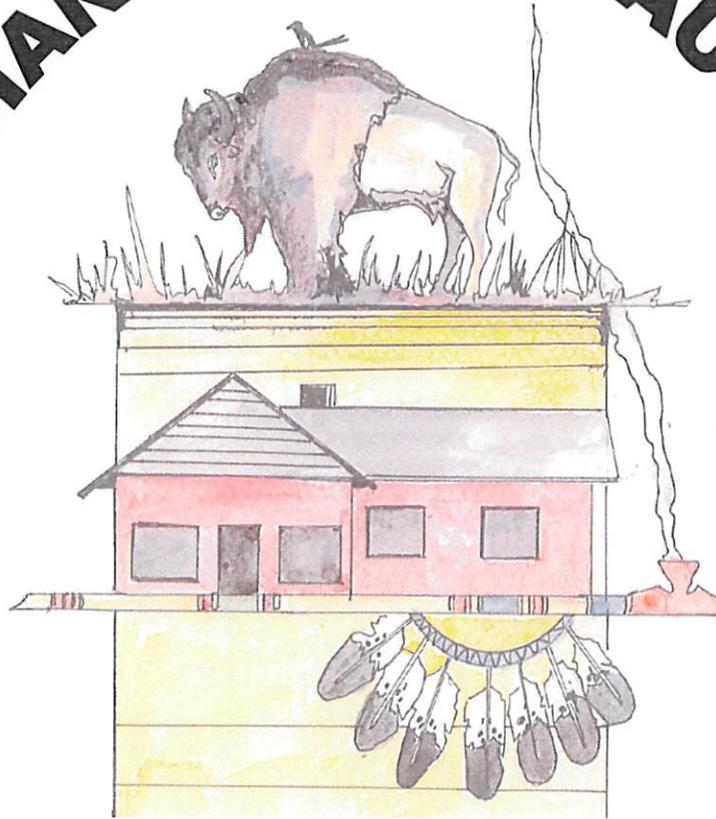


UTE INDIAN HOUSING AUTHORITY



**PROCUREMENT, INVENTORY,
ACQUISITION, DISPOSITION, AND
HOUSING STANDARDS POLICY**
**Adopted by Resolution No. 09-015,
On November 11, 2009**

UTE INDIAN HOUSING AUTHORITY

**ADOPTION OF AMENDMENT TO PROCUREMENT, INVENTORY, ACQUISITION,
DISPOSITION, AND HOUSING STANDARDS POLICY**

WHEREAS, The Ute Indian Housing Authority (UIHA) administers the Indian Housing Plan (IHP) as required of the Indian Housing Block Grant (IHBG) for the Ute Indian Tribe, Uintah and Ouray Agency as provided by the U.S. Department of the Housing and Urban Development (HUD), Office of Native American Programs (ONAP);

WHEREAS, pursuant to the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996, the regulations governing the housing program policies provide a systematic and equitable procedure relating to the operation and management of the IHBG program of the UIHA;

WHEREAS, the UIHA Board of Commissioners recognizes the need to update its policies to reflect current requirements and needs of the UIHA; and

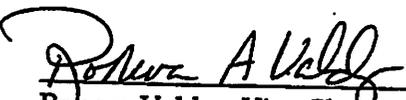
WHEREAS, the UIHA Board of Commissioners recommends the adoption of the attached First Amendment to the Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy changing Article VIII to specifically incorporate a requirement of the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) and other requirements.

NOW THEREFORE BE IT RESOLVED, by the UIHA Board of Commissioners, that we hereby approve the attached First Amendment to the Procurement, Inventory, Acquisition, Disposition, and Housing Standards Policy.

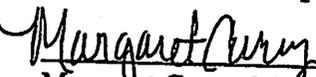
RESOLVED FURTHER, that any and all acts heretofore taken by the Executive Director of UIHA in connection with the matters authorized by the foregoing resolution are hereby ratified, confirmed, adopted and approved by the UIHA Board of Commissioners.



Charlyn Cuch, Chairperson

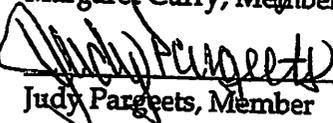


Roneva Valdez, Vice-Chairperson



Margaret Curry, Member

Cassandra Kochamp, Member



Judy Pargets, Member

CERTIFICATION

As duly qualified Secretary of the Ute Indian Housing Authority of the Ute Indian Tribe of the Uintah and Ouray Reservation, I hereby certify that the above Resolution was adopted by the Ute Indian Housing Authority Board of Commissioners in a duly called meeting at which a quorum was present and by the vote of 4 for, 0 against, and 0 abstain, and 1 absent, on this 24 day of April, 2017.

Charlyn Puch
Secretary,
UIHA Board of Commissioners

First Amendment to

PROCUREMENT, INVENTORY, ACQUISITION, DISPOSITION, AND HOUSING STANDARDS POLICY

The following changes have been adopted by the Ute Indian Housing Authority:

- 1) Add the following two italicized sentences to the end of Article VIII.A.4 on page 33 so the provision reads as follows:

VIII. Required Contract Provisions; Conflict of Interest; Applicable Laws

A. 4. All contracts and subgrants for construction or repair shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations in 29 C.F.R. Part 3. *The Copeland Act, 29 C.F.R. Part 3, requires every employer (Contractor and Subcontractor) to submit weekly certified payroll reports and regulates permissible payroll deductions. DOL form WH-347 Payroll or equivalent form can be used for compliance.*

- 2) Delete Article VIII.A.6. and replace it with the following new paragraph:

Davis-Bacon Act, as amended (40 U.S.C.3141-3148). When required by Federal Program legislation, all prime construction contract in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Work Financed in Whole or in Part, Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 3) Delete Article VIII.A.7. and replace it with the following new paragraph:

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

**UTE INDIAN TRIBALLY DESIGNATED HOUSING ENTITY
PROCUREMENT, INVENTORY, ACQUISITION, DISPOSITION,
AND HOUSING STANDARDS POLICY**

Adopted by Resolution No. 09-015, on November 11, 2009

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ATTACHMENT A "X" Factor

**UTE INDIAN TRIBALLY DESIGNATED HOUSING ENTITY
PROCUREMENT, INVENTORY, ACQUISITION, DISPOSITION,
AND HOUSING STANDARDS POLICY**

Adopted by Resolution No. 09-015, on November 11, 2009

I. APPLICABILITY

The policy enacted herein supercedes and rescinds all previous procurement policies and practice statements and is the official Procurement , Inventory, Disposition, and Housing Standards Policy (Policy) of the UTE INDIAN TRIBALLY DESIGNATED HOUSING ENTITY (UITDHE). It is intended to standardize procurement procedures and shall be reviewed periodically to assure compliance with guidelines established by the Ute Indian Tribe and the United States Department of Housing and Urban Development.

II. HOUSING STANDARDS

A. Affordable Housing.

1. Moderate Design Requirement. All UITDHE affordable housing projects must be of moderate design. "Moderate Design" means housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Tribe's general geographic area to buyers who are at or below the area median income. This requirement applies to all housing assisted as an affordable housing activity, including acquisition, new construction, reconstruction, moderate or substantial rehabilitation, homebuyer assistance, and model activities. For purposes of this Section, a "Project" is one or more housing units, of comparable size, cost, amenities, and design, developed with assistance provided by the Native American Housing Assistance and Self Determination Act ("NAHASDA").

2. Method for Determining Moderate Design. For each Project, UITDHE must use one of the following methods to determine if a Project meets the Moderate Design requirement. Prior to selection of a method, UITDHE shall conduct a preliminary analysis to determine which method is most appropriate to its use.

a. UITDHE-Developed Housing Standard.

(1) UITDHE may adopt written standards for its affordable housing programs to determine a local definition of Moderate Design. The standards must describe the type of housing, explain the basis for the standards, and be based on similar housing in the Tribe's general geographic area. As a basis for the standards, UITDHE should consider:

- (a) Gross area;
- (b) Total cost to provide the housing;
- (c) Environmental concerns and mitigations;
- (d) Climate;
- (e) Comparable housing in the geographical area;
- (f) Local codes, ordinances, and standards;
- (g) Cultural relevance in design;
- (h) Design and construction features that are reasonable, and necessary to provide decent, safe, sanitary, and affordable housing; and
- (i) Design and construction features that are accessible to persons with a variety of disabilities.

(2) Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, UITDHE must complete a comparison of the cost

of developing, acquiring, or rehabilitating the affordable housing using the Total Development Cost ("TDC") limits described herein. UITDHE standards cannot, without prior HUD approval, exceed the TDC maximum cost for the Project by more than ten percent (10%).

(3) For each Project, UITDHE must maintain documentation substantiating compliance with its Housing Standards. The standards and documentation substantiating compliance must be available for review by the general public and, upon request, by HUD.

b. HUD Total Development Cost Limits.

(1) HUD publishes a TDC for each tribe that covers the tribally recognized land base. The TDC costs include all development and construction costs (including profit and overhead of a contractor) of an individual dwelling and includes any administrative, planning, financing, site acquisition, site-based utility development, and site development. TDC amounts are based on a moderately designed house and are determined by averaging the current construction costs as listed in two nationally-recognized residential construction cost indices for publicly bid construction of a good sound and quality. Multipliers for each area are applied against these basic numbers to provide costs that are specific to each geographical location. A second multiplier is then applied to account for non-construction costs. These indices draw their data from surveys of construction costs in each specific area.

(2) TDC limits are published periodically by HUD and establish the maximum amount of funds (from all sources) that UITDHE may use to develop, acquire, or rehabilitate affordable housing.

(3) Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, UITDHE must complete a comparison of the cost of developing, acquiring, or rehabilitating the affordable housing, using the TDC limits. UITDHE may not, without prior HUD approval, exceed the TDC maximum cost for the project.

B. Non-Dwelling Structures.

1. Non-Dwelling Structures.

a. Non-dwelling structures must be of a design, size, and with features or amenities that are reasonable and necessary to accomplish to purpose intended by the structures.

Non-dwelling structures must support an affordable housing activity.

b. If UITDHE develops, acquires, or rehabilitates a non-dwelling structure with NAHASDA funds, the limitations of this Section apply to the entire structure. If funds are used from two different sources, the standards of the funding source with the more restrictive rules apply.

2. Standards for Non-Dwelling Structures. For each non-dwelling structure, UITDHE must use one of the following standards.

a. UITDHE-Developed Standards for Non-Dwelling Structures.

(1) UITDHE may adopt written standards for non-dwelling structures. The standards must describe the type of structures and clearly describe the criteria to be used to guide the cost, size, design, features, amenities, performance, and other factors as may be determined by UITDHE.

(2) When applying UITDHE Standards for non-dwelling Structures, UITDHE must document:

- 
- (a) Identification of targeted population to benefit from the structures;
 - (b) Identification of need or problem to be solved;
 - (c) Affordable housing activity provided or supported by the structures;
 - (d) Alternatives considered;
 - (e) Provision for future growth and change;
 - (f) Cultural relevance of design;
 - (g) Size and scope supported by population and need;
 - (h) Design and construction features that are accessible to persons with a variety of disabilities;
 - (i) Cost; and
 - (j) Compatibility with community infrastructure and services.



b. **No Program Standards.** If UITDHE does not adopt Standards for Non-Dwelling Structures, it must demonstrate and document that the non-dwelling structure is of a cost, size, design, and with amenities consistent with similarly designed and constructed structures in the recipient's general geographic area.

III. PROCUREMENT GUIDELINES

Purchases of and contracts for equipment, materials, supplies, and services (other than personal services) and for construction, repairs, maintenance, and replacement, shall be made in the following manner:

A. General.

1. All procurement of equipment, material, supplies, repairs, or services shall be documented.
2. Indian-owned economic enterprises or organizations shall be given preference in procurement as specified in this policy. Indian-owned economic enterprise or organization are more particularly defined in Article VII.
3. Expenditures up to \$100,000 shall be authorized by a purchase order, except for professional services agreements and contracts for construction in excess of \$10,000.00, which must be by formal written contracts.
4. Expenditures in excess of \$100,000 shall be made by formal written contract.
5. Each purchase, regardless of dollar amount, shall be supported by a purchase request approved by the Executive Director.
6. For construction or facility improvement contracts or subcontracts exceeding \$100,000.00, a bid guarantee, in the form of a bid bond, certified check, or other negotiable instrument, equivalent to five percent of the bid price, must accompany each bid. Upon selection, the contractor shall execute a performance bond for the full contract price to guarantee performance of the contract. In addition, the contractor shall execute a one-hundred percent (100%) payment bond to assure payment of all suppliers of labor and material. If such guarantees are not feasible, alternative methods to provide performance and payment assurance may include the following: (i)

Deposit with UITDHE of a cash escrow of not less than twenty percent (20%) of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; (ii) Letter of credit for twenty-five percent (25%) of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or (iii) Letter of credit for ten percent (10%) of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

7. Review of Bids.

a. After bids are opened publicly at the time and place specified in an Invitation for Bid ("IFB"), or after all timely proposals are received, UITDHE shall prepare and file, as part of the permanent record of any contract awarded, an abstract or tabulation of all bids or proposals received. UITDHE then shall evaluate each bid or proposal.

b. If UITDHE modifies the specifications or conditions prior to opening bids, the changes must be mailed by registered mail to all firms or persons who received a copy of the bid invitation packet.

c. Bids received after the time specified for submission shall be classified as late and returned unopened to the bidder. A record of the time, date, and person receiving the late bid shall be made on the outside of the envelope. Late bids received before the award is made may be considered if they were sent by registered or certified mail a reasonable time in advance of the opening date and it is determined by UITDHE that: (1) the late receipt was due solely to delay in the mails for which the offeror was not responsible; or (2) the late receipt was due solely to mishandling



by UITDHE, provided that timely receipt at UITDHE is established by examination of an appropriate date stamp or other documentary evidence.

d. The award shall be made only to a responsible contractor that possesses the technical capacity and ability to perform successfully under the terms and conditions of the solicitation, and only if the bid or proposal is responsive. In determining responsibility and responsiveness, UITDHE shall give consideration to factors including, but not limited to, contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Conditions and alternatives imposed by the bidder or proposer which give the bidder or proposer an advantage over others, which limit rights, or which affect price, quantity, or delivery against the best interest of UITDHE, are causes for rejection of the bid or proposal as nonresponsive. After evaluation, the lowest responsible bidder or proposer that meets the requirements specified and whose bid or proposal is determined to be responsive shall be awarded the contract in writing. The bidder or proposer is legally bound by the bid or proposal, as submitted. The only exception to this rule is an obvious mistake, such as a misplaced decimal.

e. UITDHE shall notify in writing all unsuccessful bidders or proposers within a reasonable time that their bids or proposals have been rejected and the reasons therefor.

f. UITDHE reserves the right to reject any and all bids and proposals, whether within applicable cost limits or not, and to waive any deficiencies or discrepancies in bids or proposals received if such objection or waiver is in the best interests of UITDHE.

g. UITDHE reserves the right to reject a bid or proposal of any person or entity which has previously failed to perform similar contracts properly or timely; which has habitually and without just cause neglected payment of bills or otherwise disregarded obligations to

subcontractors, materialmen, or employees; or which fails to include documentation sufficient to determine its eligibility as a qualified Indian-owned economic enterprise or organization or to determine that the bidder or proposer will provide to the greatest extent feasible Indian preference in the award of subcontracts and in employment and training, all pursuant to the guidelines described in this Policy.

h. UITDHE and all subcontractors shall maintain records sufficient to detail the significant history of a procurement. Such records shall include, but not be limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

B. **De Minimus Exemption for Procurement of Goods and Services.** In procuring goods and services that are valued at less than \$5,000, UITDHE shall be exempt from the requirements of any otherwise applicable competitive procurement rule or procedure; provided however, UITDHE may not segment a proposed purchase into smaller purchases so that the *de minimus* exemption applies. Provided further that, all regulations relating to record keeping apply to *de minimus* procurements.

C. **Small Purchase Procurement.**

1. Under the *de minimus* exception, the Executive Director may make purchases and contracts in amounts less than \$5,000 in the open market following such inquiry as he or she deems necessary to insure that the price obtained is the most advantageous to UITDHE; provided however, UITDHE may not segment a proposed purchase into smaller purchases so that the exemption applies.

2. For purchases and contracts from \$5,000 to \$100,000.00, the Executive Director shall use competitive negotiation and invite bids orally, by telephone, or in writing in accordance with procedures established for providing Indian preference. A tabulation of solicitations made and quotations received shall be kept on file, and inquiries for price quotations and the quotations themselves shall be recorded on a form approved by the Executive Director.

3. For purchases from \$5000 to \$100,000, award shall be made to the responsive qualified Indian-owned economic enterprise or organization with the lowest bid, if the proposed cost is no more than a specified percentage higher than the lowest cost proposed by any non-Indian bidder. If no responsive bid by a qualified Indian owned enterprise or organization meets such criteria, the award shall be made to the qualified bidder with the lowest responsive bid. For the purpose of this section the specified percentages shall be:

a. Ten (10) percentage points when the cost proposed by the non-Indian bidder is Ten Thousand Dollars (\$10,000) or less;

b. Seven (7) percentage points when the cost proposed by the non-Indian bidder is Fifty Thousand Dollars (\$50,000.00) or less but more than Ten Thousand Dollars (\$10,000); and

c. Five (5) percentage points when the cost proposed by the non-Indian bidder is more than Fifty Thousand Dollars (\$50,000).

D. Procurement of Purchases in Excess of Small Purchase Threshold. For purchases and contracts in excess of \$100,000.00, the Executive Director shall use a formal solicitation process and advertising methods and shall invite sealed bids or proposals in accordance with the methods and procedures established hereinbelow. A tabulation of bids received shall be kept on file. The

Executive Director is not authorized to obligate UITDHE to any amounts greater than \$100,000.00 without written approval by a majority [?] of the Board of Commissioners (Board).

1. Noncompetitive Proposals. Procurements shall be conducted competitively to the maximum extent possible.

a. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and at least one of the following conditions applies:

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

(2) Only one source of supply is available, and the construction officer so certifies in writing; or

(3) After solicitation of a number of sources, competition is determined inadequate.

b. When an award is made without competition, a formal report of such award, together with a certification or statement justifying the lack of competition, shall be made by the Executive Director, and the best possible price shall be negotiated with the supplier.

c. UITDHE procures insurance coverage from a non-profit insurance entity owned and controlled by Indian tribes, Indian housing authorities, or tribally-designated housing entities and approved by HUD in accordance with the relevant regulations, and UITDHE includes provisions in its contract with such entity requiring the entity to prepare all the documents referred to in the relevant regulations (audit reports, actuarial reviews, insurance management reviews, and financial statements) and to submit such documents to UITDHE within the time periods delineated in the relevant regulations.

2. Sealed Bids.

a. **General.** The sealed bid method is the preferred method for procuring construction under the following conditions:

(1) A complete, adequate, and realistic specification or purchase description is made available;

(2) Two or more responsible bidders are willing and able to compete effectively for the business; and

(3) 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.

b. Procurement Actions.

(1) UITDHE may use either a Two-step process or apply the "X" factor to ensure compliance with Indian preference requirements.

(a) Two-step Procurement.

(i) Step 1. UITDHE shall solicit Indian organizations and Indian-owned economic enterprises ("Indian Enterprise") to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(ii) Step 2. If responses are received from more than one Indian enterprise found to be qualified, UITDHE shall issue an IFB that is limited to Indian Enterprises.

(b) Application of "X" Factor. If the Two-step process is not used, UITDHE shall issue an IFB that is open to all potential bidders and shall apply an X Factor in determining the award of contract as explained below.

(i) The IFB will be publicly advertised, and bids shall be solicited from an adequate number of known suppliers in accordance with Article III of this Policy, providing them sufficient time prior to the date set for opening the bids. The IFB, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to respond properly. The IFB shall include a copy of this Policy describing the contracting and subcontracting procedures to be used, which Policy will be deemed a part of the IFB. The IFB shall specify the time and place at which bids received will be opened publicly.

(ii) Award of Contract.

(a) If at least two responsive bids are received and the Two-step method of procurement was used, the award shall be made to the qualified Indian Enterprise with the lowest responsive bid.

(b) If at least two responsive bids are received and the "X" Factor method of procurement was used, the award shall be made to the

qualified Indian Enterprise with the lowest responsive bid if that bid is (1) within the maximum total contract price established for the specific project or activity for which bids are being taken and (2) no more than "X" higher than the total bid price of the lowest responsive bid from a qualified bidder. If no responsive bid by a qualified Indian owned enterprise meets both criteria, the award shall be made to the qualified bidder with the lowest responsive bid. "X" is a percentage of the lowest responsive bid defined pursuant to Attachment A.

(c) **Re-advertisement.** If UITDHE receives fewer than two (2) statements of intent or responsive bids or proposals from responsible and qualified organizations or enterprises, then UITDHE shall re-advertise the contract, without limiting the IFB to Indian Enterprises.

(2) **Conversion to Non-Competitive Proposals.** If, upon re-advertisement, UITDHE receives one responsive bid only, such bid may be treated as a Non-Competitive Proposal.

c. **Opening of Sealed Bids.**

(1) All sealed bids are to be submitted to UITDHE clearly marked, "DO NOT OPEN" and shall indicate that a bid is within. If bids are mailed, they must be mailed certified to the attention of the Executive Director. UITDHE will not be liable or responsible for premature opening of a bid not properly addressed and identified.

(2) All sealed bids received by UITDHE shall be marked on the outside of the sealed wrapper with the date and time of receipt and shall be signed by the receiving employee of UITDHE. Sealed bids shall be stored in a locked place until the appointed bid opening time. Bids shall be opened publicly on the scheduled date and time shown in the solicitation and



read aloud to all bidders attending the opening. The reading shall include the bidder's name, the bid price(s), and other data required to be submitted with the bid, such as bonds and acknowledgment of amendments. This information shall be recorded and made available for public inspection, upon request. No commitment shall be made to any bidder at the bid opening.

3. Competitive Proposals.

a. **General.** When conditions are not appropriate for the use of sealed bids, competitive proposals may be used under the following conditions:

(1) Requests for Proposals ("RFP") will be publicized and identify all evaluation factors, including Indian preference, and their relative importance;

(2) Responses to publicized requests for proposals shall be honored to the maximum extent practical;



(3) Proposals will be solicited from an adequate number of qualified sources;

(4) UITDHE will have a method for conducting technical evaluations of the proposals received and for selecting awardees; and

(5) Awards will be made to the responsible entity whose proposal is most advantageous to the program, with price and other factors considered.

b. Competitive proposal procedures may be used for qualifications-based procurement of professional services in which competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. It cannot be used to purchase other types of services.

c. UITDHE may advertise for proposals inviting responses from non-Indian-owned as well as Indian-owned economic enterprises and organizations. The award shall be made to a qualified proposer with the most responsive proposal. No proposal may be accepted unless it is within the maximum total contract price established for the specific project or activity.

d. UITDHE shall develop a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance UITDHE places on each evaluation factor and subfactor and shall specify the percentage or number of points set aside for Indian preference and the method for allocating such points. At least five percent (5%) of the rating points will be awarded for the provision of Indian preference in the award of contracts and subcontracts.

E. Procedures for Contesting Award of Contract.

1. An unsuccessful bidder or proposer may file a written protest with UITDHE's Contract Officer within fifteen (15) days after UITDHE's mailing of the notification of rejection. Such protest shall detail the basis of the protest. Contemporaneously with and as a condition of filing a written protest, an unsuccessful bidder or proposer also must deliver to UITDHE's Contract Officer an appeal fee of One Thousand Dollars (\$1,000.00), payable by certified check or money order. Upon request, UITDHE may refund such appeal fee only if, under the procedures set forth herein, the bidder or proposer receives a final decision in his or her favor. If the bidder or proposer is unsuccessful in his or her protest, UITDHE may keep the appeal fee and assess against the bidder or proposer all additional reasonable and necessary costs and expenses resulting from the protest,



including attorneys' fees and expenses. NO UNTIMELY PROTEST, ORAL PROTEST, OR PROTEST NOT ACCOMPANIED BY THE APPEAL FEE WILL BE CONSIDERED.

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

3. The Contract Officer shall schedule a hearing no earlier than five (5) days and no later than twenty (20) business days after UITDHE's receipt of a written protest.



4. Notice of the hearing shall be sent to all interested parties and shall include the date, time, place, and purpose of the hearing. The notice shall advise the parties of their right to be present at the hearing, to present testimony of witnesses and other evidence, and to be represented by counsel at their own expense.

5. Hearings shall be conducted in an orderly manner, but formal rules of evidence need not be observed.

6. The Contract Officer shall render his or her written decision within fifteen (15) days after the hearing. The decision of the Contracting Officer may be appealed to the Board by mailing a Notice of Appeal to the Board within fifteen (15) days of the date of such decision.

7. The Board shall schedule a hearing, which shall take place no earlier than five (5) days and no later than twenty (20) business days after the Board's receipt of a written Notice of Appeal.

8. Notice of the hearing shall be sent to all parties who presented evidence or argument before the Contract Officer and, where applicable, notice of the protest shall be disclosed

to the federal agency exercising oversight of the contract, and such notice shall include the date, time, place, and purpose of the hearing.

9. The Board shall render its written decision within fifteen (15) days after the hearing, which decision shall be final and binding upon the parties.

10. If a federal agency exercises oversight of a contract, a protesting party must exhaust all the available administrative remedies before it pursues a separate protest with the responsible federal agency.

F. Contract Efficiency and Cost Analysis.

1. All purchasing, contracting, and Contract Modifications shall be based on actual need and shall be consistent with UITDHE's obligation to operate the projects efficiently and economically. Proposed procurements shall be reviewed to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, analysis shall be made of lease and purchase alternatives.

2. UITDHE must perform a cost or price analysis in connection with every procurement action including Contract Modifications. Such analysis includes verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits making independent estimates before receiving bids or proposals. Cost analysis must be performed when an offeror is required to submit the elements of its estimated costs, or when adequate price competition is lacking, as for sole source procurements, unless price reasonableness can be established through catalog or market price of a commercial product or when prices are set by law or regulation.

3. For each contract in which there is no price competition and in all cases where cost analysis is performed, profit shall be negotiated as a separate element of the price. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

4. UITDHE shall establish a ceiling price that the contractor exceeds at its own risk.

G. Contract Modifications.

1. UITDHE may obtain Contract Modifications after the execution of a contract, and without invalidating the contract, by Change Order. A Change Order is a written instrument signed by UITDHE and the contractor, stating their agreement upon all of the following:

- a. A significant change in the scope of work;
- b. The amount of the adjustment, if any, in the amount of the contract;

and

- c. The extent of the adjustment, if any, in the term of the contract.

2. Changes in the work shall be performed under applicable provisions of the contract, and the contractor shall proceed promptly, unless otherwise provided in the Change Order.

3. If the Change Order provides for an adjustment to the amount of the contract, the adjustment shall be based on one of the following methods:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

b. Unit prices stated in the contract or subsequently agreed upon; or
c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

4. All Change Orders shall be subject to principles of contract efficiency and cost analysis described in this policy.

5. If the adjustment in the amount of the contract resulting from a requested Change Order, when added to the sum of all previously approved change orders, would exceed a specified percentage of the original contract, UITDHE shall obtain additional bids for the work to be completed using the Procurement Guidelines set forth in this Policy. For the purposes of this provision, the specified percentages are as follows:

a. Fifteen percent (15%) of the original contract amount when the original contract amount was One Hundred Thousand Dollars (\$100,000) or less;

b. Ten percent (10%) of the original contract amount when the original contract amount was over One Hundred Thousand Dollars (\$100,000) but less than Five Hundred Thousand Dollars (\$500,000); and

c. Five percent (5%) of the original contract amount when the original contract amount was Five Hundred Thousand Dollars (\$500,000.00) or above.

6. If the Change Order requires a substantial change in the scope of the project, UITDHE shall obtain bids for such change using the Procurement Guidelines set forth in this Policy; provided that, for the purposes of this provision, substantial change includes any change in the project scope that results in completion of any work or acquisition not included in the original scope of the project.

7. If a requested Change Order increases the original contract amount in violation of this Section or results in a substantial change in the scope of the project, upon a showing of exigent circumstances evidenced in writing in each procurement file, UITDHE may sole source the Change Order in compliance with the Procurement Guidelines of this Policy; provided, however, that the procurement record must be made available to HUD upon request. In no event may any Change Order procured pursuant to sole source procedures and based upon exigent circumstances exceed twenty percent (20%) of the original contract amount. For the purpose of this subsection, an exigent circumstance is a situation or circumstance that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to UITDHE or its participants, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement method, and the procurement shall be limited to those supplies, services, or construction necessary to meet the exigent circumstance.

H. **HUD Review.** Upon request, UITDHE and its contractors shall make available to HUD procurement documents and technical specifications for pre-award review if:

1. The procurement procedures or a contractor's operation fails to comply with federal standards;
2. The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
3. The procurement is expected to exceed \$100,000 and specifies a "brand name" product or equal;

4. The procurement is expected to exceed \$100,000 and is to be awarded to other than the low bidder under a sealed bid procurement; or

5. Review is necessary to ensure that the item or service specified is the one being proposed for purchase.

I. **Tribal, State, and Local Governmental Contracting.** UITDHE may enter into tribal, state, and local intergovernmental agreements for procurement or use of common goods and services and may request that the contracting agency note in the contract that use by UITDHE is authorized.

J. **Donations.** The Executive Director may request and accept donations on UITDHE's behalf from any entity other than contractors, potential contractors, or parties to sub-agreements, of necessary equipment, materials, or supplies, and pay the incidental costs if they are less than the amount UITDHE could otherwise reasonably expect to pay if purchasing such equipment, materials, or supplies.

K. **Purchasing on Behalf of Participants.** Purchasing and contracting on behalf of any participant shall be permitted if the purpose is related to the participant's obligations under a Homebuyer's or Renter's Occupancy Document to maintain his or her house and grounds and if UITDHE is compensated in advance or is to be reimbursed from a participant's operating reserve.

IV. INVENTORY

A. **Objectives.** The objectives of the inventory requirements are:

1. Maintenance of effective control and accountability for all real and personal property and other assets;

2. Adequate safeguard of all such property; and

3. Assurance that such property is used solely for authorized purposes.

B. **Delegation of Authority.** The Financial Officer shall have primary responsibility for setting inventory policy and criteria, subject to review and acceptance by the Executive Director.

C. **Schedule of Inventory for Capitalized Property.**

1. UITDHE will continuously maintain the Schedule of Inventory for all housing stock and personal property owned or under the control of UITDHE with a value exceeding five thousand dollars (\$5,000). The Schedule of Inventory shall include a description of the property, which shall be categorized as to the type of funding under which it was purchased or obtained, the serial or model number, the historic value of the property, the purchase date and inventory value, and the current value as determined by Generally Accepted Accounting Principals.

2. UITDHE shall perform a complete inventory on a yearly basis.

3. If the inventory discloses that items of equipment have been lost, stolen, or destroyed, the Executive Director will obtain all the facts relating to each case and determine:

a. Whether the person who had custody of the property is to be held responsible for the loss, theft, or destruction, or is to be relieved of that responsibility; and

b. The amount, if any, such person will be required to reimburse UITDHE if held responsible for the loss. At UITDHE's discretion, such reimbursement may be withheld from a person's paycheck, provided that such amount does not exceed one hundred dollars (\$100) per pay period.

D. **Schedule of Inventory for Tools and Information Technology.** UITDHE will continuously maintain a Schedule of Inventory for all tools and information technology owned or

under the control of UITDHE with a value exceeding fifty dollars (\$50.00). The Schedule of Inventory shall include a description of the property and an identification number.

1. UITDHE shall perform a complete inventory on a yearly basis.
2. If the inventory discloses that tools or information technology have been lost, stolen, or destroyed, the Executive Director will obtain all the facts relating to each case and determine:

- a. Whether the person who had custody of the property is to be held responsible for the loss, theft, or destruction, or is to be relieved of that responsibility; and

- b. The amount, if any, such person will be required to reimburse UITDHE if held responsible for the loss. At UITDHE's discretion, such reimbursement may be withheld from a person's paycheck, provided that such amount does not exceed one hundred dollars (\$100) per pay period.

V. ACQUISITION OF REAL PROPERTY

A. Acquisition.

1. Before discussing the purchase price on real property it intends to purchase, UITDHE shall inform the owner:

- a. Of the amount it believes to be the fair market value of the real property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent UITDHE from accepting a donation or purchasing the real property at less than its fair market value; and

- b. That it will be unable to acquire the real property if negotiations fail to result in an agreement.

2. UITDHE must request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the real property if the proposed acquisition payment exceeds the fair market value. UITDHE shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment.

B. Minimize Displacement. UITDHE must take all reasonable steps to minimize the displacement of persons or entities occurring as a result of a NAHASDA assisted project. "Person" means households, businesses, nonprofit organizations, and farms.

C. Temporary Relocation. UITDHE shall provide the following to residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for a NAHASDA assisted project:

1. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs; provided however, UITDHE is not responsible for deposit fees or damages to the temporary unit; and

2. Appropriate advisory services, including reasonable advance written notice of:

a. The date and approximate duration of the temporary relocation;

b. The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

c. The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

d. The provisions of paragraph (C)(1) of this Section.

D. **Relocation Assistance for Displaced Persons.** A Displaced Person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (“URA”)(42 U.S.C. §§4601-4655) and 49 C.F.R. Part 24.

E. **Appeals to UITDHE.** A person or entity who disagrees with the UITDHE’s determination concerning whether the person or entity qualifies as a “Displaced Person,” or the amount of relocation assistance for which the person or entity is eligible, may file a written appeal of that determination with UITDHE. Appeals may be taken pursuant to UITDHE’s Occupant Grievance Policy.

F. **Responsibility of UITDHE.**

1. UITDHE shall certify to HUD that it will comply with the URA, 49 C.F.R. Part 24, and 24 C.F.R. §1000.14. UITDHE shall ensure such compliance, notwithstanding any third party’s contractual obligation to UITDHE to comply with the provisions in this Section.

2. The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to UITDHE from any other source.

3. UITDHE shall maintain records in sufficient detail to demonstrate compliance with this Section.

G. **Definition of Displaced Person.**

1. A Displaced Person means any person that moves from real property, or moves his/her/its personal property from real property, permanently, as a direct result of

rehabilitation, demolition, or acquisition of the real property for a UITDHE project, and as more fully described in the regulations promulgated under NAHASDA at 24 C.F.R. § 1000.14(g).

H. Criteria for Appraisals.

1. **Standards of Appraisal.** UITDHE shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions that, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

a. The purpose and/or the function of the appraisal, a definition of the real property being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;

b. An adequate description of the physical characteristics of the real property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining real property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five (5)-year ownership history of the real property;

c. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available

to support reliably the fair market value for the specific appraisal problem encountered, UITDHE, in its discretion, may require only the market approach. If more than one approach is used, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value;

d. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction;

e. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate; and

f. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

2. Qualifications of Appraisers.

a. UITDHE shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. UITDHE shall review the experience, education, training, and other qualifications of appraisers, and use only those determined to be qualified.

b. If the appraisal assignment requires the preparation of a detailed appraisal pursuant to the Standards for Appraisals provision herein, and UITDHE uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 3331 *et seq.*).

VI. DISPOSITION OF PROPERTY. Property acquired by UITDHE through use of Indian Housing Block Grant funds or other HUD program funds may be disposed of only in compliance with HUD regulations.

A. **Real Property.** When real property is no longer needed for the originally authorized purpose, it may be disposed of in compliance with 24 C.F.R. §85.31(c).

B. **Equipment.** When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, it may be disposed of in compliance with 24 C.F.R. §85.32(e).

C. **Supplies.** Upon termination or completion of a grant, if an inventory of unused supplies that has a total aggregate value in excess of \$5,000.00 remains, and the supplies are not needed for any other federally funded or sponsored program, the supplies may be disposed of in compliance with 24 C.F.R. §85.33(b).

VII. INDIAN PREFERENCE IN CONTRACTING, SUBCONTRACTING, EMPLOYMENT AND TRAINING

A. **Indian Preference in Procurement.** Pursuant to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e(b)) and 24 C.F.R. § 1000.52, UITDHE shall, to the greatest extent feasible, give preference in the award of contracts to verifiable, qualified, Indian organizations and Indian-owned economic enterprises, as more particularly described herein. UITDHE shall also require contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions, except where the contractor adequately advertises a position and no Indian either qualifies or accepts the terms of employment. UITDHE shall indicate what it considers to be adequate



advertisement in the IFB or RFP and in the contract. A core crew employee is an individual who is a bona fide employee of the contractor or subcontractor at the time the bid or proposal is submitted; or an individual who was not employed by the contractor or subcontractor at the time the bid or proposal was submitted, but who is regularly employed by the contractor or subcontractor as a supervisory or other key skilled position when work is available. Each contractor shall submit a list of all core employees with its bid or proposal.

1. UITDHE's procurement shall, to the greatest extent feasible provide Indian preference in the award of contracts. See generally Sections III(B)(3), Small Purchase Procurement; III(C)(2)(b), Sealed Bid; and III(C)(3)(d), Competitive Proposals.



2. If UITDHE requests proposals and no Indian organizations or Indian-owned economic enterprises either qualifies or accepts the award, UITDHE shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years.

3. All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

4. UITDHE, at its discretion, may require prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises to provide the following information before submitting a bid or proposal, or at the time of submission:

- a. Evidence showing fully the extent of 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 arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

c. Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

B. Mandatory Preference Provisions. Indian preference regulations apply to all contracts and subcontracts executed by, or arising out of, contracts executed by UITDHE. The following language must be included in all such contracts and subcontracts:

1. The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e(b)) (“Act”). Section 7(b) requires that to the greatest extent feasible (a) preferences and opportunities for training and employment shall be given to Indians, and (b) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

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

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

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

C. Tribal Preference in Contracting. Notwithstanding any other provision of law, including but not limited to section 7(b) of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. § 450e(b)) as expressed above, UITDHE may apply tribal preference laws adopted



by the Tribe in awarding contracts derived either in whole or in part from the Indian Housing Block Grant Program.

D. Procedure for Alleging Inadequate or Inappropriate Provision of Indian or Tribal Preference. The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this Policy, including alternative methods.

1. Each complaint shall be in writing, signed, and filed with UITDHE's Executive Director.

2. A complaint must be filed no later than twenty (20) days from the date of the action (or omission) upon which the complaint is based.

3. Upon receipt of a complaint, UITDHE shall promptly stamp the date and time of receipt upon the complaint and acknowledge its receipt in writing to the complainant within five (5) days.

4. Within twenty (20) calendar days of receipt of a complaint, UITDHE shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Executive Director shall make a determination on a complaint and notify the complainant, in writing, within thirty (30) calendar days of its receipt of the complaint. The decision of UITDHE's Executive Director shall constitute final administrative action on the complaint.

VIII. REQUIRED CONTRACT PROVISIONS; CONFLICTS OF INTEREST; APPLICABLE LAWS

A. Required Contract Provisions. UITDHE contracts and subcontracts must contain the provisions listed in this section. In addition, other provisions may be required by the Office of Federal Procurement Policy.

1. Contracts in excess of \$100,000.00 must provide for administrative, contractual, or legal remedies for instances in which contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

2. Contracts in excess of \$10,000.00 must provide for termination for cause and for convenience by UITDHE, including the manner by which it will be effected and the basis for settlement.

3. Construction contracts in excess of \$10,000.00 awarded by UITDHE or its contractors shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapter 60).

4. All contracts and subgrants for construction or repair shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations in 29 C.F.R. Part 3.

5. Any contract or agreement for assistance, sale, or lease shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state, tribal, or local law) by HUD, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7 and regulations in 29 C.F.R. Part 5) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved. HUD will require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

When federal assistance is used only to assist homebuyers to acquire single family housing, the foregoing rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

6. All construction contracts awarded by UITDHE or its contractors in excess of \$2,000 and all other contracts awarded in excess of \$2,500 that involve the employment of mechanics or laborers and are subject to Davis-Bacon or HUD determined wage rates shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5)

7. All contracts shall provide notice of HUD requirements and regulations pertaining to reporting.

8. All contracts shall provide notice of HUD requirements and regulations that reserve patent rights to any discovery or invention that arises or is developed in the course of or under such contract.

9. All contracts require notice of HUD requirements and regulations pertaining to copyrights and rights in data.

10. All contracts shall require access by UITDHE, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor or subcontractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. Contracts shall require retention of all required records for three years after UITDHE makes final payments and all other pending matters are closed.

12. Contracts and subcontracts in excess of \$100,000 shall require compliance with applicable provisions of the National Environmental Policy Act of 1969 ("NEPA") (42 U.S.C. 4321 *et seq.*) and the related authorities listed in implementing regulations at 24 C.F.R. parts 50 and 58 as they may be amended.

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

B. Conflict of Interest.

1. No employee, officer, or agent of UITDHE shall participate in the selection, award, or administration of a contract funded through UITDHE if a conflict of interest, real or apparent, would be involved. Such conflict would arise when the employee, officer, or agent; any member of his or her immediate family; his or her partner; or an organization that employs, or is about to employ any of the above persons has a financial interest in the firm selected for the award.

2. No employee, officer, or agent of UITDHE shall solicit or accept gratuities, favors, or anything of substantial monetary value from contractors, potential contractors, or subcontractors. The only permitted variance to this provision is that employees, officers, or agents of UITDHE may accept unsolicited gifts when, in the opinion of the Executive Director, the financial worth of the item is not substantial and may be of nominal intrinsic value. Any receipt of a gratuity, favor, or gift by an employee, officer, or agent of UITDHE must be reported immediately to the Executive Director for determination of substantial worth.

3. Consistent with applicable policies and procedures, UITDHE may reprimand, impose disciplinary probation, suspend, or terminate any employee, officer, or agent who violates these conflict of interest policies.

C. Applicable Laws.

1. UITDHE shall provide job training, employment, and contracting opportunities for low income individuals in accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) and HUD's implementing regulations, 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)).

2. UITDHE shall comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.* and HUD's implementing regulations.

3. UITDHE and its contractors shall comply with prohibitions in 24 C.F.R. § 85.35 on the use of debarred, suspended, or ineligible contractors.

4. UITDHE and its contractors shall comply with the requirements of 24 C.F.R. §85.36(e) on contracting with small and minority firms, women's business enterprise, and labor surplus area firms.

5. UITDHE and its contractors shall comply with 24 C.F.R. § 85.34 that reserves the right of the awarding agency to reproduce, publish, use, or authorize for use copyright in any work developed or purchased under a grant, subgrant or contract.

ATTACHMENT A

In accordance with this Procurement Policy, NAHASDA regulations [currently at 24 C.F.R. §1000.52] and UITDHE determination, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

X = lesser of:

When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000
When the lowest responsive bid is at least \$100,000 but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000 but less than \$1 million	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000
At least \$2 million less than \$4 million	3% of that bid, or \$80,000
At least \$4 million less than \$7 million	2% of that bid, or \$105,000
\$7 million or more	1½ % of the lowest responsive bid, with no dollar limit