

Procurement Training  
May 10-11, 2022

- Day 1

---

---

---

---

---

---

---

---

Training Objectives

To assist you as NAHASDA Recipients to:

- EFFECTIVELY** and **EFFICIENTLY** conduct procurement
- COMPLY** with requirements imposed by funding sources

---

---

---

---

---

---

---

---

Why Are We Here?

- IHBG & ICDBG Recipients required to follow NAHASDA & 2 CFR 200
- [www.youtube.com/watch?v=O1ij2zAMUD8&list=PLDYbj6cykYZ-rcnHRujd5LBbD9Nx0LbeE&index=2](https://www.youtube.com/watch?v=O1ij2zAMUD8&list=PLDYbj6cykYZ-rcnHRujd5LBbD9Nx0LbeE&index=2)

---

---

---

---

---

---

---

---



We are going to address both

**MANAGEMENT**  
Procurement  
and  
**CONSTRUCTION/  
DEVELOPMENT**  
Procurement



---

---

---

---

---

---

---

---

### 6 Trainings

- Training 1- Introduction to Procurement in Indian Country – NAHASDA Procurement – Overview
- Training 2- Regulations & 2 CFR 200 Procurement Standards
- Training 3- Indian Preference

---

---

---

---

---

---

---

---

### 6 – Trainings Cont.

- Training 4- Methods of Procurement
- Training 5- Price & Cost Analysis
- Training 6- Contract Administration

---

---

---

---

---

---

---

---

## Examples of What You Procure

### MANAGEMENT:

- Office Supplies
- Vehicles
- Accounting and Legal Services
- Computer Equipment

### DEVELOPMENT / REHAB:

- Construction Services
- Architectural Services
- Tax Credit Consultants
- Material



---

---

---

---

---

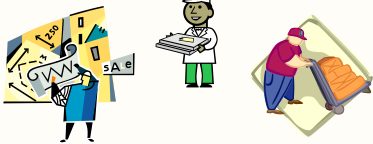
---

---

---

## 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.

---

---

---

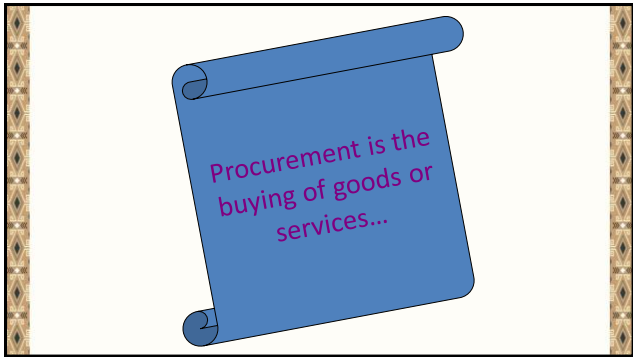
---

---

---

---

---



---

---

---

---

---


---

---

---

How Proper Procurement Helps Your Program

- Save Money
- Avoid Corruption
- Operate in a Consistent Manner
- Avoid Outside Interference
- Promote Fair and Open Competition for Contracts
- Comply with funder requirements



---

---

---

---

---

---

---

---

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
- 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

---

---

---

---

---

---

---

---

### Goals for Your Procurement Activities

- Obtain the best possible goods and services at a reasonable price
- Comply with funding and program requirements
- Understand the process
- Facilitate proper delivery
- Maintain proper documentation



---

---

---

---

---

---

---

---

### Procurement Requirements

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



---

---

---

---

---

---

---

---

## UNDERSTANDING INDIAN COUNTRY PROCUREMENT

---

---

---

---

---

---

---

---

### Fundamentals of Government Procurement

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

---

---

---

---

---

---

---

---

### Uniqueness of Tribal Procurement

Recipients and 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



---

---

---

---

---

---

---

---

### Other Circumstances Impacting Procurement

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



---

---

---

---

---

---

---

---

### INTRODUCTION TO PROCUREMENT

---

---

---

---

---

---

---

---



### Fundamentals of Government Procurement

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

---

---

---

---

---

---

---

---

### Reasons for Special Government Procurement



- Reduce cost (taxpayer money)
- Award on merit
- Bar political influence
- 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
- Governed by **laws and regulations**
- **Special requirements** imposed by government funding sources

---

---

---

---

---

---

---

---

### Written Procurement Rules

Needed to:

- List requirements
- Educate and explain
- Have uniform application



---

---

---

---

---

---

---

---

### Adherence to Procurement Rules

- Limit and discourage exceptions
- Help prevent political interference
- Avoid in-house corruption
- Ensure consistent application of rules
- Ensure compliance with law and funding requirements



---

---

---

---

---

---

---

---

### How Else Do You Benefit?

- Spend **money wisely**
- **Proper and timely** delivery of goods and services
- Maintain **credibility** of organization and staff



---

---

---

---

---

---

---

---

### Types of Purchases

#### • MANAGEMENT



#### • CONSTRUCTION / DEVELOPMENT



---

---

---

---

---

---

---

---

### Management Procurement

- Office supplies and equipment
- Professional services
- Vehicles and equipment
- What else?



---

---

---

---

---

---

---

---

### Construction / Development Procurement



- Contractors (and subcontractors)
- Building materials
- Existing or pre-built structures
- Professional services



---

---

---

---

---

---

---

---

### What is NOT Procurement?

- Subgrants
- Joint venture agreements that you control
- Investments



---

---

---

---

---

---

---

---

### PROCUREMENT REGULATIONS AND TERMS

---

---

---

---

---

---

---

---

Quotes

Debarment

Procurement and Contracting Have Their Own Language

BIDS

Liquidated Damages

Termination for Convenience

---

---

---


---

---

---

---

---

A Sampling of Terms... 

- **FORCE ACCOUNT:** Owner who performs general contractor responsibilities by itself in a construction or rehab project
- **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 performance

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

### Excluded Parties List

- [https://www.transit.dot.gov/funding/procurement/third-party-procurement/excluded-parties-list#:~:text=Resources-Excluded%20Parties%20List,at%20https%3A//www.sam.gov/portal/SAM/%C2%A0\(Revised%3A%20May%202017\),-Are%20micro%2Dpurchases](https://www.transit.dot.gov/funding/procurement/third-party-procurement/excluded-parties-list#:~:text=Resources-Excluded%20Parties%20List,at%20https%3A//www.sam.gov/portal/SAM/%C2%A0(Revised%3A%20May%202017),-Are%20micro%2Dpurchases)

---

---

---

---

---

---

---

---

### 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)

---

---

---

---

---

---

---

---

## PROCUREMENT PRINCIPLES

---

---

---

---

---

---

---

---

### Four Major Procurement Methods

- Small Purchase
- Sealed Bids
- Competitive Proposals
- Non-Competitive



---

---

---

---

---

---

---

---

### Basic Steps for All Procurement Methods

1. Establish **parameters** (e.g., quantity, price, scope of work)
2. Do a **cost or price analysis**
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**

---

---

---

---

---

---

---

---

Bidders, Proposers, and Vendors Must Be Both...

• **Responsible**

• **Responsive**



---

---

---

---

---

---

---

---

Responsive...

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



---

---

---

---

---

---

---

---

Responsible...

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



---

---

---

---

---

---

---

---



Award or Purchase Leads  
Contract is... to a Contract

- Almost always in writing
- Sometimes, the contract form is made part of the solicitation
- Level of detail depends on circumstances



---

---

---

---

---

---

---

---

Purpose and Importance of Contracts

- “Meeting of the minds” to clearly define expectations
- Incorporates terms that protect your right to get goods or services delivered promptly and properly
- Dispute avoidance
- Dispute resolution provisions



---

---

---

---

---

---

---

---



Importance of Follow-Up

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

---

---

---

---

---

---

---

---

INDIAN PREFERENCE  
REQUIREMENTS

---

---

---

---

---

---

---

---

INDIAN PREFERENCE  
REQUIREMENTS

[www.hud.gov/sites/documents/  
2013-07INDIANTRIBALPREF.PDF](http://www.hud.gov/sites/documents/2013-07INDIANTRIBALPREF.PDF)

---

---

---

---

---

---

---

---

**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

---

---

---

---

---

---

---

---

### Preference in Solicitation Process

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



---

---

---

---

---

---

---

---

### Indian Preference Is Different From Other Preferences

- NOT racially or affirmative action based
- Political status of Recipients, Tribes, and tribal members
- Arises under different federal law



---

---

---

---

---

---

---

---

### Indian Self-Determination and Education Assistance Act

- To the greatest extent feasible, preference in selection, subcontracting, job training and employment
- Federal law 25 USC 450e(b)
- NAHASDA regulations 24 CFR 1000.48 to 54 (>>See Tab 6, pages 10-13)
- Supreme Court *Morton v. Mancari*

---

---

---

---

---

---

---

---

Where Indian Preference  
Is Applied



---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

Need to Qualify 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.



---

---

---

---

---

---

---

---

51% Ownership AND  
51% Control

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



---

---

---

---

---

---

---

---

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



---

---

---

---

---

---

---

---

### Various Ways to Determine Eligibility

- Variety of approaches based on the size, regularity, and nature of the procurement
- More thorough the process, the better
- On large procurements, make the determination prior to the submission of the bid or proposal
- Shall include a determination that bidder is responsible

---

---

---

---

---

---

---

---

### When Feasible...



- Utilize **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

---

---

---

---

---

---

---

---

### When Feasible...



- **Tribal Departments - Tribal Employment Rights Office (T.E.R.O.)**
- TERO typically consists of **board** to evaluate and decide eligibility
- **TERO will conduct independent verification** and inquiry. Ultimately, TERO Certifying an entity

---

---

---

---

---

---

---

---

### Common “Fronting” Practices



- Disguise how little profit tribe or member receives
- Indian tribe or member appears on paper as 51% owner, but management/control are with non-Indian
- Less than truthful in explaining resources that each owner brings to entity

---

---

---

---

---

---

---

---

### 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



---

---

---

---

---

---

---

---

### 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

---

---

---

---

---

---

---

---

## Price vs. Cost Analysis



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

---

---

---

---

---

---

---

---

## Cost Analysis Techniques

- Conduct 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?)



---

---

---

---

---

---

---

---



## RS Means Residential Cost Data and Others

- Cost per SF models for residential construction
- Common assembly costs residential systems
- Unit Cost of more than 8,000 items
- It is an average cost of 30 largest U.S. cities
- Have to pay for them!



---

---

---

---

---

---

---

---

## 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

### Can Be Used to Procure:

- Material
- Equipment
- Some services



---

---

---

---

---

---

---

---

### Cooperative Purchasing

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



---

---

---

---

---

---

---

---

### Important Issues



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

---

---

---

---

---

---

---

---

### General Services Administration

What can we do for you?

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

---

---

---

---

---

---

---

---

### Who can use GSA Programs?

Authorized Users...  
Native American Indian Tribes

But...

*TDHEs/Recipients are NOT authorized users!*



---

---

---

---

---

---

---

---

### What are the GSA Programs ?

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



---

---

---

---

---

---

---

---

### 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

---

---

---

---

---

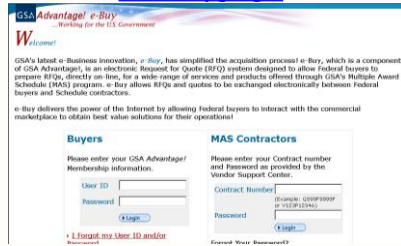
---

---

---

How do I get quotes from GSA vendors

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

---

---

---

---

---

---

---

---

### PROCUREMENT POLICY

---

---

---

---

---

---

---

---

## Reasons for a Procurement Policy

- Required by funding agencies
- Establish your own procurement rules and practices that do not conflict with agency regulations
- Assemble and integrate requirements imposed by others with your own requirements



---

---

---

---

---

---

---

---

## Part 2 CFR 200 Subpart D

- **200.317 Procurements by states.**
- When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

---

---

---

---

---

---

---

---

### **§ 200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

---

---

---

---

---

---

---

---

(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.

---

---

---

---

---

---

---

---

**Conflict Of Interest**

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.

---

---

---

---

---

---

---

---

**§ 200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

---

---

---

---

---

---

---

---

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

---

---

---

---

---

---

---

---

### How to Prepare a Procurement Policy

1. Develop a master policy
2. Gather one or more models
3. Customize the policy to reflect your program and circumstances
4. Incorporate NAHASDA requirements
5. Allow for special policy provisions
6. Involve the Board in drafting and adoption

---

---

---

---

---

---

---

---

### How to Use a Model Policy

- Board's role is to establish policy
- Must be customized and individualized
- Must be your policy
- Periodically review and update



---

---

---

---

---

---

---

---



PROCUREMENT POLICY:

Policy Introduction

- General Waiver provision
- Alternative Policies
- Special Program Requirements
- Purpose of this Policy
- Definitions

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Administration

- Board may amend
- Executive Director advises on adoption of provisions and administers Policy day-to-day



---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Policy Application

- Applies to **all** purchases except leasing of real estate
- Waivers by Board permitted in certain circumstances when not in violation of NAHASDA regulations
- Guidelines
- Competition per 24 CFR part 85
- Cost or price analysis required for each purchase

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Procurement Methods

- Try to separate procurement when using different funding sources
- In each procurement, you must select from one of the following prescribed methods...

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Procurement Methods

1. Small Purchase
2. Sealed Bids
3. Competitive Proposals (RFP)
4. Non-Competitive



---

---

---

---

---

---

---

---

**§ 200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or subaward

---

---

---

---

---

---

---

---

*(1) Micro-purchases—(i) Distribution.*

The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

---

---

---

---

---

---

---

---

## Small Purchases

- *Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

---

---

---

---

---

---

---

---

## *Simplified Acquisition Thresholds.*

- The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

---

---

---

---

---

---

---

---

## Changes to Federal Micro-Purchase & Simplified Acquisition Thresholds

- [www.hud.gov/sites/dfiles/PIH/documents/Final%20Micro%20Purchase%20Guidance%20%20PG%202019-03-A.pdf](http://www.hud.gov/sites/dfiles/PIH/documents/Final%20Micro%20Purchase%20Guidance%20%20PG%202019-03-A.pdf)

---

---

---

---

---

---

---

---

## Sealed Bids

- A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions:

---

---

---

---

---

---

---

---

## Proposals

- A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

---

---

---

---

---

---

---

---

## Non-Competitive

- There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

---

---

---

---

---

---

---

---

### PROCUREMENT POLICY:

#### Cancellation of Solicitation

- Right to cancel is set forth in Policy
- Should also be referenced in solicitation
- Funding source (like HUD) may limit
- If cancelled, carefully document the reason(s)

---

---

---

---

---

---

---

---

### PROCUREMENT POLICY:

#### Indian Preference

- Recipient's own policy
- Required when using federal funds (like NAHASDA)
- Sometimes, preference will not be feasible
- Specifically set forth in solicitation and any subsequent contract
- TERO

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Contractors Must be Qualified and Responsible

- Responsible: Must have financial and technical capacity to perform and a satisfactory record
- Cannot participate if debarred
- May utilize list of pre-qualified bidders and proposers
- Bonds and sureties are required for facilities and improvement contracts

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Types of Contracts that Can be Used

- List of required contract clauses in 24 CFR Part 85
- A contract administration system is required
- Contracts must specify which laws and courts will be used to interpret them
- May contain limited waiver of sovereign immunity

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Scope of Work and Specifications

- Must be set out in **BOTH** solicitation and contract
- Division of work
- Brand names or equal



---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Appeals and Remedies

- Attempt to resolve informally
- Can prescribe "alternative dispute resolution methods" in contract
- Bidders may protest, should not cause delay in awarding the contract
- Special rules for Indian preference protests

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Other Non-Indian Preferences

- When federal funds used, preferences for:
  - small
  - minority owned
  - women owned
  - labor surplus area firms
- Preference in contracting, training, and employment for local area residents (Section 3 of the Housing and Urban Development Act of 1968)
- Incorporated into contracts and sub-contracts

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Ethics in Procurement

- Reference Ethical Standards of Conduct Policy
- Gifts strictly limited and kick-backs are absolutely prohibited
- No contingent fees are allowed

---

---

---

---

---

---

---

---

PROCUREMENT POLICY:

Sovereign Immunity

- No waiver in policy
- Recipient has discretion to make partial waiver in contracts
- Waiver may be in dispute resolution and/or arbitration clauses
- When to waive

---

---

---

---

---

---

---

---

Periodically Review and Update  
Procurement Policy

- Funding rules change
- Adjustments may be needed
- New staff and board members need to know the policy and be committed to following it



---

---

---

---

---

---

---

---

Meaningful Policies

- Board and staff must be committed to following the policy
- Policy must be posted and referred to
- Policy must be followed



---

---

---

---

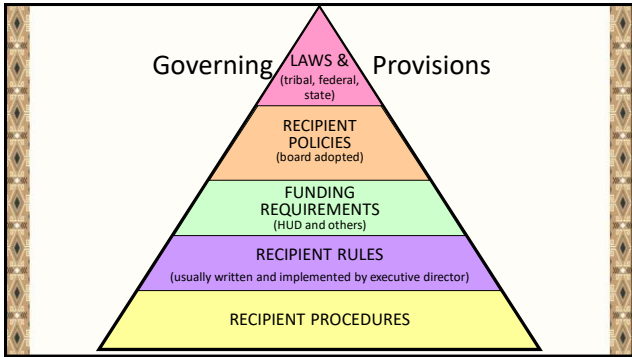
---

---

---

---






---

---

---

---

---

---

---

---

**AVOIDING SANCTIONS, PENALTIES,  
OFFENSES**

---

---

---

---

---

---

---

---

- Avoiding Sanctions, Penalties, and Offenses
- What You Should Do:**
- Follow your Procurement Policy
  - Follow the procurement regulations
  - Follow your Ethical Standards of Conduct Policy
  - Document your actions

---

---

---

---

---

---

---

---

Avoiding Sanctions, Penalties, and Offenses

Granting agency may...

- Make an annual review
- Make a special review
- Look at any procurement files related to expenditure of funds



---

---

---

---

---

---

---

---

Failures

- Violations of your Procurement Policy
- Violations of federal regulations
- Failure to properly document procurement activities (even if the activities themselves were proper)



---

---

---

---

---

---

---

---

Examples of Failures

- Indian preference not followed
- Improper negotiations with Recipient or tribe
- Conflicts of interest
- Disallowed purchase
- No environmental records/docume



---

---

---

---

---

---

---

---

### Consequences of Failures



- Disallow expenses / recapture funds
- Restriction on spending
- Terminate current funding
- Terminate eligibility for future funding

---

---

---

---

---

---

---

---

### BEST PRACTICES AND SUCCESS STORIES

---

---

---

---

---

---

---

---

### Successful Procurement System

will depend on:

- Staffing, Training: Staff procurement function with qualified people, trained and experienced
- Separation of Duties and Functions: So no one person controls ordering and receiving of goods



---

---

---

---

---

---

---

---

## Successful Procurement System

will depend on:

- Management Information System: Continuously assess contracts for timely performance and delivery
- Audits and Self-Monitoring: Identify weaknesses with prompt remedies



---

---

---

---

---

---

---

---

## Strategies to Ensure a Successful Procurement System

- Centralize Procurement Function: Avoid the “too many hands in the pot” syndrome
- Develop an Annual Procurement Plan: Avoid last minute “emergencies”

---

---

---

---

---

---

---

---

## Strategies to Ensure a Successful Procurement System

- Consolidate Procurement Activities: Use Blanket Purchase Agreements for reoccurring supplies or services
- Utilize GSA's Federal Supply Schedules: Expand competition, reduce administrative time, and save substantial \$\$\$



---

---

---

---

---

---

---

---

### Best Practices

- Board Of Commissioners/Tribal Council
  - Annual review of procurement policy
  - Include training for all new hires
  - Annual certification of Code of Conflict of Interest for all BOC and staff
  - Establish high ethical standards for staff, and act as positive role models

---

---

---

---

---

---

---

---

### Best Practices

- Utilize existing tools and systems for compliance
  - Timely address findings noted in Audits
  - Timely address findings or concerns in Monitoring Reviews by funding agencies
  - Enforce policies and procedures



---

---

---

---

---

---

---

---

### Best Practices

- Utilize existing tools and systems for compliance
  - Conduct annual self-monitoring assessments, and address weaknesses timely
  - Maintain internal controls and segregation of duties



---

---

---

---

---

---

---

---

**SAMPLE  
SCOPES OF WORK**

---

---

---

---

---

---

---

---

---

---



**#5 Scope of Services**  
June 13, 2013

*Description:*  
Stake to all lines and grades as per engineering drawings. Submit staking notes to owner as per survey inspection. There will include verification of location of all existing survey monuments as needed to perform the survey, re-orientation of the site, and construction survey for the site.

**Contract Items and Proposed Costs**

**ITEM**

**Construction Layout** – Locate and verify monuments and conduct preliminary grading from from plans.  
As per construction documents.

**Rough Grading** – Set stakes, hubs, and letters to establish cuts and fills to subgrade

Fixed Fee As per construction documents

-OR- As-Needed Basis

**Locate Structures** – Locate the corners and place reference hubs for alignment and grading.

Fixed Fee As per construction documents

-OR- As-Needed Basis

**Final Grade Control** – Set Grade control to final grade subgrade and finish elevations.

Fixed Fee As per construction documents

-OR- As-Needed Basis

---

---

---

---

---

---

---

---

---

---

**As-Built Drawings/Final Inspections**

Fixed Fee Negotiable

-OR- Hourly Fees (see attached NECI rate sheet)

*Additional comments:*  
The construction staking price would be most beneficial as an hourly rate, considering our proximity to the site, we would charge from the time the survey crew left our office until their return. The time would be recorded to the nearest one-half hour. We would also provide the staking notes and a report of this work and that this is discussed at the time you contract with Northern Engineering and Consulting, Inc. to provide the stated services.

We would also like to point out we have developed a cost sheet for the staking and would present that as a contract attachment if necessary. The contract should clearly state that the project will be staked once as necessary for each item, although the entire staking may encompass several phases. After the initial staking the contractor and/or owner is responsible to maintain the stakes as set by the survey crew, and after the initial staking of each item, if it is necessary for the survey crew to re-establish, mark, or construction, the contractor and/or owner will be charged hourly, to complete the staking that is required.

Please contact me at your earliest convenience. I may be reached at 406-282-7320. Thank you for considering our firm for the proposed work. We will be looking forward to hearing from you.

Respectfully Submitted,

Northern Engineering and Consulting, Inc.  
Rocky Mountain Region  
502 4th Street  
Hayes, MT  
406-282-7320 - Office  
406-702-0030 - Cell

Signed and Dated as Contract Document \_\_\_\_\_ Representative/ Agent

Signed and Dated as Contract Document 8-14-2013 Representative/ NECI

---

---

---

---

---

---

---

---

---

---



**Enforcement.** Judgment upon any award rendered by the arbitrators against any party shall, upon the request of the prevailing party, be entered in the Tribe's tribal court system ("**Tribal Court**") and such proceeding shall be conducted subject to the rules and regulations thereof; provided, however, that the parties agree that the Tribal Court shall have the power to enforce, but not review or modify, the arbitrators' award. Each party, for itself and its authorities and instrumentalities, agrees that it shall accept and be bound by the award of the arbitrators or a judgment, ruling or order which is final (because either the time for appeal has expired or the judgment or order is issued by the court having final appellate jurisdiction over the matter and is not subject to collateral attack). The Lessor hereby grants a limited waiver of its sovereign immunity to unconsented suit. The parties agree that such limited waiver of sovereign immunity is solely for the purpose of enforcing the provisions of this Lease and not a general or complete waiver of sovereign immunity. The parties understand and agree that they are subject to the jurisdiction of Tribal Court for the purpose of enforcement of this provision.

---

---

---

---

---

---

---

---

(a) **Document Discovery.** Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents, provided such documents are relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the chair of the arbitration panel and such determination shall be conclusive. All discovery shall be completed within forty-five (45) days following the appointment of the arbitrators.

(b) **Preliminary Relief.** Either party may apply to the panel of arbitrators seeking injunctive relief until the arbitration award is rendered or the Dispute is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from the Tribal Court, any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitration panel (or pending the arbitration panel's determination of the merits of the Dispute).

(c) **Waiver of Trial by Jury.** The parties hereby waive all rights to trial by jury in connection with any action brought or maintained hereunder.

---

---

---

---

---

---

---

---

**Third Party Beneficiary Rights.** Notwithstanding anything to the contrary herein, the parties agree that upon the occurrence or breach of any of its obligations under this Lease, any third party beneficiary of this Lease, including the Investor Limited Partner, shall be entitled to initiate an arbitration action against the Lessor and Lessor agrees to submit such claim or dispute ("**Claim**") to arbitration. Lessor acknowledges that its agreement to submit a Claim to arbitration constitutes a limited waiver of sovereign immunity solely for the purposes of enforcing its obligations under this Lease and not a general or complete waiver of sovereign immunity and that this limited waiver of sovereign immunity is consistent with, and not in conflict with the organizational documents of the Lessor (the "**Tribal Constitution**"). Lessor acknowledges and agrees that upon the occurrence of a breach of any of its obligations under this Lease, the Lender or any third party beneficiary of this Lease, including the Investor Limited Partner, may also protect and enforce its rights by appropriate judicial proceedings against Lessor to be held exclusively within the Tribal Court. Such rights shall include without limitation, the

---

---

---

---

---

---

---

---



right to pursue any applicable Tribal Law to enforce the terms of this Lease. The Lessor hereby grants a limited waiver of its sovereign immunity to unconsented suit. This limited waiver of sovereign immunity is not intended, nor shall it be construed to, by implication or otherwise, waive the immunity of the Lessor from suit in any way contrary to the Tribal Constitution

---

---

---

---

---

---

---

---

**RESOURCES:**  
Debarred Company Link:  
[www.doi.gov/agencies/ofccp/debarred-list](http://www.doi.gov/agencies/ofccp/debarred-list)  
Link to Uniform Guidance Training Videos Provided by HUD/ONAP:  
[www.youtube.com/watch?v=6O9cqR4gN0&list=PLDYb6cykYZ-rcnHRujd5LbbD9N0LbeE&index=6](https://www.youtube.com/watch?v=6O9cqR4gN0&list=PLDYb6cykYZ-rcnHRujd5LbbD9N0LbeE&index=6)  
Indian and Tribal Preference Guidance Link:  
[www.hud.gov/sites/documents/2013-07INDIANTRIBALPREF.PDF](http://www.hud.gov/sites/documents/2013-07INDIANTRIBALPREF.PDF)  
Native American Housing Activities CFR Part 1000 Link:  
[www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000](http://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000)  
Federal Register – NAHASDA Notice Link:  
[www.hud.gov/sites/documents/5275-F-13NAHASDAFINALRULE.PDF](http://www.hud.gov/sites/documents/5275-F-13NAHASDAFINALRULE.PDF)  
NAHASDA Statute Link:  
[NAHASDA Statute.PDF](#)  
Guidance – Indian and Tribal Preferences in Employment and Contracting in IHG Link:  
[www.hud.gov/sites/documents/2013-07INDIANTRIBALPREF.PDF](http://www.hud.gov/sites/documents/2013-07INDIANTRIBALPREF.PDF)

---

---

---

---

---

---

---

---

Thank You

Chancy Kittson  
[chancy6@hotmail.com](mailto:chancy6@hotmail.com)  
406-529-6243

---

---

---

---

---

---

---

---