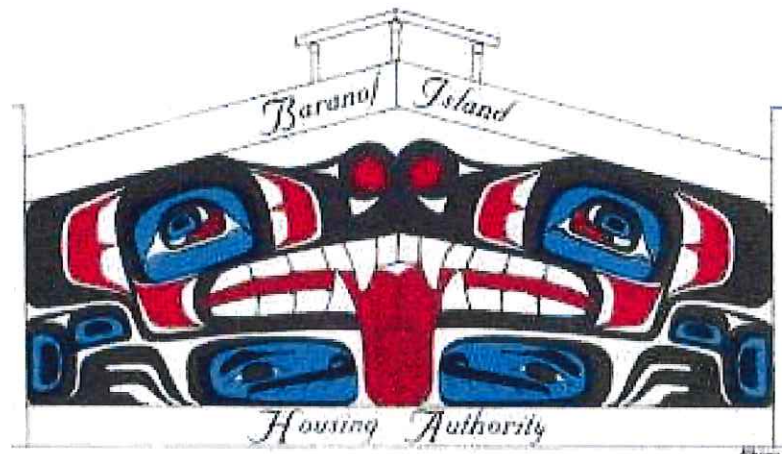


# PROCUREMENT POLICY MANUAL



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# **I. GENERAL PROVISIONS**

## **A. Applicability**

This Policy applies to all contracts for the procurement of supplies, services, equipment and materials entered by the Baranof Island Housing Authority (BIHA) after the effective date of this Policy. The Policy shall apply to every expenditure of funds by BIHA for public purchasing, irrespective of the source of funds, including contracts that do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent BIHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with applicable 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 by the applicable source of funds and provisions of this Policy applied to the work financed by HUD. If it is not possible to separate funds, the provisions of this Policy shall be applied to the total project. The term "procurement," as used in this Policy includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

## **B. Purpose**

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

## **C. Procurement Authority and Administration**

1. Contracting Officer. 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, or such other individual specified by the BIHA Board. The Executive Director shall issue operational procedures to implement this Policy. The Executive Director shall enact sanctions for violations of the ethical standards described in this Policy.
2. Executive Director Duties. The Executive Director or his/her designee shall ensure that:
  - 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 for 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 at least 10 calendar 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 21 calendar days (or other time period if required by State, tribal, or local law) for main construction contracts and 15 calendar 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.
  - d. Solicitation procedures are conducted in full compliance with Federal standards and Indian preference requirements and methods of procurements as required and further detailed in this Policy;
  - e. An independent cost estimate is prepared before issuance of solicitation 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 ensure that contractors perform in accordance with their contracts and provide for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting, and similar matters; and,
  - h. BIHA complies with applicable HUD or other funding requirements, as well as applicable Tribal law and regulations and other applicable BIHA policies and procedures.
3. This Policy 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 BIHA.



## **D. Cooperative Purchasing**

BIHA may enter into State and local inter-governmental 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. BIHA is encouraged 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.

## **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 BIHA'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. 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 Policy shall preempt applicable licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts do not occur (e.g., having a consultant perform a study of BIHA's computer needs and then allowing the consultant to compete for the subsequent contract for the computers).

## **F. 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, such as, but not limited to, those provided in Appendix II to 2 C.F.R. Part 200. Such clauses include, but are not limited to, the following:
  - a. Administrative, contracted, or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may

- be appropriate
  - b. Termination for cause and for convenience
  - c. Termination for default
  - d. Equal Employment Opportunity
  - e. Anti-Kickback Act
  - f. Davis-Bacon Act (and implementing regulations for ANHA at 24 CFR 1000.16)
  - g. Contract Work Hours and Safety Standards Act
  - h. Reporting requirements
  - i. Patent rights
  - j. Rights in data and copyrights
  - k. Examination of records by Comptroller General
  - l. Retention of records for three years after closeout
  - m. Clean Air Act and Clean Water Act
  - n. Energy efficient standards
  - o. Bid protests and contract claims
  - p. Value engineering
  - q. Payment of funds to influence certain federal transactions
2. Forms. If all required clauses are not included on HUD forms, BIHA shall attach any additional clauses to the HUD forms used in contract documents. BIHA shall include the contract clauses and solicitation notices for Tribal and Indian preference described in this Policy.

## **G. 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 BIHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost 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 BIHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles. A time and materials contract may be used only if 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.
2. Options. Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of BIHA; (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 BIHA than conducting a new procurement.

## **H. Contract Administration Types and Options**

A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained. It will contain guidelines for inspection of supplies, services or construction, as well as monitoring contractor performance, status reporting on construction contracts and similar matters.

## **I. Subrecipient and Contractor Determinations**

The BIHA may concurrently receive or award Federal awards as a recipient, a subrecipient, and/or a contractor, depending on the substance of its agreements with Federal awarding agencies. Therefore, the BIHA must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds fits the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section. BIHA staff shall utilize and maintain the Subrecipient Versus Contractor Determination Checklist to determine whether the BIHA should award Federal awards to a subrecipient or a contractor. The subrecipient and contractor determinations should be made by the BIHA before contracting or issuing a subaward. Documentation of that determination must be maintained by the project proponent.

1. Subrecipients – A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of a subrecipient relationship (either when the BIHA is a subrecipient of another organization or the BIHA awards subrecipient funding to another BIHA or organization) is when the receiving organization:
  - a. Determines who is eligible to receive what Federal assistance;
  - b. Has its performance measured in relation to whether objectives of a Federal program were met;
  - c. Has responsibility for programmatic decision making;
  - d. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
  - e. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Tribal entity.
2. Contractors – A contract is for the purpose of obtaining goods and services for the Tribal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship



between the Sitka Tribe of Alaska BIHA and a contractor are when the relationship between the BIHA and the other entity:

- a. Provides the goods and services within normal business operations;
  - b. Provides similar goods or services to many different purchasers;
  - c. Normally operates in a competitive environment;
  - d. Provides goods or services that are ancillary to the operation of the Federal program; and
  - e. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
3. Use of judgment in making determination – In determining whether an agreement between the BIHA and another entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the BIHA must use judgment in classifying each agreement as a subaward or a procurement contract.

## **J. Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR § 200. Contractors that develop or draft specifications, requirements, statements of work, invitations to bid, or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Using noncompetitive pricing practices.
4. Using noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary actions in the procurement process.

8. Imposition of geographical limitations, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
9. Using prequalified lists of persons, firms, or products that limit open and free competition, unless such lists are deemed to meet the intent and requirements of this Policy. The BIHA will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

## **II. PROCUREMENT TYPES AND METHODS**

### **A. Identification of Procurement Type and Selection of Method**

When satisfying its needs by procurement, BIHA shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. BIHA shall provide a rationale in its supporting documentation as to why it selected that particular method.

### **B. Micro-Purchase Procurement Procedure**

For small purchases of less than \$10,000, only one price quote is required, provided the quote is considered reasonable. Quotes may be obtained orally (either in person or by telephone), by fax, catalog, website, email, letter, or other informal procedure. If the purchase is made for reasons other than price, the file must clearly describe the reason for the purchase. Under no circumstances will a purchase be broken down into more than one action in order to meet the micro purchase threshold. The micro-purchase must be documented by an authorized purchase order or contract.

### **C. Small Purchase Procurement Procedures**

1. General. Any procurement not exceeding \$250,000 but greater than \$10,000 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 [?] of this Statement).
2. Indian preference. BIHA shall, to the greatest extent feasible, provide preference to Indian-owned economic enterprises and Indian organizations in making small purchases, and BIHA shall, to the extent feasible, maintain and/or refer to lists of qualified Indian supply sources. BIHA 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. BIHA shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, BIHA shall document the procurement file with the reasons for the lack of Indian participation.

3. Petty Cash Purchases. Small purchases under \$300 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. Obtaining Quotes. BIHA shall solicit price quotations by phone, fax, catalog, website, email, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, BIHA 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. BIHA 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 offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.
5. Competition. BIHA 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 BIHA 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, or catastrophic circumstances; for a proprietary product or service or a product or service available from only one source; when BIHA determines that the delays caused by re-soliciting would cause higher costs or unreasonable delay; or, where BIHA determines and documents that the proposal has a fair and reasonable price.
6. Award.
  - a. **Award based on price**. For small purchases awarded based on price or fixed specifications (i.e. not subject to negotiations), BIHA 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 from all bidders. If no responsive quotation is received from a qualified Indian-owned economic enterprise or organization that 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.** Award based on factors other than price. For small purchases to be awarded based on factors other than price, a request for proposals or request for quotations shall be prepared that includes evaluation factors and a 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 reasonable, responsive and responsible proposal or quotation in accordance with the stated rating system.

## **E. Sealed Bidding**

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. Sealed bidding should not be used for professional services contracts.
2. 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 a reasonable time 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 in writing at any time prior to bid opening.
  - b. The invitation may be restricted to qualified Indian-owned economic enterprises and Indian organizations if BIHA has a reasonable expectation of receiving the required minimum number of bids from qualified Indian-owned economic enterprises or Indian organizations. BIHA will, in its discretion, cancel a restricted solicitation and then conduct an unrestricted solicitation if: an insufficient number of qualified Indian-owned economic enterprises or Indian organizations submit responsive and responsible bids in response to a solicitation; the bid prices received were not reasonable or within the bid ceiling; a single restricted bid was not accepted; or BIHA otherwise determines that re-solicitation is in BIHA's best interest.

3. 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.
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 reasonable, responsive and responsible bid. If equal low reasonable, responsive and responsible bids are received, award shall be made by drawing lots or similar random method, unless otherwise provided by applicable law. If fewer than two qualified Indian-owned economic enterprises or organizations submit reasonable, responsive and responsible bids, all bids shall be rejected, and BIHA shall cancel the solicitation and resolicit bids from non-Indian as well as Indian-owned economic enterprises and organizations. Notwithstanding the foregoing, BIHA may accept a single bid received from a responsive and responsible bidder, subject to HUD approval as required, in unusual circumstances, such as if BIHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or BIHA determines that the delay of resoliciting would subject the project to higher construction costs or other public exigency or emergency for the requirement will not permit a delay resulting from further solicitations.
  - 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 reasonable, responsive and responsible bidder, if that bid is within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than 10% higher than the total bid price of the lowest responsive bid from any qualified bidder. If the bid from the qualified Indian-owned economic enterprise or organization is within the 10% range of the lowest, non-Indian firm, the Indian-owned firm will be given the opportunity to meet the lowest bid price. Should the Indian-owned firm refuse to meet this lower price, the bid shall then be awarded to the responsive and responsible low bidder for the project.
5. Mistakes 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 a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental 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 clear 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 BIHA or fair competition shall be permitted.
  - (i) A complete, adequate, and realistic specification or purchase description is available.

## F. 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 BIHA 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 BIHA to qualified Indian -owned economic enterprises and Indian organizations if BIHA has a reasonable expectation of receiving offers from two such entities. BIHA shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and organizations if: BIHA prefers not to restrict the RFP; or an insufficient number of qualified Indian-owned economic enterprises or 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 offerors, 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. BIHA shall reserve 15% of the total number of available rating points in



unrestricted solicitations for the provision of Tribal and Indian preference in the award of contracts and subcontracts, and up to an additional 10% for offers containing a qualified statement regarding training and employment of Tribal members and other 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 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 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 BIHA, 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 BIHA shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. BIHA may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when BIHA determines that the delays caused by resoliciting would cause higher costs, or where BIHA 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.

#### **G. Noncompetitive Proposals / Sole Source**

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 BIHA, 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;
  - 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 non-competitive 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 procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section [H] below.

#### **H. 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 follows. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received and BIHA is



considering accepting that offer, or for other procurements as deemed necessary by BIHA (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;
  - b. commercial pricing and sales information, sufficient to enable T-HRHA 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 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 cost analysis shall be performed of the individual cost elements; BIHA shall have the right to audit the contractor's books and records pertinent to such costs; and, profit shall be negotiated separately. Costs shall be allowable only to the extent that they are consistent with applicable federal cost principles. In establishing profit, BIHA 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.]

#### **I. Cancellation of Solicitations**

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: BIHA no longer requires the supplies, services or construction; or, BIHA 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 BIHA; 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 BIHA.



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 BIHA shall cancel the solicitation and re-solicit using a request for proposals.

### **III. 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 BIHA in its business dealings. The BIHA 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 BIHA. 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. Construction Contracts. In addition to the other requirements of this policy, for all construction or facility improvement contracts or subcontracts, and for all rehabilitation contracts exceeding the small purchase threshold (\$150,000), BIHA will apply the following bonding requirements:
  - a. all bidders shall be required to post a bid bond equal to five percent (5%) of the total bid amount under terms that the solicitation may require; and
  - b. the successful bidder shall be required to submit performance and payment bonds for 100% of the total contract price. The total contract price shall include the value of all contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract.
2. In lieu of the performance and payment bonding requirements of I.1, above, BIHA may, in its discretion, allow the contractor to utilize a form of security authorized by 24 C.F.R. sec. 1000.26(a)(11)(I)-(iii), in a form and amount satisfactory to BIHA.

### **IV. PREFERENCE REQUIREMENTS**

#### **A. Small and Minority Businesses**

1. Required Effort. BIHA 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 BIHA 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; and
- 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; and
- g. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in (a) through (f) above.

## 2. 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 BIHA 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**

- 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 BIHA shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the BIHA'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 BIHA 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 BIHA or its prime contractor determines an applicant ineligible for Indian preference, the BIHA 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 offerors must submit evidence of eligibility for Indian preference;
    - (ii) Any applicable locally imposed preference requirements properly enacted by the tribal governing body and adopted by BIHA (or advise offeror to contact the tribal governing body to determine any applicable preference requirements);
    - (iii) Information as to whether BIHA maintains list Indian-owned economic enterprises and Indian organizations by trade specialty which are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
    - (iv) A requirement that offerors 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;
    - (v) BIHA's description of the information to be submitted on Indian preference;
    - (vi) The factors that BIHA will use in judging the adequacy of the Indian preference information submitted;
    - (vii) A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer;

- (viii) A requirement that each contractor and subcontractor submit a certification and supporting evidence to BIHA whenever it is not feasible to provide Indian preference in subcontracting;
- (ix) 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;
- (x) For requests for proposals that are not restricted to Indian-owned economic enterprises or Indian organizations, a requirement that contractors using a request for proposals to solicit subcontractors reserve 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals; and
- (xi) 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 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;
- (ii) 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 BIHA shall attach any additional clauses for provisions to the contract forms used in solicitations and contract documents.

4. Monitoring and Remedies. BIHA 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.



## **V. ETHICS IN CONTRACTING**

The employees, officers, and agents of the BIHA shall adhere to the following code of conduct:

### **A. Conflict of Interest**

1. No employee, officer, or agent of the BIHA shall participate directly or indirectly in the selection or in the award or administration of any procurement contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in an individual or a firm selected for award is held by:
  - a. An employee, officer, or agent involved in making the award;
  - b. His or 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, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister);
  - c. His/her partner; or
1. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above. Nothing in this section shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, or agent from fully participating in BIHA activities and decision-making so long as the person is low income and otherwise an eligible applicant and selected for assistance in accordance with BIHA's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds.

### **B. Gratuities, Kickbacks, and Use of Confidential Information**

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

### **C. Prohibition against Contingent Fees**

Contractors shall not retain a person or solicit or secure a BIHA contract for a

commission, percentage, brokerage, or contingent fee, except for bona fide employees.

#### **D. Consequences for Violating Code of Conduct**

Employees, officers, and agents of BIHA who engage in the award and administration of contracts shall abide by the provisions of this Section, which establishes a code of conduct for carrying out procurement activities.

1. Disciplinary Action Against Employee Violating Code of Conduct. Any employee of BIHA who violates any provision of this code of conduct will be subject to disciplinary action, up to and including termination from employment, depending on the severity of the violation.
2. Disciplinary Action Against Officer or Agent Violating Code of Conduct. Any officer or agent of BIHA who violates any provision of this code of conduct will be subject to disciplinary action, up to and including removal from office or termination of contractual or other relationship, depending on the severity of the violation.
3. Civil Action to Recover Any Improper Financial Benefit from Employee, Officer, or Agent Violating Code of Conduct. BIHA may seek repayment from an employee, officer, or agent of the Housing Authority of any improper financial benefit that the employee, officer, or agent gained for him- or herself or for another person through such violation, which may include filing suit against the employee, officer, or agent in a court of competent jurisdiction for such repayment. Where the matter involves an employee or former employee, such action may be taken in addition to or in lieu of disciplinary action against the employee.

## **VI. APPEALS AND REMEDIES**

### **A. General.**

It is BIHA's policy to resolve all contractual issues informally at the BIHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the BIHA level. When appropriate, BIHA 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 BIHA 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 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 (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. Contractor 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, if any, to the BIHA Housing Authority Board of Commissioners.

**D. 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 in 24 CFR 1000.54.