Use one of these forms for each telephone solicitation made and retain in TDHE's files. The number required will be determined by policy, but at least two responsive responsible contractors are required.

OUTLINE OF
REQUIRED ITEMS TO BE COVERED
DURING TELEPHONE SOLICITATION FOR SERVICES
OR OTHER REQUEST FOR PROPOSALS (RFPs)
THAT ARE NOT JUST PRICE BASED
(Small Purchase less than $250,000)
Fill out one copy of this form for each firm contacted.

IDENTIFY SERVICES OR GOODS BEING SOUGHT: _____
NAME OF TDHE PERSON MAKING CALL: _____
NAME OF FIRM CONTACTED: _____
FIRM'S TELEPHONE NUMBER AND FAX: _____
DATE OF CALL: _____

Each firm contacted should be provided the same information and asked the same questions.

1. *The TDHE is soliciting request for proposals for* _____ *under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because we are following this process, we will not be able to accept proposals that are more than $250,000.*

2. *We are making this solicitation by telephone. We will be asking you a series of questions and based upon all the responses to these questions, the TDHE will make its decision. We will not be accepting written proposals, however if you would like to provide background information regarding education, experience and references, this information must be received by the TDHE by fax or delivery to the TDHE within two days.*

   Is the firm interested in responding to this request for proposals?

   _____ *(If yes, then continue with next question)*

   _____ *(If no, then proceed no further)*

   Are you authorized to speak on behalf of the firm? _____
   *If not, I will need to speak to someone who is authorized. [**FILL IN:** Name of authorized person responding to this request for proposals:* _____*]*

   [Note: If someone new gets on the phone, start back at paragraph 1 of this form.]

3 *The scope of the work is as follows: [give description of the work, including project number, with sufficient specificity]* _____
_____
_____
_____
_____
_____
_____
_____

4. *I need to read to you the list of rating criteria which we will use to evaluate all proposals.*
_____ *up to* _____ *pts.*

_____	up to	_____	pts.
_____	up to	_____	pts.
_____	up to	_____	pts.
_____	up to	_____	pts.
Indian Preference for Indian Owned Firms		15	pts.
Evaluation of Indian Preference in Training, Employment and Contracting	up to	10	pts.
	Total	100	pts.

5. Indian preference will be given in making this award. Any firm seeking such preference must provide evidence that it is not less than 51% Indian owned and controlled. Those that satisfy this requirement will be given 15 extra points (15% of all the points available.) Do you seek this preference? _____. If so, we will send or fax to you today a prequalification statement that you must fill out and return within two days of your receipt. We will then review it and determine if you are eligible for preference. If one has been submitted to us in the last 6 months, then fax or mail to us today a written statement identifying changes in your organization and we will determine if you are eligible for preference.

IF A PREFERENCE PREQUALIFICATION STATEMENT IS NEEDED, RECORD DATE AND FAX NUMBER WHERE FAXED: _____ OR, DATE AND ADDRESS WHERE MAILED: _____

[INDIAN PREFERENCE: ☐ granted, add 15 points to total ☐ not granted]

6. All proposals must contain a commitment to provide preference in 1) subcontracting, 2) training, and 3) employment. What methods will you use to provide such preferences?

1) subcontracting: _____

2) employment: _____

3) training: _____

[EMPLOYMENT/TRAINING/CONTRACTING PREFERENCE: _____ points awarded (out of 10), then add to total]

Only read if no method is given: If you believe it is infeasible to provide Indian preference in subcontracting, you must certify to us now the reasons why. This explanation must also be provided in writing to the TDHE within 3 days, but an award may be made prior to receipt of this certification.

7. In order for us to make a decision, we also need to ask you the following questions:

a) _____?

Notes on response given: _____

b) _____?

Notes on response given: _____

c) _____?

Notes on response given: _____
_____
_____

d) _____?

Notes on response given: _____
_____
_____

e) _____?

Notes on response given: _____
_____
_____

f) _____?

Notes on response given: _____
_____
_____

8. *All proposals must commit to remaining open for thirty (30) days. Please confirm that you agree.*
_____

9. *If awarded, you agree that you shall execute a TDHE provided contract, within the time later designated by the TDHE, and to be bound by all terms and conditions set forth therein, including but not limited to assurance of performance, completion dates, prevailing wage rates, warranties, other federal requirements, and other terms and provisions as set forth therein.*

10. *The TDHE reserves the right to reject any and all proposals.*

11. *And lastly, the TDHE is required to advise you that it has no list of local subcontractors.*

12. *We will let you know our decision on the award.*

13. *Thank you.*

REQUEST FOR LUMP SUM FIXED-PRICE QUOTATIONS
BY FAX OR MAIL

SOLICITATION FOR LUMP SUM FIXED-PRICE QUOTATIONS BASED ON PRICE ONLY
(Small Purchases less than $250,000)
Date of this Solicitation:_____

IDENTIFY SERVICES BEING SOUGHT: _____
FIRM CONTACTED: _____
ADDRESS: _____
FAX NO.: _____
DATE REQUEST FOR QUOTATION FAXED BY TDHE: _____

1. *The TDHE is soliciting requests for lump sum fixed-price quotations for _____ _____ _____ _____under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because the TDHE is following this process, we will not be able to accept quotations that are more than $250,000.*

2. *Quotations are invited from non-Indian as well as Indian-owned economic enterprises or organizations. Indian preference will be given in this award as set forth herein.*

3. *We are making this solicitation by fax or mail. All quotations must be submitted to the TDHE in writing and can be faxed or mailed but must be received at the TDHE's office by* ***5:00 p.m. on _ _____, 20___****. The TDHE's fax number is _____ and the mailing address is _____ _____. For all quotations that are faxed to the TDHE, you are required to make a follow-up call to the TDHE at _____ to confirm that the faxed quotation has been received by the TDHE.*

4. *The scope of the work is as set forth on Appendix A Scope of Work (consisting of _____ pages) attached to this Solicitation. Anyone submitting a quotation for this work is required to visit the job site(s) prior to bidding to ascertain the nature and location of work and to satisfy itself as to the general and local conditions which can affect the work and to independently verify for itself all measurements pertaining to the project. Site visits must be scheduled by appointment only and must be scheduled at least two (2) working days prior to visit by contacting _____ at the Housing TDHE office at_____.*

5. *Indian Preference. Any firm seeking Indian preference in this award must provide evidence that it is not less than 51% Indian owned and controlled. Do you seek this preference? _____. If so, please contact us immediately so that we can fax you a prequalification statement that you must fill out and return within two days of your receipt. We will than review it and determine if you are eligible for preference. If a prequalification form has been submitted to us in the last six months, then fax or mail to us today a written statement identifying changes in your organization and we will determine if you are eligible for preference.*

6. *Award. The contract will only be awarded to a responsive and responsible individual or firm. The contract will be awarded to a qualified Indian enterprise submitting the lowest responsive quotation if such quotation is within budgeting limits established for this solicitation and is within ten percent (10%) of the lowest responsive quotation from any qualified individual or firm..*

   If no responsive quotation by a qualified Indian enterprise is within the above-stated limits, then award will be made to the individual or firm with the lowest responsive quotation.

7. *All quotations must contain a commitment to provide Indian preference in 1) subcontracting, 2) training, and 3) employment, and must contain a statement describing the methods that will be used to provide such preferences. This statement is part of Appendix C Lump Sum Fixed-Price Quotation, which is the prescribed form for submission of quotations. This statement will be evaluated as part of the submitted quotation, and any quotation failing to contain such preference statement or failing to adequately address such preference requirements shall be deemed non-responsive.*

   If you believe it is infeasible to provide Indian preference in subcontracting, training or employment, you must include in your quotation a certification as to the reasons why.

8. *Appendix B is the form of Contract which contains terms and provisions of the contract agreement of the TDHE and the individual or firm selected for this work. By submitting a quotation, you hereby agree that if selected, you shall deliver to the TDHE, within the time later designated by the TDHE, a properly executed Appendix B and to be bound by all terms and conditions set forth therein, including but not limited to assurance of performance, completion dates, prevailing wage rates, warranties, other federal requirements, and other terms and provisions as set forth therein. Appendix B should be consulted for all such terms and conditions, and by this reference is made a part of this Solicitation.*

9. *All quotations must commit to remaining open for at least 45 days.*

10. *The selected contractor will be responsible for paying all Tribal license fees and taxes, as well as permits that may be required, if any.*

11. *All quotations must be submitted using Appendix C "Lump Sum Fixed-Price Quotation", attached hereto. No other form is acceptable. Attachments to Appendix C are permitted if needed to provide complete information. This Solicitation requires a quotation for all work described in the Scope of Work Appendix A.*

12. *The successful individual or firm on this solicitation must comply with the Tribe's TERO Ordinance, including any licensing requirements, except Tribal minimum wage rates shall not apply. A copy of the Tribe's TERO Ordinance may be obtained from the Indian Tribal Office, Tele: _____.*

13. *This solicitation does not commit the TDHE to award a contract or to pay any costs incurred in the preparation of quotations or the procurement of supplies. The TDHE reserves the right to reject any and all quotations or to re-solicit when it is deemed by the TDHE to be in its best interests to do so.*

14. *If there are any questions, please contact _____ at _____. The TDHE will let you know the decision on the awards.*

DATE PREPARED BY TDHE: _____

PREPARED BY: _____

TITLE: _____

REQUEST FOR PROPOSALS
BY FAX OR MAIL
TDHE
SOLICITATION FOR SERVICES OR OTHER REQUESTS
FOR PROPOSALS THAT ARE NOT JUST PRICE BASED
(Small Purchases of $250,000 or less)

IDENTIFY SERVICES BEING SOUGHT: _____
FIRM CONTACTED: _____
ADDRESS: _____
FAX NO.: _____
DATE REQUEST FOR PROPOSAL FAXED: _____

1. The TDHE is soliciting requests for proposals for _____ *under its small purchase procedures. This is a more informal and simplified process and will help us to expedite our selection. Because we are following this process, we will not be able to accept proposals that are more than $250,000.*

.

2. We are making this solicitation by fax or mail. All proposals must be submitted to the TDHE in writing and can be faxed or mailed but must be received at the TDHE's office by 5:00 p.m. on ,_____, 20__. The TDHE's fax number is _____ *and the mailing address is:*

_____

3. The scope of the work is as follows: _____

_____

_____

_____

4. The following is the list of rating criteria which will be used to evaluate all proposals:

_____*up to* _____*pts.*
_____*up to* _____*pts.*
_____*up to* _____*pts.*
_____*up to* _____*pts.*
_____*up to* _____*pts.*
Evaluation of Indian Preference in Training, Employment and Contracting _____*up to* _____*10 pts.*
Indian Preference for Indian Owned Firms _____ *15 pts.*
Total 100 pts.

5. Indian preference will be given in making this award. Any firm seeking such preference must provide evidence that it is not less than 51% Indian owned and controlled. Those that satisfy this requirement will be given 15 extra points (15% of all the points available). Do you seek this preference?___ . If so, please contact us immediately so that we can fax you a prequalification statement that you must fill out and return within two days of your receipt. We will than review it and determine if you are eligible for reference. If one has been submitted to us in the last six months, then fax or mail to us today a written statement identifying changes in your organization and will determine if you are eligible for preference.

6. All proposals must contain a commitment to provide preference in 1) subcontracting, 2) training, and 3) employment, and must contain a statement describing the methods that will be used to provide such preferences. This statement will be evaluated as part of the submitted proposal, and up to 10 points of all the points available will be set aside for evaluation of this statement.

If you believe it is infeasible to provide Indian preference in subcontracting, training or employment, you must include in you proposal a certification as to the reasons why.

7. [OPTIONAL FOR PROFESSIONAL SERVICES] All proposals must also include the following information:

a) The name and address of the individual or the firm applying. For firms, the key personnel for this work should be identified.

b) For each partner and associate of the firm, the name, certifications, licenses, relevant education and experience and their respective dates.

c) The names, addresses and telephone numbers of at least 3 references, preferably tribes, tribal housing authorities or other tribal entities.

d) A description of experience which is pertinent to the scope of work described above. In particular, experience working with tribes and tribal housing authorities should be emphasized.

e) The hourly rates charged for each member of the firm.

8. All proposals must commit to remaining open for at least 30 days.

9. This request for proposals does not contemplate any subcontracts, except that an applicant may associate local counsel, as needed. All applicants shall provide with the application the name, address and relevant experience of local counsel, and proof that local counsel qualifies for Indian preference, if applicable.

10. In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, the Authority will make best efforts, consistent with federal and tribal laws and regulations (including Section 7(b) of the Indian Self Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance and to give qualified business concerns the contracting opportunities generated by Section 3 covered assistance.

11. The TDHE reserves the right to reject any and all proposals or to re-solicit when it is deemed by the TDHE to be in its best interests to do so.

12. If there are any questions, please contact _____
at _____.
The TDHE will let you know the decision on the awards. If a written contract form is utilized, it shall be prepared by the Housing TDHE and its attorney. Certain terms and conditions may be required in the contract.

DATE: _____

PREPARE BY: _____

TITLE: _____

Request for Proposals for Ten Manufactured Houses
[TDHE Name] [date]

Deadline from Proposal: 5:00 pm, _____, 200__ at [TDHE] office at [address].

[TDHE] the Owner, requests written lump-sum, fixed price proposals to design, build and install ten (10) three-bedroom manufactured houses, each consisting of approximately 1100 square feet. Proposals shall contain two (2) different unit designs, which if selected each of the designs will be used for five units.

Scope of Work

The Owner is seeking proposals from manufactured housing companies for ten (10) moderately sized (approx. 1100 sq. ft.) three bedroom manufactured housing units. One of the ten units shall meet the Owner's requirements for a disabled accessible unit. The work shall cover the manufacture of the unit, delivery and set up at sites selected by the Owner on the _____ Reservation in _____.

Set up shall include the mating, leveling and trimming of each unit.

The Owner will be responsible for the design, construction and cost of the foundations for the units. The foundations shall meet the Owner's specifications. .

The Owner shall be responsible for hooking up water, sewer and electrical lines to each unit and the related costs. However, this work does not have to be completed by the Owner prior to delivery or installation of the units by the Contractor.

The Owner shall be responsible for installation of one (1) access ramp to the disabled accessible unit.

Designs

Proposers shall include in the Proposals two (2) different designs. The Proposal has to include four (4) different colors for the exteriors of the units and four different colors for the interiors of the units and the Owner will have the option of selecting any combination of these colors for each of the ten units.

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Designs and Specifications

The design of the houses proposed should generally conform to the attached suggested floor plan (Attachment A) and realignment and modifications is permitted. The Owner understands that designs conforming to the Proposer's standard products are likely to be submitted.

The Owner has prepared the attached Suggested Specifications and Materials Checklist (Attachment B). Proposals submitted must include this form with those Owner's specifications and materials that Proposers intend to use checked off by the individual Proposers.

All Proposals shall contain a single disabled accessible house that minimally contains those Owner's requirements attached (Attachment C).

Proposal

The Owner has publicly advertised the Requests for Proposals from manufactured housing companies and distributors. All Proposals must be submitted along with any other additional materials it wishes the Owner to consider, the information and attachments required by this form. Proposals must be submitted in person or by mail by 5:00 pm, _____, 200__ at either [mailing address] or the [TDHE] offices at [physical address]. Faxed proposals will be considered, however, the risk of mis-transmission, omitted pages and errors in handling at the Owners office shall lie solely with the Contractor when proposals are faxed. Any proposal submitted must state that it will remain open for sixty days. The Owner reserves the right to reject any and all proposals.

Proposals may include whatever material the Contractors wish except they must include the following items at a minimum:

1. Name and address of entity submitting Proposal as well as who is to manufacture the houses and identification of key personnel who will actually manage the work;

2. Names of each partner and owner and all relevant licenses and certifications;

3. A full description of any associations with other firms including dealership agreements;

4. Names, addresses and telephone numbers of at least three references (preferably tribes, tribal housing authorities or other tribal entities);

5. Lists of sales to Indian or public housing agencies within the last two years if any (please additionally provide contact names and telephone numbers);

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6. Disclosure of any claims, lawsuits or disputes over work or services previously done in the past five years or currently being performed;

7. A proposed lump sum, fixed price for the ten units and all work to be provided and the statement that the proposal may be accepted any time up to sixty days of its submission.

8. Proof of eligibility for Indian preference (if preference is sought);

9. A statement detailing Indian employment and training opportunities and a plan to provide Indian preference, as well as the number and percentage of both local Indians and other Indians that are anticipated to be employed and trained;

10. Drawings or illustrations of the units and floor plans, including the handicapped unit;

11. A completed Owner's Suggested Specifications and Materials Checklist;

12. Warranties to be provided:

13. Previous Participation Certificate; and

14. Non-collusive Affidavit.

Your summary of the specifications and materials contained in the houses you propose to deliver including the disabled accessible unit.

Indian Preference

The Owner will provide a preference to Indian applicants who are genuinely Indian owned and controlled. Fifteen points of the available rating points are set aside for Indian firms. Firms or individuals seeking such preference must submit evidence of more than 50% Indian ownership and control on or before the submission deadline. A preference application may be obtained from the Owner.

Selection Process

The Owner reserves the right to interview some or all of the parties submitting proposals either in person or by telephone. Selection by the Owner will be based on an evaluation of all responsive and responsible proposals using the following point system as follows:

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1.	DESIGN (Maximum 35 points)	
	A. Quality of Layout and Design	0 - 15
	B. Maintenance/Durability (Interior & Exterior)	0 - 5
	C. Energy Efficiency	0 - 5
	D. Level of Conformance to Owners proposed Specifications	0 - 10
2.	QUALIFICATIONS (Maximum 25 points)	
	A. Experience and Reputation of Contractor	0 - 10
	B. Ability to Complete Project on timely basis	0 - 5
	C. Ability to work effectively with Owner	0 - 10
3.	INDIAN PREFERENCE (Maximum 25 points)	
	A. Indian Ownership and Control Contracting Company	15
	B. Plan for hiring and training local and Tribal Member Indians	0 - 10
4.	DEVELOPER'S/CONTRACTOR'S PRICE (Maximum 15points)	
	A. Price Related to Product Provided	0 - 15
	Total Points Available	0 - 100

The Owner may reject any and all proposals.

Contract

The Contract that will be used and its terms will be mutually agreed except that all terms and conditions of this Request for Proposal, and the funding requirement of the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture must be complied with. Furthermore, the Contract shall contain warranties mutually agreed upon.

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This Request for Proposal is issued this ____ day of _____, 200___.

[TDHE], the Owner

_____
Name

_____
Title

Attachment A -- Owner's Floor Plan
Attachment B -- Owner's Suggested Specifications and Materials Checklist
Attachment C – Owner's Disabled Accessible Unit Requirements

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OWNER SUGGESTED SPECIFICATIONS
AND MATERIALS

The **[TDHE]** is accepting bids for the construction, delivery and set-up of ____ (___) moderately sized, _____ bedroom (approx. _____ square feet) modular/doublewide manufactured units.

Proposer/Contractor will check-off which of the following components they will include in their proposal:

___ Steel I-Beam frame with crown reduction bracing

___ 2"x 6" perimeter floor joists

___ 2"x 6" cantilever ladder assembly

___ 2"x 6" engineered wall studs

___ 2"x 6" transverse floor joists, #2 SBF pine set 16" on centers

___ 2" x 3" finger jointed mate wall studs

___ 2"x 6" headers over all windows and doors

___ Engineered roof trusses with at least 3/12 pitch l, 24" o/c

___ 5/8" oriented strand board sub floor

___ 7/16" oriented strand board roof decking

___ 7/16" oriented strand board exterior sheathing

___ ¼" underlayment (BBCC luan)

___ 25 year asphalt/fiberglass shingles, indicate T-LOC or 3 tab

___ ½" High strength gypsum ceiling board, textured

___ 5/16" vinyl-covered gypsum interior

___ Exterior doors to have wood rails and stiles with extra backing at latches

___ R-38 roof insulation

___ R-14 floor insulation

___ R-19 roll batt wall insulation

___ 200 amp electrical service with circuit breakers

___ Solid copper Romex electrical wiring

___ 40 gallon electric water heater

___ Two weather-proof exterior outlets

___ A door bell at main entry

___ Glass covered light fixtures

___ Electric range

___ 30" fully vented to exterior range hood

___ Double door refrigerator

___ Washing machine

___ Electric dryer

___ Double basin kitchen sink

___ PEX system hot and cold water supply

___ Whole house main water shut-off valve

___ Secondary water shut-offs throughout home

___ Porcelain bathroom sinks

___ One-piece 60" fiberglass bathtubs

___ If offered, showers will be one-piece fiberglass with glass doors

___ Two exterior frost-proof faucets

___ Schedule 40 ABS drain and waste system

___ Electric furnace

___ Thermostat with sub base, prep for A/C

___ Perimeter heat ducts

___ Insulated aluminum heat-duct trunk lines

___ Windows to be double-hung, vinyl clad

___ Windows to be insulated glass

___ Windows to meet access and egress, 5.7 sq. ft. in all sleeping areas

___ Both upper and lower window sashes to be easily removable

___ Smoke detectors to be interconnected, installed in each bedroom

___ Solid oak cabinet doors and drawer fronts

___ Kitchen cabinet stiles and rails to be solid oak

___ Drawers to four-sided plywood construction

___ Drawers will have steel guides and nylon rollers

___ Interior doors to be six-panel style

___ Interior door latches to be lockable in bedrooms and bathrooms

___ White mini-blinds on all windows

___ Linoleum to be installed in bathrooms, utility room, kitchen and foyer area

___ 100% continuous filament stain-resistant nylon carpet with ½" Redbond carpet padding in all other areas

___ 6" metal fascia with 2" x 6" backing

___ Roof dormer over entry door

___ Screen/storm doors for each exterior door

___ Limited lifetime warranty on vinyl siding

Proposer/Contracor: _____

Signature: _____

Date: _____

REQUEST FOR PROPOSALS FOR ____ MODULAR, FACTORY BUILT HOUSES
[TDHE] [date]

The _____ (the Owner) request written lump-sum, fixed price proposals to design, build, deliver and install _____ (__) modular, factory built houses, each consisting of approximately _____ square feet, including ___ (__) three bedroom houses and ___ (__) four bedroom houses, which each meet UBC standards. Proposals shall contain three (3) different unit designs, which if selected, each of the designs may be used for several units.

Scope of Work

The Owner is seeking proposals from modular, factory built housing companies or their dealers for _____ (__) moderately sized (approx. _____ sq. ft.) modular, factory built, UBC compliant housing units. ___ (__) of the units shall be three bedroom houses and ____ (__) of the units shall be four bedroom houses. ____ of the units shall meet the Owner's requirement for a disabled-accessible units and ___ units should be constructed for disabled-accessible renovation in order to meet the federal requirements for a disabled-accessible unit. The work shall cover the manufacture of the unit, delivery and set up at sites selected by the Owner on the _____ Reservation in _____.

Set up shall include the mating, leveling, and trimming of each unit. (Foundation shall be constructed by the Owner to meet the various designs selected for each site.)

The Owner will be responsible for the design, construction, and cost of the foundations for the units. The foundations shall meet the Owner's specifications.

The Owner shall be responsible for hooking up water, sewer, and electrical lines to each unit and the related costs. However, this work does not have to be completed by the Owner prior to delivery or installation of the units by the Contractor.

Designs and Specifications

Proposals shall include three (3) different designs for each bedroom size. The Proposal has to include four (4) different colors for the exteriors of the units and four different colors for the interiors of the units and the Owner will have the option of selecting any combination of these colors for each of the _____ units.

The Owner has prepared the attached Suggested Specifications and Materials. Proposals submitted must include this form with those Owner's specifications and materials that Proposers intend to use checked off by the individual Proposers.

All proposals shall contain _____ disabled-accessible units that meet federal requirements.

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Contract and Project Requirements

Within ten (10) days of award, Seller shall execute the attached contract form which contains additional obligations and requirements that apply to this Project which are incorporated herein by reference. Davis-Bacon wage requirements shall apply. Federal funds are being used to fund this Project. All applicable federal laws shall apply including but not limited to the provisions of the Native American Housing Assistance and Self-Determination Act (NAHASDA) 25 U.S.C. §4101, et seq.

Proposal

The Owner has publicly advertised the Requests for Proposals from modular, factory built housing companies and distributors. All Proposals must be submitted along with any other additional materials the Proposer wishes the Owner to consider, the information and attachments required by this form. **Proposals must be submitted in person or by mail by 4:30 pm, _____ to _____, at _____.** Faxed proposals will not be considered. Any proposal submitted must state that it will remain open for sixty days. The Owner reserves the right to reject any and all proposals.

Proposals may include whatever material the Proposers wish except they must include the following items at a minimum:

1. Name and address of entity submitting Proposal as well as who is to manufacture the houses and identification of key personnel who will actually manage the work;

2. Names of each partner and owner and all relevant licenses and certifications;

3. A full description of any associations with other firms including dealership agreements;

4. Names, addresses and telephone numbers of at least three references (preferably tribes, tribal housing authorities or other tribal entities);

5. Lists of sales to Indian or public housing agencies within the last two years if any (please additionally provide contact names and telephone numbers);

6. Disclosure of any claims, lawsuits or disputes over work or services previously done in the past five years or currently being performed;

7. A proposed lump sum, fixed price for the _____ units and all work to be provided and the statement that the proposal may be accepted any time up to sixty days of its submission.

8. Proof of eligibility for Indian preference (if preference is sought);

9. A statement detailing Indian employment and training opportunities and a plan to provide Indian preference, as well as the number and percentage of both local Indians and other Indians that are anticipated to be employed and trained;

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10. Drawings or illustrations of the units and floor plans, including the disabled accessible unit;

11. A completed Owner's Suggested Specifications and Materials checklist;

12. Proposer's summary of the specifications and materials contained in the houses;

13. Warranties as prescribed by Owner to be provided;

14. Previous Participation Certificate; and

15. Non-collusive Affidavit.

Indian Preference and Section 3

The Owner will provide a preference to Indian applicants who are genuinely Indian owned and controlled. Fifteen points of the available rating points are set aside for Indian firms. Firms or individuals seeking such preference must submit evidence of more than 50% Indian ownership and control on or before the submission deadline. A preference application may be obtained from the Owner.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, the Owner will make best efforts, consistent with federal and tribal laws and regulations (including Section 7(b) of the Indian Self Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by Section 3 covered assistance and to give qualified business concerns the contracting opportunities generated by Section 3 covered assistance.

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Selection Process

The Owner reserves the right to interview some or all of the parties submitting proposals either in person or by telephone. Selection by the Owner will be based on an evaluation of all responsive and responsible proposals using the following point system as follows:

1.	DESIGN (Maximum 35 points)	
	A. Quality of Layout and Design	0 - 15
	B. Maintenance/Durability (Interior & Exterior)	0 - 5
	C. Energy Efficiency	0 - 5
	D. Level of Conformance to Owners proposed Specifications	0 - 10
2.	QUALIFICATIONS (Maximum 25 points)	
	A. Experience and Reputation of Contractor and Manufacturer	0 - 10
	B. Ability of Contractor and Manufacturer to Complete Project on timely basis	0 - 5
	C. Ability of Contractor and Manufacturer to work effectively with Owner	0 – 10
3.	INDIAN PREFERENCE (Maximum 25 points)	
	A. Indian Ownership and Control of Contractor and Manufacturer	15
	B. Contractor and Manufacturer Plan for hiring and training Indians	0 - 10
4.	CONTRACTOR'S PRICE (Maximum 15points)	
	A. Price Related to Product Provided	0 - 15
	Total Points Available	0 - 100

Contact

For questions, contact _____. All questions must be submitted in writing and received by the Owner no later than _____, to allow sufficient time for a response.

This Request for Proposal is issued this _____ day of _____.

[TDHE]

_____

[Name]
[Title]

Attachment - Owner's Suggested Specifications and Materials

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OWNER SUGGESTED SPECIFICATIONS
AND MATERIALS

The **[TDHE]** is accepting bids for the construction, delivery and set-up of ____ (___) moderately sized, _____ bedroom (approx. _____ square feet) modular/doublewide manufactured units.

Proposer/Contractor will check-off which of the following components they will include in their proposal:

___ Steel I-Beam frame with crown reduction bracing

___ 2"x 6" perimeter floor joists

___ 2"x 6" cantilever ladder assembly

___ 2"x 6" engineered wall studs

___ 2"x 6" transverse floor joists, #2 SBF pine set 16" on centers

___ 2" x 3" finger jointed mate wall studs

___ 2"x 6" headers over all windows and doors

___ Engineered roof trusses with at least 3/12 pitch l, 24" o/c

___ 5/8" oriented strand board sub floor

___ 7/16" oriented strand board roof decking

___ 7/16" oriented strand board exterior sheathing

___ ¼" underlayment (BBCC luan)

___ 25 year asphalt/fiberglass shingles, indicate T-LOC or 3 tab

___ ½" High strength gypsum ceiling board, textured

___ 5/16" vinyl-covered gypsum interior

___ Exterior doors to have wood rails and stiles with extra backing at latches

___ R-38 roof insulation

___ R-14 floor insulation

___ R-19 roll batt wall insulation

___ 200 amp electrical service with circuit breakers

___ Solid copper Romex electrical wiring

___ 40 gallon electric water heater

___ Two weather-proof exterior outlets

___ A door bell at main entry

___ Glass covered light fixtures

___ Electric range

___ 30" fully vented to exterior range hood

___ Double door refrigerator

___ Washing machine

___ Electric dryer

___ Double basin kitchen sink

___ PEX system hot and cold water supply

___ Whole house main water shut-off valve

___ Secondary water shut-offs throughout home

___ Porcelain bathroom sinks

___ One-piece 60" fiberglass bathtubs

___ If offered, showers will be one-piece fiberglass with glass doors

___ Two exterior frost-proof faucets

___ Schedule 40 ABS drain and waste system

___ Electric furnace

___ Thermostat with sub base, prep for A/C

___ Perimeter heat ducts

___ Insulated aluminum heat-duct trunk lines

___ Windows to be double-hung, vinyl clad

___ Windows to be insulated glass

___ Windows to meet access and egress, 5.7 sq. ft. in all sleeping areas

___ Both upper and lower window sashes to be easily removable

___ Smoke detectors to be interconnected, installed in each bedroom

___ Solid oak cabinet doors and drawer fronts

___ Kitchen cabinet stiles and rails to be solid oak

___ Drawers to four-sided plywood construction

___ Drawers will have steel guides and nylon rollers

___ Interior doors to be six-panel style

___ Interior door latches to be lockable in bedrooms and bathrooms

___ White mini-blinds on all windows

___ Linoleum to be installed in bathrooms, utility room, kitchen and foyer area

___ 100% continuous filament stain-resistant nylon carpet with ½" Redbond carpet padding in all other areas

___ 6" metal fascia with 2" x 6" backing

___ Roof dormer over entry door

___ Screen/storm doors for each exterior door

___ Limited lifetime warranty on vinyl siding

Proposer/Contracor: _____

Signature: _____

Date: _____

PROCUREMENT POLICY

IHBG and ICDBG Programs

(Note: This is a model policy that may be used by Tribes and Tribally Designated Housing Entities (TDHE's) and is limited to the Indian Housing Block Grant Program (IHBG), the Indian Community Development Block Grant Program (ICDBG), and their implementing rules, regulations and statutes. If a tribe or TDHE administers any other programs other than the IHBG or ICDBG program, this model policy may be amended to include any procurement policy requirements specifically applicable to another program. But, the TDHE/TRIBE should ensure that the policy remains in compliance with the Native American Housing Assistance and Self-Determination Act (NAHASDA) and any other applicable federal, state, local, or tribal laws or regulations.)

Established for the _____**Name of TDHE/Tribe**_____by Board/Council action on ___**Date**___. The effective date of this Statement is _____**Date**_____.

This Statement of Procurement Policy complies with the Native American Housing Assistance and Self Determination Act of 1996, as amended, and the implementing regulations at 24 CFR 1000, 24 CFR 1003, and the procurement standards of 2 CFR 200.

I. General Provisions

A. Purpose

The purpose of this Statement of Procurement Policy is to: (1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the TDHE/Tribe; (2) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the TDHE/Tribe; (3) promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and (4) assure that TDHE/Tribe purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and tribal laws.

B. Application

Per 2 CFR 200.318(a), the non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. Therefore, this Statement of Procurement Policy (Statement) applies to all contracts for the procurement of supplies, services, and construction entered into by the TDHE/Tribe after the effective date of this Statement. It shall apply to every expenditure of funds by the TDHE/Tribe

for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the TDHE/Tribe from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Statement must be applied to the work financed by HUD; if it is not possible to separate the funds, the provisions of this Statement shall be applied to the total project.

The term "procurement," as used in this Statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of materials, supplies and equipment.

C. Procurement Authority and Administration

1. Contracting Officer. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director (Tribal Administrator) or other individual he or she has delegated in writing, or such other individual specified by the Board/Council. The Executive Director (Tribal Administrator) shall issue operational procedures to implement this Statement. The Executive Director (Tribal Administrator) shall also establish a system of sanctions for violations of the ethical standards described in in this Statement.

2. Executive Director (Tribal Administrator) Duties. The Executive Director (Tribal Administrator) or his/her designee shall ensure that:

    a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. The annual plan should be completed by ___Date___ of each year;

    b. Procurements and modifications are in writing, clearly specifying the desired supplies, services, or construction activity, and are supported by sufficient documentation, regarding the history of the procurement, including as a minimum the rational for the procurement method chosen, the contract type, the rationale for selecting or rejecting offers, and for procurements in excess of the Simplified Acquisition Threshold, a price or cost analysis supporting the basis for the contract price;

    c. For procurements other than small purchases, public notice is given of each upcoming procurement before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of _____ days for main construction contracts and _____ 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 CFR 200.320 and the Indian preference requirements at 24 CFR 1000.52;

e. An independent cost estimate is prepared before formal solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;

f. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted;

g. A contract administration system is maintained to insure that contractors perform in accordance with their contracts, which provides for the proper inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

D. Cooperative Purchasing

The TDHE/Tribe may enter into State or tribal inter-governmental agreements to purchase or use common goods and services. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on fostering greater economy and efficiency. If used, the inter-governmental 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. TDHE/Tribe is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

E. Specifications and Scopes of Work

1. **General**. All specifications and scopes of work shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the TDHE/Tribe needs. Specifications and scopes of work shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section V below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

2. **Limitations**. The following specification and scope of work limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection

factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the TDHE/Tribe needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State, tribal, or local licensing laws. Specifications and scopes of work shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the TDHE/Tribe computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

F. Assistance to Small and Minority Businesses

1. **Required Effort**. The TDHE/Tribe must make good faith efforts to ensure those small businesses and minority-owned businesses, women's business enterprises, and individuals or firms located within or owned in substantial part by persons residing in the area of a TDHE/Tribe project are used when possible. Such efforts shall include, but shall not be limited to:

   a. Including such firms, when qualified, on solicitation mailing lists;

   b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

   c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

   d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

   e. Using the services and assistance of the Small Business Administration;

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

G. Contract Clauses

1. **Required causes**. In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200.326 and Appendix II to Part 200, such as the following:

   a. administrative, contractual and legal remedies when contractor violates or breaches contract (Contracts over small purchase threshold)

   b. termination for default and termination for convenience (Contracts over $10,000)

   c. Equal Employment Opportunity

d. Davis-Bacon Act and Copeland "Anti-Kickback" Act (or Tribally-Determined Wage Rate requirements, if applicable).

e. Contract Work Hours and Safety Standards Act

f. Rights to Inventions Made Under a Contract or Agreement

g. Clean Air Act and Federal Water Pollution Control Act

h. Debarment and Suspension

i. Byrd Anti-Lobbying Amendment

j. Procurement of recovered materials

2. **Forms**. If all required clauses are not included on forms (e.g., Form HUD 5370), then the TDHE/Tribe shall attach any additional clauses to the forms used in contract documents and shall include the contract clauses and solicitation notices for Indian preference described above.

H. Contract Types and Options

1. **Contract Types**. Any type of contract (pricing arrangement) which is appropriate to the procurement and which will promote the best interests of the TDHE/Tribe may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD-approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the TDHE/Tribe needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

2. **Options**. Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the TDHE/Tribe; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the 'Options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the TDHE/Tribe than conducting a new procurement.

II. Indian Preferences and Section 3

A. Indian Preference

1. Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b), which provides for Indian preference, shall apply to all procurement in excess of the micro-purchase threshold funded in with NAHASDA funds. In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA. In the absence of tribal employment and contract preference laws, the TDHE/Tribe shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.

2. All preferences shall be publicly announced in the IFB and RFP and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, TDHE/Tribe shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years after the end of the program year during which the funds were expended.

3. Contractors applying for eligibility for Indian preference shall submit the following:

    a. Evidence showing that the majority ownership of the firm consists of one or more persons who are members of a federally recognized Indian tribe. A certificate of Indian blood or census card from each owner will suffice.

    b. Evidence showing that the owners claiming tribal membership are actively involved in the management of the firm, and participate proportionately in the profits. A statement from the owners will suffice.

    c. Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.

4. If the TDHE/Tribe or its prime contractor determines an applicant ineligible for Indian preference, the TDHE/Tribe or prime contractor shall notify the applicant in writing before contract award.

5. Solicitation notices shall include the following information:

    a. The TDHE/Tribe shall incorporate the following clause (referred to as the section 7(b) clause) in each solicitation and included in all contracts and subcontracts, as follows:

(1) The work to be performed under this contract is subject to Section 7(b) of the Indian Self-Determination Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations or Indian-owned economic enterprises.

(2) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(3) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the TDHE/Tribe or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

b. A statement as to whether the TDHE/Tribe maintains lists of Indian owned economic enterprises and Indian organizations by trade specialty that are available to contractors and subcontractors for use in meeting Indian preference responsibilities;

c. A statement that requires contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions;

d. A statement that requires the TDHE/Tribe to submit a list of core crew employees, if available, and that contractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions.

6. Methods of Providing Indian Preference

a. **For purchases below the Micro Purchase Threshold**, per 24CFR 1000.52(d), the tribe/TDHE is not required to use Indian Preferences for purchases under the Micro-Purchase Threshold ($10,000 or such lesser amount adopted by the tribe/TDHE).

b. **For purchases at or above the Micro-Purchase Threshold, but below the Simplified Acquisition Threshold**, the TDHE/Tribe shall seek maximum participation by Indian-owned economic enterprises and shall to the extent available, refer to lists of qualified Indian supply sources. If no quotation are solicited or received from Indian-owned economic enterprises, the TDHE/Tribe must include as part of its documentation a statement explaining the reasons for lack of Indian participation. As an alternative, a TDHE/Tribe solicitation may

be unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit quotes and an award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive quote, if the quote is within ten percent of the lowest non-Indian quote and the price is determined reasonable. If no responsive quotation by a qualified Indian-owned economic enterprises or organizations is within ten percent of the lowest non-Indian quote, award shall be made to the source with the lowest quote.

An optional method of providing Native Preference, the "X-Factor", is provided as an appendix to this policy.

c. **For sealed bids**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

(1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit bids and award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive bid, if the bid is within the total maximum contract price established for the procurement and within the applicable range specified in Appendix A of the lowest non-Indian bid price; or

(2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or

(3) Use a two stage preference procedure, as follows:

Stage 1. Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

Stage 2. If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.

An optional method of providing Native Preference, the "X-Factor", is provided as an appendix to this policy.

d. **For competitive proposals**, the TDHE/Tribe prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the TDHE/Tribe may select any one of the methods below, as follows:

(1) Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit proposals and establish a percentage or number of points set aside for Indian preference as one of the evaluating factors to consider other than price; or

(2) Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or

(3) Use a two stage preference procedure, as follows:

Stage 1. Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the Request for Proposals limited to Indian-owned economic enterprises.

Stage 2. If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.

e. If the TDHE/Tribe selects a method of providing preference, in b. or c. above, that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable cost, then the TDHE/Tribe shall:

(1) Re-advertise the contract using any of the methods described above at b. or c. for sealed bids and competitive proposals respectively; or

(2) Re-advertise the contract without limiting the solicitation for bids or proposals to Indian-owned economic enterprises or organizations. This method does not provide Indian preference. By selecting this method, the TDHE/Tribe has determined that Indian preference is not feasible even after providing for Indian preference in accordance with 24 CFR 1000.52(a), i.e. no qualified Indian bidder(s) responded, or less than two of the bid(s) received from Indian bidders were approvable; or

(3) If one approvable bid or proposal is received, the TDHE/Tribe may request ONAP review and approval of the proposed contract and related justification and procurement documentation in accordance with 2 CFR 200.320(f)(3).

f. **Monitoring and Remedies**. The TDHE/Tribe shall monitor the implementation of Indian preference in its contracts, subcontracts, training, and employment, and take appropriate remedial action to ensure compliance. If no bids or offers are received from Indian organizations and enterprises, the lack of participation and any reasons known by the TDHE/Tribe for lack of participation shall be documented in the procurement file.

B. Section 3 of the HUD Act of 1968

1. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals. However, per 24 CFR 1000.42(c), recipients shall be considered meeting the section 3 requirements when they comply with employment and contract preference laws adopted by their tribe in accordance with section 101(k) of NAHASDA.

2. Definitions:

   a. **Section 3 Business Concern** – 1) A business concern that is 51% or more owned by Section 3 residents, or 2). Whose permanent, full time employees include persons, at least 30% of whom are current Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in 1 and 2 above.

   b. **Section 3 Resident** – 1) A public housing resident; or 2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is low-income or very low-income as defined by the Housing Act of 1937.

3. The recipient threshold requirements for Section 3 apply only to those Section 3 covered projects or activities for which the amount of assistance exceeds $200,000. Covered projects are housing rehabilitation, housing construction, and other public construction projects.

4. All Section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

   a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

   b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual

or other impediment that would prevent them from complying with the part 135 regulations.

c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

f. Examples of efforts to offer training and employment opportunities to Section 3 residents and procurement procedures that provide for preference for Section 3 business concerns may be found under 24 CFR Part 135, Appendix to Part 135.

g. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

h. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)

agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

III. Procurement Methods

A. Selection of Method

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

B. Micro-Purchase Procedures

1. **General.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). Any procurement not exceeding $10,000 may be conducted in accordance with the micro-purchase procedures authorized in this section. A lower dollar amount may be used if desired or required to conform to tribal law. Contract requirements shall not be artificially divided so as to constitute a micro-purchase under this section, except as may be reasonably necessary in instances where breaking out such procurements can be shown to result in more economical purchases.

2. **Indian preference**. Not required per 24 CFR 1000.52(d)

3. **Petty Cash Purchases**. Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under small purchases apply.

4. **Obtaining Quotes**. To the extent practicable, the tribe/TDHE must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable per 2 CFR 200.404.

C. Small Purchase Procedures

1. **General.** Any procurement not exceeding $250,000 [insert a lower dollar amount if desired or required to conform to tribal law] may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section V of this Statement or in instances where breaking out such procurements can be shown to result in more economical purchases).

2. **Indian preference**. See above Section II(A)(6)(a).

3. **Obtaining Quotes**. The TDHE/Tribe shall solicit price quotations by phone, letter, or other informal procedure that allows participation by a reasonable number of

competitive sources. When soliciting quotations, the TDHE/Tribe shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The TDHE/Tribe shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within _____ days of the oral quotation or by the due date for submitting quotations. The names, addresses, and 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.

4. **Competition**. The TDHE/Tribe shall attempt to obtain quotations from a minimum of at least two responsive and responsible sources and document the procurement file with a justification whenever it has been unable to obtain at least two quotations. Solicitation of fewer than two sources is acceptable if the TDHE/Tribe has attempted but has been unable to obtain a sufficient number of quotations. This procurement would then be considered a noncompetitive procurement and the steps listed below in F. Noncompetitive procurement will be followed.

5. **Award based on price**. For small purchases award is generally based on price and fixed specifications taking into account the method of providing Indian and Section 3 preferences.

6. **Blanket Purchase Agreements (BPA)**. Once a BPA has been established, task or delivery orders can be placed without further competition. BPAs may be used for a variety of expendable supplies and services and are particularly attractive when the exact items, quantities and delivery requirements are not known in advance. The process to setup a BPA will save your TDHE/Tribe time and money while making your purchasing quicker and easier. Prior to following the small purchasing procedures established above, the TDHE/Tribe will have conducted an historical database on their re-occurring purchases. After obtaining an estimate on the volume or quantities of a list of products, the TDHE/Tribes use that information to solicit quotes or discount rates from a number of vendors. By using the purchasing power of greater quantities, the TDHE/Tribe secures better pricing. The maximum total value of the small purchase BPA is $250,000.

D. Sealed Bidding

1. **Conditions for Use**. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.

2. Solicitations and Receipt of Bids.

a. **Issuance and amendments**. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

b. **Indian Preference**. A TDHE/Tribe has several options to meet Indian preference requirements under §1000.52(a). The decision of what particular option to use should be made well in advance of the solicitation process and based on the potential availability of Indian-owned firms capable and willing to bid or propose on a particular contract.

(1) A TDHE/Tribe may develop and adopt policies and procedures in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Act, OR

(2) A TDHE/Tribe may restrict the solicitation to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving at least two bids, OR

(3) If a TDHE/Tribe is not sure there are a sufficient number of Indian owned economic enterprises or organizations available or that they will receive at least two bids, a TDHE/Tribe may use a two stage preference procedure as follows:

Stage 1 – Invite or otherwise solicit from Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

Stage 2 – If responses are received from more than one qualified Indian-owned economic enterprise, advertise for bids limited to Indian-owned economic enterprises.

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

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

a. **Restricted solicitations**. If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more [or a greater number determined by the TDHE/Tribe and stated in the invitation] qualified Indian owned economic enterprises or organizations submit responsive bids, award

shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method. If fewer than two responsive and responsible bids from qualified Indian¬ owned economic enterprises or organizations submit bids, the TDHE/Tribe shall evaluate its options to reject all bids, cancel the solicitation and re-advertise: 1. using any of the procedures in III(D)(2)(b) above, or 2. inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations with no preference given, or 3. the TDHE/Tribe may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the TDHE/Tribe determines that, based on a cost analysis, the bid price is fair and reasonable, and the TDHE/Tribe determines that the delay of re-advertising would subject the project to significant higher construction costs.

b. **Unrestricted solicitations**. If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the range specified in the Attachment to this Statement. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.

5. Mistakes in Bids.

a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is clear or the bidder submits convincing evidence that a mistake was made.

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

E. Competitive Proposals

1. **Conditions for Use**. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical

proposals and where the TDHE/Tribe determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.

2. Solicitation.

   a. **General**. The request for proposals (RFP) may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the TDHE/Tribe has a reasonable expectation of receiving offers from two [or a greater number stated in the RFP] such entities. The TDHE/Tribe shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian-organizations if: the TDHE/Tribe prefers not to restrict the RFP; or, an insufficient number of qualified Indian-¬owned economic enterprises or Indian organizations satisfactorily respond to a restricted RFP; or, a single proposal is received but not accepted. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, 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. TDHE/Tribe shall reserve ____% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional _____% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.

3. **Negotiations**. In those situations where 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. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

4. **Award**. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the TDHE/Tribe, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations

restricted to qualified Indian-owned economic enterprises and Indian organizations, if two [or a greater number stated in the RFP] such entities submit acceptable proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than this number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals, the TDHE/Tribe shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. The TDHE/Tribe may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when the TDHE/Tribe determines that the delays caused by resoliciting would cause higher costs, or where the TDHE/Tribe determines that the proposal has a fair and reasonable price.

5. **Architect Engineer Services**. Architect Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, Sealed bidding shall not be used to obtain architect/engineering services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. These procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

F. Noncompetitive Proposals

1. **Conditions for use**. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

   a. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the TDHE/Tribe, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or

   b. Only one source of supply is available, and the Contracting Officer so certifies in writing; or

   c. After solicitation of a number of sources, competition is determined inadequate; or

   d. HUD/ONAP specifically authorizes the use.

2. **Justification**. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures, including information to detail one of the four reasons above. The justification shall be approved in writing by the Contracting Officer.

3. **Price reasonableness**. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

G. Cancellation of Solicitations

1. An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if: the TDHE/Tribe no longer requires the supplies, services or construction; or, the TDHE/Tribe can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the TDHE/Tribe; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or, a condition for canceling a solicitation and resolicit, as specified above, is met; or, for good cause of a similar nature when it is in the best interest of the TDHE/Tribe.

3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited. A notice of cancellation shall be sent to all offerors solicited.

IV. Cost and Price Analysis

A. General

A cost or price analysis shall be performed for all procurement actions in excess of the Simplified Acquisition Threshold, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement. The TDHE/Tribe shall perform an independent cost or price estimate prior to receiving bids or proposals. A cost or price analysis may also be required for smaller purchases at the discretion of the tribe/TDHE.

B. Price Analysis

A Price Analysis shall be conducted on any competitive proposals (e.g., when contracting for professional, consulting, or architect/engineer services) prior to awarding a contract.

C. Cost Analysis

A Cost Analysis shall be conducted for all sealed bid prior to awarding a contract and for all noncompetitive proposals.

V. Contractor Qualifications and Duties

A. Contractor Responsibility

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

B. Bonding Requirements

1. **Minimum Requirements.** For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the TDHE/Tribe may implement bonding requirements different from the minimum federal requirements provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

    a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

    b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

    c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a

contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2. **Exception** (see 24 CFR 1000.26(a)(11)(ii) for the IHBG Program and 24 CFR 1003.501(a)(13) for the ICDBG Program). There may be circumstances under which the bonding requirements specified above are inconsistent with other responsibilities and obligations of the TDHE/Tribe. In such circumstances, acceptable methods to provide performance and payment assurance may include:

   a. Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or

   b. Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

C. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies (e.g., Department of Labor, for violations of Secretary of Labor Regulations) when necessary to protect the TDHE/Tribe in its business dealings. The TDHE/Tribe may suspend or debar a contractor under State, local or tribal laws, as applicable. Refer to System for Award Management (https://www.sam.gov) for additional information.

D. Qualified Bidder's Lists

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

E. Qualifying Indian-Owned Enterprises & Indian Organizations

A TDHE/Tribe, at its discretion, may require prospective contractors seeking to qualify as Indian organizations or Indian owned economic enterprises to complete, or update if applicable, an Indian Enterprise Qualification Statement.

F. Requiring Statements on Employment & Training of Indians

A TDHE/Tribe, at its discretion, may require prospective contractors and offerors (and their subcontractors, if required by the TDHE/Tribe) to provide a statement describing how they will

provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained.

VI. Appeals and Remedies

A. General

It is the TDHE/Tribe's policy to resolve all procurement and contractual issues timely and informally at the TDHE/Tribe level without litigation.

B. Bid Protests

1. An unsuccessful bidder or offeror may file a written complaint (or protest) with the Contracting Officer within _____ calendar days from the date of TDHE/Tribe's notice to the unsuccessful bidder or offeror or from the date of the action (or omission) upon which the complaint is based. The complaint must be signed and shall detail the basis of the complaint. No untimely or oral complaint will be considered.

2. TDHE/Tribe need not suspend contract performance or terminate the award of the contract unless TDHE/Tribe determines, in its sole discretion, which it appears likely that the contract award will be invalidated and that a delay in receiving the supplies or services will not be prejudicial to TDHE/Tribe's interests.

3. Upon receipt of a complaint, the TDHE/Tribe shall promptly stamp the date and time of receipt on the complaint and acknowledge receipt of the complaint within _____ calendar days.

4. Within _____ calendar days of receipt of a complaint, the Contracting Officer shall meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Contracting Officer shall make a determination on the complaint within _____ calendar days of TDHE/Tribe's receipt of the written complaint. The decision of the Contracting Officer shall constitute the final administrative action on the complaint.

5. A complainant must exhaust all administrative remedies with TDHE/Tribe before pursuing a protest with HUD or other agency providing funds for the procurement.

6. Reviews of complaints by the Federal or other agency will be limited to:

    a. Violations of Federal or relevant law or regulations and the standards of this Section; and

    b. Violations of TDHE/Tribe 's complaint procedures for failure to review a complaint or protests.

7. Violations of Tribal law will be under the jurisdiction of the Tribal authorities.

C. Contract Claims and Disputes

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

D. Protests Involving Indian Preference

1. **General.** Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures in 24 CFR 1000.54.

2. The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part:

    a. Each complaint shall be in writing, signed, and filed with the TDHE/Tribe.

    b. A complaint must be filed with the TDHE/Tribe no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

    c. Upon receipt of a complaint, the TDHE/Tribe shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

    d. Within 20 calendar days of receipt of a complaint, the TDHE/Tribe shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The TDHE/Tribe shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the TDHE/Tribe. The decision of the TDHE/Tribe shall constitute final administrative action on the complaint.

VI. Ethics in Public Contracting

A. General

The TDHE/Tribe shall adhere to the following code of conduct governing the performance of their employees, officers or agents engaged in the award and administration of contracts consistent with applicable State, tribal, or local law, and shall comply with the limitations imposed by 2 CFR 200.318(c) and 24 CFR 1000.30.

B. Conflict of Interest

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

    a. An employee, officer or agent involved in making the award;

b. His/her immediate family member (as determined by the tribe/TDHE in its operating policies);

c. His/her partner, or,

d. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

2. Per 24 CFR 1000.30(b), 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 the Indian tribe or TDHE in its operating policies.

3. Employees, agents and grantees who may have acquired confidential and privileged information during their tenure with the TDHE/Tribe are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, in any TDHE/Tribe project or activity that is affected by that confidential or privileged information.

4. Per 24 CFR 1000.30(c), nothing in this section shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, or agent from fully participating in TDHE/Tribe activities and decision making so long as the person is low income and otherwise an eligible applicant and selected for assistance in accordance with the TDHE/Tribe's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds.

   a. The TDHE/Tribe must make a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the person.

   b. The TDHE/Tribe shall provide ONAP with a copy of the disclosure before the assistance is provided to the person

C. Gratuities, Kickbacks, and Use of Confidential Information

TDHE/Tribe officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. It is determined that providing meals, entertainment or gifts in an amount in excess of _____ dollars ($_____) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of _____ dollars ($_____) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

D. Prohibition against Contingent Fees

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

Attachment A

Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	**X = lesser of:**
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 $32,000
At least $500,000, but less than $1,000,000	5% of that bid, or $40,000
At least $1,000,000, but less than $2,000,000	4% of that bid, or $60,000
At least $2,000,000, but less than $4,000,000	3% of that bid, or $80,000

Attachment B

Procurement Analysis Form

The Procurement Analysis Form is to be used for all procurement done by the TDHE/Tribe. The purpose of this form is to document the basis for the selection of a particular vendor, and to document the reason(s) for the use of non-competitive procurement. This form needs to be completed as part of the request for payment for every individual purchase. A copy of this form should be attached to every invoice to be paid, and then filed with the payment.

Item: enter a description of the item(s) being purchased, for example *"5 exterior doors"* or *"consultant services"*.

Vendor: enter the name of the vendor.

Basis of Selection: check the appropriate box, either (1) Lowest price; or (2) Competitive proposals; or (3) Non-competitive purchase; or (4) State or federal contract purchase.

Lowest Price: enter the number of price quotes in the space provided. If less than two quotes received, this is a Non-competitive purchase, and you must check number 3 and complete the additional information. Check "price quotes attached" if this purchase is based on Lowest Price, but is not included in the annual procurement, or check "price quotes on file" if this purchase is based on Lowest Price and is part of the annual procurement.

Competitive Proposals: Check this box if the purchase is the result of a Request for Proposals. Attach a copy of the Contract with the invoice.

Non-Competitive Purchase: Check this box if there is only one quote submitted for the procurement (sole-source procurement). One of the four boxes must be checked to justify why only one quote was obtained. There can be no other justification for obtaining only one quote. In addition, the reasonableness of the price being paid must be documented by checking one of the following boxes and attaching the related documentation.

Cost breakdown: the vendor must supply a breakdown of his cost and estimated profit related to the purchase.

Commercial pricing and sales information: provide a copy of a catalog page, an advertisement, or some other documentation that demonstrates the price being charged is the same or less than the price being charged to the general public.

Law or regulation: provide a copy of a public document that prescribes a certain price be charged through the action of a public body.

State or federal contract purchasing: Check this box if the purchase is through the State or federal procurement process, such as for the purchase of vehicles. Attach a copy of the appropriate contract or purchase order the vendor has with the State or federal government.

Micro Purchasing: Check the appropriate box if the procurement is less than $10,000 or the TDHE/Tribe threshold, whichever is less. Procurements cannot be separated to meet this threshold.

Procurement Analysis

Item: _____

Vendor: _____

Basis of Selection:

☐ 1. **Lowest price** from among _____ price quotes.

- ☐ Price quotes attached.
- ☐ Price quotes on file.

☐ 2. **Competitive Proposals**. Copy of Contract attached.

☐ 3. **Non-Competitive Purchase** due to at least one of the following reasons:

- ☐ The item is available only from a single source, based on a good faith review of available sources.
- ☐ An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency.
- ☐ HUD has authorized the use of non-competitive proposals (attach written approval).
- ☐ After solicitation of a number of sources, competition is determined inadequate.

To document the price-reasonableness of a non-competitive purchase, one or more of the following has been attached:

- ☐ A cost breakdown showing projected costs and profit.
- ☐ Commercial pricing and sales information sufficient to enable the Housing Department to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public.
- ☐ Documentation showing that law or regulation sets the offered price.

☐ 4. **State or federal contract purchasing**. Copy of contract attached.

☐ 5. **Micro Purchase**.

- ☐ Procurement is less than $10,000, or lesser amount as determined by the TDHE/Tribe. No solicitation required and cost has been determined to be reasonable.

_____ _____

Housing Director Date

Attachment C

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

A. **Contracts for more than the simplified acquisition threshold** currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. **All contracts in excess of $10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. **Equal Employment Opportunity**. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

D. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal

entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. ***This section does not apply to the ICDBG Program per 24 CFR 1003.501 and .603. It may also be waived for the IHBG Program if Tribally-Designated Wages are adopted by the tribe, per NAHASDA 104(b)(3).***

E. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all h o u r s worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. ***This section does not apply to the ICDBG Program per 24 CFR 1003.501*.**

F. **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

G. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in

excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. 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, officer or employee 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 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J. **See §200.322** Procurement of recovered materials.

INSTRUCTIONS FOR MODEL ETHICAL STANDARDS OF CONDUCT POLICY

In 1998 a set of draft model policies for Tribally Designated Housing Entities (TDHEs) was prepared to reflect changes caused by the enactment of NAHASDA. This model ***Ethical Standards of Conduct Policy*** comes out of that project. It has been updated and improved since it's original development.

Parties involved in preparing this model policy cannot represent or warrant that this model policy reflects or satisfies all funding or statutory requirements under federal, tribal, or (where appropriate) state laws. Furthermore, this model policy should be customized to reflect individual needs. Additionally, such policies should always be evaluated on a periodic basis after they are adopted. In finalizing this policy TDHEs should consult with their attorney.

(TDHE) occurs throughout this draft policy and there will be a need to fill in this line with the name of the TDHE adopting this policy.

Model Ethical Standards of Conduct Policy Table of Contents (as drafted)

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Modify To Reflect Local
Needs And Circumstances

__(Place TDHE Name Here)_
ETHICAL STANDARDS OF CONDUCT POLICY

MASTER REQUIREMENTS

These Master Policy Requirements were adopted by _____(TDHE)_____ _____ Resolution # _____ on the _____ day of _____, _____.

_____(TDHE)_____ **POLICIES**. The ___(TDHE)___ has adopted a series of administrative and management Policies. These Policies are formally adopted by the ___(TDHE)_____ and until revised or changed by formal action the Board and staff are required to follow them. Some of the provisions of these Policies, but not all, reflect requirements of federal or tribal law. The Board may in certain unique circumstances formally waive some Policy requirements on an individual basis, but in order to do so the Waiver procedure identified later in this Policy must be followed. The ___(TDHE)___ may have also elected by formal resolution to establish alternative policies for programs that are operated without Native American Housing and Self-Determination Act (NAHASDA) assistance. Such alternative policies are not subject to this Policy. Furthermore, the (TDHE) may from time to time adopt other rules, requirements, and procedures to administer its programs but all of these practices must comply with ___(TDHE)___ Policies.

THE PURPOSE OF THIS POLICY. The purpose of this policy is to establish ethical requirements and standards of conduct for current and former _____(TDHE)___ employees, Board Members and contractors as well as for _____(TDHE)___ grantees. ___(TDHE)___ is a public tribal entity whose board members, staff, grantees, contractors and subcontractors must function with high ethical standards to insure that the good and honest reputation of the ___(TDHE)___ is maintained and public moneys are protected. The purpose of the ___(TDHE)___ is to serve the interests of the ___(TDHE)___ and the general population that it services and not the personal interests of Board Members, employees or the

individual interests of elected or appointed tribal officials. This Policy simply and in a straightforward manner establishes ethical standards so that these rules can be understood and adhered to.

EXPLANATION OF THIS POLICY FORMAT. The Policy consists of this **Master Requirements** and possibly one or more **Special Program Requirements.** The **Master Requirements** contained in this Master Policy are intended to apply to all (TDHE) programs that are assisted with federal funds under NAHASDA. Additional **Special Program Requirements** may also be established for various individual (TDHE) programs. The **Master Requirements** together with all of the **Special Program Requirements** constitute the Policy.

DEFINITIONS.

- **"Board"** shall mean the governing body of the (TDHE).

- **"Delinquent on Housing Payments":** For purposes of this Policy, whenever the amount owing on travel advances or housing and loan payments to the (TDHE) by a Board Member, employee, agent or grantee exceeds $200.00 or one month's payment (whichever is greater).

- **"Individual Interest"** includes but is not limited to an interest held by wife, husband, son or daughter.

- **"Immediate Family" or "Family"** means a wife, husband, brother, sister, mother, father, grandmother, grandfather, son, daughter, grandson, granddaughter and any relative or any other party that a person is living with or intends to live with in the same house or household, whether a relative or not.

REQUIREMENTS:

1. **WAIVERS.** The Policy is intended to apply in all cases. However, in rare and unique circumstances a special Waiver of a particular requirement can be considered and approved by the (TDHE's) Board. In the case of this particular policy this may occur only where a waiver is expressly permitted elsewhere in this Policy. Such a Waiver may be made only if (1) Board Members with personal direct or indirect interests abstain from and are not present for both the Board's deliberations and decision, (2) full and complete public disclosure of a Waiver request occurs before, during, and after a vote, (3) a two-thirds (2/3) favorable vote of all Board Members appointed is obtained

and (4) the waived Policy provision is not required by federal or tribal law. If the Board is unsure as to which provisions are required by federal or tribal law, they may consult with legal counsel.

2. **TRIBAL ETHICAL REQUIREMENTS:** Where the Tribe has established by law or resolution ethical and conflicts of interest requirements for the tribe, tribal council, tribal officials and/or tribal entities, these standards shall apply. Furthermore, where those standards permit waivers of those standards such a waiver may only be entertained using the waiver procedures in the Policy. Regulation and enforcement of these tribal ethical standards shall be done by the (TDHE) so long as no Tribal law dictates otherwise. These Tribal standards are only minimal standards and the following standards are additional. If a conflict arises between the tribal requirements and the following standards the most stringent or highest standard shall apply.

3. **CONFLICTS OF INTEREST:** The duties and responsibilities of Board Members, employees, grantees and agents is to the (TDHE). These interests are not to conflict with personal interests of Board Members or employees nor shall there be the appearance of any conflicts of interest.

   a. Current Board Members. (TDHE) Board Members, including tribal councilmen and officials who serve on the Board or as liaisons, are prohibited from entering into, proposing or having a contract or any financial interest, direct or indirect, in any (TDHE) project or activity. This requirement may be waived in rare and unique cases, but only when the Board Member involuntarily acquires or had acquired prior to the beginning of their tenure on the Board any such interest. The interest must be immediately disclosed and the waiver requirements set forth above shall be followed.

   b. Former Board Members. Former Board Members are likewise prohibited from having such a contract or any financial interest, direct or indirect, in any (TDHE) project or activity, for a period of one year after their tenure on the Board. This later requirement may be waived in rare and unique cases, but only after full and public disclosure and assurance that this interest is not obtained because of non-public information obtained because of the prior Board position.

c. Employees. (TDHE) employees are prohibited from entering into, proposing or having a contract or any other financial interest, direct or indirect, in any (TDHE) project or activity. Except for subsequent employment arrangements, former employees are prohibited from having a contract or any financial interest, direct or indirect, in any (TDHE) project or activity in which the former employee had a substantial interest, responsibility or involvement with during his or her position with the (TDHE) for a period of _____ months after termination of their employment. This later requirement may be waived in rare and unique circumstances but only after full and public disclosure and assurance that this interest is not obtained because of non-public information obtained because of the prior employment.

d. Award and Administration of Contracts. No employee, Board Member, officer or agent of ___(TDHE)___ or any grantee shall participate in a decision, selection, award or administration of a contract if in fact or by appearance the Board Member, employee, officer, agent or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ such a person, has a financial or other interest in the firm to be selected or awarded. Any and all conflicts of interest shall be promptly, openly and publicly disclosed by both individuals and the ___(TDHE)___.

Not participating in a decision, selection, award or administration of a contract shall mean not discussing the matter in or outside meetings, not being physically present for any discussions and neither voting on or being present for a vote. Furthermore, it means not using a ___(TDHE)___ position to influence a decision in which you have a personal interest.

e. Program Participants. Nothing in this Policy shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, agent or grantee from fully participating in ___(TDHE)___ activities and decision making so long as those activities and that decision making is not particular to their unit, application, contract or _____(TDHE) activity.

4. **GIFTS:** ___(TDHE)___ or any grantee's officers, employees or agents will not solicit any gift nor accept gratuities, favors or

anything of monetary value from contractors, potential contractors, or parties to agreements.

It is determined that providing meals, entertainment or gifts in an amount in excess of twenty dollars ($20.00) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of one hundred dollars ($100.00) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

All gifts shall be recorded in writing by the officer, employee or agent and routinely disclosed to the __(TDHE)___.

5. **DONATIONS:** the __(TDHE)___may solicit and accept donations to its programs, however, all such solicitations and donations shall be open and public and recorded and must be for the sole benefit of the __(TDHE)__and not its employees, contractors or Board Members. Furthermore, no donations shall be solicited or made while the party donating is seeking or being considered for a contract and no donation shall be considered or accepted if it would influence the award of a contract or give the appearance of such a possible effect.

6. **PARTICIPANT GIFTS OR PAYMENTS:** No employee or Board Member or his or her spouse, who has any authority, control or influence in his official capacity shall accept any gift or money from a tenant, homebuyer, program participant or applicant if it would reasonably appear that such a gift was an attempt to influence that employee or Board Member's actions at the (TDHE).

7. **ADDITIONAL PROCUREMENT REQUIREMENTS:** Special additional procurement and contracting practices are contained in the __(TDHE)__ Procurement Policy.

8. **CONFIDENTIALITY:** _____(TDHE)___ employees, agents and grantees may have acquired confidential and privileged information during their tenure with the __(TDHE)___. They are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or any other financial interest, direct or indirect, in any

(TDHE) project or activity that is affected by that confidential or privileged information. This prohibition shall be for life. This prohibition however may be waived by the ___(TDHE)___ Board but only if the Board in its sole discretion so chooses and does so in writing and on the record and if (1) the information remains no longer privileged or confidential, and (2) the information is provided to other competitors by the ___(TDHE) or potential competitors of the former employee or Board Member. The (TDHE) may have other confidentiality requirements that are not contained in this particular policy that apply to Board Members and employees, current and former, that are unrelated to confidentiality and conflicts of interest.

9. **POLITICAL ACTIVITIES PROHIBITED:** Board Members, staff, agents and grantees shall not use ___(TDHE)___ resources, moneys, contracts, personnel or facilities for political purposes. The ___(TDHE)___ shall also restrain others from using (TDHE) resources for political purposes.

10. **RESPONSIBILITIES REGARDING CONTRACTUAL OBLIGATIONS:** Board Members, staff, agents or contractors shall not be "delinquent on housing payments" owed to the ___(TDHE)___. Such delinquencies, unless immediately resolved after they have arisen, shall result in the termination of the employee or agent and removal of the Board Member. Furthermore, such individuals shall not violate any other contractual obligations that they might have with the ___(TDHE)___.

11. **FIDUCIARY RESPONSIBILITY:** All Board Members have a fiduciary responsibility to take actions and do what is in the best interest of the ___(TDHE)___.

12. **DRUGS AND ALCOHOL:** All Board Members, employees and agents shall adhere to all ___(TDHE)___ drug and alcohol rules and requirements including those set forth in the Personnel Policy.

13. **DISCLOSURE:** All Board Members, employees, agents and grantees are required to promptly disclose to the (TDHE) their acts or conduct and all acts or conduct by other (TDHE) Board Members, employees, agents, grantees, contractors, tenants, or program recipients that are illegal or are in violation of this Policy and other ___(TDHE)___ policies. Disclosure can be to

supervisors, the Executive Director, the Board of Directors, individual Directors and the __(TDHE)__ attorneys. There shall be no retaliation or other punitive action taken against anyone who makes a disclosure under this section when the activities disclosed turn out to be a true violation.

14. **BOARD MEMBER INVOLVEMENT:** _____(TDHE)_____ Board Members' primary responsibilities are to establish goals, policies, and practices for the ___(TDHE)___ and to provide an overview direction and monitor for programs and activities. Board Members are to refrain from running the day to day activities of the ___(TDHE)___ and from individually interjecting themselves in individual management decisions except where authorized by (TDHE) policies or Board direction.

15. **TRIBAL INVOLVEMENT:** Elected Tribal officials are important partners in carrying out the activities of the ___(TDHE)___. The (TDHE) should routinely consult with and update the Tribe and such officials. However, as a tribally designated housing entity established as a separate organization tribal officials cannot direct particular services, assistance, loans or housing be given by the (TDHE) to specific individuals and families nor can tribal officials direct that __(TDHE)___ policies be violated.

16. **APPLICATION TO GRANTEES AND CONTRACTORS:** All the requirements contained in this Policy shall additionally apply to all (TDHE) grantees and contractors. Where feasible these standards shall be included in grants and contracts and where appropriate repeated in the sub-grants and sub-contracts.

--END--

AGREEMENT BETWEEN OWNER AND CONSTRUCTION CONTRACTOR

(Small Contract Form, under $250,000)

The _____ (Owner) and _____
_____(Contractor), enter into the following Contract.

1.0 SCOPE OF WORK

1.1 The work to be performed under this Contract is known as _____
_____ and consists of providing all labor, materials, tools, permits, and services to complete ____
_____
_____

1.2 The specifics of this work are set forth in Attachment A (Plans and Specifications).

2.0 CONTRACT SUM

2.1 The Contractor shall be paid the fixed price contract sum of $_____ for all the work required under this Contract subject to additions and deductions approved in writing by Owner as change orders.

3.0 PAYMENTS

3.1 The Contractor shall be paid upon completion and acceptance of work on the following payment schedule:

- ☐ Payment in full upon completion and acceptance of all work.
- ☐ Payment every two weeks for work completed and accepted to that date.
- ☐ Payment for work completed and accepted at following stages: _____
_____
_____

(Check box. If no box is checked, then the first box shall be deemed checked.)

3.2 Retainage of 10% will be withheld from each payment until full and final completion, except that the sum of $1,000.00 may continue to be withheld for a period of three months after full and final completion. The Owner may use this withholding if necessary to correct any work or obligation, including warranty obligations, that the Owner finds that the Contractor has failed to perform. If no claims exist, these sums shall be released to the Contractor.

3.3 At any time the Owner may require evidence, including written releases, that all laborers, subcontractors and suppliers are being properly paid by the Contractor or by any subcontractor.

4.0 DATE OF COMMENCEMENT, COMPLETION AND CLAIMS

4.1 The Contractor agrees to properly complete all the work required under this Contract no later than _____, _____. No Notice to Proceed will be issued on this Contract. The Contractor shall commence work within ten days of the date of this Contract and shall continue diligently and continuously until completion. If the Contractor fails to complete all the work by the above date, the Owner may recover damages for its actual and consequential losses as well as attorneys' fees and other legal costs. It is agreed that time is of the essence. The Contractor shall not be entitled to damages for Owner caused delays but may receive time extensions if justified.

4.2 If the Contractor has a claim under this Contract, he shall put the claim in writing and deliver it to the Owner within 15 days of the claim having arisen, or the Contractor waives his claim. Such a claim shall not excuse work from proceeding as scheduled.

5.0 EXPRESS WARRANTIES

5.1 The Contractor expressly warrants that all material and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted expressly by the Plans and Specifications (Attachment A), that all work will be free from defects, and that all work will conform to the requirements of this Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.0 INSURANCE

6.1 Before commencing work, the Contractor must furnish the Owner with certificates of insurance, in a form acceptable to the Owner, showing that the following minimum insurance is in force and will insure all operations under this Contract:

Workers' Compensation:	In accordance with State Workers' Compensation laws for the State in which the work is located.
Commercial General Liability:	Combined single limit for bodily injury and property damage of not less than $300,000 per occurrence.
Automobile Liability:	Combined single limit for bodily injury and property damage of not less than $300,000 per occurrence.
Builder's Risk (fire and extended):	$ _____. (if not applicable, write N/A)

6.2 Insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the work is located. All certificates of insurance shall show the Owner as additional loss payee and shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least thirty days written notice has been given to the Owner. The Contractor shall not allow insurance coverage to lapse during the construction period and until at least final acceptance of all work. The Contractor shall be liable for all work until it is fully and formally accepted by the Owner and the Contractor assumes all risk until that time.

6.3 The Contractor is responsible for assuring that each subcontractor also carries the above required minimum insurance coverage and continues such coverage in full force and effect for the construction period and until final acceptance of all work.

7.0 LABOR

7.1 If other labor is hired or contracted for, the Contractor and any subcontractor must abide by all Owner, tribe, state and federal employment rules, as applicable, including workers' compensation, Indian preference, Davis-Bacon prevailing wage rates (for contract sums in excess of $2,000) and Tribal Employment Rights Ordinance. This includes but is not limited to proper and prompt payment. The Contractor shall complete and submit periodically all required payroll/work reports upon request of Owner.

8.0 INSPECTIONS

8.1 The Contractor shall maintain and carry out an adequate inspection system and ensure that work performed under the Contract conforms to Contract requirements. All work is subject to the right of Owner to inspect at all places and times. Owner inspections do not relieve the Contractor of responsibility for providing adequate quality control measures nor relieve the Contractor of responsibility for strict compliance with the terms of this Contract.

9.0 ASSIGNMENT/SUBCONTRACT

9.1 The Contractor may not assign nor subcontract any of the work covered by this Contract without the prior written permission of the Owner, but such permission, if granted, does not constitute the Owner's approval of a particular subcontractor. The Contractor must also provide the Owner written notice of all subcontractors prior to commencement of any work by a subcontractor.

10.0 TERMINATION

10.1 The Owner may terminate the Contractor's right to proceed under this Contract with or without cause. Such termination shall be effective immediately upon delivery of written notice to the Contractor. If the Owner terminates without cause, the Contractor shall be paid a fair and reasonable amount for the work properly completed prior to the notice of termination.

11.0 INDIAN PREFERENCE

11.1 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 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that, to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and
(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

11.2 The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

11.3 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.

11.4 The contractor shall include this section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

12.0 REQUIREMENTS IMPOSED BECAUSE OF FEDERAL FUNDING

12.1 The additional requirements imposed by federal funding sources set forth in Attachment B (Other Federal Requirements) must also be complied with by the Contractor and subcontractors and are made part of this Contract.

13.0 MODIFICATIONS OR AMENDMENTS

13.1 This Contract may not be modified nor amended unless in a writing signed by both parties. Any additions or modifications executed at the time of signing of this Contract must be set forth in Attachment C. In the event of any conflict between items in Attachment C and items in the rest of the Contract, Attachment C controls.

This Contract is dated this _____ day of _____, _____.

OWNER:

_____

_____
(type of entity)

By: _____

Title:_____

_____
(mailing address)

_____
(city) (state) (zip code)

Telephone: _____

Fax: _____

CONTRACTOR:

_____

_____
(type of entity)

By: _____

Title: _____

_____
(mailing address)

_____
(city) (state) (zip code)

Telephone: _____

Fax: _____

ATTACHMENT A

to Agreement Between Owner and Construction Contractor

PLANS AND SPECIFICATIONS

_____
(Owner's initials) (date)

_____
(Contractor's initials) (date)

Sample Contract File Arrangement

Folder Number/Name	Contents
#1 – Contract Bid Folder	1. In house list of contractors that legal notice was sent to. 2. Copy of actual notice that appeared in the paper. 3. Bill from newspaper for legal notice. 4. Copy of Bid Forms. 5. Copy of Bid Bonds. 6. Copy of signed "Representations, Certifications, and Other Statements of Bidders". 7. Copy of Indian or Tribal preference documentation. 8. Copy of Non-Collusive Affidavits. 9. Copy of bid tabulation sheet. 10. Letter of recommendation to award contract. 11. Copy of independent cost estimate for proposed contract.
#2 – Contract Award Folder	1. Copy of cost or price analysis. 2. Documentation to support the rational for award of the contract. 3. Documentation to support that the contractor was cleared from the Suspended and Debarred listing. 4. Copy of Performance Bond. 5. Copy of Payment Bond. 6. Evidence of deposit of a cash escrow of not less than 20 percent of the total contract price. 7. Letter of credit for 25 percent of the total contract price. 8. Letter of credit for 10 percent of the total contract price. 9. Copy of Signed contract. 10. Copy of insurance certificates. 11. Copy of pre-construction checklist.
#3 – Specifications	1. Copy of contract specifications. 2. Copy of any bidding addendums. 3. Copy of drawings.
#4 – Contract Registers	1. Copy of contract register. 2. Copy of change order register. 3. Copy of contract progress schedules.
#5 – Change Orders	Copy of all change orders in numerical order, including: 1. Copy of change order documents. 2. Copy of cost or price analysis. 3. Documentation to support the rational for award of the change order. –Finding of Fact 4. Supporting documents.
#6 – Contract Payments	1. Copy of all contractor payment requests. 2. Supportive documentation.
#7 – Contractor Payrolls	1. Copy of all contractor payroll reports.

Sample Contract File Arrangement

Folder Number/Name	Contents
#8 - Submittals	1. Copy of contractor submittal log. 2. Copy of all contractor submittals.
#9 – Daily Logs	1. Copy of all daily logs.
#10 – General Correspondence & Closeout Documents	1. Miscellaneous correspondence. 2. Copy of final inspections and punch lists. 3. Contract closeout documents. 4. Copy of all warranties. 5. Copy of all operation and maintenance manuals.