

**MODULE 2
PROCUREMENT
PRINCIPLES & STANDARDS**

**HUD Procurement Requirements Accompanying
NAHASDA**

- NAHASDA Regulations – 24 CFR Part 1000
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR part 200
- Section 3 of the Housing and Urban Development Act of 1968 – 24 CFR Part 135
- Section 7(b) of the Indian Self-Determination and Education Assistance Act – 25 USC 450e(b)

Principal Federal Regulations

- **24 CFR 1000.26:** List of administrative requirements under NAHASDA including selected sections of 2 CFR part 200 that apply and exemption provisions for self-governance tribes
- **2 CFR Part 200:** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Sections 200.317 to 200.326 deals specifically with procurement.

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, NAHASDA 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).

Uniform Guidance: What is it?

Code of Federal Regulations: 2 CFR 200



Title 2: Grants and Agreements

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

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

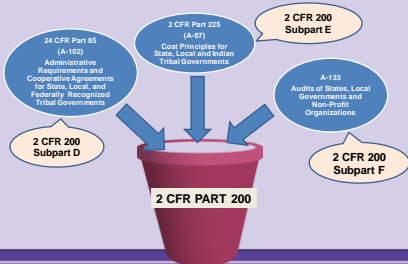
2 CFR 200 Procurement

- .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.
- .323 – Contract Cost and Price
- .324 – Awarding Agency Review
- .325 – Bonding (1000.26(a)(11) provides acceptable methods when inconsistencies exist)
- .326 – Contract Provisions

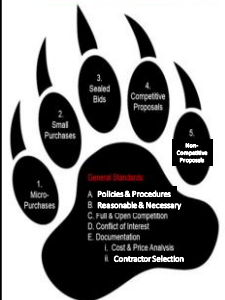
2 CFR 200 ONAP Exceptions

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

Then....and Now



Procurement "Claw" (Sections 200.317-326)




General Statement

- **EXCEPTION** – Per 24 CFR 1000.26 (a) (10), §200.317 “Procurement by states” does not apply
- **EXCEPTION** – Per 24 CFR 1000.26 (a) (11), Sections § 200.318 through 200.326 apply, as modified in this paragraph:
 - i. **Utilizing Federal supply sources in procurement.** In accordance with Section 101(j) of NAHASDA, recipients may use Federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

**§ 200.318
General Standards**

- Documented procurement procedures required
- Must conform to Federal, state, local and tribal laws and regulations



§ 200.318(c)(1): General Procurement 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.

24 CFR 1000.30: Conflict of Interest

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.

2 CFR 200.323: Contract Cost and Price

- **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 but not required and must at least document amount considered is reasonable.
- Should start with independent cost estimates before bids or proposals are solicited.
- Cost estimates are not disclosed (confidential information) to vendors, bidders and offerors/proposers.

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



§ 200.323: Contract cost and price

Above Simplified Acquisition Threshold

At or Below Simplified Acquisition Threshold

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).

Price vs. Cost Analysis

Cost Analysis Needed When...

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

Price vs. Cost Analysis

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

Cost Analysis Techniques

- Do independent cost estimate **before** receiving bids or proposals
- Verify pricing and evaluate cost proposal, including:
 - Necessary and reasonableness of costs
 - Technical appraisal (e.g., by an engineer)
 - Application of correct indirect cost rates, direct labor rates, etc.
 - Evaluate fair and reasonable profit

Cost Analysis Techniques

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



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.

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))



Cooperative Purchasing

Can Be Used to Procure:

- Material
- Equipment
- Some services



Important Issues



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

What are the GSA Programs ?

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



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



Federal Supply Schedules

What are they:

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

Federal Supply Schedules

Why use them?

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

Federal Supply Schedules

What products/services are covered?

Products

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

How do I get quotes from GSA vendors?

www.ebuy.gsa.gov



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.

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



Other NAHASDA Procurement and Contracting Regulations

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



Federal Environmental Requirements

- No HUD funds can be expended or obligated without the appropriate level of environmental review
- National Environmental Policy Act (NEPA) of 1969
- Proper environmental review documentation must be filed



Environmental Reviews

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



Other NAHASDA Procurement and Contracting Regulations

- 24 CFR 1000.38 Flood Insurance
- 24 CFR 1000.40 Lead-Based Paint
- 24 CFR 1000.44 Debarment and Suspensions
www.sam.gov (System for Award Management)
- 24 CFR 1000.46 Drug-Free Workplace Act
- 2 CFR 200.400-475: Cost Principles

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

Other Sources of Procurement Regulations and Requirements

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



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)

Where to Incorporate NAHASDA

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

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?

**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?

Q & A Session
