



# ONAP TRAINING

## Procurement

IHBG and ICDBG Programs  
January 12, 2021 (Virtual)  
Alabama-Coushatta Tribe of Texas

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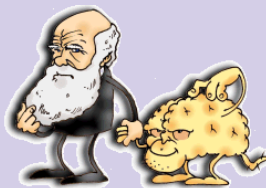
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### Instructor

**Charles Anderson**  
Northwest Housing  
Consultants, LLC  
(Olympia, WA)



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## OVERVIEW

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## Agenda

- Workshop Overview
- Understanding Indian Country Procurement
- Introduction to Procurement
- Procurement Principles and Methods
- Responsive and Responsible Contractors
- Indian Preference Requirements
- Methods of Procurement - Micro-Purchases, Small Purchases, Sealed Bid, Competitive Proposals & Non-Competitive Proposal
- Price and Cost Analysis
- Procurement Procedures

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Procurement is the buying of goods or services...

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## Clarification of Terms

- **Awarding Agency:** The federal agency administering the overall grant; for IHBG and ICDBG this would be HUD
- **Recipient:** Tribally designated housing entity (TDHE) or tribe who is administering its housing programs with IHBG or ICDBG funding.

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## Types of Solicitations

| Request for Information (RFI)  | Request for Quotes (RFQ)   | Request for Proposals (RFP)   | Invitation for Bids (IFB)   |
|--|--|---|---|
| <ul style="list-style-type: none"><li>• Educates</li><li>• How can vendor solve a problem or fill a need</li></ul> | <ul style="list-style-type: none"><li>• Quantifies</li><li>• What is the cost of meeting a specific need</li></ul> | <ul style="list-style-type: none"><li>• Compares</li><li>• Evaluate the merits of each vendor</li></ul> | <ul style="list-style-type: none"><li>• Formal solicitation</li><li>• Used primarily for construction</li></ul> |

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## Benefits of Proper Procurement

|                     |                            |
|---------------------|----------------------------|
| Cost Efficiency     | Reduce Risk                |
| Consistency         | Avoid Outside Interference |
| Promote Competition | Compliance                 |

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### Common Monitoring Findings

- Did not use fair and open competition in awarding professional service contracts
- No method of applying Indian Preference
- Inadequate or no procurement policy or procedures
- Inconsistent with adopted procurement policy

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### Common Monitoring Findings

- Records not maintained; no documentation
- Lack of cost/price analysis
- Small purchases not in accordance with regulations
- Conflicts of Interest and/or no policy
- Professional services (attorneys, accountants, etc.) not procured properly

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### Goals for Procurement Activities

- Obtain highest quality for reasonable price
- Comply with requirements
- Maintain documentation
- Facilitate delivery
- Understand process
- Implement planning process

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## Procurement Requirements



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

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## Reasons for a Procurement Policy

- Required by 24 CFR 1000.26 and 2 CFR 200.318
- Ensure consistency in procurement
- Establish your own procurement rules and practices that do not conflict with 2 CFR 200.318
- Assemble and integrate requirements imposed by others with your own requirements

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## UNDERSTANDING INDIAN COUNTRY PROCUREMENT

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## Uniqueness of Tribal Procurement

Tribal procurement reflects:

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



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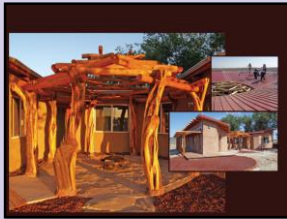
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## Special Circumstances



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

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## Tribal Requirements

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



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## Other Special Legal Issues

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



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## A Few More Special Factors

- Tribal politics
- Tribal employment
- Tribally owned companies
  - 2 CFR200.318(2)  
Organizational Conflict of Interest may apply



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## INTRODUCTION TO PROCUREMENT

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## Fundamentals of Procurement

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



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## Public Policy Initiatives

- Indian and other preferences
- Wage rates
- Labor standards
- Environmental protection



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## Government Procurement Principles to Remember

- **Different** from procurement in the private sector
- **Cannot negotiate** purchases or contracts – except on RFP in very limited situations
- Governed by **laws and regulations**
- **Special requirements** imposed by government funding sources



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## Written Procurement Rules (Policies and Procedures)

Needed to:

- List requirements
- Educate and explain
- Have uniform application



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## § 200.330 Subrecipient and Contractor Determinations

“...must make a case-by-case determination whether each agreement it makes casts the party receiving the funds in the role of a subrecipient or contractor”

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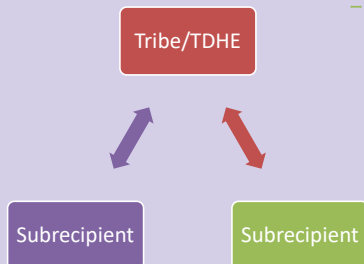
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## Compliance Responsibilities - **Subrecipient**



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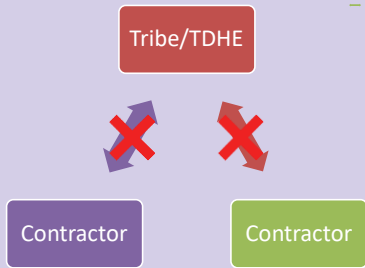
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### Compliance Responsibilities - Contractor



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### § 200.330(a): Subrecipient Determinations

#### Characteristics of **Subrecipient**:

1. Determines who is eligible
2. Performance is related to objectives of a Federal program
3. Responsible for programmatic decision making
4. Responsible for compliance with Federal program requirements
5. Uses funds for a public purpose per the program rather than providing goods or services



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### § 200.330(a): Subrecipient Determinations

#### •Purpose of Subaward

—“A *Subaward* is for the purpose of carrying out a portion of the Federal award.”

#### •§ 200.92 Subaward Definition

—*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.

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## § 200.330(b): Contractor Determinations

### Purpose of Contract:

*“A contract is for the purpose of obtaining goods and services and creates a procurement relationship with the contractor.”*



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## § 200.330(b): Contractor Determinations

### Characteristics of a **Contractor**:

1. Provides goods and services within normal business operations
2. Provides goods and services to many different purchasers
3. Normally operates within a competitive environment
4. Provides goods and services that are ancillary to the operation of the Federal Program
5. Is not subject to compliance requirements of the Federal program



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## Contractor or Subrecipient ?

1. The Elk Hill Housing Program is constructing their first rental housing project. They think having maintenance performed by another housing entity near the project would be the best approach to maintain the project.
2. The First People's Housing Department is expanding their operation by providing housing in the remote region of their service area. To reduce administrative costs associated with travel they think it would be more cost effective to have a property management firm located near the project manage the lease and occupancy of the housing development.

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# PROCUREMENT REGULATIONS

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## Procurement "Claw" (Sections 200.317-326)



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## HUD Procurement Requirements Accompanying IHBG and ICDBG

- NAHASDA Regulations – 24 CFR part 1000
- ICDBG Regulations – 24 CFR part 1003
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR part 200

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## 2 CFR 200 Procurement

- .317 – States
- .318 – Procurement Standards
- .319 – Competition
- .320 – Methods of Procurement to Be Followed
- .321 – Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
- .322 – Domestic preferences for procurements
- .323 – Procurement of Recovered Materials
- .324 - Contract Cost and Price
- .325 – Awarding Agency Review
- .326 – Bonding (24 CFR 1000.26(a)(11) provides acceptable methods when inconsistencies exist)
- .327 – Contract Provisions

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## 2 CFR 200 Exceptions

- Program statutes or existing regulations preempt 2 CFR Part 200. These preemptions are reflected in the program regulations.
  - 24 CFR 1000.26
  - 24 CFR 1003.
- Conforming regulations are necessary, e.g. conflict of interest, mandatory disclosures.
- Apply ONAP's existing exceptions. For example: IHBG and ICDBG definitions, program income.

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## Administrative Requirements

- **24 CFR 1000.26:** List of administrative requirements under IHBG including selected sections of 2 CFR part 200 that apply and exemption provisions for self-governance tribes
- **24 CFR 1003.501:** List of administrative requirements under ICDBG including selected sections of 2 CFR part 200 that apply and exemption provisions for self-governance tribes
- **2 CFR Part 200:** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Section .317 to .326 deal specifically with procurement.

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### § 200.318 General Standards

- Documented procurement procedures required
- Must conform to Federal, state, local and tribal laws and regulations
- Must have written standards of conduct covering conflict of interest.

Policies & Procedures

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### § 200.320 Methods of Procurement

- **Micro-purchases** – if price is considered reasonable, no competitive solicitation required if price does not exceed:
  - \$2,000 for procurement subject to Davis-Bacon Act
  - \$10,000 for all other procurement using federal funds (or less if stated in Policy)
- **Small purchases** – not more than Simplified Acquisition Threshold, currently \$250,000
- **Sealed bids** (formal advertising)
- **Competitive proposals** (Request For Proposals)
- **Non-competitive proposals:** must request in writing if seeking permission from Awarding Agency

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### § 200.323: Contract cost and price

Cost or Price Analysis is **REQUIRED** (**cost includes contract amount plus change orders**).

Cost or Price Analysis is **NOT REQUIRED** (however price must be reasonable and estimate is necessary to determine if procurement falls into this category).

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## Other IHBG and ICDBG Procurement and Contracting Regulations

- 24 CFR 1000.14 and 1003.602 Real Estate Acquisition
- 24 CFR 1000.16 and 1003.603 Labor Standards
- 24 CFR 1000.18-24 and 1003.605 Environmental Reviews
- 24 CFR 1000.30-36 and 1003.603 Conflicts of Interest

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## Federal Environmental Requirements

- No HUD funds can be expended or obligated without the appropriate level of environmental review
- National Environmental Policy Act (NEPA)
- Proper documentation must be filed



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## Environmental Assessments and Reviews



- Who does them?
- Importance of timely completion
- HUD Forms to Request Release of Funds
- Consequences

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## Other IHBG and ICDBG Procurement and Contracting Regulations

- 24 CFR 1000.38 Flood Insurance
- 24 CFR 1003.604 Citizen Participation
- 24 CFR 1000.40 and 1003.607 Lead-Based Paint
- 24 CFR 1000.44 and 1003.608 Debarment and Suspensions  
[www.sam.gov](http://www.sam.gov) (System for Award Management)
- 24 CFR 1000.46 Drug-Free Work Place Act
- 2 CFR 200.400-475: Cost Principles

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## Other Sources of Procurement Regulations and Requirements

- Bank Loans
- Low-Income Housing Tax Credits
- State Housing Finance Agencies
- USDA Rural Development
- Bond Projects



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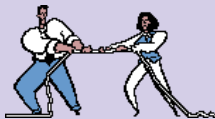
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## Reconciling Differing Regulations and Requirements

- Regulations and requirements can conflict



- Find a way to comply with both  
(or give up one of the funding sources)

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## Where to Incorporate IHBG and ICDBG

- Add procurement requirements to your recipient's Procurement Policy
- Add applicable contracting requirements to your recipient's contracts

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## PROCUREMENT PRINCIPLES

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## § 200.318(c)(1): General Standards

### Written standards of conduct required

- No employee, officer, or agent may participate in the selection, award, or administration of a contract if there is a real or apparent conflict of interest.
- **Conflict of interest:** when the employee, officer, or agent, or a member of his/her immediate family, has a financial or other interest in, or a tangible personal benefit from a firm considered for a contract. [Also §1000.30 (a) for IHBG]
- Must maintain written standards of conduct with respect to organizational conflict of interest.

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### Conflict of Interest 24 CFR 1000.30

- 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.

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

- Responsive and
- Responsible



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### Responsive...

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



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## Responsible...

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



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## Award or Purchase Leads to a Contract

Contract is...

- Almost always in writing
- The contract form is may be made part of the solicitation
- Level of detail depends on circumstances



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## Purpose and Importance of Contracts



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

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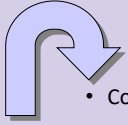
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## Importance of Follow-Up



- Compliance during performance
- Enforcement during performance
- Procurement evolves into contracting and contract administration
- Coordination between procurement and program staff

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## Procurement Exercise Standards of Conduct

The Elk Mountain tribal council selected Johnson Construction for the development of a 10-unit housing project. One of the Council members, Fred Johnson, is the brother of the owner of Johnson Construction; however, Fred abstained from participating in the decision. Charlie Johnson, Fred's son, is the Development Coordinator for the tribe.

According to the Uniform Guidance, is there a conflict of interest?

- Why or why not?

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## INDIAN PREFERENCE REQUIREMENTS

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## The Indian Self-Determination and Education Assistance Act

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

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## Section 7(b) of ISDEAA

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



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## Importance of Indian Preference

- Provides special opportunities for Indian contractors in selection
- Mandates additional preference that contractors must offer Indian laborers, subcontractors, and suppliers
- Economic opportunities for Indians, tribes, recipients, and your communities
- NOT required to hire an Indian individual / firm

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### Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 135)

- Provides that preference in employment and contracting shall be given to low-income persons.
- Per 1000.42, IHBG 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 (giving preference in employment and contracting to tribal members).

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### Indian Preference Final Rule

- The Final Rule amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting.
- Program Guidance 2013-07 (R) dated July 11, 2013, provides additional information on administering these revisions.



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### Tribal Action

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

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## Implementing Indian Preference

- Certify policies and procedures (§1000.52)
- Preference clauses must be incorporated into contracts
- Include Indian Preference reference in notices and advertisements



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## Preference in Solicitation Process

- Required by Federal (and often tribal) law
- Clarify preference standards in your procurement policy
- Clarify preference standards from the outset



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## Where Indian Preference Is Applied

- In selection of contractors or vendors
- In the contractor's selection of subcontractors and suppliers
- During employment and training by contractors



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## Qualifying Bidders, Proposers, Vendors

- **Specifically determine** if the individuals and entities are qualified to receive Indian preference.
- **Do not rely** on determinations and certifications made by others.



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## Who is Eligible for Indian Preference?

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

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## 51% Ownership AND 51% Control

- Control includes voting rights, management, decision making, and allocation of profits.
- Entity owned by a tribe or a tribal member must show evidence of 51% ownership AND 51% control.



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## Preference Must Be Requested

- Advise all bidders, proposers, and vendors Indian preference is required in contract awards
- Parties seeking preference must request preference
- When feasible, provide interested parties with an Indian Preference Qualification Application



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## When Feasible...

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



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## Document, Document, Document

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



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## Reserve the Right to Reconsider

- **Reserve the right to disqualify** anyone (even if you have already qualified them) right up until the award of the contract in case you become aware of new information and/or the entity's structure changes
- **Add contract provisions** for termination if the entity loses its Indian ownership or control during the contract period

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## Applying Indian Preference

### 24 CFR 1000.52(a)

- TDHE certifies that they have policy that will afford Indian preference that is consistent with ISDEA 25 USC 450e(b)
- OR solicit bids from Indian owned & controlled entities only
- OR use two-stage method (more...)

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## The Two-Stage Method

- 1 – Solicit **statements of intent** from Indian owned & controlled entities
- 2 – If two or more are received from qualified entities, then solicit bids/proposals from Indian owned & controlled entities only
  - Otherwise, solicit bids/proposals from all entities using your established method of applying Indian preference

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## Applying Indian Preference

- If any method of Indian preference results in only one bid or proposal being received, then
- Re-advertise using any approved method of Indian preference under (a), OR
- Re-advertise to all entities using X-factor or other points for preference, OR
- Ask HUD-ONAP for approval (remember, you must justify in writing)

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### Attachment A Using the X-Factor for Indian Preference (Optional)

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

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

### Using the X-Factor

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## X-Factor Exercise

1. Bids received:  
 Firm A (Non-Indian)     \$70,000  
 Firm B (Indian-owned)   \$80,000

Using the X-Factor, who gets the contract?

2. Bids received:  
 Firm A (Non-Indian)     \$200,000  
 Firm B (Indian-owned)   \$210,000

Using the X-Factor, who gets the contract?

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METHODS OF PROCUREMENT  
2 CFR 200.320

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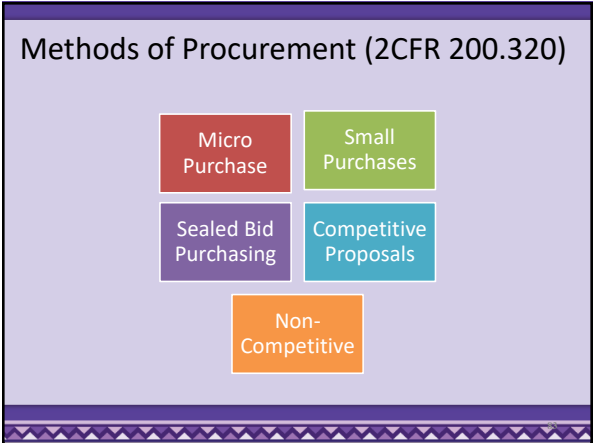
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- Basic Steps for All Procurement Methods
1. Establish **parameters** (e.g., quantity, price, scope of work)
  2. Do a **cost or price analysis** (except Micro- and Small Purchases)
  3. **Solicit** bids, proposals or price quotes
  4. **Receive**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

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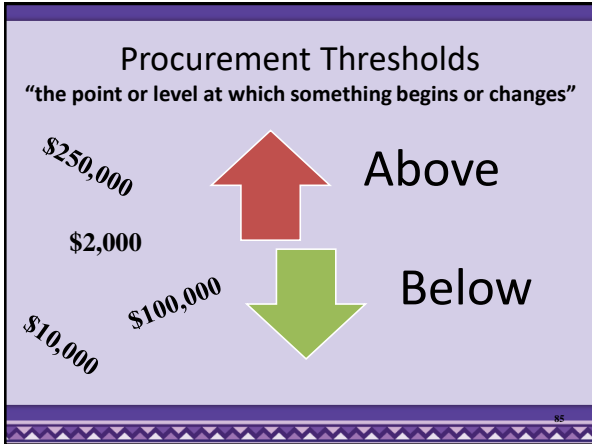
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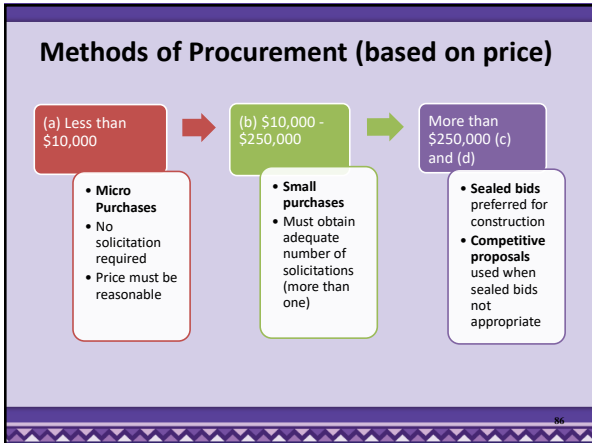
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### Procurement Method Requirements

Refer to Sample Policy II.A (Book Page 244)

The screenshot shows a document titled 'May 4, 2022 RMYT (Pending FMO Legislative Review)'. It includes a section for 'III. Procurement Methods' with sub-sections for 'A. Solicitation of Interest', 'B. Micro Purchases Procedures', 'C. Small Purchases Procedures', and 'D. Sealed Bids Procedures'. A blue arrow points from the text 'Refer to Sample Policy II.A (Book Page 244)' to the 'B. Micro Purchases Procedures' section of the document.

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## MICRO-PURCHASE METHOD

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

- **Micro-purchases** – if price is considered reasonable, no competitive solicitation required if price:
  - Does not exceed \$2,000 for procurement subject to Davis-Bacon Act
  - Is less than \$10,000 for all other procurement using federal funds (or use threshold stated in Policy if less)
  - Reference: Guidance 2019-03-A (Book Page 175)



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### Micro-Purchases (include in Policy)

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

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# SMALL PURCHASE METHOD

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## Small Purchase Method

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

**\$250,000**  
(or less according to policy)



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## Principles

- Must be competitive
- Indian Preference applies
- Apply along with either bids / quotes or proposal / RFP methods
- IHBG and ICDBG permits when purchase amount is under \$250,000
- Establish your threshold in Procurement Policy



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## Key Elements

- No public advertising required
- Need to have an “adequate” number of qualified bidders / proposers



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## Key Elements

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

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## SEALED BID METHOD

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## Sealed Bids

### What are they?

- Contractors submit their bid amounts and confirm compliance with specifications
- Price is “sole factor” and is a fixed amount
- Award to responsive and responsible bidder with lowest bid after preferences applied
- Apply preferences (when feasible)

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## Sealed Bids: Prequalification

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



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## Suspension and Debarment

- Suspension
  - A temporary measure; there is a 12-month limit
  - Usually used pending the completion of investigation or legal proceedings
  - Based upon adequate evidence, usually an indictment
- Debarment
  - Usually 3 years in length
  - Based upon a preponderance of the evidence, usually a conviction

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## Sealed Bids

### For Construction, Use a Project Manual

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



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## Opening Bids

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



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## Contract

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



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## After Execution of Contract



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

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## COMPETITIVE PROPOSALS METHOD

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## Competitive Proposals

- Used to procure goods and services when price is not the only factor
- Proposals include a list of evaluation factors and their relative importance (e.g., points scale)
- Solicitation is request for proposals (RFP)

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## Competitive Proposals

Can Be Used to Procure (examples):

- Consultants
- Banking Services
- Architects
- Accountants
- Attorneys
- Developers
- Computer systems



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## Competitive Proposals

### Price is NOT the Only Factor!

IHBG and ICDBG allows price not to be a factor in certain architect/engineering contracts (2 CFR 200.320(d)(5))



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## Using Point System

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



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### Sample Criteria With Point Scale

1. Knowledge and experience of financial and accounting standards for Indian housing programs including, but not limited to, 24 CFR part 1000.26, 2 CFR part 200 subpart E, and HUD PIH Notice 2000-18 "Accounting for Program Income Under NAHASDA", and generally accepted government accounting practices..... **Up to 25 pts.**
2. Prior experience in Indian housing programs..... **Up to 20 pts.**
3. Evaluation of performance by existing and former clients (including evaluation from advertising TDHE if applicant has previously worked for the TDHE)..... **Up to 15 pts.**
4. Fees charged (including both the rates charged and the efficiency of the accountant or firm based on prior experience)..... **Up to 15 pts.**
5. Evaluation of Indian Preference in Training, Employment and Contracting.. **Up to 10 pts.**
6. Indian Preference for Indian Owned Firms..... **0 or 15 pts.**

Maximum 100 pts

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### Opening and Evaluating Proposals

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



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### Award of Contract

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



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## Award of Contract



- Can reject any and all proposals for sound and documented reason
- Negotiations of a contract are allowed
- Cost or price analysis required

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## Contracts

- Professional services contracts often based on hourly rate
- § 200.318 (j)(1-2): Time and Materials Contracts:
  - 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.
  - Requires a high degree of oversight by non-Federal Entity.

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## Contracts

- Can use conventional contract forms and invoices
- Use Recipient approved contract form or get legal advice before signing
- Procurement Officer transfers administration to contract manager

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## § 200.319: Competition

**Contractors who are involved in drafting specs, statements of work, RFP'S or IFB's must be excluded**

- No overly restrictive requirements allowed
- No state, local or tribal geographical preferences unless mandated or encouraged by statute
- Written procedures required
- Prequalified lists must be kept current



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## Procurement Example: Competition

To help fund the housing development project, the Elk Mountain Tribe is considering applying for the Indian Community Development Block Grant program. To do this, they need to hire a consultant to help them with the ICDBG application. The Tribal Administrator suggests contacting Wilson Consultants to draft an RFP for consulting services because they provided assistance writing their ICDBG application a few years ago.

- It would be allowable to use Wilson Consulting to assist them to draft the RFP;
- But then it would not be allowable to use Wilson to assist them to draft the ICDBG application.

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## NON-COMPETITIVE METHOD

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## Non-Competitive Method

### Can Be Used...

- Only when other methods are infeasible
- Only in extraordinary situations
- Often requires special approval from HUD
- MUST document reason for use

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## § 200.320 (f): Noncompetitive Proposals

- 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.

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## Non-Competitive Method

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



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## HUD Approval

### What HUD May Want When its Approval is Required:

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



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## Procurement Method Exercise

Select one of the following procurement methods (1) Micro-Purchase; (2) Small Purchase; (3) Sealed Bid; (4) Competitive Proposal; or (5) Non-Competitive for each of the following procurements

- Legal Services
- A truck costing \$10,000
- Rehab of a home costing \$180,000
- Development of a housing project
- A house remodel costing \$18,000, you've not been able to get more than one quote
- Purchase of a laptop costing \$3,500

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## PRICE AND COST ANALYSIS "Independent Cost Estimate"

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## Independent Cost Estimate

### 2 CFR 200.323

- Before soliciting for bids or proposals
- With in-house estimates forced to analyze needs, the work and contractors needed
- Used to develop the Statement of Work
- Considered confidential information with “need to know” access



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## Contract Cost and Price 2 CFR 200.323

- **Must** perform cost/price analysis for sealed bid, competitive proposals, and noncompetitive proposal procurement **in excess of simplified acquisition threshold**, including contract changes. Method varies with cost and facts.
- Cost analysis is encouraged for Micro and Small purchases. Must at least document amount considered reasonable.
- Should start with independent cost estimates before bids or proposals
- Cost estimates are not disclosed (confidential information)

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## Price vs. Cost Analysis

### Cost Analysis Needed When...

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

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## Price vs. Cost Analysis



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

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## Cost Analysis Techniques

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



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## Price Analysis Techniques

### Reasonable?

- Compare proposed prices received in response to solicitation
- Compare past prices and contracts for same or similar items / services
- Apply “yardsticks” (i.e., \$/sq.ft., \$/lb., or other units) to find differences
- Compare competitive pricing lists, cost estimating publications, published market prices, etc.

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### Procurement Exercise Contract Cost and Price

1. The Elk Mountain Tribe received a low bid from Ace Sand and Gravel in the amount of \$245,000 for gravel to be used in their construction project. They had estimated it would cost \$260,000. Is a cost or price analysis required? Why or why not?
2. After entering into the contract and starting work, Ace submitted a Change Order in the amount of \$20,000 due to a change in the Scope of Work. Is a cost or price analysis required? Why or why not?

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### Cooperative Purchasing

- Intergovernmental Procurement or Joint Purchasing (2 CFR 200.318(e))
- General Service Administration's e-Buy (a federal request for quote system)
- Government excess and surplus property acquisition (2 CFR 200.318(f))



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### Cooperative Purchasing

#### Can Be Used to Procure:

- Material
- Equipment
- Some services



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## Important Issues



- Address in Procurement Policy
- Need to apply applicable preferences
- Price and cost analysis
- Once award is made, normal contracting procedures apply

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## Use of GSA Procurement

- **EXCEPTION** – Per 24 CFR 1000.26 (a) (11):  
**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.

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## What are the GSA Programs ?

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



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## General Services Administration

- What can we do for you?
  - Federal Agency
  - Buying Arm of the Government
  - Leverage Federal Purchasing Power
- Who can use them?
  - Tribes
  - TDHEs



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## Federal Supply Schedules

What are they:

- ✓ Pre-negotiated contracts
  - ✓ Pricing
  - ✓ Warranty
  - ✓ Environmental
  - ✓ Delivery
- ✓ Over 16,000 in place

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## Federal Supply Schedules

Why use them?

- ✓ Savings....
  - ✓ Cost
  - ✓ Time
- ✓ Competition....
  - ✓ Access to the www
- ✓ Meet Indian Preference
  - ✓ Searches available for Native Owned Enterprises

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## Federal Supply Schedules

### What products/services are covered?

#### Products

- Professional Services:
  - Audits
  - Environment Assessments
  - Architects
  - Legal

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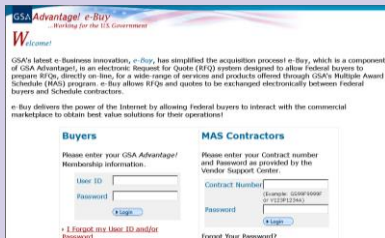
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### How do I get quotes from GSA vendors?

[www.ebuy.gsa.gov](http://www.ebuy.gsa.gov)



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### What is e-Buy?

e-Buy is an online Request for Quotes (RFQ) tool which allows authorized buyers to obtain quotes and issue orders for products and services offered by sellers on the GSA Multiple Award Schedules (MAS) program.

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## Use e-Buy for...

- ✓ Services
- ✓ Quantity or high dollar purchases where you are seeking a discount from contract pricing
- ✓ Purchases with complex requirements
- ✓ Determining sources of supply
- ✓ Receiving quotes on Blanket Purchase Agreements

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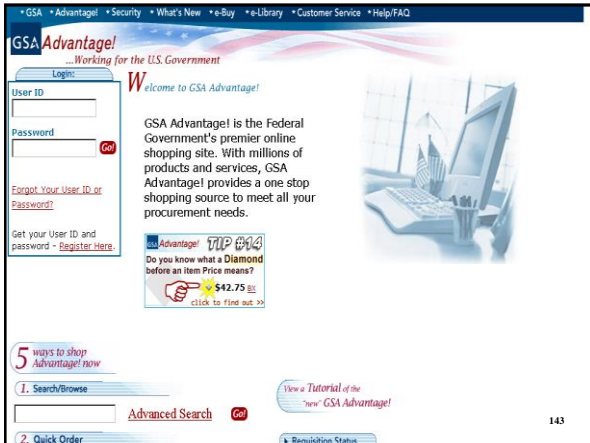
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## PROCUREMENT PROCEDURES

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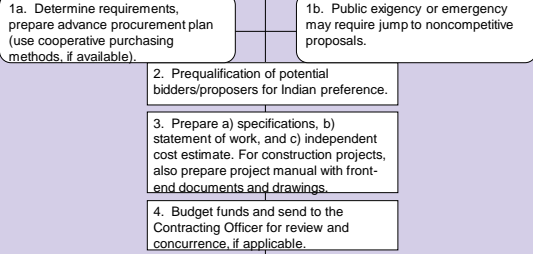
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# Procurement Procedures

## Start Procurement



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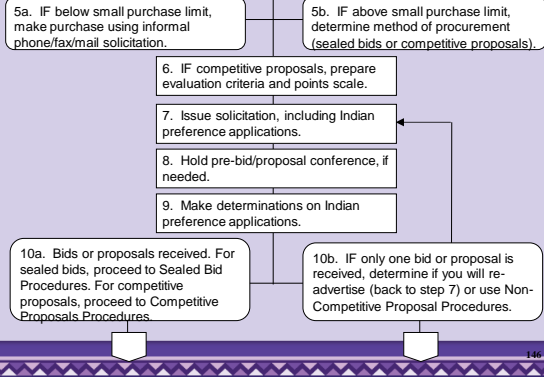
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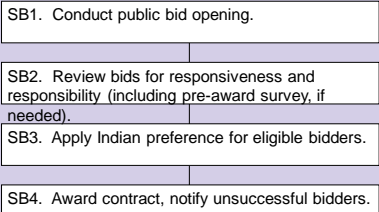
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## Sealed Bid Procedures



## End Procurement

Proceed to Post-Award Procedures.

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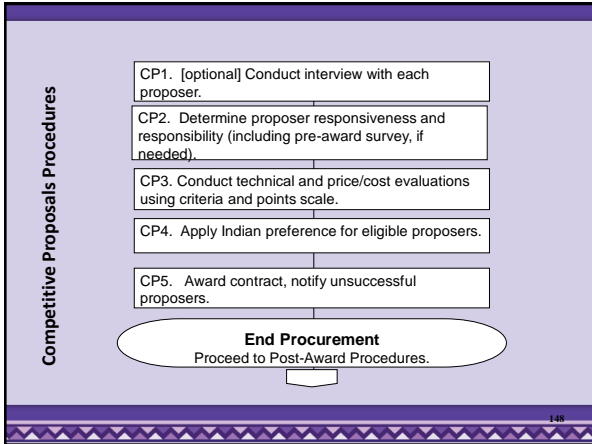
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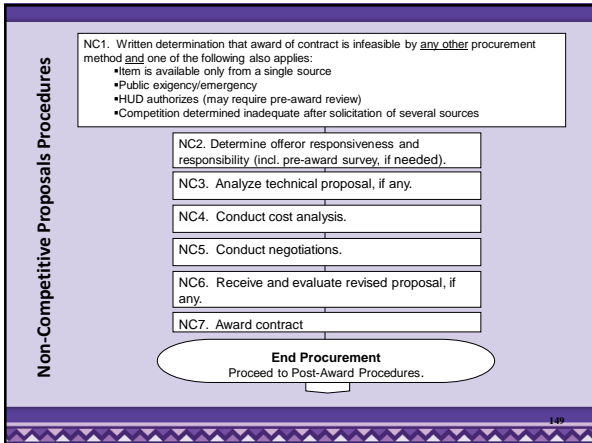
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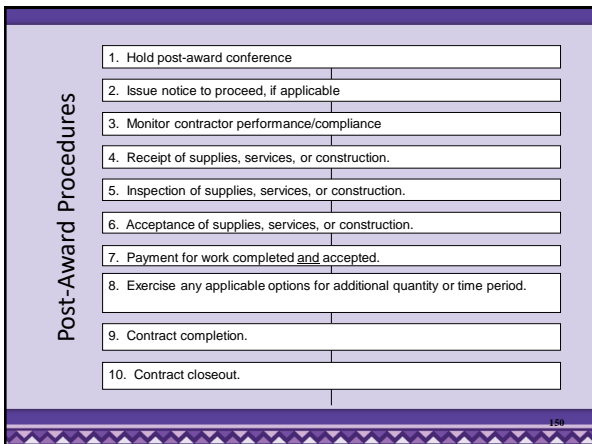
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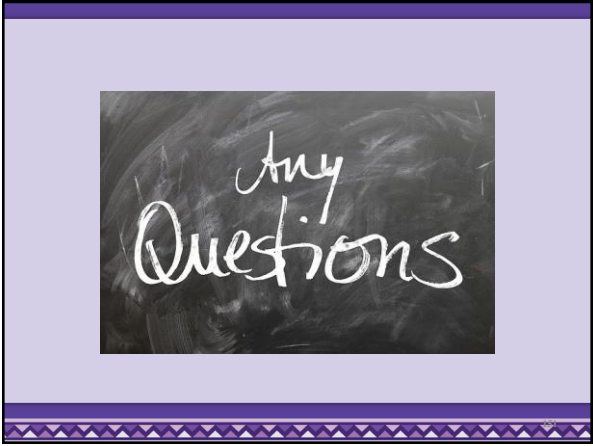
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