



Department of Health and Human Services

TRIBAL CHILD CARE FACILITIES: A GUIDE TO CONSTRUCTION AND RENOVATION



PREPARED FOR:

SPECIAL TRIBAL CLUSTER TRAINING
CONSTRUCTION AND RENOVATION OF CHILD CARE FACILITIES

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OKLAHOMA CITY, OKLAHOMA

ADMINISTRATION FOR CHILDREN AND FAMILIES CHILD CARE BUREAU



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Introduction

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allowed Tribes to use Child Care and Development Fund (CCDF) monies for the construction or renovation of child care facilities. A Tribe must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. Requests must follow uniform procedures (45 CFR 98.84; see ACYF-PI-CC-04-01, dated January 23, 2004 (Appendix A)).

As these procedures have been implemented over the years, Tribes and ACF Regional Offices have identified a number of issues and needs. Construction and renovation is a new area for many tribal child care programs. This *Guide to Construction and Renovation* is designed to provide technical assistance to address major areas of the process, including:

- Conducting a child care community needs assessment;
- Identifying a site for the facility;
- Financing the construction and renovation costs;
- Developing a business plan for the facility;
- Conducting an environmental assessment;
- Building a facility;
- Designing and planning for the facility;
- Hiring a contractor; and
- Overseeing the project.

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Chapter 1: Conducting a Child Care Community Needs Assessment

- I. What is a Community Assessment?
 - II. Why Do a Community Assessment?
 - III. Who Should Participate in a Community Assessment?
 - IV. What Method Should Be Used?
 - V. What Information Should Be Gathered?
 - VI. What Should a Community Assessment Report Look Like?
 - VII. When Should the Community Assessment Process Begin?
-

A Tribal Lead Agency should conduct a community needs assessment to determine the need for construction or renovation of a child care facility. A community assessment usually examines the entire child care service environment, including facility needs.

I. What is a Community Assessment?

A child care community assessment is the collection and analysis of information on the characteristics of the eligible children and families in the service area and the resources available to assist families in child care services.

The emphasis of the community assessment should be on issues having the greatest impact on the eligible child care population. It covers the entire service area that a tribal child care lead agency is funded to serve. It should **not** be limited to the geographical areas from which the lead agency is drawing the children and families it is currently serving.

A completed child care community assessment is a tool that will assist a Tribe in making decisions about the types of child care services to be provided in a tribal community.

II. Why Do a Community Assessment?

There are several important reasons for conducting a community assessment. They include:

- ◆ Program planning and decision-making;
- ◆ Documenting the eligible population;
- ◆ Leveraging funds to support Child Care and Development Fund (CCDF) services;
- ◆ Responding to changing programs and policies;
- ◆ Establishing collaborative community partnerships; and
- ◆ Conducting internal education for tribal officials and program staff.

Program Planning and Decision-Making

The community assessment is an integral part of the CCDF planning process for a Tribal Lead Agency. It can be an important tool for making decisions in a number of areas, such as:

- ◆ Establishing a Tribal Lead Agency's mission and service goals and objectives;
- ◆ Establishing plans to attain the desired goals and objectives;
- ◆ Determining the accessibility of, and gaps in, child care services;
- ◆ Projecting the eligible population within the service area;
- ◆ Determining the types of program services to be offered;
- ◆ Determining the locations of child care services within the service area;
- ◆ Determining the marketing and recruitment priorities; and
- ◆ Establishing need for construction and renovation of facilities.

Decisions will cover different time spans. The Tribal Lead Agency's two-year CCDF plan requires that decisions are made for a two-year period. The lead agency should be engaging in long-term strategic planning for management tasks requiring extended lead times, such as planning for and developing new facilities, expanding services, increasing and changing the types of services provided, and revising the method and criteria for determining eligibility.

Documenting the Eligible Population

Documenting the number of eligible children within a tribal community is an annual CCDF funding requirement. Collecting this data will assist the Tribal Lead Agency in projecting future trends of the child care population. Understanding trends in the target population provides the lead agency with information to design program services that

adequately meet community needs. For example, projections for a significant increase in infant/toddler or school-age children might affect the types and locations of services offered.

Leveraging Funds to Support CCDF Services

Supplemental resources can support innovative methods for educating child care consumers, extending child care services, meeting specialized service needs of participating children and their families, and/or implementing collaborative working relationships. Most decisions about child care services will be made by the Tribal Lead Agency relative to its existing resources. Nevertheless, information gleaned from a community assessment can be used to plan new programs and support other applications for public and private funding.

Responding to Changing Programs and Policies

Understanding the environment in which child care services are provided allows the lead agency greater flexibility in meeting the demands of funding agencies and the needs of the eligible population. For example, having conducted a community assessment, a Tribal Lead Agency will be more equipped to respond to new program regulations, or develop funding proposals based on the needs of the community.

Establishing Collaborative Community Partnerships

The community assessment can assist the Tribal Lead Agency in collaborative efforts with various other agencies operating within the service area. The process of collecting information and opinions from these community resources can help to develop and enhance personal ties with the staff in these agencies. Information about the programs operated by these other agencies can be used to develop effective referral services for CCDF families and to establish partnerships that help provide a seamless array of early care and education services to families in the service area.

Conducting Internal Education for Tribal Officials and Program Staff

The community assessment information can be used to educate staff, parents, tribal council members, consortium board members, early childhood service providers, and other community leaders about the needs of CCDF-eligible families. The assessment highlights the strength of the community and indicates where there are gaps in services. The information can be used to support the efforts undertaken by the Tribal Lead Agency during the public hearing process for the CCDF two-year plan.

III. Who Should Participate in a Community Assessment?

The Tribal Lead Agency has great flexibility in designing its community assessment, which includes determining who should be involved in the process. The community assessment process should involve different types of people. They may include, but should not be limited to:

- ◆ **CCDF staff:** This planning function is an administrative activity for which the CCDF director has the operating responsibility. Other child care management staff, where they exist, should participate actively in collecting and analyzing information.
- ◆ **Tribal Staff (Non-CCDF):** Depending on the structure and organization of the Tribal Lead Agency, technical staff such as planners or information management specialists may be called upon to participate in the process. Directors of other tribal human services programs may be kept informed or asked to participate in appropriate ways.
- ◆ **Decision-Making Bodies:** The tribal council and any of its relevant special committees should be consulted regarding the plan for conducting a community assessment. Members of these bodies may be asked to participate directly in collecting, analyzing, or interpreting information as individuals or as part of an existing advisory committee.
- ◆ **Consultants, Volunteers, or Students:** While most Tribal Lead Agencies are capable of planning, conducting, and preparing a community assessment without outside assistance, the CCDF management staff may choose to seek assistance to accomplish this activity. If outside help is used, care must be given to coordinating and supervising the work to be accomplished. Outside assistance should not substitute for the active involvement of the CCDF director and/or other management staff.
- ◆ **Other Early Childhood and Support Agencies:** Joint efforts can be undertaken through collaborative efforts of the various providers of early childhood programs within the tribal community. Private and public agencies can share considerable information on the needs of the CCDF service populations. The CCDF lead agency can provide similar information to other service programs within tribal communities.

IV. What Method Should Be Used?

Decisions about how to plan and conduct a community assessment will depend on the size and characteristics of the Tribal Lead Agency. Choices may include utilizing existing structures such as existing advisory committees or an existing group within the Tribe's planning department; or establishing a special community assessment committee or design team. In designing the community assessment, it is important to:

- ◆ Determine the desired results and outcomes of the assessment;
- ◆ Determine the best use of time and resources;
- ◆ Outline tasks, assign responsibilities, and establish timelines; and
- ◆ Include the correct mix of community agencies in the planning process.

Community assessment preparations should also take into account the number of staff, volunteers, and students that will be used to implement the assessment, analyze the information, and prepare a community assessment document.

V. What Information Should Be Gathered?

There is no required process to be used in conducting an assessment of child care services by a Tribal Lead Agency, nor is there a required format for reporting the community assessment findings. The CCDF regulations, program instructions, information memoranda, and CCDF Plan requirements should be reviewed to determine what information to include in the community assessment.

The tribal plan preprint and instructions provide guidance on information that must be gathered by Tribal Lead Agencies in planning for the provision of child care services. For example, data to be gathered to support the services outlined in the Tribal Plan include:

- ◆ Number of eligible children under age 13 residing within the defined service area;
- ◆ Information on the special needs of children in the service area population;
- ◆ Demographic information on the eligible population, including health needs, education levels, economic status, employment, and participation in workforce development activities and/or Temporary Assistance for Needy Families (TANF);
- ◆ Types of early care and education services provided within the service area;
- ◆ Rates charged for child care in the service area (based on market rate survey);
- ◆ Documentation of the income levels used by the lead agency for determining eligibility;
- ◆ Health and safety standards governing the community's child care programs; and
- ◆ Number and types of community resource agencies that may provide supportive services to CCDF families and may be participating in collaborative activities with the Tribal Lead Agency.

Information on a number of these items could be gathered using the community assessment. The Tribal Lead Agency may decide to include other information, as well, such as information required to apply to use CCDF funds for construction or renovation of a child care facility.

Information Sources for Community Assessment

Data to be used in a child care community needs assessment may be obtained from clients, from competitors (if applicable) and other community agencies providing similar services, and by researching local demographic information. Within each of these

areas, information can be gathered to support a lead agency's decision-making processes.

Client Information

Information gathered from current and potential clients can provide valuable information about child care services. Consumers of child care services have opinions regarding the service they receive and can provide a wealth of information that can assist a Tribal Lead Agency and child care providers. Client information can be gathered through client satisfaction surveys, meetings, interviews, or a mix of these methods. Information gathered from clients can be used to identify and prioritize issues that need to be addressed by the lead agency and/or providers; to determine lead agency goals, objectives, and activities; and to identify areas of focus for quality improvement efforts.

Input from families not currently using child care services can help the lead agency improve program options and identify potential geographic areas in need of expanded services. If some of the lead agency's services are being underutilized, information from these families can help the lead agency understand why.

Community Agency Information

Useful information can be obtained from various community agencies within and outside of the Tribe including, but not limited to, Head Start programs; child welfare agencies; social service agencies; education agencies; workforce development/employment and training/TANF agencies; health and wellness agencies; and Indian Health Service. Information from these community partners can be gathered through interviews, written questionnaires, or meetings with agency representatives.

Information on the availability and accessibility of community resources to support child care families, which can be attained from these agencies, can be used to determine the information and referral services needed within a community. This information can also be used to develop collaborative working relationships between the CCDF lead agency and others serving CCDF families, and can lead to the sharing and blending of resources to create a more seamless continuum of child care services.

Community agencies also can be valuable partners in providing resources to child care providers for quality improvements, family advocacy efforts, and strategies for enhanced service delivery.

Demographic Information

Demographic information about the lead agency's service area can assist a lead agency in identifying and prioritizing issues that need to be addressed, the types of child care services to provide, the best place to locate child care programs, and how to market the program to the service area population. It can help the lead agency establish its overall goals and objectives for the CCDF program. Some potentially useful data types and sources are noted below.

- ◆ Demographic data on the service area's population, basic economic activities, location, poverty levels, and future trends can be located in the Tribe's overall economic development plan or tribal action plan. This general background information for the community assessment may be obtained from the tribal planning department, tribal census office, and/or the U.S. Census Bureau.
- ◆ Data related to unemployment rates, number of public assistance recipients, protective service caseloads, infant mortality rates, the condition of housing and public facilities, and environmental assessments may be obtained from various tribal agencies and programs, the Indian Health Service, the Bureau of Indian Affairs, and various county or state agencies.
- ◆ Information on the tribal service area's racial/ethnic composition can be obtained from the U.S. Census Bureau and its updates; the tribal census office; and tribal, BIA, public, and private school systems.
- ◆ Information on the number of children served by other early childhood programs and the characteristics of these programs can be obtained from tribal and state licensing agencies; local Head Start and Early Head Start programs; child care resource and referral agencies; and local school districts.
- ◆ Other data may be gleaned from the lead agency's Child Care and Development Fund Annual Report (Form ACF-700 and Supplemental Narrative). This annual report, submitted to the federal government each December, provides aggregate information on CCDF program services.

VI. What Should a Community Assessment Report Look Like?

There are no requirements regarding the format, length, or content of a written community assessment report. The assessment should only address the issues and concerns of the children and families who make up the lead agency's service area population. It should be long enough to be comprehensive, yet short enough so that the report will be used by decision-makers. As a general guide, a report from a small to medium size Tribal Lead Agency may be 10–30 pages. A report from a larger tribal agency may be between 20-50 pages and would include an executive summary. The suggested page length does not include graphics, charts, or exhibits.

VII. When Should the Community Assessment Process Begin?

The tribal lead agency must take into consideration a variety of management and program activities and requirements when scheduling the community assessment process. Typically, the planning of the community assessment process must take into account the timeframe for developing and submitting the biennial tribal CCDF plan

preprint (due by July 1 in alternate years) and the annual funding application (July 1 of non-plan years). This includes the scheduling of required public hearings and the time needed for seeking tribal council approval of the CCDF plan preprint.

Generally the lead agency should plan to begin the community assessment process at least 10 months prior to the scheduled submission of the tribal plan preprint. Allowing more than 10 months for completing the entire community assessment process will permit a more thorough and accurate analysis of the information collected and should provide lead agency staff with sufficient time to draft a comprehensive summary report.

Chapter 2: Identifying a Site for the Facility

I. Determining a Location

II. Land Ownership

I. Determining a Location

Selecting the location for a child care facility is crucial to the success of the program. The site should be convenient for parents, safe for children, and close to other community programs and services. The first step in identifying a child care site should be to carefully review the information gathered through the community assessment to determine:

- ◆ How many children (by age) potentially need child care?
- ◆ Where do the families live?
- ◆ Where do the parents work and/or attend school?
- ◆ Where do 6- to 12-year-old children attend school?

When determining the convenience of a location, the lead agency should consider:

- ◆ Transportation routes for public and/or tribal transit systems, Head Start and elementary school buses, etc.;
- ◆ Routes parents most often use to travel to work, school, the grocery store, etc.;
- ◆ Distance from elementary schools, Head Start, and other part-day programs for children;
- ◆ Distance from food service, if meals will not be prepared on site; and
- ◆ Distance from health and emergency services.

Some sites should be avoided since they may pose health or safety risks to children. For example, the lead agency should avoid choosing:

- ◆ Property adjacent to a major highway, near a landfill or dump, or near a business that may produce toxic fumes or pose other health threats to children;

- ◆ Isolated property that is not easily accessible for parents, staff, or emergency vehicles;
- ◆ Property that lacks a safe water supply; and
- ◆ Property in a floodplain, or one that tends to have pools of standing water.

There are also financial factors to consider such as:

- ◆ The cost of bringing utilities (water, electric, gas/propane, sewer, telephone) onto the property, including soil, water, and other environmental tests.
- ◆ The cost of preparing the site for construction, such as removing old buildings, leveling the ground, upgrading roads leading to the site, and grading and surfacing driveways and parking lots.

II. Land Ownership

Once a general location has been identified, the next step is to determine who owns the specific property and whether the owner is willing to sell, lease, or donate the property for a tribal child care center.

If the land is located within the boundaries of a reservation, the Bureau of Indian Affairs (BIA) Realty Office should be able to identify the land owner or verify that the land is tribal trust property. Permission to use tribal trust property is generally granted by the Tribal Government with approval from BIA. Some individual property owners will be able to negotiate the use of their property while others may need the approval of the BIA and/or Tribal Government. This process will vary from Tribe to Tribe. The BIA Realty Office or the Tribal Government can provide the specific tribal procedures that should be followed for gaining permission to construct on reservation lands.

To identify the owner of off-reservation property, a records search can be conducted at the county courthouse.

Other entities that may own property suitable for a child care center include school districts; churches; and city, county, or state governments. They may be willing to donate or lease property for such a project, especially if the larger community will benefit. Businesses will sometimes donate property for a tax break or to promote good will in the community.

Before using funds for the purchase or lease of land, contact the funding source to determine if such use is allowable. The Tribe may want to consider long-term land lease agreements for modular structures but not for permanent construction. Any contract for the purchase, lease, or donation of land should be between the Tribal Government and the current land owner. Agreements should be in writing and reviewed by a lawyer.

Chapter 3: Financing Construction and Renovation Costs

- I. **Potential Funding Sources**
 - II. **Managing Multiple Funding Sources: An Overview of Cost Allocation**
-

I. **Potential Funding Sources**

Program Funding: Loans for Construction, Renovation, and Land Purchase

The *Catalog of Federal Domestic Assistance* is an annual government-wide compendium of federal programs, projects, services, and activities. The listings in this section include the program name and *Catalog of Federal Domestic Assistance* (CFDA) number (in parentheses); the eligibility requirements for the program; the total funds available per year for the program; the uses, requirements, and limitations of the program; and contact information.

For more detailed information about these programs, visit the CFDA on the Web at <http://www.cfda.gov> and query the catalog on the CFDA number.

Please note that this list is not comprehensive and is only accurate as of the date this document was published. A Tribal Lead Agency should explore all of its funding options and community needs thoroughly before applying for funds for a specific project.

Business and Industry Guaranteed Loans (10.768)

Eligibility: Assistance under the Business and Industry (B&I) Guaranteed Loan Program is available to virtually any legally organized entity, including Indian Tribes and Federally recognized tribal groups. Preference is given to loans in open country, rural communities, and towns with populations of 25,000 or less.

Total Funds Available per Year: Approx. \$1,000,000,000/FY2004 est.

Range of Financial Assistance: \$35,000 to 25,000,000

Average of Financial Assistance: \$2,100,000

Child Care Related Uses/Requirements/Limitations:

This program provides guarantees up to 80 percent of a loan made by a commercial lender. Loan proceeds may be used for working capital, machinery and equipment, buildings and real estate, and certain types of debt refinancing.

Loans may not be guaranteed to pay off a creditor in excess of the value of the collateral; for distribution of payment to the owner; or for the transfer of ownership of a business unless the loan will keep the business from closing, prevent the loss of employment opportunities in the area, or provide expanded job opportunities; etc.

Regional or Local Office Contacts:

Contact the appropriate Rural Development State Office
http://www.rurdev.usda.gov/recd_map.html

Headquarters Office Contact:

Administrator, Rural Business-Cooperative Service
U.S. Department of Agriculture
Washington, DC 20250-3201
(202) 690-4730
http://www.rurdev.usda.gov/rbs/bus/b&i_gar.htm

Child Care and Development Fund Discretionary Fund (93.575)

Eligibility: States, the District of Columbia, Territories, Federally recognized Tribal governments, Tribal organizations, Alaska Native organizations, and Native Hawaiian organizations.

Total Funds Available per Year: \$2,082,921,248/FY2005 est. (These figures do not include CCDF mandatory funds under 93.596.)

Range of Financial Assistance: For Tribal grantees, \$22,981 to \$12,444,658/FY05 est. (based on a formula). (These figures are inclusive of funds received through 93.575 and 93.596.)

Average of Financial Assistance: For Tribal grantees, \$369,000/FY05 est. (based on a formula). (These figures are inclusive of funds received through 93.575 and 93.596.)

Child Care Related Uses/Requirements/Limitations:

Grantees must operate under a plan approved by the U.S. Department of Health and Human Services (HHS), and must certify compliance with all federal regulations governing the payments under the Child Care and Development Fund. Only approved construction of child care facilities by Tribal grantees is an allowable construction use of funds.

Regional or Local Office Contacts:

Regional ACF Administrators

<http://www.acf.hhs.gov/programs/ccb/ta/raaddr/raaddr.htm>

Headquarters Office Contact:

Child Care Bureau

Office of Family Assistance

Administration for Children and Families

U.S. Department of Health and Human Services

Portals Bldg., 8th Floor

1250 Maryland Ave. SW

Washington, DC 20024

(202) 690-6782

<http://www.acf.hhs.gov/programs/ccb/>

Child Care Mandatory and Matching Funds of the Child Care and Development Fund (93.596)

Eligibility: Federally Recognized Tribal Governments, Tribal organizations, and Alaskan Native Corporations.

Total Funds Available per Year: \$2,717,000,000/FY2005 est. (These figures do not include CCDF mandatory funds under 93.596.)

Range of Financial Assistance: For Tribal grantees, \$22,981 to \$12,444,658/FY05 est. (based on a formula). (These figures are inclusive of funds received through 93.575 and 93.596.)

Average of Financial Assistance: For Tribal grantees, \$369,000/FY05 est. (based on a formula). (These figures are inclusive of funds received through 93.575 and 93.596.)

Child Care Related Uses/Requirements/Limitations:

Grantees must operate under a plan approved by the U.S. Department of Health and Human Services (HHS), and must certify compliance with all federal regulations governing the payments under the Child Care and Development Fund.

Only approved construction of child care facilities by Tribal grantees is an allowable construction/renovation use of funds.

Regional or Local Office Contacts:

Regional ACF Administrators

<http://www.acf.hhs.gov/programs/ccb/ta/raaddr/raaddr.htm>

Headquarters Office Contact:

Child Care Bureau

Office of Family Assistance

Administration for Children and Families

U.S. Department of Health and Human Services

Portals Bldg., 8th Floor

1250 Maryland Ave. SW

Washington, DC 20024

(202) 690-6782

<http://www.acf.hhs.gov/programs/ccb/>

Indian Community Development Block Grant (ICDBG) (14.862)

Eligibility: Tribes, Tribal organizations and Alaska Native villages that are eligible for assistance under the Indian Self-Determination and Education Assistance Act, or that had been eligible under the State and Local Fiscal Assistance Act of 1972.

Total Funds Available per Year: \$68,448,000/FY2005 est.

Range of Financial Assistance: \$177,274 to \$4,950,947/FY2003 est.

Average of Financial Assistance: \$600,000/FY2003 est.

Child Care Related Uses/Requirements/Limitations:

ICDBG funds may be used for: public facilities and improvements ... acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, ... to improve the housing stock, provide community facilities, make infrastructure improvements, and expand job opportunities by supporting economic development.

Activities that are eligible for funding include housing rehabilitation, ... construction of Tribal and other facilities for single or multi-use, streets and other public facilities, and economic development projects particularly those by nonprofit tribal organizations or local development corporations when the recipient determines that the provision of such assistance is appropriate to carry out an economic development project.

Regional or Local Office Contacts:

Contact the appropriate U.S. Department of Housing and Urban Development (HUD) Office of Native American Programs (ONAP) Field Office (Appendix E)
http://www.hud.gov/offices/pih/ih/onap/area_onap.cfm

Headquarters Office Contacts:

U.S. Department of Housing and Urban Development
Office of Native American Programs, Washington Office
451 Seventh Street, Room 4126
Washington, D.C. 20410
(202) 401-7914 (alternate numbers: (202) 401-7915 and (202) 401-7916)

OR

Office of Native American Programs, National Program Office
1670 Broadway, 23rd Floor
Denver, CO 80202
Phone: (303) 675-1600 or 1-800-561-5913
<http://www.hud.gov/offices/pih/ih/codetalk/onap/>

Community Facilities Loans and Grants (10.766)

Eligibility: Federally recognized Tribes; Indian Tribes on state or federal reservations; City, county, and State agencies; and others.

Total Funds Available per Year:

Direct Loans: \$300,000,000/FY2006 est.

Guaranteed Loans: \$210,000,000/FY2006 est.

Grants: \$ 17,000,000/FY2006 est.

Range of Financial Assistance:

Direct Loans: \$5,000 to \$4,500,000

Guaranteed Loans: \$50,000 to \$12,000,000

Grants: \$1000 to \$100,000

Average of Financial Assistance:

Direct Loans: \$442,192

Guaranteed Loans: \$859,283

Grants: \$31,937

Child Care Related Uses/Requirements/Limitations:

Community facilities include but are not limited to those providing or supporting overall community development such as child care facilities, food recovery and distribution centers; assisted-living facilities; group homes, mental health clinics, and shelters; and education facilities. Projects comprise community, social, cultural, transportation, industrial park sites, fire and rescue services, access ways, and utility extensions. All facilities financed in whole or in part with Rural Housing Service funds shall be for public use.

Regional or Local Office Contacts:

Contact the appropriate Rural Development State Office or Field Office

http://www.rurdev.usda.gov/recd_map.html

Headquarters Office Contact:

Housing and Community Facilities Programs National Office

U.S. Department of Agriculture

Room 5037, South Building

14th Street and Independence Avenue, S.W.

Washington, D.C. 20250

(202) 720-4323

<http://www.rurdev.usda.gov/rhs/>

Indian Economic Development (15.032)

Eligibility: Federally Recognized Indian Tribal Governments.

Total Funds Available per Year: \$1,834,000/FY2006 est.

Range of Financial Assistance: \$5,000 to \$300,000

Average of Financial Assistance: \$215,000

Child Care Related Uses/Requirements/Limitations:

Funds are used to administer tribal revolving loan programs and guaranty loan programs in order to develop resources to improve access to capital in tribal economies. Funds can also be used by Federally Recognized Indian tribal Governments to develop essential tribal ordinances and commercial business codes which provide the necessary separation and exercise of sovereign immunity between business activities and tribal regulatory activities to promote a pro-business environment.

Regional or Local Office Contacts:

Applications should be filed with the local Bureau of Indian Affairs agency office

Headquarters Office Contact:

Deputy Assistant Secretary, Policy and Economic Development

Bureau of Indian Affairs

U.S. Department of the Interior

1849 C Street NW, MS-4071 MIB

Washington, DC 20240

(202) 219-0005

<http://www.doi.gov/bureau-indian-affairs.html>

Indian Housing Block Grants (14.867)

Eligibility: Indian Tribes or tribally designated housing entities (TDHE) (to be eligible for Indian housing block grant funds the Tribe or TDHE must submit an Indian housing plan that is in compliance with the requirements of Section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996).

Total Funds Available per Year: \$582,600,000/FY2006 est.

Range of Financial Assistance: \$25,000 to \$88,388,466

Average of Financial Assistance: \$1,662,989

Child Care Related Uses/Requirements/Limitations:

Eligible activities include housing development, assistance to housing developed under the Indian Housing Program, housing services to eligible families and individuals, crime prevention and safety, and model activities that provide creative approaches to solving affordable housing problems.

Regional or Local Office Contacts:

Contact the appropriate ONAP Field Office (Appendix E)
http://www.hud.gov/offices/pih/ih/onap/area_onap.cfm

Headquarters Office Contact:

Office of Native American Programs, Washington Office
U.S. Department of Housing and Urban Development
451 Seventh Street SW, Room 4126
Washington, DC 20410
(202) 401-7914 (alternate numbers: (202) 401-7915 and (202) 401-7916)

OR

Office of Native American Programs, National Program Office
1670 Broadway, 23rd Floor
Denver, CO 80202
Phone: (303) 675-1600 or 1-800-561-5913
<http://www.hud.gov/offices/pih/ih/codetalk/onap/>

Indian Loans – Economic Development (15.124) (Loan Guaranty Program)

Eligibility: Federally Recognized Indian Tribal Governments, Native American Organizations authorized by Indian tribal governments, and individual American Indians

Total Funds Available per Year: \$6,348,000/FY2006 est.

Range of Financial Assistance:

For individuals and tribal enterprises: \$2,500 to \$500,000

For Federally Recognized Tribal Governments and Native American Organizations:
\$10,000 to \$12,000,000

Average of Financial Assistance:

For individuals and tribal enterprises: \$125,000

For Federally Recognized Tribal Governments and Native American Organizations:
\$1,500,000

Child Care Related Uses/Requirements/Limitations:

Loans may be used to finance commercial, industrial, agricultural, or business activities organized for profit. Funds may not be used for speculation. The financial assistance must be used on or near an Indian Reservation.

Regional or Local Office Contacts:

Lenders must submit applications to the local Bureau of Indian Affairs agency office or to the Tribal Government administering the program.

<http://www.doi.gov/bia/Loan%20Guaranty%20Brochure.pdf>

Headquarters Office Contact:

Office of Economic Development

Bureau of Indian Affairs

U.S. Department of the Interior

1849 C Street NW, MS-4640-MIB

Washington, DC 20240

(202) 208-5324

<http://www.doi.gov/bureau-indian-affairs.html>

Indian Tribes and Tribal Corporation Loans (10.421)

Eligibility:

Federally recognized Tribes or Tribal corporations or Alaskan communities that meet specific criteria. The Tribe must be unable to obtain sufficient credit elsewhere at reasonable rates and terms and must be able to show reasonable prospects of repaying the loan as determined by an acceptable repayment plan and a satisfactory management plan for the land being acquired.

Total Funds Available per Year: \$2,000,000/FY2006 est.

Range of Financial Assistance: \$450,000 to \$2,000,000

Average of Financial Assistance: \$224,000

Child Care Related Uses/Requirements/Limitations:

Loan funds may be used to acquire land and interest therein for the use of the Tribe or its members. Funds may also be used for incidental costs connected with land purchase. Loan funds may be used to refinance non-United States Department of Agriculture preexisting debts that applicant incurred to purchase land subject to certain conditions. Loan funds cannot be used for any improvement or development purposes, acquisition or repair of buildings, payment of operating costs, payment of finder's fees, or similar costs.

Regional or Local Office Contacts:

Contact the appropriate Farm Service Agency (FSA) State Office

<http://www.fsa.usda.gov/FSA/stateOffices?area=stoffice>

Headquarters Office Contact:

Director, Loan Servicing and Property Management Division

Farm Service Agency

U.S. Department of Agriculture

Ag Box 0523

Washington, DC 20250

(202) 720- 4572

<http://www.fsa.usda.gov>

Intermediary Relending Program (10.767)

Eligibility: Eligible intermediaries may include: Private nonprofit organizations, State or local governments, and Federally recognized Indian Tribes and cooperatives.

Total Funds Available per Year: \$34,212,000/FY2006 est.

Range of Financial Assistance: \$3,000 to \$615,000

Average of Financial Assistance: \$19,684

Child Care Related Uses/Requirements/Limitations:

An entity that receives an Intermediary Relending Program (IRP) loan from the Rural Business-Cooperative Service (RBS) is referred to as an intermediary. Intermediaries must relend all of the loan funds received from the IRP loan for business facilities or community development in rural areas. An entity that receives a loan from an intermediary is referred to as an ultimate recipient. The maximum loan to any one intermediary is \$2 million. The maximum term is 30 years and the interest rate is 1 percent per annum. Intermediaries may not use IRP funds to finance more than 75 percent of the cost of an ultimate recipient's project or for a loan of more than \$250,000 to one ultimate recipient. (No more than 25 percent of an IRP loan approved may be used for loans to ultimate recipients that exceed \$150,000.)

Regional or Local Office Contacts:

Contact the appropriate Rural Business-Cooperative Service (RBS) State Office or Field Office

http://www.rurdev.usda.gov/recd_map.html

Headquarters Office Contact:

Rural Business-Cooperative Service
U.S. Department of Agriculture
1400 Independence Avenue, SW, South Building, Room 5050
Washington, DC 20250-0700
(202) 720-1400

<http://www.rurdev.usda.gov/rbs/busp/irp.htm>

Rural Development Grants (10.769)

Eligibility: Public bodies and nonprofit corporations serving rural areas such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts and Indian Tribes on Federal and State reservations which will serve rural areas. Rural area for this program is defined as a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Total Funds Available per Year: \$39,827,899/FY2005 est.

Range of Financial Assistance: \$2,000 to \$500,000

Average of Financial Assistance: \$83,309

Child Care Related Uses/Requirements/Limitations:

Rural business enterprise grant (RBEG) funds may be used to create, expand or operate rural distance learning networks or programs that provide educational or job training instruction related to potential employment or job advancement to adult students; develop, construct or acquisition land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities; refinancing; services and fees; and to establish a revolving loan fund. All uses must assist a small and emerging private business enterprise.

Regional or Local Office Contacts:

Contact the appropriate Rural Development State Office or Field Office

http://www.rurdev.usda.gov/recd_map.html

Headquarters Office Contact:

Director, Specialty Lenders Division

Rural Business-Cooperative Service

U.S. Department of Agriculture

Washington, DC 20250-3222

(202) 720-1400

<http://www.rurdev.usda.gov/rbs/buspr/beg.htm>

Economic Adjustment Assistance (11.307)

Eligibility: Economic Development Districts; States, cities or other political subdivisions of a State or a consortium of political subdivisions; Indian Tribes or a consortium of Indian Tribes; institutions of higher learning or a consortium of such institutions; or public or nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a State.

Total Funds Available per Year: \$44,793,000/FY2005 est.

Range/Average of Financial Assistance: No specific minimum or maximum

Child Care Related Uses/Requirements/Limitations:

To assist State and local interests design and implement strategies to adjust or bring about change to an economy. Program focuses on areas that have experienced or are under threat of serious structural damage to the underlying economic base. Such economic change may occur suddenly or over time, and generally results from industrial or corporate restructuring, new Federal laws or requirements, reduction in defense expenditures, depletion of natural resources, or natural disaster. Aids the long-range economic development of areas with severe unemployment and low family income problems; aids in the development of public facilities and private enterprises to help create new, permanent jobs.

Strategy investments help organize and carry out a planning process resulting in a Comprehensive Economic Development Strategy (CEDS) tailored to the community's specific economic problems and opportunities. Implementation Investments support one or more activities identified in an EDA-approved CEDS. Activities may include, but are not limited to, the creation/expansion of strategically targeted business development and financing programs such as: Revolving loan funds, infrastructure improvements, organizational development, and market or industry research and analysis.

Regional or Local Office Contacts:

Contact the appropriate Economic Development Administration Regional Office
<http://www.eda.gov/AboutEDA/Regions.xml>

Headquarters Office Contact:

Economic Development Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230
<http://www.eda.gov>

II. Managing Multiple Funding Sources: An Overview of Cost Allocation

This summary of cost allocation principles and practices as they relate to managing multiple funding sources for tribal facilities is organized as follows:

- ◆ What is cost allocation?
- ◆ How do you do cost allocation?

What is cost allocation?

Cost allocation is a systematic way of sharing costs among tribal child care, Head Start, and other early care and education programs that are engaged in the joint purchase, construction, renovation, rental, or other uses of facilities. The Tribe must set forth its approach in a written **cost allocation plan**. The plan generally will cover other program costs in addition to facilities. Cost allocation is an important aspect of strategic planning. Accordingly, program leadership should work closely with fiscal and accounting specialists in shaping critical decisions in the cost allocation plan.

The discussion in this part of the *Guide* focuses on joint facilities of child care, as funded in whole or in part by the Child Care and Development Fund (CCDF), and the federally-funded Head Start and Early Head Start programs. Similar issues and procedures apply in the case of other early care and education program funding.

The following three principles must be kept in mind when planning for cost allocation. Costs must be:

1. **Allowable** – meeting the legal and regulatory requirements of the program funding source; uniform and consistently applied within the tribal early care and education program; in accordance with applicable grant and cost allocation methods; and documented.
2. **Reasonable** – a prudent person would approve the cost under the conditions at the time that the cost was incurred; ordinary and necessary; makes good business sense; individuals involved acted without conflict of interest.
3. **Allocable** – must reflect relative benefits to all of the partners who are sharing costs.

The cost allocation plan needs to be:

- ◆ Written and documented;
- ◆ Reinforced by accounting records;
- ◆ Comprehensive, covering all costs, both direct and indirect, that are to be allocated;

- ◆ Followed consistently;
- ◆ Monitorable, meaning that programs must be able to review the plan as the year progresses; and
- ◆ Auditable (the tribal auditor should be the primary reviewer).

How do you do cost allocation?

The discussion below draws upon and adapts guidance materials presented at national and regional ACF meetings, including *Managing Multiple Funding Streams*, sponsored by Region IV Administration for Children and Families and Region IV Head Start Quality Improvement Centers, November 1998. While the following discussion focuses on tribal facilities, it should be kept in mind that the cost allocation plan commonly will address a broad range of program costs (e.g., personnel, equipment, supplies, food, and transportation).

The cost allocation process generally includes six steps:

1. Clearly define what, where, and how the Tribe provides services, including eligibility and enrollment status;
2. Identify what costs need to be allocated;
3. Determine the method (or methods) for allocating the costs;
4. Perform the allocation and enter the data into the accounting records;
5. Periodically track the allocations by monitoring the levels of program expenditures and comparing them to the total revenue available for child care, Head Start, and other early care and education programs; and
6. Periodically review the methods for consistency and accuracy.

The Tribe may wish to test several cost allocation methods in the planning stage and then select the one that is the simplest, most straightforward way of allocating costs. Allocations may be expressed as a percentage of children, percentage of employees, child hours, child days, or some other equitable method. For facilities or occupancy costs, the likely choices for allocation would include number of children, child hours, and square feet.

Costs that need to be allocated are those shared by more than one program, but not necessarily all programs, of the Tribe. The Tribe should discuss the procedure it elects to follow with the appropriate ACF Regional Office to ensure that it is consistent with applicable policy requirements.

For additional policy regarding cost allocation, see ACYF-PIQ-CC-99-01, issued February 24, 1999 (Appendix B).

Chapter 4: Developing a Business Plan for the Facility

- I. Introduction
 - II. Preparing a Strategic Plan
 - III. Preparing a Detailed Business Plan
 - IV. The Business Plan Worksheet
 - V. Financial Planning
-

I. Introduction

A written business plan is an important initial step that helps formalize and document efforts to construct a child care facility. A plan is also necessary to assess whether the lead agency has sufficient resources to operate the facility on an ongoing basis. Developing a plan and putting it in writing are crucial to laying the groundwork for the ultimate goal—implementing the plan. A formal business plan is as important for an established agency as it is for a start-up project because it serves four critical functions:

- ◆ Helps organize, focus, and clarify a program's development and prospects;
- ◆ Provides a framework within which the agency can develop and pursue business strategies over the next one to five years;
- ◆ Serves as a basis for discussion with third parties such as funding agencies, collaborative partners, banks, and stakeholders; and
- ◆ Offers a benchmark against which actual performance can be measured and reviewed.

Just as no two businesses are alike, no two business plans are alike. It is therefore important to tailor a plan's contents to suit individual circumstances. Nonetheless, most plans follow a similar structure, and general advice on preparing a plan is universally applicable. A business plan should be a realistic view of the expectations and the short- and long-term objectives of the agency. It provides the framework within which the agency must operate and, ultimately, succeed or fail. The plan serves as a key sales document for management seeking external support (such as additional funding) since it shows that the project is well-conceived and viable. Preparation of a comprehensive plan will not guarantee success in raising funds or mobilizing support, but lack of a sound plan will almost certainly ensure failure.

Preparing a satisfactory business plan forces managers and other stakeholders to clarify what they want to achieve as well as how and when they can do it. Even if no external support is needed, a business plan can play a vital role in helping the agency avoid mistakes or recognize hidden opportunities. Many find that the process of planning (thinking, discussing, researching, and analyzing) is just as, or even more, useful than what emerges as the final plan.

The CCDF Administrator or child care construction project manager should determine who will take part in the business plan development and ensure that all stakeholders are represented on the business plan development team. Staff, management, tribal leaders, policy groups, community members, collaborative partners, and others with an interest in the tribal child care program's operation and success are all potential team members. The leaders of the team should develop a timeline that is sensitive to the schedules of all participants. The schedule should allow for the possibility of many days of hard work and several drafts to get the job done right.

A clearly written and attractively packaged business plan makes it easier to interest potential supporters, funding agencies, and other sources of financing. A well-prepared business plan demonstrates knowledge of the project and shows that stakeholders have thought through its development in terms of finances and management. The plan should also take into consideration the child care supply and demand in the tribal service area. This issue should receive attention during the community assessment described in Chapter 1 and the business plan should incorporate the relevant data gathered through that process.

II. Preparing a Strategic Plan

A short strategic plan (2-3 pages) can provide a useful foundation upon which to base a more detailed business plan. As the prelude to developing the strategic plan, identify the current status, objectives and strategies of existing programs along with the latest thinking in respect to a new venture. For example, you should evaluate and consider collaboration among programs as part of current and proposed program design. If you define your plan elements correctly, you can use them as the basis for a critical examination on existing or perceived strengths, weaknesses, opportunities, and threats (S.W.O.T. analysis). Analysis will then allow you to address the following issues:

- ◆ Vision;
- ◆ Mission;
- ◆ Objectives;
- ◆ Values;
- ◆ Strategies; and
- ◆ Goals.

First, develop a realistic **vision** for the agency. Present a realistic picture of the future in three or more years in terms of its likely physical appearance, size, and activities. Answer this question: "If someone visited us in three years, what would they see or sense?"

Second, express the nature of the program through its **mission**, which indicates its purposes for service delivery. For example, "to offer affordable, quality child care services that will meet the needs of our target population." A statement along these lines indicates what the program is about and is clearer than saying, for instance, "we're in child care." Some people confuse mission statements with value statements; the former should be concise while the latter can deal with "softer" issues.

Third, state the program's **objectives** in terms of the results you need and want to achieve in the medium- and long-term. Objectives should relate to the expectations and requirements of all the major stakeholders, including employees and clients, and should reflect the underlying reasons for operating the program.

Next, address the **values** governing the operation of the program and its conduct or relationships with the community, clients, and employees.

Develop **strategies** to define the rules and guidelines by which you will achieve your mission and objectives. They may cover the business as a whole, including such matters as diversification, growth, or funding strategies, or they may relate to primary matters in key functional areas:

- ◆ The agency's collaborative efforts with other child care providers;
- ◆ New services that will enhance existing ones over the next three years; and
- ◆ Facilities enhancement.

Finally, set **goals** with specific interim or time-based measurements to be achieved using strategies in pursuit of the agency's objectives. For example: "We will provide services to an additional 20 families within the next 24 months."

Remember that the mission, objectives, values, strategies, and goals must be interlinked and consistent with each other. Upon completion, review all aspects of the plan to ensure they are consistent in purpose and outcome.

III. Preparing a Detailed Business Plan

Before commencing any detailed work on the plan, the authors should:

- ◆ Clearly define the target audience;
- ◆ Determine its requirements in relation to the contents and levels of detail;
- ◆ Map out the plan's structure (table of contents page);

- ◆ Decide on the likely length of the plan; and
- ◆ Identify all the main issues to be addressed.

You must identify shortcomings in the concept and gaps in supporting evidence and data. This will allow for completion of an assessment of research prior to starting the draft. Remember that a business plan is the end result of a careful process of research, discussion, and evaluation.

Structure and Content

A typical business plan includes the following main elements:

1. A brief **Introduction**, which defines the plan's background and structure;
2. A **Summary**, which highlights the main issues and proposals (1-3 pages);
3. The **Main Body**, which contains chapters divided into numbered sections and subsections; and
4. **Appendices**, which contain tables, exhibits, and other detailed information referenced in the text.

Length and Timeframe

While the length of a business plan may bear no relation to the underlying prospects of a business, well-developed plans generally run at least 20 pages long, plus appendices. Set aside 5–20 days to produce the plan. While the task of writing the plan itself may take a relatively short time, be sure to allow sufficient time for the research, preparatory work, and underlying brainstorming and discussion, as well as time to have the plan reviewed by others.

Practical Hints

Outside help and guidance in preparing a business plan can be extremely valuable. If you use outside help, you must ensure that the final plan remains your own and not that of your advisers.

The following suggestions may be of assistance:

1. Use a spreadsheet program (such as Microsoft Excel) or other financial modeling software package for the financial projections.
2. When drafting the plan, be positive but realistic about the agency's prospects and acknowledge and respond honestly to shortcomings and risks.
3. The plan's management section is crucial. Consider forming a management team or strengthening management as part of the plan.
4. When writing the plan, remember to:
 - ◆ Avoid unnecessary jargon;

- ◆ Economize on words;
 - ◆ Use short crisp sentences and bullet points;
 - ◆ Concentrate on relevant and significant issues;
 - ◆ Break the text into numbered paragraphs and sections;
 - ◆ Provide detail in appendices;
 - ◆ Number the pages of the plan and provide a table of contents page; and
 - ◆ Write the summary last.
5. Have a qualified outsider review your draft plan, then revise the plan.
 6. Back up revenue and expense projections with market research. Ensure that there is a direct relationship between market analysis, revenue forecasts, and financial projections.
 7. Be realistic about revenue expectations (e.g., consider the impact of non-attendance), cash flow analysis, and funding requirements. Do not underestimate the cost and time required for advertising, start-up costs, securing external support, or raising funds. Consider hidden costs such as employee absences.
 8. If seeking external funding, be realistic about the future of the project, the risks involved, and possible returns. Give consideration to contingencies such as emergency building-repair costs and vehicle repair.
 9. Incorporate available data such as market rate analysis, census information, and financial information such as grant proposals and funding awards. Include data found on construction checklists and funding requests. Don't reinvent the wheel.

IV. The Business Plan Worksheet

The Model Business Plan Structure on page 34 could serve as the basis for a "full-blown" business plan by expanding the level of detail given. Ideal page lengths for a straightforward but comprehensive plan are given in parentheses. Include detail in accompanying appendices.

MODEL BUSINESS PLAN STRUCTURE

1. Introduction (1)

Introduce the plan.

- ✓ Who wrote it (list staff members, policy groups, community members)
- ✓ Contact information
- ✓ When written
- ✓ Process used during writing (focus groups, surveys)

2. Summary (1-3)

Write this section last. Summarize the major points of your document.

3. Mission, Strategies, etc. (1-2)

What are the central purposes and activities of the planned and/or current program?

- ✓ What are its SWOTs (Strengths, Weaknesses, Opportunities, Threats)?
- ✓ What are its major objectives, key strategies, and prime goals?

4. Present Status of Project (1-3)

Summarize achievements and performance (financial, etc) to date.

- ✓ Introduce the stakeholders and/or collaborative partners in the program.
- ✓ Describe existing and planned inter-/intra-agency agreements.
- ✓ Describe current projects and/or programs being operated by the agency that are relevant.

5. Service Description (1-2)

Keep descriptions short and confine them to broad groups. Explain briefly what makes them special.

- ✓ Define program linkages.
- ✓ Define ancillary services such as health, dental, food services, transportation, etc.
- ✓ Describe current program options being used by the agency (e.g., in-home care, center-based services, certificate programs)

6. Profile of Target Market(s) (2-3)

Identify size, segments, trends, competition, and user/client profiles.

- ✓ Utilize data from community assessments, census reports.
- ✓ Gather information from internal planning departments.

7. Marketing Strategies (2-3)

Determine how the program will market its services to clients.

- ✓ Describe proposed use of advertising, word-of-mouth, public service announcements.

- ✓ Is there competition in the area?
- ✓ Define costs that will be incurred for marketing.

8. Technology (0-2)

Explain progress, plans, and resources, and highlight technological advances such as computerization of operations, Internet use, program uses of technology, etc.

9. Operational Plans (2-3)

Cover service activities.

- ✓ Indicate organizational structure.
- ✓ Describe available resources.
- ✓ Describe the proposed fee structures, sliding fee scales, etc.
- ✓ Describe the administrative plan, such as accounting systems, fee collection procedures.

10. Management (1-2)

Introduce the proposed management team and structure.

- ✓ Indicate overhead costs.

11. Financial Position & Projections (2-3)

Use simple tables to present key financial projections.

- ✓ Include a summary profit and loss statement, a statement of cash flows, and balance sheets.
- ✓ Describe in-kind contributions.
- ✓ Describe the potential revenue flow from grants, contracts, fees for service, USDA, and other sources.
- ✓ Consider the possibility of uncollectible accounts and have a written policy to resolve these accounts.
- ✓ Place the detailed analyses in appendices.

12. Funding Requirements & Proposals (2-3)

If applicable, summarize other funding requirements, possible sources, likely terms.

13. Implementation (1-3)

Explain the major decision points, time scale, and actions required by management and others to progress the plan.

14. Conclusion (1)

Indicate why the program and/or project will succeed and why it should be supported.

V. Financial Planning

The financial projections that are included in your business plan are often considered to be the "heart" of the plan. They quantify your plan in terms of dollars and cents and units of service, and serve as an evaluation point for the viability of the program or project. It will be helpful to enlist assistance from your agency's accounting department in the preparation of these estimations.

Break down your financial data into monthly projections for years one and two and into annual projections thereafter. Based upon this, include the following in your plan:

- ◆ Profit and Loss Statement (also called Statement of Revenue and Expense)
- ◆ Balance Sheet
- ◆ Cash Flow Statement

Profit and Loss Statement

Based upon the operations plan you have developed, determine projected revenues and expenditures over time. Take into consideration the following:

- ◆ Include all sources of revenue, including projected revenue from USDA's Child and Adult Care Food Program, grant income, and parent fees (be realistic about your collection rate).
- ◆ Include all expenditures, including "hidden costs" such as employee absence, indirect costs, and annual costs such as licenses and fees.
- ◆ Be aware that some costs, such as food, vary (variable costs); some costs, such as administrative salaries, are fixed (fixed costs).
- ◆ Use historical data for estimations, but be aware of potential fluctuations in variable costs such as salary and fringe benefits.
- ◆ Take into consideration in-kind revenue, which may reduce actual costs of the program.
- ◆ Remember to consider the effects of collaborative agreements and cost allocation on your forecasts.

The profit and loss statement prepared for your business plan can serve as the basis for your ongoing operating budget and should be adjusted periodically as necessary to reflect the actual operations of the program.

Balance Sheet

The balance sheet provides a profile of the monetary "worth" of the program or agency at a given point in time. This statement lists all of the program's assets (cash, accounts receivable, inventory, real estate, etc.) and all of the program's liabilities (accounts payable, payroll taxes payable, notes payable, etc.). The difference between these two amounts is the agency or program's "net worth," or for non-profit agencies "fund balance." The Balance Sheet will give you an idea of whether you "owe more than you have." Be sure to enlist the help of the agency's accounting department in developing this statement.

Cash Flow Statement

When planning the short- or long-term funding requirements of your program, it is important to forecast the likely cash requirements. While profit—the difference between revenue and expenses within a specified period—is a vital indicator of the performance of the program, the generation of a profit does not necessarily guarantee its development, or even the survival. Lack of operating cash can result in the failure of a program.

Revenues and costs, and therefore profits, do not necessarily coincide with their associated cash inflows and outflows. While revenue may have been generated (for example, a day of service may have been provided), the related payment may be deferred as a result of the billing process. However, at the same time, payments must be made to staff and suppliers, cash must be invested in purchasing food, and new equipment may have to be purchased.

The net result is that cash receipts often lag behind cash payments and, while profits may be reported, the program may experience a short-term cash shortfall. (Remember, it is not acceptable to "borrow" from other programs that may have cash available, such as Head Start.) For this reason, it is essential to forecast cash flows as well as potential project profits.

The simplified example on page 38 (Figure A) illustrates the timing differences between profits and cash flows for a one-month period.

FIGURE A**Income Statement:**

	Month 1
Revenue:	\$7,500
Costs:	\$6,500
Profit:	\$1,000

Cash flows relating to Month 1:

	Month 1	Month 2	Month 3	Total
Receipts	2,000	3,500	2,000	7,500
Payments	4,000	2,000	500	6,500
Net Cash Flow:	(2,000)	1,500	1,500	1,000
Cumulative Net Cash Flow	(2,000)	(500)	1,000	1,000

The table shows that the cash associated with the reported profit for Month 1 will not fully materialize until Month 3 and that a serious cash shortfall will be experienced during Month 1, when receipts from revenue will total only \$2,000 as compared with cash payments to staff and suppliers of \$4,000. Normally, the main sources of cash inflows to a program are grant proceeds, increases in bank loans, parent fees, donations, asset disposals, and other income such as interest earned. Cash outflows include payments to staff and suppliers, capital and interest repayments for loans, and capital expenditure for equipment.

Net cash flow is the difference between the inflows and outflows within a given period. A projected cumulative positive net cash flow over several periods highlights the capacity of a program to generate surplus cash and, conversely, a cumulative negative cash flow indicates the amount of additional cash required to sustain the program. Cash flow planning entails forecasting and tabulating all significant cash inflows relating to revenue, new loans, interest received, etc., and then analyzing in detail the timing of expected payments relating to suppliers, wages, other expenses, capital expenditure, loan repayments, interest payments, etc. The difference between the cash in- and out-flows within a given period indicates the net cash flow. When this net cash flow is added to or subtracted from opening bank balances, any likely short-term bank funding requirements can be determined.

Using a Computer

With the aid of a computer, a mathematical model can be used to prepare cash flow projections and project short-term cash requirements for a program. The use of a computer-based model reduces the tedium of carrying out numerous

repetitive calculations and simplifies the alteration of assumptions and the presentation of results. A computer-based model can be constructed using a spreadsheet. A cash flow model can be used to compile forecasts, assess possible funding requirements, and explore the likely financial consequences of alternative strategies. Used effectively, a model can help prevent major planning errors, anticipate problems, identify opportunities to improve cash flow, or provide a basis for negotiating short-term funding from a bank.

However, the quality of these projections will be determined by the standard and reliability of the underlying assumptions. For example, if forecasts for revenue or costs are unrealistic or inadequately researched, then the value of the model's output is greatly diminished. An impressive set of projections is of little benefit if it is unsupported by experience or research, or based on mere speculation. In fact, it could be very damaging, or even destroy the project.

Remember the following points when preparing a Statement of Cash Flows:

- ◆ Check that all key assumptions and data are at hand and have been adequately researched.
- ◆ Compile opening balances for all items that will involve cash flows within the forecasting period.
- ◆ Estimate collection rates for parent fees realistically.
- ◆ Consider billing cycle time frames for grant payments and contract payments.

Once the cash flow projections have been prepared, they should be critically examined and used as a management tool to control and improve the program's expected cash position. All projections should be periodically reviewed and adjusted to reflect the status of current operations.

Chapter 5: Conducting an Environmental Assessment¹

Tribal Lead Agencies requesting to use CCDF monies for construction or renovation are required to conduct an environmental assessment in accordance with the National Environmental Policy Act (NEPA). Guidance regarding compliance with NEPA is contained in Program Instruction ACYF-PI-CC-04-01, dated January 23, 2004 (Appendix B). The following chapter is designed to provide more practical suggestions about items to consider in an assessment, as well as resources and contacts for obtaining additional information.

An environmental assessment should be completed early in the planning process. This will allow the Tribe to determine whether or not the site selected for the child care facility is suitable before the start of later-stage planning, such as the development of architectural plans and specifications.

The Head Start Bureau has developed a *Head Start Facilities Environmental Documentation Course* on CD-ROM. It includes guidance and a form to help grantees prepare environmental assessments in accordance with the National Environmental Policy Act. Although designed for Head Start grantees, the material is generally applicable to CCDF as well. Copies of the CD-ROM are available from the Tribal Child Care Technical Assistance Center (TriTAC) (800-388-7670; tritac2@aol.com).

Some Tribes have their own environmental or natural resource staff that may be able to help. In addition, the Bureau of Indian Affairs has Area Office Environmental Coordinators who can provide assistance regarding assessments.

General information concerning NEPA can be obtained from the Council on Environmental Quality. Call (202) 395-5750 or visit the Council's NEPA Net Web site at <http://ceq.eh.doe.gov/nepa/nepanet.htm>.

The following areas may be considered part of an environmental assessment:

- I. Floodplain Management**
- II. Wetlands Protection**
- III. Protection of Endangered Species**
- IV. Toxic Chemicals and Radioactive Materials**

¹ **Note:** Major portions of this chapter are excerpted from the *Manual for HUD Staff to Conduct an Environmental Review*, U.S. Department of Housing and Urban Development, available online at <http://www.hud.gov/offices/cpd/energyenvon/environment/compliance/forms/trngmanual/index.cfm>.

V. Protection of Farmlands

VI. Historic Preservation

VII. Presence of Natural Hazards

VIII. Presence of Man-Made Hazards and Nuisances

I. Floodplain Management

Federal policy strongly discourages the occupancy and development of a floodplain wherever there is a practicable alternative for a project.

"Floodplain" means the **Special Flood Hazard Area (SFHA)** identified on the flood maps published for the **National Flood Insurance Program (NFIP)** by the **Federal Emergency Management Agency (FEMA)**. These maps should be referenced when inquiring whether a project is located within a floodplain. Flood maps are generally available for viewing in a community's land planning or building permit office. Flood maps are also available through FEMA's Map Service Center. Call (800) 358-9616 or visit the FEMA Map Service Center on the Web at <http://msc.fema.gov>.

Mandatory Purchase of Flood Insurance

As a condition of funding approval, the property owner must purchase and maintain flood insurance whenever the owner's building is located within the SFHA and is benefiting from federal assistance (Sec. 102(a) of the Federal Disaster Protection Act of 1972). Furthermore, the use of federal assistance is prohibited for a building located within the SFHA, unless the community in which the building is located is participating in the NFIP (Sec. 202(a) of the Act).

The NFIP is administered by FEMA and is available only in communities that adopt and adequately enforce the requirements for floodproofing, elevating the construction of new buildings, or the substantial improvement of existing buildings located within the SFHA.

A "**Flood Insurance Rate Map (FIRM)**" published by FEMA can be used to determine whether a building is located within the SFHA and therefore subject to the flood insurance purchase requirements. FIRMs can be ordered online from FEMA's Map Service Center. The Map Service Center's Web site can also be used to create "FIRMettes," a full-scale section of a FEMA Flood Insurance Rate Map (FIRM) that can be created online by selecting the desired area from an image of a Flood Insurance Rate Map. There is no charge for making a FIRMette. Because a FIRMette is a full-scale section of an official FEMA Flood Insurance Rate Map, it can be used in all aspects of the NFIP, including

floodplain management and flood insurance. For information on how to create a FIRMette online, visit the FEMA Map Service Center Web site at <http://msc.fema.gov>.

Further information is contained in the FEMA publication entitled "Mandatory Purchase of Flood Insurance Guidelines." This publication is available on the Web at <http://www.fema.gov/business/nfip/mpurfi.shtm>. The "Community Status Book," also published by FEMA, can be used to determine the status of a community's participation in the NFIP. This information is available on the Web at <http://www.fema.gov/fema/csb.shtm>.

Call the FEMA Flood Insurance Information Hotline at (800) 427-4661 for answers to flood insurance related questions or visit NFIP's consumer Web site, FloodSmart.gov.

II. Wetlands Protection

Wetlands protection is a national priority. Federal policy strongly discourages the modification or destruction of designated wetlands.

The U.S. Fish and Wildlife Services (FWS), Department of the Interior, publishes the National Inventory of Wetlands. This official listing should be referenced when inquiring whether a project is located within a designated wetland. For map information, call the FWS National Wetlands Inventory Center at (727) 570-5400 or visit FWS on the Web at <http://www.nwi.fws.gov>.

III. Protection of Endangered Species

Compliance is required with the Endangered Species Act (ESA) of 1973, as amended, whenever federal financial assistance is proposed for a project that has the potential to affect endangered species or critical habitats. The list of endangered species is published by FWS, Department of the Interior, and should be referenced when inquiring whether a proposed project has the potential to affect endangered species or critical habitats. Generally, the list is available by counties. For information, call the nearest FWS office or visit FWS Endangered Species on the Web at <http://www.fws.gov/angered/>.

IV. Toxic Chemicals and Radioactive Materials

Particular attention should be given to any site that is located on, or in the general proximity of, such areas as dumps, landfills, industrial sites, or other locations that contain hazardous wastes. Properties considered for child care facilities should be free from hazardous materials, contamination, toxic chemicals

and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the use of the child care facility.

V. Protection of Farmlands

The Farmland Protection Policy Act requires identification of proposed actions that would affect any lands classified as prime and unique farmlands. The U.S. Natural Resources Conservation Service (<http://www.nrcs.usda.gov>) administers this act to preserve farmland. Contact the State Office of Agriculture or U.S. Natural Resources Conservation Service office in the project area and ask them to determine if the proposed action will affect any lands classified as prime and unique farmlands.

VI. Historic Preservation

The regulations concerning compliance with Section 106 of the National Historic Preservation Act of 1966 were issued by the Advisory Council on Historic Preservation as 36 CFR Part 800 (available online at http://www.access.gpo.gov/nara/cfr/waisidx_04/36cfr800_04.html).

The person preparing the assessment should check the National Register of Historic Places to determine if the project is among or near any listed properties on the National Register. A current listing of properties on the National Register may be accessed on the Web at <http://www.cr.nps.gov/nr/>. The current listing also includes all properties that have been nominated to the National Register.

In addition, it is necessary to consult the Tribal or State Historic Preservation Officer to find out whether the proposed child care facility is on or near a property that might be eligible for listing on the National Register. The list of Tribal Historic Preservation Officers (THPOs) is available online at <http://grants.cr.nps.gov/thpo/tribaloffices.cfm>; the list of State Historic Preservation Officers (SHPOs) is available online at <http://www.ncshpo.org/stateinfo/fulllist.htm>.

For additional information about the National Historic Preservation Act of 1966, contact the Advisory Council on Historic Preservation at (202) 606-8503 or on the Web at <http://www.achp.gov>.

VII. Presence of Natural Hazards

While there may be several types of natural hazards that could pose problems for a given site, some of the more prevalent of these hazards are presented below.

Radon

Radon is an odorless, colorless and tasteless gas that occurs in nature, seeping up from the earth. Radon is a result of the natural breakdown, or radioactive decay, of uranium and is present in trace amounts in all soils and rocks. Radon's migration patterns are not yet fully understood but the construction characteristics of a project as well as the soil and the rock beneath it are important factors in the accumulation of indoor radon, which is harmful to humans. Indoor radon is the second leading cause of lung cancer in the United States and the leading cause among non-smokers. Smokers are at higher risk of developing radon-induced lung cancer.

The Environmental Protection Agency (EPA) has recommended a guideline of 4 picocuries per liter of air for indoor radon (picocurie = one-trillionth of a curie or the equivalent of the decay of two radon atoms per minute in a liter of air). Additional information regarding the danger of radon may be obtained by contacting local EPA officials, a State Radon Contact (this list can be found online at <http://www.epa.gov/iaq/wherelive.html>), or the National Radon Information Line at (800) SOS-RADON (800-767-7236).

Subsidence

Subsidence causes a sinking or settlement of land areas that may result from various situations such as the pumping of ground water from the earth, "drying out" of boggy or water-laden soils, or underground mining. The settlement caused by subsidence is not consistent but is instead shaped like an inverted cone. The low point of this cone continually shifts over the span of several years. It is important to consider this natural hazard because it has the ability to impact a site by altering drainage patterns or even reversing the direction of the flow of drainage water.

Soil Stability

Different types of soil as well as erosion conditions may require particular foundations or engineered earthworks in order to ensure the stability of the project. The USDA Natural Resources Conservation Service (<http://www.nrcs.usda.gov>) publishes soil survey maps for each county. The maps provide a description and the characteristics of each soil type and series along with a legend giving the maximum slope for each soil name. If these soil surveys are not available or questionable conditions warrant further analysis, another soil survey may be required.

Where land developments include building foundations over filled ground or in areas where ground is removed and could result in swelling of exposed subsoil, the project should be controlled with an engineered earthwork.

Consideration should be given to the erosion conditions of a particular site. Erosion may damage soil stability either because of extensive rainfall or wind. If

these conditions apply, it may require further evaluation by a soil engineer or similar expert.

Surface Faults and Seismic Zones

Although surface faults and seismic zones tend to be particular to given areas, areas with this possibility may require a geological study to be performed. In cases where seismic activity is common, foundations should be engineered to withstand earthquake conditions.

VIII. Presence of Man-Made Hazards and Nuisances

Asbestos

Asbestos is a fibrous fireproof material that in the past was used in numerous building products including insulation, exterior siding, roofing materials, plaster, and many others. Because of the extreme fineness of asbestos fibers, they can easily become airborne and hazardous to human health. Long-term or concentrated exposure to asbestos can cause serious diseases that may not show up until many years after exposure began.

Although the use of asbestos in building materials has been banned since 1978, any project involving the rehabilitation or demolition of a structure constructed before this date should consider asbestos as a potential problem. Intact, undisturbed asbestos-containing materials generally do not pose a health risk; however, they may pose an increased risk when they are damaged, are disturbed in some manner (for example, during a renovation project), or deteriorate over time and thus release asbestos fibers into building air. If a project is known or likely to have asbestos, it is recommended that the Environmental Protection Agency (<http://www.epa.gov/asbestos/>) and the Occupational Safety and Health Administration (<http://www.osha.gov/SLTC/asbestos/>) be contacted for guidance. (EPA published the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Asbestos at 40 CFR 61.141-158.)

Questions related to EPA's asbestos NESHAP regulations; asbestos-related renovation or demolition in buildings other than elementary or secondary schools; or the transport and disposal of asbestos waste may be directed to the EPA SBA Asbestos Ombudsman at 1-800-368-5888. Publications about asbestos can be found online at <http://www.epa.gov/asbestos/pubs/pubs.html>. Print materials can be ordered from EPA's Toxic Substance Control Act (TSCA) at (202) 554-1404 or tsca-hotline@epa.gov.

Hazardous Dams

Dams are an integral part of the Nation's infrastructure, providing a range of benefits to the public including hydroelectric power, river navigation, water supply, wildlife habitat, waste management, flood control, and recreation. Approximately 67% of dams in the U.S. are privately owned; the remaining dams are owned by federal, state, or local governments or by public utilities.² Individual dam owners are responsible for the safety and security of their dams and for their maintenance, upgrade, and repair.

There are a number of resources available to help determine the potential hazards posed by dams located near a building site. Since 1972, Congress has passed a number of laws authorizing the U.S. Army Corps of Engineers (USACE) to study and inventory dams in the United States. The USACE's National Inventory of Dams (NID) is available online at <http://crunch.tec.army.mil/nid/webpages/nid.cfm>. The NID is searchable by dam name and location (Congressional district); dams can also be located using an interactive map. Dams data can also be downloaded by state.

Additional sources of dam and dam safety information include the Federal Emergency Management Agency's National Dam Safety Program (NDSP) (<http://www.fema.gov/fima/damsafe/>); the Association of State Dam Safety Officials (ASDSO), which provides links to state agencies responsible for dam safety (<http://www.damsafety.org/>); and the National Performance of Dams Program at Stanford University (<http://npdp.stanford.edu/>), which provides online access to a comprehensive dam directory including dam incident reports and dam modifications/repairs.

High Voltage Transmission Electrical Lines

While it is known that transmission lines have electromagnetic fields that are harmful to humans, it is not known at what level of electromagnetic radiation this hazard occurs. In addition, the towers supporting electrical lines have posed risks when people, especially children, have attempted to climb their steel frames. For these reasons, child care facilities should be located a safe distance from electrical lines, and nearby towers should be fenced.

Lead and Lead-Based Paint

Childhood lead poisoning causes reduced intelligence, low attention span, learning disabilities, and many other adverse health effects. In adults, it can cause nerve damage and decrease reproductive ability. About 80 percent of all homes built before 1980 have some lead-based paint. Many of those homes have only small amounts of such paint, but, generally, the older the home, the greater the amount of lead-based paint. Lead-containing paint was completely

² Source: National Inventory of Dams, U.S. Army Corps of Engineers, January 2001, as quoted on the Web site of the National Dam Safety Program (NDSP), Federal Emergency Management Agency (FEMA).

banned from residential use in 1978.

The Residential Lead-Based Paint Hazard Reduction Act of 1992, known as "Title 10," set the current federal focus for lead paint poisoning on "lead-based paint hazards," which are conditions that cause health effects from exposure to lead-contaminated dust or soil, or lead-based paint that has or can become deteriorated. Most intact lead-based paint is not a "hazard," although the paint's condition should be monitored and maintained to ensure that it does not become deteriorated. Approaches for testing paint for lead and evaluating lead-based paint hazards are available.

In addition to the hazards associated with lead-based paint, soil may be contaminated by lead from nearby industries or waste disposal sites, paint removal from bridges or other steel structures, and from old fallout of leaded gasoline emissions. Additional lead health risks can come from lead in drinking water.

For more information, visit the EPA's lead awareness Web site at <http://www.epa.gov/lead> or contact EPA's National Lead Information Center (NLIC) at (800) 424-LEAD (800-424-5323). Lead poisoning prevention materials for children, parents, and early childhood staff have been developed by the EPA and the National Head Start Association (NHSA). These and other outreach materials can be download (in PDF format) from <http://www.epa.gov/lead/pubs/leadpbed.htm>.

Chapter 6: Building a Facility

The information provided below is designed to assist your Tribe, tribal organization, or department in designing, managing, and completing the process of constructing or renovating a child care center. (Please note that, for the purposes of this chapter, renovation is the same as construction.) The lead agency's tasks for managing the complete construction process can be divided into four major categories:

- I. Selecting and Working with an Architect**
 - II. Designing and Planning the Facility**
 - III. Hiring a Contractor**
 - IV. Overseeing the Project**
-

I. Selecting and Working with an Architect

First and foremost, the architect should be licensed in the state where the project is located. A licensed architect provides not only a professional service, but a legal protection for the Tribe in the event of any disputes over applicable codes and regulations, misinterpretations by the contractor of the plans and specifications, and any errors and omissions in professional services delivery.

You should select the architect based on professional knowledge, experience, and understanding of the specifics of the project. An architect is selected by proposal, not by bid. In selecting an architect, the Tribe may apply a weighted evaluation criteria for minority architectural firms. However, the primary criteria in selecting an architect is professional knowledge, experience in working with similar projects, and understanding the cultural, social, and special concerns of the Tribe. The American Institute of Architects (AIA) or local or state chapters can provide information to the Tribe concerning architects in your area who are qualified to design child care facilities.

The use of a licensed engineer, in some instances, is acceptable. However, engineers are trained in more technical aspects of a project and may not have the creative problem-solving skills and training needed for many child care center designs. Architect/Engineer (A/E) fees for child care projects are normally between 6 and 15 percent. Most architectural fees will not exceed 10 percent of the total project cost and this normally includes project management.

The American Institute of Architects (AIA) sells a variety of contract documents that can be used as the basis for agreements between the Tribe and the selected architect (and other project professionals). To accommodate any specific contractual needs or stipulations of the Tribe, these documents may be modified, by mutual agreement. All contracts should be reviewed by the Tribe's attorney and an insurance professional prior to signing. AIA contract documents can be ordered from local AIA chapters or by calling (800) 365-2724.

For more information about finding and selecting an architect, negotiating a contract, and other aspects of the owner-architect relationship, visit the "What an Architect Can Do For You" section of the AIA Web site at http://www.aia.org/about_doforyou. Please note that the goal of AIA is to promote the interests and services of architects.

II. Designing and Planning the Facility

The scope of the architect's work includes:

- ◆ A design plan that targets and schedules different dates for accomplishing various design phases (i.e., schematic, preliminary, final, etc.).
- ◆ A scope of work that clearly states the most cost-effective design and energy conserving systems.
- ◆ Cost estimates for each phase of design that allows the Tribe to make knowledgeable and informed decisions. As the design changes, based on input from the Tribe, the costs will also change until a final design is agreed upon and budgeted.
- ◆ A set of final plans and specifications, approved by the Tribe. Depending on the funding agency, the plans and specifications may have to be reviewed and approved by one or more state or federal agencies (e.g., State Fire Marshall's Office, Office of the Building Code, Army Corp. of Engineers).
- ◆ Construction bid documents that are prepared once the final plans are approved by appropriate agencies and entities. An estimate of construction costs should be part of the bid documents.
- ◆ Scheduling, planning, and presiding over a pre-bid conference, and once a construction contract has been awarded, the pre-construction conference.
- ◆ Management and oversight of the day-to-day progress and work. The Tribe could hire a third party for project management, or this could be part of the architect's contract.

A primary part of the architect's contractual responsibility to the Tribe is to ensure that all aspects of the project comply with the appropriate legal and federal requirements. These requirements include, but are not limited to:

- ❑ **Environmental Impact:** National Environmental Policy Act of 1969 (NEPA), Public Law (PL. 91-190). NEPA sets national policy goals and procedures for protecting and enhancing the environment. The Tribe must conduct an environmental assessment in accordance with guidance provided in ACYF-PI-CC-04-01. Chapter 5 of this Guide provides additional guidance on the environmental assessment process.
- ❑ **Floodplain Management:** Executive Order 11988. The order requires agencies to avoid, where possible, constructing facilities within the confines of floodplains. If this can not be avoided, specific insurance restrictions are applied to protect federal interest. See Chapter 5, Section I for more information.
- ❑ **Code Requirements:** The most recent edition of the National Fire Protection Association (NFPA) publication no. 101, the Life Safety Code[®], contains minimum life safety standards.
- ❑ **Accessibility:** National and local requirements for accessibility are intended to help insure the rights of all individuals, including the disabled. The best known and most often used requirements are those based upon the American National Standards Institute (ANSI). Accessibility standards for the disabled are also included in the uniform Federal Accessibility Standards, Title II and III of the Americans with Disabilities Act (ADA).
- ❑ **National Historic Preservation Act of 1966:** Section 106 requires consideration of the effects construction may have on a site listed on the National Register of Historic Places.
- ❑ **Earthquake Provisions-Occupational Safety and Health Act and Public Law 95-124:** Legislation concerned with earthquake resistance of structures.
- ❑ **Relocation Assistance-Uniform Relocation Assistance and Real Property Acquisition Policies Act, PL. 91-646:** Requires both services and payments be provided to persons and businesses displaced by a federally assisted project.
- ❑ **Potable Water-Occupational Safety & Health Act:** Requires that potable water be provided to federally assisted construction projects.
- ❑ **Equal Employment-Executive Order 11246:** For any contract or sub-contract that exceeds \$10,000, no federally funded contractor can discriminate against any employee or applicant for employment because of race, color, religion, or sex.
- ❑ **Federal Wage Rate-Davis Bacon and Related Acts:** Requires certain contracts to pay federal wage rates. This Act does not apply to projects solely funded by CCDF.

The project shall also be developed according to applicable program or Tribal standards and other codes and ordinances, including environmental and zoning requirements. The Uniform Building Code shall be used as a minimum standard in the absence of a local or Tribal building code.

III. Hiring a Contractor

Prior to hiring a contractor, the architect must prepare a bidding package and develop a bidding process. The minimum package and process requirements include:

A. Boiler Plate Specifications (standard items included before technical specifications)

1. Advertisement for Bid Form (or the Tribe may elect to solicit selected contractors, using pre-qualification criteria)
2. Bid Forms
3. Instructions to Bidders Form, including the method for award of contract (e.g., to the lowest bid or the lowest base bid in combination with alternates)
4. Bid Bond Form (5 percent bid security)
5. Contract Form
6. Performance and Payment Bond Form (100 percent)
7. Contractor's Application for Payment
8. Construction Contract General Conditions (AIA form 201) and Supplementary Conditions (AIA form 201SC-1999)
9. Equal Employment Opportunity (construction contracts exceeding \$10,000)
10. Bonding and Insurance Requirements
11. Construction Contract Completion Time and Closeout Documents necessary for Substantial Completion

B. Cost Estimates

The estimate of construction costs will be developed based on the final working drawings and specifications. The estimate shall not be divulged to outsiders for any reason.

C. Final Working Drawings

Final working drawings will be 100 percent complete and adequate for bidding, contracting, and construction purposes. Drawings will be prepared for the architectural, civil, structural, mechanical, electrical, and other work. The architect may hire an engineering consultant for support as necessary during the design process.

D. Final Technical Specifications

Final technical specifications supplement the final working drawings to fully describe types, sizes, capacities, and other characteristics of all materials, equipment, and installation techniques. It is recommended that the technical specifications format be based on the most current version of MasterFormat, the standards produced by the Construction Specifications Institute (CSI).

Specifications will include:

- ◆ Details of materials;
- ◆ Reference standards;
- ◆ Shop drawings;
- ◆ Sample submissions;
- ◆ Certifications; and
- ◆ Performance concepts.

Specifications are developed to insure competitive bidding without proprietary sole-source restrictions. When identifying materials or equipment by manufacturer's name, trade name, or catalog number, include the words, "or equal to...". This method of developing specifications is not designed to give preference to any one manufacturer but is merely to show a standard. Under the conditions of the contract, the contractor shall be allowed to furnish materials or equipment of manufacturers other than those identified by name that the project architect/engineer accepts as comparable to that specified in the bid documents.³

The substitution clause may include the following language:

When a material, article, or piece of equipment is identified on the drawings or in the specifications by reference to manufacturer's or vendor's name, trade name, catalog number, or the like, it is only identified to establish a standard. Any material, article, or piece of

³ Contract Conditions, Substitution of Materials and Equipment, AIA Document A201/SC; Supplementary Conditions of the Contract for Construction.

equipment of other manufacturers or vendors that will perform equally or better the duties imposed by the general design will be considered equally acceptable provided the proposed items are, in the opinion of the architect, of equal substance, appearance, and function. These items shall not be purchased or installed by the contractor without the architect's written approval.

E. Equal Employment Requirements for Construction Contracts

(1) Federal Executive Order 11246, effective October 24, 1965.

This executive order requires an equal employment clause in all federally assisted construction contracts. In signing a government contract or subcontract of more than \$10,000, the contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and agrees to take affirmative action to insure that applicants are employed, and employees are treated fairly during employment, without regard to these factors. If the contractor fails to comply with the nondiscriminatory clauses of the contract, or with the regulations of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part and the contractor declared ineligible for further government contracts.

(2) The Office for Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor.

This office has federal responsibility for overseeing the implementation of Executive Order 11246 by the various federal departments and agencies. OFCC often prescribes written compliance requirements for construction contractors in designated geographical areas. In addition, it is OFCC policy that the approval of an area-wide agreement or the issuance of a hometown plan may include a state or local government's appending additional equal employment opportunity (EEO) requirements to federally assisted construction contracts and subcontracts where state and local funds are also involved in the construction.

F. Procurement Requirements (45 CFR Part 92.36)

Facility construction transactions funded by CCDF must comply with the procurement procedures in 45 CFR Part 92.36 and be conducted in a manner that provides, to the maximum extent possible, open and free competition.

Under 45 CFR Part 92.36, the sealed bid method is the preferred method for procuring construction, when feasible. An invitation for bids by contractors involves the following steps, if the sealed bid method is used:

- ◆ Preparing an invitation for bids, describing the building(s) design and specifications clearly, accurately, and completely by avoiding unclearly restrictive specifications or requirements.
- ◆ Publicizing the invitation for bids in newspapers of general circulation or other means as appropriate to insure distribution to prospective bidders in sufficient time to enable them to prepare and submit bids.
- ◆ Pre-bid conference (if applicable), called by the architect and including representatives of the Tribe, during which any prospective contractor may attend (in some instances, attendance is mandatory in order for the contractor to submit a bid), review the details of the project, question and clarify any construction issues, and obtain a general understanding of the job.
- ◆ Conducting a public bid opening, including adequate documentation of the proceedings (i.e., certified bid tabulation by the architect, minutes of the opening).
- ◆ Preparing to award the contract after sealed bids are publicly opened to the responsible bidder whose bid contains the lowest price offer and conforms to the requirements of the invitation for bids and all prescribed documents, bonds, and assurances. After the lowest bidder is publicly announced (which does not constitute an award or an intended contract), the architect or the Tribe ensures that the low bidder is **not** excluded from federal procurement or non-procurement programs (that the bidder is not on the so-called “Debarred List”) by checking the Excluded Parties List System (EPLS) database maintained by the U.S. General Services Administration. This database is accessible online at <http://epls.gov/>.
- ◆ The Construction Contract is signed (after a review of the bids, a recommendation from the architect and/or the program, and approval by the Tribal Council or the authorized Tribal representative or entity to award the construction contract).
- ◆ Notice to Proceed can then be written and issued by the Tribe to the contractor indicating the day construction may commence.

The following documents constitute a complete contract or contract file:

- An original executed copy of the construction contract.
- A completed certified set of contract drawings and specifications with all addenda(s).
- 100 percent executed performance and payment bond(s) provided by an approved surety.
- Certificate(s) of Insurance.
- Notice to Proceed.

G. Liquidated Damage Requirements

The contract document must state the specified time for completion of the contract. Time will be specified in calendar days or by a definite calendar date. A specific dollar amount of daily damages may be included as a condition for assessments against the contractor for not completing the contract on time. The assessment must be specific for each calendar day that contract work exceeds the stipulated contract completion date without an accepted and signed (time extension) Change Order. The daily assessment, known as liquidated damages, will be reasonable and adequate to cover appropriate fair damage costs to the Tribe and the program that result from delays in occupancy or other real and tangible costs, including additional rent or lease costs, fee and fines, and legal costs. A single source of responsibility, such as the general contractor, shall be held liable for the entire amount of liquidated damages to the Tribe.

When liquidated damages are to be specified, the following clause is recommended for inclusion in the construction contract:

The Tribe or owner will suffer financial loss if the project is not substantially complete and ready for beneficial occupancy on the date stated in the contract documents. The contractor shall be liable for and shall apply to the Tribe or owner the sum hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay beyond those specified in the specifications until the work is substantially complete and ready for beneficial occupancy.

H. Bonds Requirements

The contractor should provide to the Tribe the following recommended minimum coverage for bid bonds and performance and payment bonds:

1. A bid guarantee from each bidder equivalent to 5 percent of the bid price. The bid guarantee shall include a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. The Tribe will keep the bid securities of at least the three lowest bidders until award of the construction contract is complete.
2. A Performance and Payment Bond is provided to the Tribe by the contractor from a surety company guaranteeing the performance of the work in accordance with the contract documents. The bond is 100 percent of the contract sum and covers labor, materials, and performance.

I. Contractor's Liability Insurance

Contractor's Liability Insurance is a requirement of the contractor to protect the Tribe from claims arising out of, or as a result of, the contractor's operations under the contract. Samples of claims include:

- ◆ Workmen's compensation, disability benefits, and other similar employee benefits;
- ◆ Bodily injury, occupational sickness or disease, or death of an employee on the job or any person other than an employee while on the job site;
- ◆ Damages insured by usual personal injury liability coverage sustained by any person because of an offense directly or indirectly related to the employment of such person by the contractor or by any other person;
- ◆ Injury to, or destruction of, tangible property, including loss of use; and
- ◆ Adequate protection against special hazards.

Other recommended minimum insurance coverage for the Tribe to be provided by the contractor includes Contractors Comprehensive General Liability Insurance; Property Damage Liability Insurance; and Automobile Liability Insurance. Subcontractors insurance coverage requirements include Subcontractors Comprehensive General Liability, Automobile Liability, and Property Insurance of the type and in the same amount specified for the general contractor. Specific dollar amounts for all types of contractor-provided coverage should be established by the Tribe in consultation with qualified attorneys and insurance professionals.

Certificate of Insurance documents should be required by the Tribe from the contractor(s) before the start of work. These certificates must contain a provision that coverage afforded under the policies will not be canceled without a minimum number of days prior written notice to the Tribe. The certificates of insurance should also list the Tribe as an "additional insured" for each appropriate policy. The Tribe's specific requirements for the certificates should be determined by the Tribe's attorneys and insurance professionals and should be included in the bid package.

Owners Liability Insurance is a responsibility of the Tribe. The purchase and maintenance of liability insurance during construction protects the Tribe against claims that may arise from operations under the contract.

Property Insurance, unless otherwise provided, is a responsibility of the Tribe. The purchase and maintenance of property insurance covers all work at the site to the full insurable value. The insurance is protection against fire, extended coverage, vandalism, and malicious mischief and includes the interest of the Tribe, the contractor, and subcontractors involved in the work.

IV. Overseeing the Project

It is the responsibility of the Tribe to provide for construction inspections and supervision, adequate to assure the project is being constructed according to contract documents in order to allow for payment to the authorized contractor. In general, the architect/engineer or project manager who designed the project will play a key role in supervising construction, as s/he will be the most familiar with the project and is legally responsible for the design. The separate fee for supervision is generally negotiated at the beginning of the project; alternately, this fee may be included in the overall architectural contract. It is beneficial to hire an architect or project manager who is experienced in the design and construction of similar projects.

There are many software programs available that are specifically designed to facilitate the scheduling of construction projects. Many of these programs use widely accepted scheduling processes/models, such as the critical path method (CPM) or program evaluation and review technique (PERT), to estimate the time needed to complete all tasks in a project. However, unless the project is a large scale one, it may not be necessary to use one of these programs. For smaller projects, more readily available basic office software programs, or even bar charts, will be sufficient to monitor the progress of the project on a monthly basis.

After contract award and execution, Notice to Proceed, and contractor mobilization and set up is complete, there will be regular construction meetings. These will probably be held at least monthly and may be held more often if the project is large or particularly complex. A construction meeting, called by the architect, should be attended by a representative of each subcontractor, the principle owner and on-site supervisor of the contractor, any suppliers, and tribal and program representatives. The meeting is designed to update all parties on work progress, delays, explanations, problems, and change orders, and to allow for general discussion on meeting all contract requirements.

All payment requests, Certificates for Payment, invoices, and contract billings will be received and processed by the architect or project manager. Certified payroll reports are checked and approved, and any financial reports are received and processed. No payment to a contractor or subcontractor is made without approval from the architect or project manager and the Tribe or program.

Close-Out

The close-out is a process involving the architect or project manager, the contractor and all subcontractors, the Tribe, any licensing agencies, and any federal or state agency involved with code or operations. The architect or project manager coordinates on behalf of the Tribe any licensing requirements and represents the Tribe to insure all licensing and code requirements are followed.

One set of complete contract documents, including specifications, will be provided to the Tribe after the project is accepted and during project closeout. Operations manuals, training of maintenance personnel on building equipment and subsystems (as necessary), and warranties should be part of a project closeout and acceptances as noted in the specifications. Outstanding construction items (noted as “punch list items”) will be listed on a Certificate of Substantial Completion form signed by the Tribe, architect, and contractor at the end of the job. This certificate allows the Tribe to safely and effectively utilize the structure. This phase of construction is known as beneficial occupancy.

The architect or project manager calls and conducts a final punch-list or walk-through to identify and determine any items needing work in order for the job to be accepted. Normally the final punch-list does not delay occupancy. Once the final punch-list has been satisfied, the licensing and code requirements have been met, and all financial obligations have been satisfied, the contract is closed except for warranty.

The warranty period provided by the contractor and subcontractor is normally for a minimum of one year. Extended warranty periods may be provided by manufacturers for certain items and may last, for example, up to 20 years for roofs and five years for parts and labor on equipment. Once the warranty period for a contractor and subcontractor is over, the architect or project manager notifies the Tribe to release the 10 percent retainage that had been withheld from the contractor's Certificate for Payment and held in escrow.

Chapter 7: Glossary and Resources

Glossary

Listed below are terms, phrases, and definitions used by architects, engineers, contractors, and managers in the performance of a construction project. This listing may be used by non-construction professionals as a guide to understanding the terminology used for their project.

A

Abate or abatement: To remove material.

Abstract of title: An outline history of the ownership of a parcel of land, from the original grant, with changes in title, and with a statement of all mortgages, liens, encumbrances, etc., affecting the property.

Acceptance test: A test conducted by a purchaser (or his or her agent) to determine if the material, devices, or equipment delivered conforms to the purchase contract specifications or the product supplied by the vendor.

Access: A means of approach, e.g., a road, street, or walk.

Accessible: Allowing physical contact, as by means of an easily removable cover or door, or a part of the building structure or finish materials. Providing access to a fixture, appliance, or piece of equipment; removal of a cover, panel, plate, or similar obstruction may be required.

Accident: A sudden, unexpected event identified as to time and place.

Acre: A unit of land measurement equal to 43,560 sq. ft. or 4046.85 sq. mile; 1 sq. mile equals 640 acres.

Activity: In CPM terminology, a task or item of work that must be performed in order to complete a project.

Activity duration: In CPM terminology, the amount of time estimated as required to accomplish an activity.

ADD.: On drawings, abbreviation for addendum.

Addendum: A supplement to bidding documents, issued prior to the submission of bids, or the purpose of clarifying, correcting, or adding to the specifications previously issued.

Addition: A floor or floors, a room, wing, or other expansion to an existing building. Any new construction which increases the height or floor area of an existing building or adds to it (as a porch or attached garage). An amount added to the contract sum by a change order.

Additional services: The professional services which may, upon the owner's or Tribe's request or approval, be rendered by the architect in addition to the basic services identified in the owner-architect agreement.

Additive alternate: An alternate bid resulting in an addition to the same bidder's base bid. Same as alternate bid.

Administration of the construction contract: Same as construction phase-administration of the construction contract.

Administrative authority: The individual, official, board, department, tribal council, or tribal leader established and authorized by a tribal council or by the people or political subdivision created by law to administer and enforce the provisions of the code.

Advertisement for bids: The published public notice soliciting bids for a construction project. Most frequently used to conform to legal requirements pertaining to projects to be constructed under public authority, and usually published in newspapers of general circulation in those districts from which the public funds are derived.

A/E: Abbreviation for architect-engineer.

Agency: A relationship by which one party, usually the agency, is empowered to enter into binding transactions affecting the legal rights of another party, usually called the principle, as, for example entering into a contract or buying or selling property in his name or on his behalf. An administrative branch of government. The Bureau of Indian Affairs, Agency Office, is the local or lowest level of federal government that acts and administers funds and programs on behalf of the Tribe or principle.

Agent: One who is empowered to enter into binding transactions on behalf of another. The Tribal Chairperson, Chief, Governor, or President is the recognized and legal agent of his or her Tribe.

Agreement: An arrangement indicating the intent of a contract but not necessarily fulfilling all the enforceable provisions of it. A meeting of minds. A legally enforceable promise or promises between two or among several persons. On a construction project, the document stating the essential terms of the construction contract which incorporates by reference the other contract documents.

Agreement form: A document setting forth in printed form the general provisions of an agreement with spaces provided for insertion of specific data relating to a particular project.

AIA: Abbreviation for American Institute of Architects.

All-in contract: Same as turn-key job.

Alterations: Remodeling.

Alternate bid: The amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change

in project scope or alternate materials and/or methods of construction is accepted.

Application for payment: The contractor's written request for payment of amount due for completed portions of the work, may include, in the contract so provides, materials delivered and suitably stored pending their incorporation into the work.

Appraisal: An evaluation or estimate (preferably by a qualified professional appraiser) in some instances by the Bureau of Indian Affairs, Agency Office, of the market or other value, cost, utility, or other attribute of land or other facility.

Approved: Referring to materials, devices, or construction accepted by the authority having jurisdiction, by reason of tests or investigations conducted by it or by an agency satisfactory to the authority, or by reason of accepted principles or tests by national authorities or technical or scientific organizations.

Approved equal: Materials, equipment, or method approved by the architect for use in the work as being acceptable as an equivalent in essential attributes to the material, equipment, or method specified in the contract document.

Approving authority: The individual agency, board, department, Tribe, or official established and authorized by a political subdivision which is created by law to administer and enforce specified requirements.

Arbitration: The binding resolution of disputes by one or more neutral persons, as a substitute for judicial proceedings; may be invoked only by agreement of the parties to the dispute, but such agreement may be arrived at before there is an actual dispute, for example, through a clause in a contract.

Architect: A person trained and experienced in the design of buildings and coordination and supervision of all aspects of the construction of buildings.

Architect-engineer: An individual or firm offering professional services as both architect and engineer; terms generally used

in government contracts, particularly those with the federal government.

Architect's approval: The architect's written or imprinted acknowledgment that materials, equipment, or methods of construction are acceptable for use in the work.

Architect's scale: A scale having graduations along its edges so that scale drawings can be measured directly in feet.

Architectural: Pertaining to architecture, its features, characteristics, or details.

Architectural drawing: One of a number of drawings prepared by an architect for a construction project, e.g., plans, elevations, and details.

Architecture: The art and science of designing and building structures, or large groups of structures, in keeping with aesthetic and functional criteria.

Area method: A method of estimating probable total construction cost by multiplying the adjusted gross floor area by a predetermined cost per unit of area.

Article: A subdivision of a document.

Assessed valuation: The value of a property as determined by a recognized legal entity such as a Tribe, for real estate tax purposes; often this valuation is less than the true market value of the property.

Assessment: A tax, charge, or levy on property.

Assessment ratio: Of a property, the ratio between its market value and its assessed value.

Assignment: The transfer of a legal right.

Attorney-in-fact: A person authorized to act for or in behalf of another person or organization, to the extent prescribed in a written instrument known as a power of attorney.

Authority: Same as administrative authority.

Authority having jurisdiction: A federal, state, local, or tribal entity having statutory authority. In many instances the Tribe or Bureau of Indian Affairs or a delegated agent assumes the role of the authority having jurisdiction.

B

Base bid: The amount of money stated in the bid as the sum for which the bidder offers to perform the work, not including that work for which alternate bids are also submitted.

Base bid specifications: The specifications listing or describing only those material, equipment, and methods of construction upon which the base bid must be predicated, exclusive of any alternate bids.

Base services: The services performed by an architect during the following five phases of a project: schematic design; design development; construction documents; bidding or negotiation; and contract administration.

BIA: Abbreviation for Bureau of Indian Affairs

Bid: An offer to perform the work described in a contract at a specified cost. A complete and properly signed proposal to do the work. Competition for a job based on lowest cost to do the work. Bids are generally cost specific, based on the cost of labor, materials, profit, and over-head. Bids are normally not negotiated and can not be changed once accepted by the owner/Tribe. Bids are time sensitive and are generally good for 30 to 60 days after the bid opening.

Bid bond: A form of id security executed by the bidder as principal and by a surety.

Bid date: The date established by the owner or Tribe or the architect for the receipt of bids.

Bid documents: The advertisement or invitation to bid, instructions to bidders, the bid form, and the proposed contract documents including any addenda issued prior to receipt of bids.

Bid form: A form furnished to a bidder to be filled out, signed, and submitted as his bid.

Bid guarantee: Same as bid security.

Bid letting: Same as bid opening.

Bid opening: The opening and tabulation of bids submitted by the prescribed bid time and in conformity with the prescribed procedures.

Bid price: The sum stated in the bid for which the bidder offers to perform the work.

Bid security: The deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner or Tribe that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

Bid time: The date and hour established by the owner or Tribe or the architect for the receipt of bids.

Bidder: One who submits a bid for a prime contract with the owner or Tribe, as distinct from a sub-bidder who submits a bid to a prime bidder. A bidder is not a contractor on a specific project until a contract exists between him and the owner or Tribe.

Bidding or negotiation phase: the fourth phase of the architect's basic service, during which competitive bids or negotiated proposals are sought as the basis for awarding a contract.

Bidding period: The calendar period beginning at the time of issuance of bidding requirements and contract documents and ending at the prescribed bid time.

Bidding requirements: those documents providing information and establishing procedures and conditions for the submission of bids. They consist of the notice to bidders or advertisement for bids, instructions to bidders, invitation to bid, and sample forms.

Bona fide bid: A bid submitted in good faith, complete and in prescribed form which

meets the conditions of the bidding requirements and is properly signed by someone legally authorized to sign such bid.

Bond: A financial guarantee by a surety company that work will be completed as described in a contract.

Bonding capacity: An indication of a contractor's credit rating.

Bonus and penalty clause: A provision in a construction contract for payment of a bonus to the contractor for completing the work prior to a stipulated date, and a charge against the contractor for failure to complete the work by such stipulated date.

Boundary survey: A mathematically closed diagram of the completed peripheral boundary of a site, reflecting dimensions, compass bearings and angles.

Builder's risk insurance: A specialized form of property insurance to cover work in the course of construction. Also property insurance.

Building area: The total area of the site which is covered by buildings as measured on a horizontal plane at ground level.

Building code: A collection of rules and regulations adopted by authorities having appropriate jurisdiction to control the design and construction of buildings, alteration, repair, quality of materials, use and occupancy, and related factors of buildings within their jurisdiction.

Building inspector: A member of a building department, usually of a municipality or Tribe, who inspects construction to determine if it conforms to both the requirements of the building code and the approved plans.

Building permit: A written authorization to an applicant for a specific project allowing him to proceed with construction; granted by the authorized agency, a Tribe or local municipality, having jurisdiction after plans have been filed, reviewed.

Building rehabilitation: The returning of a building to a useful state by repair, alteration, and modification.

Building restoration: The accurate reestablishment of the form and details of a building, its artifacts, and the site on which it is located, usually as it appeared at a particular time.

Building restriction: Any one of a number of restrictions, imposed on the construction of a building or the use of land. Also known as restrictive covenant.

Building services: The utilities and services supplied and distributed within a building generally related to the building environment.

Building site: Same as site.

Bureau of Indian Affairs: Branch of the U.S. Department of the Interior.

C

Cash allowance: An amount established in the contract documents for inclusion in the contract sum to cover the cost of prescribed items not specified in detail, with provision that variations between such amount and the finally determined cost of the prescribed items will be reflected in change orders appropriately adjusting the contract sum.

Certificate for payment: A statement from the architect to the owner or Tribe confirming the amount of money due the contractor for work accomplished or materials and equipment suitable stored, or both.

Certificate of insurance: A memorandum issued by an authorized representative of an insurance company stating the types, amounts, and effective dates of insurance in force for a designated insured.

Certificate of occupancy: A document issued by governmental authority certifying that all or a designated portion of a building complies with the provisions of applicable statutes and regulations, and permitting occupancy for its designated use.

Certification: A declaration in writing that a particular product or service complies with a specification or stated criterion.

Change order: A written order to the contractor signed by the owner or Tribe and the architect issued after the execution of the contract, authorizing a change in the work or an adjustment in the contract sum or the contract time as originally defined by the contract documents; may add to subtract from, or vary the scope of work. A change order may be signed by the architect alone (provided he has written authority from the owner or Tribe).

Changes in work: Changes ordered by the owner consisting of additions, deletions, or other revisions within the general scope of the contract, the contract sum and the contract time being adjusted accordingly.

Clerk of the works: Same as project representative.

Closed list of bidders: Same as invited bidders.

Closed specifications: Specifications stipulating the use of specific products or processes without provision for substitution. Same as base bid specifications.

Code: A legal instrument adopted within a political jurisdiction including a Tribe or a reservation, that prescribes the minimum acceptable levels of the design, construction, installation, and performance of materials, components, devices, items of equipment, appliances used in a building, or building system and/or subsystem.

Code of practice: A technical document setting forth standards of good construction for various materials and trades.

Community: A Tribe of people having common rights, privileges, or interests, or living in the same place under the same laws and regulations.

Compensation: Payment for services rendered or products or materials furnished or delivered.

Completed operations insurance: Liability insurance coverage for injuries to persons or damage to property occurring after an operation is completed but attributed to that operation; does not apply to damage to the completed work itself.

Completion bond, construction bond, contract bond: The guarantee of a bonding company that a contractor will perform and deliver the work contracted for free of all encumbrances and liens.

Completion date: In the contract documents, the date of substantial completion of the work.

Completion list: Same as inspection list.

Comprehensive general liability insurance: A broad form of liability insurance covering claims for bodily injury and property damage which combines under one policy coverage for all liability exposures on a blanket basis and automatically covers new and unknown hazards that may develop; automatically includes contractual liability coverage for certain types of contracts.

Comprehensive services: Professional services performed by the architect in addition to the basic services in such related areas as project analysis, programming, land use studies, feasibility investigations, financing, construction management, and special consulting services.

Conditions of the bid: Conditions set forth in the instructions to bidders, the notice to bidders or advertisement for bids, the invitation to bidders, or other similar bid documents prescribing the conditions under which bids are to be prepared, executed, submitted, received, and accepted.

Conditions of the contract: those portions of the contract documents that define, set forth or relate to: contract terminology; the rights and responsibilities of the contracting parties and of others involved in the work; requirements for safety and for compliance with laws and regulations; general procedures for the orderly prosecution and management of the work; payments to the

contractor; and similar provisions of a general, nontechnical nature.

Consent of surety: Written consent of the surety on a performance bond and/or labor and material payment bond to such contract charges as change orders or reductions in the contractor's retainage, or to final payment, or to waiving notification of contract changes.

Construction: All the on-site work done in building or altering structures, from land clearance through completion, including excavation, erection, and the assembly and installation of components and equipment.

Construction bond: A completion bond.

Construction budget: The sum established by the owner or Tribe as available for construction of the project. The highest acceptable bid.

Construction cost: The cost of all the construction portions of a project, generally based upon the sum of the construction contracts and other direct construction costs; does not include the compensation paid to the architect and consultants, the cost of land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner or Tribe.

Construction documents: The working drawings and specifications.

Construction documents phase: The third phase of the architect's basic services. In this phase the architect prepares from the approved design development documents, for approval by the owner or Tribe, the working drawings and specifications and the necessary bidding information. In this phase the architect also assists the owner in the preparation of bidding forms, the conditions of the contract, and the form of agreement between the owner or Tribe and the contractor.

Construction inspector: Same as project representative.

Construction loan: A loan to builder for a short term, financing construction prior to permanent financing.

Construction management: the special management services performed by the architect or others during the construction phase of the project, under separate or special agreement with the owner. This is not part of the architect's basic services, but is an additional service sometime included in the comprehensive services.

Construction phase - administration of the construction contract: The fifth and final phase of the architect's basic services, which includes the architect's general administration of the construction contracts.

Construction survey: Same as engineering survey.

Consultant: An individual or organization engaged by the owner or Tribe or the architect to render professional consulting services complementing or supplementing the architect's services.

Contingency allowance: A sum designated to cover unpredictable or unforeseen items of work, or changes subsequently required by the owner or Tribe.

Contingency agreement: Any agreement under which the rights or obligations of a party are subject to the happening of stated contingency.

Contract: A legally enforceable promise or agreement between two or among several persons.

Contract administration: The duties and responsibilities of the architect or consultant during the construction phase.

Contract bond: Same as completion bond.

Contract date: Same as date of agreement.

Contract documents: Those documents that comprise a contract: owner-contractor agreement, conditions of the contract, plans and/or drawings, specifications, all addenda, modifications, and changes together with

any other items stipulated as being specifically included.

Contracting officer: The person designated as the official representative of the federal and/or tribal government with specific authority to act on behalf of the government in connection with the project.

Contractor: One who undertakes responsibility for the performance of construction work, including the provision of labor and materials, in accordance with plans and specifications and under a contract specifying cost and schedule for completion of the work; the person or organization responsible for performing the work and identified as such in the owner-contractor agreement.

Contractor's affidavit: A certified statement of the contractor, properly notarized, relating to payment of debts and claims, release of liens, or similar matters requiring specific evidence for the protection of the owner or Tribe. Same as non-collusion affidavit.

Contractor's estimate: A forecast of construction cost, as opposed to a firm proposal, prepared by the contractor for a project or a portion of a project.

Contractor's liability insurance: Insurance purchased and maintained by the contractor to protect him from specified claims which may arise out of or result from his operations under the contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

Contractor's option: A provision of the contract documents under which the contractor may select certain specified materials, methods, or systems at his own option, without change in the contract sum.

Contractor's proposal: Same as bid.

Contract sum: the price stated in the owner-contractor agreement, which is the total amount payable by the owner or Tribe to the contractor for the performance of the work in the contract document, can be adjusted only by a signed change order.

Contract time: The period of time established in the contract documents pursuant to other agreement between the parties, or by operation of law, within which the work must be completed.

Contractual liability: Liability assumed by a party under a contract by express language, implication, or operation of law. A "hold harmless" clause.

Cost breakdown: Same as schedule of values.

Cost-plus-fee agreement: An agreement under which the contractor or the architect is reimbursed for his direct and indirect costs and in addition, is paid a fee for his services. The fee is usually stated as a stipulated sum or as a percentage of cost.

CPM: Abbreviation for critical path method.

Critical path method: CPM, a system of project planning, scheduling, and control that combines all relevant information into a single master plan, permitting the establishment of the optimum sequence and duration of operations; the interrelation of all the efforts required to complete a construction project are shown; and indication is given of the efforts that are critical to timely completion of the project.

D

Damages: Same as liquidated damages.

Date of agreement: The date stated on the face of the agreement. If no date is stated, it may be the date on which the agreement is actually signed, if this is recorded, or it may be the date established by the award; also referred to as the contract date.

Date of commencement of the work: The date established in a notice to proceed or, in the absence of which notice, the date of the agreement or such other date as may be established therein or by the parties thereto.

Date of substantial completion: The date certified by the architect when the work or a designated portion thereof is sufficiently complete, in accordance with the contract

documents, so the owner or Tribe may occupy the work or designated portion thereof for the use for which it is intended.

Debt service: The periodic payment of a loan, including both accrued interest and a portion of the principal.

Deduction: The amount deducted from the contract sum by a change order.

Deductive alternate: An alternate bid resulting in a deduction from the same bidder's base bid. Same as Alternate Bid.

Deed: Any duly attested, written document executed under seal and delivered to effect a transfer, bond, or contract, such as a conveyance of real property or interest therein.

Deed restriction: A limitation on the use of land, which is set forth in a deed conveying the restrictions.

Defective work: Work not complying with the contract requirements.

Demolition: The systematic destruction of a building, all or in part.

Department of Housing and Urban Development: A department of the U.S. government that strives for a decent, safe, and sanitary home and suitable living environment for every American.

Deposit for bidding documents: Monetary deposit required to obtain a set of construction documents and bidding requirements, customarily refunded to bona fide bidders on return of the documents in good conditions within a specified time.

Design: To compose a plan for a building. The architectural concept of a building as represented by plans, elevations, renderings, and other drawings.

Design development phase: The second phase of the architect's basic services. In this phase the architect prepares the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical and

electrical systems, materials and such other essentials as may be appropriate; the architect also submits to the owner or Tribe a further statement of probable construction cost.

Design documents: Same as structural design documents.

Detailed estimate of construction costs: A forecast of construction cost prepared on the basis of a detailed analysis of materials and labor for all items of work, as contrasted with an estimate based on current area, volume, or similar unit costs.

Developed area: An area of land upon which improvements have been made.

Development: A tract of previously undeveloped land which is subdivided and provided with all necessary utilities, such as roads, water, electricity, sewers, etc.

Direct personnel expense: Salaries and wages of principals and employees engaged on a project, assignment, or task, including mandatory and customary benefits.

Document deposit: Same as deposit for bidding documents.

E

Educational occupancy: The use of a building or buildings for the gathering of groups of six or more persons for purposes of instruction.

Eminent domain: The power or right of the nation, Tribe, or state to take private property for public use, usually with reasonable compensation to the owner.

Employer's liability insurance: Insurance protection for the employer against claims by employees for damages which arise out of injuries or diseases sustained in the course of their work and which are based on common law negligence rather than on liability under workmen's compensation acts.

Engineer: A person trained and experienced in the profession of

engineering; a person licensed to practice the profession by the authority in the area.

Engineering survey: A survey conducted to obtain essential information for planning an engineering project or developing and estimating its cost.

Environmental design professional: The professions collectively responsible for the design of man's physical environment.

Environmental impact statement: A detailed analysis of the probable environmental consequences of proposed federal legislation, major federal actions, or large-scale construction making use of federal funds, likely to have significant effects on environmental quality; such a statement is required by the National Environmental Policy Act of 1969.

Estimate: Same as detailed estimate of construction costs. Same as statement of probable construction costs. Same as contractor's estimate.

Extended coverage insurance: Same as property insurance.

Extra services: Same as additional services.

Extra work: Any work not included in the contract documents; an extra.

F

Facility: The building(s), playground(s), parking area(s), and campus where the program or construction site is located.

Fee-plus-expenses agreement: Same as cost-plus-fee agreement.

Field representative: Same as project representative.

Field supervision: That portion of the architect's supervisory work which is done at the construction site.

Final acceptance: The owner's or Tribe's acceptance of a project from the contractor upon certification by the architect that it is

complete and in accordance with the contract requirements; final acceptance is confirmed by the making of final payment unless otherwise stipulated at the time of making such payment.

Final completion: The completion of work and all contract requirements by the contractor.

Final inspection: The final review of the project by the architect prior to his issuance of the final certificate for payment.

Final payment: Payment made by the owner or Tribe to the contractor, upon issuance by the architect of the final certificate for payment, of the entire unpaid balance of the contract sum as adjusted by change orders.

Fire and extended coverage insurance: Same as property damage insurance.

Fixed limit of construction cost: The maximum allowable cost of the construction work as established in the agreement between the owner or Tribe and the architect. Same as construction budget.

Force account: A term used when work is ordered to be done without prior agreement as to lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and equipment, insurance, taxes, etc., plus an agreed percentage for overhead and profit.

G

General conditions: That part of the contract documents that sets forth many of the rights, responsibilities, and relationships of the parties involved. Same as conditions of the contract.

General contract: Under the single contract system, the contract between the owner or Tribe and the contractor for construction of the entire work.

General contractor: The prime contractor who is responsible for most of the work at the construction site, including that performed by the subcontractors.

Generally accepted standard: A specification, code, rule, guide, or procedure in the field of construction, or related thereto, recognized and accepted as authoritative.

Guarantee: A legally enforceable assurance of the quality or duration of a product or of work performed.

Guaranteed maximum cost: An amount estimated in an agreement between the owner or Tribe and contractor as the maximum cost of performing specified work on the basis of cost of labor and materials plus overhead expense and profit.

Guaranty bond: Same as bid bond. Same as labor and material payment bond. Same as performance bond. Same as surety bond.

H

HUD: The abbreviation for U.S. Department of Housing and Urban Development.

I

IHS: Abbreviation for Indian Health Service.

Indian Health Service: A branch of the Public Health Service

Inspection list: A list of items of work to be completed or corrected by the contractor during or after completion of the work and during the warranty period.

Instructions to bidders: Instructions contained in the bidding requirements for preparing and submitting bids for a construction project. Same as notice to bidders.

Invitation to bid: A solicitation of competitive bids. The term usually is employed in connection with private construction projects, but also may be used for government projects, for the purchase of supplies or other goods, or in connection with the sale of property. Same as advertisement for bids.

Invited bidders: The bidders selected by the architect and the owner or Tribe as the only ones from whom bids will be received.

J

Job: Same as project. Same as work.

Job captain: A member of the architect's staff normally responsible, on a given project, for the preparation of drawings and their coordination with other documents.

Job site: The site of the construction project.

Job superintendent: Same as superintendent.

L

Labor and material payment bond: A bond of the contractor in which a surety guarantees to the owner or Tribe that the contractor will pay for labor and materials used in the performance of the contract. The claimants under the bond are those having direct contracts with the contractor or any subcontractor.

Landscape architect: A person trained and experienced in the design and development of landscapes and gardens.

Land survey: A survey of landed property establishing or reestablishing lengths and directions of boundary lines. Land boundaries are usually defined by ownership, commencing with the earliest owners through successive ownerships and partitions.

Latest event occurrence time: In CPM, the latest point in time by which no further work must be done on an activity if the project is not to be delayed.

Latest start date: In CPM, the latest possible point in time by which an activity must be started if the project is not to be delayed.

Letter of intent: A letter signifying an intention to enter into a formal agreement, usually setting forth the general terms of such agreement.

Liability insurance: Insurance that protects the insured against liability on account of injury to the person or property of another.

Licensed architect: Same as architect.

Licensed contractor: A person or organization certified by governmental authority, where required by law, to engage in construction contracting.

Licensed engineer: Same as professional engineer.

Lien: A right enforceable against specific property to secure payment of an obligation.

Lien waiver: An instrument by which a person, organization or Tribe who has or may have a right of mechanic's lien against the property of another relinquishes such right. Same as mechanic's lien and release of lien.

Life cycle cost: The cost of a building or equipment based not only on the initial expenditure, but also on its maintenance and operating cost over its entire lifetime.

Liquidated damages: A sum specified in a contract whereby damages in the event of breach are to be determined. In a construction contract liquidated damages usually are specified as a fixed sum per day for failure to complete the work within a specified time.

Listed: Equipment, materials, or products included in a list published by an organization acceptable to the authority having jurisdiction.

Loss of use insurance: Insurance protecting against financial loss during the time required to repair or replace property damaged or destroyed by an insured peril.

Lowest responsible bidder, lowest qualified bidder: The bidder who submits the lowest bona fide bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

Lowest responsive bid: The lowest bid which is responsive to and complies with the bidding requirements.

Lump sum agreement: Same as stipulated sum agreement.

M

Main contractor: Same as general contractor.

Maintenance bond: A bond that provides a guarantee to an owner or Tribe that the contractor will rectify defects in workmanship or materials reported to the contractor within a specified time period following final acceptance of the work under contract.

Measured drawing: An architectural drawing of an existing structure, drawn to scale.

Mechanic's lien: A lien on privately owned real property created by state statute in favor of persons supplying labor or materials for a building or structure or improvements thereof, generally for the value of the labor or materials supplied by them.

Model code: A proposed building code that is written and published by building official associations available for adoption by states, Tribes, counties and municipalities.

Modification: A written amendment to the contract document signed by both parties. A change order. A written order for a minor change in the work issued by the architect.

Modular construction: Construction in which a selected unit or module, such as a box or other sub-component, is used repeatedly in the aggregate construction.

Mortgage: A loan in which property is used as security for the debt.

Mortgagee: The lender from whom a mortgage is obtained.

Mortgage lien: A charge against property as security for the payment of a loan.

Mortgagor: The borrower who obtains a mortgage.

N

Negligence: Failure to exercise that degree of care which a reasonable and prudent person would exercise under the same circumstances.

Negotiation phase: Same as bidding or negotiation phase.

Non-collusion affidavit: A notarized statement by a bidder that he has prepared his bid without collusion of any kind.

Nonconforming work: Work that does not fulfill the requirement of the contract documents.

Notice to bidders: A notice contained in the bidding requirements informing prospective bidders of the opportunity to submit bids on a project and setting forth the procedures for doing so.

Notice to proceed: Written communication issued by the owner or Tribe to the contractor authorizing him to proceed with the work and establishing the date of commencement of the work.

O

Observation of the work: A function of the architect in the construction phase, during his periodic visits to the site, to familiarize himself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents.

Occupancy permit: Same as certificate of occupancy.

Opening of bids: Same as bid opening.

Ordinance: A law or rule adopted by a local or tribal governmental authority.

Orientation: The placement of a structure on a site with regard to local conditions of sunlight, wind, and drainage.

OSHA: The abbreviation for "Occupational Safety and Health Administration," Department of Labor.

Over design: As applied to structural design, a design based on requirements higher than service demands, usually as a means of compensating for unknown and/or anticipated deficiencies.

Owner: Tribe or tribal government, the architect's client and party to the owner-architect agreement.

Owner-architect agreement: A contract between the architect and the client or Tribe for professional services.

Owner-contractor agreement: A contract between the owner or Tribe and contractor for a construction project.

Owner's inspector: A person employed by the owner or Tribe to inspect construction in the owner's behalf.

Owner's liability insurance: Insurance which protects the owner or Tribe against claims arising from his ownership of property and which may be extended to cover claims which may arise from operations of others under the construction contract.

P

Package dealer: A person or organization assuming responsibility under a single contract for the design and construction of a project to meet the specific requirements of another.

Parcel: Of land, a contiguous land area which is considered as a unit, which is subject to a single ownership, and which is legally recorded as a single piece.

Partial occupancy: Occupancy by the owner or Tribe of a portion of a project prior to final completion.

Partial payment: A progress payment.

Payment request: Same as application for payment.

P.E.: Abbreviation for professional engineer.

Penal sum: The amount named in a contract or bond as the damages or penalty

to be paid by a signatory thereto in the event he failed to perform his contractual obligations or does not do so within the time prescribed by the contract.

Penalty-and-bonus clause: Same as bonus-and penalty clause.

Penalty clause: A contract provision setting forth the damages a party must pay in the event of his breach. If such a clause is regarded by the court as too harsh to be regarded as a fair estimate of probable damaged, it will normally be held invalid. Same as liquidated damages.

Percentage agreement: An agreement for professional services in which the compensation is based upon a percentage of the construction cost.

Percentage fee: Compensation based upon a percentage of construction cost. Same as fee.

Performance bond: A bond of the contractor in which a surety guarantees to the owner or Tribe that the work will be performed in accordance with the contract documents; frequently combined with the labor and materials payment bond, except where prohibited by statute.

Permit: A document issued by a governmental authority having jurisdiction to authorize specific work by the applicant.

Personal injury: In insurance terminology, injury or damage to the character or reputation of a person, as well as bodily injury. Person injury insurance usually covers such situations. Same as bodily injury.

Personal property: Movable and other property not classified as real property.

PERT: Acronym for project evaluation and review technique.

PERT schedule: A PERT chart of the activities and events anticipated in a work process.

PHS: Abbreviation for Public Health Service.

Planning: the process of studying the layout of spaces within buildings and of buildings and other facilities or installations in open spaces in order to develop the general scheme of a building or group of buildings.

Post-completion services: Additional services rendered after issuance of the final certificate for payment, such as consultation regarding maintenance, processes, systems, etc.

Power of attorney: An instrument authorizing another to act as one's agent. Same as attorney-in-fact.

Preliminary drawings: Drawings prepared during the early stages of the design of a project.

Preliminary estimate: Same as statement of probable construction costs.

Premises: Land and/or its appurtenances.

Pre-bid Conference or Pre-bid walk-through: A meeting of any interested bidder, at the job site, giving an opportunity to review the project, and discuss any unclear design or programming issues.

Pre-qualification of prospective bidders: The process of investigating the qualifications of prospective bidders on the basis of their competence, integrity, and responsibility relative to the contemplated project.

Prime contract: A contract between the owner or Tribe and contractor for construction of a project or portion thereof.

Prime contractor: The contractor on a project having a contract directly with the owner.

Prime professional: Any person or firm having a contract directly with the owner for professional services.

Principle: One on whose behalf or in whose name binding transactions may be entered into by another; usually called the agent.

Production drawings: Same as working drawings.

Professional adviser: An architect engaged by the owner or Tribe to direct an authorized design competition for the selection of an architect.

Professional engineer: A designation reserved, usually by law, for a person or organization professionally qualified and duly licensed to perform such engineering services as structural, mechanical, electrical, sanitary, civil, etc.

Professional liability insurance: Insurance designed to insure an architect or engineer against claims for damages resulting from alleged professional negligence. Also known as errors and omissions insurance.

Professionals practice: The practice of one of the environmental design professionals in which services are rendered within the framework of recognized professional ethics and standards.

Program: A statement prepared by or for an owner or Tribe, with or without an architect's assistance, setting forth the conditions and objectives for a building project including its general purpose and detailed requirements, such as a complete list of the rooms required, their sizes, special facilities, etc.

Program evaluation and review technique (PERT): A management control technique applied to building construction; determines what must be done to complete construction by a given date. Similar to the critical path method (CPM).

Progress chart: A chart prepared by a contractor, brought up to date monthly; the principal trades of the project are tabulated vertically and the scheduled construction time shown horizontally.

Progress payment: A partial payment made during progress of the work on account of work completed and/or materials suitably stored.

Progress schedule: A diagram, graph, or other pictorial or written schedule showing proposed and actual times of starting and completion of the various elements of the work.

Project: A construction undertaking, composed of one or more buildings and the site improvements, planned and executed in a fixed time period.

Project budget: The sum established by the owner or Tribe as available for the entire project, including the construction budget, land costs, equipment costs, financing costs, compensation of professional services, contingency costs, and other similar established or estimated costs.

Project cost: The total cost of a project including the professional compensation, land costs, furnishings and equipment, financing, and other changes as well as the construction cost.

Project Manager: A third party consultant or employee of the owner/Tribe that works for the owner and coordinates the activities of the project. Assists with the development of specific strategies of the project (including bidding and contracting), establishing time frames and benchmarks for the project, assisting the owner in hiring other professional services; reviews plans and drawings and makes recommendations to the owners, monitors the budget of all phases of the project, works with all consultants, monitors the day-to-day work progress of the contractor, assists the owner in close-out, and prepares for occupancy.

Project manual: The manual prepared by the architect for a project, including the bidding requirements, conditions of the contract, and the technical specifications.

Project representative: The architect's representative at the project site who assists in the administration of the construction contract.

Property: Any asset, real or personal.

Property damage insurance: Part of general liability insurance covering injury to or destruction of tangible property, including loss of use resulting from, but usually not including property that is in the area, custody and control of the insured.

Property line: A recorded boundary of a plot.

Property survey: Same as boundary survey.

Proposal: In construction terminology, could be the same as bid. (Request For Proposals): A document used by the owner/Tribe to evaluate the professional capabilities of a business, agency, or individual against a set of pre-established criteria that may be weighted on a numerical scale using a set of questions that allows the owner/Tribe to determine the best business, agency, or individual to hire for their specific job. Normally, the proposal does not include the cost of services; cost is generally a negotiated amount after the competing proposals have been evaluated and ranked. The proposal, however, is designed to evaluate such criteria as previous work experience, work with Tribes or tribal organizations, and, specifically, your Tribe; preference can be given to local or in-state business; the qualifications of the lead professional and the qualifications of the team that will be working on the project; and if their previous work has been completed on time and within budget.

Proposal form: Same as bid form.

Public liability insurance: Insurance covering liability of the insured for negligent acts resulting in bodily injury, disease, or death of others than employees of the insured, and/or property damage.

Q

Quality assurance: The inspection, testing, and other relevant action taken to ensure that the desired level of quality is in accordance with the applicable standards or specifications for the product or work.

Quality control: The inspection, analysis, and other relevant action taken to provide control over what is being done, manufactured, or fabricated, so that a desirable level of quality is achieved and maintained.

Quality survey: A detailed analysis and listing of all items of materials and equipment necessary to construct a project.

Quitclaim deed: A written instrument whereby the seller conveys only whatever interest he has in property, but makes no warranties or representations as to the nature of that interest or as to the absence of any limitations or restrictions thereon, or even that he has any right to the property at all.

Quotation: A price quoted by a contractor, sub-contractor, material supplier, or vendor to furnish materials, labor, or both.

R

Real estate: Property in the form of land and all its appurtenances, such as buildings.

Real property: Land, everything growing on it, and all improvements made to it.

Realty Officer: A tribal and/or BIA employee who assists the governments in realty issues including, but not limited to, disputes, developments, and assignments.

Record drawings: Construction drawings revised to show significant changes made during the construction process, usually based on marked-up prints, drawings and other data furnished by the contractor to the architect.

Record sheet: On a construction job, a sheet or printed form for keeping a record, usually of materials delivered, number of men working at the various trades, hours worked, etc.

Regulation: Any rule prescribing permitted or forbidden conduct, whether found in legislation or in the actions of an administrative agency such as the Tribe or the BIA or some other federal agency.

Release of lien: Instrument executed by one supplying labor, materials, or professional services on a project which releases his mechanic's lien against the project property. Same as mechanic's lien.

Render: To give a mechanical drawing, as in elevation, a more or less complete indication of shades and shadows.

Reservation: Land designated as being "in trust" to the federal government on behalf of the individual Tribe or tribal government.

Resident engineer: A person representing the owner's or Tribe's interests at the project site during the construction phase; term frequently used on projects in which a governmental agency is involved such as a Tribe.

Resident inspector: Same as owner's inspector.

Responsible bidder: Same as lowest responsible bidder.

Restricted list of bidders: Same as invited bidders.

Restriction: On land, an encumbrance limiting its use.

Restrictive covenant: An agreement between two or more individuals, incorporated within a deed, that stipulates how land may be used.

Retainage: A sum withheld from progress payments to the contractor in accordance with the terms of the owner-contractor agreement.

Retention: The withholding of a portion (usually 10 percent) of a periodic payment to a contractor, by prior agreement, for work completed. The retention is held in escrow for a stipulated time period after the acceptance of the completed work by the architect and owner or Tribe.

Retention money: Same as retention.

Right-of-way: Any strip of land, including surface and overhead or underground space, which is granted by deed or easement for the construction and maintenance of specified linear elements such as power and telephone lines.

S

Satisfaction: Cancellation of an encumbrance on real property, usually by payment of the debt secured by it.

Schedule: A detailed tabulation of components, items, or parts to be furnished.

Schedules of values: A statement furnished by the contractor to the architect reflecting the portions of the contract sum allotted for the various parts of the work and use as the basis for reviewing the contractor's application for progress payment.

Schematic design phase: The first phase of the architect's basic services. In this phase, the architect consults with the owner or Tribe to ascertain the requirements of the project and prepares schematic design studies consisting of drawings and other documents illustrating the scale and relationship of the project components for approval by the owner or Tribe. The architect also submits to the owner or Tribe a statement of probable construction costs.

Schematic drawing: Same as schematic design phase.

Scheme: The basic arrangement for an architectural composition. Primary sketch for a design.

Selected bidder: The bidder selected by the owner or Tribe for discussion relative to the possible award of the construction contract.

Selected list of bidders: Same as invited bidders.

Setback: The minimum distance between a reference line and a building, or portion thereof.

Shop drawings: Drawings, diagrams, illustrations, schedules, performances charts, brochures, and other data prepared by the contractor or any subcontractor, manufacturer, supplier, or distributor, which illustrates how specific portions of the work shall be fabricated and/or installed.

Single contract: A contract for construction of a project under which a single prime contractor is responsible for all the work.

Site: An area or plot of ground with defined limits on which a building or project is located or proposed to be located.

Site investigation: An examination of the subsoil and surface of a site to obtain complete information necessary for the design of foundations and structures on them.

Site plan: A plan of a construction site showing the position and dimensions of the building to be erected and the dimensions and contour of the lot.

Special conditions: A section of the conditions of the contract, other than general conditions and supplemental conditions, which may be prepared for a particular project. Same as conditions of the contract.

Special hazards insurance: Additional perils insurance to be included in property insurance.

Specifications: **1.** A written document describing in detail the scope of work, materials to be used, method of installation, and quality of workmanship for a parcel of work to be placed under contract; usually utilized in conjunction with working drawings in building construction. **2.** A part of the contract documents contained in the project manual consisting of written descriptions of a technical nature of materials, equipment construction systems, standards, and workmanship.

Standard: A document prepared by a recognized standard-setting organization that prescribes methods and materials for the safe use and consistent performance of specific technologies.

Standards of professional practice: Statements of ethical principles promulgated by professional societies to guide their members in the conduct of professional practice.

Statement of probable construction cost: Cost forecasts prepared by the architect during the schematic design, design development, and construction documents phases of basic services for the guidance of the owner or Tribe.

Statute of limitations: A statute specifying the period of time within which legal action must be brought for alleged damage or

injury. The lengths of the periods vary from state to state and depends upon the type of legal action.

Statutory bond: A bond, the form and contents of which is prescribed by statute.

Stipulated sum agreement: A contract in which a specific amount is set forth as the total payment for performance of the contract.

Structural design documents: The plans, design details, and job specifications prepared by the structural designer.

Structural drawings: Drawings, usually prepared by a structural engineer, of the design and working drawings of a building's structure.

Structural engineering: That branch of engineering concerned with the design and construction of structures to withstand physical forces.

Sub-bidder: One who tenders to a bidder on a prime contract a proposal to provide materials and/or labor.

Subcontract: **1.** An agreement between a prime or general contractor and a subcontractor for the execution of a portion of the contractual obligation of the prime contract to the owner or Tribe. **2.** A person or organization who has a direct contract with a prime contractor to perform a portion of the work at the site.

Subcontractor bond: A performance bond given by a subcontractor that guarantees performance of a contract and the payment of bills for labor and materials.

Substantial completion: Same as date of substantial completion.

Substitution: A materials or process offered in lieu of, and as being equivalent to, a specified material or process.

Successful bidder: Same as selected bidder.

Superintendent: At a construction site, the contractor's representative who is

responsible for continuous field supervision, coordination, and completion of the work and, unless another person is designated in writing by the contractor to the owner and the architect, for the provision of accidents. With the BIA, the federal official in charge of the agency office.

Supervision: the observation and inspection of construction work in order to ensure conformity with the contract documents, direction of work by the contractor's personnel.

Supplemental conditions: Same as supplementary conditions.

Supplementary conditions: A part of the contract documents that supplements and may also modify provisions of the general conditions.

Surety: A person or organization who, for a consideration, promises in writing to make good the debt or default of another.

Surety bond: A legal instrument under which one party agrees to answer to another party for the debt, default, or failure to perform of a third party.

Survey: A boundary and/or topographic mapping of a site.

T

Tender: A proposal or bid for a contract to perform work, often on a form, completed by a contractor, giving estimated price and time to complete a contract.

Terminal expense: An expense incurred in connection with the termination of a contract.

Time: Time limits or period stated in the contract.

Timely completion: Completion of the work or designated portion thereof on or before the date required.

Time of completion: The date established in the contract, by name or by number of days, for substantial completion of the work.

Title insurance: Insurance, offered by a company, that the title to property is clear or that it may be cleared by curing specified defects.

Title search: An inquiry into the historical ownership record of a property.

Topographical survey: The configuration of a surface including its relief and the locations of its natural and man-made features.

Trade: A person's occupation or craft, usually involving manual skill.

Tribal government: The government of the Tribe, using a written or unwritten constitution or set of principles for governance.

Turn-key job: A job in which the contractor completes all work and furnishing of a building so that it is ready for immediate use.

V

Variation order: Same as change order.

Visual inspection: Inspection by examination without the use of testing apparatus.

W

Waiver of lien: Same as lien waiver.

Work: All labor necessary to produce the construction required by the contract document.

Working drawings: Drawings, intended for use by a contractor, subcontractor, or fabricator, which form part of the contract documents for a building project.

Workmen's compensation insurance: Insurance covering liability of an employee to his employees for compensation and other benefits required by workmen's compensation laws.

Z

Zoning: The control by a Tribe or municipality of the use of land and buildings, the height and bulk of the buildings, the density of population, the relation of a lots building coverage to open space, size and location of yards and setbacks, and the provision of any ancillary facilities.

Zoning permit: A permit issued by appropriate governmental authority authorizing land to be used for a specific purpose.

RESOURCES

Center for American Indian Economic Development (CAIED)

College of Business Administration

P.O. Box 15066

Flagstaff, AZ 86011-5066

(928) 523-7320

World Wide Web: <http://www.cba.nau.edu/caied>

Located on the campus of Northern Arizona University, CAIED is an information and resource center for tribal nations and communities. CAIED stimulates and nurtures entrepreneurship by providing technical assistance, business consulting, training, and educational workshops to Indian reservations. The center also provides a resource library with current information on Arizona Tribes, Indian economic development, and general development issues on Indian Country.

First Nations Development Institute

2300 Fall Hill Ave., Suite 412

Fredericksburg, VA 22401

(540) 371-5615

World Wide Web: <http://www.firstnations.org/>

First Nations Development Institute focuses specifically on supporting the culturally-compatible, sustainable asset-building and asset-management efforts of tribal communities. First Nations administers a number of grant and loan funds to support Indian economic development, including the Eagle Staff Fund and the Native Youth & Culture Fund. First Nations has published a number of publications aimed at supporting the capacity of Native non-profit organizations, including *Writing a Business Plan* and *Providing a Long Term Map for Organizational Effectiveness*. The booklets are available for free from the First Nations Web site.

Local Initiatives Support Corporation (LISC)

501 Seventh Avenue

New York, NY, 10018

(212) 455-9800

World Wide Web: <http://www.lisc.org>

LISC is a national nonprofit community development investor whose mission is to help community based organizations create healthy neighborhoods that are good places to live, work, raise children and conduct business. Through more than 30 local offices around the country, LISC channels grants, loans and equity investments to nonprofit community development corporations (CDCs) for community or neighborhood redevelopment. A list of local LISC offices is available on the LISC Web site.

LISC's Community Investment Collaborative for Kids (CICK) offers financial and technical assistance to build new child care centers or refurbish old ones. CICK typically works with public officials, child care providers, philanthropies and others to devise solutions to the child care supply problem. LISC's online resource library includes a number of free documents on facilities development and financing, including the CICK Resource Guides on *Equipping and Furnishing Early Childhood Facilities* and *Creating Playgrounds for Early Childhood Facilities*.

Minority Business Development Agency (MBDA)

U.S. Department of Commerce

World Wide Web: <http://www.mbda.gov>

MBDA was established to foster the creation, growth and expansion of minority-owned businesses in America. The MBDA Web site includes a variety of free articles on finance, marketing, hiring employees, and other topics.

MBDA also has regional Native American Business Development Centers (NABDCs) located in several cities. NABDCs can provide minority entrepreneurs with one-on-one assistance in writing business plans, marketing, management and technical assistance, and financial planning to assure adequate financing for business ventures. The Centers are staffed by business specialists who have the knowledge and practical experience needed to run successful and profitable businesses.

National Children's Facilities Network (NCFN)

World Wide Web: <http://www.ncfn.org/>

The National Children's Facilities Network (NCFN) is a coalition of nonprofit financial and technical assistance intermediaries involved in planning, developing, and financing facilities for low-income early care and education programs. NCFN member organizations build public-private partnerships and craft innovative financing solutions to build the supply and quality of child care in lower-income urban and rural communities nationwide. As of August 2005, NCFN's member organizations have invested over \$156 million in the renovation, construction and improvement of more than 1,800 child care centers and homes serving 108,000 children across the country.

NCFN's Web site contains free information and links on topics including quality early childhood facility design, regulations, and facilities financing. Downloadable tools on the Web site include a child care space planning spreadsheet; budget and financing spreadsheets; and an in-depth PowerPoint presentation on facilities planning and financing.

National Head Start Facilities Assistance Desk

The National Head Start Training and Technical Assistance Resource Center (NRC)

(800) 303-0705

World Wide Web: <http://www.hsnrc.org/facilities/>

The National Head Start Facilities Assistance Desk can provide Tribal Child Care programs with information, training, and assistance regarding early childhood facilities. The Assistance Desk offers support in areas such as facility maintenance and operations; space utilization and design criteria; environmental assessments and reviews; renovation and construction funding sources; playground design and safety; the Americans with Disabilities Act (ADA); and steps in the construction process.

Rural Information Center (RIC)

National Agricultural Library

10301 Baltimore Avenue, Room 304

Beltsville, MD 20705-2351

(800) 633-7701

World Wide Web: <http://www.nal.usda.gov/ric/>

RIC provides information and referral services to local, tribal, state, and federal government officials; community organizations; rural electric and telephone cooperatives; libraries; businesses; and, citizens working to maintain the vitality of America's rural areas. The RIC Web site contains over 3,000 links to current and reliable information on a wide variety of rural resources and funding sources, including RIC's database, Federal Funding Sources for Rural Areas Database.

Rural Community Assistance Corporation (RCAC)

3120 Freeboard Drive, Suite 201

West Sacramento, CA 95691

(916) 447-2854

World Wide Web: <http://www.rcac.org>

RCAC is a nonprofit organization dedicated to helping rural communities achieve their goals by providing training, technical assistance, and access to resources. Most RCAC services are available to communities with populations fewer than 50,000 and for the benefit of low-income people. RCAC has field offices throughout the West. Since its inception, RCAC has placed a priority on providing information and assistance to Native American groups, serving rural and Native communities in the areas of drinking water, wastewater, solid waste, housing, and financial services.

Small Business Administration's 8(a) Business Development

World Wide Web: <http://www.sba.gov/8abd/>

SBA's 8(a) Business Development program provides business development assistance to socially and economically disadvantaged business persons to ensure opportunities to participate more fully and successfully in the mainstream national economy. Business Opportunity Specialists (BOS), located in SBA district offices, provide business development assistance to active 8(a) participants.

Small Business Administration's Office of Women's Business Ownership (OWBO)

(202) 205-6673

World Wide Web: <http://www.onlinewbc.gov/>

OWBO promotes the growth of women-owned businesses through programs that address business training and technical assistance, and provide access to credit and capital, federal contracts, and international trade opportunities. Available resources include a women's business ownership representative in every SBA district office, a nationwide network of mentoring roundtables, women's business centers in nearly every state and territory, women-owned venture capital companies, and the Online Women's Business Center.

List of Appendices

- A. CCDF Program Instruction (ACYF-PI-CC-04-01), dated January 23, 2004
<http://www.acf.hhs.gov/programs/ccb/policy1/current/pi0401/pi0401.htm>
- B. CCDF Policy Interpretation Question (ACYF-PIQ-CC-99-01), dated February 24, 1999
<http://www.acf.hhs.gov/programs/ccb/policy1/current/pq9901/pq9901.htm>
- C. Sample Notice of Federal Interest
- D. Application of Title III (Public Accommodations) of the Americans with Disabilities Act (ADA) to the Tribes
- E. U.S. Department of Housing and Urban Development Indian Housing Area Office of Native American Programs (ONAP) Directory
http://www.hud.gov/offices/pih/ih/onap/area_onap.cfm
- F. Tribal Child Care Technical Assistance Center Fact Sheet
<http://nccic.org/tribal/whatis.html>
- G. National Child Care Information Center Fact Sheet
<http://nccic.org/about/aboutnccic.html>
- H. Child Care Bureau Staff List
<http://www.acf.hhs.gov/programs/ccb/helpcont/index.htm>
- I. ACF Regional Office Tribal Lead Contacts List
<http://www.acf.hhs.gov/programs/ccb/ta/raaddr/liaisons.htm>
- J. National Head Start Facilities Assistance Desk Fact Sheet
<http://nccic.org/tribal/documents/flyer.html>

Appendix C
Sample Notice of Federal Interest

SAMPLE NOTICE OF FEDERAL INTEREST

Upon completion of construction or major renovation with CCDF funds of a facility, the grantee must record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility is located. Below is a sample:

Notice of Federal Interest

This is to serve as notice to all potential sellers, purchasers, transferrers, and grantees of a transfer of the real property described below as to the Federal Government's reversionary interests as set forth in 45 CFR Part 92, which have arisen as a result of [GRANTEE'S NAME] receipt and use of Department of Health and Human Services's grant funds in connection with said property. These grant funds were awarded on [DATE] in accordance with the Child Care and Development Block Grant Act. The property to which this notice is applicable is [ADDRESS] and identified as Parcel [INSERT APPROPRIATE NUMBER(S)] in the books and records of [INSERT APPROPRIATE NAME OF RECORDING AGENCY]. Said real property is also described as: [INSERT LEGAL DESCRIPTION.]

In accordance with 45 CFR 92.31, this property may not be mortgaged, used as collateral, sold, leased, or otherwise transferred, or its title encumbered, without the prior written permission of the Administration for Children and Families, Department of Health and Human Services. There is a prohibition against the use of this property during its useful life for other than the purpose for which the property was financed for or for any purpose inconsistent with that authorized by the Child Care and Development Block Grant Act and applicable regulations. These grant conditions and requirements cannot be altered or nullified through a transfer of ownership. Further information as to the Federal Government's interests referred to above can be obtained from the Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20024.

This Notice of Federal Interest was completed by [NAME, TITLE, SIGNATURE] on [DATE].

Appendix D
Application of Title III (Public Accommodations) of the Americans with
Disabilities Act (ADA) to the Tribes

Application of Title III (Public Accommodations) of the Americans with Disabilities Act (ADA) to the Tribes

In a long awaited decision, the 11th Circuit Court of Appeals ruled on February 3, 1999, in Florida Paraplegic Association, Inc. v. Miccosukee Tribe of Indians of Florida, that while Title III of the Americans with Disabilities Act (ADA), (the part that applies to public accommodations) does apply to the tribes, tribal sovereign immunity prevents the filing of individual lawsuits against tribes. However, the court also ruled that the Attorney General for the United States can pursue an action against tribes failing to comply with the ADA.⁴

This lawsuit was filed by the Florida Paraplegic Association and the Association for Disabled Americans. They alleged that the Miccosukee Indian Tribe's restaurant and entertainment facility was in violation of Title III of the ADA because the handicapped parking was inadequate, the bathrooms were not properly equipped, the ramps were too steep, etc. The tribe argued it was immune from such a lawsuit.

The appeals court first found that the ADA did apply to the tribes: they decided that the ADA is a general law and as such it is presumed to govern the tribes unless certain conditions are met which were not met here. However, it also found that the tribes were immune from private suit, because tribal sovereign immunity is never to be abrogated unless it is eliminated in unmistakably clear and explicit language which was not done in the drafting of the ADA.

Nonetheless, according to this court decision, tribes must still comply with Title III of the Americans with Disabilities Act (ADA). This is because the ADA allows the United States Attorney General (AG) to bring suit against "any person or group of persons . . . engaged in a pattern or practice of discrimination" and tribal sovereign immunity does not bar suits by the United States.

Cases brought by the Attorney General are for pattern or practice discrimination or cases of general public importance; the Attorney General does not file lawsuits in every case in which a private litigant could file a lawsuit. Also, by contrast with private lawsuits which include no monetary damages, lawsuits by the AG can result in fines (up to \$50,000 for the first violation and up to \$100,000 for subsequent violations), as well as compensatory damages for the individual if requested by the Department of Justice. Punitive damages are not available. In determining the amount of damages courts may take into consideration good faith efforts at compliance.

This was a case of first impression, meaning it was the first court decision to address the issue. The ruling is binding on the Eleventh Circuit which includes the states of Alabama, Florida and Georgia.

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⁴ A specific exclusion in Title I (which deals with employment) already had made clear that Indian Tribes are not considered employers under the ADA thereby excluding them from coverage for employment discrimination based on disability. (See 42 U.S.C. Section 12111(5)(B)(i)).