

PROCUREMENT POLICY

I. GENERAL PROVISIONS

A. Purpose

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

B. Application

This Statement of Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the CDHA after the effective date of this Statement. It shall apply to every expenditure of funds by the CDHA for public purchasing, irrespective of the sources of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the CDHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both HUD and non-Federal funds are used for a project, the work to be accomplished with funds should be separately identified, and HUD's Indian preference regulations must be applied to the work financed by HUD; if it is not possible to separate funds, then 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 or services, as well as purchase, lease, or rental of supplies and equipment.

The public shall have access to the Procurement Policy of the Coeur d' Alene Housing Authority.

C. Procurement Authority and Administration

1. **Contracting Officer.** All procurement transactions shall be administered and executed 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 procurement handbook or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section VI below, consistent with State, tribal, or local law.
2. **Executive Director Duties.** The Executive Director or his/her designee shall ensure
 - a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing.
 - b. 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 a minimum the method of procurement chosen, the selection of the contract type, the rationale of selecting or rejecting

offers, and the basis for the contract price;

- c. For procurement other than small purchases, public notice is given of each upcoming procurement 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 for other contracts is provided for preparation and submission of bids or proposals; and notice of contract award is made available to the public;
- d. Solicitation procedures are conducted in full compliance with Federal standards Stated in 24 CFR 85.36, the Indian preference requirements and methods of procurement required by NAHASDA, and consistent with Attachment A;
- e. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurement;
- f. 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;
- g. A contract administration system is maintained to insure that contractors perform in accordance with their contracts shall be maintained, and provide for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters; and
- h. The CDHA complies with applicable HUD Handbooks and review requirements.

D. Cooperative Purchasing

The CDHA may enter into State and local inter-governmental agreements to conduct 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. CDHA will make attempts whenever practical to utilize Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs on GSA.

E. Specifications

1. **General.** All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the CDHA's needs. Specifications shall be reviewed before solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurement to

obtain a more economical purchase (see Section V below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

2. **Limitations.** 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 or equal specification (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 do not occur (example: having a consultant perform a study of the CDHA's computer needs and then allowing the consultant to compete for the subsequent contract for the computers).

II. PROCUREMENT METHODS

A. Selection of Method

The CDHA 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 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 V of this Statement).
2. **Indian Preference.** The CDHA 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 CDHA 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 CDHA shall document its efforts in providing Indian preference. All awards using the unrestricted method must be made in accordance with Attachment A. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the CDHA shall document the procurement file with the reasons for the lack of Indian participation.
3. **Petty Cash Purchases.** Small purchases under \$100 which can be satisfied by local sources may be processed through the use of a petty cash account. Such purchases shall be distributed equitably among qualified sources.
4. **Small Purchases of \$100,000 or less.**
 - a. **Obtaining Quotes.** The CDHA shall solicit price quotations by phone fax, letter,

or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, the CDHA 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 CDHA shall obtain written quotations; however, the written quotation may be 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 offers and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

b. Competition. The CDHA 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 CDHA 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, financial emergency, catastrophic circumstances).

c. Award.

Award based on price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiations) the CDHA 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 is within 10% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.

Award based on factors other than price. For small purchases to be awarded based on factors other than price, a formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. 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 State rating system.

5. **Small purchases of \$2,000 or less.** CDHA shall follow the procedures specified in paragraph 4 above; however, oral quotations are acceptable (provided that the CDHA documents the quotes received), and the CDHA may develop alternative methods of providing Indian preference which promote maximum participation by Indian organizations and Indian-owned economic enterprises.

C. *Sealed Bidding (Purchases over \$100,000)*

1. **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 contract, sealed bidding should not be used.

2. **Solicitation and Receipt of Bids.**

a. **Issuance and amendment.** An invitation for bids shall be issued including specification 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 CDHA has a reasonable expectation of receiving the required minimum number of bids from them. The CDHA shall solicit bids from non-Indians as well as Indian-owned economic enterprises or organizations if: the CDHA decides not to restrict the solicitation; or, an insufficient number of qualified Indian-owned economic enterprises or organization submit responsive bids in response to a solicitation; or, a single bid is not accepted.

3. **Bid opening.** Bids shall be opened publicly and in presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection.

4. **Award.** Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:

a. **Restricted solicitations.** If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more 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 CDHA shall cancel the solicitation and re-solicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. The CDHA may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the CDHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or the CDHA determines that the delay of re-soliciting 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 organizations with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited. 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 economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.

5. **Mistakes in Bids.**

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, 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 a 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 CDHA or fair competition shall be permitted.

D. Competitive Proposals

1. **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 CDHA determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.
2. **Solicitation**
 - a. **General.** The request for proposals (RFP) may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the CDHA has a reasonable expectation of receiving offers from two such entities. The CDHA shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian organizations if: the CDHA prefers not to restrict the RFP; or, an insufficient number of qualified Indian-owned economic enterprises or Indian organizations satisfactorily respond to a restricted RFP; or a single proposal is received but not accepted. 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 offers, identity of the offers, and the contents of their proposals.

b. **Evaluation 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. CDHA 's 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 an additional 10% for evaluation of the offers Statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.

3. **Negotiations.** In those situations where negotiations are deemed necessary, negotiations shall be conducted with entities of offers 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 offers 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 advise offers 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 offer shall be assisted in bringing its proposal up to the level of any other proposal. Offers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for an award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
4. **Award.** After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the CDHA, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations restricted to qualified Indian-owned economic enterprises and Indian organizations, if two 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 this number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals, the CDHA shall reject all proposals and re-solicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. The CDHA may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when the CDHA determines that the delays caused by re-soliciting would cause higher costs, or where the CDHA determines that the proposal has a fair and reasonable price.

5. **Architect/Engineer Services.**

Architect/Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposal method of qualifications-based selection procedures. Sealed bidding shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitor's 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. Non-competitive Proposals

1. **Conditions for use.** Procurement shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used 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 CDHA, as may arise by reason of flood, earthquake, epidemic, riot, equipment failure, or similar events. 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 supply 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.
3. **Price reasonableness.** The reasonableness of the price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph F below.

F. Cost and Price Analysis

1. **General.** A cost of price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding procurement.
2. **Submission of Cost or Pricing Information.** If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurement as deemed necessary by the CDHA (e.g. when contracting for professions, consulting, or architect/engineer services) the offer shall be required to submit:
 - a. A cost breakdown showing projected costs and profit;
 - b. Commercial pricing and sales information, sufficient to enable the CDHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
 - c. Documentation showing that law or regulation sets the offered price.

3. **Cost Analysis.** Cost analysis shall be performed if an offer/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the CDHA shall have a right to audit the contractor's books and records pertinent to such costs; and 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, 48 CFR Chapter 1, which are included in HUD Handbook 2210.18). In establishing profit, the CDHA shall consider factors such as the complexity and risk of the work involved the contractor's investment and productivity, the amount of subcontracting, 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 Section II, F, 3 above.

G. Contract Clauses

1. **Required 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:
 - a. Termination for convenience
 - b. Termination for default
 - c. Equal Employment Opportunity
 - d. Anti-Kickback Act
 - e. **Davis-Bacon provisions of NAHASDA**
 - f. Contract Work Hours and Safety Standards Act
 - g. Reporting requirements
 - h. Patent rights
 - i. Rights in data
 - j. Examination of records by Comptroller General
 - k. Retention of records for three years after close-out
 - l. Clean air and water
 - m. Energy efficiency standards

- n. Bid protests and contracts claims
 - o. Value engineering
 - p. Payment of funds to influence certain Federal transactions.
2. **Forms.** If all required clauses are not included on HUD forms (e.g., HUD 5370), then the CDHA shall attach any additional clauses to the HUD forms used in contract documents. CDHA shall include the contract clauses and solicitation notices for Indian preference described below.

H. Contract Types and Options

1. **Contract Types.** Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the CDHA may be used, if the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD-approved form of contract. A cost reimbursement contract shall not be used, unless it is likely to be less costly or it is impracticable to satisfy the CDHA 's needs otherwise, and the proposed contract '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 contract may be used only if written determination is made and no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.
2. **Options.** Options for additional quantities or performance periods may be included in contract, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the CDHA; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the CDHA than conducting a new procurement.

I. Cancellation of Solicitations

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: the CDHA no longer requires the supplies, services or construction; or, the CDHA can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services or construction are no longer required, ambiguous or otherwise inadequate specifications were part of the

solicitation; or, the solicitation did not provide for consideration of all factors of significance to the CDHA; or, prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds; or, 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, a condition for canceling a solicitation and re-soliciting, as specified above, is met; or, for good cause of a similar nature when it is in the best interest of the CDHA.

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 offers solicited. A notice of cancellation shall be sent to all offers solicited.
4. 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 CDHA shall cancel the solicitation and re-solicit using a request for proposals.

2 CONTRACTOR QUALIFICATIONS AND DUTIES

A. Contractor Responsibility

Procurement 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 CDHA 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, work previously performed for the CDHA, etc.), 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 non-responsible, a written determination of non-responsibility 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 (e.g., Department of Labor, for violations of Secretary of Labor regulations) when necessary to protect the CDHA in its business dealings. The CDHA may suspend or debar a contractor under State, local or tribal laws, as applicable.

C. Qualified Bidder's List

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified 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 CDHA. 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

1. **Development Contracts.** In addition to the other requirements of this Policy, for construction of development projects, the successful bidder shall be required to submit one of the following forms of assurance, in accordance with the approved method set forth in the solicitation, within 10 days after the prescribed contract forms are presented for signature:
 - a. A performance and payment bond for 100% of the total contract price; or
 - b. A cash escrow deposited with the CDHA of not less than 20% of the total contract price, subject to reduction, with the approval of HUD, during the warranty period commensurate with potential risk; or
 - c. An irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the CDHA, subject to reduction, with the approval of HUD, during the warranty period commensurate with potential risk; or
 - d. An irrevocable letter of credit for 10% of the total contract price and compliance with the procedures for monitoring and disbursements provided by the contractor, as approved by HUD.
2. **Rehab Contracts.** In the case of rehab construction contracts for any contract over \$75,000 the contractor shall be required to submit the following, unless otherwise required by regulations.
 - a. A bid guarantee from each bidder equivalent to 5% of the bid pricing; and one of the following:
 - i. A performance and payment bond for 100% of the contract price; or
 - ii. Separate performance and payment bonds, each for 50% or more of the contract price; or
 - iii. A 20% cash escrow; or
 - iv. A 25% irrevocable letter of credit.

IV. APPEALS AND REMEDIES

General It is the CDHA 's policy to resolve all contractual issues informally at the CDHA level, without litigation. Disputes shall be referred to HUD until all administrative remedies have been

exhausted at the CDHA level. When appropriate, the CDHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, or help resolve the difference. HUD will only review protests in cases of violations of Federal law or regulations and failure of the CDHA to review a complaint or protest.

- A. **Bid Protests.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles set forth in this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten 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.

- B. **Contract Claims.** All claims by a contractor relating to 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 the Housing Authority Board of Commissioners.
 - 1. **Protests Involving Indian Preference.** Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures prescribed by NAHASDA.

V. ***PREFERENCE REQUIREMENTS***

A. ***Small Businesses***

- 1. **Required Efforts.** The CDHA 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 CDHA project are used when possible. Such efforts shall include, but shall not be limited to:
 - a. Including such firms, when qualified, on solicitation mailing lists;
 - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - e. Using the services and assistance of the Small Business Administration;
 - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with 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 135, pursuant to Section 3 of the HUD Act of 1968; and

2. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in 1a through 1f above.

3. **Definitions**

a. 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 CDHA determines that their use is inappropriate.

b. A business concern located in the area of the project 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 is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, 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.

B. ***Indian Preference Requirements***

1. **General.** Projects developed and operated with assistance under **NAHASDA** 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 **NAHASDA** and consistent with 24 CFR Part 85. Where Indian preference is determined not to be feasible, the CDHA shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the CDHA ' s jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be described above. In no case shall the CDHA authorize or provide a preference for Indian, 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 consistent **with NAHASDA**. If CDHA or its prime contractor determines an applicant ineligible for Indian preference, the CDHA or prime contractor shall notify the applicant in writing before contract award, or filing the position or providing the desired training.

3. **Contract clauses and solicitation notices.**

- a. Solicitations shall include the following information:
 - i A statement of the applicability of Indian preference to the solicitation and a time before the due date for offers by which offers must submit evidence of eligibility for Indian preference;
 - ii The local preference requirements for solicitations over \$500,000;
 - iii Any applicable locally imposed preference requirements properly enacted by the tribal governing body and adopted by the CDHA (or advise offeror to contact the tribal governing body to determine any applicable preference requirements);
 - iv Information as to whether the CDHA 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;
 - v A requirement that offerors provide a statement describing how they will provide Indian preference in subcontracting, training and employment, including the number of percentage of Indians to be employed and trained;
 - vi The CDHA 's description of the information to be submitted on Indian preference;
 - vii The factors that the CDHA will use in judging the adequacy of the Indian preference information submitted;
 - viii A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer;
 - ix A requirement that each contractor and subcontractor submit a certification and supporting evidence to the CDHA whenever it is not feasible to provide Indian preference in subcontracting;
 - x 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;
 - xi A requirement in unrestricted RFP 's that subcontractors using request 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
 - xii 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:
 - i The clause prescribed in **NAHASDA** implementing Section 7(b) of the Indian Self-Determination and Education Assistance Act in connection with the development or operation of CDHA projects;
 - ii The grounds for termination of a contract or the imposition of penalties for improper subcontracting or false certification as to subcontracting with Indian enterprises or organizations; and
 - iii Any additional information required because of the nature of the project (i.e., self-help, sweat equity, volunteer, etc.)**
 - iv If all required clauses and provisions are not included on HUD forms (e.g., HUD-5369 and HUD 5370), then the CDHA shall attach any additional clauses or provisions to the HUD forms used in solicitations and contract documents.
- c. Monitoring and Remedies. The CDHA shall monitor the implementation of Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action (including cancellation of contracts and assessments of penalties) to ensure compliance.

VI. ETHICS IN PUBLIC CONTRACTING

A. General

The CDHA shall adhere to the following code of conduct, consistent with applicable State, tribal, or local law, and shall comply with the limitations imposed by NAHASDA and consistent with 24 CFR Part 85.

B. Conflict of Interest.

No employee, officer or agent of this CDHA shall participate directly or indirectly in the selection or in the award or administration of any contract 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, father-in-law, mother-in-law, son-in-law, 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.

The provisions of NAHASDA and the CDHA Standards of Conduct and the Ethics and Integrity Policy are also applicable.

C. *Gratuities, Kickbacks, and Use of Confidential Information*

CDHA 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 or anticipated personal gain.

ATTACHMENT A: INDIAN PREFERENCE

In accordance with 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 AX@ higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor AX@ is determined as follows:

X ‘ LESSOR OF

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