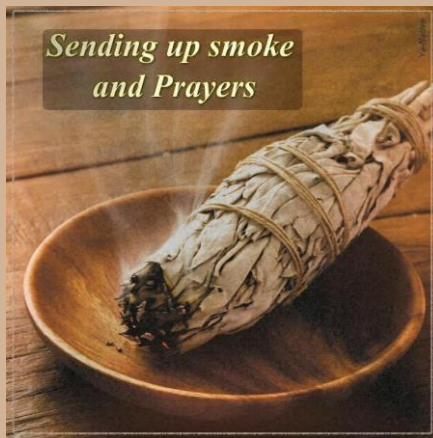




Procurement & Contract Administration April 21-22, 2021 Day 1



WELCOME & GOOD MORNING!



Cheryl A. Causley and
Associates Housing
Consulting &
Management Services

cherylacausley@hotmail.com

(906) 440-1007

Skype:cherylacausley61



Brought to you courtesy of the National
American Indian Housing Council and
the Office of Native American Programs



Getting to know The Instructor

Greetings My Name is Cheryl,

My Anishinaabe name is Red Bird Woman

I am Loon Clan and I come from the Place of the Pike, Bay Mills

Bay Mills is a Reservation located at the Top of Michigan and our waters Border Canada and we are Ojibwe/Chippewa

I was a Director of Housing for my Tribe for over 28 Years

I was honored to serve as the Chairwoman of the NAIHC for Four years and on the Board of Directors as Vice Chair & Secretary for an additional 12 years

I also served as The Chairwoman of the Great Lakes Indian Housing Association for 7 years

I am currently serving on the National Congress of Australia's first peoples International Strategic Advice & Support Group currently planning the World Indigenous Housing Conference scheduled to be held on the Gold Coast of Australia



Getting to Know You Introductions

What is your name and your position within your Housing Organization

What is the length of time you have been involved in Indian Housing?

What is your role in Procurement?

What do you hope to learn?



Agenda Day 1

April 21, 2021

11:00 -11:15 A.M.

11:15 – 4:00 P.M.

ZOOM SIGN IN & ROOM ENTRY

Welcome, Introductions.

Understanding Indian Country Procurement

Procurement Language & Terms

Government Procurement Principals

Subrecipient and Contractor Determinations

Procurement Principals & Standards

Procurement Regulations

Price & Cost Analysis

Methods of Procurement

1:00 – 2:00 P.M.

LUNCH BREAK

Agenda Day 2

April 22, 2021

11:00 -11:15 A.M.

11:15 – 4:00 P.M.

ZOOM SIGN IN & ROOM ENTRY

Welcome Back, Introductions.

Competitive Sealed Bid Method

Competitive Proposals Method

Non- Competitive Method

Procurement Procedures

Specifications & Statements of Work

Indian Preference Requirements

Cash Management & Internal Controls

Conflict of Interest in the Administration of Contracts

Quotation Evaluations

Procurement Authority & Administration of the Procurement Function

Contracting Officer Signature & Obligation of Funds

1:00 – 2:00 P.M.

LUNCH BREAK

Appendix

- #1 eCFR part 200
- #2 NAHASDA Statute
- #3 Part 1000 NAHASDA REGULATIONS
- #4 NAHASDA Procurement Glossary
- #5 Indian Preference Determination Letter
- #6 Indian Preference Qualification Application
- #7 Indian Preference in Employment & Contracting
- #8 Federal Micro Purchase Threshold 2019-03
- #9 NAHASDA Related Procurement Regulations
- #10 2 CFR 200 Transitional Notice
- #11 Environmental Review Process



Appendix

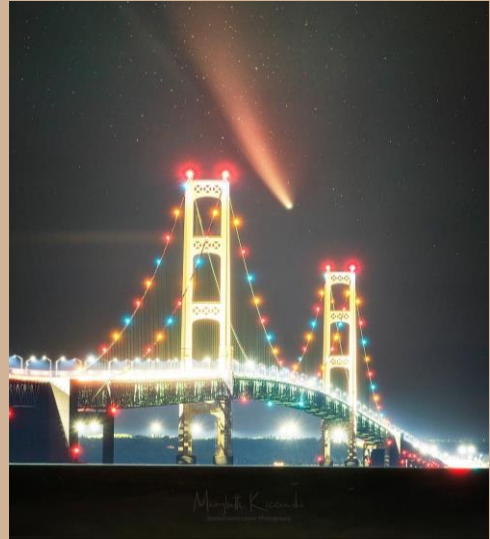
- #13 Procurement Checklist
- #14 RFQ Lump Sum Fax Mail
- #15 RFP Fax or Mail
- #16 RFP Manufactured Home
- #17 RFP Modular Home
- #18 Sample Procurement Policy
- #19 Example Ethics Policy
- #20 Procurement & Post Award Flowchart
- #21 Owner Contractor Construction Agreement
- #22 Sample Procurement Contract File Arrangement



Overview.....

ALERT!!!

In this class there are likely considerable differences in procurement experience expertise, and knowledge. So, please bear with me.



Questions

Please jot your questions down during the presentation and we will address at the Q & A section at the end of each session.



TRAINING OBJECTIVES & OVERVIEW



Training Objectives

To assist you as NAHASDA Recipients to:
EFFECTIVELY and EFFICIENTLY conduct
procurement and
COMPLY with requirements imposed by
HUD and other funding sources

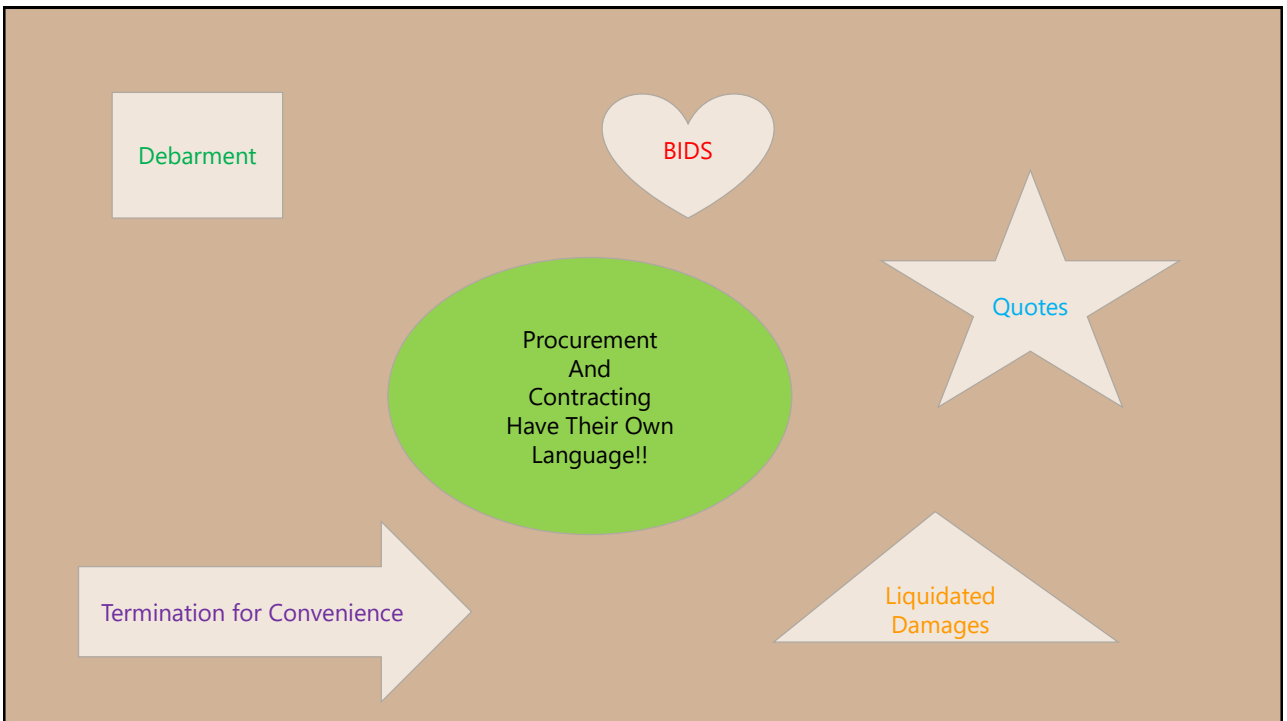


UNDERSTANDING INDIAN COUNTRY PROCUREMENT



**Procurement is the
buying of goods or
services...**

Procurement Language & Terms



Definitions of Selected Words Used In Indian & Native Alaskan Housing Procurement & Construction Contracting Please see Appendix for Glossary

- 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.

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Clarification of Terms

- **Recipient:** Tribally designated housing entity (TDHE) or tribe who is administering its housing programs with NAHASDA (Native American Housing Assistance and Self Determination Act) funding. Sometimes called "Housing Authority."

Clarification of Terms

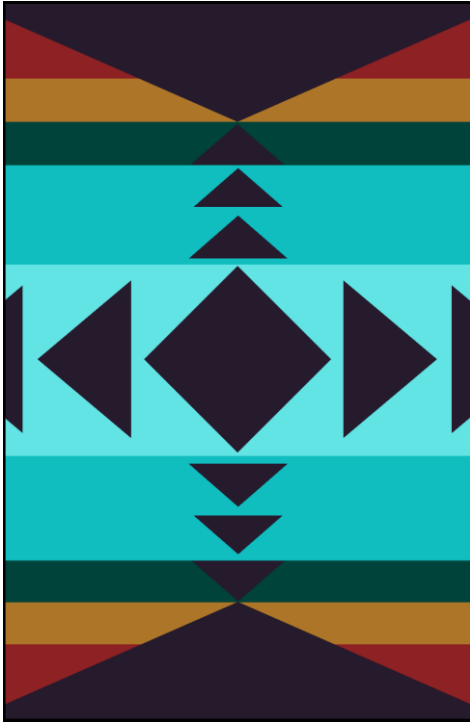


- **Contractor:** Any goods and/or service provider, vendor, supplier, or builder.

Clarification of Terms

- **Board:** Board of Directors, Board of Commissioners, Authority Board, Housing Committee, or in some cases where a tribe is administering the program—a Tribal Council.





A Sampling of Terms...

- **CONTRACTOR:** Individual, company or organization that provides goods or services or performs work under a contract
- **CONTRACTING OFFICER:** Owner's designated representative who makes determination on contracting issues
- **ADVERTISEMENT/PUBLIC INVITATION:** Formal announcement placed in a newspaper soliciting bids or proposals
- **NEGOTIATE:** To bargain or trade regarding a purchase

A Sampling of Terms...

- **BID:** Offer from a contractor to perform or deliver specified work or goods for a specified price (also called a "quote")
- **PROPOSAL:** Offer from a contractor to perform services or deliver work or goods with price and other factors
- **RFP:** "Request for Proposals" seeking goods and/or services
- **RFQ:** "Request for Qualifications" (pre-bid) often used when procuring architectural or engineering services
- **IFB and RFQ:** "Invitation for Bid" and "Request for Quotes" are often used interchangeably, with IFB being more binding.



Benefits of Proper Procurement



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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
- Actual practice is inconsistent with adopted procurement policy

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



Goals for Procurement Activities

Obtain highest quality for reasonable price

Comply with requirements


Maintain documentation


Facilitate delivery


Understand process


Implement planning process


Basic Steps for All Procurement Methods

 Establish **parameters** (e.g., quantity, price, scope of work)


 Do a **cost or price analysis** (except Micro- and Small Purchases)

 **Solicit** bids, proposals or price quotes

 **Receive** bids, proposals or price quotes

 **Evaluate** bids, proposals or price quotes

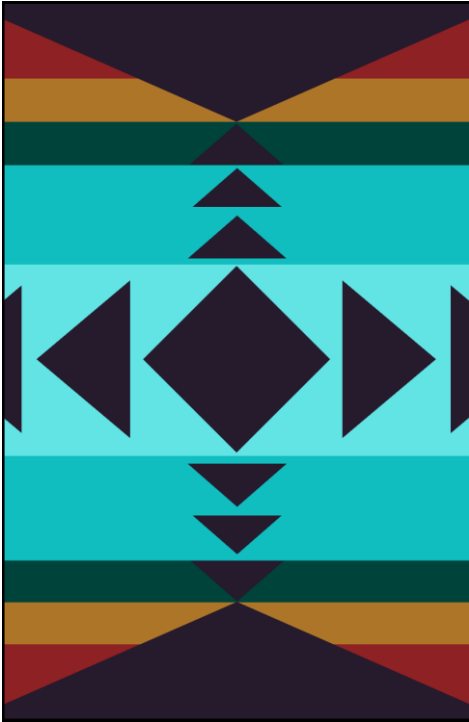
 **Award**

 Enter into contract or purchase **agreement**

Procurement Requirements



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



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

Uniqueness of Tribal Procurement

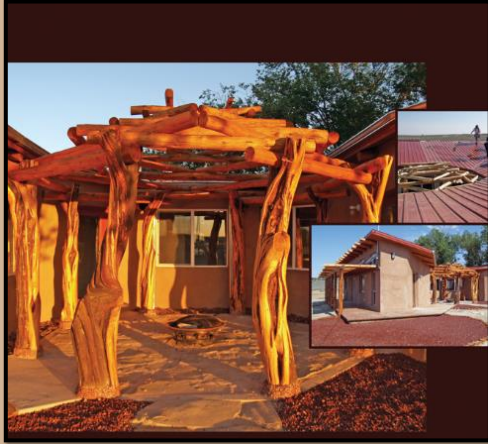


Tribal procurement reflects:

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



Special Circumstances



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



Tribal Requirements

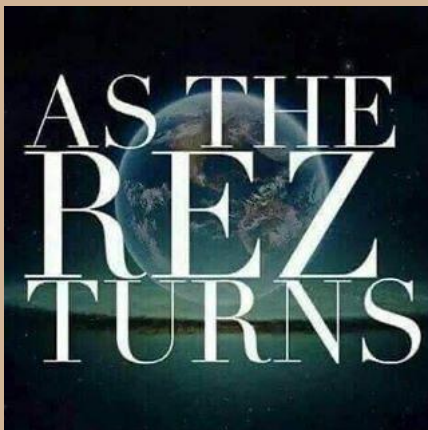
Tribal law
 Federally directed Indian preference
 Tribal licensing
 Tribal Employment Rights Organization (TERO)

Other Special Legal Issues

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



A Few More Special Factors



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

Other Circumstances Impacting Procurement

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



Fundamentals of Procurement



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

Incentives for Government Procurement

- Reduce cost (taxpayer money)
- Award on merit
- Avoid corruption and scandals



Public Policy Initiatives

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



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



Written Procurement Rules (Policies and Procedures)

Needed to:

- List requirements
- Educate and explain
- Have uniform application





Adherence to Procurement Rules

- Limit and discourage exceptions
- Ensure consistent application of rules
- Ensure compliance with law and funding requirements
- Efficient Self Monitoring

What is NOT Procurement?

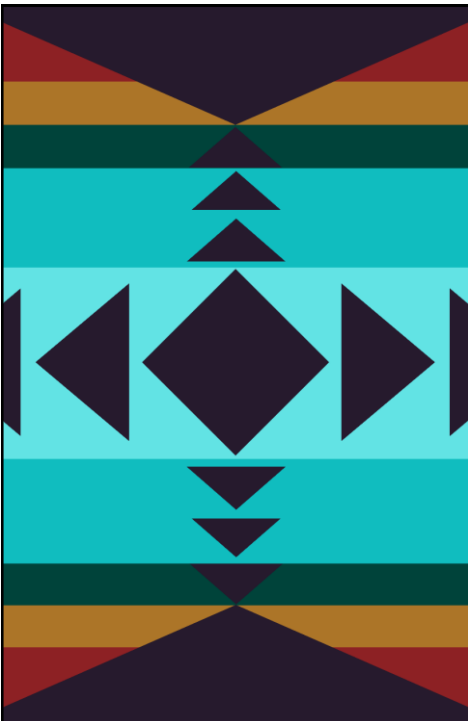
- Subgrants
- Joint venture agreements that you control
- Investments





Contractor (Vendor) vs Subrecipient

The relationship needs to be determined so the proper rules can be followed.



§ 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"

§ 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



§ 200.330(a): Subrecipient Determinations

Purpose of Subaward

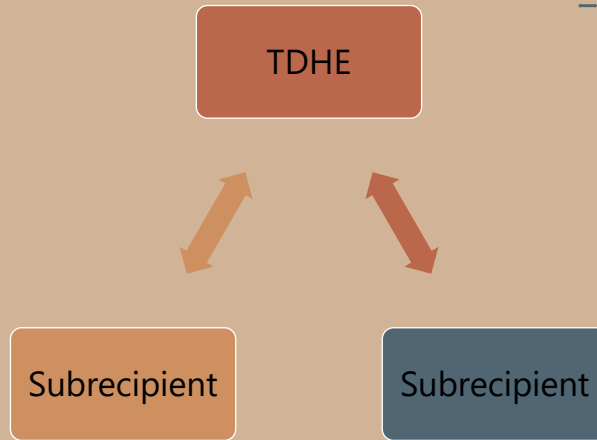
•“A Subaward is for the purpose of carrying out a portion of the Federal award.”

§ 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.



Compliance Responsibilities



§ 200.331: Contractor Determinations

Purpose of Contract:

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

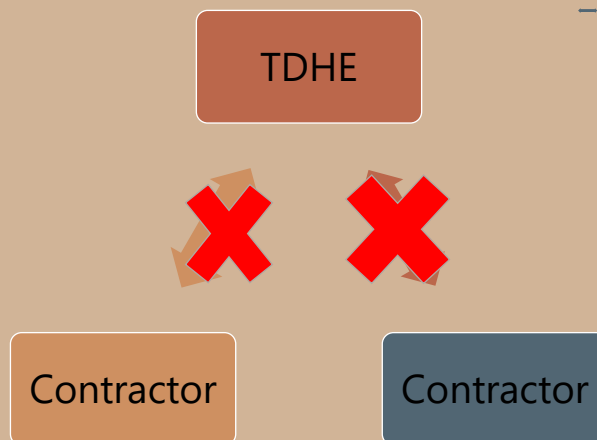
§ 200.331: Contractor Determinations

Characteristics of a Contractor Relationship:

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



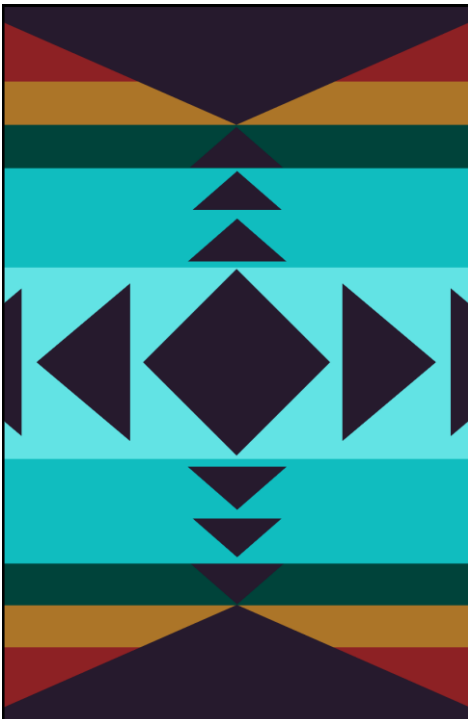
Compliance Responsibilities



§ 200.331: Use Judgment in Making Determinations



- Recipient must use judgment in classifying each agreement as a subaward or procurement contract
- The substance of the agreement is more important than the form of the agreement
- All the characteristics of a subrecipient and/or contractor may not be present



Subrecipient vs. Contractor Classification Checklist

The Uniform Guidance implements definitions of Contractor and Subrecipient. Generally, determination of the relationship with an external entity is verified through review of the proposal, budget, and other related documents. When the relationship remains unclear, this form can be used to provide assistance in making an accurate determination and provide documentation of the decision made.

Subrecipient vs. Contractor Classification Checklist

Definitions from Uniform Guidance (2 CFR Part 200):

Subrecipient:

200.93 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.

Contractor:

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

200.22 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.



Subrecipient vs. Contractor Classification Checklist

Instructions

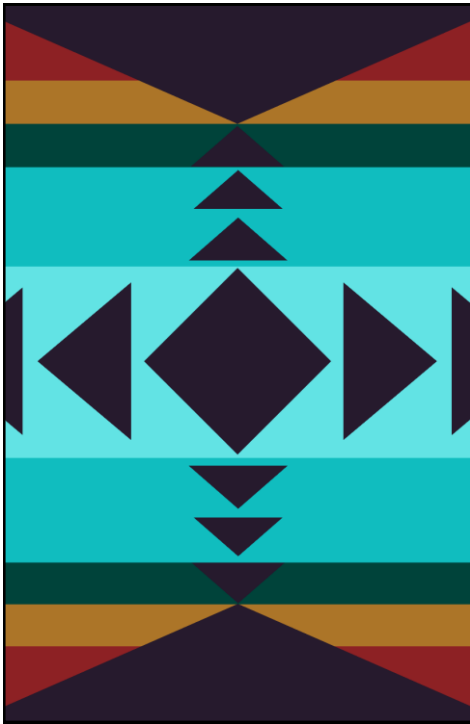
Complete sections one and two by marking all characteristics that apply to the outside entity receiving Federal funds. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the agency. On occasion there may be exceptions to the type of relationship indicated by the checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the agency and the outside entity. Section three should be used to provide documentation on the use of judgment in determining the proper relationship classification.

Name of Outside Entity: _____

Contract number: _____

CFDA number: _____



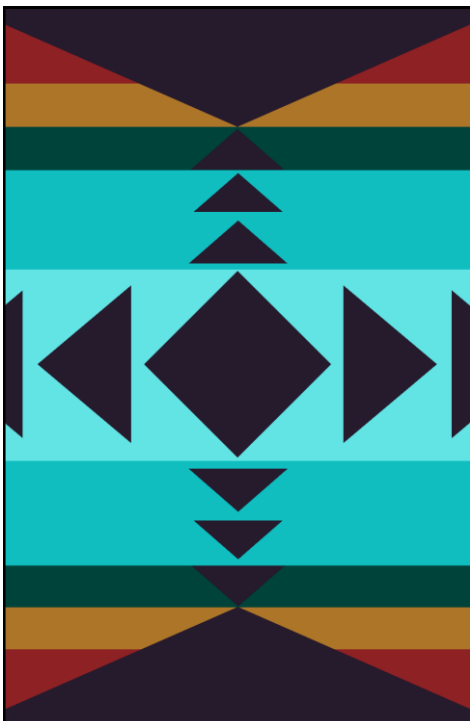


Subrecipient vs. Contractor Classification Checklist

Section 1-Subrecipient

Description: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- 1. Determines who is eligible to receive what Federal assistance.
- 2. Measures performance based on meeting objectives of Federal program.
- 3. Is responsible for programmatic decision making.
- 4. Is responsible for ensuring Federal requirements outlined in the award are followed.
- 5. Uses the Federal funds to carry out a program of the organization as opposed to providing goods or services.

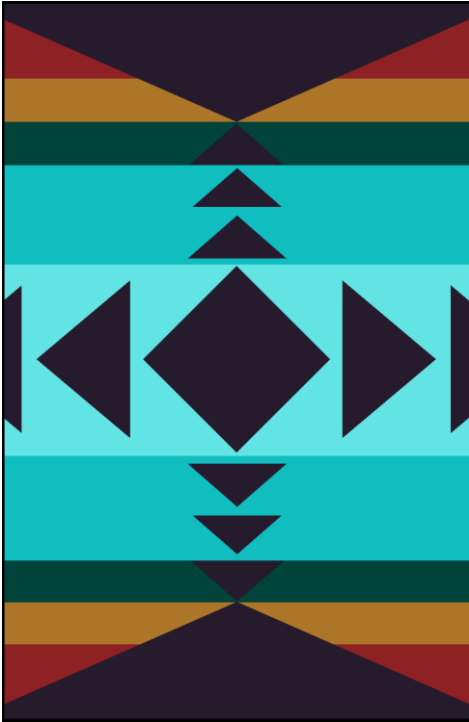


Subrecipient vs. Contractor Classification Checklist

Section 2-Contractor

Description: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

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



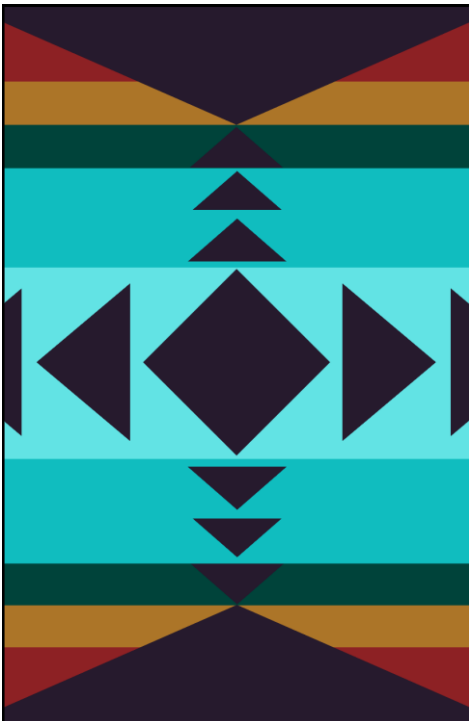
Subrecipient vs. Contractor

Classification Checklist

Optional-Section 3 –Use of Judgment

Description: In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

Explanation of Use of Judgment Determination:



Subrecipient vs. Contractor

Classification Checklist

Final Determination:

Subrecipient Contractor

1st Reviewer Name & Title: _____

Reviewer Signature: _____

Date: _____

2nd Reviewer Name & Title: _____

Reviewer Signature: _____

Date: _____

CONTRACTOR OR SUBRECIPIENT ?

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.



Break Time

NO
ZOOM FATIGUE
ALLOWED!





CONTRACTOR OR SUBRECIPIENT?

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.

PROCUREMENT PRINCIPLES & STANDARDS



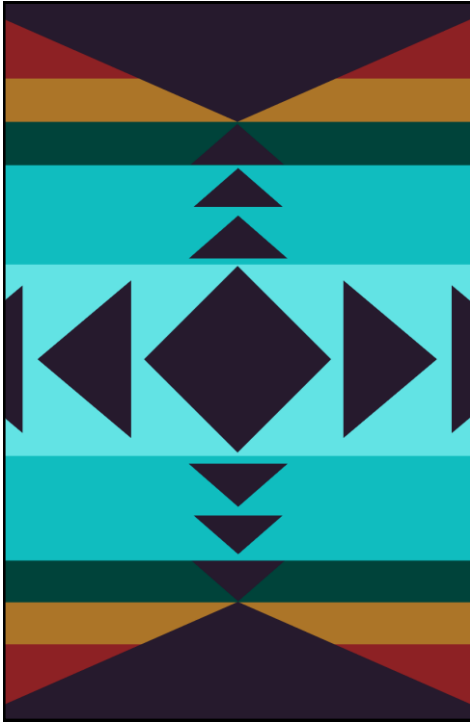
HUD Procurement Requirements Accompanying NAHASDA

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

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)





NAHASDA PROCUREMENT CAVEAT

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

Section 3

Recipients are required to comply with Section 3 of the Housing and Urban Development Act of 1968. Section 3 addresses job training, employment, and contracting opportunities for low-income individuals. This may be addressed in the personnel and procurement policies. This requirement is found at §1000.42.

On Oct 23, 2020, a Dear Tribal Leader letter was issued.

Please See Appendix Documents:
Dear Tribal Leader-Section 3 Oct 23, 2020
Section 3 Final Rule Sept 29, 2020



Section 3

On September 29, 2020, the U.S. Department of Housing and Urban Development (HUD) published a final rule entitled "Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses" (Section 3 Final Rule) in the Federal Register (FR) at 85 FR 61524.

As you know, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires that recipients of certain HUD funds make economic opportunities available for low- and very low-income individuals, especially recipients of government assistance for housing, living in the areas where HUD funds are spent.

The Section 3 Final Rule makes changes to the Section 3 regulations, now codified in 24 CFR Part 75 and effective on November 30, 2020, designed to focus on economic opportunity outcomes while simultaneously reducing regulatory burden. These changes improve the effectiveness of Section 3, streamline some processes that have not yielded significant benefits, and encourage HUD grantees to focus on sustained employment for low- and very low-income individuals.

Section 3

The Section 3 Final Rule does impact our Native American programs in important ways that I wanted to share with you. The Final Rule provides that "Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of" 24 CFR Part 75.

Section 3

Accordingly, beginning on November 30, 2020, the effective date of the Section 3 Final Rule, Tribes and Tribally Designated Housing Entities (TDHEs) will no longer be required to comply with Section 3 requirements. Additionally, the Final Rule makes conforming technical changes to the Indian Housing Block Grant (IHBG) regulations at 24 CFR 1000.42 clarifying that IHBG recipients are no longer subject to Section 3 requirements.



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?



LUNCH |
1:00 To 2:00 EST

PROCUREMENT REGULATIONS



Principal Regulations

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

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

Uniform Administrative Act (2 CFR Part 200)

To ensure the accountability of all federal funding, the Office of Management and Budget (OMB) establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

The regulations implementing NAHASDA (24 CFR § 1000) include a variety of general administrative requirements that must be followed by recipients of the Indian Housing Block Grant funds. Prior to December 26, 2014, the NAHASDA regulations addressing administrative requirements at 24 CFR § 1000.26 cited two former OMB regulatory documents: OMB Circular A-87 (cost principles), and OMB Circular A-102 (Uniform Administrative Requirements codified for HUD programs in 24 CFR § 85).



Uniform Administrative Act (2 CFR Part 200)

The OMB has streamlined the Federal government's guidance from eight existing OMB circulars (which includes A-87, A-102, and A-133) into one consolidated set of guidance in the code of Federal regulations (2 CFR §200) and is titled the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the 'Uniform Guidance').

This consolidation is aimed at eliminating duplicative or almost duplicative language in order to clarify where policy is substantively different across types of entities, and where it is not.

OMB issued the final rule on December 26, 2013. The final rule became effective for grantees on December 26, 2014. When a recipient accepts IHBG funds, it agrees to comply with these administrative requirements.



Uniform Administrative Act (2 CFR Part 200)

Subpart A – Acronyms and Definitions

Subpart B – General Provisions

Subpart C – *Pre-Federal Award Requirements &
Formula Allocation*

Subpart D – *Post-Federal Award Requirements*

Subpart E – Cost Principles

Subpart F – Audit Requirements



2 CFR 200 *Application*

- All ONAP program grant agreements state that the award is subject to regulations as they may be amended.
- Apply 2 CFR Part 200 to current and prior years grants.

2 CFR 200 Subpart B: General Provisions

The Office of Management & Budget (OMB) previously issued Circular notices for uniform requirements which were then Codified and made effective December 26, 2014. Please see ONAP Program Guidance 2014-12, Consolidation of OMB Circulars.

The purpose of this Subpart is to establish uniform administrative requirements, cost principles and audit requirements for Federal awards to non-Federal entities by Federal awarding agencies;

This Subpart provides basis for systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to OMB.

This Subpart prescribes the manner in which GSA, OMB and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act.

It also requires the following:

2 CFR 200 Subpart B: General Provisions

§200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters **are required to report certain civil, criminal, or administrative proceedings to SAM.** ~~Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.~~ (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[80 FR 43308, July 22, 2015]

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

2CFR 200 Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards

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

2 CFR 200 *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 Subpart D: Post Federal Reward Requirements

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

§200.302 Financial management.

Investment, Cash Management, Accounting System

§200.303 Internal controls.

§200.313 Equipment, Property Inventory, Control & Disposition System

§200.333 Retention requirements for records, (3 Years)

The financial management system of each non-Federal entity must provide for the following:

§200.334 Requests for transfer of records

§200.335 Methods for collection, transmission and storage of information

§200.336 Access to records

§200.337 Restrictions on public access to records

200.317-326 PROCUREMENT STANDARDS

§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.



Uniform Guidance Sessions

The methods of Procurement are listed in the Super Circular at 2 CFR Part 200.320

HUD has an excellent 9-part series titled "OMB NEW UNIFORM Guidance Sessions" Available to watch using YouTube.

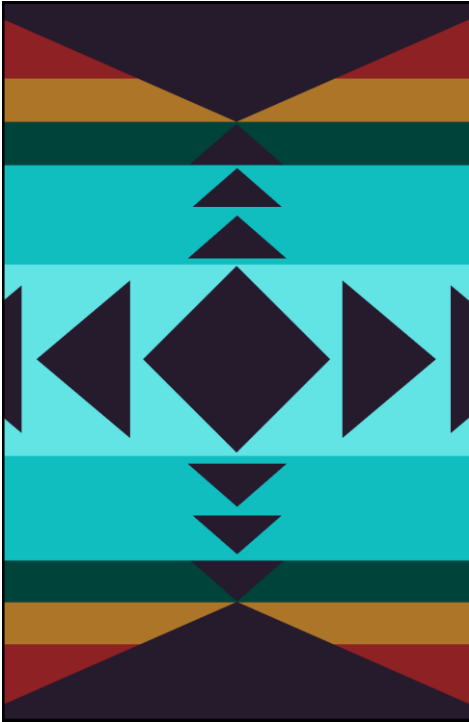
I would recommend it as the uniform guidance is a major piece of the puzzle in assuring your procurement is done properly.

https://www.hud.gov/program_offices/public_indian_housing/ih/regs/resources

2 CFR PART 200 UNIFORM GUIDANCE WEBCAST SERIES AND RESOURCES

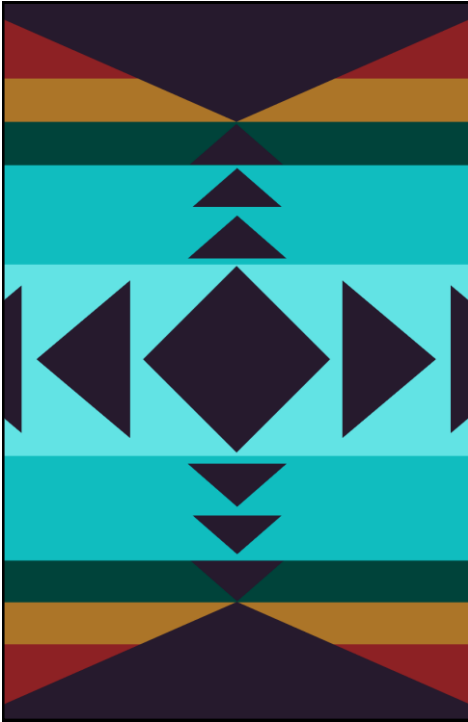
REMEMBER:

When reading the uniform guidance, They are very precise in using the terms "should and must" **Should** means best practices or recommended approaches and **Must** means it is required.



Federal Register / Vol. 85, No.
157 / Thursday, August 13, 2020
/ Rules and Regulations

**OFFICE OF MANAGEMENT AND BUDGET 2 CFR
Parts 25, 170, 183, and 200 Guidance for Grants
and Agreements ACTION: Final guidance.**



Federal Register / Vol. 85, No. 157 / Thursday, August 13, 2020 / Rules and Regulations HIGHLIGHTS

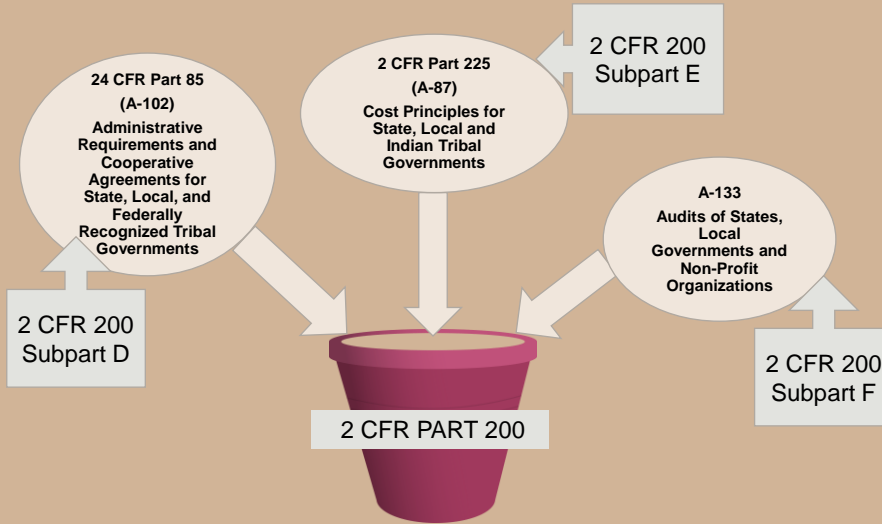
- Simplified Acquisition Threshold (2 CFR Part 200.320) for procurement was increased to **\$250,000**, which allows for purchases below this amount using Small Purchase Methods.
- Micro Purchase (2 CFR Part 200.320) for procurement was increased to **\$10,000**, which allows for purchases below this amount without a price or rate quotation.
- Domestic Preferences for Procurement (2 CFR Part 200.322) includes iron, steel, aggregates for concrete, aluminum, plastics, and polyvinyl pipe.
- Prohibition on Certain Telecommunication and Video Surveillance Services and Equipment (2 CFR Part 200.216) stops the purchase/use of specific items from specific companies.
- Supplies (2 CFR Part 200.314) are tangible property with a value at or **below \$5,000** regardless of its useful life including IT Systems, computing devices and smart phones
- Equipment (2 CFR Part 200.313) means tangible property having a useful life of more than 1 year and a per-unit acquisition cost of **more than \$5,000** or more (2 CFR Part 200.1).
- Audit Requirements (2 CFR Part 200.501) increased to **\$750,000** for a Single Audit.

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
- **(i) De minimis procurement. A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.**
- **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

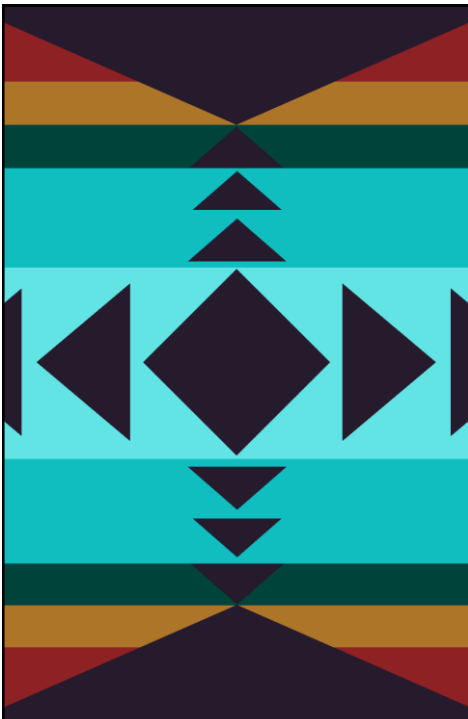
- Documented procurement procedures required
- Must conform to Federal, state, local and tribal laws and regulations



200.318(c)(1): General 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.



Conflict of Interest 24 CFR 1000.30

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.

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)

Independent Cost Estimate

2 CFR 200.323



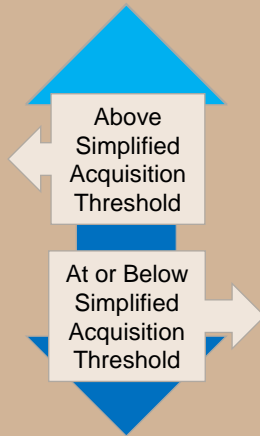
Before soliciting for bids or proposals

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



- 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 an estimate is necessary to determine if procurement falls into this category).

PRICE AND COST ANALYSIS "Independent Cost Estimate"



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))



© Can Stock Photo - csp10293117

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

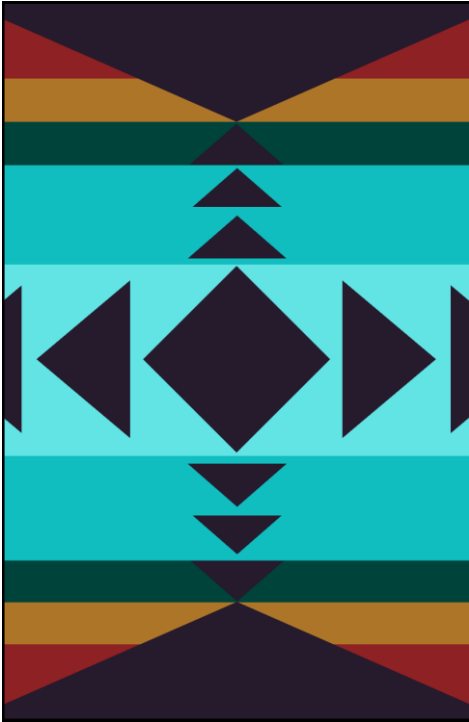


What can they do for you?

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

Who can use them?

- Tribes
- TDHEs



Federal Supply Schedules

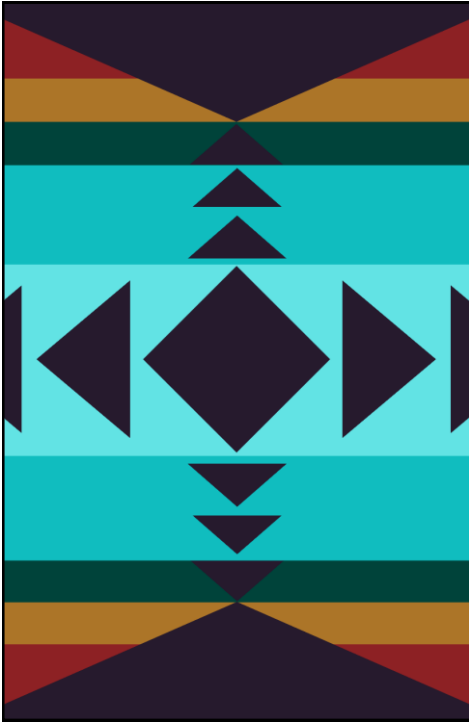
What are they:

- ✓ 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

GSA Advantage! e-Buy
...Working for the U.S. Government

Welcome!

GSA's latest e-Business innovation, *e-Buy*, has simplified the acquisition process! e-Buy, which is a component of GSA Advantage!, is an electronic Request for Quote (RFQ) system designed to allow Federal buyers to prepare RFQs, directly on-line, for a wide-range of services and products offered through GSA's Multiple Award Schedule (MAS) program. e-Buy allows RFQs and quotes to be exchanged electronically between Federal buyers and Schedule contractors.

e-Buy delivers the power of the Internet by allowing Federal buyers to interact with the commercial marketplace to obtain best value solutions for their operations!

Buyers

Please enter your GSA Advantage! Membership information.

User ID

Password

[I forgot my User ID and/or Password](#)

MAS Contractors

Please enter your Contract number and Password as provided by the Vendor Support Center.

Contract Number

(Example: G599F999F or V123P1234A)

Password

[Forgot Your Password?](#)

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

* GSA * Advantage! * Security * What's New * e-Buy * e-Library * Customer Service * Help/FAQ

GSA Advantage!

...Working for the U.S. Government

Login:

User ID

Password
 Go!

[Forgot Your User ID or Password?](#)

Get your User ID and password - [Register Here.](#)

Welcome to GSA Advantage!

GSA Advantage! is the Federal Government's premier online shopping site. With millions of products and services, GSA Advantage! provides a one stop shopping source to meet all your procurement needs.



GSA Advantage! TIP #14
Do you know what a **Diamond** before an item Price means?
 **\$42.75 BX**
[click to find out >>](#)

5 ways to shop Advantage! now

- 1. Search/Browse**
 [Advanced Search](#) **Go!** [View a Tutorial of the "new" GSA Advantage!](#)
- 2. Quick Order** [Requisition Status](#)



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)
- Proper documentation must be filed



Environmental Assessments and 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



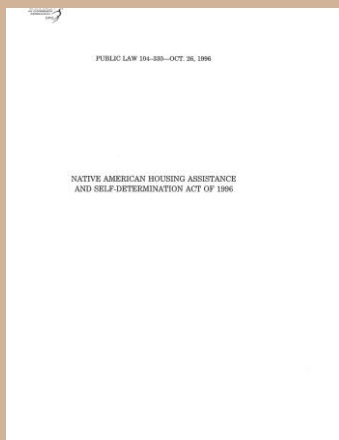
Reconciling Differing Regulations and Requirements

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

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?

METHODS OF PROCUREMENT

2 CFR 200.320

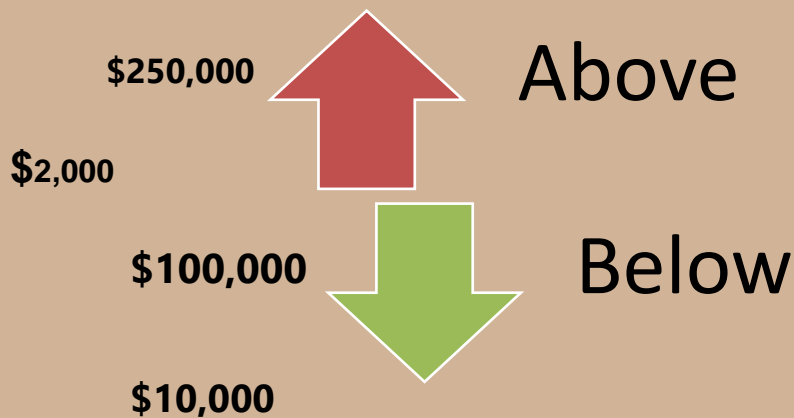


Methods of Procurement (2CFR 200.320)

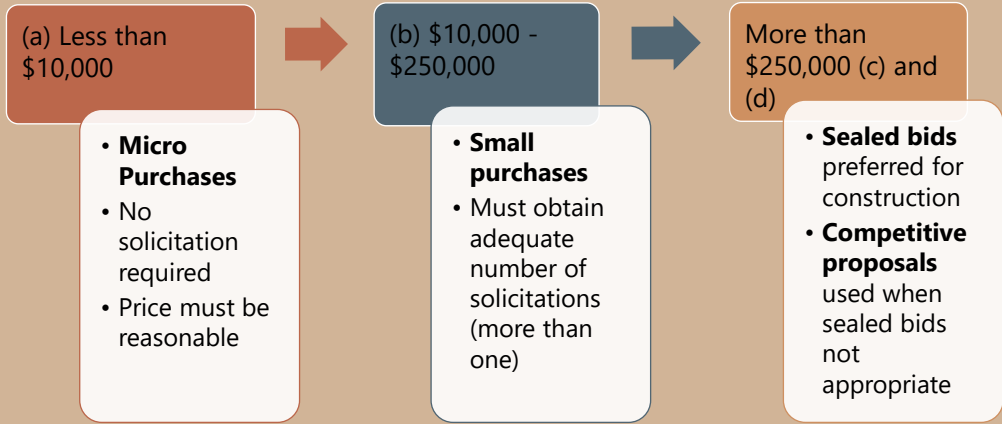


Procurement Thresholds

the point or level at which something begins or changes”



Methods of Procurement (based on price)



May 3, 2016 DRAFT (Pending HED Legal Counsel Review)

agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 3(b).

III. Procurement Methods

A. Selection of Method

When satisfying its needs by procurement, the TOW/TA shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. The TOW/TA shall provide a reference in its supporting documentation as to why it selected that particular method.

B. Micro-Purchase Procedures

- 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 (\$1000 for micro-purchases). Any procurement not exceeding \$1,000 (HED Program) or \$5,000 (COW/ Program) may be conducted in accordance with the micro-purchase procedures authorized in this section. A lower dollar amount may be used if deemed or required to conform to that 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.
- Indirect performance.** Not required per 34 CFR 300.5216
- Price Cash Purchases.** Petty cash purchases should be kept to a minimum, since purchasing in buying quantities does not provide for the best price and all administrative requirements under small purchases apply.
- Obtaining Quotes.** To the extent practicable, the TOW/TA must distribute micro-purchase requests 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.

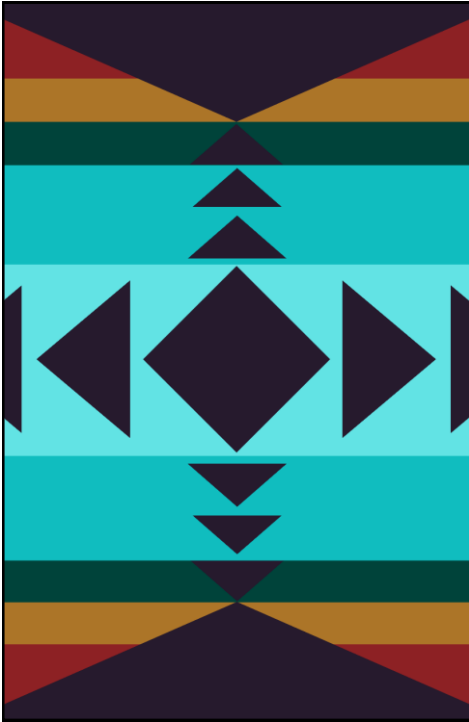
C. Small Purchase Procedures

- General.** Any procurement not exceeding \$500,000 (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 7 of the Statement on Instances where breaking out such procurements can be shown to result in more economical purchases).
- Indirect performance.** See above Section 8(A)(3)(ii).

SMALL PROCUREMENT POLICY PAGE 12

Procurement Method Requirements

Refer to Sample Policy



§ 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 the Simplified Acquisition Threshold, currently set at \$250,000

§ 200.320 cont'd Methods of Procurement

- Competitive Sealed bids: – Purchases over \$250,000 (formal advertising)
- Competitive proposals Purchases over \$250,000 for services (Request For Proposals)
- Non-competitive proposals: **change – must request in writing if** seeking permission from Awarding Agency



MICRO-PURCHASE METHOD



Micro Purchase Threshold (2CFR 200.67)

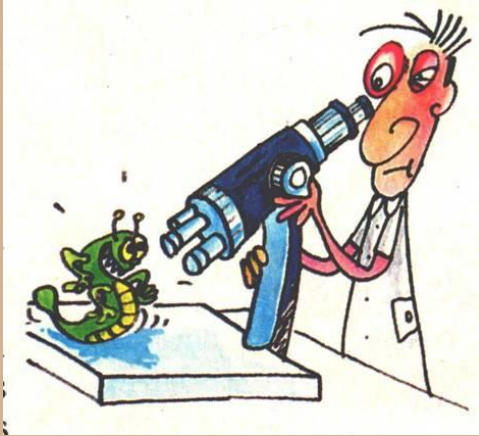
Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

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.

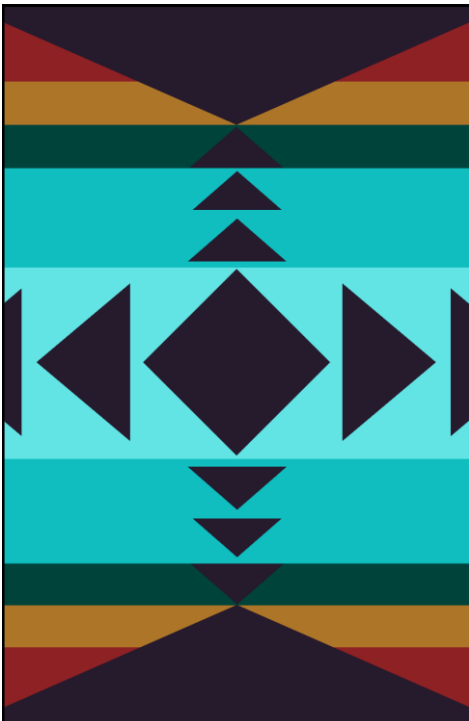
The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions).

It is \$10,000 currently, but this threshold is periodically adjusted for inflation.

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
 - \$10,000 for all other procurement using federal funds* (or use threshold stated in your Policy if less)



Micro-Purchases (include in Policy)

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

Prohibition Against Bid Splitting

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

Simplified Acquisition Threshold (2CFR 200.88)

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 this date, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation.

SMALL PURCHASE METHOD



Small Purchase Method

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

\$250,000

Or Less
According To
Your Policy!

Small Purchase Method

Can Be Used to Procure:

 Office supplies

 Vehicles

 Rehabilitation Contractors

 Professional Services

 Equipment

Principles of Small Purchase Method

Must be competitive

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

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

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

Establish your threshold in your Procurement Policy- And follow it

Key elements of Small Purchase Method

No public advertising

Need to have an adequate number of qualified bidders / proposers

At a minimum, use a written checklist in solicitation so each bidder has the same information

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

Key Elements of Small purchase method

Award and Contract



Award and Contract:

- Only to responsive and responsible bidder
- Reasonable price
- May not be the lowest bidder

Use appropriate contract forms and methods after obtaining legal advice



QUESTIONS

55

See you at 11:00
AM EST



If you should need anything Else!

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