

**CHAPTER 13  
PROCUREMENT POLICY**

**CHAPTER 1 GENERAL PROVISIONS**

1-1\_ Purpose The purpose of this Policy is to:

- a) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the KTHA,
- b) assure that supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the KTHA,
- c) promote competition in contracting,
- d) provide safeguards for maintaining a procurement system of quality and integrity,
- e) and assure that the KTHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State, tribal and local laws.

1-2 Application This Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the KTHA after the effective date of this policy. It shall apply to every expenditure of funds by the KTHA for public purchasing, irrespective of the source of funds; however, nothing in the policy shall prevent the KTHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. When both HUD and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian preference regulations shall be applied to the total project. The term "procurement," as used in this policy, includes both contracts and change orders for construction or service, as well as purchase, lease or rental of supplies and equipment.

1-3 Public Access to Procurement Information: Procurement information shall be a matter of public record and shall be available to the public.

**CHAPTER 2 PROCUREMENT AUTHORITY AND ADMINISTRATION**

2-1 All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director (ED) or other individual authorized in writing.

2-2 The ED or designee shall ensure that:

- a) procurement requirements are subject to an annual planning process to assure efficient and economical purchasing,
- b) contracts and change orders are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the

rationale for selecting or rejecting offers, and the basis for the contract price,

- c) for procurement other than small purchases, public notice is given of at least ten days before a solicitation is issued, responses to such notice are honored to the maximum extent practical, a minimum of thirty days for main construction contracts and fifteen days for other contracts is provided for preparation and submission of bids or proposals, and notice of contract awards is made available to the public,
- d) solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36 and the Indian preference requirements and methods of procurement at 24 CFR 905, Subpart B,
- e) an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurement,
- f) contract award is made to the responsive and responsible bidder offering the lowest price, consistent with Indian preference requirements, or contract award is made to the offeror whose proposal offers the greatest value to the KTHA, considering price, technical and other factors as specified in the solicitation, including Indian preference; unsuccessful firms are notified within ten days after contract award,
- g) there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or change order, work is inspected before payment, and payment is made promptly for contract work performed and accepted,
- h) procedures for inventory control, storage and protection of goods and supplies, and issues of, or other disposition of, supplies and equipment are established in accordance with HUD Handbook 7460.1, Chapter 5,
- i) the KTHA adheres to the procurement and program requirements of HUD Handbook 7450.1 for Indian Housing development projects, and HUD Handbook 7485.1 for modernization projects, and
- j) the KTHA complies with applicable HUD review requirements, as provided in the operational procedures implementing this policy.

### **CHAPTER 3 PROCUREMENT METHODS**

3-1 Selection of Method When satisfying its needs by procurement, the KTHA shall choose one of the following procurement methods, based on the nature, and anticipated dollar value of the purchase.

3-2 Small Purchases

- a) General: Any procurement not exceeding \$25,000 may be conducted in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

1) Centralized Purchasing: General purchases such as maintenance and office supplies shall be ordered as follows: purchase order will be created by requestor; P/O will be sent to finance department for budget approval and forwarded to Executive Director for approval; a copy of P/O will be returned to requestor; original P/O will be given to person designated by Executive Director to do ALL ordering/purchasing. This person will keep original P.O on file and attach any packing slips, back order slips or any other pertinent paperwork to the P/O and forward to fiscal department for payment processing.

- b) Indian Preference: The KTHA shall to the greatest extent feasible provide preference to Indian-owned economic enterprises and shall, to the extent feasible, maintain lists of qualified Indian supply sources. The KTHA shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training and employment. The KTHA shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises, the KTHA shall document the procurement file with reasons for the lack of Indian participation.

- c) Petty Cash: Small purchases under \$200 which can be satisfied by local sources may be processed through the use of a petty cash account. Policy outlining petty cash included in cash control policy.

- 1) Limited Purchase Order: At the discretion of the Executive Director, department managers may use a limited purchase order on specific accounts. The Executive Director shall specify the vendor and department manager authorized for purchasing. Limited Purchase Order accounts require one purchase order per month. The department manager who is authorized to use the limited purchase order, shall be responsible for submitting receipts for all purchases on the account. Such account will be used for emergency purposes only and shall not exceed \$250.00 per month.

1) Small purchases of \$100,000 or less.

- a) Obtaining Quotes: The KTHA shall solicit price quotations by phone, letter or in person to allow a reasonable number of competitive sources. When soliciting quotations, the KTHA shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The KTHA shall obtain written quotations by the due date. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as public record.

- b) Competition: The KTHA shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with justification whenever it has been unable to obtain at least three quotations. Solicitation of

fewer than three sources is acceptable if the KTHA has attempted to obtain sufficient quotations. A sole quotation received may be accepted only in emergencies threatening public health and safety.

c) Award:

1) Award based on price: For small purchases awarded based on price and fixed specifications the KTHA shall make award to a qualified Indian-owned economic enterprise if it is reasonable and no more than 10% higher than the lowest responsive quotation received. If no responsive quotation from an Indian-owned business is within 10% of the lowest responsive quotation, then award shall be made to the source with the lowest quotation.

2) Award based on factors other than price: For small purchases to be awarded based on factors other than price, a formal solicitation shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, include price. The solicitation shall reserve 15% of the total evaluation points for Indian preference. Award shall be made in accordance with the stated rating system.

2) Small purchases of \$2,000 or less.

a) The KTHA shall follow the procedures specified above. However, oral quotations are acceptable, with documentation, and the KTHA may develop alternative methods of providing Indian preference which promotes maximum participation by Indian-owned economic enterprises. This alternate method must be in writing and approved by HUD.

3-3 Sealed Bids

a) Conditions for Use. Sealed bidding is the preferred method for construction procurement. Under the Comprehensive Improvement Assistance Program (CIAP), sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional service contracts, sealed bids should not be used.

b) Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:

- 1) a complete, adequate and realistic specification or purchase description is available,
- 2) two or more responsible bidders are willing and able; to compete effectively for the work,
- 3) the procurement lends itself to a firm fixed price contract, and
- 4) the selection of the successful bidder can be made principally on the basis of price.

c) Solicitation and receipt of Bids.

1) Issuance and amendment. An invitation for bids shall be issued including specifications and all contractual

terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and within seven days of the bid opening. The invitation for bids shall state the time and place for the receipt of bids and the public bid opening. All bids received shall be time-stamped and stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

- 2) Restricting solicitations. The invitation may be restricted to qualified Indian-owned economic enterprises if the KTHA has a reasonable expectation of receiving the required minimum number of bids from them.
- d) Bid Opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection.
- e) Award. Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:
  - 1) Restricted solicitations. If the solicitation is restricted to Indian-owned economic enterprises, and two or more responsive bids are received, award shall be made to the qualified enterprise with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots. If fewer than the minimum number of responsive bids are received, all bids shall be rejected, and the KTHA shall cancel the solicitation and re-solicit, inviting unrestricted bids. The KTHA may accept a single bid subject to HUD approval if the KTHA determines that, based on a cost analysis, the bid price is fair and reasonable, or the KTHA determines that the delay would subject the project to higher construction costs.
  - 2) Unrestricted solicitations. If the solicitation is not restricted, to qualified Indian-owned economic enterprises, award shall be made to the qualified enterprise with the lowest responsive bid, if that bid is within the maximum total contract price established for the project, and the bid is within the range specified in 24 CFR 905.175(c)(1)(ii)(B) and shown in the Attachment to this policy. If equal low bids are received from qualified enterprises, award shall be made by drawing lots or similar random method. If no responsive bid by qualified enterprise is within this range, award shall be made to the lowest, responsible, responsive bidder.
- f) Mistakes in bids.
  - 1) Correction or withdrawal of inadvertently erroneous bids may be permitted before bid opening by written notice received in the office designated for receipt of bids.
  - 2) After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of non-judgmental character was made, the nature of the mistake, and the bid price actually intended.

- 3) A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.
- 4) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the ED. After bid opening, no changes in bid price or other provision of bids prejudicial to the interest of the KTHA or fair competition shall be permitted.

### 3-4 Competitive Proposals

- a) Conditions for Use. Competitive proposals (including turnkey) may be used if there is an adequate method of evaluating technical proposals and where the KTHA determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.
- b) Solicitation.
  - 1) The request for proposals (RFP) may be restricted to qualified Indian-owned economic enterprises if the KTHA has a reasonable expectation of receiving offers from two such entities. The KTHA shall solicit non-restricted proposals if:
    - I) the KTHA prefers not to restrict the RFP, or
    - II) an insufficient number of qualified Indian-owned economic enterprises satisfactorily respond to a restricted RFP; or
    - III) a single proposal is received but not accepted.
  - 2) A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposal.
  - 3) Evaluation Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors, including the weight given to each technical factor. KTHA's shall reserve 15% of the total available points for the provision of Indian preference in the award of contracts, and up to an additional 10% for evaluation of the offerors statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
  - 4) Negotiations. If negotiations are deemed necessary, they shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected, based on evaluation against technical and price factors specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations

shall be to seek clarification of deficiencies in technical and price aspects of proposals and to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, be assisted in correcting deficiencies, or be directed to reduce their proposed prices to be considered for an award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- 5) Award. After evaluation of revisions, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the KTHA, provided that the price is within the maximum total contract price established for the specific project. For restricted solicitations, award shall be made to the qualified Indian-owned economic enterprise with the best proposal, provided that the price is within the maximum total price established for the specific project. If fewer than two restricted proposals are received, the KTHA shall reject all proposals and re-solicit within restriction. The KTHA may accept the sole proposal received, subject to HUD approval, if the KTHA determines that the delays caused by re-solicitation would cause higher costs, or were the KTHA determines the proposal has a fair and reasonable price.
- 6) Architect/Engineer Services. A/E services in excess of the small purchase limitation may be obtained by the competitive proposals method. Sealed bidding shall not be used. This procedure shall not be used to purchase other types of services even though A/E firms are potential sources.

### 3-5 Non-Competitive Proposals

- a) Conditions for use. Procurement shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
  - 1) an emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the KTHA (flood, earthquake, epidemic, riot, equipment failure, etc). In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency, or
  - 2) only one source of supply is available, and the ED so certifies in writing; or
  - 3) after solicitation of a number of sources, competition is determined inadequate, or

- 4) HUD specifically authorizes the use of noncompetitive proposals.
- b) Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the ED.
- c) Price Reasonableness. The reasonableness of the price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis, as described below.

### 3-6 Cost And Price Analysis

A cost analysis shall be performed for all procurement actions, including change orders. The method of analysis shall be determined as follows. The degree of analysis shall depend on procurement.

- a) Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, the KTHA shall be required to submit:
  - 1) a cost breakdown showing projected costs,
  - 2) commercial pricing information, sufficient to enable the KTHA to verify the reasonableness of the proposed price of a product should to the general public, or
  - 3) documentation showing that the offered price is set by law or regulation.
- b) Cost Analysis. Cost analysis shall be performed if an offeror is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted:
  - 1) a cost analysis shall be performed of the individual cost elements,
  - 2) the KTHA shall have a right to audit the contractor's books pertinent to such costs, and
  - 3) profit shall be analyzed separately.
- c) Price Analysis. A comparison of prices shall be used in all cases other than those described above.

### 3-7 Cancellation Of Solicitations

- a) An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if:
  - 1) the KTHA no longer requires the supplies, services or construction,
  - 2) the KTHA can no longer reasonably expect to fund the procurement,
  - 3) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable, or
  - 4) similar reasons.

- b) A solicitation may be canceled and all bids or proposals that have already been received may be rejected if:
  - 1) the supplies, services or construction are no longer required,
  - 2) ambiguous or otherwise inadequate specifications were part of the solicitation,
  - 3) the solicitation did not provide for consideration of all factors of significance to the KTHA,
  - 4) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds,
  - 5) there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith, or
  - 6) for good cause of a similar nature when it is in the best interest of the KTHA.
- c) The reasons for cancellation shall be ;documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
- d) A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- e) For solicitations that are not restricted, if all otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the price is unreasonable, the KTHA shall cancel the solicitation and either:
  - 1) re-solicit using a request for proposals, or
  - 2) complete the procurement by using the competitive proposal method, or by using the noncompetitive proposals method, provided the ED determines in writing that such action is appropriate, all bidders are informed of the KTHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

### 3-8 Cooperative Purchasing

The KTHA may enter into local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment and other relevant terms and conditions.

## **CHAPTER 4 CONTRACTOR QUALIFICATIONS AND DUTIES**

4-1 Contractor Responsibility Procurement shall be conducted only with responsible contractors (those who have the technical and

financial competence to perform and who have a satisfactory record of integrity). Before awarding a contract, the KTHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity, compliance with public policy, record of past performance, and financial, administrative and technical capability to perform contract work of the size and type involved and within the time frame provided under the contract. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

- 4-2 Suspension and Debarment Contracts shall not be awarded to debarred, suspended or ineligible contractors. Contractors may be suspended, debarred or determined ineligible by HUD in accordance with HUD regulations when necessary to protect KTHA in their business deadlines. The KTHA may suspend or debar a contractor as applicable.
- 4-3 Qualified Bidder's Lists. Interested businesses shall be given an opportunity to be included on qualified bidders lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. List of pre-qualified Indian enterprises may be maintained by the KTHA. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.
- 4-4 Bonds
- a) Development Contracts. In addition to the other requirements of this policy, for construction or development projects, the successful bidder shall be required to submit one of the following forms of assurance, in accordance with the approved method set forth in the solicitation within ten days after the prescribed contract forms are presented for signature:
- 1) a performance and payment bond for 100% of the total contract price,
  - 2) a cash escrow deposited with the KTHA of not less than 20% of the total contract price, subject to reduction, with the approval of HUD, during the warranty period commensurate with potential risk,
  - 3) an irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the KTHA, subject to reduction, with the approval of HUD, during the warranty period commensurate with potential risk,
  - 4) an irrevocable letter of credit for 10% of the total contract price and compliance with the procedures for monitoring and disbursements provided by the contractor, as approved by HUD.

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

- b) CIAP Contracts

- 1) a bid guarantee from each bidder equivalent to 5% of the bid price, and
- 2) one of the following:
  - I) a performance and payment bond for 100% of the contract price, or
  - II) separate performance and payment bonds, each for 50% or more of the contract price, or
  - III) a 20% cash escrow, or
  - IV) a 25% irrevocable letter of credit.

## **CHAPTER 5 TYPES OF CONTRACTS, CLAUSES AND CONTRACT ADMINISTRATION**

- 5-1 Contract Types. Any type of contract which is appropriate to the procurement and which will promote the best interest of the KTHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties and shall be in the HUD approved form of contract. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the KTHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles. A time and materials contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.
- 5-2 Options. Options for additional qualities or performance periods may be included in contracts, provided that:
- a) the option is contained in the solicitation,
  - b) the option is a unilateral right of the KTHA,
  - c) the contract states a limit on the additional qualities and the overall term of the contract,
  - d) the options are evaluated as part of the initial competition,
  - e) the contract states the period within which the option may be exercised,
  - f) the options may be exercised only at the price specified,
  - g) the options may be exercised only if determined to be more advantageous to the KTHA than conducting a new procurement.
- 5-3 Contract Clauses. In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations such as:
- a) termination for convenience
  - b) termination for default

- c) Equal Employment Opportunity
- d) Anti-Kickback Act
- e) Davis-Bacon Act
- f) contract work hours and Safety Standards Act
- g) reporting requirements
- h) patent rights
- i) rights in data
- j) examination of records by Comptroller General
- k) retention of records for three years after closeout
- l) clean air and water
- m) energy efficiency standards
- n) bid protests and contract claims
- o) value engineering
- p) payment of funds to influence certain Federal transactions

If all required clauses are not include on HUD forms, then the KTHA shall attach any additional clauses to the HUD forms used in contract documents. The operational procedures required by this policy shall contain the test of all clauses and required certifications used by the KTHA. The KTHA shall include the contract clauses and solicitation notices for Indian preference described below.

5-4 Contract Administration. A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. It will contain guidelines for inspection of supplies, services or construction, as well as monitoring contractor performance, status reporting on construction contracts and similar matters.

5-5 Specifications. Specifications shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the KTHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided when possible. Consideration shall be given to consolidating procurement to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

- a) Limitations. The following specification limitations shall be avoided:
  - 1) geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available),
  - 2) unnecessary bonding or experience requirements,

- 3) brand name specifications unless a written determination is made that only the identified item will satisfy the KTHA's needs,
- 4) brand name or equal specifications, unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use.

Nothing in this policy shall preempt any State, tribal or local licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur.

## **CHAPTER 6 APPEALS AND REMEDIES**

It is the KTHA's policy to resolve all contractual issues informally at the KTHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the KTHA level. When appropriate, the KTHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the difference. HUD will only review protests in cases of violations of Federal law or regulations and failure of the KTHA to review a complaint or protest.

- a) Bid Protests. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this policy. Any protest against a solicitation must be received before the due date of receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the ED, who shall issue a written decision on the matter. The ED may suspend the procurement pending resolution of the protest, if warranted by the facts presented.
- b) Contract Claims. All claims by a contractor relating to performance of a contract shall be submitted in writing to the ED for a written decision. The contractor may request a conference on the claim. The ED's decision shall inform the contractor of its appeal rights.
- c) Protests involving Indian Preference. Complaints arising out of any of the methods of providing for Indian preference shall be handled in accordance with the procedures in 24 CFR 905.165(f).

## **CHAPTER 7 ASSISTANCE TO SMALL AND OTHER BUSINESSES**

7-1 Required Efforts. The KTHA shall make efforts to ensure that small businesses and individuals located in or owned substantially by persons residing in the area of a KTHA project are used when possible. Such efforts shall include, but not limited to:

- a) including such firms, when qualified, on solicitation mailing lists,
- b) encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources,
- c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum

participation by such firms,

- d) establish delivery schedules, where possible, which encourage participation by such firms,
- e) using the services and assistance of the Small Business Administration,
- f) including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area, and to award subcontracts for work in connection with the project to business concerns which are located in the area of the project, and
- g) requiring prime contractors to take the steps listed above.

Goals may be established by the KTHA periodically for participation by small businesses which are located in or owned substantially by persons residing the area of the project, in the KTHA's prime contract opportunities.

## 7-2 Definitions

- a) A small business is defined as a business which is:
  - 1) independently owned,
  - 2) not dominant in its field of operation, and
  - 3) not an affiliate or subsidiary of a business dominant in its field of operation.
- b) A business concern located in the area of the project is defined as located within the relevant project area and meeting the small business definition above.
- c) A business owned substantially by a person residing in the project area is defined as a business which is 51% or more owned by persons residing within the project area.

7-3 Indian Preference Requirements. Projects developed and operated with assistance under 24 CFR Part 905 are subject to Section 7(b) of the Indian Self-determination and Education Assistance Act. Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian owned economic enterprises in the award of all contracts. Preference must be provided in accordance with 24 CFR 905, Subpart B. Where Indian preference is determined not to be feasible, the KTHA shall document to procurement file with the basis for its findings. Indian preference applies not only on-site, but also to contracts with firms that operate outside the area. Indian preference in the solicitation, evaluation and award process shall be as described above. In no case shall the KTHA authorize or provide preference based on particular tribal affiliation or membership.

- a) Eligibility. Eligibility for Indian preference shall be established in accordance with procedures in 24 CFR 905.165(e). If the KTHA or its prime contractor determines an applicant ineligible for Indian preference, they shall notify the applicant in writing before contract award, or filling the position or providing the desired training.
- b) Solicitation notices. Solicitations shall include the following:

- 1) a statement of the applicability of Indian preference to the solicitation and a time before the due date by which offerors must submit evidence of eligibility for Indian preference,
  - 2) the local preference requirements for solicitations of \$500,000,
  - 3) any applicable locally improved preference requirements property enacted by the tribal governing body and adopted by the KTHA,
  - 4) information as to whether the KTHA maintains lists of Indian-owned economic enterprises, or individuals, which are available to contractors for use in meeting Indian preference responsibilities,
  - 5) a requirement that offerors provide a statement describing how they will provide Indian preference in subcontracting, training and employment, including the number or percentage of Indians to be employed and trained,
  - 6) the KTHA's description of the information to be submitted on Indian preference,
  - 7) the factors the KTHA will use in judging the adequacy of the Indian preference information submitted,
  - 8) a statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer,
  - 9) a requirement that each contractor and subcontractor submit a certification and supporting evidence to the KTHA whenever it is not feasible to provide Indian preference in subcontracting,
  - 10) for requests for proposals that are not restricted, the percentage or number of points set aside for Indian preference and the method for allocating these points,
  - 11) a requirement in unrestricted RFP's that subcontractors using requests for proposals soliciting subcontractors reserve 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals, and
  - 12) a requirement that offerors submit a list of core crew employees with their offers, as defined in 24 CFR 905.180(c), and that contractors and subcontractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions.
- c) Solicitations, contracts, and subcontracts shall include the following:
- 1) the clause prescribed in 24 CFR 905.165(d) implementing Section 7(b) of the Indian Self-

Determination and Education Assistance Act in connection with the development or operation of KTHA projects,

- 2) the grounds for termination of a contract or the imposition of penalties for improper subcontracting or false certification as to subcontracting with Indian preference, and
  - 3) if the contract is for Mutual Help, any additional information required.
- d) If all required clauses and provisions are not included on HUD forms, then the KTHA shall attach any additional clauses or provisions to the HUD forms used in solicitations and contract documents.
- e) Monitoring and Remedies. The KTHA shall monitor the implementation of Indian preference in its contracts, subcontracts, training and employment, and take appropriate remedial action to ensure compliance.

## **CHAPTER 8 ETHICS IN PUBLIC CONTRACTING**

The KTHA shall adhere to the following code of conduct and shall comply with the limitations imposed by the Annual Contributions Contract (Part Two, Section 515).

- a) Conflict of Interest. No employee, officer or agent of the KTHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
  - 1) an employee, officer or agent involved in making the award,
  - 2) His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother and half sister),
  - 3) His/her partner, or
  - 4) an organization which employees, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- b) Gratuities, kickbacks, and use of confidential information. KTHA officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties or subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.
- c) Prohibition against contingent fees. Contractors shall not retain a person to solicit or secure a KTHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

**AX@ FACTOR**

In accordance with 24 CFR 905.175(c), award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise within the maximum total contract price established for the specific project being solicited, if the bid is no more than AX@ higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor AX@ is determined as follows:

AX@ = lesser of:

- When lowest responsive bid is less than \$100,000..... 10% of that bid, or \$9,000
- When lowest responsive bid is at least \$100,000 but less than \$200,000..... 9% of that bid, or \$16,000
- When lowest responsive bid is at least \$200,000 but less than \$300,000..... 8% of that bid, or \$21,000
- When lowest responsive bid is at least \$300,000 but less than \$400,000..... 7% of that bid, or \$24,000
- When lowest responsive bid is at least \$400,000 but less than \$500,000..... 6% of that bid, or \$25,000
- When lowest responsive bid is at least \$500,000 but less than \$1 million..... 5% of that bid, or \$40,000
- When lowest responsive bid is at least \$1 million but less than \$2 million..... 4% of that bid, or \$60,000
- When lowest responsive bid is at least \$2 million but less than \$4 million..... 3% of that bid, or \$80,00
- When lowest responsive bid is at least \$4 million but less than \$7 million..... 2% of that bid, or \$105,000
- When lowest responsive bid is \$7 million or more.. 1% of the lowest responsive bid, w/no dollar limit