

# NORTHERN PONCA HOUSING AUTHORITY

## PROCUREMENT POLICY

This Statement complies with the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), and the Indian Housing procurement regulations at 24 CFR 1000.26, selected sections of the procurement standards of 24 CFR 85 and OMB Circular No. A-87.

### SECTION K-1 GENERAL PROVISIONS

#### 1. PURPOSE

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

#### 2. APPLICATION

This Statement applies to all contracts for the procurement of supplies, services, equipment and materials entered into by the NPHA after the effective date of this Statement. It shall apply to every expenditure of funds by the NPHA for public purchasing, irrespective of the source of funds (such as concession contracts); however, nothing in this Statement shall prevent the NPHA 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 HUD's Indian preference regulations shall be applied to the total project. The term "procurement", as used in this Statement, includes contracts and modifications (including change orders) for construction services, as well as the purchase, lease, or rental of supplies and equipment.

## SECTION K-2. PROCUREMENT AUTHORITY AND ADMINISTRATION

1. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director, or other individual he or she has authorized in writing. The Executive Director shall issue operational procedures (such as a procurement handbook or standard operating procedures) to implement this Statement. The Executive Director shall also establish a system of sanctions for violations of the ethical standards, consistent with tribal, or law.
2. The Executive Director or his/her designee shall ensure that:
  - a. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
  - b. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum, the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
  - c. For procurement's other than small purchases, public notice is given of each upcoming procurement at least 10 days before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 30 days for main construction contracts and 14 days for other contracts is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
  - d. Solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85 and the Indian preference requirements and methods of procurement at 24 CFR.
  - e. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement

above the small purchases limitation, and a cost or price analysis is conducted of the responses received for all procurement's;

- f. Contract award is made to the responsive and responsible bidder offering the lowest price, consistent with Indian preference requirements (for sealed bid contracts) or contract award is made to the offer or whose proposal offers the greatest value to the NPHA, considering price, technical, and other factors as specified in the solicitation, including Indian Preference (for new contracts awarded based on competitive proposals); unsuccessful firms are notified within ten days after contract award;
  - g. 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;
  - h. Procedures for inventory control, storage and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established.
  - i. The NPHA adheres to the procurement and program requirements of NAHASDA; and
  - j. The NPHA complies with applicable HUD review requirements, as provided in the operational procedures implementing this Statement.
3. This Statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the NPHA.
4. Cooperative Purchasing-- The Housing Authority may enter into State and local inter-governmental agreements to purchase or use common goods and services. The decision uses an inter-governmental agreement or

conduct a direct procurement shall be based on 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. The Housing Authority is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property when such use is feasible and reduces project costs.

5. SPECIFICATIONS:

- a. General- All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the Authority's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive unnecessary or duplicate items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided when possible. Consideration shall be given to consolidating or breaking out procurement's to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
- b. Limitations - The following specifications 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 Authority's 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 shall be scrutinized to ensure that organizational conflicts of interest do not occur.

### SECTION K-3. PROCUREMENT METHODS

#### 1. SELECTION OF METHOD

When satisfying its need by procurement, the NPHA shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

### SECTION K-4 SMALL PURCHASE PROCEDURES

1. GENERAL-- Any procurement not exceeding \$10,000.00 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.
2. INDIAN PREFERENCE—(For Procurement in excess of \$1,000.00)  
The NPHA shall to the greatest extent feasible provide preference to Indian-owned economic enterprises and Indian organizations and shall, to the extent feasible, maintain and/or refer to lists of qualified Indian supply sources. The NPHA shall require a statement from all general contractors agreeing to provide Indian preference in subcontracting, training, and employment, and shall specify the method to be used. The NPHA shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, NPHA shall document the procurement file with the reasons for the lack of Indian participation.
3. PETTY CASH PURCHASES-- Small purchases under \$50.00, which can be satisfied by local sources, may be processed through the use of a petty cash account. The Contracting Officer shall ensure that:  
the account is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the NPHA finance officer; and, the account is periodically audited by the finance manager or designee to validate proper use and to verify that the account total equals cash on hand plus the total or

accumulated vouchers.

Northern Ponca Housing Authority petty cash account is not to exceed \$300.00. (Resolution 04-25 on 9-12-04)

4. SMALL PURCHASES \$1,000.00-\$10,000.00

a) GENERAL-- At NPHA's option, NPHA may elect to use small purchase procedures in accordance with HUD regulation 24 CFR 1000.26.

b) OBTAINING QUOTES-- NPHA shall solicit price quotations by fax, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, NPHA 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. NPHA shall obtain written quotation; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within 10 days of the oral quotation or by the due date for submitting quotations. The names, addresses, and/or telephone numbers of the offertory and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

c) COMPLETION-- NPHA shall attempt to obtain quotations from a minimum of three (3) qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three (3) sources is acceptable if the NPHA has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).

5. AWARD

- a
- a) Award Based on Price-- For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiation) NPHA shall make award to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation. If no responsive quotation from qualified Indian-owned economic enterprise or organization is received the solicitation shall be re-let and award shall be made to the source with the lowest quotation and the Executive Director shall execute the award for solicitations between \$1,000.00 - \$10,000.00.
  - b) Award Based on Factors Other Than Price-- For small purchases to be awarded based on factors other than price, formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. The solicitation shall reserve 15% of the total evaluation points for providing Indian preference. Award shall be made to the best proposal or quotation in accordance with the stated rating system.
  - c) Small Purchases of \$1,000 - \$ 10,000.00 NPHA shall follow the procedures specified in paragraph 4 above; however, oral quotations are acceptable (provided that the Authority documents the quotes received), and the Authority may develop alternative methods of providing Indian preference which promotes maximum participation by Indian organizations and Indian-owned economic enterprises (provided that such methods are in writing and approved).

SECTION K-5 SEALED BIDS FOR PURCHASES IN EXCESS OF \$ 10,000

- 1. General-- NPHA shall use the procurement method of sealed bids in accordance with HUD regulations.

2. 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 procurement's under NAHASDA, sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

## SECTION K-6 SOLICITATION AND RECEIPT OF BIDS

1. Issuance and Amendment-- A written 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 (7) days of the bid opening, the bid opening shall be postponed until at least seven (7) 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 their bid at any time prior to bid opening.
2. Restricting Solicitations--The invitation shall be restricted to qualified Indian-owned economic enterprises and Indian organizations if NPHA has a reasonable expectation of receiving the required minimum number of bids from them. NPHA shall solicit bids from non-Indian as well as Indian-owned economic enterprises and Indian organizations if NPHA decides not to restrict the solicitation; or, an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation; or, a single bid is not accepted.

3. Bid-Opening-- Bids shall be opened publicly and in the presence of at least one witness. A bid tabulation shall be recorded and the bids shall be available for public inspection.
4. Bid opening for solicitations in excess of \$10,000 shall be conducted by the Board of Commissioners.
5. Award-- Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:
  - a) Restricted Solicitations-- If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more (or a greater number determined by NPHA as 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, unless otherwise provided in State, tribal or local law. If fewer than the minimum number of qualified Indian-owned economic enterprises or organizations submit responsive bids, all bids shall be rejected, and the NPHA shall cancel the solicitation  
  
and resolicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. NPHA may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if NPHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or NPHA documents  
and  
determines that the delay of resoliciting would subject the project to substantially higher 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 the

bid is within the maximum total contract price established for the specific project or activity being solicited the bid is within the range specified in the Attachment to this Statement. If equal low bids are received from qualified Indian- owned economic enterprise or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided in State, Tribal or local law. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.

#### **SECTION K-7 MISTAKES IN BIDS**

1. Prior to bid opening correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall not be permitted. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document or the bidder submits convincing evidence that a mistake was made.
2. All decisions to allow 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 NPHA or fair competition shall be permitted.

#### **SECTION K-8 COMPETITIVE PROPOSALS/(RFP) Request For Proposal**

1. General-- NPHA shall use the procurement method of competitive proposals in accordance with HUD regulations (24CFR1000.26). This method generally applies when a bid is not "apples for apples"
2. Conditions for Use-- Competitive proposals may be used if there is an adequate method of evaluating technical proposals and where NPHA determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.

### 3 . Solicitation

- a. General-- The Request for Proposals (RFP) may be restricted to qualified Indian-owned economic enterprise and Indian organizations if NPHA has a reasonable expectation of receiving offers from two (or a greater number stated in the RFP) such entities. NPHA shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian organizations if NPHA 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 written 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 of Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and sub factor. NPHA shall reserve 15% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional 10% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
4. Negotiations-- In those situations where negotiations are deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. 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 specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

5. 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 NPHA, provided that the price is within the maximum total contract price established for the specific property 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 submit acceptable proposals, NPHA shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. NPHA may accept the sole proposal received, subject to HUD approval, in unusual circumstances, such as when NPHA determines that the delays caused by resoliciting would cause higher costs, or where NPHA determines that the proposal has a fair and reasonable price.
6. Architect/Engineer Services-- Architect/Engineer services in excess of the small purchase limitation (or less if required by State, Tribal or local law) may be obtained by competitive proposals method. Sealed bidding shall not be used to obtain architect/engineer 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.

## SECTION K-9 COMPETITIVE 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 NPHA, 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 supplies is available, and the Contracting Officer so certifies in writing; or
  - c) After solicitation of a number of sources, competition is determined inadequate; or
  - d) HUD specifically authorizes the use of noncompetitive proposals.
2. Justification-- Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The Executive Director shall approve the justification in writing.
3. Price Reasonableness-- The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

## SECTION K-10

## PRICE ANALYSIS

1. General-- A cost or price analysis shall be performed for all non-competitive procurement actions, including contract modifications. The method of analysis shall be determined as is set forth below. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost of Pricing Information-- If the procurement is based on noncompetitive proposals, or when only one offer is received, the offeror shall be required to submit:
  - a) A cost breakdown showing projected costs and profit; and
  - b) Commercial pricing and sales information, sufficient to enable NPHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - c) Documentation showing that the offered price is set by law regulation.
3. Cost Analysis-- Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted (a) a cost analysis shall be performed of the individual cost elements; (b) NPHA shall have a right to audit the contractor's books and records pertinent to such costs; and (c) profit shall be analyzed separately. In establishing profit, the NPHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
4. Price Analysis-- A comparison of prices shall be used in all cases other than those described.

## SECTION K-11 CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if. (a) NPHA no longer requires the supplies, services or construction; or, (b) NPHA can no longer reasonably expect to fund the procurement; or, (c) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (d) similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if. (a) the supplies, services, or construction are no longer required; or (b) ambiguous or otherwise inadequate specifications were part of the solicitation; or, (c) the solicitation did not provide for consideration of all factors of significance to NPHA; or, (d) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, (e) 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, (f) a condition for canceling a solicitation and resoliciting, as specified in paragraphs III(C)(5)(a) or III(D)(5) above, is met; or, (g) for good cause of a similar nature when it is in the best interest of the NPHA.
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.
  4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
5. For solicitations that are not restricted to Indian-owned economic enterprises or Indian organizations, if all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the NPHA shall cancel the solicitation and either:

- a. Resolicit using a request for proposals; or
- b. Complete the procurement by using the competitive proposed method, following paragraphs above (when more than one otherwise acceptable bid has been received), provided, that the Contracting Officer determines in writing that such action is appropriate, that all bidders are informed of the NPHA's intent to negotiate, and that each responsible bidder is given a reasonable opportunity to negotiate.

## SECTION K-12 CONTRACTOR QUALIFICATIONS AND DUTIES

### 1. 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 NPHA 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 Indian Housing Authorities), 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 not responsible, a written determination of nonresponsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

### 2. SUSPENSIONS 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 85) when necessary to protect the NPHA in its business dealings. The

NPHA may suspend or debar a contractor under tribal laws, as applicable.

3. QUALIFIED BIDDER'S LISTS

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any prequalified 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 shall be maintained by the NPHA. 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.

4. BONDS

a. Development contracts. In addition to the other requirements of this Statement, the successful bidder shall be required to submit one of the following forms of assurance, in accordance with the approved method set forth in the solicitation, within 10 days after the prescribed contract forms are presented or signature:

- 1) a performance and payment bond for 100% of the total contract price; shall be mandatory when the contract price exceeds \$10,000.00
- 2) An irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the NPHA shall be mandatory for contracts executed between the sums of \$1,000.00 and \$10,000.00, subject to reduction with the approval of HUD, during the warranty period commensurate with potential risk; or

The solicitation shall indicate which of the above methods is applicable.

**SECTION K-13      TYPES OF CONTRACTS, CLAUSES, AND CONTRACT  
ADMINISTRATION**

**1.      CONTRACT TYPES**

Any type of contract (pricing arrangement) which is appropriate to the procurement may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction costs 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 approved form of contract. A time and material contracts 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: (1) the option is contained in the solicitation; (2) the option is a unilateral right of the NPHA; (3) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (4) the options may be exercised only if determined to be more advantageous to the NPHA than conducting a new procurement.

**3.      CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36 (I), such as the following:

- a.      Termination for convenience
- b.      Termination for default
- c.      Equal Employment Opportunity
- d.      Anti-Kickback Act
- e.      Davis-Bacon Act And for Maintenance Wage Rate Determination.
- f.      Contract Work Hours and Safety Standards Act

- g. Reporting requirements
- \*h. Patent rights
- \*i. Rights in data
- \*j. Examination of records by Comptroller General
- \*k. Retention of records for three years after closeout
- \*l. Clear air and water
- \*m. Energy efficient standards
- n. Bid protests and contract claims
- \*o. Value engineering
- \*p. Payment of funds to influence certain Federal transactions

\* Notes applicable only to new development contracts.

If all required clauses are not included, then the NPHA shall attach any additional clauses to the forms used in contract documents. The operational procedures required for this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the NPHA. NPHA shall include the contract clauses and solicitation notices for Indian preference.

#### 4. CONTRACT ADMINISTRATION

A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section II(A) above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

### SECTION K-14 SPECIFICATIONS

#### 1. GENERAL

All specifications shall be drafted so as to promote overall economy or the purposes intended and to encourage competition in satisfying the NPHA's needs. Specifications 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, except if the NPHA is attempting to standardize equipment for maintenance ease and/or inventory convenience.

## 2. LIMITATIONS

The following specification limitations shall be avoided: geographic restrictions; unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the NPHA's needs); brand name or equal specifications

## SECTION K-15 APPEALS AND REMEDIES

### 1. GENERAL

It is the NPHA's practice to resolve all contractual issues informally at the Housing Authority level, to the greatest extent feasible. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the NPHA level. When appropriate, the NPHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the NPHA to review a complaint or protest.

### 2. BID PROTESTS

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

3. CONTRACT CLAIMS

All claims by a contractor relating to the performance of a contract shall be submitted in writing to the Contracting Officer 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 NPHA, such as the Executive Director.

4. PROTESTS INVOLVING INDIAN PREFERENCE

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

**SECTION K-16 ASSISTANCE TO SMALL AND OTHER BUSINESSES**

1. REQUIRED EFFORTS

The NPHA shall make efforts to ensure that small businesses and individuals or firms located in or owned in substantial part by person residing in the area of a NPHA project are used when possible. Such efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on initial solicitation mailing lists;
- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- d. Using the services and assistance of the Small Business Administration;
- e. Including the contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents for the project to

business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 1000.48), pursuant to Section 3 of the HUD Act of 1968; and

Goals may be established by the NPHA periodically for participation by small businesses and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the NPHA's prime contracts and subcontracting opportunities.

## 2. DEFINITIONS

- a. A small business is defined as a business that is independently owned not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the NPHA determines that their use is inappropriate.
- b. A business concern located in the area of the project is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 1000.48, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is five percent (5%) or more owned by persons residing within the Section 3 covered project area, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged and meeting the definition of small business above.

## 3. INDIAN PREFERENCE REQUIREMENTS

- a. General-- Projects developed and operated with assistance under 24 CFR Part 1000 are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (24 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts

and subcontracts. Preference must be provided in accordance with the methods set forth in 24 CFR 1000, or an alternate method approved under 24 CFR 950.1000. Specifically the NPHA shall provide preference in the following general manner:

- a.) The NPHA shall develop a qualified Native contractors list.
- b.) The NPHA shall solicit solely from the Native list only. If no or insufficient responses are received;
- c.) The NPHA shall solicit responses from all contractors, vendors.

In the latter process the "X" factor shall not apply.

Where Indian preference is determined not to be feasible, the NPHA shall document the procurement file with the basis for its findings. Indian preference applies not within the NPHA's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be as described above. In no case shall the NPHA authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on particular tribal affiliation or membership.

- b. Eligibility-- Eligibility for Indian preference shall be established in accordance with the procedures in 24 CFR 1000. If the NPHA determines an applicant ineligible for Indian preference, the NPHA shall notify the applicant in writing before contract award, or filling the position or providing the desired training.

## **SECTION K-17 ETHICS IN PUBLIC CONTRACTING**

### **1. GENERAL**

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

2. CONFLICT OF INTEREST

No employee, officer or agent of the NPHA shall participate directly or indirectly in the selection of, or in the award of, 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 relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, and half sister);
- 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.

3. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

NPHA 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 personal gain.

4. PROHIBITION AGAINST CONTINGENT FEES

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

## Section K-18 Total Development Costs (TDC's)

The following Total Development Costs (TDC's) shall be followed for all home acquisition (including the cost of expansion and/or necessary improvements) and construction:

One Bedroom-	\$ 95,000.00
Two Bedroom-	\$105,000.00
Three Bedroom-	\$115,000.00
Four Bedroom-	\$125,000.00
Five Bedroom-	\$135,000.00

(Resolution 04-31 on 11-14-04)

**K-18 Exclusions**

***This policy and it's requirement do not apply to the Authority acquisition of the following:***

- a.) Unit acquisition***
- b.) Vehicle trade or purchase***