

PROCUREMENT & CONTRACT ADMINISTRATION TRAINING

Presented By NAIHC
August 18-19, 2021



Training Objectives

To assist you as NAHASDA Recipients to:

- **EFFECTIVELY** and **EFFICIENTLY** conduct procurement and administer contracts
- **COMPLY** with requirements imposed by HUD and other funding sources



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Training Agenda

- **Day 1**
 - Module 1 - Introduction to Indian Country Procurement
 - Module 2 - Procurement Principles & Standards
- **Day 2**
 - Module 3 - Methods of Procurement
 - Module 4 - Indian & Tribal Preferences and Contract Administration

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



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Day 1 Overview

- **Module 1 - Indian Country Procurement**: Understanding the procurement in the world of Indian housing
- **Module 2 - Procurement Principles & Standards**: Knowing the basic rules and standards of purchasing goods and services using NAHASDA IHBG funds

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MODULE 1
INTRODUCTION TO
INDIAN COUNTRY PROCUREMENT



Procurement is the
buying of goods or
services...

Procurement and Contracting Have Their Own Language

Quotes **Debarment**

BIDS

Liquidated Damages

Termination for Convenience

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DEFINITIONS OF SELECTED WORDS USED IN INDIAN AND NATIVE ALASKAN HOUSING PROCUREMENT AND CONSTRUCTION CONTRACTING

<p>- R -</p> <p>Regulations – rules issued by government statute and are a type of law.</p> <p>Reimbursable Expense – A charge to the contractor that is to be paid 100 cent on the dollar.</p> <p>RFP – A "Request for Proposal" made by the owner.</p> <p>Responsible Contractor – A contractor that is capable of promptly performing its contracts.</p> <p>Responsive Contractor – a contractor in accordance with the documents required in the solicitation.</p> <p>- S -</p> <p>Sealed Bids – A government procurement method where price quotes which are publicly opened at the time of award.</p> <p>- N -</p> <p>Schedule of Payments – A schedule of payments to be made by the owner to the contractor.</p> <p>Schematic – A preliminary design showing the general layout and location of the project.</p> <p>Scope of Work – A description of the work to be performed under the contract.</p>	<p>- A -</p> <p>Acceptance – The act of an authorized representative of the owner acknowledging that the contractor's supplies, services or activity are in conformity with the contract requirements.</p> <p>Addendums - (Addenda) Written information adding to, clarifying or modifying the bidding documents. The owner generally issues an addendum to the contractor during the bidding process and as such, addenda are intended to become part of the contract documents when the construction contract is executed.</p> <p>Additional Services - Services provided over and above those designated as basic services in the contract or owner agreements with A/Es and CMs.</p> <p>Advertisement – a public announcement in a newspaper soliciting bids or proposals.</p> <p>Architect/Engineer (A/E) - the design professional hired by the owner to provide design and design-related services.</p>
<p>Not Damage for Delay Clause – A contract term that releases owner from damages resulting from owner caused delays and limits contractor to recovering time extensions for such delays.</p> <p>Notice of Award - A letter from an owner to a contractor stating that a contract has been awarded to the contractor and a contract will be forthcoming.</p> <p>Notice to Proceed - A notice from an owner directing a contractor to begin work on a contract.</p>	

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Some Important 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.”

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



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- **Board:** Board of Directors, Board of Commissioners, Authority Board, Housing Committee serving as oversight of the housing program, or in some cases where a tribe is directly administering the housing program—its **Tribal Council** with no housing Board.

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Some Sampling of Terms...

- **CONTRACTOR:** Individual, company or organization that provides goods or services or performs services 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

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- **BID:** Offer from a contractor to perform or deliver specified work or goods for a specified fixed price
- **PROPOSAL:** Offer from a contractor to perform services or deliver work with price and other factors
- **IFB:** “Invitation for Bids” is used for exact specifications and quantities with binding terms
- **RFP:** “Request for Proposals” is used often for professional services at negotiated price or Not To Exceed amount
- **RFQ:** “Request for Quotes” often used for purchase of goods and services under small purchasing threshold

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Benefits of Proper Procurement



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Some 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 requirements

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...Monitoring Findings Continued

- 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 federal and TDHE policy requirements

Maintain documentation

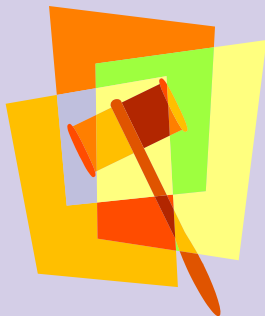
Facilitate delivery of services or products

Understand overall process

Implement planning process

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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

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Reasons for a Procurement Policy

- Required by 24 CFR 1000.26 and 2 CFR 200.318
- Ensure consistency all procurement actions
- 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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Uniqueness of Tribal Procurement

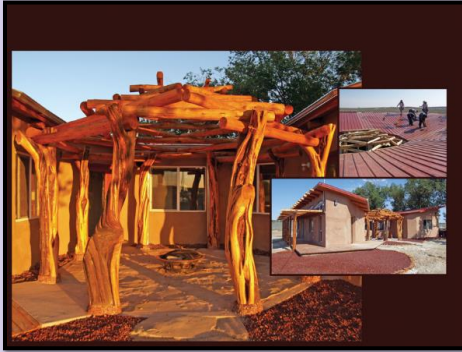
Tribal procurement reflects:

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



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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, accessibility)



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A Few More Special Factors

- Tribal governance
- Self-employment
- Tribally owned companies
 - 2 CFR 200.318(2)
Organizational Conflict of Interest may apply



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Other Circumstances Impacting Procurement

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



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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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Incentives for Government Procurement



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

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Public Policy Initiatives

- Indian, tribal 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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Adherence to Procurement Rules

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



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What is NOT Procurement?

- Subgrants
- Joint venture agreements that you control
- Investments



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Contractor (Vendor) vs Subrecipient

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



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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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§ 200.330(a): Subrecipient Determinations

Characteristics of Subrecipient:

1. Tribes/TDHE 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

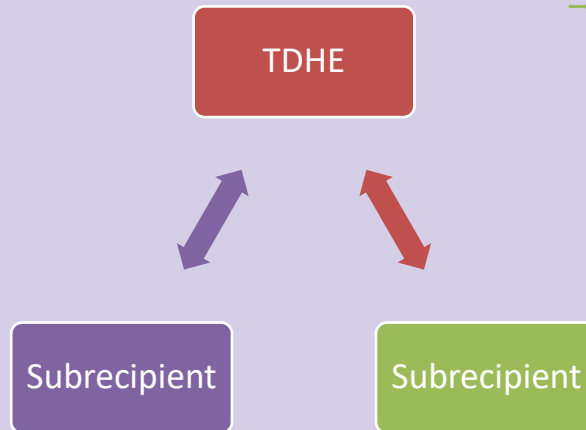
–“A *Subaward* is for the purpose of carrying out a portion of the Federal award.”

•§ 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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Compliance Responsibilities



§ 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.”



§ 200.330(b): Contractor Determinations

Characteristics of a Contractor

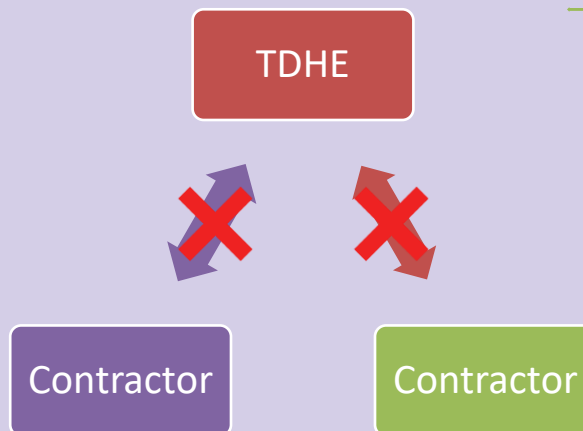
Relationship:

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



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Compliance Responsibilities



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§ 200.330(c): 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 (see previous slides) may not be present



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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.



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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.

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Q & A Session

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