

**REQUEST FOR PROPOSALS
COQUILLE INDIAN HOUSING AUTHORITY
AUDIT SERVICES**

November 13, 2023

Deadline for Submission of Proposals:
Monday, December 18, 2023 at 5:00 p.m. PST

Submit proposals to:

Anne Cook, Executive Director
Coquille Indian Housing Authority
2678 Mexeye Loop
Coos Bay, OR 97420
Email: annecook@coquilleiha.org



Coquille Indian Housing Authority

2678 Mexeye Loop • Coos Bay, OR 97420

November 13, 2023

REQUEST FOR PROPOSALS AUDIT SERVICES

The Coquille Indian Housing Authority (“CIHA”) is seeking proposals from qualified certified public accounting firms to conduct an annual financial and compliance audit of the Authority’s books of account and records for the fiscal year ended September 30, 2023, with an option to extend performance for up to four subsequent fiscal years.

Questions regarding this RFP should be submitted via email no later than 5:00 p.m., Wednesday, November 29, 2023 to CIHA Controller Marcy Chytka at marcychytka@coquilleiha.org.

Response will be posted with the proposal packet materials online at www.coquilleiha.org by 5:00 p.m., Monday, December 4, 2023.

Written proposals may be submitted by hard copy or email until 5:00 p.m. PST on Monday, December 18, 2023 to:

Anne Cook, Executive Director
Coquille Indian Housing Authority
2678 Mexeye Loop
Coos Bay, OR 97420

Email: annecook@coquilleiha.org

If submission is made by hard copy, only one set of proposal documents is necessary. Proposals received after the deadline will be considered only if insufficient qualified proposals are received prior to the deadline.

This RFP is not restricted to qualified Indian owned firms; however preference will be given to Indian and Tribal owned enterprises in accordance with implementing regulations 24 CFR 1000.48 and 1000.52 of the Native American Housing Assistance and Self-Determination Act (NAHASDA), Tribal ordinance, and CIHA policy.

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GENERAL INFORMATION

The Coquille Indian Housing Authority (CIHA) is the tribally-designated housing entity (TDHE) for the Coquille Indian Tribe. The purpose of the Authority is to provide decent, safe, and sanitary affordable housing opportunities to qualified Native Americans and Alaska Natives within the Tribe's five-county service area in compliance with the Native American Housing and Self-Determination Act of 1996 (NAHASDA) and its implementing rules and regulations. It is governed by a Board of Commissioners appointed by the Tribal Council.

Primary sources of income include grant monies received through the Indian Housing Block Grant (IHBG) program administered by the HUD Office of Native American Programs (ONAP), administrative fees and rents earned through management of approximately 48 rental housing units, 16 homebuyer housing units, and 30 private residential leases, contributions from the Coquille Indian Tribe, and commercial leases. The Authority also operates a tenant-based rental assistance program offering 64 units of assistance.

Additional sources of income for the fiscal year ended September 30, 2023 include HUD IHBG Competitive, CARES, and ARP grants, U.S. Treasury Emergency Rental Assistance and Homeowner Assistance Fund grants, and State of Oregon Homeless Services and Homeownership grants. Total annual grants and other revenues for the fiscal year ended September 30, 2023 were approximately \$3 million. Cash and investments for the fiscal year ended September 30, 2023 were approximately \$2 million.

SCOPE OF SERVICES

The audit services to be provided are for the fiscal year ended September 30, 2023 with an option to extend performance for up to four additional years. For the FY 2023 audit, work may begin immediately following award. Fieldwork must be complete and a draft report submitted no later than March 11, 2024. The final audit report must be submitted in electronic format by March 24, 2024. Presentation of the final report shall be made to the CIHA Board of Commissioners at its meeting on March 28, 2023. Submission to the Federal Audit Clearinghouse must be complete within 30 calendar days of the date the final report is issued. All audit work papers shall be provided to CIHA in electronic format no later than 60 calendar days of the date the final report is issued. Services for succeeding years are to be completed on a similar schedule.

The audit shall be conducted in accordance with Generally Accepted Governmental Auditing Standards (GAGAS) and conform with 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F – Audit Requirements. Pursuant to 2 CFR 2.514(b), “the auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles.”

The auditor will ensure the accuracy of the financial statements by performing thorough compliance testing with all applicable policies of the Authority, as well as the applicable federal regulations, particularly all material areas of 2 CFR 200 and 24 CFR 1000. It is expected that the report to the Board shall be in a manner that will enable the Commissioners to fully understand the financial condition of the Authority as represented in the financial statements, and shall fully understand the reasons for all audit findings, if any, and the actions to be taken by the Authority to resolve them.

TRIBAL AND INDIAN PREFERENCE

Solicitation and award of this contract shall be done in compliance with the CIHA Procurement Policy, which provides preference for Tribal and Indian owned firms. Eligibility for Tribal preference shall be determined in accordance with Coquille Tribal Code Section 160.200(6)(c). In addition, solicitation and award of this contract as well as activities under the contract are subject to the Indian preference requirements of Section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and the applicable Indian preference regulations set out at 24 CFR 1000.48-54. Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts and subcontracts. Preference must be provided in accordance with the methods set forth in 24 CFR 1000.52.

CONTENT OF PROPOSALS

1. A profile of the firm, including information such as year established, type of ownership, principals/partners, managerial and financial capacity to deliver the proposed services, etc.
2. A description of the proposed services.
3. The proposed price of the audit, inclusive of all fees and incidental costs, such as clerical support, postage, transportation, meals, lodging, etc., and any proposed cost adjustment for the four succeeding audit periods.
4. A copy of the credentials of the Certified Public Accountant(s) representing the firm.
5. A list of clients for whom the proposer has performed similar services, noting three or more that may be contacted as references.
6. Resumes of the individuals who would perform the services, with special attention to experience related to Indian or public housing authorities, tribes, or similar organizations.
7. A copy of the firm's most recent peer review report.
8. Written evidence that the offeror maintains:
 - Professional liability insurance in an amount of not less than \$1,000,000
 - General liability insurance in an amount of not less than \$1,000,000 per occurrence
 - Automobile liability insurance in the amount of not less than \$1,000,000

9. To qualify for Tribal or Indian Preference, evidence showing 51% or more ownership interest by a member or members of the Coquille Indian Tribe or a federally recognized Indian tribe.
10. Any other information the firm believes is pertinent to its proposal or will assist CIHA in its evaluation.

SELECTION CRITERIA

The following criteria will be used to evaluate proposals submitted in response to this solicitation:

<u>Points</u>	<u>Criteria</u>	<u>Points</u>	<u>Criteria</u>
20	Experience with Indian or public housing providers that administer HUD-funded programs, tribes, or similar organizations	15	Overall quality of the proposal
20	Qualifications and experience of key personnel who will be performing the audit, specifically with respect to performing similar work	10	Cost of proposal
20	Past performance in terms of quality of work and compliance with time schedules, as evidenced by references and peer review	15	Tribal and Indian Preference

The Authority reserves the right to interview the candidates prior to the final selection. The Authority also reserves the right to reject any or all of the proposals submitted and to cancel this solicitation at any time at its sole discretion if it determines it is in the best interest of the Authority to do so.

QUESTIONS

A list of Frequently Asked Questions accompanies this RFP. Other questions should be submitted in writing no later than 5:00 p.m., Wednesday, November 29, 2023 to CIHA Controller Marcy Chytka at marcychytka@coquilleiha.org.

Response will be posted at www.coquilleiha.org by 5:00 p.m., Monday, December 4, 2023.

DEADLINE FOR SUBMISSIONS

Written proposals may be submitted by hard copy or email until **5:00 p.m. PST on Monday, December 18, 2023** to:

Anne Cook, Executive Director
Coquille Indian Housing Authority
2678 Mexeye Loop
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Email: annecook@coquilleiha.org

Coquille Indian Housing Authority
Request for Proposals – Audit Services
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If submission is made by hard copy, only one set of proposal documents is necessary. Proposals received after the deadline will be considered only if insufficient qualified proposals are received prior to the deadline.

EVALUATION

Proposals will be reviewed by a three or more person panel in accordance with the evaluation criteria set out above and may include oral interviews with proposers.

AWARD

Attached is an addendum containing HUD-required contract clauses that will be made part of any contract issued pursuant to this solicitation. Please note that, although required, not all provisions will apply to services of this nature.

It is anticipated that an award will be made by January 8, 2024.

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FREQUENTLY ASKED QUESTIONS

Question 1. How many auditor journal entries were there during last year's audit, and can we get a copy of these journal entries?

Response: There were no journal entries proposed by the auditors.

Question 2. Approximately what date are your books closed and reconciled and ready for auditors to complete their fieldwork?

Response: The books are normally closed by the end of November.

Question 3. Can we get a copy of last year's audit?

Response: Information regarding the Authority's audit for the fiscal year ended September 30, 2022 is available on the Federal Audit Clearinghouse website. Full audit reports for fiscal years 2021 and 2022 are available at www.coquilleiha.org.

Question 4. What was your prior audit fee?

Response: The Authority feels the audit fee should be based upon the proposing firm's assessment of the scope of the engagement and its ability to provide a quality audit of our entity. While cost is a consideration, it is not the most important for the Authority in choosing an auditor.

Question 5. Is there a specific reason you are going out to bid for audit services?

Response: The Authority is required to obtain competitive bids for audit services. Your bid may be for one to five years of service, with the Authority having the option of renewal each year or to proceed with a request for proposals each year.

Question 6. Do you prepare the financial statements, including the notes?

Response: The Authority prepares its own financial statements, including the notes. However, it is anticipated that the auditor may advise and assist with the form and content of the statements, notes, and Management's Discussion and Analysis.

Question 7. Should the cost of travel be included in the proposal?

Response: Yes. The proposal should include all travel costs to conduct audit activities, including transportation, lodging, meals, and incidental expenses. Presentation of the final report to the CIHA Board of Commissioners may be made virtually.

EXHIBIT A

Addendum – Contract Requirements

This Addendum is attached to and is incorporated by reference in its entirety in the Contract for professional services between _____ (“Contractor”) and the Coquille Indian Housing Authority (“CIHA”) and the terms and conditions of this Addendum shall apply to and govern the provisions of that Contract. To the extent that the terms and conditions of this Addendum are inconsistent with the Contract, the terms and conditions of this Addendum shall govern.

- 1. INDEMNITY.** Contractor shall indemnify and hold harmless CIHA and its employees, agents, and officers against any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees), obligations, liabilities, and liens (including any of the foregoing arising or imposed under the doctrines of "strict liability" or "product liability" and including, without limitation, the cost of any fines, remedial action, damage to the environment and cleanup, and the fees and costs of consultants and experts) arising out of the services provided by Contractor pursuant to this Contract, or for any other activities of Contractor or Contractors' officers, agents, or employees, excluding, however, any of the foregoing resulting from the sole negligence or willful misconduct of CIHA. Contractor agrees that upon written notice by CIHA of the assertion of such a claim, action, damage, obligation, liability, or lien, Contractor shall assume full responsibility for the defense thereof. Contractor's choice of counsel shall be mutually acceptable to both CIHA and Contractor.
- 2. ASSIGNMENT.**
 - 2.1 Neither party may assign this Contract or any interest in this Contract without the express prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that CIHA may assign its rights under this Contract without Contractor's prior consent to an affiliate of CIHA or to the Coquille Indian Tribe in the event of a merger, reorganization, or consolidation as a result of which CIHA is not a surviving legal entity. In the event of any such assignment by either party, that party's assignee shall have all the rights, powers, privileges, remedies, and obligations of the assigning party set forth in this Contract.
 - 2.2 This Contract shall be binding upon and inure to the benefit of CIHA and Contractor and their respective permitted successors and assigns.
- 3. REPRESENTATIONS AND WARRANTIES.** Each party hereby represents and warrants to the other party that: (i) all action on the part of such party necessary for the execution, delivery, and performance of this Contract by such party has been taken, (ii) this Contract is a legal, valid, and binding obligation of such party enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of law governing specific performance, injunctive relief, or other equitable remedies, and (iii) the execution and delivery of, and the performance of the obligations under, this Contract by such party does not and will not contravene or result in any breach of any law or of any regulation, order, writ, injunction, or decree of any court, tribunal, governmental

body, authority, agency, or instrumentality, nor do or will such execution, delivery, or performance violate, conflict with, or result in (or with notice or lapse of time or both result in) a breach of or a default under any term or provision of any agreement, oral or written, to which such party is a party or is bound.

4. DEFAULT.

- 4.1 The occurrence of any of the following events shall constitute an "Event of Default by CIHA" under this Contract:
- a. The failure by CIHA to pay any payment payable to Contractor hereunder within sixty (60) days after its due date;
 - b. The failure by CIHA to perform any of its obligations hereunder, which failure continues uncured for a period of thirty (30) days following Contractor's written notice to CIHA thereof.
- 4.2 The failure by Contractor to perform any of its obligations hereunder, which failure continues uncured for a period of thirty (30) days following CIHA's written notice to Contractor thereof, shall constitute an "Event of Default by Contractor" under this Contract.

5. REMEDIES UPON EVENT OF DEFAULT; TERMINATION FOR CONVENIENCE.

- 5.1 Upon the occurrence of any Event of Default by CIHA, and at any time as long as such Event of Default by CIHA continues, Contractor may, at its option, declare this Contract to be in default and exercise any one or more of the following remedies:
- a. Terminate this Contract by written notice to CIHA, which termination shall be effective upon delivery of such notice to CIHA;
 - b. Exercise all rights and remedies available to Contractor at law or in equity under the laws of the Coquille Indian Tribe.
- 5.2 Upon the occurrence of any Event of Default by Contractor, and at any time as long as such Event of Default by Contractor continues, CIHA may, at its option, declare this Contract to be in default and exercise any one or more of the following remedies:
- a. Terminate this Contract by written notice to Contractor, which termination shall be effective upon delivery of such notice to Contractor; and
 - b. Exercise all rights and remedies available to CIHA at law or in equity under the laws of the Coquille Indian Tribe.
- 5.3 After any Event of Default by Contractor, Contractor shall reimburse CIHA for all reasonable costs and expenses (including attorneys' fees) of enforcement of CIHA's rights and remedies under this Section.

5.4 Termination for Convenience. Notwithstanding any other provision of this Contract, CIHA may terminate this Contract in whole or in part when it determines that continuing the Contract is no longer in the best interest of CIHA. Such termination will be effected by the delivery of written notice to the Contractor of a Notice of Termination and the effective date of the termination. If CIHA terminates for convenience under this clause, CIHA shall pay to Contractor all reasonable and proper payment for services provided up to the date of the termination. Contractor shall submit an invoice to CIHA in writing with appropriate documentation.

6. APPLICABLE LAW. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of the Coquille Indian Tribe, the Coquille Indian Housing Authority, and the United States governing performance of the scope of work. This Contract is subject to applicable governing law, which includes, but is not limited to:

6.1 Indian Preference. (Section 7(b) Clause)

- a. The work to be performed under this Contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e(b)) (the Indian Act). Section 7(b) requires that to the greatest extent feasible:
 - (i) Preferences and opportunities for training and employment shall be given to Indians; and
 - (ii) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.
- b. The parties to this Contract shall comply with the provisions of Section 7(b) of the Indian Act.
- c. In connection with this Contract, the Contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
- d. The Contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of CIHA, take appropriate action pursuant to the subcontract upon a finding by CIHA or HUD that the Contractor has violated the Section 7(b) clause of the Indian Act.

6.2 The applicable provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and the regulations promulgated pursuant thereto.

6.3 The laws, policies, and regulations of the Coquille Indian Tribe, including Tribal employment and contracting preferences.

6.4 Such other federal law as may be applicable.

7. INSURANCE.

7.1 Contractor's Insurance. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the services are performed the types of insurance policies and in the following minimum amounts:

General Liability Insurance	\$1,000,000	Each Occurrence
	\$2,000,000	Policy Aggregate
	\$5,000	Premise Medical
	All covering operations, completed operations, contract disputes and personal injuries.	
Comprehensive Automobile Liability	\$1,000,000	Combined Single Limit
Worker's Compensation	As required by applicable law	

7.2 Evidence of Insurance. Contractor shall, upon the request of CIHA, provide CIHA with certificates of insurance or, if requested copies of actual policies, evidencing the insurance coverage required by this Section 7.

7.3 Maintenance of Insurance. Contractor shall pay all premiums for policies each is required to carry under this Section 7 when due so as to avoid any lapse in coverage.

8. DISPUTE RESOLUTION. The parties shall attempt to resolve any dispute, controversy, or claim arising out of or relating to this Contract and any other contractual obligation between Contractor and CIHA (a "Claim") through mediation. If mediation is unsuccessful, the Claim shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, which shall be the sole remedy as to all such Claims.

8.1 The arbitration shall take place on Coquille Indian Tribe reservation lands unless the parties mutually agree to a different location.

8.2 The costs of the arbitration shall be borne equally by the parties.

8.3 The arbitrator may not alter or amend the Contract.

8.4 The arbitration will be done by a single Arbitrator that is mutually agreed upon. However, if the parties fail to agree upon a single arbitrator, then each party shall choose one arbitrator and those two shall choose a third arbitrator.

8.5 The arbitration decision shall be final and binding upon Contractor and CIHA, and shall be enforceable in any court of competent jurisdiction.

8.6 With respect to any arbitration proceeding commenced hereunder, the prevailing party shall be entitled to seek and obtain in any arbitration award the payment or reimbursement, as appropriate, of the prevailing party's reasonable costs and expenses,

including reasonable attorney's fees, incurred or expended by the prevailing party in connection with the dispute, controversy, claim, or other contractual obligation submitted to arbitration hereunder.

- 8.7 The parties agree that the only forum in which an arbitration award may be enforced is in the Tribal Court for the Coquille Indian Tribe, and Contractor hereby expressly consents to the jurisdiction of the Tribal Court for the Coquille Indian Tribe for this purpose.

9. PROHIBITIONS ON CONFLICTS OF INTEREST

- 9.1 Based on the federal regulations (2 CFR 200.318) and where those regulations apply, no employee, officer, or agent of CIHA shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer, or agent; (ii) any member of his or her family; (iii) his or her partner; or, (iv) an organization that employs, or is about to employ, any of the above has financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by the state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractor or its agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- 9.2 Neither CIHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or agreement, in connection with any project or any property included or planned to be included in any project, in which any member, officer, or employee of CIHA, or any member of the governing body of CIHA, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the project during his/her tenure or for one (1) year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee of CIHA, or such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to CIHA and such disclosure is entered upon the minutes of CIHA, CIHA, with the prior approval of HUD, may waive the prohibition contained in this subsection; Provided, that any such present member, officer, or employee of CIHA shall not participate in any action by CIHA relating to such contract, subcontract, or arrangement.
- 9.3 No member, officer, or employee of CIHA, no member of the governing body of CIHA, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one (1) year

thereafter, shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

- 9.4 Based on federal regulations (24 CFR 1000.30) in all cases not governed by 2 CFR 200.318, the following conflict of interest provisions shall apply: No person who participates in the decision-making process or who gains inside information with regard to NAHASDA-assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract, or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by CIHA in its operating policies.
- 9.5 If Contractor becomes aware that any of its business activities might reasonably be considered to be a conflict of interest to CIHA, or may have the appearance of being a conflict of interest to CIHA, Contractor shall promptly report such business activities to CIHA. If conflicts of interest do arise, Contractor agrees to promptly cease the conflicting activities upon request by CIHA

10 WAGES, HOURS, AND RELATED REQUIREMENTS

- 10.1 Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- 10.2 Compliance with Copeland Act Requirements. To the extent applicable to the scope of work, the Contractor shall comply with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented in Department of Labor regulations of 29 CFR Part 3, which are hereby incorporated by reference in this Contract.
- 10.3 Contract Termination; Debarment. A breach of the labor standards clauses in this Contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- 10.4 Compliance with Davis-Bacon and related Act Requirements. To the extent applicable to the scope of work, the Contractor shall comply with the Davis-Bacon Act (40 USC 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- 10.5 Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this clause shall be subject to the general disputes clause of this Contract, except that disputes related to the Copeland Act and the Contract Work Hours and Safety Act shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and CIHA, HUD, the U.S. Department of Labor, or their employees or representatives.

10.6 Certification of Eligibility.

- a. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 USC 1001.

10.7 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

10.8 Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

- a. The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 3141 et seq.) to be prevailing in the locality with respect to such trade;
- b. An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- c. An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

11 MISCELLANEOUS.

11.1 Survival. The obligations set forth in Sections 1, 2, 3, 6, 7, and 8 hereof and this Section 11 shall survive any termination of this Contract for any reason.

11.2 Notices. Any notice, request, demand, statement, authorization, approval or consent required or permitted under this Contract shall be in writing and shall be made by, and deemed duly given upon, (a) deposit in the mail, postage prepaid, registered or certified, return receipt requested, (b) personal delivery, (c) delivery to an overnight courier of

recognized reputation, or (d) facsimile transmission (with confirmation by mail), as follows, or to such other address and/or such additional parties as either party may specify by written notice given in accordance with this Section:

If to Contractor: _____

If to CIHA: Coquille Indian Housing Authority
Attention: Executive Director
2678 Mexeye Loop
Coos Bay, OR 97420

All such notices and communications hereunder shall be deemed given upon personal delivery, seven (7) business days after deposit in the mail, two (2) business days following deposit with any international courier service of recognized reputation or one (1) business day after transmission by fax.

- 11.3 Entire Contract. This Contract constitutes the entire agreement between the parties with respect to the subject matter covered by this Contract and supersedes all previous discussions, negotiations, oral or written, representations, statements, arrangements, agreements and understandings, if any, by and between the parties with respect to the subject matter covered by this Contract other than those herein, and any such discussions, negotiations, oral or written, representations, statements, arrangements, agreements, and understandings are hereby canceled and terminated in all respects. This Contract may not be amended, changed, or modified except by a writing duly executed by the parties hereto or their duly authorized representatives. The parties have made no representations or warranties not expressly set forth in this Contract.
- 11.4 Severability. In the event any provision of this Contract or the application thereof to any circumstance shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, it shall be construed to be limited or reduced so as to be enforceable to the maximum extent allowed by applicable law as it shall then be in force, and if such construction shall not be feasible, then such provision shall be deemed to be deleted herefrom in any action before that court, and all other provisions of this Contract shall remain in full force and effect.
- 11.5 Remedies. All rights and remedies of the parties are separate and cumulative, and no one of them, whether exercised or not, shall be deemed to be to the exclusion of or to limit or prejudice any other legal or equitable rights or remedies which the parties may have. The parties shall not be deemed to waive any of their rights or remedies under this Contract unless such waiver is in writing and signed by the party to be bound. No delay or omission on the part of either party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

- 11.6 Headings. The headings contained in this Contract are for convenience only and are not a part of this Contract, and do not in any way interpret, limit or amplify the scope, extent or intent of this Contract, or any of the provisions of this Contract.
- 11.7 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original, but which together shall constitute one and the same agreement.
- 11.8 Expenses. Except as otherwise expressly provided for in this Contract, each of the parties shall pay its own expenses in connection with the negotiation, preparation and execution of this Contract or other related documents and the consummation of the transactions consummated herein and therein.
- 11.9 Choice of Law. The rights and obligations of the parties hereto shall be construed and enforced in accordance with and governed by the internal laws of the Coquille Indian Tribe.
- 11.10 No Third Party Beneficiaries. Neither this Contract nor any provision hereof, nor any document or instrument executed or delivered pursuant hereto, shall be deemed to create any right in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective permitted successors and assigns, except for those provisions which recognize the rights of certain agencies of the United States.
- 11.11 Legal Advice and Construction of Contract. Each party represents that it has received independent legal advice with respect to the preparation of, and the advisability of entering into, this Contract and neither has been entitled to rely upon nor has in fact relied upon the legal or other advice of the other party or such other party's counsel in entering into this Contract. Each party has participated in the drafting and preparation of this Contract, and, accordingly, in any construction or interpretation of this Contract, the same shall not be construed against either party by reason of the source of drafting.
- 11.12 Parties' Understanding. Each party represents that it has carefully read this Contract, that this Contract has been fully explained to it by its attorney, that it fully understands the final and binding effect of this Contract, that the only promises made to it to sign this Contract are those stated above, and that it is signing this Contract voluntarily.
- 11.13 Force Majeure. No party hereto shall be deemed in default if its performance of obligations hereunder is delayed or becomes impossible or impractical by reason of any act of God, war, fire, earthquake, strike, civil commotion, epidemic, or any other cause beyond such party's reasonable control.
- 11.14 Limitation of Damages. Except as expressly set forth herein, in any action or proceeding arising out of, relating to or concerning this Contract, including, without limitation, any claim of breach of contract, liability shall be limited to compensatory damages proximately caused by such breach and no party shall, under any circumstances, be liable to the other party for consequential, incidental, indirect or special damages, including but not limited to lost profits or income, even if such party has been apprised of the likelihood of such damages occurring.

- 11.15 Use of Debarred, Suspended or Ineligible Subcontractors. Contractor will comply with the prohibitions set out in 24 CFR Part 24, 2 CFR 200, and Executive Order 12549, as well as any tribal requirements, with regard to the use of debarred, suspended or ineligible subcontractors. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Contractor will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by CIHA.
- 11.16 Drug-Free Workplace. Contractor will comply with the Drug-Free Workplace Act of 1988, HUD's implementing regulations at 24 CFR Part 24, and any tribal requirements as set out in 24 CFR 1000.46.
- 11.17 Equal Employment Opportunity. Contractor will comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), consistent with the Indian preference requirements set out in Section 10.1, above.
- 11.18 Independent Contractor. The parties intend that each of them is and shall remain independent contractors with respect to services and items being provided hereunder. This Contract is not intended to create a partnership or joint venture between the parties and nothing in this Contract shall be construed as creating a relationship of employer and employee between the parties. No agent, employee or representative of any party shall be construed or deemed an agent, employee, or representative of the other.
- 11.19 Ownership of Documents. All documents created or prepared under this Contract are the property of CIHA and are not to be used by the Contractor or any sub-subcontractor except in connection with the work performed under this Contract unless otherwise required by applicable law or professional standards.
- 11.20 Copyrights and Rights in Data. The United States Department of Housing and Urban Development reserves an irrevocable, non-exclusive, and royalty-free license to reproduce, publish, or otherwise use, for Federal government purposes only and to the extent otherwise permitted by law, (a) the copyright in any work developed under a grant or subgrant, or contract under a grant or subgrant, and (b) any rights of copyright to which a grantee, subgrantee, or contractor purchases ownership with grant support.
- 11.21 Examination and Retention of Contractor's Records.
- a. CIHA, HUD, and the Comptroller General of the United States, and any of their duly authorized representatives, shall, until five (5) years after final payment is made under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records

involving transactions related to this Contract, for the purpose of making audit, examination, excerpts, and transcriptions.

- b. The Contractor agrees to include in all subcontracts under this Contract at any tier a clause substantially the same as subparagraph 11.21(a) above.
- c. The periods of access and examination in subparagraphs 11.21(a) and (b) above for records relating to (1) appeals under the disputes clause of this Contract, (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs or expenses of this Contract to which CIHA, HUD, or the Comptroller General or any of their duly authorized representatives have taken exception shall continue until the disposition of such appeals, litigation, claims, or exceptions, or until the end of the five-year period in subparagraph 11.21(a), whichever is later.

11.22 Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

11.23 Contractor shall comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

11.24 Restrictions on Lobbying. Contractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 319) as supplemented by applicable HUD regulations, to the extent applicable. This Law applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier, under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to CIHA. Necessary certification and disclosure forms shall be provided by CIHA.

11.25 Records. Contractor shall maintain accurate records detailing the costs which constitute the cost of the services provided, and shall make such records available to CIHA, upon reasonable notice and at reasonable times, for audit, such audit to be at CIHA's expense.

11.26 No Liens. The property on which CIHA is located is on reservation lands of the Coquille Indian Tribe held in trust for the Tribe by the United States. Due to its trust

status, the property cannot be subject to any mechanic's or other lien. Contractor shall ensure that no mechanic's or other liens are filed against CIHA's property arising out of work performed under this Contract or for any other purpose. In the event that a lien is filed against CIHA's property, Contractor shall, at CIHA's request, at any time that Contractor is disputing the validity or amount of such lien provide a bond or other security reasonably acceptable to CIHA in the amount of such lien.

- 11.27 Safety. Contractor shall take necessary precautions for the safety of its employees and shall comply with all applicable provisions of Federal and Tribal safety laws to endeavor to prevent accidents or injury to persons on, about, or adjacent to the locations where services are performed. Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work carried on by CIHA or its separate contractors, or their respective employees, agents, contractors, or tenants. CIHA agrees to cause its employees, agents, separate contractors, and tenants to abide by and fully adhere to all applicable provisions of Federal and Tribal safety laws and regulations.
- 11.28 Training, Certifications, Licenses, and Permits. Contractor hereby represents and warrants that all of its employees, officers, and agents possess the training, certifications, licenses, and permits necessary under applicable law to perform the scope of services under this Contract.
- 11.29 E-Verify. Contractor and any subcontractors shall register and utilize the Department of Homeland security E-Verify employee verification program.
- 11.30 System for Award Management Registration. Contractor and any subcontractors shall register with the U.S. Government System for Award Management (SAM.gov).
- 11.31 Limitation on payments to influence certain federal transactions.
- a. Contractor will strictly comply with the restrictions set out in 31 USC § 1352, which prohibits the expenditure of appropriated funds by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. The prohibition on the use of appropriated funds in Section 11.31 of this Contract does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

- i. Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- ii. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- c. Cost Allowability. Nothing in Section 11 of this Contract is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with 2 CFR 200 Subpart E. Conversely, costs made specifically unallowable by the requirements in this Section will not be made allowable under any of the provisions of 2 CFR 200 Subpart E.

11.32 Procurement of recovered materials (if applicable)

- a. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
- b. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items:
 - i. are not reasonably available in a reasonable period of time;
 - ii. fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or
 - iii. are only available at an unreasonable price.
- c. This Section of this Contract shall apply to items purchased under this Contract where:
 - i. the Contractor purchases in excess of \$10,000 of the item under this Contract; or
 - ii. during the preceding Federal fiscal year, the Contractor:
 - 1. purchased any amount of the items for use under a Contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and
 - 2. purchased a total of in excess of \$10,000 of the item both under and outside that contract.

11.33 Additional federally required orders/directives.

- a. Both parties agree that they will comply with the following laws and directives, where applicable:
 - i. Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
 - ii. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
 - iii. Anti-Drug Abuse Act of 1988 (42 USC 11901 et. seq.).
 - iv. HUD Information Bulletin 909-23 which is the following:
 1. Notice of Assistance Regarding Patent and Copyright Infringement;
 2. Clean Air and Water Certification; and
 3. Energy Policy and Conversation Act.
 - v. That none of the personnel who are employed in the administration of the work required by this Contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.
 - vi. The mention herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable nor is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either part.

11.34 Interest of Members of Congress. No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise there from, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

11.35 Dissemination or Disclosure of Information. No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by CIHA.

