RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE NAVAJO HOUSING AUTHORITY

Approving the Revision to the Navajo Housing Authority Procurement Policy

WHEREAS:

1. Pursuant to 6 N.C., Sections 605 and 616(b)(3), the Board of Commissioners of the Navajo Housing Authority (NHA) is empowered with the authority to manage the affairs of the NHA including the power to establish and amend rules, regulations and policies in the operation and management of its programs; and

2. The NHA management established and revised the current Navajo Housing Authority Procurement Policy & Procedures pursuant to Resolution NHA-4640-2016 adopted August 8, 2016; and

3. The NHA management finds it necessary to include updates of the Code of Federal Regulations in addendum form; and The NHA management now proposes to add nine (9) addendums to the NHA Procurement Policy to comply with the Code of Federal Regulations and implement Standard Operating Procedures for all methods of procurement according to the updated regulations; and

4. The NHA management has updated the NHA Procurement Policy Table of Contents to include supplemental Addendums A—I.

5. The NHA management recommends the approval of the NHA Procurement Policy Addendums A—I for the Navajo Housing Authority as shown in Exhibit A attached hereto and made a part hereof.

6. The NHA management has attached copies of the new federal code of regulations and labeled them Exhibits B—H. Exhibits B—H contain handwritten notes guiding the reader to the specific section being recommended for update.

NOW, THEREFORE, BE IT RESOLVED THAT:

A. The Board of Commissioners of the Navajo Housing Authority hereby approves supplemental addendums A—I on pages 41—47 of the NHA Procurement Policy for the Navajo Housing Authority as shown in Exhibit “A” attached hereto and made a part of this Resolution. Exhibit “A” is the Procurement Policy with supplemental addendums A—I.
RESOLUTION NHA-4831-2018
October 9, 2018
Page 2

B. The Board of Commissioners of the Navajo Housing Authority hereby directs the Chief Executive Officer to immediately implement the supplemental addendums added to the NHA Procurement Policy for the Navajo Housing Authority.

CERTIFICATION

Commissioner Derrith Watchman-Moore moved that the foregoing Resolution NHA-4831-2018 be adopted and this was seconded by Commissioner Sean McCabe. Same was passed by the following vote:

AYES: 4  NAYES: 0  ABSTAINED: 1

The Secretary, thereupon, declared said motion carried and said Resolution NHA-4831-2018 was adopted this 9th day of October, 2018.

Kris Beecher, Chairperson
NHA BOARD OF COMMISSIONERS

ATTEST:

Sean McCabe, Secretary/Treasurer
NHA BOARD OF COMMISSIONERS

RESPECTIVE CHIEF:
LEGAL REVIEW:
CHIEF EXECUTIVE OFFICER:
Navajo Housing Authority

Procurement Policy

As Revised per Resolution
NHA-4640-2016

Adopted on August 8, 2016

(Addendums A—I adopted on October 9, 2018 by NHA-4831-2018)
Table of Contents

1 PURPOSE ......................................................................................................................... 5
  1.1 Procurement Resolution ......................................................................................... 5
  1.2 Authority .................................................................................................................. 6
  1.3 Applicable Documents ............................................................................................. 7
2 CODE OF CONDUCT ....................................................................................................... 7
  2.1 Conflict of Interest .................................................................................................... 7
  2.2 Conflict of Interest - Gifts .......................................................................................... 8
  2.3 Conflict of Interest - Gifts - Nominal Intrinsic value ..................................................... 8
  2.4 Penalties or Disciplinary Action ................................................................................. 9
  2.5 Sanctions ................................................................................................................... 9
  2.6 Unauthorized Business Transactions - Effect .............................................................. 11
  2.7 Reimbursement for Prohibited Transactions .............................................................. 11
  2.8 Nondiscrimination .................................................................................................... 11
3 RESPONSIBILITIES ......................................................................................................... 12
  3.1 Chief Executive Officer (CEO) .................................................................................. 12
  3.2 NHA Contracting Officer (CO) .................................................................................. 12
  3.3 Contracting Officer Representatives (COR) .............................................................. 13
  3.4 Chief Financial Officer (CFO) .................................................................................... 14
  3.5 Chief Operating Officer (COO) .................................................................................. 14
  3.6 Grants Management .................................................................................................. 15
  3.7 Procurement Department ......................................................................................... 15
  3.8 Contract Analyst (CA) .............................................................................................. 16
  3.9 Risk Management ..................................................................................................... 17
  3.10 Legal Department .................................................................................................... 18
  3.11 Project Architect ....................................................................................................... 18
  3.12 NHA Employees / Sub-Recipients ........................................................................... 18
4 PURCHASING CARD RESPONSIBILITIES .................................................................... 19
  4.1 Bank .......................................................................................................................... 19
  4.2 Finance Purchasing Card Administrator (FPCA) .......................................................... 19
  4.3 Procurement Purchasing Card Administrator (PPCA) ............................................... 19
  4.4 Division Liaison ......................................................................................................... 20
  4.5 Cardholder ................................................................................................................ 20
5 BUDGET LIMITATIONS ................................................................................................. 20
6 PLACE OF CONTRACTING AND PERFORMANCE ..................................................... 20
7 EXCEPTIONS ................................................................................................................ 20
8 APPLICATION .............................................................................................................. 21
9 BUSINESS QUALIFICATIONS, INDIAN PREFERENCE, AND LISTS ......................... 21
  9.1 Competition Required for Procurement over $5,000 .................................................. 21
    9.1.2 Restricted versus Open Solicitation ...................................................................... 21
    9.1.3 Non-Prohibitive .................................................................................................... 22
  9.2 Responsible Bidders or Offerors ................................................................................ 22
  9.3 No Geographical Preferences .................................................................................. 23
  9.4 Indian Preference ....................................................................................................... 23
  9.5 Exception ................................................................................................................... 23
    9.5.1 Prequalification ................................................................................................. 23
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.5.2 Certification Investigation</td>
<td>24</td>
</tr>
<tr>
<td>9.5.3 Restricted Bids</td>
<td>24</td>
</tr>
<tr>
<td>9.6 List of Qualified Indian, Small, Minority, and Women's Business Enterprise</td>
<td>25</td>
</tr>
<tr>
<td>10 GENERAL PROCUREMENT PRINCIPLES</td>
<td>25</td>
</tr>
<tr>
<td>10.1 Cost and price</td>
<td>25</td>
</tr>
<tr>
<td>10.1.1 Federal Cost Principle</td>
<td>25</td>
</tr>
<tr>
<td>10.1.2 Cost and Price Analysis</td>
<td>26</td>
</tr>
<tr>
<td>10.1.3 Negotiating Bidder or Offeror Profit</td>
<td>26</td>
</tr>
<tr>
<td>10.1.4 No Cost Plus or Percentage of Cost Contracts</td>
<td>26</td>
</tr>
<tr>
<td>10.2 Unnecessary Procurement</td>
<td>26</td>
</tr>
<tr>
<td>10.3 Standard Methods of Procurement</td>
<td>26</td>
</tr>
<tr>
<td>10.3.1 Micro Procurement</td>
<td>27</td>
</tr>
<tr>
<td>10.3.2 Small Purchases</td>
<td>27</td>
</tr>
<tr>
<td>10.3.3 Sealed Bids</td>
<td>27</td>
</tr>
<tr>
<td>10.3.4 Competitive Proposals and</td>
<td>28</td>
</tr>
<tr>
<td>10.3.5 Noncompetitive Proposals</td>
<td>28</td>
</tr>
<tr>
<td>10.4 Restricted versus Open Solicitation</td>
<td>29</td>
</tr>
<tr>
<td>10.5 Pre-Award Review</td>
<td>29</td>
</tr>
<tr>
<td>10.6 HUD Review and Approval</td>
<td>29</td>
</tr>
<tr>
<td>10.7 Board Approval of Awards</td>
<td>30</td>
</tr>
<tr>
<td>10.8 Preparation of Contracts</td>
<td>30</td>
</tr>
<tr>
<td>10.9 Contract Terms</td>
<td>30</td>
</tr>
<tr>
<td>10.10 Cancellation of Invitation for Bids or Requests for Proposal</td>
<td>31</td>
</tr>
<tr>
<td>10.11 Limitations on Contract Modifications</td>
<td>32</td>
</tr>
<tr>
<td>10.12 Alternative Procurement Methods</td>
<td>32</td>
</tr>
<tr>
<td>10.12.1 Intergovernmental Agreements</td>
<td>32</td>
</tr>
<tr>
<td>10.12.2 Federal Excess and Surplus Property</td>
<td>32</td>
</tr>
<tr>
<td>10.12.3 GSA (General Services Administration)</td>
<td>33</td>
</tr>
<tr>
<td>10.13 Procuring 'Green' Products and Services</td>
<td>33</td>
</tr>
<tr>
<td>11 EMERGENCY PROCUREMENT</td>
<td>33</td>
</tr>
<tr>
<td>12 RECORDS OF PROCUREMENT</td>
<td>33</td>
</tr>
<tr>
<td>13 ISSUES, DISPUTES, PROTESTS, AND CLAIMS</td>
<td>34</td>
</tr>
<tr>
<td>13.1 Submission Issues</td>
<td>35</td>
</tr>
<tr>
<td>13.1.1 'Obvious Mistakes'</td>
<td>35</td>
</tr>
<tr>
<td>13.1.2 Minor Informalities</td>
<td>35</td>
</tr>
<tr>
<td>13.1.3 Withdrawal of Bids</td>
<td>35</td>
</tr>
<tr>
<td>13.1.4 Single Bids/Proposals Received</td>
<td>35</td>
</tr>
<tr>
<td>13.1.5 Resubmit of Original Response for Re-Solicitation</td>
<td>36</td>
</tr>
<tr>
<td>13.2 Bidder Disputes and Protests</td>
<td>36</td>
</tr>
<tr>
<td>APPENDIX A: DEFINITIONS</td>
<td>38</td>
</tr>
<tr>
<td>SUPPLEMENTAL ADDENDUMS A--I added on October 9, 2018</td>
<td></td>
</tr>
<tr>
<td>ADDENDUM A Simplified Acquisition Threshold</td>
<td>41</td>
</tr>
<tr>
<td>ADDENDUM B Organizational Conflicts</td>
<td>41</td>
</tr>
<tr>
<td>ADDENDUM C Value Engineering Contracting Clause</td>
<td>41</td>
</tr>
<tr>
<td>ADDENDUM D Time and Materials Type Contract</td>
<td>41</td>
</tr>
<tr>
<td>ADDENDUM E Section 3</td>
<td>42</td>
</tr>
<tr>
<td>ADDENDUM F Sub-Recipient Review</td>
<td>42</td>
</tr>
</tbody>
</table>
ADDENDUM G  Contract Provisions.................................................43
ADDENDUM H  Noncompetitive Proposals........................................46
ADDENDUM I  Cost Principles.........................................................47
1 PURPOSE

This Navajo Housing Authority (NHA) Policy, as adopted by its Board of Commissioners in NHA Resolution NHA-4640-2016, provides the overall policy framework of NHA's Indian Housing Block Grant (IHBG) activities for the procurement of goods and services. This policy complies with the laws of the Navajo Nation and governing federal law, regulations and policies. This policy directly supports NHA's mission to meet the needs of the Navajo Nation by promoting and providing affordable quality homes, professional and respectful management services, and economic growth in an ethical manner.

NHA defines procurement as the buying, contracting, purchasing, renting, leasing, or otherwise acquiring any materials, services, or construction. Procurement also includes all functions that pertain to obtaining any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Procurement begins with an idea or proposal fulfilling an identified need that is aligned with NHA's strategic plans and objectives. Procurement ends with the completion of the program or project or the final disposition of the product or service.

Together, governance and strategic management form the foundation for NHA's procurement process. The goal of NHA's procurement process is to effectively and efficiently obtain necessary goods and services at the best value to support NHA's mission. NHA's broad concept of procurement means that everyone in NHA and everyone supporting NHA has a role in procurement.

To ensure each individual fully understands NHA's procurement policy and their role in supporting procurement, this policy will define NHA's procurement policy, NHA procurement process in broad terms and the roles, responsibilities, and authority of those involved with that process. This policy is directly supported by Standard Operating Procedures (SOPs) that contain detailed information concerning their respective procurement activities.

1.1 Procurement Resolution

Pursuant to NHA Board of Commissioners (BOC) Resolution NHA-4640-2016, NHA, including all departments and sub-grantees, shall;

a. Follow this policy for all Indian Housing Block Grant (IHBG) procurement Activities; this policy shall not apply to procurement for all Non-IHBG sources of funding and activities.


c. comply with the program standards of the U.S. Department of Housing and Urban Development ("HUD");
d. provide for the efficient and effective acquisition of property, materials, goods and services;

e. establish a sound and integral contract administration system;

f. set standards of conduct for employees engaging in procurement awards;

g. award contracts to responsive and responsible bidders or offerors;

h. record procurement transactions;

i. provide for the settlement of disputes during procurement;

j. otherwise, provide for economic, cost-efficient, competitive, and fair purchases of goods and services;

k. allow its CEO to make recommended and necessary changes to this policy to ensure the organization is in compliance with current laws, regulations, and statutes.

Ref. 24 C.F.R. § 85.36(b); 24 C.F.R. §1000.26(11), and NHA-4640-2016

1.2 Authority

a. NHA is an Indian Housing Authority organized under the laws of the Navajo Nation at 6 N.N.C. § 601, and designated as the Tribally Designated Housing Entity by Navajo Nation Council (NNC) Resolution CD-62-03 and regulated by HUD program requirements set out in the Code of Federal Regulations Title 24 Housing and Urban Development Parts 85 and 1000.

Ref. 24 C.F.R. PART 85; 24 C.F.R. §1000.6 and 1000.26; 6 N.N.C. § 601et.seq.

b. The notation "Ref." following the rules refers to the HUD regulation or program requirement upon which each particular rule was based as specified in the Code of Federal Regulations or other appropriate regulation, and the reader should refer to such provisions to supplement a particular rule. The provisions of 24 C.F.R. 85.36, "Procurement", are controlling and in the event of any conflict in interpretation, HUD regulations prevail.

Ref. 24 C.F.R. §85.36(b)(1)

c. References:


2. Housing and Urban Development Administrative Requirements for Grants and Cooperative Agreements to State, Local and federally recognized Indian Tribal Governments (24 C.F.R. PART 85).

3. Housing and Urban Development Native American Housing Activities (24 C.F.R. PART 1000)

4. Navajo Nation Council Resolution CD-82-03
5. 6 N.N.C. § 601.et.seq.
6. NHA Delegations of Authority

1.3 Applicable Documents
a. HUD Administrative Requirements for Grants and Cooperative Agreements to
   State, Local and Federally Recognized Indian Tribal Governments (24 C.F.R.
   PART 85)
b. HUD Native American Housing Activities (24 C.F.R. PART 1000)
c. Protection and Enhancement of Environmental Quality (24 C.F.R. 50)
d. Environmental Review Procedures for Entities Assuming HUD Environmental
   Responsibilities (24 C.F.R. 58)
e. Cost Principles for State, Local, and Indian Tribal Governments (2 C.F.R. 255)
f. Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular
   A-87, Revised)
g. NHA Code of Ethics and Conduct for All Employees
h. NHA Travel Policies & Procedures
i. Procurement Plan
j. NHA Standard Operating Procedure (SOP) for Small and Micro Purchases
k. NHA SOP for Invitation For Bid (IFB) (Non-Construction)
l. NHA SOP for Request For Proposal (RFP)
m. NHA SOP for IFB (Construction)

2 CODE OF CONDUCT

This part will be considered a written code of standards of conduct governing the
performance of the BOC and NHA employees engaged in the award and administration
of contracts. This code of conduct also applies to persons under contract with the NHA,
including attorneys, auditors, accountants, and all other individuals or agents who provide
professional or other services to the NHA. In all cases not governed by this part the
conflict of interest provisions outlined at 24 CFR Part 1000.30, 32, 34, and 36 shall apply.
Ref. 85.36 (b)(3); 24 CFR §1000.30

2.1 Conflict of Interest

2.1.1 No employee, officer, contract employee or agent of the NHA shall
   participate in the selection, award or administration of any contract if a
   conflict of interest, real or apparent, would be involved. Such a conflict
   would arise when:
   a. The employee, officer, contract employee or agent, or
b. Any member of his or her immediate family (as defined by the NHA Personnel Policy), or

c. His or her business partners, or
d. Any organization which employs any of the above, has a financial or other interest in the business or contractor selected for award.

Ref. 85.36 (b) (3); 1000.30; 1000.32; 1000.34; 1000.36

2.1.2 It shall be a conflict of interest for any:

a. Person, firm or company;
b. Partner;
c. Part owner of a firm or company;
d. Officer, board member or agent of a firm or company

who has a pending lawsuit, claim, or other adversarial proceeding in any forum against the NHA to submit a bid for a contract. A bid from any such person, partner, past owner, board member, or agent of a firm or company shall be rejected.

2.2 Conflict of Interest - Gifts

Employees, officers, contract employees or agents of the NHA shall not solicit nor accept gratuities, favors, or anything of monetary value from contractors, subcontractors, potential contractors, or parties to sub agreements with the NHA. Employees, officers, or agents of the NHA shall report in writing any and all unsolicited offers from any contractor, subcontractor, potential contractor, or from a party to a sub agreement with the NHA.

Ref. 85.36 (b) (3); 1000.30; 1000.32; 1000.34; 1000.36

2.3 Conflict of Interest - Gifts - Nominal Intrinsic value

Nothing in rule 2.2 or 2.3 shall prohibit any employee, officer, or agent, from accepting a gift where the financial interest of the donor (i.e., one who gives a gift) is not substantial or where the gift is an unsolicited item of nominal intrinsic value, and the employee, officer, or agent has made a determination that no conflict of interest exists.

a. A financial interest is "not substantial" with respect to businesses which do business or propose to do business with the NHA where the person or firm offering the gift does not do so for the purpose of immediately influencing the decision of an officer or employee of the NHA, but only to generate general business good will, and where the gift is appropriate under the circumstances as a matter of normal business practice.

b. An "unsolicited item of nominal intrinsic value" means the kind of gift or gratuity which is normally and customarily given to another in business practice. Examples of such gifts include meals and refreshments, pens, calendars,
samples, tickets to sporting or entertainment events, or other items which business normally or customarily offer to those with whom they do business. The events which business customarily use as an occasion to give such nominal gifts include initial or out-of-town business meetings (for meals and refreshments), conventions and conferences, birthdays, Christmas, the birth of a child, or other occasions where businesses recognize individuals as a matter of business goodwill. In no event shall a gift of a value of $100 or more in any one calendar year be considered of “nominal intrinsic value,” and in no event shall a gift of money or other monetary items (i.e. check, gift certificate, discount, rebate, etc.) be accepted.

c. No employee, officer or agent shall solicit or ask for a gift or gratuity from any contractor, potential contractor, or party to a sub agreement with the NHA, even if the same may be allowed under these rules.

d. The prohibition against soliciting or receiving gifts shall not apply to solicitations for contributions by employees for operations or functions of the NHA, so long as no employee receives any personal benefits as a result of any contribution and so long as prior written approval of the appropriate Division Director is obtained. “Personal Benefit” does not include enjoyment of a facility, refreshments, meals, or other items purchased or contributed for the general benefit of NHA employees.

e. All Employees, officers, or agents of the NHA who accepts a gift pursuant to this part shall report in writing the acceptance of that gift to the Contracting Officer by the end of the next business day.

Ref. 85.36 (b)(3)

2.4 Penalties or Disciplinary Action

Any employee, officer, or agent who violates these rules may be subject to disciplinary action. Any actions against employees will be consistent with the requirements of the NHA Personnel Policies. The degree of discipline applied shall be reasonable and take into account the circumstances as a whole and whether or not a violation was willful.

Ref. 85.36 (b) (3); 1000.34

2.5 Sanctions

a. Any agent, contractor, subcontractor, officer or employee of a business doing contract work for the NHA who violates the rules of this part may be subject to sanctions ranging from a written warning to debarment from doing business with the NHA or revocation of a contract with the NHA, depending upon the severity of the conduct. This part constitutes notice to contractors, subcontractors, and others of both the standards of conduct and potential sanctions under this part by means of the power contained in 24 CFR Sec. 85.36 (b) (3) and the promulgation of these rules.

Ref. 85.36 (b) (3)
b. Depending upon the severity of the offense, the range of sanctions shall include written warning, suspension, debarment, or revocation of an existing contract. A suspension from contracting with the NHA shall not exceed one year unless allowed by these rules. A debarment shall not be less than one year unless allowed by these rules.

c. The causes for suspension or debarment include the following:

1. Conviction of any person or any subsidiary or affiliate of any person for the commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract; or in the performance of such contract or subcontract.

2. Conviction of any person or any subsidiary or affiliate of any person under any Navajo, state, or federal statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a NHA contractor.

3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under any state or federal antitrust statute.

4. Violations of contract provisions of a character that are deemed to be so serious as to justify debarment action, such as any of the following:

A. Knowingly fails without good cause to perform in accordance with the specification or the time limit provided in the contract.

B. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment.

C. Notice of non-participation by HUD.

D. Failure to pay or reimburse the NHA for outstanding liabilities due the NHA.

E. Non-compliance with the Navajo Nation Code.

F. Disbarment by a state.

5. Any other cause deemed to affect responsibility as an NHA contractor including suspension or debarment of such person or subsidiary or affiliate of such person of any other governmental entity for any cause listed herein or subsequent regulations issued by the Chief Executive Officer.

A. A written determination to suspend or debar shall be issued by the Chief Executive Officer which shall:

i. State the reasons for the action taken.
ii. Inform any suspended or debarred person involved of the right to administrative review as provided in this policy.

iii. A copy of the determination under this sub-section shall be mailed or otherwise furnished to any debarred or suspended person.

B. A copy of any sanction notice imposed pursuant to this rule shall be sent to the Contracting Officer who shall maintain a record of sanctions.

2.6 Unauthorized Business Transactions - Effect

All purchases, procurement, contracts, and other business transactions of the NHA which obligate the NHA to pay monies or transfer property require the approval of the Chief Executive Officer, and where required, the approval of the Board of Commissioners.

The actions of any officer or employee procuring goods, materials, equipment, work, or services are subject to these rules, and any transaction taken in violation of these rules is void or voidable by the NHA, acting through its Chief Executive Officer. Strict compliance with these rules and other applicable HUD program requirements is a condition precedent to the validity of any contract or business transaction of the NHA.

Other than permitted by these rules, no officer, employee, or agent of the NHA has the authority to bind the NHA to procurement, purchases, or other financial transactions, and any such contract is void or voidable, at the option of the NHA, and such is punishable as provided in Rule 2.5. Any person or entity doing business with the NHA who violates this rule may be subject to sanctions under Rule 2.6.

2.7 Reimbursement for Prohibited Transactions

Any officer, employee, contract employee or agent of the NHA, and any person or entity who enters into prohibited transactions in violation of these rules will be required to reimburse the NHA for any expenditure of its funds, damages, or other losses; and any officer, employee, contract employee or agent of the NHA, and any person or entity receiving a gift or engaging in a conflict of interest in violation of these rules will be required to return the same or make whole the NHA or other person for its value.

2.8 Nondiscrimination

To the extent required by the Indian Civil Right Act of 1968 and any applicable Federal or Navajo law, the NHA and its officers, employees, agents and contractors or subcontractors shall not discriminate against any person in the enjoyment of their rights or privileges under this policy nor shall the NHA, its officers, employees, agents and contractors or subcontractors discriminate against any person on the basis of race, color, religion, gender, national origin, age, or handicap status in employment or contracting.

Ref. 1000.12
3 RESPONSIBILITIES

3.1 Chief Executive Officer (CEO)

The NHA Board of Commissioners ("BOC") delegate the authority and responsibility to oversee the implementation of these rules to the NHA CEO and that person has the power and duty to issue directives, instructions, or other guidance to implement and enforce these rules. Specifically, the CEO has the authority and responsibility to:

a. Adopt procedures and model forms to carry out NHA Procurement Policy and rules.

b. Delegate responsibilities for specific portions of NHA procurement rules to individual NHA staff.

c. Exercise discretion as allowed under HUD regulations and NHA Procurement Policy where rules use words such as "may", "should," or other language indicating a choice of action.

d. Identify by position and title those NHA officials authorized to undertake procurement where competitive bidding is not required by HUD regulations.

e. Do all things necessary to apply and enforce the NHA Procurement Policy within the terms of applicable HUD Regulations.

f. The CEO or designee shall report all contractors or vendors who received a contract at the end of each quarter.

g. The CEO shall submit all procurement actions in excess of $1,000,000 to the NHA Board of Commissioners for approval.

Reference for 'e.', 24 C.F.R. §1000.26

3.2 NHA Contracting Officer (CO)

The NHA "BOC" appoints the CEO as the NHA Contracting Officer for all NHA procurement actions. NHA Contracting Officer has the authority and responsibility to:

a. Contractually bind NHA.

b. After BOC approval, signs all NHA procurements for goods and services valued in excess of $1,000,000.

c. Delegate responsibility for NHA procurement actions valued $1,000,000 or less.

d. Delegate responsibility for specific portions of these rules to individual NHA Contracting Officer Representatives (COR)

e. Sign and approve all of the following which are valued in excess of $1,000,000:
   1. Contract Award Letters after BOC approval
   2. Construction Contracts after BOC approval
3. Contractor-Provided Schedule of Values
   f. Places Change Orders and Contract Amendments into effect for contracts $1,000,000 or greater
   g. Approves and signs all payments for NHA managed or assumed construction contracts, to include Sub-grantee construction contracts.
   h. Certify that solicitations and awards were conducted in compliance with all appropriate laws, regulations and policies.
   i. Ensure all necessary actions for effective contracting and efficient contract administration are conducted, including monitoring contract performance in accordance with the contract’s terms, inspections for contract compliance, the filing and retention of contracts and warranties, contractor performances, payments, and other like matters:
   j. Ensure compliance with the terms of the contract and safeguarding NHA interests in its contractual relationships.
   k. Ensure sufficient funds are available for each obligation prior to approval.
   l. Ensure contractors receive impartial, fair, and equitable treatment.
   m. Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate.

3.3 Contracting Officer Representatives (COR)
The NHA Contracting Officer will designate Contracting Officer Representatives (COR), which are the respective Branch Chiefs of the NHA, for all NHA procurement actions which are valued $1,000,000 or less. The COR’s have the authority and responsibility to;
   a. Contractually bind NHA.
   b. Sign all NHA procurements for goods and services valued up to and no more than $1,000,000. BOC approval is required if the goods and services is over $1,000,000.
   c. Delegate responsibility for specific portions of these rules to individual NHA staff
   d. Sign and approve all of the following which are valued $1,000,000 or less:
      4. Contract Award Letters. BOC approval is required if the award is valued over $1,000,000.
      5. Construction Contracts. BOC approval is required if the contract is valued over $1,000,000.
      6. Contractor-Provided Schedule of Values
   e. Places Change Orders and Contract Amendments into effect, which are contracts valued $1,000,000 or less.
n. Approves and signs all payments for NHA managed or assumed construction contracts, to include Sub-grantee construction contracts.

o. Certify that solicitations and awards were conducted in compliance with all appropriate laws, regulations and policies.

p. Ensure all necessary actions for effective contracting and efficient contract administration are conducted, including monitoring contract performance in accordance with the contract’s terms, inspections for contract compliance, the filing and retention of contracts and warranties, contractor performances, payments, and other like matters:

q. Ensure compliance with the terms of the contract and safeguarding NHA interests in its contractual relationships.

r. Ensure sufficient funds are available for each obligation prior to approval.

s. Ensure contractors receive impartial, fair, and equitable treatment.

t. Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate.

3.4 **Chief Financial Officer (CFO)**

CFO has the authority and responsibility to;

a. Ensures the efficient and timely support of those finance-related activities directly related to NHA procurement activities, to include the assignment of contract numbers, and the transfer of programmatic funds to a work in progress, and the timely payment of contractors.

b. Supervise the Financial Services Branch Contract Analyst support of Executive, Financial Services and Administrative branch departments’ procurement actions to include construction services, to ensure the effective procurement of construction services in compliance with NHA policies and procedures.

c. Ensure effective planning, evaluation and assessment for Sub-recipient construction contracts including the following:

1. Ensure the efficient and timely support of those activities directly supporting construction procurements to include the development of statements of work, project management and the provision of subject matter experts to serve on planning teams and solicitation evaluation committees.

2. Ensure sufficient project funds are available to support construction procurements prior to initiating the action.

3. Work directly with the Contracts Analyst to ensure the timely provision of construction services to meet organizational objectives and goals.

3.5 **Chief Operating Officer (COO)**

COO has the authority and responsibility to;
a. Ensure the efficient and timely support of those activities directly supporting NHA construction procurement to include site selection, environmental assessments, project management, development of statements of work (SOW), and the provision of subject matter experts to serve on planning teams and solicitation evaluation committees.

b. Ensure sufficient project funds are available for each construction project prior to requesting the procurement of construction services.

c. Supervise the Operations Branch Contract Analyst to ensure the effective procurement of construction services, in compliance with NHA policies and procedures.

3.6 Grants Management

Grants Management Division has the authority and responsibility to:

a. Ensure the efficient and timely support of those activities directly supporting construction procurements of NHA sub-grantees to include the development of statements of work, project management and the provision of subject matter experts to serve on planning teams and solicitation evaluation committees.

b. Work directly with the Contract Analyst (CA) to ensure the timely provision of construction services to meet NHA and sub-grantees organizational objectives and goals.

c. Work directly with the CA and ensure CA is always informed on any sub-recipient contract or proposed procurement matters.

d. Ensure sufficient project funds are available to support construction procurements prior to initiating the action.

3.7 Procurement Department

a. Provide oversight for all NHA procurement activities to ensure compliance with appropriate laws, regulations, policy, and procedures.

b. Develop and provide training concerning NHA Procurement Policies and Procedures.

c. Interface with NHA senior management team on matters affecting NHA procurements.

d. Recommend modifications to NHA procurement policy and procedures, as appropriate, for approval by NHA CEO.

e. Sign and approve all NHA procurements for goods and services valued at less than $100,000 and meeting the requirements of 24 C.F.R 85.36(d)(1) for Small Purchases and make recommendations for approval, as appropriate, to NHA Contracting Officer.

f. Ensure sufficient funds are available for a planned procurement prior to initiation.
g. Certify that the proposed procurement activity is in compliance with 24 C.F.R. § 1000.28; OMB Circular A-87, 24 CFR § 85.22 (Allowable Costs) and 2 CFR 225.

h. Schedule and conduct pre-bid/pre-proposal meetings in conjunction with the Contract Analyst and the sponsoring department

i. Conduct evaluation and certify the bid responsiveness and bidder responsibility for all NHA procurements for goods and meeting the requirements of 24 C.F.R 85.36.

j. Publish the public notice announcing NHA IFBs and RFPs.

k. Form Evaluation Committees, as necessary, to evaluate bids/proposals submitted in response to NHA solicitations; prepare and distribute evaluation package to each committee member, provide confidentiality briefing and review the evaluation criteria as stated in the solicitation.

l. Maintain full and complete procurement records (including a Master Solicitation File for each NHA procurement) documenting the procurement’s history and compliance with applicable laws, regulations, and policies.

m. Delegate authority to Procurement Specialists, as necessary, to ensure the efficient and effective execution of NHA procurement actions.

n. Coordinate with NHA Contract Analysts concerning contract administration and contract closeouts.

o. Analyze annual divisional/departmental expenditures for forecasting and bulk purchasing.

p. Procurement Department will be responsible for conducting unscheduled audits of each division/department on a semi-annual basis.

3.8 Contract Analyst (CA)

The Contract Analyst has been delegated responsibility to support the NHA Branches, Divisions and Departments in planning and executing their procurements. Therefore, they directly support the NHA Contracting Officer and the Procurement Manager in the procurement of goods and services valued at $100,000 or greater. Specifically, the Contract Analysts have the authority and responsibility to:

a. Coordinate with the NHA Branches, Divisions and Departments sponsoring the Procurement (known as the “Requester”) and appropriate subject matter experts to ensure the thoroughness and accuracy of the project’s statement of work (SOW), proposal/bid evaluation criteria and other documents required for contract solicitation.

b. Ensure sufficient funds are available for a planned procurement prior to initiation.
c. Certify that the proposed procurement activity is in compliance with 24 C.F.R. § 1000.28; OMB Circular A-87, 24 CFR § 85.22 (Allowable Costs) and 2 CFR 225.

d. Review/Finalize the project scope of work/specifications draft with the requesting department.

e. Provide a Request for Publication of NHA Solicitation for the Procurement Department.

f. Attend the pre-bidders/pre-proposal conference.

g. Collaborate with Procurement Department in providing consolidated response to bidder/offor requests for clarification and submit to planning room, is used for solicitation, if not provide to Procurement Specialist for release seven (7) days prior to close of solicitation.

h. Certify that the proposed procurement activity is in compliance with 24 C.F.R. § 1000.28; OMB Circular A-87, 24 CFR § 85.22 (Allowable Costs).

i. Negotiate the contract's final price for RFP awards prior to award;
   1. Create/sign/send letter of consideration

j. Draft BOC Resolution supporting documentation for review and concurrence by NHA legal counsel prior to submission to the CEO's office for inclusion in the BOC's Meeting agenda.

k. Draft the following documents for execution by the NHA Contracting Officer;
   1. award letter (signed by Contract Analyst)
   2. the contract
   3. the Notice to Proceed Letter

l. Ensure compliance with the contract's terms, to include the review of awardee-provided documents prior to recommending the issuance of the Notice to Proceed.

m. Make final distribution of BOC Resolution and contract, as required;

n. Maintain the Master Contract File to include contracts and warranties, contractor performances, payments, and other like matters.

3.9 Risk Management

NHA Risk Management has the authority and responsibility to:

a. Maintain copies of the Insurance Certificates provided to NHA by the contractor in accordance with the contract terms;

b. Verify the certificates throughout the duration of the contract: insurance brokers, performance/payment bonds; and errors and omissions insurance.
3.10 Legal Department:
NHA Legal Department has the authority and responsibility to
a. Evaluate the draft Board of Commissioners Resolution.
b. Evaluate the draft solicitation, as requested.
c. Evaluate the draft contract, as requested.
d. Advise the NHA Contracting Officer in addressing contract disputes.

3.11 Project Architect
Also may be known as the "Architect of Record", this usually is provided via a
professional services contract. Smaller projects (under $100,000) may be assigned
from NHA subject matter expertise;

a. Must be licensed in the State that the project is located in.
b. Prepares the solicitation's cost estimate and provides to the Contract Analyst
for inclusion in the Master Solicitation File. Validates and updates cost
estimate, as necessary, at each stage in the project.
c. Evaluates the solicitation awardee's Schedule of Values, progress payments
and recommends approval, as appropriate, to NHA CO/COR for approval.

3.12 NHA Employees / Sub-Recipients
All NHA employees / Sub-Recipients have a responsibility to ensure all procurement
activities they initiate and/or participate in are consistent with NHA's mission and
values. Specifically;

a. Shall ensure procurement action adheres to all NHA's policy, directives,
requirements, processes, procedures, and that all necessary planning and
coordination has been done prior to initiating a procurement action to ensure
compliance with all necessary laws and regulations.
b. Develop an annual NHA Procurement Plan consistent with the approved
annual budget.
c. Ensure expectations regarding timelines and quality levels are realistic.
d. Ensure procurement requests include sufficient information to allow the
Procurement Department to adequately estimate the time and resources
needed. Be prepared to provide additional information as requested by the
Procurement Department.
e. All procurement requests must be approved by Branch Chiefs and authorized
by branch/department/divisions/Sub-recipient budgets prior to submitting a
procurement action.
f. Procurement action must support full disclosure and avoid conflicts of interest
(See NHA Code of Ethics and Conduct Policies and Procedures 7/08).
4 PURCHASING CARD RESPONSIBILITIES

Purchasing Card (P-Card) shall be used for legitimate, authorized NHA purchases only in accordance with this policy. Any unauthorized use of the P-Card shall by the responsibility of the P-Card holder subject to revocation of the card and disciplinary action in accordance with the NHA Personnel Policies and Procedures, Section XI – Employee Conduct Guidelines and Section XIV – Administration of Discipline.

Authority and responsibility for each participant role in P-Card purchases is as follows;

4.1 Bank

The financial institution (the Bank) shall be designated by the NHA to be the P-Card service provider. The Bank provides services such as;

a. Issuing the P-Cards as requested by the Procurement Purchasing Card Administrator (PPCA),
b. Authorizing electronic transactions,
c. Correcting erroneous P-Card charges, and
d. Billing NHA for all the purchases made with the P-Cards.

4.2 Finance Purchasing Card Administrator (FPCA)

The FPCA, located in the NHA Finance Department, has the authority and responsibility to;

a. Coordinate P-Card billing processes with the Division Liaisons and Cardholders,
b. Coordinate all activities associated with e-interface with the Bank, including account statement distribution,
c. Create/Maintain appropriate account codes,
d. Collects and maintains supporting documentation from the using departments, and
e. Acts as NHA’s secondary intermediary in correspondence with the bank on issues relating to set-up, maintenance and closure of P-Card accounts.

Note: Alternate FPCA is the General Accounting Supervisor

4.3 Procurement Purchasing Card Administrator (PPCA)

The PPCA, located in the NHA Procurement Department, has the authority and responsibility to;

a. Coordinates the P-Card application process,
b. Provides P-Card use instruction to prospective Cardholders,
c. Issues P-Cards to Cardholders,
d. May approve P-Card purchases in the event a Division/Department head is unavailable to do so, and
e. Acts as NHA's primary intermediary in correspondence with the Bank on issues relating to set-up, maintenance and closure or P-Card accounts.

Note: Alternate PPCA is any Representative designated by the Procurement Manager.

4.4 Division Liaison

A Division Liaison is an employee in each Division/Department, as designated by the Department Supervisor, has the authority and responsibility to;

   a. Review all transactions of the cardholders within control of their division/department,
   b. Ensure the transactions are legitimate business expenses, and
   c. Verify proper supporting documents and account codes are attached to each transaction.

4.5 Cardholder

A Cardholder is an employee of NHA who is approved by their Division/Department head and has the authority and responsibility to;

   a. Use the P-Card to execute purchases on behalf of NHA in accordance with prescribed duties, procedures and regulations and
   b. Safeguard the P-Card at all times by keeping it in a secure location, exercise caution when sharing card information, and never allowing other individuals to use the card.

For a listing of specific role duties and regulations relating to procedures, refer to the NHA Procurement SOP for Micro and Small Purchases.

5 BUDGET LIMITATIONS

All IHBG procurement activities shall be in conformity with line item or allowable expense allocation of the current operating, development, block grant funding, or other budgets. Procurement shall not exceed the budget limits. Where the budget allocation of a line item will be exceeded, approval must be obtained in accordance with Standard Operating Procedures for the procurement and prior to solicitation of bids/proposals.

6 PLACE OF CONTRACTING AND PERFORMANCE

All IHBG procurement, including contracts, agreements, or purchases, under these rules is deemed to have been made within the exterior boundaries of the Navajo Nation. This rule is deemed published, and on adoption, constitutes constructive notice to all businesses, entities, or firms doing business with NHA.

7 EXCEPTIONS

Nothing contained in these rules shall prohibit:

   a. Homebuyer materials or equipment contributions;
b. Purchases and contracts on behalf of Mutual Help Program participants where the purpose is related to the participant’s obligations under a Mutual Help and Occupancy Agreement, and where NHA is compensated in advance or is to be reimbursed from the participant’s reserve accounts; or

c. Any other exception or permissible practice specifically allowed by federal laws or regulation.

8 APPLICATION

These revised rules are effective the date approved by the BOC Resolution NHA-4640-2016. These rules shall apply to all procurement for goods and services as of the BOC approval date.

Ref. C.F.R. § 85.36 (b)(91); 24 C.F.R. §1000.48 and 1000.52

9 BUSINESS QUALIFICATIONS, INDIAN PREFERENCE, AND LISTS

9.1 Competition Required for Procurement over $5,000.

9.1.1 Two or More Quotes Required

The following rules for all procurement transactions requiring two (2) or more quotations shall be conducted in a manner providing full and open competition. NHA shall not:

a. Approve or allow noncompetitive pricing practices between contractors or businesses or between affiliated companies

b. Grant noncompetitive award to consultants who have retainer contracts with NHA

c. Allow organizational conflicts of interest (Refer to NHA Code of Ethics and Conduct Policies and Procedures)

d. Specify only a “brand name” product but shall ask for a “brand name or an equal” product or describe the good or service needed to permit competition

e. Take or permit any other arbitrary action in the procurement process that undermines or eliminates the competition process

Ref. 24 C.F.R. § 85.36( c)(1); 24 C.F.R. § 1000.26

9.1.2 Restricted versus Open Solicitation

Prior to starting a procurement through solicitation (as set out in these rules), NHA CO shall make a determination as to whether the solicitation will be restricted to Indian-owned economic enterprises or organizations or whether the procurement shall be by open solicitation. This decision must follow the Indian preference and solicitation rules and regulations and the rules set out in Part V. In general, the determination to restrict the competition to Indian-owned economic enterprises or organizations unless there is a reasonable expectation that two or more qualified Indian-owned enterprises or organizations are likely to submit responsive bids. The
decision of restricted versus open solicitation must be in writing, with a statement of reasons for the choice.

Ref. 24 C.F.R. § 1000.52

9.1.3 Non-Prohibitive

Where not prohibited by any applicable law or regulation, the NHA may determine that a service or product may be provided by NHA employees or force account if such product or service would be advantageous to the NHA. If the total amount of the service exceeds the total amount of the employee’s salary for the time expended on the service, that differential amount shall be deducted from the service amount to be paid to the employee.

9.2 Responsible Bidders or Offerors

Notwithstanding the need for competition, NHA shall make awards only to a responsible bidder or offeror.

a. Before the awarding of any contract, NHA shall make a responsibility determination to ensure that the bidder has the sufficient technical, administrative, and financial capability to perform contract work of the size and type involved within the time provided, as detailed below and in accordance with the Procurement SOPs.

b. In its Invitations for Bid (IFB) and Requests for Proposal (RFP), NHA shall require documents showing the bidder’s technical, administrative, and financial resources (including but not limited to financial statements and business profiles), evidence of contractor integrity and compliance with public policy, record of past performance, and other documents which demonstrate to the satisfaction of NHA the bidder’s capabilities. This documentation will be subject to two specific evaluations to determine that the bid is responsive and that the bidder is responsible.

1. The first evaluation determines that the bid/proposal is responsive to the solicitation and provides all of the requested information.

2. The second evaluation determines the bidder’s ability to successfully provide the goods or services being solicited. This responsibility evaluation first makes an assessment of whether the bidder has the capacity to perform. Technical assessments are conducted as part of this evaluation.

c. NHA shall reject any bid or offer that is not responsive to the requirements of the solicitation or does not satisfy the responsibility factors of this section.

d. Before contract award, the Procurement Specialist will review the Excluded Parties List System (EPLS) to confirm that the lowest bidder has not been disbarred or suspended from contracting with Federal Agencies due to misconduct. Documentation of this search will be included in the Master Solicitation File. NHA shall also make similar inquiries to other appropriate federal agencies and Navajo Nation offices to determine whether such bidder
or offeror is listed as being disbarred or suspended. No contract shall be awarded to a person or firm who is on any such List.

Ref. 24 C.F.R. § 85.36 (b) (8); 24 C.F.R. § 1000.26 and 1000.44

9.3 No Geographical Preferences

NHA shall not use in-State or local geographical preferences in the evaluation of bids or proposals.

Ref. 24 C.F.R. § 85.36(c)(2)

9.4 Indian Preference

Preference in the award of contracts and subcontracts shall be given to Indian-owned economic enterprises and Indian organizations. The definitions of “Indian,” “economic enterprise,” and “Indian Organization” shall be as defined in 24 C.F.R. 1000.48, 1000.50, and 1000.52, respectively.

9.5 Exception

Navajo Preference, as implemented by Navajo law, shall apply in the award and implementation of contracts and subcontracts where the source of funding can be clearly identified as non-federal funds, but only to that portion of work to be accomplished with the non-federal funds.

9.5.1 Prequalification

NHA shall require the following information from offerors and bidders seeking to qualify as Indian organizations or Indian-owned economic enterprise before submitting a bid or proposal or at the time of submission.

   a. Evidence showing fully the extent of at least fifty one per cent (51%) Indian ownership and interest.

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

   c. Evidence sufficient to demonstrate to the satisfaction of NHA that the offeror or bidder has the technical, administrative, and financial capability to perform contract work of the size and type involved.

   d. Evidence showing an independent and continuing operation for profit, performing a commercially useful function that is owned and controlled by one or more Indians. The ownership and control by an Indian or Indian organization or Indian-owned economic enterprise shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
e. An Indian or Indian organization or Indian-owned economic enterprise owner must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions that limit the customary discretion of an owner. There shall be no restrictions by partnership agreements, charter requirements, or other arrangements that prevent an Indian owner from making a business decision of the firm without the consent or vote of any owner who is not an Indian.

9.5.2 Certification Investigation

NHA shall investigate Indian ownership arrangements beyond formal documents submitted by each entity if;

a. The firm is applying for certification with NHA for the first time
b. The firm is newly formed or the firm has Indian ownership of less than 100 percent (100%);
c. There is a previous or continuing employer-employee relationship between or among present owners
d. A business that is not an Indian or Indian organization or Indian-owned economic enterprise has an interest in the firm
e. The ownership of the firm has changed since documents have been submitted to NHA; and/or
f. A review of the documents submitted with the application raises serious concerns regarding either ownership or control of the firm

Ref. 24 C.F.R. § 1000.48; 1000.50 and 1000.52

9.5.3 Restricted Bids

Where NHA has a reasonable expectation that two or more qualified Indian organizations or enterprises are likely to satisfactorily respond to procurement, the procurement solicitation, bid, or request for proposals may be restricted to such qualified firms or persons. NHA may prefer not to restrict the solicitation and procurement to qualified Indian enterprise or organizations where such appears to be in the best interests of NHA or where greater competition may result in a superior product, better services, or a lowest cost.

NHA legal counsel or his designee and the Contracting Officer shall prepare an appropriate form to be used in determining Indian Preference status for each bidder or offeror claiming such status. NHA shall keep on file proof of Indian ownership and shall compile a list of all contractors and subcontractors eligible under Indian preference. Such list shall constitute prequalification for Indian preference eligibility if no more than 2 years has passed since the last qualification.
9.6 List of Qualified Indian, Small, Minority, and Women’s Business Enterprise

NHA shall take all necessary affirmative steps to ensure small businesses, minority firms, women’s business enterprises, and low-income individuals are used when possible.* Affirmative steps shall include:

a. Placing qualified small and minority businesses, women’s business enterprises, and low-income individuals on solicitation lists

b. Assuring that small and minority businesses, women’s business enterprises, and low-income individuals are solicited whenever they are potential sources

c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority business, women’s business enterprises, and low-income individuals

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises, and low-income individuals;

e. Using the service and assistance of the Navajo Nation Business Regulatory Department, Small Business Administration, and the Minority Business Development Agency of the Department of Commerce, and;

f. Requiring the prime contractor if subcontractors are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this part.

*The application of this part will not be interpreted to diminish the effect of Rule 7.2.

Reference 24 C.F.R. § 85.36(e)

10 GENERAL PROCUREMENT PRINCIPLES

NHA is tasked with saving costs and ensuring the purchase of the highest-quality goods and services from the most responsive responsible bidder or offeror. Prior to procurement, NHA shall determine;

a. The need for a particular item or service

b. The availability of funds for the purchase of goods or services

c. The precise nature of the good or service required to satisfy the need

10.1 Cost and price

10.1.1 Federal Cost Principle

OMB Circular A-87 shall be used to determine the extent to which costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

Ref. 24 C.F.R. § 85.36(f)(7) and 85.22
10.1.2 Cost and Price Analysis

Prior to soliciting for procurement, NHA shall conduct a cost or price analysis. Based on the complexity of the procurement the Contract Analysts may contract with external firms, such as an A&E firm, to provide an independent cost estimate or the cost analysis may be done in-house by a subject matter expert. This must be done for all procurement requiring two (2) or more quotations, including contract modifications. The method or degree of analysis depends on the facts and circumstances of a given procurement, but the purpose of a contract cost and price analysis is to get an independent estimate of reasonable costs and prices before receiving bids or proposals.

10.1.3 Negotiating Bidder or Offeror Profit

Where there is no price competition and where a cost analysis has been performed, the Contract Analyst or Procurement Specialist, on behalf of NHA, shall negotiate profit as a separate element of the price of the contract. To establish a fair and reasonable profit, the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting required, the quality of the contractor’s record for past performance, and industry profit rates in the geographical area for similar work, shall all be considered.

10.1.4 No Cost Plus or Percentage of Cost Contracts.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used in determining the cost of the contract.

Ref. 24 C.F.R. § 85.36(f)(4)

10.2 Unnecessary Procurement

NHA shall avoid the purchase of unnecessary or duplicative items by:

a. Checking inventories to see if the item is needed.

b. Waiting to buy items in a general, consolidated procurement or considering breaking out or buying only needed products, depending upon which method is more economical.

c. Where appropriate, an analysis will be made by the Procurement Specialist of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

Ref. 24 C.F.R. § 85.36(b)(4)

10.3 Standard Methods of Procurement

One of the following five procurement methods may be used;
10.3.1 Micro Procurement

For purchases of less than $5,000.00 (also known as Micro Purchases) only one price quote is required, provided that quote is considered reasonable. Quotes may be obtained orally (either in person or by telephone), by catalog, fax or email. If the purchase is made for reasons other than price, the file must clearly describe the reason for the purchase. The Micro Purchase must be documented by an authorized purchase order or contract. Under NO circumstances will a purchase be broken down into more than one transaction in order to meet the Micro Purchase threshold. All Micro Purchase requests shall be the responsibility of the Division/Department level management and to the "greatest extent feasible Indian Preference will be applied." In the event the Division/Department level management determine that the bid received does not meet the criteria of $5,000.00 or less, they will revert to the Small Purchase method to ensure compliance with the Procurement Policy and the Federal Regulations. Refer to NHA Procurement SOP for Micro and Small Purchases for additional information.

Ref. 24 C.F.R. § 85.36 (c) (1); 24 C.F.R. 1000.26, 48, 50, 52, Public and Indian Housing Notice (PIH) PIH-2009-14

10.3.2 Small Purchases

For purchases ranging from $5000.00 up to $100,000.00. This simple and informal procurement method may be used for obtaining services, supplies, or other property with a cost of not more than $100,000 in the aggregate. Small purchases are made by means of (1) the solicitation procedure (2) the use of sealed bids and (3) competitive proposals. All purchases and expenditures using this method must be documented by means of purchase orders or purchase requisitions and by receipts of purchase. Under NO circumstances will a purchase be broken down into more than one transaction in order to meet the Small Purchase threshold. Refer to NHA Procurement SOP for Micro and Small Purchases for additional information.

Ref. 24 C.F.R. § 85.36 (d) (1); 24 C.F.R. 1000.26,48,50,52 and PIH-2009-14

10.3.3 Sealed Bids

1. For purchases over $100,000.00, bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

2. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.
i. In order for sealed bidding to be feasible, the following conditions should be present:

A. A complete, adequate, and realistic specification or purchase description is available;

B. Two or more responsible bidders are willing and able to compete effectively and for the business; and

C. 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.

Refer to NHA Standard Operating Procedures for IFB/RFPs for additional information.

Ref. 24 C.F.R. § 85.36(d)(2); 24 C.F.R. 1000.52

10.3.4 Competitive Proposals

Procurement over $100,000.00 by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. These contracts will be signed by NHA Contracting Officer or COR. It is generally used when conditions are not appropriate for the use of sealed bids, meaning that the selection of the successful bidder will not be made principally on the basis of price and/or complete, adequate, and realistic specification or purchase description is not available. Refer to NHA Standard Operating Procedures for IFB/RFPs for additional information.

Grantees and sub-grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a major selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Ref: 24 C.F.R. § 85.36(d)(3)

10.3.5 Noncompetitive Proposals

For purchases over $100,000.00, noncompetitive proposals (also known as sole source procurements) shall be avoided, except where no reasonable alternative sources exist. See also section '11 Emergency Procurement'. These contracts will be signed by NHA Contracting Officer after BOC approval. Solicitation of a proposal from one source without satisfying the small purchase (under $100,000.00), sealed bids or competitive proposal requirements, may be utilized for the procurement of equipment, professional services, materials, supplies, and
service contracts for repairs, maintenance and replacement.
Ref. 85.36(d)(4)

10.4 Restricted versus Open Solicitation

NHA shall make a determination in accordance with this policy section 7.4., as to whether the solicitation will be restricted to Indian-owned economic enterprises or organizations, or whether the procurement shall be by open solicitation. This determination shall be made prior to starting procurement through solicitation and shall be made in writing, with a statement of reasons for the choice.

10.5 Pre-Award Review

Prior to contract award, NHA Contracting Officer shall certify that bidding and awarding procedures were conducted in compliance with tribal law, federal requirements, and this procurement policy and:

a. Certify that the prospective contractor is a responsive responsible bidder or offeror and has the technical, administrative, and financial capabilities to perform the contract.

b. Ensure that the prospective contractor is not on the List of Parties Excluded from Navajo, other tribal, NHA any state, or Federal Procurement and Non-procurement Programs.

c. Certify that the award does not exceed the approved budgeted amount and is not made on the basis of a single bid (unless the bid is in compliance with the sole source or emergency procurement provisions of this regulation).

d. Present a copy of the bid tabulation sheet;
   1. explain the criteria used to evaluate the bids;
   2. explain how the X factor was applied if used;
   3. present budget verification;
   4. explain why the particular procurement method used was selected for the bid; and
   5. present evidence of the existence of performance and other bonds if required for the bid.

10.6 HUD Review and Approval – Before Contract Award only for sole source over $100,000

HUD approval for sole source contracts for the procurement of repairs, construction, and/or related equipment, or professional services over $100,000 is not required unless the following is true:

a. Proposed contract awards for repairs, construction, and related equipment if NHA receives one bid from an Indian-owned, economic entity or business organization. On request, NHA will make procurement documents available
for HUD pre-award review. Those documents include requests for proposals, invitations for bids, and independent cost estimates. NHA will notify HUD of its intention to undertake a procurement and invite a pre-award review when there is a question as to whether the procurement complies with 24 C.F.R. §. 85.36.

10.7 Board Approval of Awards

All procurement awards and contracts exceeding $1,000,000.00 shall be approved by a resolution of the Board of Commissioners following a review of the merits of the award and compliance with these rules. The CEO or his or her designee shall report to the board all the contractors or vendors who received a contract over $100,000 at the end of each month and all small purchases, under $100,000 at the end of each quarter.

10.8 Preparation of Contracts

Following the decision to make an award to a particular contractor, the CO/COR shall make arrangements for the preparation of a contract with the successful party. The CO/COR may consult with the General Counsel to determine those instances where law or HUD policy requires a written contract, particularly where the Statute of Frauds under local law may require an instrument in writing.

10.9 Contract Terms

Where required, all written contracts shall contain the following terms and provisions in addition to specifying the parties, the services or goods being provided, price, and payment terms:

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, with such sanctions as may be appropriate. (Not required for small purchases);

b. Termination for causes and for convenience by NHA, including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000);

c. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 C.F.R. Chapter 60). (All Construction contracts awarded in excess of $10,000 by NHA, its contractors or sub grantees);

d. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C § 874) as supplemented by Department of Labor regulations (29 C.F.R. PART 3). (All contracts and sub grants for construction or repair);

e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 C.F.R. PART 5). (Construction contacts in excess of $2000 awarded by grantees and sub-grantees when required by Federal grant program legislation)
f. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330.) as supplemented by Department of Labor regulations (29 C.F.R. PART 5) (Construction contracts in excess of $2,000 and in excess of $2,500 for contracts which involve the employment of mechanics or laborers);

g. Notice of awarding agency requirements and regulations pertaining to reporting;

h. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;

i. Awarding agency requirements and regulations pertaining to copyrights and rights in data;

j. Access by NHA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions;

k. Retention of all required records for three (3) years after NHA makes final payments and all other pending matters are closed;

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15). (Contracts, subcontracts, and sub-grants in excess of $100,000);

m. Mandatory standards and policies relating to energy efficiency that are contained in the state or tribal energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

n. The mandatory Section 7 (b) clause incorporating provisions of the Indian Self Determination and Education Assistance Act (24 U.S.C. § 450e (b) found at 24 C.F.R. § 1000.50 (a) (1).

o. The required prevailing wage statement of 24 C.F.R. 1000.16.

p. Any required and applicable tribal requirements with respect to contract terms; and

q. Such other and further clauses and terms as may be required by applicable NAHASDA regulations, or applicable NHA requirements.

Ref.24 C.F.R § 85.36 (l)

10.10 Cancellation of Invitation for Bids or Requests for Proposal

An Invitation for Bids, a Request for Proposals or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interest of NHA. The reason for the cancellation or
rejection shall be made a part of the procurement file.

10.11 Limitations on Contract Modifications

Any contract or award of one million dollars ($1,000,000) or less approved or awarded by the NHA Contracting Officer that is subsequently amended pursuant to a change order that exceeds the aggregate amount of one million ($1,000,000) or fifteen percent (15%) of the original contract price if the 15% amendment results in the contract exceeding $1,000,000 shall be approved by the BOC.

10.12 Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or sub grantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified.

2. 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.

3. 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.

10.13 Alternative Procurement Methods

10.13.1 Intergovernmental Agreements

NHA CO may enter into State, tribal, or local intergovernmental agreements for procurement or for the use of common goods and services, and this option should be considered during the pre-procurement phase.

Ref: 24 C.F. R. § 85.36(b)(5)

10.13.2 Federal Excess and Surplus Property

The possibility of the availability of federal excess and surplus property, or State surplus property programs, should be considered in lieu of or in addition to
purchasing new equipment and property whenever such is feasible to reduce project cost.

Ref: 24 C.F. R. § 85.36(b)(5)

10.13.3 GSA (General Services Administration)

GSA establishes long-term government-wide contracts with commercial companies to provide access to millions of commercial products and services at volume discount pricing.

10.14 Procuring ‘Green’ Products and Services

NHA is committed to the stewardship of the environment and to reducing the Agency’s dependency on non-renewable products and energy. Our goal is to reduce the adverse environmental impact of our purchasing decisions by buying goods and services from manufacturers and vendors who share our commitment to the environment. Green purchasing is the method wherein environmental and social considerations are taken with equal weight to the price, availability and performance criteria that NHA uses to make purchasing decisions.

Until such a time further policy is defined for ‘environmentally preferred purchasing’ (EPP), all Divisions/Departments of NHA shall endeavor to do their best to seek out products and services with equivalent specifications and value. For help finding and evaluating Green Products and Services, visit http://www.epa.gov/opptintr/epp/index.htm.

11 EMERGENCY PROCUREMENT

Notwithstanding any other provision of this Policy, the CO or COR may make or authorize others to make emergency procurement, that shall not exceed one hundred thousand dollars ($100,000), in the following circumstances;

1. A threat to public health, welfare, or safety exists

2. A situation exists that makes compliance with sections 3.1 of this Policy impracticable, unnecessary or contrary to the public interest as defined in regulations promulgated by the CEO, except that such emergency procurement shall be made with such competition as is practicable under the circumstances.

A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

12 RECORDS OF PROCUREMENT

On behalf of NHA, the Procurement Department shall maintain full and complete records of all purchases $100,000 and greater, sufficient to show the significant history of all procurement. The records must include the following:

a. A showing of a need for the procurement;

b. Decision not to restrict the solicitation to Indian economic entities or organizations; Indian preference qualification decisions; and the choice of non-Indian contractors
in the place of qualified Indian contractors;
c. Contractor selection or rejection and the reasons for such decisions;
d. Contractor qualification decisions;
e. Methods of assessment and selection of proposals under requests for proposals (RFPs);
f. The basis for the contract price; and
g. Such other information that shall be necessary to show compliance with this policy.
h. Records will be retained according to the NHA Records Retention Policy

For purchases of less than $100,000, each Division/Department head will be responsible for maintaining full and complete records sufficient to show the significant history of all divisional/departmental procurement and providing Finance with appropriate records as requested. Records must include the above stated list.

Procurement Department will be responsible for conducting unscheduled audits of Micro and Small purchases for each Division/Department on a semi-annual basis. If a Division/Department fails to pass an audit the following corrective steps will be taken:

a. Division/Department authorized purchasing personnel will be required to attend a re-orientation of the NHA SOP for Micro and Small Purchases and placed on probation for a one (1) month period, having to report all purchases to the NHA Procurement Department.

b. A second failure will require a full audit of all purchases. Re-training of all Division/Department personnel with purchasing authority in NHA Procurement Policies and Procedures and placed on probation for a three (3) month period, having to report all purchases to the NHA Procurement Department.

c. On a third failure to pass the random audit the Division/Department will no longer be allowed to approve/purchase Micro/Small purchases and the head will be relieved of their position.

d. If findings indicate fraudulent practices, disciplinary action will be employed in accordance with the NHA Personnel Policies and Procedures, Section XI – Employee Conduct Guidelines and Section XIV – Administration of Discipline.

Ref. 24 C.F.R. § 85.36(b)(9)

13 ISSUES, DISPUTES, PROTESTS, AND CLAIMS

NHA CO or their designee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. Such issues may include source evaluation, protests, disputes, and claims. These standards shall not relieve NHA from its obligation under its contracts, as provided by law.

Ref. 85.36 (b) (11)
13.1 Submission Issues

13.1.1 ‘Obvious Mistakes’

The Procurement Specialist shall carefully review all bids to ensure the bidders have not made any obvious mistakes in their bids, e.g., the sum of individual bid line items does not equal the total bid price. An item-by-item recalculation of the bid costs will often reveal the miscalculation or error. If a bidder appears to have made a mistake, the Procurement Specialist shall notify the Procurement Manager for verification. Upon verification, Procurement Specialist shall immediately notify the bidder of any apparent mistake in his/her bid and request verification of the bid as submitted. If the bidder is not present at bid opening, or if the Procurement Specialist performs the bid review after opening takes place, the Procurement Specialist shall notify the bidder by phone then confirm phone notifications with a follow-up letter containing the information communicated by phone. The Procurement Specialist shall place a copy of the letter in, or otherwise document, the procurement file.

13.1.2 Minor Informalities

The Procurement Specialist may waive minor informalities or allow the bidder to correct them, only after obtaining authorization from the Procurement Manager. Minor informalities are matters of form rather than substance. They are insignificant mistakes that can be waived or corrected without prejudice to the other bidders and have little or no effect on price, quantity, quality, delivery, or contractual conditions.

13.1.3 Withdrawal of Bids

Withdrawal of a bid is permissible if there is an obvious error in the bid such as a math error, but the mistake must be readily apparent from the bid itself. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. A bidder may also be permitted to withdraw a low bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. NHA shall require written supporting evidence before allowing withdrawal by the bidder. If NHA allows withdrawal, the bid bond shall be returned to the bidder upon verification of the error. In cases of alleged mistakes no corrections will be allowed.

13.1.4 Single Bids/Proposals Received

In the event NHA Procurement Department receives only a single bid for any one solicitation by the due date/time, the following shall apply;

a. All bids/proposals shall remain sealed and secure, DO NOT OPEN.

b. Offerors are to be contacted and informed of the unsuccessful offering and given the opportunity to auto-resubmit pending a re-solicitation (see 12.1.5) or have their response returned to them at their expense.
c. A Re-solicitation (without change) shall take place within five (5) calendar days of the previous closing date.

d. If re-solicitation fails to bring in more than the minimum required responses, the solicitation may be or awarded, providing that the sole response is considered responsive/responsible or if in the best interest of the NHA a cancellation will be made for redetermination and/or future solicitation.

13.1.5 Resubmit of Original Response for Re-Solicitation

In efforts to streamline the procurement process of unsuccessful solicitations due to not receiving the required minimum number of responses, NHA will allow bidders/offerors to resubmit their original, unopened bid/proposal for consideration in the re-solicitation provided that;

a. There are no changes to the requirements and/or scope of work in the re-solicitation,

b. No bid/proposal has been opened,

c. Doing so will not put any new bidders at a disadvantage.

Offerors given this opportunity must respond in writing authorizing NHA to submit the held bid to the re-solicitation on their behalf. Written request will be attached to the sealed packet and later placed in respondents file.

13.2 Bidder Disputes and Protests

Any bidder, or disputant of a decision made pursuant to this rule must exhaust the administrative remedy provided by this rule. This rule shall govern complaints and protests with respect to Indian preference procedures and any other procurement decision under these rules.

a. Only a person or business entity claiming to have been adversely and directly affected by an action or inaction of NHA regarding the provision of preference to Indians in contracting, subcontracting, employment, or training, or regarding an NHA decision under these rules or Federal procurement regulation may make a complaint.

b. Protests based upon alleged improprieties in a solicitation apparent before bid opening or the closing date for receipt of initial proposals, must be filed before bid opening or the closing date for receipt of initial proposals. For procurements by competitive sealed proposals (the method which uses an RFP), alleged improprieties that did not exist in the initial solicitation but which are subsequently incorporated in the re-solicitation must be filed no later than the next closing date for receipt of proposals following the incorporation.

c. A complaint or protest must be filed with the Procurement Manager of NHA no later than five (5) calendar days following the action, event, or omission upon which the complaint or protest is based.

d. All complaints must be in writing and must contain;
1. The name and address of the protestor,
2. Identification of the procurement, i.e. the solicitation or contract number and Title,
3. The reasons for the protest and any supporting exhibits or
4. Other forms of evidence or documentation to substantiate the reasons for the protest.

e. NHA shall stamp all complaints with the date and time upon receipt.

f. NHA shall acknowledge receipt of the complaint in writing to the complainant immediately upon receipt and place a copy in or document on the file.

g. The CO or COR shall investigate the complaint within their respective approval levels, and within twenty (20) calendar days of acknowledging the receipt of the complaint meet or communicate by mail or telephone with the complaining party in order to attempt a resolution of the matter. NHA Legal Department may participate in investigation and/or resolution. The CO or COR shall make a written determination upon the complaint within thirty (30) days after the receipt of the complaint.

h. The CO or COR may undertake discussion, negotiation, mediation, or other methods to resolve the complaint, using that method of resolving the matter, which, in his or her discretion, serves the best interests of NHA. All complaints must be resolved as expeditiously as possible.

i. If the CO or COR finds noncompliance with this policy or applicable HUD requirements, he or she may grant reasonable relief to resolve the complaint or the protest may be dismissed.

j. Procurement awards or contracts affected by complaints under this rule shall not be finally awarded unless the CO or COR has determined that the complainant is not a proper party under this rule or that no violation of the policies has occurred. Where the CO or COR has determined that the person is a proper complainant and that he or she may have a valid claim, NHA may proceed with the award or contract where the circumstances require, providing for the rights of the affected parties.

k. The decision of the CO or COR shall be in writing, state the reasons for it, and copies shall be provided the complainant. The written decision of the CO shall constitute final NHA action on the matter.

l. Complaint remedies within HUD are set forth at 24 C.F.R. § 85.36(b)(12) and 905.165(f).

Ref. 24 C.F.R. § 86.36(b)(12); 24 C.F.R. § 1000.54(e)
APPENDIX A: DEFINITIONS

In this policy, unless the context provides otherwise:

Bank – The financial institution (the Bank) designated by NHA to be the P-Card service provider. The Bank provides services such as issuing the P-Cards as requested by the NHA Card Administrator, authorizing electronic transactions, correcting erroneous P-Card charges and billing NHA for all purchases made against the P-Cards.

Bidder prequalification – determining in accordance with rules adopted pursuant to this policy that a prospective bidder or offeror satisfies the criteria for being included on the bidders list.

Business – any corporation, partnership, limited liability company, limited liability partnership, individual, sole proprietorship, joint venture, or other private legal entity.

Cardholder – An employee of the Authority who is approved by his/her Department Supervisor to use the P-Card to execute purchase transactions on behalf of the NHA in accordance with prescribed policies, procedures, and regulations.

Chief Executive Officer – the NHA CEO (CEO) responsible for NHA operations. The CEO may be a contract employee.

Competitive Procurement – a procurement method normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. 24 C.F.R. §85.36 (d)(3).

Conflict of Interest – situation in which an employee has an obligation and absolute duty to act for the benefit of the public or a designated individual and chooses to act for personal benefit instead or may be unable to render impartial assistance or advice.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Contract – all types of NHA agreements, regardless of what they may be called, for the procurement of materials, services or construction or the disposal of materials.

Contract Analyst – the NHA employee who has been delegated the authority by the Contracting Officer and CEO to prepare procurement actions for public announcement, review and award by the Contracting Officer.

Contract Modification – any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

Contracting Officer – the person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

Contracting Officer’s Representative – persons authorized of the contracting officer acting within the limits of their authority as delegated by the contracting officer in writing, pursuant to the terms of this policy and these rules.
Contractor – any person who has a contract with the NHA.

Data – documented information, regardless of form or characteristics.

Designee – a duly authorized representative of the NHA CEO.

Division Liaison – An employee in each department/division designated by the Department Supervisor to review transactions of individual Cardholders to ensure the transactions are legitimate business expenses.

Employee – an individual classified as an employee by the NHA personnel policies and procedures.

Finance Purchasing Card Administrator (FPCA) – Accounting department designee who coordinates the P-Card billing processes with the Division Liaison and Cardholders, coordinates all activities associated with the electronic interface with the Bank, maintains appropriate account codes, distributes and collects statements and supporting documents from the using departments, and acts as the Authority’s second intermediary in correspondence with the Bank on issues relating to set-up, maintenance, and closure of P-Card accounts.

Invitation for Bids – all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with procedures described herein at section 5.3.

Materials – all property, including equipment, supplies, sand, rock, gravel, printing, insurance and lease of property, but does not include land, a permanent interest in land, fixtures, and real property or leasing space.

Person – any corporation, business, individual, union, committee, club, other organization or group of individuals.

Procurement – buying, contracting, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Department – the NHA Procurement Department is authorized by the CEO and the NHA Contracting Officer to exercise oversight and ensure compliance with NHA procurement policies and procedures. Additionally, the NHA Procurement Department has been delegated the authority by the NHA Contracting Officer to execute small purchases in accordance with the NHA Procurement Policy.

Procurement Manager – the manager of the NHA Procurement Department.

Procurement Specialist – the Procurement Department employee responsible for initiating and conducting various activities directly supporting NHA’s procurement activities.

Procurement Purchasing Card Administrator (PPCA) – the Procurement Manager is in charge of coordinating the application process, provides usage orientation, issues cards, authorizes purchases against the cards (above the Department Manager’s
threshold), and is the primary intermediary in correspondence with the Bank on issues relating to set-up, maintenance, and closure of P-Card accounts.

**Requester** – The NHA Department or Office requesting the procurement action.

**Request for Information** – all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.

**Request for Proposals** – all documents, whether attached or incorporated by reference, which are used for solicitations.

**Responsible Bidder or Offeror** – a person who has been determined to have sufficient financial resources; performance record; integrity and ethics; organization and skills; equipment and facilities, and other technical skills and qualifications to be considered for a contract award.

**Responsive Bidder or Offeror** – a person who submits a bid/proposal that conforms in all material respects to the invitation including timeliness and conformation to all essential requirements set forth in the invitation for bid / request.

**Sealed Bids** – a procurement method used when best value is expected to result from the selection of the lowest evaluated price offered. This contracting method solicits via an 'invitation to bid' via formal public advertising for a firm-fixed-price contract (lump sum or unit price). 24 C.F.R. § 85.36 (d)(2)

**Services** – the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance. Service does not include employment agreements or collective bargaining agreements.

**Solicitation** – small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

**Subcontractor** – a person who contracts to perform work or render services to a contractor as defined by this section or another subcontractor as a part of a contract with the NHA.
ADDENDUM A

This section shall replace the maximum threshold amount for Small Purchases page 26 in section 10.3.2 from $5,000—100,000 to $5,000--$150,000.

ADDENDUM B

This section shall supplement Code of Conduct page 11 and appear as section 2.9 Organizational Conflicts of Interest. This section on Organizational Conflicts of Interest is included to place those affiliates or subsidiary organizations that are not a state, local government or Indian tribe on notice that 2 C.F.R. §200.318(c)(2) requires the NHA to maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest occur when the NHA and a parent company, affiliate, or subsidiary organization engage or participate in procurement transactions with the appearance of impartiality or the inability to be impartial. Therefore, the NHA shall not contract, purchase, or procure directly with an affiliate or subsidiary organization if the NHA is unable or appears to be unable to be impartial.

ADDENDUM C

This section shall supplement and be added to Cost and price on pages 25—26 and titled 10.1.5 Use of Value Engineering Clauses. The Use of Value Engineering Clauses is added to place contracting parties on notice that the NHA is encouraged to use value engineering clauses in contracts for construction projects. The purpose of including value engineering clauses to projects of sufficient size is to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

ADDENDUM D

This section shall be titled Time and Materials Type Contract 10.1.6 and added to Cost and price on pages 25—26 appearing after Section 10.1.5 or ADDENDUM C. The purpose of this supplement is to place contracting parties on notice that the NHA may use a time and materials type contract. A time and materials type contract may be used only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. A time and materials type contract means a contract whose cost to the NHA is the sum of (1) the actual cost of materials; and (2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open ended contract price, a time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Further, if the NHA awards such a contract, the contract must assert a high degree of oversight in order to obtain
reasonable assurance that the contractor is using efficient methods and effective cost controls.

**ADDENDUM E**


This section shall be titled Section 3 at 10.15 and appear as a new section added to page 32. Section 3 shall be used in the rare instance that the contracting party falls outside the provisions of the mandatory Section 7(b) clause incorporating provisions of the Indian Self Determination and Education Assistance Act 24 C.F.R. §1000.50(a)(1).

The purpose of this section is to place those affected on notice that the NHA and recipients of NAHASDA funds 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. The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds $200,000. Recipients meet 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. For purposes of section 3, NAHASDA funding is subject to the requirements applicable to the category of programs entitled “Other Programs” that provide housing and community development assistance (12 U.S.C. 1701u(c)(2), (d)(2)).

**ADDENDUM E**

2 CFR §200.324 Federal awarding agency or pass-through entity review. Effective: December 26, 2013

This section shall be titled HUD or NHA Review of Sub-Recipients and appear as a new section titled 14 with two subparts labeled 14.1 and 14.2 beginning on page 37.

14.1 Technical Specification on proposed procurements

The sub-recipient must make available, upon request of HUD or the NHA, technical specifications on proposed procurements where HUD or the NHA believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the sub-recipient desires to have the review accomplished after a solicitation has been developed, HUD or the NHA may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. Ref. 2 CFR § 200.324 (a)

14.2 Procurement Review for RFP, IFB and Cost Estimates

The sub-recipient must make available upon request, for HUD or NHA pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a. The sub-recipient's procurement procedures or operation fails to comply with the procurement standards in this part;
b. The procurement is expected to exceed the Small Purchase Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

c. The procurement, which is expected to exceed the Small Purchase Threshold, specifies a “brand name” product;

d. The proposed contract is more than the Small Purchase Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Small Purchase Threshold.

f. The sub-recipient is exempt from the pre-procurement review under this section, if HUD or the NHA determines that its procurement systems comply with the standards of this part.

g. sub-recipient may request that its procurement system be reviewed by HUD or the NHA to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

h. The sub-recipient may self-certify its procurement system. Such self-certification must not limit HUD’s or the NHA’s right to survey the system. Under a self-certification procedure, HUD or the NHA may rely on written assurances from the sub-recipient that it is complying with these standards. The sub-recipient must provide or cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

**ADDENDUM G**


This section shall replace Contract Terms in Section 10.9 on page 29. Where required, all written contracts shall contain the following terms and provisions in addition to specifying the parties, the services or supplies being provided, price, and payment terms: Where required, all written contracts shall contain the following terms and provisions in addition to specifying the parties, the services or supplies being provided, price, and payment terms:

a. Contracts for more than the simplified acquisition threshold currently set at $150,000, 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 NHA including the manner by which it will be effected and the basis for settlement;


d. 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 sub-recipient 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 NHA must report all suspected or reported violations to the Federal awarding agency;

e. 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 NHA and sub-recipients 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 NHA 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 NHA must report all suspected or reported violations to the Federal awarding agency.

f. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by NHA 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 hours 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.;

g. Notice of awarding agency requirements and regulations pertaining to reporting;

h. Rights to Inventions Made Under a Contract or Agreement. If the award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub-recipient 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 sub-recipient 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.;

i. Awarding agency requirements and regulations pertaining to copyrights and rights in data;

j. Access by NHA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions;

k. Retention of all required records for six (6) years after NHA makes final payments and all other pending matters are closed;

l. 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 subgrants of amounts in excess of $150,000 must contain a provision that requires the NHA 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).;

m. Mandatory standards and policies relating to energy efficiency that are contained in the state or tribal energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
n. The mandatory Section 7 (b) clause incorporating provisions of the Indian Self Determination and Education Assistance Act (24 U.S.C. § 450e (b) found at 24 CFR § 1000.50 (a) (1).

o. The required prevailing wage statement of 24 CFR §1000.16.

p. 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 Excluded Parties List System 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.” The Excluded Parties List System in SAM 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.


r. Any required and applicable tribal requirements with respect to contract terms; and

s. Such other and further clauses and terms as may be required by applicable NAHASDA regulations, or applicable NHA requirements.

ADDENDUM H

2 C.F.R. §200.320(f) Method of procurement to be followed—Noncompetitive proposals.

Effective: September 10, 2015.

This section shall replace Noncompetitive Proposals in Section 10.3.5 on page 28.

Procurement by non-competition proposals is procurement through solicitation of a proposal form only one (1) and may be used only when one (1) or more of the following circumstances apply:

1. The item is available only from a single source;

2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

   i. Public exigency is a sudden and unexpected happening. It is an unforeseen occurrence or condition; a perplexing contingency or
complication of circumstances; or a sudden or unexpected occasion for action.

ii. Emergency is a sudden, urgent, usually unexpected incident or occurrence that requires an immediate reaction or assistance for emergency situations faced by the recipients of public assistance. The main purpose of such assistance is to bring the situation under control and to restore normality. It usually poses a threat to the health or safety of those involved, responders, and people in the surrounding area.

iii. HUD expressly authorizes noncompetitive proposals in a response to a written request by NHA;

iv. After solicitation of a number of sources, competition is determined inadequate.

ADDENDUM I

This section shall replace Federal Cost Principle in Section 10.1.1 on page 25. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the NHA under Subpart E—Cost Principles of 2 CFR 200. The NHA may reference its own cost principles that comply with the Federal cost principles.