



Apsaalooke Nation Housing
Authority

Procurement

APSAALOOKE NATION HOUSING AUTHORITY

PROCUREMENT POLICY

These policies and procedures were adopted by the APSAALOOKE NATION HOUSING AUTHORITY Board of Commissioners by Resolution # _____ on _____, _____.

SECTION 1. PURPOSE

This Procurement Policy complies with HUD's requirements, the Indian Housing procurement regulations at 24 CFR 1000, and the procurement standards of 24 CFR Part 85, and OMB circulars, as applicable.

SECTION 2. GENERAL PROVISIONS

A. PURPOSE

The purpose of this Statement is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the ANHA; assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to the ANHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that ANHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State, Tribal, and local laws.

B. APPLICATION

This Statement applies to all contracts for the procurement of supplies, services, equipment and materials entered into by the ANHA after the effective date of this Statement. IT shall apply to every expenditure of funds by the ANHA for public purchasing, irrespective of the source of funds (such as concession contracts); however, nothing in this Statement shall prevent the ANHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian

preference regulations shall be applied to the total project. The term “procurement,” as used in this Statement, includes both contracts and modifications (including change orders) for construction services, as well as the purchase, lease, or rental of supplies and equipment.

C. PUBLIC ACCESS TO PROCUREMENT INFORMATION-(See 24 CFR 1000.552, 554, 556 and 558)

Procurement information shall be a matter of public record to the extent provided for in (24 CFR 1000) and shall be available to the public as provided in the regulations.

SECTION 3. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director, or other individual he or she has authorized in writing. The Executive Director shall issue operational procedures (such as a procurement handbook or standard operating procedures) to implement this Statement. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section IX below, consistent with State, tribal, or local law.
- B. The Executive Director or his/her designee shall ensure that:
1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
 2. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as [at] a minimum, the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
 3. For procurements other than small purchases, public notice is given of each upcoming procurement at least 10 days (or other time period if required by State, tribal, or local law) before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 30 days for main construction contracts and 15 days (or other time period if required by State, tribal, or local law) for other contracts is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
 4. Solicitation procedures are conducted in full compliance with Federal Standards stated in 24 CFR 85.36, OMB Circular A-102, and the Indian preference requirements and methods of procurement at 24 CFR 1000.
 5. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchases limitation, and a cost or price analysis is conducted of the responses received for all procurements;

6. Contract award is made to the *responsive* and *responsible* bidder offering the lowest price, consistent with Indian preference requirements (for sealed bid contracts) or contract award is made to the offer or whose proposal offers the greatest value to the ANHA, considering price, technical, and other factors as specified in the solicitation, including Indian Preference (for new contracts awarded based on competitive proposals); unsuccessful firms are notified within ten days (or other time period required by State, tribal, or local law) after contract award;
 7. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders) work is inspected before payment, and payment is made promptly for contract work performed and accepted;
 8. Procedures for inventory control, storage, and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established in accordance with applicable HUD regulations.
 9. The ANHA adheres to the procurement and program requirements of 24 CFR 1000.
 10. The ANHA complies with applicable HUD review requirements, as provided in the operational procedures implementing this Statement.
- C. This Statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegated procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the ANHA.

SECTION 4. PROCUREMENT METHODS (See 24 CFR 85.36(d))

A. SELECTION OF METHOD

When satisfying its need by procurement, the ANHA shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

B. SMALL PURCHASE PROCEDURES

1. General. Any procurement not exceeding \$100,000.00 may be conducted in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this Statement).
2. Indian Preference. The ANHA shall to the greatest extent feasible provide preference to Indian-owned economic enterprises and Indian organizations and shall, to the extent feasible, maintain and/or refer to lists of qualified Indian supply sources. The ANHA shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training, and employment, and shall specify the method to be used. The ANHA shall

document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, ANHA shall document the procurement file with the reasons for the lack of Indian participation.

3. The Executive Director shall make purchases and contracts not to exceed Twenty thousand dollars (\$20,000) in the open market using Small Purchase Procedures, and after such inquiry as he deems necessary to insure that the price obtained is the most advantageous to the APSAALOOKE NATION HOUSING AUTHORITY (ANHA). Price quotes shall be recorded on the form provided in Exhibit "A", which is attached to hereto and which may be amended by the Executive Director, from time to time as the Executive Director deems necessary.
4. For purchases and contracts from Three-thousand and One dollars (\$3,001) to Ten-thousand dollars (\$10,000), the Executive Director shall use competitive negotiation and invite bids: Orally or in writing from at least three (3) suppliers. A tabulation of solicitations made and quotations received shall be kept on file, and inquiries for price quotations and the quotations themselves shall be recorded on the forms provided.

C. General. The ANHA may elect to use small purchase procedures in accordance with applicable generations.

1. Obtaining Quotes. The ANHA shall solicit price quotations by phone, letter, or other informal procedures that allows participation by a reasonable number of competitive sources. When soliciting quotations, the ANHA shall inform the sources, solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The ANHA shall obtain written quotation; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within 10 days of the oral quotation or by the due date for submitting quotations. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as public record.
2. Competition. The ANHA shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if the ANHA has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).
3. Award.
 - (a) Award Based on Price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiation) the ANHA

shall make award to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 10% higher than the lowest responsive quotation received. If no responsive quotation from a qualified Indian-owned economic enterprise or organization received is within 10% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.

- (b) Award Based on Factors Other Than Price. For small purchases to be awarded based on factors other than price, formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. The solicitation shall reserve 15% of the total evaluation points for providing Indian preference. Award shall be made to the best proposal or quotation in accordance with the stated rating system.

C. SEALED BIDS

1. General. The ANHA shall use the procurement method of sealed bids in accordance with the applicable regulations (24 CFR 85.36)
2. Conditions for Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.
3. Solicitation and Receipt of Bids.
 - a. Issuance and Amendment. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
 - b. Restricting Solicitations. The invitation may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the ANHA has a reasonable expectation of receiving the required minimum number of bids from them (see 5(a) below). The ANHA shall solicit bids from non-Indian as well as Indian-owned economic

- enterprises and Indian organizations if the ANHA decides not to restrict the solicitation; or, an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation; or, a single bid is not accepted.
4. Bid-Opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection.
 5. Award. Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows: (see 24 CFR 85.36(d)(4))
 - a. Restricted Solicitations. If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more (or a greater number determined by the ANHA as stated in the invitation) qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method, unless otherwise provided in State, tribal or local law. If fewer than the minimum number of qualified Indian-owned economic enterprises or organizations submit responsive bids, all bids shall be rejected, and the ANHA shall cancel the solicitation as resolicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. The ANHA may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the ANHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or the ANHA determines that the delay of resoliciting would subject the project to higher construction costs.
 - b. Unrestricted Solicitations. If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, if the bid is within the maximum total contract price established for the specific project or activity being solicited the bid is within the range specified in the Attachment to this Statement. If equal low bids are received from qualified Indian-owned economic enterprise or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided in State, Tribal or local law. If no responsive bid by a qualified Indian-owned enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.
 6. Mistake in Bids.
 - a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by

clear and convincing evidence that a mistake of non-judgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

- b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the ANHA or fair competition shall be permitted.

D. COMPETITIVE PROPOSALS

1. General. The ANHA shall use the procurement method of competitive proposals in accordance with HUD regulations (See 24 CFR 1000.52 and OMB Circular A-102).

Note: This section is written in accordance with 24 CFR 1000.52 and is alternative to the Sample Policy provided in the old HUD handbook.

2. Conditions for Use. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the ANHA determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.

3. Solicitation.

- a. General. The ANHA shall invite or otherwise solicit Indian-owned economic enterprises and Indian organizations to submit a statement of intent to respond to a request for Proposals (RFP) limited to Indian-owned firms. If responses are received from more than one qualified Indian firm, the ANHA shall restrict the RFP to qualified Indian organizations and Indian-owned economic enterprises. If the solicitation results in fewer than two responses from qualified Indian firms submitting a statement of intent or proposal to perform the contract at a reasonable cost, then the ANHA shall have the option to re-advertise the contract using the two-stage preference procedure, or advertise restricted to Indian firms, or advertise without restricting the solicitation to Indian firms, or if one approvable proposal is received, request HUD approval to award the contract based on a single proposal. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identify the offerors, and the contents of their proposals.

- b. Evaluation of Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors and sub-factors,

including the weight given to each technical factor and sub-factor. The ANHA shall reserve 15% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to and additional 10% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.

4. Negotiations. In those situations where negotiations are deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and to advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
5. Award. After evaluation of proposal revision, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the ANHA provided that the price is within the maximum total contract price established for the specific property or activity. For solicitations restricted to qualified Indian-owned economic enterprises and Indian organizations, if two (or a greater number stated in the RFP) such entities submit acceptable proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than two of Indian owned economic enterprises or Indian organizations submit acceptable proposals, the ANHA shall re-solicit or otherwise proceed in accordance with Section III.D.3. The ANHA may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when the ANHA determines that the delays caused by resoliciting would cause higher costs, or where the ANHA determines that the proposal has a fair and reasonable price.
6. Architect/Engineer Services. Architect/Engineer services in excess of the small purchase limitation (or less if required by State, Tribal or local law) may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless State law mandates the specific procedure. Sealed bidding shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most

qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

E. NONCOMPETITIVE PROPOSALS

1. Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
 - a. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the ANHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or
 - b. Only one source of supplies, is available, and the Contracting Officer so certifies in writing; or
 - c. After solicitation of a number of sources, competition is determined inadequate; or
 - d. HUD specifically authorizes the use of noncompetitive proposals.
2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer *and the Board of Commissioners*.
3. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph III (F) below.

F. COST AND PRICE ANALYSIS

1. General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as is set forth below. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the ANHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
 - a. a cost breakdown showing projected costs and profit; and

- b. commercial pricing and sales information, sufficient to enable the MTDHE to verify the reasonableness of the proposed prices as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
 - c. documentation showing that the offered price is set by law or regulation.
3. Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted (a) a cost analysis shall be performed of the individual cost elements; (b) the ANHA shall have a right to audit the contractor's books and records pertinent to such costs; and (c) profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, which are included in HUD Handbook 2210.18). In establishing profit, the ANHA shall consider factors such as the complexity and risk of the work involved, the quality of past performance, and industry profit rates in the area for similar work.
 4. Price Analysis. A comparison of prices shall be used in all cases other than those described in III(F)(3) above.

G. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitations may be cancelled before offers are due if (a) the ANHA no longer requires the supplies, services, or construction; or, (b) the ANHA can no longer reasonably expect to fund the procurement; or, (c) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (d) similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if (a) the supplies, services, or construction are no longer required; or (b) ambiguous or otherwise inadequate specifications were part of the solicitation; or (c) the solicitation did not provide for consideration of all factors of significance to the ANHA; or, (d) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, (e) there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, (f) a condition for canceling a solicitation and resoliciting, as specified in paragraphs III(C)(5)(a) or III(D)(5) above, is met; or (g) for good cause of a similar nature when it is in the best interest of the ANHA.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to

5. compete on any resolicitation or future procurement of similar items.
5. For solicitations that are not restricted to Indian-owned economic enterprises or Indian organizations, if all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the ANHA shall cancel the solicitation and either:
- a. resolicit using a request for proposals; or
 - b. complete the procurement by using the competitive proposals method, following paragraphs III(D)(3) and III(D)(4) above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph III(E)(2) above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, that all bidders are informed of the ANHA's intent to negotiate, and that each responsible bidder is given a reasonable opportunity to negotiate.

H. COOPERATIVE PURCHASING

The ANHA may enter into State and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The ANHA encourages the use of Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

SECTION 5. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the ANHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Indian Housing Authorities), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor is found to be nonresponsible, a written determination of

nonresponsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal Agencies when necessary to protect the MTDHE in its business dealings. The ANHA may suspend or debar a contractor under State, local or tribal laws, as applicable.

C. QUALIFIED BIDDER'S LISTS

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any prequalified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified Indians, Indian enterprises, or Indian organizations may be maintained by the ANHA. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

D. BONDS (See CFR 1000.26 and 24 CFR 85.36(h))

For construction or facility improvement contracts or subcontracts exceeding \$100,000, the ANHA shall require assurance of performance and payment. Acceptable forms of assurance include:

1. deposit of a cash escrow of not less than 20% of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or
2. an irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the ANHA, subject to reduction during any warranty period commensurate with potential risk; or
3. an irrevocable letter of credit for 10% of the total contract price unconditionally payable upon demand of the ANHA, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

SECTION 6. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES

Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the ANHA may be used, provided that the cost-plus-a-percentage-of cost and percentage of construction

costs methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the ANHA needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS

Options for additional quantities or performance periods may be included in contracts, provided that (1) the option is contained in the solicitation; (2) the option is a unilateral right of the ANHA; (3) the contract states a limit on the additional quantities and the overall term of the contract; (4) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (5) the options may be exercised only if determined to be more advantageous to the MTDHE than conducting a new procurement.

C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36 (i), such as the following:

1. Administrative, contracted, or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may be appropriate.
2. Termination for cause and for convenience
3. Termination for default
4. Equal Employment Opportunity
5. Anti-Kickback Act⁵.
6. Davis-Bacon Act (and implementing regulations for ANHA at 24 CFR 1000.16)
7. Contract Work Hours and Safety Standards Act
8. Reporting requirements
9. Patent rights
10. Rights in data and copyrights
11. Examination of records by Comptroller General
12. Retention of records for three years after closeout
13. Clear Air Act and Clean Water Act
14. Energy efficient standards
15. Bid protests and contract claims
16. Value engineering

17. Payment of funds to influence certain federal transactions

If all required clauses are not included on the contract form, then the TDHE shall attach any additional clauses to the contract forms used in contract documents. The operational procedures required by section II (A) of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the TDHE. The TDHE shall include the contract clauses and solicitation notices for Indian preference described in Section VIII(C)(3) below.

D. CONTRACT ADMINISTRATION (See 24 CFR 85.36 (b) (2))

A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section II(A) above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

SECTION 7. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy or the purposes intended and to encourage competition in satisfying the TDHE's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible, except if the TDHE is attempting to standardize equipment for maintenance ease and/or inventory convenience. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

B. LIMITATIONS (See 24 CFR 85.36 (c))

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the TDHE's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in

this procurement policy shall preempt any State, tribal, or local licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the TDHE's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

SECTION 8. APPEALS AND REMEDIES

A. GENERAL

It is the TDHE's policy to resolve all contractual issues informally at the TDHE level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the TDHE level. When appropriate, the TDHE may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the TDHE to review a complaint or protest.

B. BID PROTESTS

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Statement. Any protest against a solicitation must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

C. CONTRACT CLAIMS

All claims by a contractor relating to the performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights (to a higher level in the MTDHE, such as the Executive Director or designated Board member, or a Procurement Appeals Board).

D. PROTESTS INVOLVING INDIAN PREFERENCE (See 24 CFR 1000.54)

Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures in 24 CFR 1000.54. Each complaint shall be in writing, signed, and filed with the TDHE. A complaint must be filed with the TDHE no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based. Upon receipt of a complaint, the

TDHE shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt. Within 20 calendar days of receipt of a complaint, the TDHE shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The TDHE shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the TDHE. The decision of the TDHE shall constitute final administrative action on the complaint.

SECTION 9. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS (See 24 CFR 1000.42)

The TDHE shall make efforts to ensure that small businesses and individuals or firms located in or owned in substantial part by persons residing in the area of a TDHE project/activity are used when possible. The requirements of Section 3 apply only to those Sections 3 covered projects/activities for which the amount of assistance exceeds \$200,000. Such efforts shall include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration;
6. Including the contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents for the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 175 (c), pursuant to Section 3 of the HUD Act of 1968; and
7. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in A(I) through 6 above .

Goals may be established by the TDHE periodically for participation by small businesses and business concerns which are located in, or owned in substantial part by persons residing in the area of the project/activity, in the TDHE's prime contracts and subcontracting opportunities.

B. DEFINITIONS

1. A small business is defined as a business which is independently owned not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used,

unless the TDHE determines that their use is inappropriate.

2. A business concern located in the area of the project /activity is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project/activity is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project area, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged and meeting the definition of small business above.

C. INDIAN PREFERENCE REQUIREMENTS (See 24 CFR 100.48, 50, and 52)

1. General. Projects developed and operated with assistance under 24 CFR Part 1000 are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts and subcontracts. Preference must be provided in accordance with the methods set forth in 24 CFR 1000. Where Indian preference is determined not to be feasible, the TDHE shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the TDHE's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be as described in Section III above. In no case shall the TDHE authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on particular tribal affiliation or membership.
2. Eligibility. Eligibility for Indian preference shall be established in accordance with the procedures in 24 CFR 1000. If the TDHE or its prime contractor determines an applicant ineligible or Indian preference, the TDHE or prime contractor shall notify the applicant in writing before contract award, or filling the position or providing the desired training.
3. Contract clauses and solicitation notices.
 - a. Solicitations shall include the following information:
 1. a statement of the applicability of Indian preference to the solicitation and a time before the due date for offers by which offerors must submit evidence of eligibility for Indian preference;
 2. the local preference requirements stated in 24 CFR 1000.42, which states that Section 3 requirements apply only to those projects/activities for which the amount of assistance exceeds \$200,000.
 3. any applicable locally imposed preference requirements properly enacted by the tribal governing body and adopted by the TDHE (or advise offerors to contact the Tribal governing body to determine any applicable preference requirements);

4. information as to whether the TDHE maintains lists of Indian-owned economic enterprises and Indian organizations by trade specialty which are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
 5. a requirement that offerors (and their subcontractors, if required by the TDHE) provide a statement describing how they will provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained;
 6. the TDHE's description of the information to be submitted on Indian preference;
 7. the factors that the TDHE will use in judging the adequacy of the Indian preference information submitted;
 8. a statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer;
 9. a requirement that each contractor and subcontractor submit a certification and supporting evidence to the TDHE whenever it is not feasible to provide Indian preference in subcontracting;
 10. for requests for proposals that are not restricted to Indian-owned economic enterprises or Indian organizations, the percentage or number of points set aside for Indian preference and the method for allocating these points;
 11. a requirement in unrestricted RFPs that subcontractors using requests for proposals solicit subcontractors by reserving 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals; and
 12. a requirement that offerors submit a list of core crew employees with their offers, and that contractors and subcontractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions.
- b. Solicitations, contracts, and subcontracts shall include the following:
 1. the clause prescribed in 24 CFR 1000.52 implementing section 7(b) of the Indian Self-Determination and Education Assistance Act in connection with the development or operation of MTDHE projects/activities;
 2. the grounds for termination of a contract or the imposition of penalties or improper subcontracting or false certification as to subcontracting with Indian enterprises or organizations; and
 - c. If any or all required clauses and provisions are not included on contract forms, then the TDHE shall attach any additional clauses for provisions to the contract forms used in solicitations and I contract documents.
4. Monitoring and Remedies. The TDHE shall monitor the implementation of

Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action (including cancellation of contracts and assessment of penalties) to ensure compliance.

SECTION 10. ETHICS IN PUBLIC CONTRACTING

A. GENERAL (See 24 CFR 85.36 (b)(3))

The TDHE shall adhere to the following code of conduct, consistent with applicable State, tribal, or local law.

B. CONFLICT OF INTEREST

No employee, officer or agent of the ANHA shall participate directly or indirectly in the selection of, or in the award of, or administration of any contract supported by Federal funds if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. an employee, officer, or agent involved in making the award;
2. his/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, and half sister);
3. his/her partner; or,
4. an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

ANHA officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual personal gain.

D. PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a ANHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

SECTION 11. CONSEQUENCES FOR VIOLATION OF POLICY.

Employees or others found to be in violation of or participating in the violation of these policies shall be subject to the following:

1. Disciplinary action against the employee, up to and including termination from employment;
2. Liability for restitution for costs and/or expenses related to addressing violations of the policy, including, but not limited to the re-procurement of services; and
2. Subject to criminal prosecution for acts completed in a knowing manner which have injured the ANHA and/or its programs and/or beneficiaries.

ATTACHMENT A.

In accordance with paragraph III(C)(5)(b) of this Statement, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

	X = lesser of
When the lowest responsive bid Is less than \$100,000.00	10% of that bid, or \$9,000.00
when the lowest responsive bid is: at least \$100,000, but less than \$200,000.00	9% of that bid, or \$16,000.00
At least \$200,000.00, but less than \$300,000.00	8% of that bid, or \$21,000.00
At least \$300,000, But less than \$400,000.00	7% of that bid, or \$24,000.00
At least \$400,000.00, but at less than \$500,000.00	6% of that bid, or \$25,000.00
At least \$500,000.00 but less than \$1 million	5% of at bid, or \$40,000.00
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000.00
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000-00
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.00
\$7 million or more	1% of that bid, with no dollar limit.