

# Purchasing Under a FEMA Award: Exemptions for Indian Tribes

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Indian Tribal governments and their members are an essential part of our nation's emergency management team and are frequently provided financial assistance under FEMA grant programs. This Fact Sheet provides key information for federally recognized Indian Tribes about the exemptions they are entitled to when purchasing under a FEMA award.

## Indian Tribal Governments

Although eligibility will vary depending on the FEMA grant program, federally recognized Indian Tribal governments are considered [non-federal entities \(NFE\)](#) and eligible to receive financial assistance under many FEMA grant programs. Pursuant to [2 C.F.R. § 200.1](#), *Indian Tribe* means any Indian Tribe, band, nation or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([43 U.S.C. Chapter 33](#)), which is recognized as eligible for the special programs and services provided by the United States to Indian Tribes because of their status as Indians ([25 U.S.C. 5304](#)). For a list of federally recognized Tribes, please see the annually published [Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services](#). For the purposes of this Fact Sheet, "Indian Tribe" is used interchangeably with "Indian Tribal Government".

## Federal Procurement Under Grants Rules

When purchasing under a FEMA Award, all recipients and subrecipients must comply with the procurement under grant rules set forth at [2 C.F.R. §§ 200.317-200.327](#) (rules applicable to FEMA awards and disasters declared on or after November 12, 2020). Failure to follow the federal procurement rules when procuring and selecting contractors places FEMA award recipients and subrecipients at risk of not receiving their full reimbursement for work done under the FEMA award or having obligated funds recouped by FEMA.

## Procurement Under Grants Rules Applicable to Indian Tribal Governments

Although Indian Tribal Governments may serve as a recipient or a subrecipient under certain FEMA awards, in both capacities they must comply with the procurement under grant rules applicable to non-state entities at [2 C.F.R. §§ 200.318-200.327](#) (which include the rules for local governments, Tribes and nonprofit organizations). These rules include provisions for competition, methods of procurement, conflicts of interest, cost or price analyses, bonding requirements, etc. **Table 1** lists all the federal procurement rules applicable to Indian Tribal Governments and outlines tribal considerations associated with each rule. For comprehensive information on each rule beyond the tribal considerations, please see the [Procurement Disaster Assistance Team \(PDAT\) Field Manual](#).

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**Table 1: Federal Procurement Under Grants Rules Applicable to Indian Tribal Governments**

2 C.F.R. Citation	Federal Procurement Rule	Exemptions for Indian Tribal Governments
<a href="#"><u>§ 200.318</u></a>	General Procurement Standards	
<a href="#"><u>§ 200.319</u></a>	Competition	Indian Tribal Governments are allowed to apply a preference in line with the Indian Self-Determination and Education Assistance Act. <a href="#"><u>See below.</u></a> Tribal Employment Preference is permitted. <a href="#"><u>See below.</u></a>
<a href="#"><u>§ 200.320</u></a>	Methods of Procurement to be Followed	
<a href="#"><u>§ 200.321</u></a>	Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms	When applying a preference in accordance with the Indian Self-Determination and Education Assistance Act, the Socioeconomic Steps are not required. <a href="#"><u>See below.</u></a>
<a href="#"><u>§ 200.322</u></a>	Domestic Preferences for Procurements	
<a href="#"><u>§ 200.323</u></a>	Procurement of Recovered Materials	Does not apply to Indian Tribal Governments. <a href="#"><u>See below.</u></a>
<a href="#"><u>§ 200.324</u></a>	Contract Cost and Price	
<a href="#"><u>§ 200.325</u></a>	Federal Awarding Agency or Pass-Through Entity Review	
<a href="#"><u>§ 200.326</u></a>	Bonding Requirements	
<a href="#"><u>§ 200.327</u></a>	Contract Provisions	Clause for Procurement of Recovered Materials is not required. <a href="#"><u>See below.</u></a>

## Exemptions for Indian Tribes

Chapter 13 of the [PDAT Field Manual](#) provides a closer look at the Indian Tribal procurement rule exemptions. Please see the list of exemptions Indian Tribes should consider when purchasing under a FEMA award below.

### Indian Tribal Preferences When Awarding Contracts

The federal procurement under grant rules at [2 C.F.R. § 200.319 Competition](#) require non-state entities to conduct procurement transactions in a manner providing for full and open competition; however, Indian Tribal preferences may be permissible if certain requirements are met under the [Indian Self-Determination and Education Assistance Act \(25 U.S.C. Ch. 46\)](#).

The Indian Self-Determination and Education Assistance Act sets forth federal policy allowing Indian Tribal Governments to apply preference in the award of contracts and subcontracts to “Indian organizations” or “Indian-

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owned economic enterprises” in connection with the administration of any federal award ([25 U.S.C. § 5307\(b\)\(1\) and \(2\)](#)).

- An Indian organization is the governing body of any federally recognized Indian Tribe or an entity established or recognized by such a governing body ([25 U.S.C. § 5304\(l\)](#)).
- An Indian-owned economic enterprise is any commercial, industrial or business activity established or organized by a member of a federally recognized Indian tribe for the purpose of profit, provided that such Indian Tribal ownership constitutes 51% or higher of the enterprise ([25 U.S.C. § 1452\(e\)](#)).

Indian Tribal Governments using a permissible preference are required to document that they have met the requirements under the Indian Self-Determination and Education Act ([2 C.F.R. § 200.318\(i\)](#)). They must also ensure compliance with the remainder of federal procurement under grant rules, as well as any applicable Tribal laws.

Although Indian tribal preferences may be permissible when awarding contracts and subcontracts under the Indian Self-Determination and Education Assistance Act, Indian Tribal Governments still have a responsibility, under the FEMA award, to ensure that costs are reasonable and document such a determination. All NFEs must abide by the *Cost Principles* found [in 2 C.F.R. Part 200, Subpart E](#) to ensure that all costs are reasonable.

### **Example: Indian Tribal Preference When Awarding a Contract**

**Scenario:** The Indian Tribal Government of Y, as the result of a flood, sustains damages to many of its government buildings. When evaluating proposals for the repair work, Indian Tribal Government Y applies a preference percentage to Indian-owned economic enterprises competing for the award. Indian Tribal Government Y documents in its procurement file how the preference meets the requirements under the Indian Self-Determination and Education Assistance Act.

**Question:** Was the use of the Indian Tribal preference permissible under the federal procurement under grant rules?

**Answer:** Yes. The use of the Indian tribal preference was permissible. The Indian Self-Determination and Education Assistance Act provides that an Indian Tribal Government may apply preferences in the award of contracts and subcontracts to “Indian organizations” or “Indian-owned economic enterprises” in connection with the administration of a FEMA award.

## Indian Tribal Preference in Employment

An exception to Title VII of the Civil Rights Act of 1964 allows an Indian Tribe or any business enterprise on or near an Indian Tribal reservation to apply Indian tribal preferences in employment ([42 U.S.C. § 2000e-2\(i\)](#)). This exception is often referenced in contracts awarded by Indian Tribal Governments and is compliant with the federal procurement under grant standards.

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### Inapplicability of the Socioeconomic Affirmative Steps

When complying with the Indian Self-Determination and Education Assistance Act, if using the preference, Indian Tribal Governments do not need to take additional steps to comply with the socioeconomic affirmative steps found in the federal procurement under grant rules at [2 C.F.R. § 200.321](#).

### Inapplicability of the Procurement of Recovered Materials

Non-state entities are required to comply with rules outlined at [2 C.F.R. 200.318-200.327](#). However, the procurement of recovered materials provision at [2 C.F.R. § 200.323](#) requiring compliance with section 6002 of the Solid Waste Disposal Act, applies only to state entities or political subdivisions of a state and its contractors. Indian Tribal Governments are not required to comply with this rule and corresponding contract provision.

## Further Assistance

Additional assistance regarding purchasing under a FEMA award can be accessed by visiting the [Procurement Disaster Assistance Team webpage](#) and or by contacting one of the points of contact listed below:

- State Emergency Management Agency (Disaster Grants): [www.fema.gov/emergency-management-agencies](http://www.fema.gov/emergency-management-agencies)
- State Administrative Agency (Non-Disaster Grants): <https://www.fema.gov/about/contact#regions>
- FEMA Regional Tribal Liaison: [www.fema.gov/fema-regional-contacts](http://www.fema.gov/fema-regional-contacts)
- Additional Resources for Tribal organizations: [www.fema.gov/about/organization/tribes](http://www.fema.gov/about/organization/tribes)