



COQUILLE INDIAN HOUSING AUTHORITY

PROCUREMENT POLICY

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I. GENERAL PROVISIONS

A. Purpose

The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Coquille Indian Housing Authority (CIHA); assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to CIHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and, assure that CIHA purchasing actions are in full compliance with applicable law.

B. Application

This policy applies to all contracts for the procurement of supplies, services, and construction entered into by CIHA; however, nothing in this policy shall prevent CIHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both HUD and non-HUD funds are used for a project, the work to be accomplished may be separately identified by the applicable source of funds and HUD's regulations applied to the work financed by HUD; if it is not feasible to separate funds, then HUD's regulations shall be applied to the total project. The term procurement, as used in this policy, includes both contracts and change orders for construction or services, as well as purchase, lease, or rental of supplies and equipment.

C. Procurement Authority and Administration

- 1. Contracting Officer.** All procurement transactions shall be administered and executed by the Contracting Officer, who shall be the Executive Director or other individual he or she has authorized in writing. The Executive Director shall establish operational procedures to implement this policy. The Executive Director shall enact sanctions for violations of the ethical standards described in Section VI below, consistent with applicable law and CIHA policy.
- 2. Executive Director Duties.** The Executive Director or his/her designee shall ensure that:
 - a. Procurement requirements are subject to an annual review 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 at a minimum the method of procurement chosen, the selection of the contract type, the rationale of selecting or rejecting offers, and the basis for the contract price;

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- c. For procurement other than small purchases, public notice is given of each upcoming procurement at least 10 calendar days before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 calendar days for main construction contracts and 15 calendar days for other contracts is provided for preparation and submission of bids or proposals; and, notice of contract award is made available to the public;
- d. Solicitation procedures are conducted in full compliance with federal standards stated in 2 C.F.R §§ 200.317-326, the Indian preference requirements and methods of procurement in accordance with the applicable NAHASDA regulations, except where such standards have been superseded by Tribal law (see Coquille Tribal Code §160.200(6)(c), Tribal preference requirements), and consistent with Appendix A;
- 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. CIHA complies with applicable HUD or other funding requirements, as well as applicable Tribal law and regulations and other applicable CIHA policies and procedures.

D. Cooperative Purchasing

CIHA may enter into interagency agreements to conduct direct procurement based on economy and efficiency. If used, an interagency 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. CIHA may utilize governmental excess and surplus property programs instead of purchasing new equipment and property if suitable for the purpose of the procurement.

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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 CIHA'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 when 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 Procurement 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 CIHA's computer needs and then allowing the consultant to compete for the subsequent contract for the computers).

II. PROCUREMENT METHODS

A. Selection of Method

CIHA shall choose one of the following procurement methods based on the nature and anticipated dollar value of the total requirement.

B. Small Purchase Procedures

1. **General.** Any procurement not exceeding \$250,000 may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section (except as may be reasonably necessary to comply with Section V of this policy).
2. **Tribal and Indian Preference.** CIHA shall, to the greatest extent feasible, provide preference first to Tribal member-owned economic enterprises and organizations, and then to Indian-owned economic enterprises and Indian organizations in the procurement of small purchases.
3. **Petty Cash Purchases of \$100 or Less.** Small purchases under \$100 which can be satisfied by local sources may be processed through the use of a petty cash account. Such purchases shall be distributed equitably among qualified sources. No quotation is required if CIHA considers the price to be reasonable.

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- 4. Micro Purchases of between \$100 and \$10,000.** 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 (except as may be reasonably necessary to comply with Section V of this policy). To the extent practicable, micro purchases shall be distributed equitably among qualified sources and must be documented by an authorized purchase order or contract.
- 5. Small Purchases of between \$10,000 and \$250,000.**

 - a. Obtaining quotes.** CIHA 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, CIHA 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. CIHA 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.
 - b. Competition.** CIHA 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 CIHA 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 CIHA determines that the delays caused by re-soliciting would cause higher costs or unreasonable delay; or, where CIHA determines and documents that the proposal has a fair and reasonable price.
 - c. Tribal and Indian preference in award.**

 - i. Award based on price.** For small purchases awarded based on price or fixed specifications (i.e. not subject to negotiations), CIHA shall make award to the qualified Tribal member-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 10% higher than the lowest responsive quotation received. If there is no such Tribal member-owned enterprise or organization, CIHA shall make award to the

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qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 5% higher than the lowest responsive quotation received. If no responsive quotation is received from a qualified Tribal member-owned economic enterprise or organization that is within 10% of the lowest responsive quotation from any qualified source, and if no responsive quotation is received from a qualified Indian-owned economic enterprise or organization within 5% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.

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

6. **Blanket Purchase Orders and Agreements.** Blanket Purchase Orders and Agreements may be used for expendable supplies and routine services. For expendable supplies, CIHA shall prepare a list of products with an estimate of the volume or quantity of each product historically purchased in a one-year fiscal period. Quotes shall be obtained using the small purchase procedures set forth above. The maximum total value of a Blanket Purchase Order or Agreement may not exceed \$250,000.

C. Sealed Bidding (Purchases over \$250,000)

1. **Conditions for Use.** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and, the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. 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 publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. An invitation for bids shall be issued including specification of all contractual terms and conditions applicable to the procurement, and must adequately define the items or services for bid in order for the bidder to properly respond. Any amendments to the invitation shall be in writing. If it is necessary to issue an amendment within 7 calendar days of the bid opening, the bid opening shall be postponed until at least 7 calendar days after the

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- issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
- b. **Restricting solicitations.** The invitation may be restricted to qualified Tribal member- and Indian-owned economic enterprises and organizations if CIHA has a reasonable expectation of receiving the required minimum number of bids from them. CIHA shall solicit bids from non-Indians as well as Tribal member- and Indian-owned economic enterprises or organizations if: CIHA decides not to restrict the solicitation; an insufficient number of qualified Tribal member- and Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation; or, a single bid is received but not accepted.
3. **Bid Opening.** Bids shall be opened publicly and in the presence of at least one witness in addition to the Contracting Officer. 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 Tribal member- and Indian-owned economic enterprises and organizations, and three or more qualified Tribal member- and Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive and responsible bid, provided, however, that if a Tribal member-owned enterprise or organization is within 10% of the lowest responsive and responsible bid, award shall be made to that enterprise or organization if that bid is within the maximum total contract price established for the specific project or activity being solicited. If equal low bids are received, award shall be made to the Tribal member-owned enterprise or organization; if equal low bids are received from two or more Tribal member-owned enterprises or organizations, or by two or more Indian-owned enterprises or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided by applicable law. If fewer than three qualified Tribal member- or Indian-owned economic enterprises or organizations submit responsive bids, all bids shall be rejected, and CIHA shall cancel the solicitation and re-solicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. CIHA may accept a single bid received from a responsive and responsible bidder, subject to HUD approval where required, in unusual circumstances, such as if CIHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or CIHA determines that the delay of re-soliciting 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.

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- b. **Unrestricted solicitations.** If the solicitation is not restricted to Tribal member-owned or Indian-owned economic enterprises and organizations, award shall be made to the qualified Tribal member-owned or Indian-owned economic enterprise or organizations with the lowest responsive and responsible bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited and if the bid is no more than “X” higher than the total bid price of the lowest responsive and responsible bid from any qualified bidder, as set out in Appendix A hereto. If equal low bids are received from a Tribal member-owned enterprise or organization and an Indian-owned enterprise or organization, award shall be made to the Tribal member-owned enterprise or organization; if equal low bids are received from two or more Tribal member-owned enterprises or organizations, or by two or more Indian-owned enterprises or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided by applicable law. If no responsive bid by a qualified Tribal member-owned or Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsive, responsible bidder.

- c. **Mistakes in bids.** Correction or withdrawal of inadvertently erroneous bids may be permitted by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. 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 CIHA or fair competition shall be permitted.

- d. **Rejection of bids.** CIHA may reject any or all bids if there is a sound documented reason.

D. Competitive Proposals

- 1. **Conditions for Use.** Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where CIHA 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.** Requests for proposals (RFP) will be publicized, identify all evaluation factors and their relative importance, and be solicited from an adequate number of qualified sources. The RFP may be restricted to qualified Tribal member-owned or Indian-owned economic enterprises and organizations if CIHA has a reasonable expectation of receiving offers from three such entities. CIHA shall solicit

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- proposals from non-Indian as well as Tribal member-owned or Indian-owned economic enterprises and organizations if: an insufficient number of qualified Tribal member-owned or Indian-owned economic enterprises or organizations satisfactorily respond to a restricted RFP or solicitation; 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. CIHA 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 offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to, and advise offerors of, the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. Any technical or price aspect to the RFP shall be supplied to all bidders. 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 responsive and responsible firm whose qualifications, price and other factors considered, are the most advantageous to CIHA, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations restricted to qualified Tribal member-owned or Indian-owned economic enterprises and organizations, if two such entities submit acceptable proposals, award shall be made to the qualified Tribal member-owned or Indian-owned economic enterprise or organization with the best proposal based on the applicable criteria, provided that the price is within the maximum total price established for the specific project or activity. If fewer than two Tribal member-owned or Indian-owned economic enterprises or organizations submits acceptable proposals, CIHA shall reject all proposals and re-solicit without restricting the RFP to qualified Tribal member-owned

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or Indian-owned economic enterprises and organizations. CIHA may accept a sole proposal received, subject to HUD approval where required, in unusual circumstances, such as when CIHA determines that the delays caused by re-soliciting would cause higher costs, or where CIHA determines that the proposal has a fair and reasonable price.

- 5. Rejection of Proposals.** CIHA may reject any or all proposals if there is a sound documented reason.

- 6. Architectural and Engineering Services.** Architectural and Engineering services in excess of the small purchase limitation may be obtained by the competitive proposal method of qualifications-based selection procedures. Sealed bidding shall not be used to obtain architectural and engineering 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 architectural and engineering firms are potential sources.

E. Non-Competitive Proposals

- 1. Conditions for Use.** Procurement shall be conducted competitively to the maximum extent possible. Procurement by non-competitive 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 CIHA, 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. The procurement is for a proprietary product or service or a product or service available from only one source, and the Contracting Officer so certifies in writing;
 - c. After solicitation of a number of sources, competition is determined inadequate; or,
 - d. The funding agency specifically authorizes or has approved the use of non-competitive 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.

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3. **Price Reasonableness.** The reasonableness of the price for all procurement based on non-competitive proposals shall be determined by performing a cost analysis, as described in Section F below.

F. Cost and Price Analysis

1. **General.** A cost or price analysis shall be performed for all procurement actions in excess of the Simplified Acquisition Threshold (at the time of adoption, \$250,000, but may be updated at 2 C.F.R. § 200.188), including contract modifications. The degree of analysis shall depend on the facts surrounding the procurement; as a starting point CIHA will make independent estimates before receiving bids or proposals.
2. **Submission of Cost or Pricing Information.** If the procurement is based on non-competitive proposals, or when only one offer is received, or for other procurement as deemed necessary by CIHA (e.g. when contracting for professional, consulting, or architectural and engineering 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 CIHA to verify the reasonableness of the proposed price, such as a catalog or market price of a commercial product sold in substantial quantities to the general public; or,
 - c. Documentation showing that law or regulation sets the offered price.
3. **Cost Analysis.** Cost analysis shall be performed if an 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; CIHA shall have the right to audit the contractor's books and records pertinent to such costs; and, profit shall be negotiated separately in accordance with 2 C.F.R 200.3243(b). Costs shall be allowable only to the extent that they are consistent with applicable federal cost principles. In establishing profit, CIHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
4. **Price Analysis.** A comparison of prices shall be used in all cases other than those described in Section II(F)(3) above.

G. Cancellation of Solicitations

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

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- b. CIHA can no longer reasonably expect to fund the procurement;
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or,
 - d. CIHA determines that it is in the best interest of CIHA to cancel.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if:
- a. The supplies, services, or construction are no longer required;
 - b. The solicitation did not provide for consideration of all factors of significance to CIHA;
 - c. Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds;
 - d. 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,
 - e. CIHA determines that it is in the best interest of CIHA to cancel.
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 offerors solicited. A notice of cancellation shall be sent to all offerors solicited.

For solicitations that are not restricted to Tribal member-owned or Indian-owned economic enterprises or 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, CIHA shall cancel the solicitation and re-solicit using a request for proposals.

H. Contract Types and Options

1. **Contract Types.** Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of CIHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All contracts 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 CIHA'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

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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 a contract, provided that:
 - a. The option is contained in the solicitation;
 - b. The option is a unilateral right of CIHA;
 - c. The contract states a limit on the additional quantities and the overall term of the contract;
 - d. The options are evaluated as part of the initial competition;
 - e. The contract states the period within which the options may be exercised;
 - f. The options may be exercised only at the price specified in or reasonably determinable from the contract; and,
 - g. The options may be exercised only if determined to be more advantageous to CIHA than conducting a new procurement.

3. **Contract Clauses.** In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations, 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. Termination for convenience
 - b. Termination for default
 - c. Equal Employment Opportunity
 - d. Anti-Kickback Act and Department of Labor Regulations (29 C.F.R. Part 3)
 - e. Davis-Bacon provisions of NAHASDA
 - f. Contract Work Hours and Safety Standards Act
 - g. For Contracts in excess of \$100,000 that employ mechanics or laborers, a provision for compliance with 40 U.S.C. §§ 3702 & 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5
 - h. Reporting requirements

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- i. Patent rights
 - j. Copyrights and rights in data
 - k. Examination of records by CIHA, federal agencies, Comptroller General, or duly appointed staff
 - l. Retention of records for three years after close-out
 - m. Clean air and water
 - n. Energy efficiency standards
 - o. Bid protests and contracts claims
 - p. Value engineering
 - q. Payment of funds to influence certain federal transactions
 - r. For contracts more than the Simplified Acquisition Threshold, provisions addressing administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as deemed appropriate
 - s. Anti-Lobbying Amendments
 - s.t. Domestic preferences for procurements (2 C.F.R. § 200.322)
 - ~~u.~~ Procurement of recovered materials (2 C.F.R. § 200.3232)
- 4. Forms.** If all required clauses are not included on HUD forms (e.g. HUD 5370), CIHA shall attach any additional clauses to the HUD forms used in contract documents. CIHA shall include the contract clauses and solicitation notices for Tribal and Indian preference described in Section V of this policy.

I. Contract Administration

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.

J. Specifications

Specifications shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying CIHA's needs. Specifications shall be reviewed

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prior to 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 when possible. Consideration shall be given to consolidating 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.

- 1. Limitations.** Specification limitations that are inconsistent with applicable law and regulations, including but not limited to the following, shall be avoided:
- a. 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);
 - b. Unnecessary bonding or experience requirements;
 - c. Brand name specifications unless a written determination is made that only the identified item will satisfy CIHA's needs; and,
 - d. Brand name or equal specifications, unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use.

Nothing in this policy shall preempt any applicable State, Tribal or local licensing laws. Specifications shall be scrutinized to ensure that organizational or other conflicts of interest, as defined by Tribal Code and applicable federal laws, do not occur.

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, CIHA 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 CIHA, 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.

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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 or by other federal agencies. If warranted, CIHA may seek suspension or debarment of a contractor under applicable federal or non-federal law. CIHA may also, according to its own established procedures, suspend or debar a contractor as applicable. Documentation showing the contractor is debarred or suspended shall be maintained in the contract file.

C. Bonds

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 (\$250,000), CIHA will apply the following bonding requirements:

1. Each bidder must provide a bid guarantee to CIHA equivalent to 5% of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond from a surety listed by the U. S. Department of the Treasury, certified check, or other negotiable instrument accompanying a bid (which instrument must be acceptable to CIHA, at CIHA’s sole discretion) as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. The successful bidder shall be required to submit one of the following forms of assurance, in accordance with the approved method set forth in the solicitation, within 10 business days after the prescribed contract forms are presented for signature:
 - a. A performance and payment bond for 100% of the total contract price from a surety listed by the U. S. Department of the Treasury; or,
 - b. A cash escrow deposited with CIHA of not less than 20% of the total contract price, subject to reduction at CIHA’s sole discretion, during the warranty period commensurate with potential risk;
 - c. An irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of CIHA, subject to reduction at CIHA’s sole discretion, during the warranty period commensurate with potential risk; or,
 - d. An irrevocable letter of credit for 10% of the total contract price and compliance with the procedures for monitoring and disbursements provided by the contractor, as approved by CIHA.

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IV. APPEALS AND REMEDIES

A. General

It is CIHA's policy to first attempt to resolve all contractual issues informally with the Contracting Officer. When appropriate, CIHA 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 difference. If these informal procedures do not result in a mutually acceptable outcome, then the following formal processes may be used.

B. Bid Protests

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

C. Contract Claims

All claims by a contractor relating to 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 Housing Authority Board of Commissioners.

D. Appeals

- 1. Exhaustion of CIHA Remedies.** A protestor must exhaust all administrative remedies with CIHA before pursuing a protest with HUD. Note that HUD will only consider protests for matters of primarily Federal concern. Violations of law must be referred to local, state, tribal, or federal authority having proper jurisdiction. If a matter is not of primarily federal concern, or is not a violation of law, protests will be referred back to CIHA.
- 2. Informal Appeals Procedure.** For contracts of \$250,000 or less, a bidder/contractor who has a grievance with a bid, request for proposals, or other solicitation, or a procurement decision, must submit a request in writing to meet with the appropriate CIHA Contracting Officer within five (5) days of the decision being grieved. The meeting will be an informal discussion and the CIHA Contracting Officer will attempt to resolve the grievance informally. The decision of the Contracting Officer will be final.

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3. Formal Appeals Procedure. The following appeals procedure shall apply to solicitations/contracts of more than \$250,000.

- a. **Formal Appeal – Step 1.** Any actual or prospective contractor may appeal the solicitation or award of a contract for serious violations of the principles of this Policy by filing an appeal with the appropriate CIHA Contracting Officer. Any appeal against a bid, request for proposals, or other solicitation, or a procurement decision, must be received before the due date for the receipt of bids or proposals, and any appeal against the award of a contract must be received within five (5) calendar days after the unsuccessful bidder/proposer receives notice of the contract award, or the appeal will not be considered. All appeals 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/her discretion, suspend the procurement pending resolution of the appeal if the facts presented so warrant.
- b. **Formal Appeal – Step 2.** If a party receives an adverse decision from the Contracting Officer, that party may appeal to the CIHA Executive Director. Any appeal against the Contracting Officer’s decision must be submitted within 5 (five) calendar days after the unsuccessful bidder/proposer receives notice of the Contracting Officer’s decision, or the appeal will not be considered. All appeals shall be in writing, submitted to the CIHA Executive Director, who shall issue a written decision on the matter. The CIHA Executive Director may, at his/her discretion, suspend the procurement pending resolution of the appeal if the facts presented so warrant. The decision of the CIHA Executive Director is final.

E. Protests Involving Indian Preference

Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures prescribed by the NAHASDA regulations at 24 C.F.R. § 1000.48 - 52.

V. PREFERENCE REQUIREMENTS

A. Small Businesses

1. **Required Efforts.** To the extent consistent with and not superseded by applicable law and regulations, and specifically the Tribal preference requirements set out herein and the Indian preference requirements set out in the NAHASDA regulations at 24 C.F.R. § 1000.48-52, CIHA shall make efforts to ensure that small and minority firms, women’s business enterprises, labor surplus area firms, and individuals located in or owned substantially by persons residing in the area of a CIHA 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;

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- 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, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; 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 1(a) through 1(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 C.F.R. § 121 shall be used unless CIHA 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 C.F.R. § 135.5 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, considered by the U. S. Small Business Administration to be socially or economically disadvantaged, and meeting the definition of small business above.

B. Tribal and Indian Preference Requirements

- 1. **General.** Projects developed and operated with assistance under NAHASDA are subject to Section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts and subcontracts. However, NAHASDA and

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its applicable regulations also provide that “Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under [NAHASDA] that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).” (25 U.S.C. 4111(k)). The Coquille Indian Tribe has adopted Tribal contract preference requirements in its Fiscal Management Ordinance, Coquille Tribal Code, §160.200(64)(eb)(3). Thus, the Tribal preference requirements must be applied first, and only if there is no Tribal contractor who meets those requirements would the Indian preference requirements apply. Preference must be provided in accordance with the methods set forth in NAHASDA and consistent with 2 C.F.R. Part 200. Where Tribal and Indian preference is determined not to be feasible, CIHA shall document the procurement file with the basis for its findings. Tribal and Indian preference applies not only on Coquille Tribal Lands or elsewhere within CIHA’s jurisdiction, but also to contracts with firms that operate outside these areas. Tribal and Indian preference in the solicitation, evaluation, and award process shall be as described above.

2. **Eligibility.** ~~Eligibility for Tribal preference shall be established in accordance with Coquille Tribal Code Section 160.200(6)(e). To be eligible for Tribal preference, a business concern must be 51% or more owned by a Coquille Tribal member.~~ Eligibility for Indian preference shall be established in accordance with procedures consistent with NAHASDA. If CIHA or its prime contractor determines an applicant ineligible for Tribal or for Indian preference, CIHA or the prime contractor shall notify the applicant in writing before contract award, or filling the position, or providing the desired training.

3. **Contract Clauses and Solicitation Notices.**

- a. Solicitations shall include the following information:
- i. A statement of the applicability of Tribal and Indian preference to the solicitation and a time before the due date for offers by which offerors must submit evidence of eligibility for Tribal or Indian preference;
 - ii. Any applicable locally imposed preference requirements properly enacted by the tribal governing body and adopted by CIHA (or advise offeror to contact the tribal governing body to determine any applicable preference requirements);
 - iii. Information as to whether CIHA maintains lists of Tribal- or Indian-owned economic enterprises and Tribal or Indian organizations by trade specialty which are available to contractors and subcontractors for use in meeting Tribal and Indian preference responsibilities;

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- iv. A requirement that offerors provide a statement describing how they will provide Tribal and Indian preference in subcontracting, training and employment, including the number or percentage of Tribal members and Indians to be employed and trained;
 - v. CIHA's description of the information to be submitted on Tribal and Indian preference;
 - vi. The factors that CIHA will use in judging the adequacy of the Tribal or Indian preference information submitted;
 - vii. A statement that failure to submit the required Tribal and 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 CIHA whenever it is not feasible to provide Tribal or Indian preference in subcontracting;
 - ix. For requests for proposals that are not restricted to Tribal member-owned or Indian-owned economic enterprises or organizations, the percentage or number of points set aside for Tribal or Indian preference and the method for allocating these points;
 - x. For requests for proposals that are not restricted to Tribal member-owned or Indian-owned economic enterprises or organizations, a requirement that contractors using a request for proposals to solicit subcontractors reserve **1510% of the available rating points for Tribal preference and 5% for Indian preference in subcontracting, not to be combined,** and the criteria to be used in evaluating subcontractor proposals, with the award to go to the Tribal member-owned economic enterprise or organization over the Indian-owned entity if the points are otherwise the same; 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 Tribal members and other Indians in all positions other than core crew positions.
- b. Solicitations, contracts, and subcontracts shall include the following:
- i. A reference to the applicability of Tribal preference requirements consistent with this policy and Coquille Tribal Code §160.200**(64)(eb)(3)**;
 - ii. The clause implementing Section 7(b) of the Indian Self-Determination and Education Assistance Act in connection with the development or operation of

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CIHA projects in accordance with 24 C.F.R. § 1000.52 as this provision currently exists or is subsequently amended;

- iii. The grounds for termination of a contract or the imposition of penalties for improper subcontracting or false certification as to subcontracting with Tribal member-owned or Indian-owned economic enterprises or organizations; and,
 - iv. Any additional information required because of the nature of the project.
- c. If all required clauses and provisions are not included on form documents (e.g. HUD-5369 and HUD-5370), then CIHA shall attach any additional clauses or provisions to the forms used in solicitations and contract documents.
- 4. Monitoring and Remedies.** CIHA shall monitor the implementation of Tribal and Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action (including cancellation of contracts and assessments of penalties) to ensure compliance.

VI. ETHICS IN PUBLIC CONTRACTING

A. General

CIHA shall adhere to the following code of conduct and shall comply with the limitations imposed by NAHASDA and other applicable law, consistent with 2 C.F.R Part 200.

B. Conflict of Interest

The Coquille Indian Housing Authority prohibits its officers, employees, and agents from participating directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

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

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C. Gratuities, Kickbacks, and Use of Confidential Information

CIHA 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.

D. Prohibition against Contingent Fees

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

E. Consequences for Violating Code of Conduct

Employees, officers, and agents of CIHA 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 CIHA 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 CIHA 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.** CIHA 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.

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APPENDIX A: TRIBAL AND INDIAN PREFERENCE

In accordance with this statement, awards shall be made under **unrestricted sealed bid** solicitations to the lowest responsive bid from a qualified **Tribal member-owned** economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than “X” higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor “X” is determined as follows:

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

In accordance with this statement, awards shall be made under **unrestricted sealed bid** solicitations to the lowest responsive bid from a qualified **Indian -owned** economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than “X” higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor “X” is determined as follows:

| <u>When the lowest responsive and responsible bid is:</u> | <u>X = the lessor of:</u> |
|---|---|
| Less than \$100,000 | 5% of that bid or \$4,500 |
| At least \$100,000 but less than \$200,000 | 4.5% of that bid or \$8,000 |
| At least \$200,000 but less than \$300,000 | 4% of that bid or \$10,500 |
| At least \$300,000 but less than \$400,000 | 3.5% of that bid or \$12,000 |
| At least \$400,000 but less than \$500,000 | 3% of that bid or \$12,500 |
| At least \$500,000 but less than \$1 million | 2.5% of that bid or \$20,000 |
| At least \$1 million but less than \$2 million | 2% of that bid or \$30,000 |
| At least \$2 million but less than \$4 million | 1.5% of that bid or \$40,000 |
| At least \$4 million but less than \$7 million | 1% of that bid or \$52,500 |
| \$7 million or more | .5% of the lowest responsive bid with no dollar limit |