal award, *obligations* means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

§200.72 Office of Management and Budget (OMB).

OMB means the Executive Office of the President, Office of Management and Budget.

§200.73 Oversight agency for audit.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency

for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in §200.513 Responsibilities, paragraph (b).

§200.74 Pass-through entity.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

§200.75 Participant support costs.

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

§200.76 Performance goal.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

§200.77 Period of performance.

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§200.210 Information contained in a Federal award paragraph (a)(5) and 200.331 Requirements for pass-through entities, paragraph (a)(1)(iv)).

§200.78 Personal property.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

§200.79 Personally Identifiable Information (PII).

PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

§200.80 Program income.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307 paragraph (f). (See §200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also §200.407 Prior written approval (prior approval). See also 35 U.S.C. 200-212 “Disposition of Rights in Educational Awards” applies to inventions made under Federal awards.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.81 Property.

Property means real property or personal property.

§200.82 Protected Personally Identifiable Information (Protected PII).

Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. (See also §200.79 Personally Identifiable Information (PII)).

§200.83 Project cost.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

§200.84 Questioned cost.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

- (a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (b) Where the costs, at the time of the audit, are not supported by adequate documentation;

or

- (c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

§200.85 Real property.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

§200.86 Recipient.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also §200.69 Non-Federal entity.

§200.87 Research and Development (R&D).

R&D means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

“Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§200.88 Simplified acquisition threshold.

Simplified acquisition threshold means the dollar amount 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 the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

§200.89 Special purpose equipment.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also §§200.33 Equipment and 200.48 General purpose equipment.

§200.90 State.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014]

§200.91 Student Financial Aid (SFA).

SFA means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

§200.92 Subaward.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

§200.93 Subrecipient.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

§200.94 Supplies.

Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§200.20 Computing devices and 200.33 Equipment.

§200.95 Termination.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

§200.96 Third-party in-kind contributions.

Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that—

- (a) Benefit a federally assisted project or program; and
- (b) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

§200.97 Unliquidated obligations.

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

§200.98 Unobligated balance.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

§200.99 Voluntary committed cost sharing.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

Subpart D—Post Federal Award Requirements

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity 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, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which 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 a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity 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 non-Federal entity 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.

(2) Since 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 non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order 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.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase

procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. 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 item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

RECORD RETENTION AND ACCESS

§200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§200.334 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§200.335 Methods for collection, transmission and storage of information.

In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§200.336 Access to records.

(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§200.337 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

Subpart E—Cost Principles

GENERAL PROVISIONS

§200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See §200.56 Indirect (facilities & administrative (F&A)) costs.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also §200.307 Program income.

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§200.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also Subpart A—Acronyms and Definitions, §§200.45 Fixed amount awards and 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(4) Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this Subpart E—Cost Principles of this part with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of §200.449 Interest. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

BASIC CONSIDERATIONS

§200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

§200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

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§200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to

benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

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§200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

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§200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

(a) §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

- (b) §200.306 Cost sharing or matching;
- (c) §200.307 Program income;
- (d) §200.308 Revision of budget and program plans;
- (e) §200.311 Real property;
- (f) §200.313 Equipment;
- (g) §200.332 Fixed amount subawards;
- (h) §200.413 Direct costs, paragraph (c);
- (i) §200.430 Compensation—personal services, paragraph (h);
- (j) §200.431 Compensation—fringe benefits;
- (k) §200.438 Entertainment costs;
- (l) §200.439 Equipment and other capital expenditures;
- (m) §200.440 Exchange rates;
- (n) §200.441 Fines, penalties, damages and other settlements;
- (o) §200.442 Fund raising and investment management costs;
- (p) §200.445 Goods or services for personal use;
- (q) §200.447 Insurance and indemnification;
- (r) §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) §200.455 Organization costs;
- (t) §200.456 Participant support costs;
- (u) §200.458 Pre-award costs;
- (v) §200.462 Rearrangement and reconversion costs;
- (w) §200.467 Selling and marketing costs;
- (x) §200.470 Taxes (including Value Added Tax); and

(y) §200.474 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§200.412 Classification of costs through 200.415 Required certifications) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§200.416 Cost allocation plans and indirect cost proposals and 200.417 Interagency service) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

§200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§200.300 Statutory and national policy requirements through 200.309 Period of performance.

§200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT (F&A) COSTS

§200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also §200.405 Allocable costs.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also §200.454 Memberships, subscriptions, and professional activity costs.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.

(3) Promotion, lobbying, and other forms of public relations. See also §§200.421 Advertising and public relations and 200.450 Lobbying.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also §200.432 Conferences.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also §200.442 Fund raising and investment management costs.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also §200.431 Compensation—fringe benefits.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for institutions of higher education, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200— Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also §200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As

appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in §200.331 Requirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in §200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under §200.414 Indirect (F&A) costs, paragraph (f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in §200.414 Indirect (F&A) costs, paragraph (a).

(d) See also §200.450 Lobbying for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans.

SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

§200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs, of this subpart;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards.

(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required

when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

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GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II. Basic Considerations of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in §200.403 Factors affecting allowability of *costs* must be applied in determining allowability. See also §200.102 Exceptions.

§200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also §200.463 Recruiting costs);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also §200.432 Conferences), including:

- (i) Costs of displays, demonstrations, and exhibits;
- (ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
- (iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
- (3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;
- (4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See §200.444 General costs of government, applicable to states, local governments and Indian tribes.

§200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D—Post Federal Award Requirements of this part, §§200.330 Subrecipient and contractor determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also §200.428 Collections of improper payments.

§200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in §200.305 *Payment*.

§200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.

§200.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in §200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of

Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.* (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in §200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also §200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g.,

post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles*. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs*. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the “Cost Accounting Standard for Composition and Measurement of Pension Costs” (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health*. Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal Government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See §200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

§200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this part and 200.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§200.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.447 Insurance and indemnification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see §200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with §200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of §200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in §200.306 Cost sharing or matching.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§200.300 Statutory and national policy requirements through 200.309 Period of performance of subpart D of this part. The value of the donations must be determined in accordance with §§200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) Definitions for the purposes of this section.

(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs*. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

- (1) Where the non-Federal entity can demonstrate unusual circumstances; and
- (2) With the approval of the cognizant agency for indirect costs.

§200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§200.439 Equipment and other capital expenditures.

(a) See §§200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See §200.436

Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also §200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See §200.436 Depreciation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

§200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in §200.460 Proposal costs.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in §200.413 Direct costs.

§200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§200.436 Depreciation and 200.439 Equipment and other capital expenditures.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in §200.447 Insurance and indemnification.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§200.310 Insurance Coverage through 200.316 Property trust relationship.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in §200.474 Travel costs). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see §200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see §200.431 Compensation—fringe benefits). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not

covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§200.448 Intellectual property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also §200.459 Professional service costs).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets is defined as noted in §200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

§200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of “lobbying” or “influencing legislation” by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and “grass roots” lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. §4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of §200.413 Direct costs.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also §200.415 Required certifications.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in §200.302 Financial management with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see §200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

§200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also §200.450 Lobbying.

§200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§200.456 Participant support costs.

Participant support costs as defined in §200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.

200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to §200.439 Equipment and other capital expenditures.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

§200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under §200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.
- (3) The past pattern of such costs, particularly in the years prior to Federal awards.
- (4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).
- (5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
- (6) Whether the service can be performed more economically by direct employment rather than contracting.
- (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
- (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of

employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also §200.464 Relocation costs of employees.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;
- (3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
- (4) Meet the definition of "direct cost" as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

- (1) The move is for the benefit of the employer.
- (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with §200.474 Travel costs, and not this §200.464 Relocation costs of employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

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§200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in §200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in §200.430 Compensation—personal services, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also §200.431 Compensation—fringe benefits.

§200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under §200.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

§200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under §200.406 Applicable credits.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§200.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also §200.313 Equipment, paragraph (d), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D—Post Federal Award Requirements of this part, §§200.338 Remedies for Noncompliance through 200.342 Effects of Suspension and termination); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in §200.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§200.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§200.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of §200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also §200.432 Conferences.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

- (i) Require circuitous routing;
- (ii) Require travel during unreasonable hours;
- (iii) Excessively prolong travel;
- (iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

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§200.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also §200.474 Travel costs.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

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

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every

mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. GENERAL

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled “*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*” A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their Web site at <https://rates.psc.gov>.

B. DEFINITIONS

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in §200.19 Cognizant agency for indirect costs of this Part. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1, Negotiation and Approval of Central Service Plans.

5. *Major local government* means local government that receives more than \$100 million in direct Federal awards subject to this Part.

C. SCOPE OF THE CENTRAL SERVICE COST ALLOCATION PLANS

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. SUBMISSION REQUIREMENTS

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. DOCUMENTATION REQUIREMENTS FOR SUBMITTED PLANS

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included

in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocation central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan must include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund

contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. *Required Certification*

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit:

Signature:

Name of Official:

Title:

Date of Execution:

F. NEGOTIATION AND APPROVAL OF CENTRAL SERVICE PLANS

1. *Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation*

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. OTHER POLICIES

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a “fixed with carry-forward” basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This “carry-forward” procedure applies to all central

services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal share) exceeds \$500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D—Post Federal Award Requirements, of Part 200.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

A. GENERAL

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. DEFINITIONS

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. POLICY

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. SUBMISSION, DOCUMENTATION, AND APPROVAL OF PUBLIC ASSISTANCE COST ALLOCATION PLANS

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment

will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. REVIEW OF IMPLEMENTATION OF APPROVED PLANS

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. UNALLOWABLE COSTS

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. GENERAL

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled “*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*” A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their Web site at <https://rates.psc.gov>.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to Part 200—Public Assistance Cost Allocation Plans.

B. DEFINITIONS

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F, Negotiation and Approval of Central Service Plans.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

C. ALLOCATION OF INDIRECT COSTS AND DETERMINATION OF INDIRECT COST RATES

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed

under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a “restricted rate” is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. SUBMISSION AND DOCUMENTATION OF PROPOSALS

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in §200.333 Retention Requirements for Records.

b. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost

proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit:

Signature:

Name of Official:

Title:

Date of Execution:

E. NEGOTIATION AND APPROVAL OF RATES.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in §200.420 Considerations for selected items of cost, of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. OTHER POLICIES

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise

the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014]

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.

NAME OF ENTERPRISE OR ORGANIZATION: _____

TELEPHONE NUMBER: _____

FAX: _____

E-MAIL: _____

ADDRESS: _____

MAILING ADDRESS (IF DIFFERENT): _____

LOCATION OF ALL OTHER OFFICES (INCLUDING TEMPORARY AND PART-TIME):

I. ORGANIZATION

Are you

- a private for profit or non-profit company, or
- a tribal organization

Check one:

- Corporation Partnership Joint Venture
- Sole Proprietorship Other (describe) _____

Date established: _____

Place established: _____

Dates organization changed or amended as to ownership and management: _____

Attach to this application current organization documents (including where appropriate Articles of Incorporation and bylaws).

II. CURRENT OWNERSHIP

Date current ownership was established: _____

Current Ownership fill out an additional disclosure for each owner that is an entity.				
NAME	Check if enrolled in a federally recognized tribe	ADDRESS	TELEPHONE	% of OWNERSHIP

Attach to this application official evidence or record of enrollment of all owners who are enrolled members of federally recognized tribes.

Name any companies or individuals that provide management or administrative services to your company: _____

How many employees do you currently have: _____

Name who has made capital contributions to your company: _____

Explain who will get your profit on this contract and what percentage: _____

Who is your bank and the name and telephone number of the bank official you work with at the bank? _____

What agency and what insurance company provides your insurance and list telephone number: _____

If you are a construction company, what agency and what bonding companies provide your bid, performance and payment bonds and list telephone number: _____

Explain who you will contract or subcontract more than 10% of your work to: _____

If you are supplying goods, name companies that will provide you 10% or more of the goods to be provided under the contract you are seeking (and identify if they are 51% or more Indian-owned and -controlled by an enrolled member of a federally recognized Tribe): _____

III. PAST AND CURRENT PERFORMANCE

Have you or any owner of your entity had any of the following occur in the past 10 years and, if so, please explain with an attached narrative:

- filed bankruptcy or been petitioned into bankruptcy
- sued regarding a contract or payment of a contract
- sued regarding contract, performance or payment of a contract
- failed to complete a contract on time
- failed to finish a contract
- had a claim made on a bond provided on your behalf
- involved in arbitration regarding a contract or its performance
- had a contract terminated for cause
- denied Indian preference after seeking it
- debarred, suspended or other sanctions
- failed to properly pay a supplier, subcontractor, employee as required by contract

- any legal judgments entered against you
- any other incident involving performance of a contract where claims or disputes arose

Attach appropriate narratives to this application.

Name other companies in businesses similar to what you now do that you and your owners have operated or owned in the last 10 years: _____

List all tribes, tribally designated housing entities, and Indian housing authorities that you have had a contract with in the past 10 years and the years you had the contract(s): _____

IV. CONTROL

List all officers and any Board members of your company and identify if they are enrolled in a federally recognized tribe. If so, indicate which tribe as well as what management duties they have: _____

List the other top 10 management: _____

If any of the above individuals have employment, positions or contracts with or interests in (including ownership) other companies, please so identify and explain, including the % or work time they spend in that position: _____

Name the location of all temporary and permanent offices you have: _____

If you are a construction company, list your core crew employees: _____

What companies or individuals, if any, are mentoring or providing you assistance (including but not limited to loans, capital or staff) to develop as a company and explain on attached sheet: _____

Disclose here and explain on an attached sheet any agreements or arrangements whereby some or all of your company is managed, administered or run in whole or in part by an individual(s) or company(s) not otherwise explained in this application: _____

Disclose here and explain on an attached sheet any public or private agreements, or arrangements, other than those fully disclosed and explained elsewhere in this application, whereby companies or individuals (i.e., service agreements, supplier contracts or subcontracting) received profit from your company: _____

By submitting this Application you are asserting that you believe and know yourself to be a 51% or more Indian-owned and -controlled economic enterprise or tribal organization.

Where not enough space has been provided on this form to allow you to fully explain your answers use additional sheets and attach them to this application.

Your application must be truthful and correct. Making false or misleading statements could subject your company and the individual signing this Application to criminal prosecution and civil penalties since the contract may be funded with government funds.

If any changes in these circumstances or others that impact your eligibility for Preference occur prior to the award of a contract or during the performance of such a contract, you agree to immediately notify _____.
Name of TDHE

Furthermore, if based on new information or changes in circumstances, you should, in the opinion of _____ lose 51% or more Indian ownership or control
Name of TDHE
of your company, you will lose your eligibility for Indian preference.

If applicant is Sole Proprietor, Sign Below:

Name: _____ (date) _____

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name: _____ (date) _____

Name: _____ (date) _____

If applicant is a corporation

Name: _____ (date) _____
President or CEO's Signature

TO BE FILLED IN BY TDHE
Please submit this Application to: _____ _____ _____ _____

(TDHE Letterhead)

Date _____

Re: Determination on Request for Indian Preference

Dear _____:

The _____ [TDHE] has made the following general contracting prequalification determination for

_____ and has asked me to communicate this decision to you. Prequalification 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 Prequalification Application.

Qualified

Disqualified

Tentatively Qualified

Please also understand that disqualifications as a general contractor may not necessarily prohibit you from being considered a possible Indian subcontractor or supplier.

If you have been tentatively qualified, the TDHE will be contacting you by telephone to discuss what additional information is needed or what restrictions have been applied.

If you have been disqualified for Indian preference, this does not prohibit you from submitting a bid. It only disqualifies you from bidding with Indian Preference.

The TDHE reserves the right to later disqualify a prequalified contractor after bids are received should any new information be obtained which contradict this Indian preference determination.

If you have any questions regarding this prequalification process or the determination regarding your application, please contact the TDHE.

In conclusion, the TDHE staff and Board want me to express to you their appreciation for your interest in these projects.

Sincerely,

Contracting Officer

cc: TDHE Executive Director
TDHE Chairman
TDHE Attorneys
TDHE Architect

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low-and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

- HUD Field Office: Enter the Field Office name .
1. Recipient: Enter the name and address of the recipient submitting this report.
 2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
 3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
 - 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
 6. Reporting Period: Indicate the time period (months and year) this report covers.
 7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.



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

RECIPIENT GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities

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

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

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

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

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

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

Tribes and TDHEs that adopt a tribal preference law must comply with that tribal law in lieu of Indian preference requirements that would otherwise apply under Section 7(b) of the Indian Self-Determination and Education Assistance Act.

If a TDHE is the IHBG recipient, it must comply with the tribal preference laws of the beneficiary tribe. If the TDHE is authorized to issue regulations or ordinances under tribal law, any regulations or ordinances issued by the TDHE that provide for tribal preferences in employment and contracting will govern under the IHBG program.

Applicability of Other Requirements:

- a. Small Purchase Procurement:** Procurements that are less than the simplified acquisition threshold, recently increased to \$150,000, but equal to or greater than \$5,000, are considered small purchases under 24 CFR §85.36(d)(1). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Recipients carrying out small purchase procurement must still comply with Indian preference or tribal preference requirements that are applicable.
- b. De Minimis Exception:** Procurements with a value less than \$5,000, known as "De Minimis procurement" or "Micro-Purchasing," are not subject to Indian preference requirements pursuant to 24 CFR §§1000.48(c) and 1000.52(d). Recipients are also exempt from complying with the general procurement requirements in 24 CFR §85.36 when carrying out De Minimis procurement. See the PIH Notice on *Micro-Purchasing* for additional information.
- c. Federal Supply Sources:** In accordance with Section 101(j) of NAHASDA, recipients may use federal supply sources made available by the General Services Administration (GSA), pursuant to 40 U.S.C. 501. Recipients must still comply with any Indian preference or tribal preference requirements that may be applicable when procuring goods and services through GSA's supply sources. See Program Guidance 2010-09 for additional information.
- d. Section 3:** Generally, if an IHBG recipient has projects or activities that exceed \$200,000 or more in HUD financial assistance, the recipient is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR Part 135. Section 3 regulations require recipients to provide certain preferences in job training, employment, and contracting to low-income individuals.

HUD will be launching a new online Section 3 reporting system (60002) for the 2013 reporting period. The new system will resolve some of the technical issues encountered with the current system, will reduce user errors, and will decrease recipient burden. A series of trainings on the new 60002 reporting system will be offered in the coming weeks, and will be posted on the Section 3 webpage at www.hud.gov/section3. This site will also provide assistance if you are having technical difficulties.

The current Section 3 reporting system at:

<http://www5.hud.gov:63001/apps/po/e/srs/Public/form.cfm> **will no longer be available after July 1, 2013.** Additional guidance will be posted on the above webpage after July 1, 2013 for agencies that are unable to meet the reporting requirements before the system terminates.

If you have any questions or concerns, please send an email to: section3@hud.gov. HUD's Section 3 office will make every effort to respond to you within 2 business days.

Recipients must submit a completed Section 3 Summary Report (HUD-60002) describing employment, training, and contracting opportunities provided to low-, and very low-income persons, as required by 24 CFR Section 135.90. The Section 3 Summary Report (HUD-60002) is required to be submitted to HUD's Office of Fair Housing and Equal Opportunity at the same time the recipient submits its Annual Performance Report (APR) to the Area Office of Native American Programs (ONAP).

Exemption: Recipients that are subject to and complying with tribal employment and contract preference laws adopted in accordance with Section 101(k) of NAHASDA are deemed to be in compliance with the requirements of Section 3. Therefore, such recipients do not have to establish preferences for applicants claiming Section 3 status when hiring or procuring goods or services in order to meet the requirements of Section 3. These recipients also are not required to submit the annual HUD-60002 form.

Indian Preference Procurement Requirements: As stated above, in the absence of tribal employment and contracting preference laws, a recipient must, to the greatest extent feasible, give preference and opportunities for training and employment in connection with the administration of NAHASDA grants in accordance with the Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act. Recipients may comply with Indian preference requirements by:

- Certifying to HUD that the policies and procedures adopted by the recipient will provide preference in procurement activities. (An Indian preference policy that was previously approved by HUD for a recipient will meet the requirements of this section);
- For procurement by sealed bids, advertising for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or
- Using a two-stage preference procedure as follows:

Stage 1. Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

Stage 2. If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

All preferences must be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents. If fewer than two responsive, qualified organizations or enterprises submit a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the recipient must:

- (i) Re-advertise the contract, limiting the solicitation to qualified Indian organizations and Indian-owned enterprises; or
- (ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or
- (iii) If only one approvable bid or proposal is received, the tribe or TDHE should request Area ONAP review and approval of the proposed contract and related procurement documents in order to award the contract to the single bidder or offeror.

A recipient may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Examples of such information may include:

- (i) evidence showing fully the extent of Indian ownership and interest; (ii) evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; management salary or profit-sharing arrangements and evidence showing the effect of these on the extent of Indian ownership and interest; and (iii) evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

Recipients must incorporate the following, commonly referred to as the Section 7(b) clause, in each contract awarded in connection with a funded project:

- (i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that, to the greatest extent feasible:

- (A) Preferences and opportunities for training and employment shall be given to Indians; and

- (B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

- (ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Self-Determination and Education Assistance Act.

- (iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

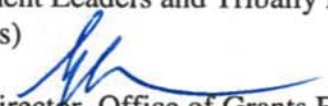
(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this Section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the Section 7(b) clause.

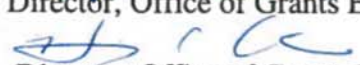
If you have questions or need further assistance please contact your Area ONAP.

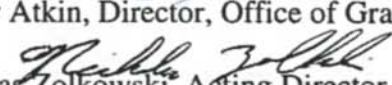
PROGRAM GUIDANCE

PROGRAM: All Programs of the Office of Native American Programs

FOR: Tribal Government Leaders and Tribally Designated Housing Entities (TDHEs)

FROM: Gary Nemeec, Director, Office of Grants Evaluation 

FROM: Hillary Atkin, Director, Office of Grants Management 

FROM: Nicholas Zolkowski, Acting Director, Office of Field Operations 

TOPIC: Recent Changes to the Federal Micro-Purchase and Simplified Acquisition Thresholds

PURPOSE: This guidance informs Indian tribes and Tribally Designated Housing Entities about increases to the micro-purchase and simplified acquisition thresholds for programs involving Federal funds.

BACKGROUND: On December 12, 2017, the National Defense Authorization Act for Fiscal Year 2018, (Public Law 115-91), was signed into law. The Act raised the Federal micro-purchase threshold from \$3,500 to \$10,000. It also raised the simplified acquisition threshold to \$250,000.

Initially, these changes were not to become effective until the Federal Acquisition Regulation was revised. However, on June 20, 2018, the Office of Management and Budget issued a Memorandum (M-18-18) to Federal agencies that granted an exception and allowed all grant recipients to benefit from these higher micro-purchase and simplified acquisition thresholds; effective immediately.

OVERVIEW: The changes described below apply to the Indian Housing Block Grant (IHBG), Native Hawaiian Housing Block Grant, Tribal Housing and Urban Development/Veterans Affairs Supportive Housing and Indian Community Development Block Grant programs.

New Micro-Purchase Threshold:

The micro-purchase threshold has been raised to \$10,000. To the extent practicable, a recipient must distribute micro-purchases equitably among qualified suppliers.

No competitive quotes are required if the recipient determines that the price is *reasonable*. For more information on the definition of micro-purchase and its use, please see 2 CFR §§ 200.67 and 200.320(a).

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 the Native American Housing Assistance and Self-Determination Act of 1996.

NOTE: Micro-purchase and de minimus exemptions 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 minimus procurements.

New Simplified Acquisition Threshold:

The simplified acquisition threshold has been raised to \$250,000. Informal purchasing procedures are acceptable, but price or rate quotes are required from an adequate number of sources. For more information on the definition of simplified acquisition and its use, see 2 CFR §§ 200.88 and 200.320(b).

PROCEDURE: Recipients should update their procurement policies and procedures to reflect these changes in micro-purchase and simplified acquisition thresholds.

ADDITIONAL GUIDANCE: Please contact your Area ONAP Grants Management Specialist for additional guidance.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

Special Attention of:

NOTICE: SD-2015-01

Issued:

FEB 26 2015

HUD Regional Directors
HUD Field Office Directors
HUD Offices of Community Planning and Development (CPD),
Fair Housing and Equal Opportunity (FHEO),
Housing,
Native American Programs (ONAP),
Lead Hazard Control and Healthy Homes (OLHCHH),
Public and Indian Housing (PIH),
Policy Development and Research (PD&R)
HUD Grant Administrators, Grant Officers, Government Technical Monitors (GTMs), and
Government Technical Representatives (GTRs) and Recipients of HUD Federal Financial
Assistance

This notice remains effective until amended,
superseded or rescinded

SUBJECT: Transition to 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance*

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1. BACKGROUND

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78590; <https://federalregister.gov/a/2013-30465>) final guidance on the above subject, which is codified at 2 CFR part 200. OMB and the Federal awardmaking agencies published a joint interim final rule implementing the final guidance as requirements for recipients of Federal financial assistance on December 19, 2014 (at 79 Federal Register 75871; <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>). OMB also made technical corrections to part 200.

The purpose of 2 CFR part 200 is to streamline the Federal government’s guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, *Cost Principles for Educational Institutions*,
- A-87, *Cost Principles for State, Local and Indian Tribal Governments*,
- A-89, *Catalog of Federal Domestic Assistance*,
- A-102, *Grants and Cooperative Agreements With State and Local Governments*,
- A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*,
- A-122, *Cost Principles for Non-Profit Organizations*,
- A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and
- The guidance in OMB Circular A-50, *Audit Followup*, on Single Audit Act follow-up.

HUD adopted this guidance at a new part, 2 CFR part 2400. The uniform guidance also removed: 2 CFR parts 215, 220, 225, and 230. HUD amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.

Major Reforms and Policy Changes

The policy reforms brought about by OMB's consideration of public comments and efforts to streamline federal grant-making processes are identified as the following:

- Eliminate duplicative/conflicting guidance;
- Focus on performance over compliance for accountability;
- Encourage efficient use of information technology (IT)/shared services;
- Provide for consistent treatment of costs;
- Limit allowable costs for the best use of Federal resources;
- Incorporate standard business processes using data definitions;
- Strengthen oversight; and
- Target audit requirements on risk of waste, fraud, and abuse.

In addition to the consolidation of the OMB Circulars, major audit changes include the following:

- The Single Audit threshold is raised from \$500,000 to \$750,000, which eliminates the need for more than 5,000 audits, with a cost savings estimated at \$250 million;
- The questioned cost limit in Single Audits is raised from \$10,000 to \$25,000;
- Assessment of government-wide audit quality is to be conducted every six years (beginning in 2018).

The uniform guidance, which provides a government-wide framework for grants management, is designed to reduce administrative burden for non-Federal entities receiving Federal awards.

2. EFFECTIVE DATE AND APPLICABILITY TO HUD

The uniform guidance was applicable for Federal agencies, including HUD, effective December 26, 2013. Federal agencies, including HUD, adopted 2 CFR part 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014. It was made applicable to non-Federal entities (recipients of Federal financial assistance) effective December 26, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB Circulars A-87 or A-110 for one additional fiscal year which begins after December 26, 2014. For example, the first full fiscal year for a non-Federal entity with a June 30th year would be the year ending June 30, 2016. See also the General Transition Rules section of this Notice.

3. PURPOSE

The purpose of this Notice is to identify and explain significant changes made in 2 CFR part 200, and provide transition guidance and links to additional resource materials for HUD and its grant program stakeholders and other recipients of Federal financial assistance from HUD. This Notice is broken out by the six subparts in 2 CFR part 200:

- Subpart A – *Acronyms and Definitions*;
- Subpart B – *General Provisions*;
- Subpart C – *Pre-Federal Award Requirements and Contents of Federal Awards*;
- Subpart D – *Post-Federal Award Requirements*;
- Subpart E – *Cost Principles*; and
- Subpart F – *Audit Requirements*.

Appendix A of this Notice provides the table of contents for 2 CFR part 200. HUD highly recommends that recipients familiarize themselves with 2 CFR part 200 in its entirety. This Notice is intended to highlight major changes and topical areas that may apply across all HUD programs or be of general interest.

4. SUBPART A – ACRONYMS AND DEFINITIONS: HIGHLIGHTS

Subpart A of 2 CFR part 200 lists definitions and acronyms for key terms found throughout the uniform guidance. Each definition is in its own section so that the reader can look at the table of contents to see defined terms. Since the uniform guidance originated in eight different Circulars, there are numerous conforming changes made to provide consistency for the terms used. In particular, part 200 uses “non-Federal entity” and “pass-through entity.” “Non-Federal entity” means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. “Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Policy decisions are reflected in some definitions, including: §200.18, *Cognizant agency for audit*, §200.23, *Contractor*, §200.33, *Equipment*, §200.73, *Oversight agency for audit*, and §200.94, *Supplies*. Section 13.b of this Notice provides a link to a crosswalk developed by OMB from the existing OMB Circulars to the final uniform guidance in 2 CFR part 200.

Definition of Indian Tribe: The definition of Indian tribe in §200.54 differs from the definition in the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4013, et seq.). The definition of Indian tribe in §200.54 has no effect on programs with statutory definitions of “Indian tribe.”

5. SUBPART B – GENERAL PROVISIONS: HIGHLIGHTS

Subpart B covers general provisions, including the basic purpose of 2 CFR part 200 and its applicability to different types of Federal awards to non-Federal entities, and states that

Federal agencies, including HUD, may apply subparts A-E to for-profit entities. Exceptions to the applicability of the rule are listed in 2 CFR 200.101(d) and (e) and 2 CFR 200.102. This subpart makes clear that part 200 does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation (FAR). As an example, for public housing, the disposition statute at Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) supersedes the disposition instructions in §200.311(c). Subpart B also covers Authorities, Effect on other issuances, Agency implementation, OMB responsibilities, Inquiries, Effective date, English language, Conflict of interest, and Mandatory disclosures. Highlights are discussed below.

Applicability: Section 200.101 includes a table that summarizes how the guidance applies to types of Federal awards. This table must be read along with the other provisions of section 200.101:

The following portions of Part 200:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e) of section 200.101):	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions.	—All.	
Subpart B—General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113.Mandatory disclosures	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, and 200.113. Mandatory Disclosures	—Grant agreements and cooperative agreements.	<ul style="list-style-type: none"> —Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	<ul style="list-style-type: none"> —Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles.	<ul style="list-style-type: none"> —Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts in accordance with the FAR. —Fixed price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs. 	<ul style="list-style-type: none"> —Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards. —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).
Subpart F—Audit Requirements.	—All.	

Exceptions:

- Section 200.102(a) allows OMB to make exceptions to 2 CFR part 200 for certain classes of Federal awards or for certain non-Federal entities, but only in unusual circumstances and if such exceptions are not prohibited by law. Where the provisions of Federal statutes or regulations differ from the provisions of part 200, the provisions of the Federal statutes or regulations take precedence.
- Section 200.102(b) allows HUD to make certain exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval is expressly required by 2 CFR part 200. Under §200.102(c), HUD may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB or required by Federal statutes or regulations. HUD may also apply less restrictive requirements when making fixed amount awards as defined in Subpart A, §200.45.
- Exemptions from Subpart F, Audit Requirements, are not permitted under any circumstances.

English Language: Section 200.111 makes clear that all HUD financial assistance announcements, HUD award information (e.g., Notices of Funding Availability), and applications must be in the English language. Non-Federal entities may translate the Federal award and other documents into another language, however, in the event of any inconsistency, the English language meaning would control. Where a significant portion of the non-Federal entity's employees working on the award are not fluent in English, the non-Federal entity must provide the HUD award in English and the language(s) with which the employees are more familiar.

Conflict of Interest: Section 200.112 requires HUD to establish conflict of interest policies for Federal awards and requires non-Federal entities to disclose in writing any potential conflict of interest to HUD or the pass-through entity in accordance with HUD's policy. The general procurement standards in §200.318 require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "Organizational conflicts of interest" means that, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

6. SUBPART C – PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS: HIGHLIGHTS

Subpart C prescribes the instructions and other pre-award information to be used in the funding announcement and application process.

Selecting the Instrument for Award: Section 200.201 requires the Federal awarding agency or pass-through entity to decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or Federal contract under the Federal Acquisition Regulation) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08). The program statute or pass-through entity may have another name for

the document (e.g., annual contributions contract), but the choice is limited to these three instruments, in accordance with the Federal Grant and Cooperative Agreement Act.

Fixed Amount Awards: Section 200.201(b) allows for “fixed amount” awards under which the amount is negotiated using the cost principles (or other pricing information) as a guide. Fixed amount awards generally may be used if the project scope is specific and if adequate cost, historical, or unit pricing data are available to establish a fixed amount award based on a reasonable estimate of actual cost. Accountability is based on performance. There is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Payments may be based on milestones, on a unit price basis, or in a single payment upon completion of the Federal award. The non-Federal entity is required to provide a certification regarding completion. Periodic reports may be required.

Funding Announcements and Award Agreements: Sections 200.202, 200.203, 200.210, and Appendix I require funding opportunities to be available for at least 60 days and impose standard requirements on HUD’s notices of funding opportunities, on application requirements, and Federal award requirements. HUD will include with each Federal award any program-specific or other terms and conditions, and will share both the general and the program-specific or other requirements on a public website and in Notices of Funding Availability (NOFAs).

Risk-Based Awards: Sections 200.204 and 200.205 require Federal agencies to design and execute a merit review process for competitive applications using a risk-based approach that relies, in part, on HUD review of OMB-designated repositories of government-wide eligibility qualification or financial integrity information (such as the Federal Awardee Performance and Integrity Information System (FAPIS), “Do Not Pay” lists, etc.)¹. This assessment can include, for example:

- financial stability,
- the quality of management systems and ability to meet the management standards in 2 CFR part 200,
- history of performance,
- reports and findings from audits, and
- the applicant’s ability to effectively implement statutory, regulatory, or other requirements, and debarment and suspension guidelines.

HUD must also comply with the debarment and suspension guidelines in 2 CFR part 180.

¹ FAPIS is a database that has been established to track contractor misconduct and performance. The database contains Federal contractor criminal, civil, and administrative proceedings in connection with federal awards; suspensions and debarments; administrative agreements issued in lieu of suspension or debarment; non-responsibility determinations; contracts terminated for fault; defective pricing determinations; and past performance evaluations (see: <https://www.fapis.gov/fapis/index.jsp>). The “Do Not Pay” Business Center was developed for programs administered and/or funded by the Federal government to help prevent, reduce and stop improper payments while protecting citizens' privacy, and partner with agencies to identify potential fraud, waste, and abuse while protecting citizens' privacy (see: <http://donotpay.treas.gov/index.htm>).

Section 200.207 authorizes Federal agencies and pass-through entities to impose additional specific award conditions on applicants or recipients who have a history of failure to comply with terms and conditions, or failure to meet performance goals, or are not otherwise responsible. The conditions include requiring reimbursements rather than advance payments, requiring additional, more detailed reports, additional monitoring, etc. If such additional requirements are imposed, HUD or the pass-through entity must notify the applicant or non-Federal entity as to the nature of, and reasons for, the requirements, actions needed, and timeframe, if applicable. Special conditions must be promptly removed once the causal conditions have been corrected.

7. SUBPART D – POST-FEDERAL AWARD REQUIREMENTS: HIGHLIGHTS

Subpart D describes the requirements standards for managing and administering HUD awards. It includes standards for financial and program management, property and procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access, remedies for noncompliance, the provisions of the Federal Funding and Accountability Transparency Act (FFATA)² and closeout. NOTE: There will be exceptions to the items listed below and they will be published by regulation. See also Section 5 of this Notice.

Performance Measurement: Section 200.301 requires, as appropriate and in accordance with OMB information collection requirements, recipients to relate financial data to performance accomplishments of the Federal award and provide cost information to demonstrate cost effective practices (e.g., through unit cost data). This is in line with the shift in 2 CFR part 200 from compliance to performance. It also requires Federal agencies to use only OMB-approved forms for performance reports. Non-Federal entities must comply with FFATA. A recipient's performance should be measured in a way that will help HUD and other non-Federal entities improve program outcomes, share lessons learned, and spread the adoption of promising practices.

Internal Controls and Protected Personally Identifiable Information: Section 200.303 sets forth requirements for internal controls. This section reflects requirements that were previously in the A-133 audit requirements. It also addresses the non-Federal entity's responsibilities to take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the Federal awarding agency or the pass-through entity, consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Payment: Section 200.305 describes cash management requirements applicable to states and other non-Federal entities to minimize the time elapsed between agencies' advance

² FFATA, signed September 26, 2006, requires information on Federal awards (Federal financial assistance and expenditures) to be made available to the public via a single, searchable website, which is www.USASpending.gov. The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. Amendments to FFATA have expanded its scope. See also <https://www.frs.gov/>.

payments of funds to the non-Federal entity and the entity's disbursement of funds for direct program or project costs.

Interest Earned on Federal Advances: Section 200.305(b)(8) requires non-Federal entities to maintain advance Federal payments in interest-bearing accounts (with some exceptions). Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses. Under §200.303(b)(9), interest earned in excess of \$500 must be remitted annually to the Department of Health and Human Services' Payment Management System (either electronically through the system, or by check to the Department of Health and Human Services to the Treasury-approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231).

Program Income: Section 200.307 generally encourages recipients to earn income to offset program costs. This section has several provisions that include, but are not limited to, the following:

- Proceeds from the sale of property or equipment are not program income; such proceeds will be handled in accordance with the requirements of §200.311, *Real property*, and §200.313, *Equipment*, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- If the Federal awarding agency does not specify in its regulations or the terms and conditions of its award, or give prior approval for how program income is to be used, then, ordinarily, program income must be deducted from total allowable costs to determine the net costs. Program income must be used for current costs unless HUD authorizes otherwise. Program income that the recipient did not anticipate at time of the Federal award must be used to reduce the award rather than to increase the funds committed to the project.

Revision of Budget and Program Plans: Section 200.308 requires, among other things, recipients to obtain Federal agency approvals for budget and program or project scope revisions.

Property Standards: Sections 200.310-200.316 set forth standards for real property, equipment, supplies, and intangible property. The regulations cover title, insurance, property trust relationships, and disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from HUD that provides for: 1) retention of title after compensation to HUD, 2) sale of the property and compensation to HUD, or 3) transfer of title to HUD or a third party approved or designated by HUD.

Procurement: §§200.317- 200.326 cover procurement standards. The standards are generally consistent with the requirements in 24 CFR part 85 for all non-Federal entities. For governmental recipients, the regulations have not substantially changed.

- The regulations require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest, and governing the performance of their employees engaged in the selection, award and administration of contracts. "Organizational conflicts of interest" means that,

because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization (§200.318(c)(2)).

- The non-Federal entity's procurement procedures must be designed to avoid acquisition of unnecessary or duplicative items and the non-Federal entity is encouraged to enter into intergovernmental or inter-entity agreements to procure or use common goods and services (§200.318(d) and (e)).
- Non-Federal entities, in conducting procurements, must conduct them in a manner providing full and open competition and are prohibited from using state or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR part 135) (§200.319).
- Methods of procurement now include a micro-purchase option, which is the acquisition of supplies or services that do not exceed \$3,000 (or \$2,000 for acquisitions for construction subject to the Davis-Bacon Act) (§200.320(a)).
- "Supplies" includes computing devices if the acquisition cost was less than the lesser of the capitalization level established by a non-Federal entity for financial statement purposes or \$5,000, regardless of the length of their useful life (§200.94).
- The Simplified Acquisition Threshold for small purchase procedures, which are those relatively simple and informal procurement methods for securing services, supplies or other property, is now \$150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation (§200.88 and §200.320(b)).
- The non-Federal entity's contracts must contain certain provisions which are included in Appendix II of 2 CFR part 200 (§200.326).
- Non-Federal entities have one full fiscal year after the effective date to comply with the revised procurements standards (see *Implementation Dates* in the December 19, 2014, Federal Register at <https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

Bonding Requirements: Section 200.325 permits the Federal agency to accept the recipient's bonding policy and requirements if the Federal agency has determined that the Federal interest is adequately protected, and if not, the minimum requirements (abbreviated) are as follows:

- A bid guarantee equal to five percent of the bid price.
- A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment

as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Performance and Financial Monitoring and Reporting: Sections 200.327-328 address the frequency, standards, and OMB approval requirements for agency collection of recipient performance and financial data and monitoring of recipient performance.

Real Property Reporting: Section 200.329 requires annual reporting on real property for which there is a Federal interest, but permits an option for various and less stringent multi-year reporting periods where the Federal interest extends beyond 15 years.

Subrecipient or Contractor: Section 200.330 provides guidance for determining whether an entity is a subrecipient or contractor, in order to apply the appropriate oversight of the Federal funds.

Requirements for Pass-Through Entities: Section 200.331 requires pass-through entities to comply with certain requirements in order to meet their own responsibility to the Federal awarding agency. Many of these requirements were in OMB Circular A-133. Pass-through entities are required to identify certain, clearly identified subaward information. This includes an indirect cost rate if the subrecipient has indirect costs. Pass-through entities must consider risks associated with subawards. The evaluation of a subrecipient's risk of noncompliance with Federal statutes and regulations is used to determine the appropriate level of subrecipient monitoring. Specific subrecipient monitoring tools are outlined, giving pass-through entities flexibility to adjust their oversight framework based on that consideration of risk.

Record Retention: Section 200.333 continues the existing record retention period of generally three years, with some exceptions and caveats. Federal agencies and non-Federal entities should, whenever practicable, collect, transmit and store Federal award-related information in machine-readable formats instead of closed formats or on paper.

Remedies for Noncompliance: Sections 200.338-200.342 cover remedies for noncompliance, including termination and notices of termination. Section 200.338 permits conditions to be imposed on the award if the non-Federal entity fails to comply with the requirements of the award. Previously, only pre-award conditions were authorized.

Closeout: Section 200.343 describes specific closeout actions that are required for all Federal awards at the end of the period of performance and should be completed no later than one year after receipt and acceptance of all required final reports. The non-Federal entity must submit all required final reports within 90 days after the end of the period of performance. The period of performance, defined at §200.77, means from the start to the end dates in the Federal award.

Post-closeout Adjustments and Continuing Responsibilities: Section 200.344 limits the period during which any post-closeout adjustments can be made. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify

the non-Federal entity within the record retention period. However, amounts due can be collected after this period.

8. SUBPART E – COST PRINCIPLES: HIGHLIGHTS

Subpart E covers the principles that must be used in determining the allowable costs of work performed by a non-Federal entity under a Federal award and in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate prices. It covers exemptions (§200.401(c)) and basic considerations (§§200.402-200.411). The application of the cost principles should require no significant changes in the internal accounting policies and practices of non-Federal entities. The Basic Considerations for costs are largely unchanged. Changes have been made to some select items of cost.

Profit: Section 200.400(g) states that non-Federal entities may not earn or keep any profit resulting from the Federal financial assistance (unless explicitly authorized by the terms and conditions of the Federal award). This is not new.

Prior Approval: In recognition of the difficulty in determining the reasonableness and allocability of certain items of cost, non-Federal entities may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of incurring unusual or special costs. Prior approval is specifically required for allowability under certain circumstances as described in §200.407.

Direct Costs: Direct costs are covered in §200.413. This section is largely unchanged from previous OMB cost principles.

- Direct costs are identified specifically with the Federal award or can be easily and accurately assigned to activities of the award. Typical direct costs include employee compensation, fringe benefits, materials and other items attributable to the award.
- If directly related to a specific award, certain costs that would otherwise be included with an indirect cost rate can be direct charged, such as extraordinary utility consumption, cost of materials supplied from stock or services from specialized facilities or other institutional service operations.

Indirect Costs: Indirect costs are addressed in §200.414. This section is largely unchanged from previous OMB cost principles.

- Negotiated indirect cost rates must be accepted by all Federal awarding agencies unless certain conditions are met. A Federal awarding agency must implement and make publicly available (e.g., via the Federal Register) the policies, procedures, and general decision-making criteria the programs would follow in seeking and justifying deviations from negotiated rates.
- Pass-through entities must accept a federally recognized indirect cost rate between a subrecipient and the Federal government or, if no such rate exists, either negotiate a rate between the entity and the subrecipient or establish a de minimis indirect cost rate (see also §200.331(a)(4)).

- If a non-Federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) as defined in §200.68, which may be used indefinitely (§200.414(f)). (Exceptions for some non-Federal entities are listed in Appendix VII, paragraph (d)(1)(B).)
- Non-Federal entities that are able to allocate and charge 100% of their costs directly may continue to do so. Charging the Federal award for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover thereby would be immaterial and not worth the effort needed to obtain it.
- Non-Federal entities that have a federally negotiated indirect cost rate may apply for a one-time extension of the current rate for a period up to four years, subject to the review and approval of the cognizant agency for indirect costs. At the end of the four-year extension period, the non-Federal entity must negotiate a rate. This rate may be extended.

Certifications: Section 200.415 addresses certifications, which are required to be submitted with annual and final fiscal reports, vouchers for payment, and proposals to establish a cost allocation plan or indirect cost rate. Specific language is included acknowledging the statutory consequences of false certifications.

Special Considerations: Special considerations for states, local governments, and Indian tribes for identification and assignment of central service costs are included in §§200.416 and 200.417. Special considerations for institutions of higher education are covered in §§200.418 and 200.419.

General Provisions for Selected Items of Cost: General provisions for 56 selected items of cost are covered in §§200.420-200.475; this section uses language from three Circulars, A-21 (2 CFR part 220), A-87 (2 CFR part 225), and A-122 (2 CFR part 230). These principles apply whether a particular item is properly treated as either a direct or indirect cost. These selected items include two additions (§200.428, *Collections of Improper Payments*, and §200.440, *Exchange Rates*), some changed provisions (including the deletion of *Communications*, which OMB thought could be addressed through “Basic Considerations,” §§200.402 – 200.411), and some clarifications.

- Audit Services: Any costs when audits required by the Single Audit Act have not been conducted or costs of auditing grantees or recipients that are not required to have a single audit are not allowable (§200.425). This provision was in OMB Circular A-133.
- Collections of Improper Payments: Costs of recipients to recover improper payments may be charged as direct or indirect, and may be used in accordance with cash management standards described in §200.305 (§200.428).
- Compensation – Personal Services: §200.430 requires non-Federal entities to maintain a strong system of internal controls over their records to justify costs of salaries and wages and provides additional flexibility in the processes they use to meet these standards.
- Conferences: Allowable conference costs paid by non-Federal entities must be necessary and reasonable for successful performance under the award and may include facilities rentals, speakers’ fees, costs of meals and refreshments, local

transportation, and other incidental items, unless further restricted by the terms and conditions of the Federal award (§200.432).

- Contingency Provisions: Contingency definitions, allowances, and disallowances are set forth in §200.433.
- Fines, Penalties, Damages, and Other Settlements: Costs resulting from a recipient's violations of, alleged violations of, or failure to follow Federal, State, local, tribal, or foreign laws or regulations are unallowable (§200.441).
- Lobbying: The cost to influence activities associated with obtaining grants, contracts, cooperative agreements or loans is unallowable (§200.450).
- Organization Costs: Costs for items such as incorporation fees, attorneys, or accountants in connection with establishment or reorganization of an entity are unallowable except with prior approval of the Federal awarding agency (§200.455).
- Pre-award Costs: Are only allowable to the extent that they would have been approved if incurred after the date of the Federal award and only with prior approval of the Federal awarding agency (§200.458).

9. SUBPART F – AUDIT REQUIREMENTS: HIGHLIGHTS

Subpart F sets forth the standards for audits of non-Federal entities expending Federal awards.

Increased Audit Threshold: One of the significant changes is the raised threshold which requires a non-Federal entity to have a single or program-specific audit conducted for any year in which the non-Federal entity expends \$750,000 or more (up from \$500,000) (§200.501(a)).

Making Audits Publicly Available: Auditees must make copies of their audit available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse (FAC) and all Federal agencies, pass-through entities, and others interested in an audit report must obtain it from the FAC. Indian tribes may opt out of authorizing the FAC to publish the reporting package on the Web, but are then responsible for providing the reporting package directly to any affected pass-through entities and also making it available for public inspection (§200.512(b)(2)).

Federal Agency Responsibilities: §200.513 requires Federal agencies, including HUD, to:

- Appoint a Single Audit Accountable Official (SAAO) and a Single Audit Liaison;
- Participate in a government-wide project to determine the quality of single audits;
- Use cooperative audit resolution mechanisms to improve Federal program outcomes through better audit resolution follow-up and corrective action; and
- Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings and the effectiveness of Single Audits in improving non-Federal agency accountability and their use in making award decisions.

Audits and GAGAS: Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) (§200.514(a)).

Higher Threshold for Known Questioned Costs: The threshold for known questioned costs has been increased to \$25,000 from \$10,000. As before, in evaluating the effect of questioned costs on its opinion on compliance, the auditor must consider the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The higher threshold amount is also used in several related aspects of auditing (§200.516(a)).

Major Program Determinations and Low-Risk Auditees: Changes have been made to the auditor's risk-based approach for determining which Federal programs are major programs (§200.518). Auditees that meet the criteria for a low-risk auditee are eligible for reduced audit coverage (§200.520).

Transition Guidance: To ensure the uniform application of the requirements of Subpart F for all Federal programs, the requirements will be effective for audits of fiscal years starting December 26, 2014, or later. These revised audit requirements are not applicable to fiscal years beginning before that date.

10. 2 CFR PART 200 APPENDICES: A BRIEF DESCRIPTION

2 CFR part 200 contains 11 Appendices, briefly described here:

- Appendix I: This Appendix provides the full text of the notice of funding opportunities as required by §200.203, along with application and submission information, application review information, Federal award administration information, and Federal awarding agency contact(s) requirements.
- Appendix II: This Appendix contains required contract provisions for all contracts made by a non-Federal entity under a Federal award. The description of each provision should be sufficient for a non-Federal entity to determine if the provision needs to be included in a specific contract.
- Appendix III: This Appendix provides criteria for identifying and computing indirect cost rates at institutions of higher education (IHEs).
- Appendix IV: This Appendix provides guidance for identifying and assigning indirect costs and making rate determinations for nonprofit organizations.
- Appendix V: This Appendix provides guidance on a process for state and local governments to identify and assign central service costs to benefitted activities on a reasonable and consistent basis.
- Appendix VI: This Appendix extends requirements by the Department of Health and Human Services (HHS) on developing, documenting, submitting, negotiating, and approving public assistance cost allocation plans to all Federal agencies whose

programs are administered by a state public assistance agency. (Most such programs are funded by HHS; few, if any, are funded by HUD.)

- Appendix VII: This Appendix provides guidance to state and local governments and Indian tribes on developing, submitting and documenting indirect cost rate proposals.
- Appendix VIII: This Appendix lists those nonprofit organizations that are exempted from the requirements of Subpart E, *Cost Principles*.
- Appendix IX: This Appendix makes clear that existing principles at 45 CFR Part 74 Appendix E, *Principles for Determining Cost Applicable to Research and Development under Grants and Contracts with Hospitals*, remains in effect until OMB implements revised guidance for hospitals.
- Appendix X: This Appendix states that the Data Collection Form SF-SAC for Single Audits is available on the Federal Audit Clearinghouse (FAC) website. The FAC website address <http://harvester.census.gov/sac/>, given in §200.36, *Federal Audit Clearinghouse (FAC)*, for accessing the FAC, was valid as of the issuance of this Notice.
- Appendix XI: This Appendix states that the audit compliance supplement for Single Audits cited by §200.21, *Compliance supplement*, is available on OMB's website, and provides an address (<http://www.whitehouse.gov/omb/circulars>) that was valid for accessing the supplement as of the issuance of this Notice.

11. GENERAL TRANSITION RULES

HUD's regulations adopting the requirements of 2 CFR part 200 for HUD programs were published in the Federal Register on December 19, 2014

(<https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform>).

Questions have been raised about the applicability of these requirements. The following applies:

- Federal awards made before December 26, 2014, will continue to be governed by the terms and conditions of the Federal award. The grant agreements for some HUD programs (e.g., Community Development Block Grant, HOME Investment Partnerships, Emergency Solutions Grants, Indian Housing Block Grants, Native Hawaiian Block Grants, Indian Community Development Block Grants) incorporate the regulations "as now in effect and as may be amended from time to time" and, therefore, 2 CFR part 200 will be applicable to these grants.
- New Federal awards made on or after December 26, 2014, are governed by 2 CFR part 200, including formula awards.

- For Federal agencies that consider incremental funding action on previously made awards to be opportunities to change award terms and conditions, 2 CFR part 200 applies to the first funding increment issued on or after December 26, 2014, and any subsequent funding increment. Awards made before then that have been modified on or after that date in ways that do not increase the funding amount (such as a no-cost extension, or more frequent reporting) will continue to be governed by the terms and conditions of the Federal award. As a result, 2 CFR part 200 will not apply to such awards unless there is another requirement that makes that part apply to them.
- For Federal agency incremental funding actions that are subject to 2 CFR part 200, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion. For example, a non-Federal entity may track the old funds and continue to apply the Federal award flexibilities to the funding awarded under the old rules (e.g., local ability to issue fixed price subawards, non-Federal entity determination of the need to incur administrative and clerical salaries based on major project classification).
- For Federal awards made with modified award terms and conditions at the time of incremental funding actions, Federal awarding agencies may apply 2 CFR part 200 to the entire Federal award that is uncommitted or unobligated as of the Federal award date of the first increment received on or after December 26, 2014.
- Existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated. HUD and indirect cost negotiating agencies will use 2 CFR part 200, both in generating proposals and negotiating new rates (when the rate is due to be re-negotiated) for non-Federal entities' fiscal years that start on or after December 26, 2014.
- The effective date of 2 CFR part 200 for subawards is the same as the effective date of 2 CFR part 200 for the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.
- Subpart F, Audit requirements, applies to audits of non-Federal entity fiscal years beginning on or after December 26, 2014. The revised audit requirements are not applicable to fiscal years beginning before that date.

OMB provided additional guidance on the effective dates in its Frequently Asked Questions updated November 2014:

Q.110-13 (Previously Q II-2) Effective Dates and Federal Awards Made Previously

Will this apply only to awards made after the effective date, or does it apply to awards made earlier?

- Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to Federal awards or funding increments after that date, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions

of the Federal award. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

•We would anticipate that for many of the changes, non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example to payroll or procurement systems). Practically speaking, these changes would impact their existing/older awards. Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so.

12. CONFORMING PROGRAM REGULATIONS AND GUIDANCE

HUD will publish conforming rule changes for its programs and will provide notification of these changes when they are made. These changes will update the program regulations to revise the sections that refer to the OMB Circulars and HUD regulations in 24 CFR parts 84 and 85, as well as to reflect the provisions of 2 CFR part 200 that are not applicable because they are inconsistent with a program statute or because OMB has given an exception to specific requirements.

HUD recognizes that there may be uncertainty pending publication of the conforming program regulations. The provisions of 2 CFR part 200 apply, consistent with the exceptions given to the HUD program for requirements which are detailed in the 2013 edition of the Code of Federal Regulations in 2 CFR parts 215, 220, 225, and 230, 24 CFR parts 84 and 85, and OMB Circulars. HUD will notify recipients through program regulations, grants or cooperative agreements, or other guidance, which subparts are applicable to specific programs.³

13. ADDITIONAL RESOURCE MATERIALS

Grant recipients are strongly encouraged to review this information to obtain a better understanding of the uniform guidance and its implications for their Federal awards. The Council on Financial Assistance Reform (COFAR) has provided additional tools to assist in the transition including:

- a. Frequently Asked Questions for New Uniform Guidance at 2 CFR 200:
[The FAQ For 2 CFR 200 \(https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf\)](https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf).
- b. Uniform Guidance Crosswalk from Existing Guidance to Final Guidance:
<http://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf>.

³ Separate guidance will be issued as necessary to identify and clarify whether all provisions of part 200 apply to the Section 8 project-based and tenant-based programs, particularly with respect to financial management concerns and alternative requirements. This guidance will be based, in part, on the treatment of this assistance in CMS Contract Management Services et al v. Massachusetts Housing Finance Agency v. United States for which the Solicitor General has sought certiorari from the Supreme Court (745 F.3d 1379 (Fed. Cir. 2014)).

- c. COFAR Webcast Trainings & Slides:
 - i. Uniform Guidance 1-27-14 Training Webcast
COFAR Training Intro 1-27-14
<http://youtu.be/SOET4b-7my8>
 - ii. COFAR Training Administrative Requirements 1-27-14
<http://youtu.be/BP3I3PjI1JQ>
Link to the Training Webcast Presentation Slides
[COFAR Training Administrative Requirements 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx)
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx>
 - iii. COFAR Training Cost Principles 1-27-14
<http://youtu.be/q0rWXdy2ICM>
Link to the Training Webcast Presentation Slides
[COFAR Training Cost Principles 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx)
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx>
 - iv. COFAR Training Audit Requirements 1-27-14
<http://youtu.be/g-U8HGbbC-Y>
Link to the Training Webcast Presentation Slides
[COFAR Training Audit Requirements 1-27-14 Slides](https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx)
<https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx>
 - v. Uniform Guidance Implementation: A Conversation Presented by the Council on Financial Assistance Reform; October 2, 2014
<https://www.youtube.com/channel/UCL7wVVxWI4pRHL6cHgj0vVQ/videos>

14. UPCOMING TRAINING AND ADDITIONAL GUIDANCE

Additional upcoming training and/or guidance by COFAR will be publicized on its website; recipients of Federal financial assistance, and their subrecipients and contractors, are encouraged to periodically check <https://cfo.gov/cofar/>. HUD is also planning program-specific guidance and additional training, including an on-line financial management curriculum that integrates and highlights the requirements of 2 CFR part 200, and will provide notification of such when developed. In addition, we have established an internal Frequently Asked Questions (FAQ) Outlook mailbox in the Grants Management and Oversight Division of the Office of Strategic Planning and Management to which HUD employees may address implementation questions. Questions can be sent to the email address: **2 CFR 200 Administrative Requirements@hud.gov**.

15. CONTACTS FOR QUESTIONS

Questions from grant recipients, subrecipients and contractors should be directed to their HUD Headquarters or Field Office contacts, Government Technical Representatives (GTRs) or Government Technical Monitors (GTMs).

For HUD Headquarters and field office staff, operational questions should be directed to the Office of Strategic Planning and Management's Grants Management and Oversight Division at (202) 402-3964 (this is not a toll-free number), or Loyd.LaMois@hud.gov, and policy questions should be directed to the Office of the Chief Financial Officer's Financial Policy & Procedures Division at (202) 402-2277 or Scott.Moore@hud.gov. Persons with hearing or speech impairments may access the number above through TTY by calling the toll-free Federal Relay Services at (800) 877-8339.

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<p>Closeout 200.343 Closeout.</p> <p>Post-Closeout Adjustments and Continuing Responsibilities 200.344 Post-closeout adjustments and continuing responsibilities.</p> <p>Collection of Amounts Due 200.345 Collection of amounts due.</p> <p>Subpart E—Cost Principles</p> <p>General Provisions 200.400 Policy guide. 200.401 Application.</p> <p>Basic Considerations 200.402 Composition of costs. 200.403 Factors affecting allowability of costs. 200.404 Reasonable costs. 200.405 Allocable costs. 200.406 Applicable credits. 200.407 Prior written approval (prior approval). 200.408 Limitation on allowance of costs. 200.409 Special considerations. 200.410 Collection of unallowable costs. 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.</p> <p>Direct and Indirect (F&A) Costs 200.412 Classification of costs. 200.413 Direct costs. 200.414 Indirect (F&A) costs. 200.415 Required certifications.</p> <p>Special Considerations for States, Local Governments and Indian Tribes 200.416 Cost allocation plans and indirect cost proposals. 200.417 Interagency service.</p> <p>Special Considerations for Institutions of Higher Education 200.418 Costs incurred by states and local governments. 200.419 Cost accounting standards and disclosure statement.</p> <p>General Provisions for Selected Items of Cost 200.420 Considerations for selected items of cost. 200.421 Advertising and public relations. 200.422 Advisory councils. 200.423 Alcoholic beverages. 200.424 Alumni/ae activities.</p>	<p>200.425 Audit services. 200.426 Bad debts. 200.427 Bonding costs. 200.428 Collections of improper payments. 200.429 Commencement and convocation costs. 200.430 Compensation—personal services. 200.431 Compensation—fringe benefits. 200.432 Conferences. 200.433 Contingency provisions. 200.434 Contributions and donations. 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements. 200.436 Depreciation. 200.437 Employee health and welfare costs. 200.438 Entertainment costs. 200.439 Equipment and other capital expenditures. 200.440 Exchange rates. 200.441 Fines, penalties, damages and other settlements. 200.442 Fund raising and investment management costs. 200.443 Gains and losses on disposition of depreciable assets. 200.444 General costs of government. 200.445 Goods or services for personal use. 200.446 Idle facilities and idle capacity. 200.447 Insurance and indemnification. 200.448 Intellectual property. 200.449 Interest. 200.450 Lobbying. 200.451 Losses on other awards or contracts. 200.452 Maintenance and repair costs. 200.453 Materials and supplies costs, including costs of computing devices. 200.454 Memberships, subscriptions, and professional activity costs. 200.455 Organization costs. 200.456 Participant support costs. 200.457 Plant and security costs. 200.458 Pre-award costs. 200.459 Professional service costs. 200.460 Proposal costs. 200.461 Publication and printing costs. 200.462 Rearrangement and reconversion costs. 200.463 Recruiting costs. 200.464 Relocation costs of employees. 200.465 Rental costs of real property and equipment. 200.466 Scholarships and student aid costs. 200.467 Selling and marketing costs. 200.468 Specialized service facilities. 200.469 Student activity costs. 200.470 Taxes (including Value Added Tax). 200.471 Termination costs. 200.472 Training and education costs. 200.473 Transportation costs.</p>
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<p>200.474 Travel costs. 200.475 Trustees.</p> <p>Subpart F—Audit Requirements</p> <p>General 200.500 Purpose.</p> <p>Audits 200.501 Audit requirements. 200.502 Basis for determining Federal awards expended. 200.503 Relation to other audit requirements. 200.504 Frequency of audits. 200.505 Sanctions. 200.506 Audit costs. 200.507 Program-specific audits.</p> <p>Auditees 200.508 Auditee responsibilities. 200.509 Auditor selection. 200.510 Financial statements. 200.511 Audit findings follow-up. 200.512 Report submission.</p> <p>Federal Agencies 200.513 Responsibilities.</p> <p>Auditors 200.514 Scope of audit. 200.515 Audit reporting. 200.516 Audit findings. 200.517 Audit documentation. 200.518 Major program determination. 200.519 Criteria for Federal program risk. 200.520 Criteria for a low-risk auditee.</p> <p>Management Decisions 200.521 Management decision.</p> <p>Appendix I to Part 200—Full Text of Notice of Funding Opportunity Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for nonprofit Organizations</p>	<p>Appendix V to Part 200—State/Local Government Central Service Cost Allocation Plans Appendix VI to Part 200—Public Assistance Cost Allocation Plans Appendix VII to Part 220—States and Local Government and Indian Tribe Indirect Cost Proposals Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200 Appendix IX to Part 200—Hospital Cost Principles Appendix X to Part 200—Data Collection Form (Form SF-SAC) Appendix XI to Part 200—Compliance Supplement</p>
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Environmental Review Process

(To Be Conducted by Responsible Entity)



****Note that 24 CFR §58.6 – Flood Insurance, Coastal Barrier Resources Act, and Runway Clear Zone Requirements – apply to all projects, whether exempt, categorically excluded, or requiring the EA or EIS level of review.**

**Procurement checklist
Information for Procurement Files**

Micropurchase	<u>Complete</u>	<u>Date</u>	<u>Initials</u>
Procurement method used	_____	_____	_____
Description of item/service to purchase	_____	_____	_____
Vendor selected	_____	_____	_____
Cost/price reasonable	_____	_____	_____
Purchase order or contract	_____	_____	_____
Indian Preference	_____	_____	_____
Debarred list	_____	_____	_____

Instructions: Please provide comment, if needed, regarding any variance from the standard procurement procedures, such as why a different method of procurement was used or why multiple bids could not be obtained.

**Procurement checklist
Information for Procurement Files**

Small purchase	<u>Complete</u>	<u>Date</u>	<u>Initials</u>
Procurement method used	_____	_____	_____
Description of item/service to purchase	_____	_____	_____
Number of quotes received	_____	_____	_____
Vendor selected	_____	_____	_____
Vendor rejected and why	_____	_____	_____
Cost/price reasonable	_____	_____	_____
Purchase order or contract	_____	_____	_____
Indian Preference	_____	_____	_____
Debarred list	_____	_____	_____

Instructions: Please provide comment, if needed, regarding any variance from the standard procurement procedures, such as why a different method of procurement was used or why multiple bids could not be obtained.

**Procurement checklist
Information for Procurement Files**

Sealed Bid	<u>Complete</u>	<u>Date</u>	<u>Initials</u>
Procurement method used	_____	_____	_____
Description of item/service to purchase	_____	_____	_____
Invitation of bids public	_____	_____	_____
Potential bidders requesting bid package	_____	_____	_____
Pre bid conference sign in sheet	_____	_____	_____
Bid opening sheet	_____	_____	_____
Bids received as complete and verified	_____	_____	_____
Amendments if any	_____	_____	_____
Vendor selected	_____	_____	_____
Vendor rejected and why	_____	_____	_____
Cost/price reasonable	_____	_____	_____
Purchase order or contract	_____	_____	_____
Indian Preference	_____	_____	_____
Debarred list	_____	_____	_____

Instructions: Please provide comment, if needed, regarding any variance from the standard procurement procedures, such as why a different method of procurement was used or why multiple bids could not be obtained.

**Procurement checklist
Information for Procurement Files**

Competitive Proposal	<u>Complete</u>	<u>Date</u>	<u>Initials</u>
Procurement method used	_____	_____	_____
Description of item/service to purchase	_____	_____	_____
Request for Proposal public	_____	_____	_____
Request for Proposal includes evaluation factors	_____	_____	_____
Proposals received as complete and evaluation	_____	_____	_____
Amendments if any	_____	_____	_____
Vendor selected	_____	_____	_____
Vendor rejected and why	_____	_____	_____
Cost/price reasonable	_____	_____	_____
Purchase order or contract	_____	_____	_____
Indian Preference	_____	_____	_____
Debarred list	_____	_____	_____

Instructions: Please provide comment, if needed, regarding any variance from the standard procurement procedures, such as why a different method of procurement was used or why multiple bids could not be obtained.

**Procurement checklist
Information for Procurement Files**

Sole Source	<u>Complete</u>	<u>Date</u>	<u>Initials</u>
Procurement method used	_____	_____	_____
Description of item/service to purchase	_____	_____	_____
Reason for Sole Source	_____	_____	_____
Vendor selected	_____	_____	_____
Cost/price reasonable	_____	_____	_____
Purchase order or contract	_____	_____	_____
Indian Preference	_____	_____	_____
Debarred list	_____	_____	_____
HUD approval as required	_____	_____	_____

Instructions: Please provide comment, if needed, regarding any variance from the standard procurement procedures, such as why a different method of procurement was used or why multiple bids could not be obtained.

**OUTLINE OF
REQUIRED ITEMS TO BE COVERED
DURING TELEPHONE SOLICITATION FOR SERVICES
OR OTHER REQUEST FOR PROPOSALS (RFPs)
THAT ARE NOT JUST PRICE BASED
(Small Purchase less than \$250,000)
Fill out one copy of this form for each firm contacted.**

IDENTIFY SERVICES OR GOODS BEING SOUGHT: _____
NAME OF TDHE PERSON MAKING CALL: _____
NAME OF FIRM CONTACTED: _____
FIRM'S TELEPHONE NUMBER AND FAX: _____
DATE OF CALL: _____

Each firm contacted should be provided the same information and asked the same questions.

1. The TDHE is soliciting request for proposals for _____ under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because we are following this process, we will not be able to accept proposals that are more than \$250,000.
2. We are making this solicitation by telephone. We will be asking you a series of questions and based upon all the responses to these questions, the TDHE will make its decision. We will not be accepting written proposals, however if you would like to provide background information regarding education, experience and references, this information must be received by the TDHE by fax or delivery to the TDHE within two days.

Is the firm interested in responding to this request for proposals?

_____ (If yes, then continue with next question)

_____ (If no, then proceed no further)

Are you authorized to speak on behalf of the firm? _____
If not, I will need to speak to someone who is authorized. [FILL IN: Name of authorized person responding to this request for proposals: _____]

[Note: If someone new gets on the phone, start back at paragraph 1 of this form.]

3. The scope of the work is as follows: [give description of the work, including project number, with sufficient specificity] _____

4. I need to read to you the list of rating criteria which we will use to evaluate all proposals.
_____ up to _____ pts.

	up to	pts.
	up to	pts.
	up to	pts.
	up to	pts.
<u>Indian Preference for Indian Owned Firms</u>		15 pts.
<u>Evaluation of Indian Preference in Training, Employment and Contracting</u>	up to	10 pts.
	Total	100 pts.

5. *Indian preference will be given in making this award. Any firm seeking such preference must provide evidence that it is not less than 51% Indian owned and controlled. Those that satisfy this requirement will be given 15 extra points (15% of all the points available.) Do you seek this preference? _____ . If so, we will send or fax to you today a prequalification statement that you must fill out and return within two days of your receipt. We will then review it and determine if you are eligible for preference. If one has been submitted to us in the last 6 months, then fax or mail to us today a written statement identifying changes in your organization and we will determine if you are eligible for preference.*

IF A PREFERENCE PREQUALIFICATION STATEMENT IS NEEDED, RECORD DATE AND FAX NUMBER WHERE FAXED: _____ OR, DATE AND ADDRESS WHERE MAILED: _____

[INDIAN PREFERENCE: granted, add 15 points to total not granted]

6. *All proposals must contain a commitment to provide preference in 1) subcontracting, 2) training, and 3) employment. What methods will you use to provide such preferences?*

1) subcontracting: _____

2) employment: _____

3) training: _____

[EMPLOYMENT/TRAINING/CONTRACTING PREFERENCE: _____ points awarded (out of 10), then add to total]

Only read if no method is given: If you believe it is infeasible to provide Indian preference in subcontracting, you must certify to us now the reasons why. This explanation must also be provided in writing to the TDHE within 3 days, but an award may be made prior to receipt of this certification.

7. *In order for us to make a decision, we also need to ask you the following questions:*

a) _____?

Notes on response given: _____

b) _____?

Notes on response given: _____

c) _____?

Notes on response given: _____

d) _____?

Notes on response given: _____

e) _____?

Notes on response given: _____

f) _____?

Notes on response given: _____

8. *All proposals must commit to remaining open for thirty (30) days. Please confirm that you agree.*

9. *If awarded, you agree that you shall execute a TDHE provided contract, within the time later designated by the TDHE, and to be bound by all terms and conditions set forth therein, including but not limited to assurance of performance, completion dates, prevailing wage rates, warranties, other federal requirements, and other terms and provisions as set forth therein.*

10. *The TDHE reserves the right to reject any and all proposals.*

11. *And lastly, the TDHE is required to advise you that it has no list of local subcontractors.*

12. *We will let you know our decision on the award.*

13. *Thank you.*

**REQUEST FOR LUMP SUM FIXED-PRICE QUOTATIONS
BY FAX OR MAIL**

**SOLICITATION FOR LUMP SUM FIXED-PRICE QUOTATIONS BASED ON PRICE ONLY
(Small Purchases less than \$250,000)**

Date of this Solicitation: _____

IDENTIFY SERVICES BEING SOUGHT: _____

FIRM CONTACTED: _____

ADDRESS: _____

FAX NO.: _____

DATE REQUEST FOR QUOTATION FAXED BY TDHE: _____

1. The TDHE is soliciting requests for lump sum fixed-price quotations for _____

_____ under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because the TDHE is following this process, we will not be able to accept quotations that are more than \$250,000.
2. Quotations are invited from non-Indian as well as Indian-owned economic enterprises or organizations. Indian preference will be given in this award as set forth herein.
3. We are making this solicitation by fax or mail. All quotations must be submitted to the TDHE in writing and can be faxed or mailed but must be received at the TDHE's office by **5:00 p.m. on** _____, **20**____. The TDHE's fax number is _____ and the mailing address is _____. For all quotations that are faxed to the TDHE, you are required to make a follow-up call to the TDHE at _____ to confirm that the faxed quotation has been received by the TDHE.
4. The scope of the work is as set forth on Appendix A Scope of Work (consisting of _____ pages) attached to this Solicitation. Anyone submitting a quotation for this work is required to visit the job site(s) prior to bidding to ascertain the nature and location of work and to satisfy itself as to the general and local conditions which can affect the work and to independently verify for itself all measurements pertaining to the project. Site visits must be scheduled by appointment only and must be scheduled at least two (2) working days prior to visit by contacting _____ at the Housing TDHE office at _____.
5. Indian Preference. Any firm seeking Indian preference in this award must provide evidence that it is not less than 51% Indian owned and controlled. Do you seek this preference? _____. If so, please contact us immediately so that we can fax you a prequalification statement that you must fill out and return within two days of your receipt. We will then review it and determine if you are eligible for preference. If a prequalification form has been submitted to us in the last six months, then fax or mail to us today a written statement identifying changes in your organization and we will determine if you are eligible for preference.

6. Award. The contract will only be awarded to a responsive and responsible individual or firm. The contract will be awarded to a qualified Indian enterprise submitting the lowest responsive quotation if such quotation is within budgeting limits established for this solicitation and is within ten percent (10%) of the lowest responsive quotation from any qualified individual or firm..

If no responsive quotation by a qualified Indian enterprise is within the above-stated limits, then award will be made to the individual or firm with the lowest responsive quotation.

7. All quotations must contain a commitment to provide Indian preference in 1) subcontracting, 2) training, and 3) employment, and must contain a statement describing the methods that will be used to provide such preferences. This statement is part of Appendix C Lump Sum Fixed-Price Quotation, which is the prescribed form for submission of quotations. This statement will be evaluated as part of the submitted quotation, and any quotation failing to contain such preference statement or failing to adequately address such preference requirements shall be deemed non-responsive.

If you believe it is infeasible to provide Indian preference in subcontracting, training or employment, you must include in your quotation a certification as to the reasons why.

8. Appendix B is the form of Contract which contains terms and provisions of the contract agreement of the TDHE and the individual or firm selected for this work. By submitting a quotation, you hereby agree that if selected, you shall deliver to the TDHE, within the time later designated by the TDHE, a properly executed Appendix B and to be bound by all terms and conditions set forth therein, including but not limited to assurance of performance, completion dates, prevailing wage rates, warranties, other federal requirements, and other terms and provisions as set forth therein. Appendix B should be consulted for all such terms and conditions, and by this reference is made a part of this Solicitation.

9. All quotations must commit to remaining open for at least 45 days.

10. The selected contractor will be responsible for paying all Tribal license fees and taxes, as well as permits that may be required, if any.

11. All quotations must be submitted using Appendix C "Lump Sum Fixed-Price Quotation", attached hereto. No other form is acceptable. Attachments to Appendix C are permitted if needed to provide complete information. This Solicitation requires a quotation for all work described in the Scope of Work Appendix A.

12. The successful individual or firm on this solicitation must comply with the Tribe's TERO Ordinance, including any licensing requirements, except Tribal minimum wage rates shall not apply. A copy of the Tribe's TERO Ordinance may be obtained from the Indian Tribal Office, Tele: _____.

13. *This solicitation does not commit the TDHE to award a contract or to pay any costs incurred in the preparation of quotations or the procurement of supplies. The TDHE reserves the right to reject any and all quotations or to re-solicit when it is deemed by the TDHE to be in its best interests to do so.*

14. *If there are any questions, please contact _____
at _____. The TDHE will let you know the decision on the awards.*

DATE PREPARED BY TDHE: _____

PREPARED BY: _____

TITLE: _____

**REQUEST FOR PROPOSALS
BY FAX OR MAIL
TDHE
SOLICITATION FOR SERVICES OR OTHER REQUESTS
FOR PROPOSALS THAT ARE NOT JUST PRICE BASED
(Small Purchases of \$250,000 or less)**

IDENTIFY SERVICES BEING SOUGHT: _____
FIRM CONTACTED: _____
ADDRESS: _____
FAX NO.: _____
DATE REQUEST FOR PROPOSAL FAXED: _____

1. The TDHE is soliciting requests for proposals for _____ under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because we are following this process, we will not be able to accept proposals that are more than \$250,000.

2. We are making this solicitation by fax or mail. All proposals must be submitted to the TDHE in writing and can be faxed or mailed but must be received at the TDHE's office by 5:00 p.m. on _____, 20___. The TDHE's fax number is _____ and the mailing address is:

3. The scope of the work is as follows: _____

4. The following is the list of rating criteria which will be used to evaluate all proposals:

_____	up to _____	pts.
_____	up to _____	pts.
_____	up to _____	pts.
_____	up to _____	pts.
_____	up to _____	pts.
Evaluation of Indian Preference in Training, Employment and Contracting	_____ up to _____	10 pts.
Indian Preference for Indian Owned Firms	_____	15 pts.
		Total 100 pts.

5. Indian preference will be given in making this award. Any firm seeking such preference must provide evidence that it is not less than 51% Indian owned and controlled. Those that satisfy this requirement will be given 15 extra points (15% of all the points available). Do you seek this preference? _____. If so, please contact us immediately so that we can fax you a prequalification statement that you must fill out and return within two days of your receipt. We will then review it and determine if you are eligible for reference. If one has been submitted to us in the last six months, then fax or mail to us today a written statement identifying changes in your organization and will determine if you are eligible for preference.

6. All proposals must contain a commitment to provide preference in 1) subcontracting, 2) training, and 3) employment, and must contain a statement describing the methods that will be used to provide such preferences. This statement will be evaluated as part of the submitted proposal, and up to 10 points of all the points available will be set aside for evaluation of this statement.

If you believe it is infeasible to provide Indian preference in subcontracting, training or employment, you must include in your proposal a certification as to the reasons why.

7. [OPTIONAL FOR PROFESSIONAL SERVICES] All proposals must also include the following information:

a) The name and address of the individual or the firm applying. For firms, the key personnel for this work should be identified.

b) For each partner and associate of the firm, the name, certifications, licenses, relevant education and experience and their respective dates.

c) The names, addresses and telephone numbers of at least 3 references, preferably tribes, tribal housing authorities or other tribal entities.

d) A description of experience which is pertinent to the scope of work described above. In particular, experience working with tribes and tribal housing authorities should be emphasized.

e) The hourly rates charged for each member of the firm.

8. All proposals must commit to remaining open for at least 30 days.

9. This request for proposals does not contemplate any subcontracts, except that an applicant may associate local counsel, as needed. All applicants shall provide with the application the name, address and relevant experience of local counsel, and proof that local counsel qualifies for Indian preference, if applicable.

10. In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, the Authority will make best efforts, consistent with federal and tribal laws and regulations (including Section 7(b) of the Indian Self Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance and to give qualified business concerns the contracting opportunities generated by Section 3 covered assistance.

11. The TDHE reserves the right to reject any and all proposals or to re-solicit when it is deemed by the TDHE to be in its best interests to do so.

12. If there are any questions, please contact _____
at _____.

The TDHE will let you know the decision on the awards. If a written contract form is utilized, it shall be prepared by the Housing TDHE and its attorney. Certain terms and conditions may be required in the contract.

DATE: _____

PREPARE BY: _____

TITLE: _____

Request for Proposals for Ten Manufactured Houses [TDHE Name] [date]

Deadline from Proposal: 5:00 pm, _____, 200__ at [TDHE] office at [address].

[TDHE] the Owner, requests written lump-sum, fixed price proposals to design, build and install ten (10) three-bedroom manufactured houses, each consisting of approximately 1100 square feet. Proposals shall contain two (2) different unit designs, which if selected each of the designs will be used for five units.

Scope of Work

The Owner is seeking proposals from manufactured housing companies for ten (10) moderately sized (approx. 1100 sq. ft.) three bedroom manufactured housing units. One of the ten units shall meet the Owner's requirements for a disabled accessible unit. The work shall cover the manufacture of the unit, delivery and set up at sites selected by the Owner on the _____ Reservation in _____.

Set up shall include the mating, leveling and trimming of each unit.

The Owner will be responsible for the design, construction and cost of the foundations for the units. The foundations shall meet the Owner's specifications. .

The Owner shall be responsible for hooking up water, sewer and electrical lines to each unit and the related costs. However, this work does not have to be completed by the Owner prior to delivery or installation of the units by the Contractor.

The Owner shall be responsible for installation of one (1) access ramp to the disabled accessible unit.

Designs

Proposers shall include in the Proposals two (2) different designs. The Proposal has to include four (4) different colors for the exteriors of the units and four different colors for the interiors of the units and the Owner will have the option of selecting any combination of these colors for each of the ten units.

Designs and Specifications

The design of the houses proposed should generally conform to the attached suggested floor plan (Attachment A) and realignment and modifications is permitted. The Owner understands that designs conforming to the Proposer's standard products are likely to be submitted.

The Owner has prepared the attached Suggested Specifications and Materials Checklist (Attachment B). Proposals submitted must include this form with those Owner's specifications and materials that Proposers intend to use checked off by the individual Proposers.

All Proposals shall contain a single disabled accessible house that minimally contains those Owner's requirements attached (Attachment C).

Proposal

The Owner has publicly advertised the Requests for Proposals from manufactured housing companies and distributors. All Proposals must be submitted along with any other additional materials it wishes the Owner to consider, the information and attachments required by this form. Proposals must be submitted in person or by mail by 5:00 pm, _____, 200__ at either [mailing address] or the [TDHE] offices at [physical address]. Faxed proposals will be considered, however, the risk of mis-transmission, omitted pages and errors in handling at the Owners office shall lie solely with the Contractor when proposals are faxed. Any proposal submitted must state that it will remain open for sixty days. The Owner reserves the right to reject any and all proposals.

Proposals may include whatever material the Contractors wish except they must include the following items at a minimum:

1. Name and address of entity submitting Proposal as well as who is to manufacture the houses and identification of key personnel who will actually manage the work;
2. Names of each partner and owner and all relevant licenses and certifications;
3. A full description of any associations with other firms including dealership agreements;
4. Names, addresses and telephone numbers of at least three references (preferably tribes, tribal housing authorities or other tribal entities);
5. Lists of sales to Indian or public housing agencies within the last two years if any (please additionally provide contact names and telephone numbers);

6. Disclosure of any claims, lawsuits or disputes over work or services previously done in the past five years or currently being performed;
7. A proposed lump sum, fixed price for the ten units and all work to be provided and the statement that the proposal may be accepted any time up to sixty days of its submission.
8. Proof of eligibility for Indian preference (if preference is sought);
9. A statement detailing Indian employment and training opportunities and a plan to provide Indian preference, as well as the number and percentage of both local Indians and other Indians that are anticipated to be employed and trained;
10. Drawings or illustrations of the units and floor plans, including the handicapped unit;
11. A completed Owner's Suggested Specifications and Materials Checklist;
12. Warranties to be provided;
13. Previous Participation Certificate; and
14. Non-collusive Affidavit.

Your summary of the specifications and materials contained in the houses you propose to deliver including the disabled accessible unit.

Indian Preference

The Owner will provide a preference to Indian applicants who are genuinely Indian owned and controlled. Fifteen points of the available rating points are set aside for Indian firms. Firms or individuals seeking such preference must submit evidence of more than 50% Indian ownership and control on or before the submission deadline. A preference application may be obtained from the Owner.

Selection Process

The Owner reserves the right to interview some or all of the parties submitting proposals either in person or by telephone. Selection by the Owner will be based on an evaluation of all responsive and responsible proposals using the following point system as follows:

1.	DESIGN (Maximum 35 points)	
	A. Quality of Layout and Design	0 - 15
	B. Maintenance/Durability (Interior & Exterior)	0 - 5
	C. Energy Efficiency	0 - 5
	D. Level of Conformance to Owners proposed Specifications	0 - 10
2.	QUALIFICATIONS (Maximum 25 points)	
	A. Experience and Reputation of Contractor	0 - 10
	B. Ability to Complete Project on timely basis	0 - 5
	C. Ability to work effectively with Owner	0 - 10
3.	INDIAN PREFERENCE (Maximum 25 points)	
	A. Indian Ownership and Control Contracting Company	15
	B. Plan for hiring and training local and Tribal Member Indians	0 - 10
4.	DEVELOPER'S/CONTRACTOR'S PRICE (Maximum 15points)	
	A. Price Related to Product Provided	0 - 15
		<hr/>
Total Points Available		0 - 100

The Owner may reject any and all proposals.

Contract

The Contract that will be used and its terms will be mutually agreed except that all terms and conditions of this Request for Proposal, and the funding requirement of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture must be complied with. Furthermore, the Contract shall contain warranties mutually agreed upon.

This Request for Proposal is issued this ____ day of _____, 200__.

[TDHE], the Owner

Name

Title

Attachment A -- Owner's Floor Plan

Attachment B -- Owner's Suggested Specifications and Materials Checklist

Attachment C -- Owner's Disabled Accessible Unit Requirements

**OWNER SUGGESTED SPECIFICATIONS
AND MATERIALS**

The [TDHE] is accepting bids for the construction, delivery and set-up of ____ () moderately sized, ____ bedroom (approx. ____ square feet) modular/doublewide manufactured units.

Proposer/Contractor will check-off which of the following components they will include in their proposal:

- Steel I-Beam frame with crown reduction bracing
- 2"x 6" perimeter floor joists
- 2"x 6" cantilever ladder assembly
- 2"x 6" engineered wall studs
- 2"x 6" transverse floor joists, #2 SBF pine set 16" on centers
- 2" x 3" finger jointed mate wall studs
- 2"x 6" headers over all windows and doors
- Engineered roof trusses with at least 3/12 pitch l, 24" o/c
- 5/8" oriented strand board sub floor
- 7/16" oriented strand board roof decking
- 7/16" oriented strand board exterior sheathing
- ¼" underlayment (BBCC luan)
- 25 year asphalt/fiberglass shingles, indicate T-LOC or 3 tab
- ½" High strength gypsum ceiling board, textured
- 5/16" vinyl-covered gypsum interior
- Exterior doors to have wood rails and stiles with extra backing at latches
- R-38 roof insulation
- R-14 floor insulation
- R-19 roll batt wall insulation

- ___ 200 amp electrical service with circuit breakers
- ___ Solid copper Romex electrical wiring
- ___ 40 gallon electric water heater
- ___ Two weather-proof exterior outlets
- ___ A door bell at main entry
- ___ Glass covered light fixtures
- ___ Electric range
- ___ 30" fully vented to exterior range hood
- ___ Double door refrigerator
- ___ Washing machine
- ___ Electric dryer
- ___ Double basin kitchen sink
- ___ PEX system hot and cold water supply
- ___ Whole house main water shut-off valve
- ___ Secondary water shut-offs throughout home
- ___ Porcelain bathroom sinks
- ___ One-piece 60" fiberglass bathtubs
- ___ If offered, showers will be one-piece fiberglass with glass doors
- ___ Two exterior frost-proof faucets
- ___ Schedule 40 ABS drain and waste system
- ___ Electric furnace
- ___ Thermostat with sub base, prep for A/C
- ___ Perimeter heat ducts
- ___ Insulated aluminum heat-duct trunk lines

- ___ Windows to be double-hung, vinyl clad
- ___ Windows to be insulated glass
- ___ Windows to meet access and egress, 5.7 sq. ft. in all sleeping areas
- ___ Both upper and lower window sashes to be easily removable
- ___ Smoke detectors to be interconnected, installed in each bedroom
- ___ Solid oak cabinet doors and drawer fronts
- ___ Kitchen cabinet stiles and rails to be solid oak
- ___ Drawers to four-sided plywood construction
- ___ Drawers will have steel guides and nylon rollers
- ___ Interior doors to be six-panel style
- ___ Interior door latches to be lockable in bedrooms and bathrooms
- ___ White mini-blinds on all windows
- ___ Linoleum to be installed in bathrooms, utility room, kitchen and foyer area
- ___ 100% continuous filament stain-resistant nylon carpet with ½" Redbond carpet padding in all other areas
- ___ 6" metal fascia with 2" x 6" backing
- ___ Roof dormer over entry door
- ___ Screen/storm doors for each exterior door
- ___ Limited lifetime warranty on vinyl siding

Proposer/Contractor: _____

Signature: _____

Date: _____

**REQUEST FOR PROPOSALS FOR _____ MODULAR, FACTORY BUILT HOUSES
[TDHE] [date]**

The _____ (the Owner) request written lump-sum, fixed price proposals to design, build, deliver and install _____ () modular, factory built houses, each consisting of approximately _____ square feet, including _____ () three bedroom houses and _____ () four bedroom houses, which each meet UBC standards. Proposals shall contain three (3) different unit designs, which if selected, each of the designs may be used for several units.

Scope of Work

The Owner is seeking proposals from modular, factory built housing companies or their dealers for _____ () moderately sized (approx. _____ sq. ft.) modular, factory built, UBC compliant housing units. _____ () of the units shall be three bedroom houses and _____ () of the units shall be four bedroom houses. _____ of the units shall meet the Owner's requirement for a disabled-accessible units and _____ units should be constructed for disabled-accessible renovation in order to meet the federal requirements for a disabled-accessible unit. The work shall cover the manufacture of the unit, delivery and set up at sites selected by the Owner on the _____ Reservation in _____.

Set up shall include the mating, leveling, and trimming of each unit. (Foundation shall be constructed by the Owner to meet the various designs selected for each site.)

The Owner will be responsible for the design, construction, and cost of the foundations for the units. The foundations shall meet the Owner's specifications.

The Owner shall be responsible for hooking up water, sewer, and electrical lines to each unit and the related costs. However, this work does not have to be completed by the Owner prior to delivery or installation of the units by the Contractor.

Designs and Specifications

Proposals shall include three (3) different designs for each bedroom size. The Proposal has to include four (4) different colors for the exteriors of the units and four different colors for the interiors of the units and the Owner will have the option of selecting any combination of these colors for each of the _____ units.

The Owner has prepared the attached Suggested Specifications and Materials. Proposals submitted must include this form with those Owner's specifications and materials that Proposers intend to use checked off by the individual Proposers.

All proposals shall contain _____ disabled-accessible units that meet federal requirements.

10. Drawings or illustrations of the units and floor plans, including the disabled accessible unit;
11. A completed Owner's Suggested Specifications and Materials checklist;
12. Proposer's summary of the specifications and materials contained in the houses;
13. Warranties as prescribed by Owner to be provided;
14. Previous Participation Certificate; and
15. Non-collusive Affidavit.

Indian Preference and Section 3

The Owner will provide a preference to Indian applicants who are genuinely Indian owned and controlled. Fifteen points of the available rating points are set aside for Indian firms. Firms or individuals seeking such preference must submit evidence of more than 50% Indian ownership and control on or before the submission deadline. A preference application may be obtained from the Owner.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, the Owner will make best efforts, consistent with federal and tribal laws and regulations (including Section 7(b) of the Indian Self Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance and to give qualified business concerns the contracting opportunities generated by Section 3 covered assistance.

Selection Process

The Owner reserves the right to interview some or all of the parties submitting proposals either in person or by telephone. Selection by the Owner will be based on an evaluation of all responsive and responsible proposals using the following point system as follows:

1.	DESIGN (Maximum 35 points)	
	A. Quality of Layout and Design	0 - 15
	B. Maintenance/Durability (Interior & Exterior)	0 - 5
	C. Energy Efficiency	0 - 5
	D. Level of Conformance to Owners proposed Specifications	0 - 10
2.	QUALIFICATIONS (Maximum 25 points)	
	A. Experience and Reputation of Contractor and Manufacturer	0 - 10
	B. Ability of Contractor and Manufacturer to Complete Project on timely basis	0 - 5
	C. Ability of Contractor and Manufacturer to work effectively with Owner	0 - 10
3.	INDIAN PREFERENCE (Maximum 25 points)	
	A. Indian Ownership and Control of Contractor and Manufacturer	15
	B. Contractor and Manufacturer Plan for hiring and training Indians	0 - 10
4.	CONTRACTOR'S PRICE (Maximum 15points)	
	A. Price Related to Product Provided	0 - 15
		<hr/>
	Total Points Available	0 - 100

Contact

For questions, contact _____ . All questions must be submitted in writing and received by the Owner no later than _____, to allow sufficient time for a response.

This Request for Proposal is issued this _____ day of _____.

[TDHE]

[Name]
[Title]

Attachment - Owner's Suggested Specifications and Materials

**OWNER SUGGESTED SPECIFICATIONS
AND MATERIALS**

The [TDHE] is accepting bids for the construction, delivery and set-up of ____ () moderately sized, _____ bedroom (approx. _____ square feet) modular/doublewide manufactured units.

Proposer/Contractor will check-off which of the following components they will include in their proposal:

- Steel I-Beam frame with crown reduction bracing
- 2"x 6" perimeter floor joists
- 2"x 6" cantilever ladder assembly
- 2"x 6" engineered wall studs
- 2"x 6" transverse floor joists, #2 SBF pine set 16" on centers
- 2" x 3" finger jointed mate wall studs
- 2"x 6" headers over all windows and doors
- Engineered roof trusses with at least 3/12 pitch 1, 24" o/c
- 5/8" oriented strand board sub floor
- 7/16" oriented strand board roof decking
- 7/16" oriented strand board exterior sheathing
- ¼" underlayment (BBCC luan)
- 25 year asphalt/fiberglass shingles, indicate T-LOC or 3 tab
- ½" High strength gypsum ceiling board, textured
- 5/16" vinyl-covered gypsum interior
- Exterior doors to have wood rails and stiles with extra backing at latches
- R-38 roof insulation
- R-14 floor insulation
- R-19 roll batt wall insulation

- ___ 200 amp electrical service with circuit breakers
- ___ Solid copper Romex electrical wiring
- ___ 40 gallon electric water heater
- ___ Two weather-proof exterior outlets
- ___ A door bell at main entry
- ___ Glass covered light fixtures
- ___ Electric range
- ___ 30" fully vented to exterior range hood
- ___ Double door refrigerator
- ___ Washing machine
- ___ Electric dryer
- ___ Double basin kitchen sink
- ___ PEX system hot and cold water supply
- ___ Whole house main water shut-off valve
- ___ Secondary water shut-offs throughout home
- ___ Porcelain bathroom sinks
- ___ One-piece 60" fiberglass bathtubs
- ___ If offered, showers will be one-piece fiberglass with glass doors
- ___ Two exterior frost-proof faucets
- ___ Schedule 40 ABS drain and waste system
- ___ Electric furnace
- ___ Thermostat with sub base, prep for A/C
- ___ Perimeter heat ducts
- ___ Insulated aluminum heat-duct trunk lines

- ___ Windows to be double-hung, vinyl clad
- ___ Windows to be insulated glass
- ___ Windows to meet access and egress, 5.7 sq. ft. in all sleeping areas
- ___ Both upper and lower window sashes to be easily removable
- ___ Smoke detectors to be interconnected, installed in each bedroom
- ___ Solid oak cabinet doors and drawer fronts
- ___ Kitchen cabinet stiles and rails to be solid oak
- ___ Drawers to four-sided plywood construction
- ___ Drawers will have steel guides and nylon rollers
- ___ Interior doors to be six-panel style
- ___ Interior door latches to be lockable in bedrooms and bathrooms
- ___ White mini-blinds on all windows
- ___ Linoleum to be installed in bathrooms, utility room, kitchen and foyer area
- ___ 100% continuous filament stain-resistant nylon carpet with ½" Redbond carpet padding in all other areas
- ___ 6" metal fascia with 2" x 6" backing
- ___ Roof dormer over entry door
- ___ Screen/storm doors for each exterior door
- ___ Limited lifetime warranty on vinyl siding

Proposer/Contractor: _____

Signature: _____

Date: _____

PROCUREMENT POLICY

IHBG and ICDBG Programs

(Note: This is a model policy that may be used by Tribes and Tribally Designated Housing Entities (TDHE's) and is limited to the Indian Housing Block Grant Program (IHBG), the Indian Community Development Block Grant Program (ICDBG), and their implementing rules, regulations and statutes. If a tribe or TDHE administers any other programs other than the IHBG or ICDBG program, this model policy may be amended to include any procurement policy requirements specifically applicable to another program. But, the TDHE/TRIBE should ensure that the policy remains in compliance with the Native American Housing Assistance and Self-Determination Act (NAHASDA) and any other applicable federal, state, local, or tribal laws or regulations.)

Established for the _____ **Name of TDHE/Tribe** _____ by Board/Council action on _____ **Date** _____. The effective date of this Statement is _____ **Date** _____.

This Statement of Procurement Policy complies with the Native American Housing Assistance and Self Determination Act of 1996, as amended, and the implementing regulations at 24 CFR 1000, 24 CFR 1003, and the procurement standards of 2 CFR 200.

I. General Provisions

A. Purpose

The purpose of this Statement of Procurement Policy is to: (1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the TDHE/Tribe; (2) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the TDHE/Tribe; (3) promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and (4) assure that TDHE/Tribe purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and tribal laws.

B. Application

Per 2 CFR 200.318(a), the non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. Therefore, this Statement of Procurement Policy (Statement) applies to all contracts for the procurement of supplies, services, and construction entered into by the TDHE/Tribe after the effective date of this Statement. It shall apply to every expenditure of funds by the TDHE/Tribe

for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the TDHE/Tribe from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Statement must be applied to the work financed by HUD; if it is not possible to separate the funds, the provisions of this Statement shall be applied to the total project.

The term "procurement," as used in this Statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of materials, supplies and equipment.

C. Procurement Authority and Administration

1. Contracting Officer. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director (Tribal Administrator) or other individual he or she has delegated in writing, or such other individual specified by the Board/Council. The Executive Director (Tribal Administrator) shall issue operational procedures to implement this Statement. The Executive Director (Tribal Administrator) shall also establish a system of sanctions for violations of the ethical standards described in in this Statement.
2. Executive Director (Tribal Administrator) Duties. The Executive Director (Tribal Administrator) or his/her designee shall ensure that:
 - a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. The annual plan should be completed by Date of each year;
 - b. Procurements and modifications are in writing, clearly specifying the desired supplies, services, or construction activity, and are supported by sufficient documentation, regarding the history of the procurement, including as a minimum the rationale for the procurement method chosen, the contract type, the rationale for selecting or rejecting offers, and for procurements in excess of the Simplified Acquisition Threshold, a price or cost analysis supporting the basis for the contract price;
 - c. For procurements other than small purchases, public notice is given of each upcoming procurement before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of days for main construction contracts and days for other contracts is provided for preparation and submission of bids or proposals; and notice of contract award is made available to the public;

- d. Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR 200.320 and the Indian preference requirements at 24 CFR 1000.52;
- e. An independent cost estimate is prepared before formal solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
- f. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted;
- g. A contract administration system is maintained to insure that contractors perform in accordance with their contracts, which provides for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

D. Cooperative Purchasing

The TDHE/Tribe may enter into State or tribal inter-governmental agreements to purchase or use common goods and services. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on fostering greater economy and efficiency. If used, the inter-governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. TDHE/Tribe is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

E. Specifications and Scopes of Work

1. **General.** All specifications and scopes of work shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the TDHE/Tribe needs. Specifications and scopes of work shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section V below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
2. **Limitations.** The following specification and scope of work limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection

factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the TDHE/Tribe needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State, tribal, or local licensing laws. Specifications and scopes of work shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the TDHE/Tribe computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

F. Assistance to Small and Minority Businesses

1. **Required Effort.** The TDHE/Tribe must make good faith efforts to ensure those small businesses and minority-owned businesses, women's business enterprises, and individuals or firms located within or owned in substantial part by persons residing in the area of a TDHE/Tribe project are used when possible. Such efforts shall include, but shall not be limited to:
 - a. Including such firms, when qualified, on solicitation mailing lists;
 - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - e. Using the services and assistance of the Small Business Administration;
 - f. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in a. through e. above.

G. Contract Clauses

1. **Required clauses.** In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200.326 and Appendix II to Part 200, such as the following:
 - a. administrative, contractual and legal remedies when contractor violates or breaches contract (Contracts over small purchase threshold)
 - b. termination for default and termination for convenience (Contracts over \$10,000)
 - c. Equal Employment Opportunity

- d. Davis-Bacon Act and Copeland “Anti-Kickback” Act (or Tribally-Determined Wage Rate requirements, if applicable).
 - e. Contract Work Hours and Safety Standards Act
 - f. Rights to Inventions Made Under a Contract or Agreement
 - g. Clean Air Act and Federal Water Pollution Control Act
 - h. Debarment and Suspension
 - i. Byrd Anti-Lobbying Amendment
 - j. Procurement of recovered materials
2. **Forms.** If all required clauses are not included on forms (e.g., Form HUD 5370), then the TDHE/Tribe shall attach any additional clauses to the forms used in contract documents and shall include the contract clauses and solicitation notices for Indian preference described above.

H. Contract Types and Options

1. **Contract Types.** Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the TDHE/Tribe may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD-approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the TDHE/Tribe needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.
2. **Options.** Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the TDHE/Tribe; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the 'Options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the TDHE/Tribe than conducting a new procurement.

II. Indian Preferences and Section 3

A. Indian Preference

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.
5. Solicitation notices shall include the following information:
 - a. The TDHE/Tribe shall incorporate the following clause (referred to as the section 7(b) clause) in each solicitation and included in all contracts and subcontracts, as follows:

- (1) The work to be performed under this contract is subject to Section 7(b) of the Indian Self-Determination Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations or Indian-owned economic enterprises.
 - (2) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.
 - (3) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
 - (4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the TDHE/Tribe or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.
- b. A statement as to whether the TDHE/Tribe maintains lists of Indian owned economic enterprises and Indian organizations by trade specialty that are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
 - c. A statement that requires contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions;
 - d. A statement that requires the TDHE/Tribe to submit a list of core crew employees, if available, and that contractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions.
6. Methods of Providing Indian Preference
- a. **For purchases below the Micro Purchase Threshold**, per 24CFR 1000.52(d), the tribe/TDHE is not required to use Indian Preferences for purchases under the Micro-Purchase Threshold (\$10,000 or such lesser amount adopted by the tribe/TDHE).
 - b. **For purchases at or above the Micro-Purchase Threshold, but below the Simplified Acquisition Threshold**, the TDHE/Tribe shall seek maximum participation by Indian-owned economic enterprises and shall to the extent available, refer to lists of qualified Indian supply sources. If no quotation are solicited or received from Indian-owned economic enterprises, the TDHE/Tribe must include as part of its documentation a statement explaining the reasons for lack of Indian participation. As an alternative, a TDHE/Tribe solicitation may

be unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit quotes and an award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive quote, if the quote is within ten percent of the lowest non-Indian quote and the price is determined reasonable. If no responsive quotation by a qualified Indian-owned economic enterprises or organizations is within ten percent of the lowest non-Indian quote, award shall be made to the source with the lowest quote.

An optional method of providing Native Preference, the “X-Factor”, is provided as an appendix to this policy.

c. **For sealed bids**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

(1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit bids and award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive bid, if the bid is within the total maximum contract price established for the procurement and within the applicable range specified in Appendix A of the lowest non-Indian bid price; or

(2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or

(3) Use a two stage preference procedure, as follows:

Stage 1. Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

Stage 2. If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.

An optional method of providing Native Preference, the “X-Factor”, is provided as an appendix to this policy.

d. **For competitive proposals**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

- (1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit proposals and establish a percentage or number of points set aside for Indian preference as one of the evaluating factors to consider other than price; or
 - (2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or
 - (3) Use a two stage preference procedure, as follows:
 - Stage 1.** Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the Request for Proposals limited to Indian-owned economic enterprises.
 - Stage 2.** If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.
- e. If the TDHE/Tribe selects a method of providing preference, in b. or c. above, that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable cost, then the TDHE/Tribe shall:
- (1) Re-advertise the contract using any of the methods described above at b. or c. for sealed bids and competitive proposals respectively; or
 - (2) Re-advertise the contract without limiting the solicitation for bids or proposals to Indian-owned economic enterprises or organizations. This method does not provide Indian preference. By selecting this method, the TDHE/Tribe has determined that Indian preference is not feasible even after providing for Indian preference in accordance with 24 CFR 1000.52(a), i.e. no qualified Indian bidder(s) responded, or less than two of the bid(s) received from Indian bidders were approvable; or
 - (3) If one approvable bid or proposal is received, the TDHE/Tribe may request ONAP review and approval of the proposed contract and related justification and procurement documentation in accordance with 2 CFR 200.320(f)(3).
- f. **Monitoring and Remedies.** The TDHE/Tribe shall monitor the implementation of Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action to ensure compliance. If no bids or offers are received from Indian organizations and enterprises, the lack of participation and any reasons known by the TDHE/Tribe for lack of participation shall be documented in the procurement file.

B. Section 3 of the HUD Act of 1968

1. 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. However, per 24 CFR 1000.42(c), recipients shall be considered meeting 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.
2. Definitions:
 - a. **Section 3 Business Concern** – 1) A business concern that is 51% or more owned by Section 3 residents, or 2). Whose permanent, full time employees include persons, at least 30% of whom are current Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in 1 and 2 above.
 - b. **Section 3 Resident** – 1) A public housing resident; or 2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is low-income or very low-income as defined by the Housing Act of 1937.
3. The recipient threshold requirements for Section 3 apply only to those Section 3 covered projects or activities for which the amount of assistance exceeds \$200,000. Covered projects are housing rehabilitation, housing construction, and other public construction projects.
4. All Section 3 covered contracts shall include the following clause (referred to as the section 3 clause):
 - a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual

or other impediment that would prevent them from complying with the part 135 regulations.

- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Examples of efforts to offer training and employment opportunities to Section 3 residents and procurement procedures that provide for preference for Section 3 business concerns may be found under 24 CFR Part 135, Appendix to Part 135.
- g. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- h. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)

agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

III. Procurement Methods

A. Selection of Method

When satisfying its needs by procurement, the TDHE/Tribe shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. The TDHE/Tribe shall provide a rationale in its supporting documentation as to why it selected that particular method.

B. Micro-Purchase Procedures

1. **General.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$200.67 Micro-purchase). Any procurement not exceeding \$10,000 may be conducted in accordance with the micro-purchase procedures authorized in this section. A lower dollar amount may be used if desired or required to conform to tribal law. Contract requirements shall not be artificially divided so as to constitute a micro-purchase under this section, except as may be reasonably necessary in instances where breaking out such procurements can be shown to result in more economical purchases.
2. **Indian preference.** Not required per 24 CFR 100.52(d)
3. **Petty Cash Purchases.** Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under small purchases apply.
4. **Obtaining Quotes.** To the extent practicable, the tribe/TDHE must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable per 2 CFR 200.404.

C. Small Purchase Procedures

1. **General.** Any procurement not exceeding \$250,000 [insert a lower dollar amount if desired or required to conform to tribal law] may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section V of this Statement or in instances where breaking out such procurements can be shown to result in more economical purchases).
2. **Indian preference.** See above Section II(A)(6)(a).
3. **Obtaining Quotes.** The TDHE/Tribe shall solicit price quotations by phone, letter, or other informal procedure that allows participation by a reasonable number of

competitive sources. When soliciting quotations, the TDHE/Tribe shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The TDHE/Tribe shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within ____ days of the oral quotation or by the due date for submitting quotations. The names, addresses, and telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

4. **Competition.** The TDHE/Tribe shall attempt to obtain quotations from a minimum of at least two responsive and responsible sources and document the procurement file with a justification whenever it has been unable to obtain at least two quotations. Solicitation of fewer than two sources is acceptable if the TDHE/Tribe has attempted but has been unable to obtain a sufficient number of quotations. This procurement would then be considered a noncompetitive procurement and the steps listed below in F. Noncompetitive procurement will be followed.
5. **Award based on price.** For small purchases award is generally based on price and fixed specifications taking into account the method of providing Indian and Section 3 preferences.
6. **Blanket Purchase Agreements (BPA).** Once a BPA has been established, task or delivery orders can be placed without further competition. BPAs may be used for a variety of expendable supplies and services and are particularly attractive when the exact items, quantities and delivery requirements are not known in advance. The process to setup a BPA will save your TDHE/Tribe time and money while making your purchasing quicker and easier. Prior to following the small purchasing procedures established above, the TDHE/Tribe will have conducted an historical database on their re-occurring purchases. After obtaining an estimate on the volume or quantities of a list of products, the TDHE/Tribes use that information to solicit quotes or discount rates from a number of vendors. By using the purchasing power of greater quantities, the TDHE/Tribe secures better pricing. The maximum total value of the small purchase BPA is \$250,000.

D. Sealed Bidding

1. **Conditions for Use.** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.
2. Solicitations and Receipt of Bids.

- a. **Issuance and amendments.** An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
- b. **Indian Preference.** A TDHE/Tribe has several options to meet Indian preference requirements under §1000.52(a). The decision of what particular option to use should be made well in advance of the solicitation process and based on the potential availability of Indian-owned firms capable and willing to bid or propose on a particular contract.
 - (1) A TDHE/Tribe may develop and adopt policies and procedures in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Act, OR
 - (2) A TDHE/Tribe may restrict the solicitation to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving at least two bids, OR
 - (3) If a TDHE/Tribe is not sure there are a sufficient number of Indian owned economic enterprises or organizations available or that they will receive at least two bids, a TDHE/Tribe may use a two stage preference procedure as follows:

Stage 1 – Invite or otherwise solicit from Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

Stage 2 – If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.
3. **Bid Opening.** Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and made available for public inspection.
4. **Award.** Award shall be made to the lowest responsive and responsible bidders provided in the invitation for bids by written notice to the successful bidder, as follows:
 - a. **Restricted solicitations.** If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more [or a greater number determined by the TDHE/Tribe and stated in the invitation] qualified Indian owned economic enterprises or organizations submit responsive bids, award

shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method. If fewer than two responsive and responsible bids from qualified Indian-owned economic enterprises or organizations submit bids, the TDHE/Tribe shall evaluate its options to reject all bids, cancel the solicitation and re-advertise: 1. using any of the procedures in III(D)(2)(b) above, or 2. inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations with no preference given, or 3. the TDHE/Tribe may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the TDHE/Tribe determines that, based on a cost analysis, the bid price is fair and reasonable, and the TDHE/Tribe determines that the delay of re-advertising would subject the project to significant higher construction costs.

- b. **Unrestricted solicitations.** If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the range specified in the Attachment to this Statement. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.

5. Mistakes in Bids.

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is clear or the bidder submits convincing evidence that a mistake was made.
- b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the TDHE/Tribe or fair competition shall be permitted.

E. Competitive Proposals

- 1. **Conditions for Use.** Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical

proposals and where the TDHE/Tribe determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.

2. Solicitation.
 - a. **General.** The request for proposals (RFP) may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving offers from two [or a greater number stated in the RFP] such entities. The TDHE/Tribe shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian-organizations if: the TDHE/Tribe prefers not to restrict the RFP; or, an insufficient number of qualified Indian--owned economic enterprises or Indian organizations satisfactorily respond to a restricted RFP; or, a single proposal is received but not accepted. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
 - b. **Evaluation Factors.** The RFP shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. TDHE/Tribe shall reserve ____% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional ____% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
3. **Negotiations.** In those situations where deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
4. **Award.** After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the TDHE/Tribe, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations

restricted to qualified Indian-owned economic enterprises and Indian organizations, if two [or a greater number stated in the RFP] such entities submit acceptable proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than this number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals, the TDHE/Tribe shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. The TDHE/Tribe may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when the TDHE/Tribe determines that the delays caused by resoliciting would cause higher costs, or where the TDHE/Tribe determines that the proposal has a fair and reasonable price.

5. **Architect Engineer Services.** Architect Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, Sealed bidding shall not be used to obtain architect/engineering services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

F. Noncompetitive Proposals

1. **Conditions for use.** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
 - a. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the TDHE/Tribe, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or
 - b. Only one source of supply is available, and the Contracting Officer so certifies in writing; or
 - c. After solicitation of a number of sources, competition is determined inadequate; or
 - d. HUD/ONAP specifically authorizes the use.

2. **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures, including information to detail one of the four reasons above. The justification shall be approved in writing by the Contracting Officer.
3. **Price reasonableness.** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

G. Cancellation of Solicitations

1. An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if: the TDHE/Tribe no longer requires the supplies, services or construction; or, the TDHE/Tribe can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the TDHE/Tribe; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, a condition for canceling a solicitation and resolicit, as specified above, is met; or, for good cause of a similar nature when it is in the best interest of the TDHE/Tribe.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited. A notice of cancellation shall be sent to all offerors solicited.

IV. Cost and Price Analysis

A. General

A cost or price analysis shall be performed for all procurement actions in excess of the Simplified Acquisition Threshold, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement. The TDHE/Tribe shall perform an independent cost or price estimate prior to receiving bids or proposals. A cost or price analysis may also be required for smaller purchases at the discretion of the tribe/TDHE.

B. Price Analysis

A Price Analysis shall be conducted on any competitive proposals (e.g., when contracting for professional, consulting, or architect/engineer services) prior to awarding a contract.

C. Cost Analysis

A Cost Analysis shall be conducted for all sealed bid prior to awarding a contract and for all noncompetitive proposals.

V. Contractor Qualifications and Duties

A. Contractor Responsibility

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the TDHE/Tribe shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other TDHEs/Tribes), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

B. Bonding Requirements

1. **Minimum Requirements.** For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the TDHE/Tribe may implement bonding requirements different from the minimum federal requirements provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
 - a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a

contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2. **Exception** (see 24 CFR 1000.26(a)(11)(ii) for the IHBG Program and 24 CFR 1003.501(a)(13) for the ICDBG Program). There may be circumstances under which the bonding requirements specified above are inconsistent with other responsibilities and obligations of the TDHE/Tribe. In such circumstances, acceptable methods to provide performance and payment assurance may include:
 - a. Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or
 - b. Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

C. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies (e.g., Department of Labor, for violations of Secretary of Labor Regulations) when necessary to protect the TDHE/Tribe in its business dealings. The TDHE/Tribe may suspend or debar a contractor under State, local or tribal laws, as applicable. Refer to System for Award Management (<https://www.sam.gov>) for additional information.

D. Qualified Bidder's Lists

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified Indians, Indian enterprises, or Indian organizations may be maintained by the TDHE/Tribe. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

E. Qualifying Indian-Owned Enterprises & Indian Organizations

A TDHE/Tribe, at its discretion, may require prospective contractors seeking to qualify as Indian organizations or Indian owned economic enterprises to complete, or update if applicable, an Indian Enterprise Qualification Statement.

F. Requiring Statements on Employment & Training of Indians

A TDHE/Tribe, at its discretion, may require prospective contractors and offerors (and their subcontractors, if required by the TDHE/Tribe) to provide a statement describing how they will

provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained.

VI. Appeals and Remedies

A. General

It is the TDHE/Tribe's policy to resolve all procurement and contractual issues timely and informally at the TDHE/Tribe level without litigation.

B. Bid Protests

1. An unsuccessful bidder or offeror may file a written complaint (or protest) with the Contracting Officer within _____ calendar days from the date of TDHE/Tribe's notice to the unsuccessful bidder or offeror or from the date of the action (or omission) upon which the complaint is based. The complaint must be signed and shall detail the basis of the complaint. No untimely or oral complaint will be considered.
2. TDHE/Tribe need not suspend contract performance or terminate the award of the contract unless TDHE/Tribe determines, in its sole discretion, which it appears likely that the contract award will be invalidated and that a delay in receiving the supplies or services will not be prejudicial to TDHE/Tribe's interests.
3. Upon receipt of a complaint, the TDHE/Tribe shall promptly stamp the date and time of receipt on the complaint and acknowledge receipt of the complaint within _____ calendar days.
4. Within _____ calendar days of receipt of a complaint, the Contracting Officer shall meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Contracting Officer shall make a determination on the complaint within _____ calendar days of TDHE/Tribe's receipt of the written complaint. The decision of the Contracting Officer shall constitute the final administrative action on the complaint.
5. A complainant must exhaust all administrative remedies with TDHE/Tribe before pursuing a protest with HUD or other agency providing funds for the procurement.
6. Reviews of complaints by the Federal or other agency will be limited to:
 - a. Violations of Federal or relevant law or regulations and the standards of this Section; and
 - b. Violations of TDHE/Tribe 's complaint procedures for failure to review a complaint or protests.
7. Violations of Tribal law will be under the jurisdiction of the Tribal authorities.

C. Contract Claims and Disputes

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the TDHE/Tribe, such as the Executive Director or a designated Board member, or a Procurement Appeals Board.

D. Protests Involving Indian Preference

1. **General.** Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures in 24 CFR 1000.54.
2. The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part:
 - a. Each complaint shall be in writing, signed, and filed with the TDHE/Tribe.
 - b. A complaint must be filed with the TDHE/Tribe 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 TDHE/Tribe 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 TDHE/Tribe shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The TDHE/Tribe 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 TDHE/Tribe. The decision of the TDHE/Tribe shall constitute final administrative action on the complaint.

VI. Ethics in Public Contracting

A. General

The TDHE/Tribe shall adhere to the following code of conduct governing the performance of their employees, officers or agents engaged in the award and administration of contracts consistent with applicable State, tribal, or local law, and shall comply with the limitations imposed by 2 CFR 200.318(c) and 24 CFR 1000.30.

B. Conflict of Interest

1. No employee, officer or agent of this TDHE/Tribe shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
 - a. An employee, officer or agent involved in making the award;

- b. His/her immediate family member (as determined by the tribe/TDHE in its operating policies);
 - c. His/her partner, or,
 - d. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
2. Per 24 CFR 1000.30(b), no person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.
 3. Employees, agents and grantees who may have acquired confidential and privileged information during their tenure with the TDHE/Tribe are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, in any TDHE/Tribe project or activity that is affected by that confidential or privileged information.
 4. Per 24 CFR 1000.30(c), nothing in this section shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, or agent from fully participating in TDHE/Tribe activities and decision making so long as the person is low income and otherwise an eligible applicant and selected for assistance in accordance with the TDHE/Tribe's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds.
 - a. The TDHE/Tribe must make a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the person.
 - b. The TDHE/Tribe shall provide ONAP with a copy of the disclosure before the assistance is provided to the person

C. **Gratuities, Kickbacks, and Use of Confidential Information**

TDHE/Tribe officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. It is determined that providing meals, entertainment or gifts in an amount in excess of _____ dollars (\$_____) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of _____ dollars (\$_____) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

D. Prohibition against Contingent Fees

Contractors shall not retain a person to solicit or secure a TDHE/Tribe contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

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

Attachment B

Procurement Analysis Form

The Procurement Analysis Form is to be used for all procurement done by the TDHE/Tribe. The purpose of this form is to document the basis for the selection of a particular vendor, and to document the reason(s) for the use of non-competitive procurement. This form needs to be completed as part of the request for payment for every individual purchase. A copy of this form should be attached to every invoice to be paid, and then filed with the payment.

Item: enter a description of the item(s) being purchased, for example “5 exterior doors” or “consultant services”.

Vendor: enter the name of the vendor.

Basis of Selection: check the appropriate box, either (1) Lowest price; or (2) Competitive proposals; or (3) Non-competitive purchase; or (4) State or federal contract purchase.

Lowest Price: enter the number of price quotes in the space provided. If less than two quotes received, this is a Non-competitive purchase, and you must check number 3 and complete the additional information. Check “price quotes attached” if this purchase is based on Lowest Price, but is not included in the annual procurement, or check “price quotes on file” if this purchase is based on Lowest Price and is part of the annual procurement.

Competitive Proposals: Check this box if the purchase is the result of a Request for Proposals. Attach a copy of the Contract with the invoice.

Non-Competitive Purchase: Check this box if there is only one quote submitted for the procurement (sole-source procurement). One of the four boxes must be checked to justify why only one quote was obtained. There can be no other justification for obtaining only one quote. In addition, the reasonableness of the price being paid must be documented by checking one of the following boxes and attaching the related documentation.

Cost breakdown: the vendor must supply a breakdown of his cost and estimated profit related to the purchase.

Commercial pricing and sales information: provide a copy of a catalog page, an advertisement, or some other documentation that demonstrates the price being charged is the same or less than the price being charged to the general public.

Law or regulation: provide a copy of a public document that prescribes a certain price be charged through the action of a public body.

State or federal contract purchasing: Check this box if the purchase is through the State or federal procurement process, such as for the purchase of vehicles. Attach a copy of the appropriate contract or purchase order the vendor has with the State or federal government.

Micro Purchasing: Check the appropriate box if the procurement is less than \$10,000 or the TDHE/Tribe threshold, whichever is less. Procurements cannot be separated to meet this threshold.

Procurement Analysis

Item: _____

Vendor: _____

Basis of Selection:

- 1. **Lowest price** from among _____ price quotes.
 - Price quotes attached.
 - Price quotes on file.
- 2. **Competitive Proposals.** Copy of Contract attached.
- 3. **Non-Competitive Purchase** due to at least one of the following reasons:
 - The item is available only from a single source, based on a good faith review of available sources.
 - An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency.
 - HUD has authorized the use of non-competitive proposals (attach written approval).
 - After solicitation of a number of sources, competition is determined inadequate.

To document the price-reasonableness of a non-competitive purchase, one or more of the following has been attached:

- A cost breakdown showing projected costs and profit.
 - Commercial pricing and sales information sufficient to enable the Housing Department to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public.
 - Documentation showing that law or regulation sets the offered price.
- 4. **State or federal contract purchasing.** Copy of contract attached.
 - 5. **Micro Purchase.**
 - Procurement is less than \$10,000, or lesser amount as determined by the TDHE/Tribe. No solicitation required and cost has been determined to be reasonable.

Housing Director

Date

Attachment C

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. **Contracts for more than the simplified acquisition threshold** currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. **All contracts in excess of \$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal

entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **This section does not apply to the ICDBG Program per 24 CFR 1003.501 and .603. It may also be waived for the IHBG Program if Tribally-Designated Wages are adopted by the tribe, per NAHASDA 104(b)(3).**

- E. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **This section does not apply to the ICDBG Program per 24 CFR 1003.501.**
- F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in

excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- H. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- J. **See §200.322** Procurement of recovered materials.

INSTRUCTIONS FOR MODEL ETHICAL STANDARDS OF CONDUCT POLICY

In 1998 a set of draft model policies for Tribally Designated Housing Entities (TDHEs) was prepared to reflect changes caused by the enactment of NAHASDA. This model ***Ethical Standards of Conduct Policy*** comes out of that project. It has been updated and improved since it's original development.

Parties involved in preparing this model policy cannot represent or warrant that this model policy reflects or satisfies all funding or statutory requirements under federal, tribal, or (where appropriate) state laws. Furthermore, this model policy should be customized to reflect individual needs. Additionally, such policies should always be evaluated on a periodic basis after they are adopted. In finalizing this policy TDHEs should consult with their attorney.

(TDHE) occurs throughout this draft policy and there will be a need to fill in this line with the name of the TDHE adopting this policy.

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individual interests of elected or appointed tribal officials. This Policy simply and in a straightforward manner establishes ethical standards so that these rules can be understood and adhered to.

EXPLANATION OF THIS POLICY FORMAT. The Policy consists of this **Master Requirements** and possibly one or more **Special Program Requirements**. The **Master Requirements** contained in this Master Policy are intended to apply to all (TDHE) programs that are assisted with federal funds under NAHASDA. Additional **Special Program Requirements** may also be established for various individual (TDHE) programs. The **Master Requirements** together with all of the **Special Program Requirements** constitute the Policy.

DEFINITIONS.

- **“Board”** shall mean the governing body of the (TDHE).
- **“Delinquent on Housing Payments”:** For purposes of this Policy, whenever the amount owing on travel advances or housing and loan payments to the (TDHE) by a Board Member, employee, agent or grantee exceeds \$200.00 or one month’s payment (whichever is greater).
- **“Individual Interest”** includes but is not limited to an interest held by wife, husband, son or daughter.
- **“Immediate Family” or “Family”** means a wife, husband, brother, sister, mother, father, grandmother, grandfather, son, daughter, grandson, granddaughter and any relative or any other party that a person is living with or intends to live with in the same house or household, whether a relative or not.

REQUIREMENTS:

1. **WAIVERS.** The Policy is intended to apply in all cases. However, in rare and unique circumstances a special Waiver of a particular requirement can be considered and approved by the (TDHE’s) Board. In the case of this particular policy this may occur only where a waiver is expressly permitted elsewhere in this Policy. Such a Waiver may be made only if (1) Board Members with personal direct or indirect interests abstain from and are not present for both the Board’s deliberations and decision, (2) full and complete public disclosure of a Waiver request occurs before, during, and after a vote, (3) a two-thirds (2/3) favorable vote of all Board Members appointed is obtained

and (4) the waived Policy provision is not required by federal or tribal law. If the Board is unsure as to which provisions are required by federal or tribal law, they may consult with legal counsel.

2. **TRIBAL ETHICAL REQUIREMENTS:** Where the Tribe has established by law or resolution ethical and conflicts of interest requirements for the tribe, tribal council, tribal officials and/or tribal entities, these standards shall apply. Furthermore, where those standards permit waivers of those standards such a waiver may only be entertained using the waiver procedures in the Policy. Regulation and enforcement of these tribal ethical standards shall be done by the (TDHE) so long as no Tribal law dictates otherwise. These Tribal standards are only minimal standards and the following standards are additional. If a conflict arises between the tribal requirements and the following standards the most stringent or highest standard shall apply.

3. **CONFLICTS OF INTEREST:** The duties and responsibilities of Board Members, employees, grantees and agents is to the (TDHE). These interests are not to conflict with personal interests of Board Members or employees nor shall there be the appearance of any conflicts of interest.
 - a. **Current Board Members.** (TDHE) Board Members, including tribal councilmen and officials who serve on the Board or as liaisons, are prohibited from entering into, proposing or having a contract or any financial interest, direct or indirect, in any (TDHE) project or activity. This requirement may be waived in rare and unique cases, but only when the Board Member involuntarily acquires or had acquired prior to the beginning of their tenure on the Board any such interest. The interest must be immediately disclosed and the waiver requirements set forth above shall be followed.

 - b. **Former Board Members.** Former Board Members are likewise prohibited from having such a contract or any financial interest, direct or indirect, in any (TDHE) project or activity, for a period of one year after their tenure on the Board. This later requirement may be waived in rare and unique cases, but only after full and public disclosure and assurance that this interest is not obtained because of non-public information obtained because of the prior Board position.

c. Employees. (TDHE) employees are prohibited from entering into, proposing or having a contract or any other financial interest, direct or indirect, in any (TDHE) project or activity. Except for subsequent employment arrangements, former employees are prohibited from having a contract or any financial interest, direct or indirect, in any (TDHE) project or activity in which the former employee had a substantial interest, responsibility or involvement with during his or her position with the (TDHE) for a period of _____ months after termination of their employment. This later requirement may be waived in rare and unique circumstances but only after full and public disclosure and assurance that this interest is not obtained because of non-public information obtained because of the prior employment.

d. Award and Administration of Contracts. No employee, Board Member, officer or agent of ___(TDHE)___ or any grantee shall participate in a decision, selection, award or administration of a contract if in fact or by appearance the Board Member, employee, officer, agent or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ such a person, has a financial or other interest in the firm to be selected or awarded. Any and all conflicts of interest shall be promptly, openly and publicly disclosed by both individuals and the ___(TDHE)___.

Not participating in a decision, selection, award or administration of a contract shall mean not discussing the matter in or outside meetings, not being physically present for any discussions and neither voting on or being present for a vote. Furthermore, it means not using a ___(TDHE)___ position to influence a decision in which you have a personal interest.

e. Program Participants. Nothing in this Policy shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, agent or grantee from fully participating in ___(TDHE)___ activities and decision making so long as those activities and that decision making is not particular to their unit, application, contract or _____(TDHE) activity.

4. **GIFTS:** ___(TDHE)___ or any grantee's officers, employees or agents will not solicit any gift nor accept gratuities, favors or

anything of monetary value from contractors, potential contractors, or parties to agreements.

It is determined that providing meals, entertainment or gifts in an amount in excess of twenty dollars (\$20.00) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of one hundred dollars (\$100.00) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

All gifts shall be recorded in writing by the officer, employee or agent and routinely disclosed to the (TDHE) .

5. **DONATIONS:** the (TDHE) may solicit and accept donations to its programs, however, all such solicitations and donations shall be open and public and recorded and must be for the sole benefit of the (TDHE) and not its employees, contractors or Board Members. Furthermore, no donations shall be solicited or made while the party donating is seeking or being considered for a contract and no donation shall be considered or accepted if it would influence the award of a contract or give the appearance of such a possible effect.
6. **PARTICIPANT GIFTS OR PAYMENTS:** No employee or Board Member or his or her spouse, who has any authority, control or influence in his official capacity shall accept any gift or money from a tenant, homebuyer, program participant or applicant if it would reasonably appear that such a gift was an attempt to influence that employee or Board Member's actions at the (TDHE) .
7. **ADDITIONAL PROCUREMENT REQUIREMENTS:** Special additional procurement and contracting practices are contained in the (TDHE) Procurement Policy.
8. **CONFIDENTIALITY:** (TDHE) employees, agents and grantees may have acquired confidential and privileged information during their tenure with the (TDHE) . They are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, in any

(TDHE) project or activity that is affected by that confidential or privileged information. This prohibition shall be for life. This prohibition however may be waived by the ___(TDHE)___ Board but only if the Board in its sole discretion so chooses and does so in writing and on the record and if (1) the information remains no longer privileged or confidential, and (2) the information is provided to other competitors by the ___(TDHE)___ or potential competitors of the former employee or Board Member. The (TDHE) may have other confidentiality requirements that are not contained in this particular policy that apply to Board Members and employees, current and former, that are unrelated to confidentiality and conflicts of interest.

9. **POLITICAL ACTIVITIES PROHIBITED:** Board Members, staff, agents and grantees shall not use ___(TDHE)___ resources, moneys, contracts, personnel or facilities for political purposes. The ___(TDHE)___ shall also restrain others from using (TDHE) resources for political purposes.
10. **RESPONSIBILITIES REGARDING CONTRACTUAL OBLIGATIONS:** Board Members, staff, agents or contractors shall not be “delinquent on housing payments” owed to the ___(TDHE)___ . Such delinquencies, unless immediately resolved after they have arisen, shall result in the termination of the employee or agent and removal of the Board Member. Furthermore, such individuals shall not violate any other contractual obligations that they might have with the ___(TDHE)___ .
11. **FIDUCIARY RESPONSIBILITY:** All Board Members have a fiduciary responsibility to take actions and do what is in the best interest of the ___(TDHE)___ .
12. **DRUGS AND ALCOHOL:** All Board Members, employees and agents shall adhere to all ___(TDHE)___ drug and alcohol rules and requirements including those set forth in the Personnel Policy.
13. **DISCLOSURE:** All Board Members, employees, agents and grantees are required to promptly disclose to the (TDHE) their acts or conduct and all acts or conduct by other (TDHE) Board Members, employees, agents, grantees, contractors, tenants, or program recipients that are illegal or are in violation of this Policy and other ___(TDHE)___ policies. Disclosure can be to

supervisors, the Executive Director, the Board of Directors, individual Directors and the (TDHE) attorneys. There shall be no retaliation or other punitive action taken against anyone who makes a disclosure under this section when the activities disclosed turn out to be a true violation.

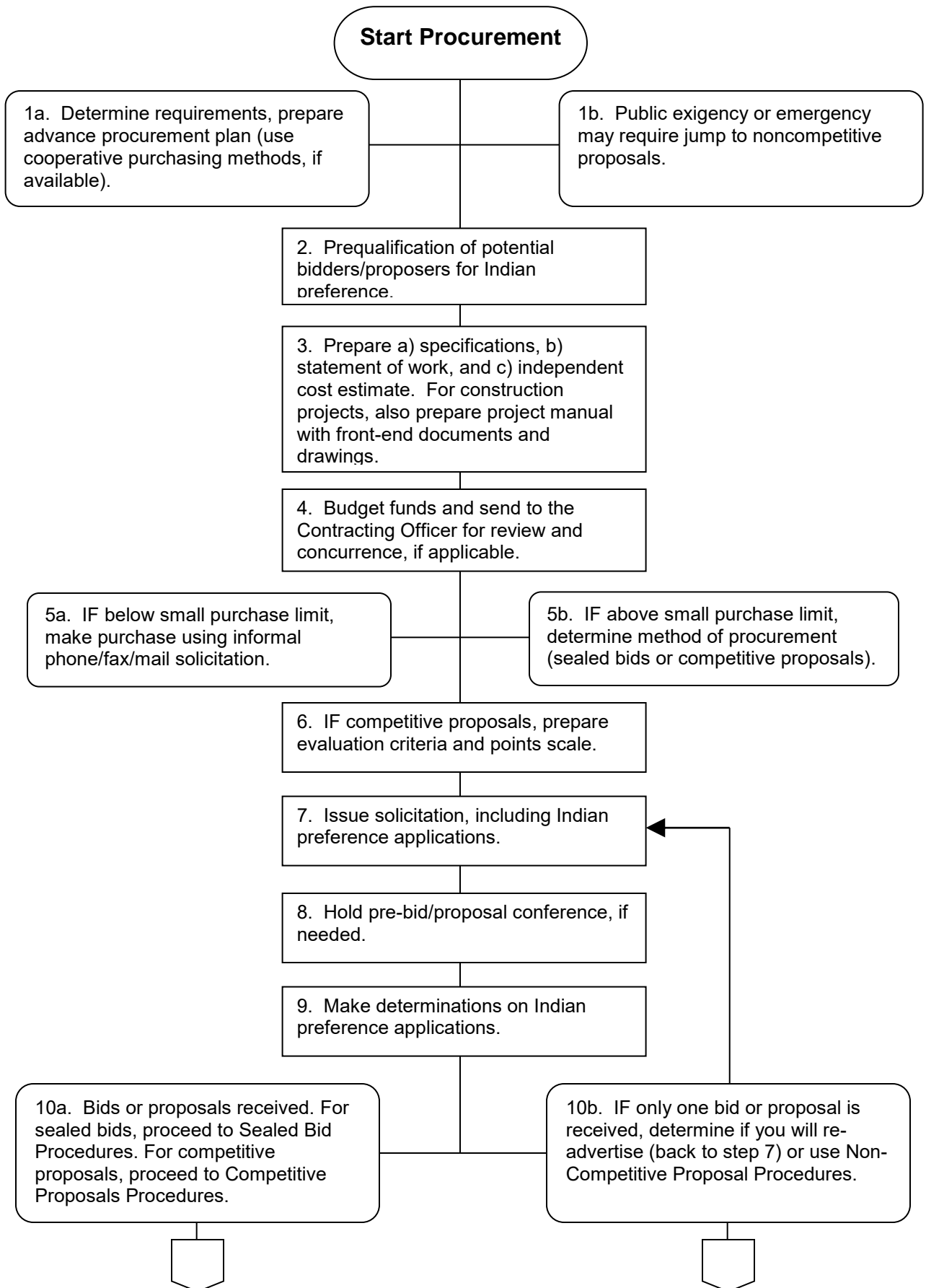
14. **BOARD MEMBER INVOLVEMENT:** (TDHE) Board Members' primary responsibilities are to establish goals, policies, and practices for the (TDHE) and to provide an overview direction and monitor for programs and activities. Board Members are to refrain from running the day to day activities of the (TDHE) and from individually interjecting themselves in individual management decisions except where authorized by (TDHE) policies or Board direction.

15. **TRIBAL INVOLVEMENT:** Elected Tribal officials are important partners in carrying out the activities of the (TDHE) . The (TDHE) should routinely consult with and update the Tribe and such officials. However, as a tribally designated housing entity established as a separate organization tribal officials cannot direct particular services, assistance, loans or housing be given by the (TDHE) to specific individuals and families nor can tribal officials direct that (TDHE) policies be violated.

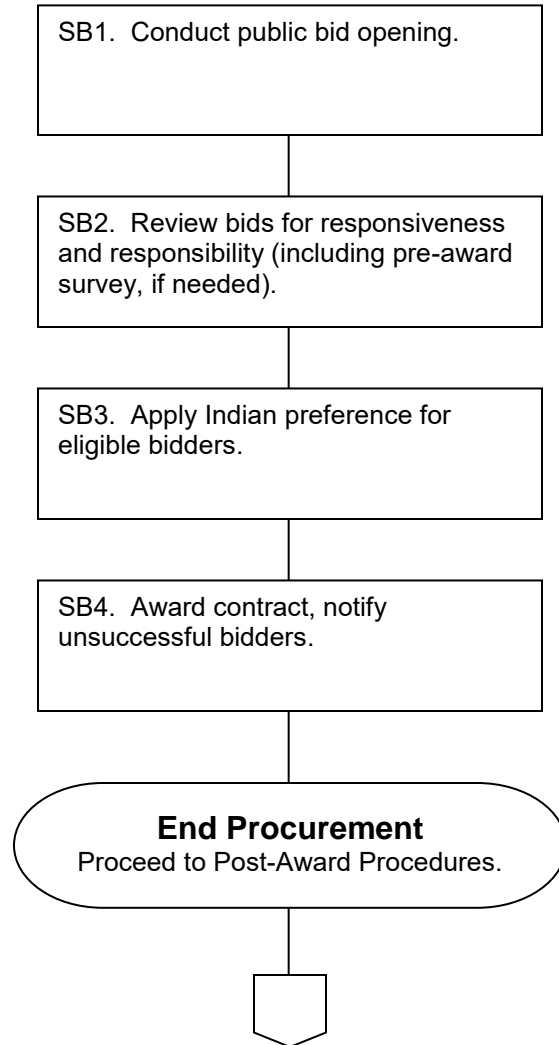
16. **APPLICATION TO GRANTEES AND CONTRACTORS:** All the requirements contained in this Policy shall additionally apply to all (TDHE) grantees and contractors. Where feasible these standards shall be included in grants and contracts and where appropriate repeated in the sub-grants and sub-contracts.

--END--

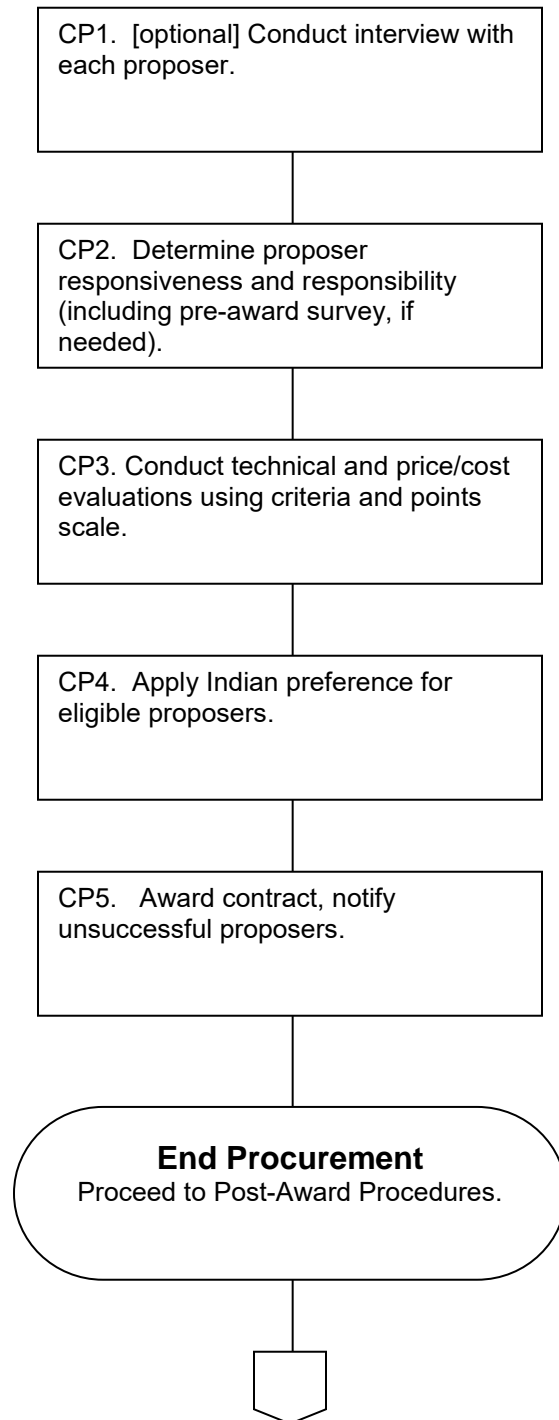
PROCUREMENT AND POST-AWARD PROCEDURES



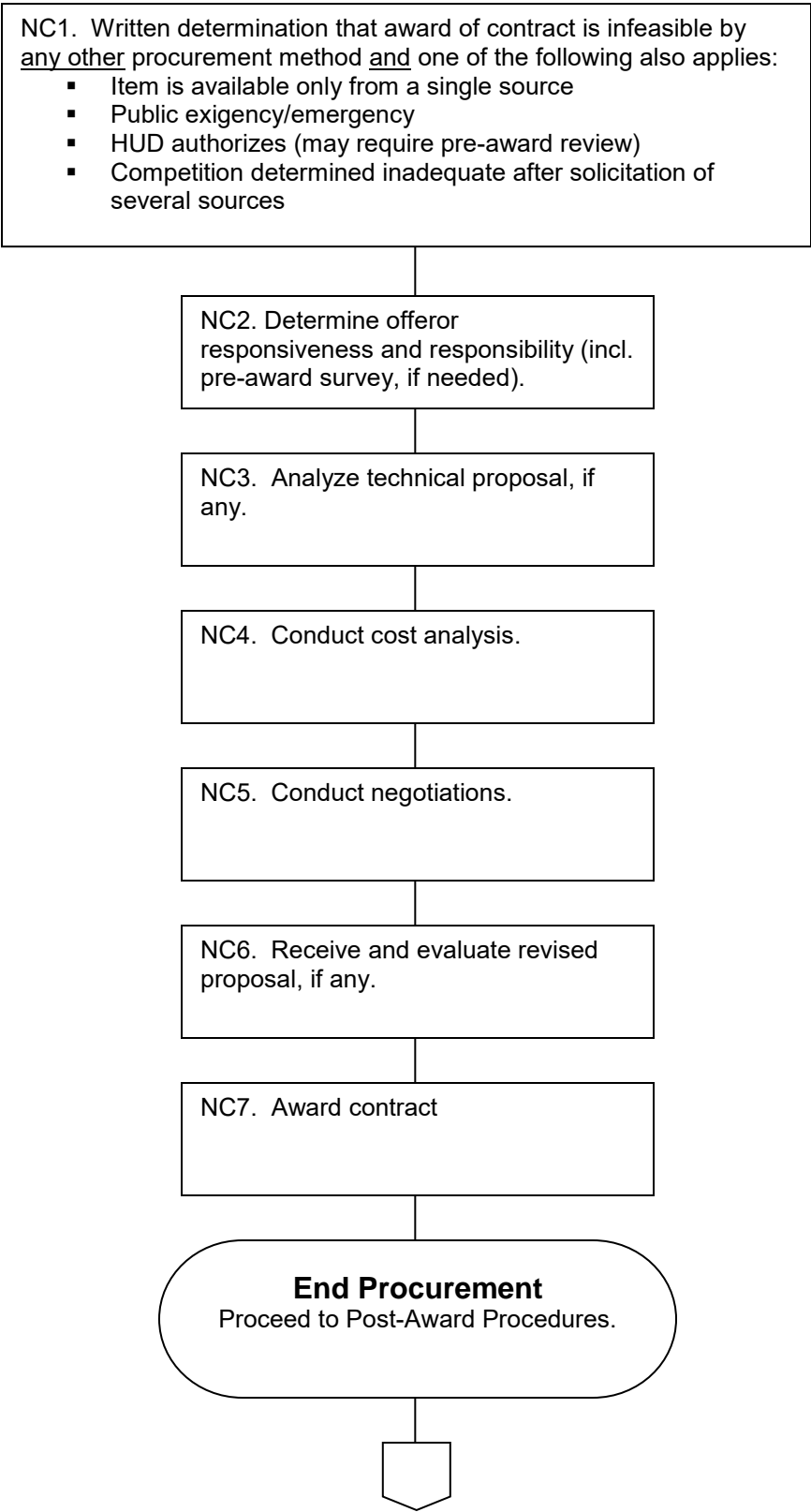
For Sealed Bids, continue with the following steps:



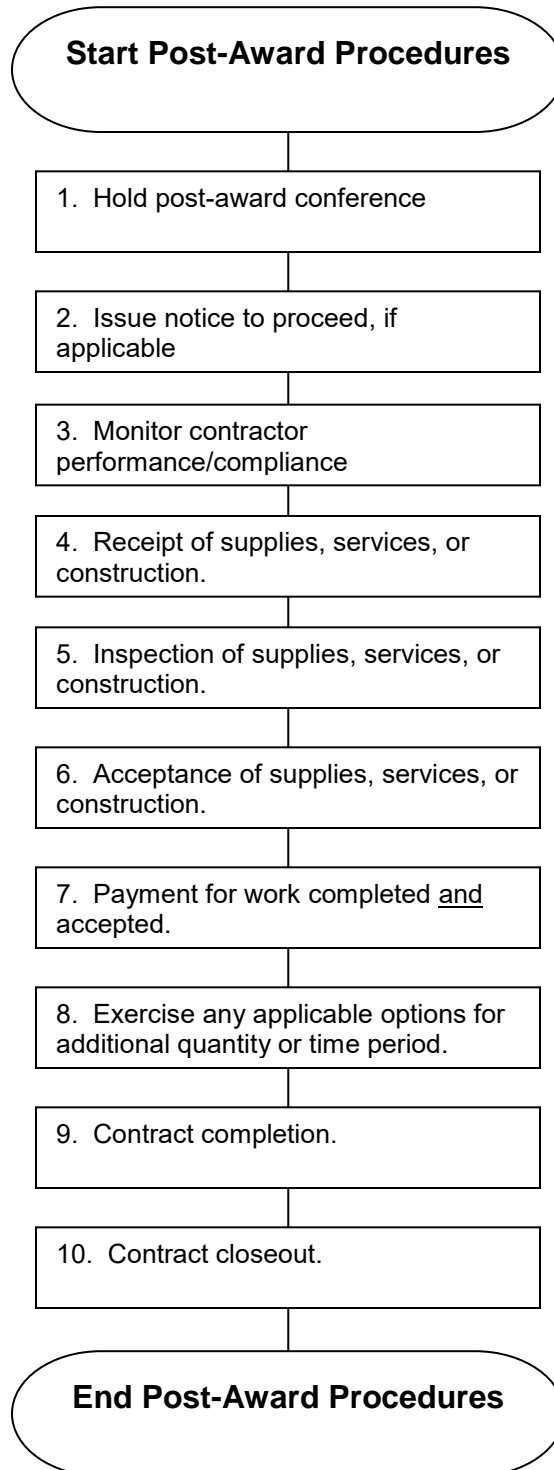
For Competitive Proposals, continue with the following steps:



For Non-Competitive Proposals, continue with the following steps:



POST-AWARD PROCEDURES



AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR

(Small Contract Form, under \$250,000)

The _____ (Owner) and _____
_____ (Contractor), enter into the following Contract.

1.0 SCOPE OF WORK

1.1 The work to be performed under this Contract is known as _____
_____ and consists of providing all labor, materials, tools, permits, and services to complete _____

1.2 The specifics of this work are set forth in Attachment A (Plans and Specifications).

2.0 CONTRACT SUM

2.1 The Contractor shall be paid the fixed price contract sum of \$ _____
for all the work required under this Contract subject to additions and deductions approved in writing by
Owner as change orders.

3.0 PAYMENTS

3.1 The Contractor shall be paid upon completion and acceptance of work on the following payment
schedule:

- Payment in full upon completion and acceptance of all work.
- Payment every two weeks for work completed and accepted to that date.
- Payment for work completed and accepted at following stages: _____

(Check box. If no box is checked, then the first box shall be deemed checked.)

3.2 Retainage of 10% will be withheld from each payment until full and final completion, except that the
sum of \$1,000.00 may continue to be withheld for a period of three months after full and final completion.
The Owner may use this withholding if necessary to correct any work or obligation, including warranty
obligations, that the Owner finds that the Contractor has failed to perform. If no claims exist, these sums
shall be released to the Contractor.

3.3 At any time the Owner may require evidence, including written releases, that all laborers,
subcontractors and suppliers are being properly paid by the Contractor or by any subcontractor.

4.0 DATE OF COMMENCEMENT, COMPLETION AND CLAIMS

4.1 The Contractor agrees to properly complete all the work required under this Contract no later than
_____, _____. No Notice to Proceed will be issued on this Contract. The
Contractor shall commence work within ten days of the date of this Contract and shall continue diligently
and continuously until completion. If the Contractor fails to complete all the work by the above date, the
Owner may recover damages for its actual and consequential losses as well as attorneys' fees and other
legal costs. It is agreed that time is of the essence. The Contractor shall not be entitled to damages for
Owner caused delays but may receive time extensions if justified.

4.2 If the Contractor has a claim under this Contract, he shall put the claim in writing and deliver it to the Owner within 15 days of the claim having arisen, or the Contractor waives his claim. Such a claim shall not excuse work from proceeding as scheduled.

5.0 EXPRESS WARRANTIES

5.1 The Contractor expressly warrants that all material and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted expressly by the Plans and Specifications (Attachment A), that all work will be free from defects, and that all work will conform to the requirements of this Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.0 INSURANCE

6.1 Before commencing work, the Contractor must furnish the Owner with certificates of insurance, in a form acceptable to the Owner, showing that the following minimum insurance is in force and will insure all operations under this Contract:

<u>Workers' Compensation:</u>	In accordance with State Workers' Compensation laws for the State in which the work is located.
<u>Commercial General Liability:</u>	Combined single limit for bodily injury and property damage of not less than \$300,000 per occurrence.
<u>Automobile Liability:</u>	Combined single limit for bodily injury and property damage of not less than \$300,000 per occurrence.
<u>Builder's Risk (fire and extended):</u>	\$ _____ (if not applicable, write N/A)

6.2 Insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the work is located. All certificates of insurance shall show the Owner as additional loss payee and shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least thirty days written notice has been given to the Owner. The Contractor shall not allow insurance coverage to lapse during the construction period and until at least final acceptance of all work. The Contractor shall be liable for all work until it is fully and formally accepted by the Owner and the Contractor assumes all risk until that time.

6.3 The Contractor is responsible for assuring that each subcontractor also carries the above required minimum insurance coverage and continues such coverage in full force and effect for the construction period and until final acceptance of all work.

7.0 LABOR

7.1 If other labor is hired or contracted for, the Contractor and any subcontractor must abide by all Owner, tribe, state and federal employment rules, as applicable, including workers' compensation, Indian preference, Davis-Bacon prevailing wage rates (for contract sums in excess of \$2,000) and Tribal Employment Rights Ordinance. This includes but is not limited to proper and prompt payment. The Contractor shall complete and submit periodically all required payroll/work reports upon request of Owner.

8.0 INSPECTIONS

8.1 The Contractor shall maintain and carry out an adequate inspection system and ensure that work performed under the Contract conforms to Contract requirements. All work is subject to the right of Owner to inspect at all places and times. Owner inspections do not relieve the Contractor of responsibility for providing adequate quality control measures nor relieve the Contractor of responsibility for strict compliance with the terms of this Contract.

9.0 ASSIGNMENT/SUBCONTRACT

9.1 The Contractor may not assign nor subcontract any of the work covered by this Contract without the prior written permission of the Owner, but such permission, if granted, does not constitute the Owner's approval of a particular subcontractor. The Contractor must also provide the Owner written notice of all subcontractors prior to commencement of any work by a subcontractor.

10.0 TERMINATION

10.1 The Owner may terminate the Contractor's right to proceed under this Contract with or without cause. Such termination shall be effective immediately upon delivery of written notice to the Contractor. If the Owner terminates without cause, the Contractor shall be paid a fair and reasonable amount for the work properly completed prior to the notice of termination.

11.0 INDIAN PREFERENCE

11.1 The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that, to the greatest extent feasible:

- (A) Preferences and opportunities for training and employment shall be given to Indians; and
- (B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

11.2 The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

11.3 In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

11.4 The contractor shall include this section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

12.0 REQUIREMENTS IMPOSED BECAUSE OF FEDERAL FUNDING

12.1 The additional requirements imposed by federal funding sources set forth in Attachment B (Other Federal Requirements) must also be complied with by the Contractor and subcontractors and are made part of this Contract.

13.0 MODIFICATIONS OR AMENDMENTS

13.1 This Contract may not be modified nor amended unless in a writing signed by both parties. Any additions or modifications executed at the time of signing of this Contract must be set forth in Attachment C. In the event of any conflict between items in Attachment C and items in the rest of the Contract, Attachment C controls.

This Contract is dated this _____ day of _____, _____.

OWNER:

CONTRACTOR:

(type of entity)

(type of entity)

By: _____

By: _____

Title: _____

Title: _____

(mailing address)

(mailing address)

(city) (state) (zip code)

(city) (state) (zip code)

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

ATTACHMENT A
to Agreement Between Owner and Construction Contractor

PLANS AND SPECIFICATIONS

(Owner's initials) (date)

(Contractor's initials) (date)

All Indian Central Housing Authority

Name of TDHE

**INDIAN PREFERENCE
QUALIFICATION
APPLICATION**

Chocatwo Computer Services herein submits to

Name of Applicant

All Indian Central H.A. the following application seeking to qualify as a

Name of TDHE

51% or more Indian owned and controlled economic enterprise or tribal organization so it can be eligible for Indian preference in

All Indian Central H.A selection and award of contracts, subcontracts,

Name of TDHE

employment and training. This application must be submitted in a timely manner and by a date prescribed by All Indian Central H.A

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.

NAME OF ENTERPRISE OR ORGANIZATION: Chocatwo Computer Services

TELEPHONE NUMBER: 312-541-0831

FAX: None

E-MAIL: billy.tom@bia.gov

ADDRESS: 321 10th Street, Center, CA

MAILING ADDRESS (IF DIFFERENT): _____

LOCATION OF ALL OTHER OFFICES (INCLUDING TEMPORARY AND PART-TIME):

None

I. ORGANIZATION

Are you

- a private for profit or non-profit company, or
 a tribal organization

Check one:

- Corporation Partnership Joint Venture
 Sole Proprietorship Other (describe) _____

Date established: January 5, 2001

Place established: Center, California

Dates organization changed or amended as to ownership and management: N/A

Attach to this application current organization documents (including where appropriate Articles of Incorporation and bylaws).

II. CURRENT OWNERSHIP

Date current ownership was established: January 5, 2001

Current Ownership fill out an additional disclosure for each owner that is an entity.				
NAME	Check if enrolled in a federally recognized tribe	ADDRESS	TELEPHONE	% of OWNERSHIP
<i>Billy Digs</i>	<input checked="" type="checkbox"/> <i>Chocatwo</i>	<i>321 10th St.</i>	<i>312-541-0831</i>	<i>100%</i>

Attach to this application official evidence or record of enrollment of all owners who are enrolled members of federally recognized tribes.

Name any companies or individuals that provide management or administrative services to your company: None

How many employees do you currently have: 2

Name who has made capital contributions to your company: Only myself

Explain who will get your profit on this contract and what percentage:

Me 100%

Who is your bank and the name and telephone number of the bank official you work with at the bank? Center Bank, Arizona

What agency and what insurance company provides your insurance and list telephone number: Tommy Chance Man, State Farm

If you are a construction company what agency and what bonding companies provide your bid, performance and payment bonds and list telephone number: None

Explain who you will contract or subcontract more than 10% of your work to: None

If you are supplying goods, name companies that will provide you 10% or more of the goods to be provided under the contract you are seeking (and identify if they are 51% or more Indian owned and controlled by an enrolled member of a federally recognized tribe): Gilber Computer Service
Sacramento, California

III. PAST AND CURRENT PERFORMANCE

Have you or any owner of your entity had any of the following occur in the past 10 years and, if so, please explain with an attached narrative:

- filed bankruptcy or been petitioned into bankruptcy
- sued regarding a contract or payment of a contract
- sued regarding contract, performance or payment of a contract
- failed to complete a contract on time
- failed to finish a contract
- had a claim made on a bond provided on your behalf

- involved in arbitration regarding a contract or its performance
- had a contract terminated for cause
- denied Indian preference after seeking it
- debarred, suspended or other sanctions
- failed to properly pay a supplier, subcontractor, employee as required by contract
- any legal judgments entered against you
- any other incident involving performance of a contract where claims or disputes arose

Attach appropriate narratives to this application.

Name other companies in businesses similar to what you now do that you and your owners have operated or owned in the last 10 years: _____

List all tribes, tribally designated housing entities, and Indian housing authorities that you have had a contract with in the past 10 years and the years you had the contract(s): None

IV. CONTROL

List all officers and any Board members of your company and identify if they are enrolled in a federally recognized tribe. If so, indicate which tribe as well as what management duties they have: Me alone

List the other top 10 management: Billy Digs, President
Susan Digs, Office Manager

If any of the above individuals have employment, positions or contracts with or interests in (including ownership) other companies, please so identify and explain, including the % or work time they spend in that position: Billy Digs is employed at BIA Realty Office

Name the location of all temporary and permanent offices your have: _____
None

If you are a construction company, list your core crew employees: _____
N/A

What companies or individuals, if any, are mentoring or providing you assistance (including but not limited to loans, capital or staff) to develop as a company and explain on attached sheet: Gilbert Computer Services has provided some training

Disclose here and explain on an attached sheet any agreements or arrangements whereby some or all of your company is managed, administered or run in whole or in part by an individual(s) or company(s) not otherwise explained in this application: None

Disclose here and explain on an attached sheet any public or private agreements, or arrangements, other than those fully disclosed and explained elsewhere in this application, whereby companies or individuals (i.e., service agreements, supplier contracts or subcontracting) received profit from your company: None

By submitting this application you are asserting that you believe and know yourself to be a 51% or more Indian owned and controlled economic enterprise or tribal organization.

Where not enough space has been provided on this form to allow you to fully explain your answers use additional sheets and attach them to this application.

Your application must be truthful and correct. Making false or misleading statements could subject your company and the individual signing this Application to criminal prosecution and civil penalties since the contract may be funded with government funds.

If any changes in these circumstances or others that impact your eligibility for Preference occur prior to the award of a contract or during the performance of such a contract, you agree to immediately notify All Indian Central HA.
Name of TDHE

Furthermore, if based on new information or changes in circumstances, you should, in the opinion of All Indian Central HA lose 51% or more Indian ownership or control
Name of TDHE
of your company, you will lose your eligibility for Indian preference.

If applicant is Sole Proprietor, Sign Below:

Name: Billy Digs (date) March 5, 2006

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name: _____ (date) _____

Name: _____ (date) _____

If applicant is a corporation

Name: _____ (date) _____
President or CEO's Signature

TO BE FILLED IN BY TDHE
Please submit this Application to: <u>All Indian Central Housing Authority</u> <u>32 Dalton Agency Road</u> <u>Center, California</u>

Lake Forest TDHE

Name of TDHE

**INDIAN PREFERENCE
QUALIFICATION
APPLICATION**

Shaston Construction, Inc. herein submits to

Name of Applicant

Lake Forest TDHE the following application seeking to qualify as a

Name of TDHE

51% or more Indian owned and controlled economic enterprise or tribal organization so it can be eligible for Indian preference in Lake Forest TDHE

Name of TDHE

selection and award of contracts, subcontracts, employment and training. This application must be submitted in a timely manner and by a date prescribed by Lake Forest TDHE in order for the Applicant to be considered eligible for

Name of TDHE

Indian preference. Applicant may be required to periodically resubmit this application from time to time.

NAME OF ENTERPRISE OR ORGANIZATION: Shaston Construction, Inc.

TELEPHONE NUMBER: 615-353-8891

FAX: 615-353-8889

E-MAIL: None

ADDRESS: Forest, Minnesota

MAILING ADDRESS (IF DIFFERENT): _____

LOCATION OF ALL OTHER OFFICES (INCLUDING TEMPORARY AND PART-TIME):

None

I. ORGANIZATION

Are you

- a private for profit or non-profit company, or
- a tribal organization

Check one:

- Corporation Partnership Joint Venture
- Sole Proprietorship Other (describe) _____

Date established: May 31, 2005

Place established: Chicago, Illinois

Dates organization changed or amended as to ownership and management: None

Attach to this application current organization documents (including where appropriate Articles of Incorporation and bylaws).

II. CURRENT OWNERSHIP

Date current ownership was established: May 31, 2005

Current Ownership fill out an additional disclosure for each owner that is an entity.				
NAME	Check if enrolled in a federally recognized tribe	ADDRESS	TELEPHONE	% of OWNERSHIP
<i>Milton Davie</i>	<i>Shaston Sioux</i>	<i>Forest, MN</i>	<i>615-353-8891</i>	<i>90%</i>

Attach to this application official evidence or record of enrollment of all owners who are enrolled members of federally recognized tribes.

Name any companies or individuals that provide management or administrative services to your company: *Milton Davie, President and Manager*
Bill Jones, Project Manager

How many employees do you currently have: 2

Name who has made capital contributions to your company: _____

Explain who will get your profit on this contract and what percentage: _____

Milton Davie. \$5,000

Bill Jones, \$5,000

Who is your bank and the name and telephone number of the bank official you work with at the bank? First National, Chicago, Illinois

David Thompson 613-888-3126

What agency and what insurance company provides your insurance and list telephone number: Tipton Agency, American Casualty

Chicago, Illinois 613-816-3998

If you are a construction company, what agency and what bonding companies provide your bid, performance and payment bonds and list telephone number:

Marine Fidelity, St. Paul, Minnesota 413-333-8162

Explain who you will contract or subcontract more than 10% of your work to:

Unsure

25% to Jones Construction

If you are supplying goods, name companies that will provide you 10% or more of the goods to be provided under the contract you are seeking (and identify if they are 51% or more Indian owned and controlled by an enrolled member of a federally recognized tribe): Don't know yet

III. PAST AND CURRENT PERFORMANCE

Have you or any owner of your entity had any of the following occur in the past 10 years and, if so, please explain with an attached narrative:

- filed bankruptcy or been petitioned into bankruptcy
- sued regarding a contract or payment of a contract
- sued regarding contract, performance or payment of a contract
- failed to complete a contract on time
- failed to finish a contract

- had a claim made on a bond provided on your behalf
- involved in arbitration regarding a contract or its performance
- had a contract terminated for cause
- denied Indian preference after seeking it
- debarred, suspended or other sanctions
- failed to properly pay a supplier, subcontractor, employee as required by contract
- any legal judgments entered against you
- any other incident involving performance of a contract where claims or disputes arose

Attach appropriate narratives to this application.

Name other companies in businesses similar to what you now do that you and your owners have operated or owned in the last 10 years: _____

_____ *Jones Construction* _____
 _____ *Shaston Builders* _____

List all tribes, tribally designated housing entities, and Indian housing authorities that you have had a contract with in the past 10 years and the years you had the contract(s): *Ft. Thompson HA* _____

_____ *Great Plains HA* _____

IV. CONTROL

List all officers and any Board members of your company and identify if they are enrolled in a federally recognized tribe. If so, indicate which tribe as well as what management duties they have: *Milton Davie, Shaston Sioux, overall*

management _____
Bill Jones, no enrollment, Vice President _____
Betty Jones, no enrollment, _____
Secretary/Treasurer _____

List the other top 10 management: *Milton Davie, President* _____

Bill Jones, Project Manager _____
Betty Jones, Bookkeeper _____
Billy Davidson, Superintendent _____

If any of the above individuals have employment, positions or contracts with or interests in (including ownership) other companies, please so identify and explain, including the % or work time they spend in that position: _____

Bill Jones, President, Jones Construction 80%

Betty Jones, Office Manager, Jones Construction 50%

Billy Davidson, Superintendent, Jones Construction
20%

Name the location of all temporary and permanent offices your have: None

If you are a construction company, list your core crew employees: Dave Tilton,
Sam Burger, Dick Johnston

What companies or individuals, if any, are mentoring or providing you assistance (including but not limited to loans, capital or staff) to develop as a company and explain on attached sheet: None

Disclose here and explain on an attached sheet any agreements or arrangements whereby some or all of your company is managed, administered or run in whole or in part by an individual(s) or company(s) not otherwise explained in this application: None

Disclose here and explain on an attached sheet any public or private agreements, or arrangements, other than those fully disclosed and explained elsewhere in this application, whereby companies or individuals (i.e., service agreements, supplier contracts or subcontracting) received profit from your company: None

By submitting this application you are asserting that you believe and know yourself to be a 51% or more Indian owned and controlled economic enterprise or tribal organization.

Where not enough space has been provided on this form to allow you to fully explain your answers use additional sheets and attach them to this application.

Your application must be truthful and correct. Making false or misleading statements could subject your company and the individual signing this Application to criminal prosecution and civil penalties since the contract may be funded with government funds.

If any changes in these circumstances or others that impact your eligibility for Preference occur prior to the award of a contract or during the performance of such a contract, you agree to immediately notify Lake Forest TDHE.
Name of TDHE

Furthermore, if based on new information or changes in circumstances, you should, in the opinion of Lake Forest TDHE lose 51% or more Indian ownership or control
Name of TDHE
of your company, you will lose your eligibility for Indian preference.

If applicant is Sole Proprietor, Sign Below:

Name: _____ (date) _____

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name: _____ (date) _____

Name: _____ (date) _____

If applicant is a corporation

Name: Milton Davie (date) February 14, 2006
President or CEO's Signature

TO BE FILLED IN BY TDHE
Please submit this Application to: <u>Lake Forest TDHE</u> <u>Box 231</u> <u>Forest, Minnesota 31284</u> _____

Sunny Pueblo TDHE

Name of TDHE

**INDIAN PREFERENCE
QUALIFICATION
APPLICATION**

Stone Lodge Builders herein submits to Sunny Pueblo TDHE

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 Sunny Pueblo TDHE 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 Sunny Pueblo

Name of TDHE

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.

NAME OF ENTERPRISE OR ORGANIZATION: Stone Lodge Builders

TELEPHONE NUMBER: 505-666-8282

FAX: 505-666-8280

E-MAIL: stone505@yahoo.com

ADDRESS: Albuquerque, New Mexico

MAILING ADDRESS (IF DIFFERENT): Same

LOCATION OF ALL OTHER OFFICES (INCLUDING TEMPORARY AND PART-TIME):

None

I. ORGANIZATION

Are you

- a private for profit or non-profit company, or
- a tribal organization

Check one:

- Corporation Partnership Joint Venture
- Sole Proprietorship Other (describe) _____

Date established: December 2003

Place established: New Mexico
Dates organization changed or amended as to ownership and management: None

Attach to this application current organization documents (including where appropriate Articles of Incorporation and bylaws).

II. CURRENT OWNERSHIP

Date current ownership was established: December 2003

Current Ownership fill out an additional disclosure for each owner that is an entity.				
NAME	Check if enrolled in a federally recognized tribe	ADDRESS	TELEPHONE	% of OWNERSHIP
<i>Stone Lodge Tribe</i>	<i>X</i>	<i>New Mexico</i>	<i>505-666-8282</i>	<i>100 %</i>

Attach to this application official evidence or record of enrollment of all owners who are enrolled members of federally recognized tribes.

Name any companies or individuals that provide management or administrative services to your company: Good Books Accounting 505-666-7300

How many employees do you currently have: 30

Name who has made capital contributions to your company: Stone Lodge Tribe

Explain who will get your profit on this contract and what percentage: Stone Lodge Tribe 100%

Who is your bank and the name and telephone number of the bank official you work with at the bank? Desert Pines Bank, Jack Witford, 505-868-2900

What agency and what insurance company provides your insurance and list telephone number: Farm State Insurance, 505-868-2421

If you are a construction company, what agency and what bonding companies provide your bid, performance and payment bonds and list telephone number: Maine Casualty

Explain who you will contract or subcontract more than 10% of your work to: Trades as necessary

If you are supplying goods, name companies that will provide you 10% or more of the goods to be provided under the contract you are seeking (and identify if they are 51% or more Indian owned and controlled by an enrolled member of a federally recognized tribe): Southwest Building Materials

III. PAST AND CURRENT PERFORMANCE

Have you or any owner of your entity had any of the following occur in the past 10 years and, if so, please explain with an attached narrative:

- filed bankruptcy or been petitioned into bankruptcy
- sued regarding a contract or payment of a contract
- sued regarding contract, performance or payment of a contract
- failed to complete a contract on time
- failed to finish a contract
- had a claim made on a bond provided on your behalf
- involved in arbitration regarding a contract or its performance

- had a contract terminated for cause
- denied Indian preference after seeking it
- debarred, suspended or other sanctions
- failed to properly pay a supplier, subcontractor, employee as required by contract
- any legal judgments entered against you
- any other incident involving performance of a contract where claims or disputes arose

Attach appropriate narratives to this application.

Name other companies in businesses similar to what you now do that you and your owners have operated or owned in the last 10 years: None

List all tribes, tribally designated housing entities, and Indian housing authorities that you have had a contract with in the past 10 years and the years you had the contract(s): Stone Lodge TDHE 2003 + 2004

IV. CONTROL

List all officers and any Board members of your company and identify if they are enrolled in a federally recognized tribe. If so, indicate which tribe as well as what management duties they have: Harold Spanks, enrolled Stone Lodge, CEO

Myra Duncan, enrolled Stone Lodge, CFO

Ben Peppers, enrolled Stone Lodge, Council/Board

Twila Gooding, " " , Council/Board

Albert Blue, " " , Council/Board

List the other top 10 management: Tom Hawk, Construction Manager

Belua Thompson, Purchasing

Trina Burnest, Officer Manager

If any of the above individuals have employment, positions or contracts with or interests in (including ownership) other companies, please so identify and explain, including the % or work time they spend in that position: None

Name the location of all temporary and permanent offices your have:

Stone Lodge, NM

If you are a construction company, list your core crew employees: _____

Tom Hawk, Manager

Alvis Red Beur, Supervisor

Dick Thompson, Supervisor

What companies or individuals, if any, are mentoring or providing you assistance (including but not limited to loans, capital or staff) to develop as a company and explain on attached sheet: None

Disclose here and explain on an attached sheet any agreements or arrangements whereby some or all of your company is managed, administered or run in whole or in part by an individual(s) or company(s) not otherwise explained in this application: None

Disclose here and explain on an attached sheet any public or private agreements, or arrangements, other than those fully disclosed and explained elsewhere in this application, whereby companies or individuals (i.e., service agreements, supplier contracts or subcontracting) received profit from your company: None

By submitting this application you are asserting that you believe and know yourself to be a 51% or more Indian owned and controlled economic enterprise or tribal organization.

Where not enough space has been provided on this form to allow you to fully explain your answers use additional sheets and attach them to this application.

Your application must be truthful and correct. Making false or misleading statements could subject your company and the individual signing this Application to criminal prosecution and civil penalties since the contract may be funded with government funds.

If any changes in these circumstances or others that impact your eligibility for Preference occur prior to the award of a contract or during the performance of such a contract, you agree to immediately notify Sunny Pueblo TDHE.
Name of TDHE

Furthermore, if based on new information or changes in circumstances, you should, in the opinion of Sunny Pueblo TDHE lose 51% or more Indian ownership or control
Name of TDHE
of your company, you will lose your eligibility for Indian preference.

If applicant is Sole Proprietor, Sign Below:

Name: _____ (date) _____

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name: _____ (date) _____

Name: _____ (date) _____

If applicant is a corporation

Name: Harold Spanks (date) 03-06-2006
President or CEO's Signature

TO BE FILLED IN BY TDHE
Please submit this Application to: <u>Sunny Pueblo TDHE</u> <u>45 Dusty Road</u> <u>Sunny Pueblo, New Mexico</u>

Tall Grass TDHE
Name of TDHE
**INDIAN PREFERENCE
QUALIFICATION
APPLICATION**

3 Sparrows Systems herein submits to Tall Grass TDHE
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 Tall Grass TDHE 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 Tall Grass TDHE
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.

NAME OF ENTERPRISE OR ORGANIZATION: _____
3 Sparrows Systems, Ltd.

TELEPHONE NUMBER: 605-888-1212

FAX: 605-888-1213

E-MAIL: info@3sparrows.com

ADDRESS: P.O. Box 150, Prairie, South Dakota

MAILING ADDRESS (IF DIFFERENT): Same

LOCATION OF ALL OTHER OFFICES (INCLUDING TEMPORARY AND PART-TIME):

Agency, South Dakota

Washington, DC

I. ORGANIZATION

Are you

- a private for profit or non-profit company, or
 a tribal organization

Check one:

- Corporation Partnership Joint Venture
 Sole Proprietorship Other (describe) _____

Date established: June 1999

Place established: South Dakota

Dates organization changed or amended as to ownership and management: _____
None

Attach to this application current organization documents (including where appropriate Articles of Incorporation and bylaws).

II. CURRENT OWNERSHIP

Date current ownership was established: June 1999

Current Ownership fill out an additional disclosure for each owner that is an entity.				
NAME	Check if enrolled in a federally recognized tribe	ADDRESS	TELEPHONE	% of OWNERSHIP
<i>Mike Sparrow</i>	<i>Tall Grass</i>	<i>South Dakota</i>	<i>605-888-1212</i>	<i>41</i>
<i>Tom Sparrow</i>	<i>No</i>	<i>Nebraska</i>	<i>402-856-7213</i>	<i>5</i>
<i>Nina Sparrow</i>	<i>Tall Grass</i>	<i>South Dakota</i>	<i>605-888-1212</i>	<i>5</i>
<i>Big Beltway, Inc.</i>	<i>No</i>	<i>Washington, DC</i>	<i>202-728-2100</i>	<i>49</i>

Attach to this application official evidence or record of enrollment of all owners who are enrolled members of federally recognized tribes.

Name any companies or individuals that provide management or administrative services to your company: *Mike Sparrow, Lead Consultant*
Big Beltway, Inc.

How many employees do you currently have: *165*

Name who has made capital contributions to your company: _____
Mike Sparrow, \$5,000
Big Beltway, Inc. \$4, 999

Explain who will get your profit on this contract and what percentage: _____
3 Sparrows 51%
Big Beltway 49%

Who is your bank and the name and telephone number of the bank official you work with at the bank? Lonley Prairie Bank
Amos Reeves 605-721-8466

What agency and what insurance company provides your insurance and list telephone number: Boston Mutual
617-888-2100

If you are a construction company, what agency and what bonding companies provide your bid, performance and payment bonds and list telephone number: N/A

Explain who you will contract or subcontract more than 10% of your work to: No one

If you are supplying goods, name companies that will provide you 10% or more of the goods to be provided under the contract you are seeking (and identify if they are 51% or more Indian owned and controlled by an enrolled member of a federally recognized tribe): N/A

III. PAST AND CURRENT PERFORMANCE

Have you or any owner of your entity had any of the following occur in the past 10 years and, if so, please explain with an attached narrative:

- filed bankruptcy or been petitioned into bankruptcy
- sued regarding a contract or payment of a contract
- sued regarding contract, performance or payment of a contract
- failed to complete a contract on time
- failed to finish a contract
- had a claim made on a bond provided on your behalf
- involved in arbitration regarding a contract or its performance
- had a contract terminated for cause
- denied Indian preference after seeking it
- debarred, suspended or other sanctions
- failed to properly pay a supplier, subcontractor, employee as required by contract

- any legal judgments entered against you
- any other incident involving performance of a contract where claims or disputes arose

Attach appropriate narratives to this application.

Name other companies in businesses similar to what you now do that you and your owners have operated or owned in the last 10 years: _____
Mike Sparrow was a sole proprietor consultant

List all tribes, tribally designated housing entities, and Indian housing authorities that you have had a contract with in the past 10 years and the years you had the contract(s): *Hawk Feather TDHE, 2002, Indian Housing Plan*
Sunny Pueblo TDHE, 2002, Indian Housing Plan
Lake Forest TDHE, 2003, Indian Housing Plan

IV. CONTROL

List all officers and any Board members of your company and identify if they are enrolled in a federally recognized tribe. If so, indicate which tribe as well as what management duties they have: *Mike Sparrow, enrolled Tall Grass, CEO*
Tom Sparrow, not enrolled, COO
Nina Sparrow, enrolled Tall Grass, CFO
Ben Jones, not enrolled, Bd. Member

List the other top 10 management: *Mike Sparrow, Lead Consultant*
Ben Jones, Lead Consultant and Project Manager
Tom Sparrow, Operations
Nina Sparrow, Bookkeeping

If any of the above individuals have employment, positions or contracts with or interests in (including ownership) other companies, please so identify and explain, including the % or work time they spend in that position: Ben Jones, Big Beltway, Inc., 90%

Name the location of all temporary and permanent offices your have: Agency, South Dakota
Washington, DC

If you are a construction company, list your core crew employees: N/A

What companies or individuals, if any, are mentoring or providing you assistance (including but not limited to loans, capital or staff) to develop as a company and explain on attached sheet: We use staff only from 3 Sparrows and Big Beltway, Inc.

Disclose here and explain on an attached sheet any agreements or arrangements whereby some or all of your company is managed, administered or run in whole or in part by an individual(s) or company(s) not otherwise explained in this application: None

Disclose here and explain on an attached sheet any public or private agreements, or arrangements, other than those fully disclosed and explained elsewhere in this application, whereby companies or individuals (i.e., service agreements, supplier contracts or subcontracting) received profit from your company: Big Beltway, Inc. is paid first from profits of joint venture to reimburse up front expenses

By submitting this Application you are asserting that you believe and know yourself to be a 51% or more Indian owned and controlled economic enterprise or tribal organization.

Where not enough space has been provided on this form to allow you to fully explain your answers use additional sheets and attach them to this application.

Your application must be truthful and correct. Making false or misleading statements could subject your company and the individual signing this Application to criminal prosecution and civil penalties since the contract may be funded with government funds.

If any changes in these circumstances or others that impact your eligibility for Preference occur prior to the award of a contract or during the performance of such a contract, you agree to immediately notify Tall Grass TDHE.
Name of TDHE

Furthermore, if based on new information or changes in circumstances, you should, in the opinion of Tall Grass TDHE lose 51% or more Indian ownership or control
Name of TDHE
of your company, you will lose your eligibility for Indian preference.

If applicant is Sole Proprietor, Sign Below:

Name: _____ (date) _____

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name: Mike Sparrow (date) 3-1-06

Name: Benjamin Jones (date) 3-3-06

If applicant is a corporation

Name: _____ (date) _____
President or CEO's Signature

TO BE FILLED IN BY TDHE
Please submit this Application to: <u>Tall Grass TDHE</u> <u>Box 796</u> <u>Tall Grass, South Dakota 57777</u>

Procurement

Group Exercise 2: Bid Letting

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.

Questions:

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

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

Procurement

Group Exercise 2: Bid Letting

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, 2007, 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, 2007. 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?

Procurement

Group Exercise 2: Bid Letting

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, 2007. Bid opening was to be held on September 25, 2007, 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?