Development Planning: Part 1
Attachments

1. Sample Procurement Policy (Page 2)
2. Sample Sources and Uses Budget (Page 33)
3. Operating Proforma (Page 35)
4. Sources and Uses Budget Form (Page 36)
5. Development Process Chart (Page 38)
6. Language of Leveraging (Page 39)
7. Development Costs List (Page 44)
PROCUREMENT POLICY MANUAL

As Approved by the

Swinomish Housing Authority

Board of Commissioners

June , 2019 by Resolution No. 2019
Table of Contents

Contents

I. GENERAL PROVISIONS ............................................................................................................................................... 4
   A. Applicability........................................................................................................................................................ 4
   B. Purpose .............................................................................................................................................................. 4
   C. Administration and General Contract Requirements ........................................................................................ 5
   D. Definitions: ......................................................................................................................................................... 6
   E. Authority of the Board of Commissioners ......................................................................................................... 9
   F. Subrecipient and Contractor Determinations.................................................................................................... 9
   G. Competition ..................................................................................................................................................... 10
   H. Indian Preference Requirement ....................................................................................................................... 11

II. METHODS OF PROVIDING INDIAN PREFERENCE ..................................................................................................... 11
   A. Section 7(b) of the Indian Self Determination and Education Assistance Act ................................................. 11
   B. Notification and Documentation ..................................................................................................................... 11
   C. Eligibility for Indian Preference ........................................................................................................................ 12
   D. Determination of Ineligibility ........................................................................................................................... 12
   E. Requirements for Solicitation Notices ............................................................................................................. 12
   F. Providing Indian Preference for Small Purchases ............................................................................................ 13
   G. Providing Indian Preference for Sealed Bids .................................................................................................... 13
   H. Providing Indian Preference for Competitive Proposals .................................................................................. 14
   I. Monitoring and Remedies ............................................................................................................................... 15
   J. Award of Contracts for Restricted Solicitations ........................................................................................... 15
   K. Award of Contracts for Unrestricted Solicitation .......................................................................................... 15
   L. Complaints ....................................................................................................................................................... 15

III. PROCUREMENT TYPES AND METHODS ................................................................................................................... 16
   A. Identification of Procurement Type and Selection of Method ........................................................................ 16
   B. Procurement of Micro-Purchases .................................................................................................................... 16
   C. Small Purchase Procurement Procedures ........................................................................................................ 16
   E. Major Purchase Procurement Procedures ....................................................................................................... 16
   F. Exemptions from Formal Procurement Methods ............................................................................................ 19

IV. PROCUREMENT DOCUMENTATION ........................................................................................................................ 19
   A. Documentation Requirements .......................................................................................................................... 19
I. GENERAL PROVISIONS

A. Applicability

This Policy applies to the Swinomish Housing Authority (SHA) contracts for the procurement of supplies, services, equipment and materials, irrespective of the source of funds, except for contracts specifically identified as excluded in this Policy. Nothing in this Policy shall prevent the SHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with applicable law. It is the intent of the SHA to comply with all applicable Federal standards, as well as applicable Tribal code for all procurement actions covered by this Policy.

When both federal and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified. The term "procurement," as used in this Policy includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

B. Purpose

The purposes of the Swinomish Housing Authority Procurement Policy (the “Policy”), are as follows:

1. To provide for the fair and equitable treatment of all persons or firms involved in procurement by the SHA.

2. To provide documented procurement procedures that reflect applicable state, local, and Swinomish Tribal laws and regulations in accordance with 2 CFR § 200, et seq.

3. To assure that goods and services are procured efficiently and economically, that the SHA avoids purchasing unnecessary or duplicative items, and at the most favorable prices and the highest quality. This may be achieved by entering into local intergovernmental agreements or inter-agency agreements with other governments or considering the use of Federal excess and surplus property. It may also include the incorporation of value engineering clauses in construction contracts.

4. To ensure compliance with the Tribal Employment Rights Ordinance, Swinomish Tribal Code Title 14, Chapter 1.

5. To promote competition and ensure that the SHA awards contracts only to responsible contractors possessing the ability to perform successfully.

6. To provide safeguards for maintaining a procurement system of quality and integrity and assure that the SHA’s procurement actions are in compliance with applicable Federal standards and Tribal laws.

7. To provide oversight ensuring that contractors and vendors perform in accordance with terms, conditions, and specifications of their contracts or purchase orders.
8. To maintain written standards of conduct covering conflicts of interest, and governing selection, award, and administration of contracts.

9. To the maximum extent possible, ensure consistency of procurement policy and procedures between procurement actions regardless of funding source.

C. Administration and General Contract Requirements

All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director. In administering this Policy, the Contracting Officer(s) shall exercise sound business judgment and protect the interests of the SHA. As required by 2 CFR §200, et seq., and this Policy, the following requirements apply to procurements under this Policy:

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;

2. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;

3. For procurement other than small purchases, public notice is given of each upcoming procurement before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 21 days for contracts over $100,000 is provided for preparation and submission of bids or proposals;

4. Solicitation procedures are conducted in full compliance with Federal standards and Indian preference requirements and methods of procurements as required and further detailed in this Policy;

5. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation;

6. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), inspection prior to payment, promptness for contract work performed and accepted;

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

8. Prior to award of a Contract, the Contracting Officer must make a determination that the price is fair and reasonable, with this determination supported by documentation
in the procurement file.

9. All Contracts must specify a Period of Performance (start and end date) if required by applicable statute or regulation.

10. The SHA may use time and material type contracts only after a determination that no other contract is suitable. A time and material type contract means a contract whose cost to the SHA is the sum of: 1) the actual cost of materials; and 2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Such contracts must set a ceiling price that the contractor exceeds at its own risk.

11. A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the SHA must make independent estimates before receiving bids or proposals.

12. Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must 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.

13. Costs or prices based on estimated costs are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the SHA under Subpart E - Cost Principles of 2 CFR § 200.

14. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

D. Definitions:

1. Acquisition Cost: The cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (“GAAP”). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

2. Bid Guarantee: A firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid by the SHA, execute such contractual documents as may be
required within the time specified. A bid guarantee must equal 5% of the bid price. Submission of a bid guarantee does not preclude withdrawal of a bid by a bidder, if a legitimate error or other justifiable reason is demonstrated.

3. Board of Commissioners: The 5-member governing body of the SHA, appointed by the Swinomish Indian Tribal Community Senate.

4. Contract: A legal instrument by which the SHA purchases property or services needed to carry out a project or program.

5. Contractor: An entity that receives a contract.

6. Contracting Officer: The SHA’s Executive Director shall be responsible under this Policy for the solicitation, negotiation, administration, close-out, and termination of contracts.

7. Cost Analysis: The detailed examination of the cost estimates submitted by offerors to determine the necessity and reasonableness of costs. The most common cost elements include: (1) direct material cost, both quantity and unit price; (2) direct labor costs, including amount and rates; (3) nonrecurring costs, such as special tooling, test equipment, travel, and personnel training; (4) indirect costs, such as overhead and general and administrative expenses; and (5) profit or fee.

8. Debarment & Suspension: The Federal Government (along with some states and SHAs) maintains a list of contractors that are ineligible to receive contracts funded with Federal funds, because they have been either suspended or permanently debarred. Ineligible contractors are listed on the System for Award Management (“SAM”), a GSA administered website (http://www.sam.gov).

9. Non-Federal Funds: Includes funds that are sourced from general funds, indirect cost pool, and state sourced grants.

10. Department: Business unit of the SHA where the contract requirement is generated.

11. Emergency: A situation where unusual and compelling urgency precludes full and open competition and delay in award of a contract would result in serious injury, financial or other, to the SHA. The Tribal Chairman is authorized to approve emergency procurements, provided that the Swinomish Indian Board must ratify such emergency procurements at a future meeting of the Swinomish Indian Board.

12. Federal Funding: Includes funds from Federal grants and state funding that are pass-through funds from Federal sources. Some BIA and IHS funding may be subject to less restrictive procurement requirements (see ISDEAA (25 CFR 900.37)), but procurements using those funds will be subject to this Policy unless exempted by the Board, Chairman, or responsible Committee.

13. Indian Enterprise: In section 3 of the Indian Financing Act of 1974, “economic enterprise” is defined as any Indian-owned commercial, industrial, or business
activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines “Indian organization” to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

14. Major Purchases: Purchases with an acquisition cost greater than the Simplified Acquisition Threshold of $250,000.

15. Micro-Purchases: Purchases with an acquisition cost of $10,000 or less or an acquisition cost not to exceed $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act.

16. Payment Bond: An instrument executed in connection with a construction or facility improvement contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. A payment bond must equal 100% of the contract price.

17. Performance Bond: An instrument executed in connection with a construction or facility improvement contract to secure fulfillment of all the contractor’s obligations under a given contract. A performance bond must equal 100% of the contract price.

18. Price Analysis: The process of examining and evaluating a prospective price without considering separate cost elements or profit. Price analysis is accomplished in various ways, including: (1) comparison of the price quotations submitted; (2) comparison of prior quotations and contract prices with current quotations for the same or similar end items; (3) use of parametric relationship measurements; (4) comparison of prices set forth in published price lists issued on a competitive basis, or published market prices of commodities; (5) comparison of proposed prices with estimates of cost independently developed by the SHA.

19. Procurement: The acquiring by contract of supplies and services by and for the use of the Tribal Government by purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Procurement begins at the point when Tribal needs are established and includes the description of requirements to satisfy Tribal needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling Tribal needs by contract.

20. Purchasing: The process of ordering and receiving goods and services, as a subset of the wider procurement process.

21. Senate: The Swinomish Indian Senate of the Swinomish Indian Tribal Community.

22. Small Purchases: Purchases with an acquisition cost below the Simplified Acquisition Threshold of $250,000 but greater than the $10,000 Micro-Purchase threshold.
23. Subaward: An agreement for the purpose of carrying out a portion of a Federal award, which creates a Federal assistance relationship with the subrecipient.

24. Subrecipient: A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.

25. Tribally Designated Housing Entity: The Swinomish Housing Authority.

26. Tribe: The Swinomish Indian Tribal Community.

27. Vendor: An entity that provides services, supplies, or other property for Micro-Purchases and/or Small Purchases.

E. Authority of the Board of Commissioners

The Board of Commissioners (BOC) retains full authority over the implementation and interpretation of this Policy and the procedures herein. Any and all changes to this Policy shall be submitted to and approved by the BOC.

F. Subrecipient and Contractor Determinations

The SHA may concurrently receive or award Federal awards as a recipient, a subrecipient, and/or a contractor, depending on the substance of its agreements with Federal awarding agencies. Therefore, the SHA must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds fits the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section. SHA staff shall utilize and maintain the Subrecipient Versus Contractor Determination Checklist to determine whether the SHA should award Federal awards to a subrecipient or a contractor. The subrecipient and contractor determinations should be made by the SHA before contracting or issuing a subaward. Documentation of that determination must be maintained by the project proponent.

1. Subrecipients – A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of a subrecipient relationship (either when the SHA is a subrecipient of another organization or the SHA awards subrecipient funding to another SHA or organization) is when the receiving organization:

   a. Determines who is eligible to receive what Federal assistance;
   b. Has its performance measured in relation to whether objectives of a Federal program were met;
   c. Has responsibility for programmatic decision making;
   d. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
   e. In accordance with its agreement, uses the Federal funds to carry out a
program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Tribal entity.

2. Contractors – A contract is for the purpose of obtaining goods and services for the Tribal entity’s own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the Swinomish SHA and a contractor are when the relationship between the SHA and the other entity:

   a. Provides the goods and services within normal business operations;
   b. Provides similar goods or services to many different purchasers;
   c. Normally operates in a competitive environment;
   d. Provides goods or services that are ancillary to the operation of the Federal program; and
   e. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

3. Use of judgment in making determination – In determining whether an agreement between the SHA and another entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the SHA must use judgment in classifying each agreement as a subaward or a procurement contract.

G. Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR § 200. Contractors that develop or draft specifications, requirements, statements of work, invitations to bid, or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business.

2. Requiring unnecessary experience and excessive bonding.


4. Using noncompetitive contracts to consultants that are on retainer contracts.

5. Organizational conflicts of interest.

6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary actions in the procurement process.

8. Imposition of geographical limitations, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

9. Using prequalified lists of persons, firms, or products that limit open and free competition, unless such lists are deemed to meet the intent and requirements of this Policy. The SHA will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

H. Indian Preference Requirement

Projects developed and operated with assistance under 24 CFR Part 1000.48, et. al., are subject to the Swinomish Indian Tribal Community code, which requires the following:

1. That any contract, subcontract, grant, or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

   a. Preference and opportunities for training and employment shall be given to Tribally-owned and Tribal community member-owned businesses and


2. The SHA is not required to apply Indian preference with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than $10,000.

II. METHODS OF PROVIDING INDIAN PREFERENCE

A. Section 7(b) of the Indian Self Determination and Education Assistance Act

Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b), which provides for Indian preference, shall apply to all procurement funded by HUD funds. The SHA shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.

B. Notification and Documentation

All preferences shall be publicly announced in the Invitation for Bid (IFB) and Request for Proposal (RFP) and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, SHA shall
document in writing the basis of its finding of infeasibility and maintain the documentation in its files for seven (7) years after all expenditures have been audited or at the close of any litigation whichever is greater.

C. Eligibility for Indian Preference

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

1. Evidence showing that the applicant is an Indian of a federally recognized Indian tribe. A certificate of Indian blood or census card will suffice.

2. Evidence showing fully the extent of Indian ownership and interest;

3. 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

4. Documents required by the Swinomish Tribal Rights’ Office (TERO).

D. Determination of Ineligibility

If the SHA or its prime contractor determines an applicant ineligible for Indian preference, the SHA or prime contractor shall notify the applicant in writing before contract award, before filling the position, or before providing training.

E. Requirements for Solicitation Notices

A recipient shall incorporate the following clause in each solicitation and all contracts and subcontracts, as follows:

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

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

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

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

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

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

7. A requirement that offerors submit a list of core crew employees with their offers, and that contractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions.

F. Providing Indian Preference for Small Purchases

The SHA shall seek maximum participation by Indian-owned economic enterprises and shall to the extent available, refer to lists of qualified Indian supply sources. If no quotation are solicited or received from Indian-owned economic enterprises, the SHA must include as part of its documentation a statement explaining the reasons for lack of Indian participation. As an alternative, a SHA solicitation may be unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit quotes and an award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive quote, if the quote is within ten percent of the lowest non-Indian quote and the price is determined reasonable. If no responsive quotation by a qualified Indian-owned economic enterprises or organizations is within ten percent of the lowest non-Indian quote, award shall be made to the source with the lowest quote.

G. Providing Indian Preference for Sealed Bids

The SHA prior to solicitation shall decide on the method it will use in applying Indian preference depending on the particular procurement. In accordance with 24 CFR 1000.52, the SHA may select any one of the methods below, as follows:

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

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

3. Use a two-stage preference procedure, as follows:
a. Stage 1. Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to the bid announcement limited to Indian-owned economic enterprises.

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

H. Providing Indian Preference for Competitive Proposals

The SHA prior to solicitation shall decide on the method it will use in applying Indian preference depending on the method of procurement. In accordance with 24 CFR 1000.52, the SHA may select any one of the methods below, as follows:

1. Issue the solicitation unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit proposals and establish a percentage or number of points, i.e. 5-10 points, set aside for Indian preference as one of the evaluating factors to consider other than price; or

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

3. Use a two-stage preference procedure, as follows:

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

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

4. If the SHA selects a method of providing preference, in 1, 2, or 3 above, that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable cost, then the SHA shall:

   a. Re-advertise the contract using any of the methods described above at 1, 2, or 3. for sealed bids and competitive proposals respectively; or

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

c. If one approvable bid or proposal is received, the SHA may request ONAP review and approval of the proposed contract and related justification and procurement documentation in accordance with 2 CFR 200.324.

I. Monitoring and Remedies

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

J. Award of Contracts for Restricted Solicitations

If the solicitation is restricted to qualified Indian owned economic enterprises and organizations and two or more qualified Indian owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, drawing lots or similar random method shall make award, unless otherwise provided in tribal. If fewer than the minimum number of qualified Indian owned economic enterprises or organizations submit responsive bids, all bids shall be rejected, and the SHA shall cancel the solicitation. The SHA may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the SHA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or the SHA determines that the delay of re-soliciting would subject the project to higher costs.

K. Award of Contracts for Unrestricted Solicitation

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 10% higher than the total bid price of the lowest responsive bid from any qualified bidder. If the bid from the qualified Indian-owned economic enterprise of organization is within the 10% range of the lowest, non-Indian firm, the Indian-owned firm will be given the opportunity to meet the lowest bid price. Should the Indian-owned firm refuse to meet this lower price, the bid shall then be awarded to the responsive and responsible low bidder for the project.

L. Complaints

Complaints arising from any of the methods the SHA utilizes to implement Indian preference shall be conducted in accordance with the procedures described at 24CFR 1000.54.
III. PROCUREMENT TYPES AND METHODS

A. Identification of Procurement Type and Selection of Method

The type and method of procurement, as described below, shall be identified and chosen based on the nature and anticipated dollar value of the proposed procurement. In all instances, Indian Preference must be applied.

B. Procurement of Micro-Purchases

Purchases for goods and services with an acquisition cost of $10,000 or less require no competitive quotes, if the SHA considers the price to be reasonable. It is only necessary that the opportunity to participate in these purchases be spread among a number of qualified suppliers.

C. Small Purchase Procurement Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property with a total acquisition cost of $250,000 or less but greater than $10,000.

1. Small Purchase Procurement Procedures:
   a. Price or rate quotes must be obtained from more than one vendor.
   b. Quotes can be obtained directly from vendors, printed sales materials (catalogues, brochures, etc.), vendor websites, research done via online search engine, or telephonically (with proper documentation, such as a memo to file).
   c. The Contracting Officer shall document the method of obtaining the price or rate quotations. A cost or price analysis is not required.
   d. Sole Source procurement techniques may only be used for Small Purchases when all applicable requirements are satisfied and documented in the procurement file.
   e. Section II-Methods of Providing Indian Preference shall apply.

E. Major Purchase Procurement Procedures

Major purchases are those procurements of services and/or goods with a total acquisition cost over $250,000. Procurement of major purchases shall be accomplished using one of the specific procurement methods described in this Policy. Such procurements must conform to and abide by any and all specified requirements of the funding source or agency, as applicable and as stipulated in this Policy. No procurement
of major purchases shall be done by noncompetitive proposals, except as provided for in this Policy.

1. **Procurement by Competitive Sealed Bids (Formal Advertising):** Under this procurement method, bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

2. Indian preference requirements described in Section II shall apply to procurement by competitive sealed bids.

   a. The sealed bid method is the preferred method for procuring construction, if the following conditions are present:

      (i) A complete, adequate, and realistic specification or purchase description is available.
      (ii) Two or more responsible bidders are willing and able to compete effectively for the business.
      (iii) 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. If sealed bids are used, the following requirements apply:

      (i) Bids must be solicited from an adequate number of known suppliers, supplying them with sufficient response time prior to the date set for the opening of bids.
      (ii) The invitation for bids must be publicly advertised in the Tribal newspaper of record and/or other such publications as necessary to ensure adequate notice and solicitation of bids.
      (iii) The advertised invitation for bids must include a summary description on the proposed project, information on bid submittal process and requirements, location and deadline for bid submittal, time and location for public bid opening, contact information for the Contracting Officer, and information on the means for obtaining the full bid package including any specifications, pertinent attachments, and applicable contract forms and terms of service. Any addenda to the bid package must be posted to the same location as the full original bid package.
      (iv) All bids must be opened publicly at the time and place specified in the invitation for bids.
      (v) A firm fixed price contract award will be made, in writing, to the lowest responsive and responsible bidder, following a detailed evaluation and verification of the apparent qualified low bidder’s response. This evaluation must include application of any Native American preference or other factors specified in the bid.
invitation and response. Should the bidder report any inadvertent and unintentional errors in the bid, the bidder will be afforded opportunity to provide corrected information for re-evaluation; should the final evaluation reveal the apparent low bidder’s response to be invalid, the bid will be rejected and evaluation will begin on the next lowest bid response, with the process continuing until a successful low bidder is verified.

(vi) Any or all bids may be disqualified or rejected if warranted, in which case the Contracting Officer will document the reason and justification for any disqualification or rejection, with proper notice to bidder(s) as necessary.

3. **Procurement by Competitive Proposals**: This procurement method is commonly used to solicit offers from multiple qualified sources, conducted with less formality than sealed bid procedures, and results in the award of either a fixed price or a cost-reimbursement type contract. If Procurement by Competitive Proposals is utilized, the following requirements apply:

a. Request for Proposals (“RFPs”) must be publicized and identify all evaluation factors, including Indian Preference, and their relative importance. Any response to publicized RFPs must be considered to the maximum extent practical.

b. Proposals must be solicited from an adequate number of qualified sources.

c. The Contracting Officer will prepare a written method for conducting technical evaluations of the proposals received and for selecting recipients.

d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the SHA, with price and other factors considered.

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

4. **Procurement by Noncompetitive Proposals (Sole Source)**: This type of procurement involves procurement through solicitation of a proposal from only one source and may be used only when one or more of the following
circumstances apply:

   a. The needed service or item is available only from a single source; the circumstances that make this procurement available from only a single source must be documented.

   b. Competitive solicitation is not feasible because the procurement is necessary to address a public exigency or emergency; documentation is required regarding the existence and nature of the emergency circumstances.

   c. The awarding agency or pass-through entity expressly authorizes this method of procurement (properly approved and authorized documentation from awarding agency is required).

   d. A proper solicitation has been attempted using one of the other previously outlined methods, and it is determined that competition is inadequate after solicitation of a number of sources.

   e. Acquisition of goods and services from the Skagit River System Cooperative (“SRSC”), an Inter-Tribal Consortium of the Swinomish and Sauk-Suiattle SHAs, may qualify for sole source procurement due to the unique relationship between the SHA and SRSC, and SRSC’s special expertise in matters relating to treaty fishing and environmental science.

Written approval from the SHA’s Chief Financial Officer is required for all sole source procurements made under this Policy (see sole source justification form).

F. Exemptions from Formal Procurement Methods

Procurements made with Non-Federal Funds (such as program income, private funds) and represents the sole funding source are exempt from the formal procurement methods, regardless of their amount. Written approval from the SHA’s Executive Director is required (see sole source justification form).

IV. PROCUREMENT DOCUMENTATION

A. Documentation Requirements

The Contracting Officer must maintain adequate documentation in the procurement file to detail the significant history of the procurement. The requesting Department will assist the Contracting Officer as necessary to obtain and prepare this documentation.

B. Minimum File Documentation
Minimum procurement file documentation must include the following, as applicable based on the procurement method prior to awarding contract:

1. Description of requirement from funding source.
2. Estimated acquisition cost.
3. Cost and price analysis documentation.
4. Technical evaluation criteria.
5. Funding source or program budget to be charged.
6. Grant / Operating Account to which the cost will be charged.
7. Any special considerations, other than cost.
8. Basis of the method of procurement selected.
9. Basis for contractor’s selection/rejection.
10. Justification for lack of competition, when applicable.
11. Verification regarding suspension or debarment of contractor for contracts exceeding $25,000 (see guidance for debarment/suspension checks).

V. CONTRACT REVIEW REQUIREMENTS

A. Contracts that are $5,000 or less must:

1. Be approved by the Accounting Department;
2. After approval by the Accounting Department;
3. Board approval by resolution before signature by the Board Chair or designee is required:
   a. If the contract includes a waiver of sovereign immunity;
   b. If the Committee overseeing the project recommends Board approval; or
   c. Where required by the Office of Tribal Attorney after legal review, due to unique legal risks or issues.

4. Contracts that are not submitted to Board for approval must be submitted and reported, along with a copy of the completed Contract and Subaward Review Form, on a monthly basis in the Department’s Report to the Board.
B. Contracts that exceed $5,000 must:

1. Be approved by the Accounting Department;

2. Be approved by the Committee overseeing the project or the staff conducting the project (and the Budget Committee, when applicable);

3. Receive legal review and approval by the Office of Tribal Attorney;

4. After approval by the Accounting Department, the responsible Committee, and legal approval by the Office of Tribal Attorney, receive Board approval; and

5. After legal approval by the Office of Tribal Attorney and approval by the Board, be signed by the Board Chair or designee.

C. If the original Board Resolution authorizes the Chairman or designee to execute amendments, grant time extensions, obligate additional funds, or take other actions relating to the contract, then the Contracting Officer, upon request of the Department requesting the contract change and documentation in the contract file, may submit the necessary documents to the Chairman or designee for signature after legal review and approval by the Office of Tribal Attorney. Lacking such prior authorization, the procedures specified above will apply and contract amendments will follow the same review and approval process as the original contract.

VI. SUSPENSION AND DEBARMENT

A. Purpose

The purpose for maintaining lists of suspended and debarred contractors is to protect the integrity of government programs by ensuring that only honest, ethical, and otherwise responsible persons and companies participate.

B. Documentation Verification

Prior to awarding any contract in excess of $25,000, the contract file must be documented with either:

1. Verification that the contractor is not suspended or debarred (such as a printout from the http://www.sam.gov website); or

2. A signed certified statement from the Contractor that they are not suspended, debarred, or otherwise ineligible to receive government contracts.

3. If a contract was previously funded by SHA general funds and subsequently becomes funded under a Federal award, verification that the contractor is not suspended or debarred must be documented before services are authorized that
utilize funds from the Federal award.

4. In the event a contractor is debarred or suspended during the performance of a contract, the SHA, upon learning of the debarment or suspension, will take action as required by the funding agency to remedy the situation.

VII. REQUIRED CONTRACT PROVISIONS

A contract must include all contract provisions required by Tribal, state, or Federal law for that type of contract, and with any applicable state or Federal awarding agency requirements. These provisions include, but are not limited to, the following examples:

1. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented by Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees.)

2. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair.)

3. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation.)

4. Compliance 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 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers.) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

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

6. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

7. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
8. Compliance with all applicable standards, orders, or requirements issued under
   Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean
   Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection
   Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of
   amounts in excess of $100,000.)

9. Mandatory standards and policies relating to energy efficiency which are contained
   in the State energy conservation plan issued in compliance with the Energy Policy


VIII. BONDING REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding $250,000, the
following bonding requirements apply:

A. Bid Guarantee

   A bid guarantee from each bidder equivalent to 5% of the bid price. This “bid guarantee”
   must be in the form of a bid bond, certified check, or other negotiable instrument.

B. Performance Bond

   A performance bond on the part of the contractor for 100% of the contract price. This will
   be executed in connection with the contract.

C. Payment Bond

   A payment bond on the part of the contractor for 100% of the contract price. This will be
   executed in connection with a contract.

IX. CONTRACTING WITH SMALL AND MINORITY BUSINESSES,
    WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA
    FIRMS

The SHA will take all necessary affirmative steps to assure that small and minority
businesses, women’s business enterprises, and labor surplus area firms are used when
possible.

A. Affirmative Steps:

1. Placing qualified small and minority businesses and women’s business
   enterprises on solicitation lists.

2. Assuring that small and minority businesses and women’s business
   enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or qualities to permit maximum participation by small and minority businesses and women’s business enterprises.

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s owned businesses.

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in 1-5 above.

X. ETHICS IN CONTRACTING

The employees, officers, and agents of the SHA shall adhere to the following code of conduct:

A. Employee Conflict of Interest

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

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

2. His or 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, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister); or

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

B. Gratuities

The SHA’s officers, employees, or agents, shall not solicit nor accept gratuities, favors, or anything of monetary value greater than $100 from contractors, vendors, or subrecipients.

C. Prohibited Use of Confidential Information

Tribal officers, employees, or agents shall not knowingly use confidential information gained in the procurement process for personal tangible gain.
D. Compliance with Funding Sources

Where the procurement is supported by Federal or state funds, Tribal officers, employees, or agents shall abide by any and all additional restrictions imposed by the funding agency.

E. Non-Compliance

Failure to comply with guidelines may result in corrective actions up to and including immediate termination.

XI. DISPUTES

A. General:

Disputes will be addressed in accordance with the Dispute Resolution procedures specified in the Contract.

B. Contract Claims

Unless a contract specifies a different procedure, all claims by a Contractor relating to performance of a contract shall first be submitted in writing to the Contracting Officer for legal review and decision no later than 60 days after the Period of Performance for the Contract has ended, or the date of substantial completion if such term is defined in the contract. Timely submission of a claim to the Contracting Officer shall be a prerequisite to any other Dispute Resolution methods specified in the Contract.

B. No Waiver of Sovereign Immunity

Nothing in this Policy is intended to be or shall constitute or shall be construed as a waiver, limitation, or modification of the Swinomish Indian Tribal Community’s sovereign immunity from unconsented suit.

XII. CONTRACT AND SUBAWARD REVIEW FORM

See attached form.

XIII. SUBRECIPIENT VERSUS CONTRACTOR DETERMINATION CHECK LIST

See attached form.
INSTRUCTIONS: Review Section III of this form; then complete Sections I & II, and email the completed form along with any additional documents to KELLY GEORGE at KGEORGE@SWINOMISH.NSN.US at the Office of Tribal Attorney (“OTA”). This form is for use by Swinomish Governmental Departments only and not Swinomish Enterprises.

I. Department/Proponent

Requesting Department: 

Employee Submitting Contract/Subaward as the Project Proponent: First and Last Name

Fund Account Number: 

Name of Contractor/Consultant: 

☐ This is a new contract/subaward, and we have not previously contracted with Contractor/Consultant

☐ This is a new contract/subaward, and we have previously contracted with Contractor/Consultant (include copy of previous contract/subaward, signed by both parties, with the new contract/subaward)

☐ This is an amendment to a contract/subaward (include copy of contract/subaward, signed by both parties, with the amendment)

II. Approval Process

☐ THIS IS A CONTRACT/SUBAWARD FOR $5,000 or LESS:

☐ Accounting Department Approved on Date

☐ Attorney Review and Approval on Date

☐ Name of Responsible Committee and Approved on Name and Date

☐ If Recommended by OTA or Responsible Committee, Board Approval on Date

☐ Signed by Board Chair or Designee on Date

☐ Signed agreement provided to Contractor/Consultant on Date

☐ Signed agreement received back from Contractor/Consultant on Date

☐ Presented to Board as part of Department’s monthly report on Date

☐ THIS IS A CONTRACT/SUBAWARD EXCEEDING $5,000:

☐ Accounting Department Approved on Date

☐ Attorney Review and Approval on Date

☐ Name of Responsible Committee and Approved on Name and Date

☐ Board Approval on Date

☐ Signed by Board Chair or Designee on Date

☐ Signed agreement provided to Contractor/Consultant on Date

☑ Signed agreement received back from Contractor/Consultant on Date
III. Instructions for Completing the Approval Process

CONTRACTS/SUBAWARDS $5,000 OR LESS:
1. Submit for review and approval by Accounting Department.
2. Legal Review by Office of Tribal Attorney (“OTA”):
   ✓ The contract/subaward will be assigned to an attorney for review.
   ✓ The Proponent must submit the contract/subaward to the OTA and obtain legal review and approval before submitting to the responsible committee, the Board, and/or for signature by the Board Chair or designee.
   ✓ Legal review is of the contract/subaward as a legally binding document and to identify practical or risk management considerations, and not to evaluate whether a contract/subaward is appropriate from a business and/or administrative perspective.
3. Responsible Committee:
   ✓ The Proponent will need to contact the committee chair at least two days before the committee meeting and request the item be added to the committee agenda, and will present the contract/subaward to the committee responsible for oversight of proponent’s department and/or over subject matter of contract/subaward.
   ✓ After the contract/subaward has been presented to the responsible committee, and the budget committee when applicable, the Proponent should mark the date of review and approval by the committee(s) and any of the committee’s recommendations on the Contract and Subaward Review Form.
4. Board Approval, if requested by OTA or the Responsible Committee:
   ✓ The Proponent will need to draft and submit a resolution for review/approval to the OTA, including a copy of the contract/subaward.
   ✓ The Proponent will need to upload the approved resolution and contract/subaward into Novus for Board, by or before the deadline set by the Board’s Executive Assistant.
5. Signature of Board Chair or designee:
   ✓ The Proponent must include a copy of the Contract and Subaward Review Form showing the required approvals when the Proponent submits the contract/subaward to the Board Chair or designee for signature.
   ✓ The Proponent is responsible for obtaining signature by the Board Chair or designee and then submitting the agreement to the contractor/consultant for signature, requesting a copy of the agreement be returned to the Proponent after the contractor/consultant has signed the contract/subaward. Do NOT provide the contractor/consultant with a copy of this Contract and Subaward Review Form.
   ✓ The Proponent should maintain a copy of the agreement signed by both the Board Chair or designee and the contractor/consultant and is responsible for providing one copy of the agreement signed by both the Board Chair or designee and the contractor/consultant to the Board’s Executive Assistant.
6. The Proponent is required to submit the contract/subaward, along with a copy of the completed Contract and Subaward Review Form, to the following Board meeting in the Department’s monthly report to the Board.

CONTRACTS/SUBAWARDS EXCEEDING $5,000:
1. Submit for review and approval by Accounting Department.
2. Legal Review by Office of Tribal Attorney (“OTA”):
   ✓ The contract/subaward will be assigned to an attorney for review.
   ✓ The Proponent must submit the contract/subaward to the OTA and obtain legal review and approval before submitting to the responsible committee, the Board, and/or for signature by the Board Chair or designee.
   ✓ Legal review is of the contract/subaward as a legally binding document and to identify practical or risk management considerations, and not to evaluate whether a contract/subaward is appropriate from a business and/or administrative perspective.
3. Responsible Committee:
   ✓ The Proponent will need to contact the committee chair at least two days before the committee meeting and request the item be added to the committee agenda, and will present the contract/subaward to the committee responsible for oversight of proponent’s department and/or over subject matter of contract/subaward.
   ✓ After the contract/subaward has been presented to the responsible committee, and the budget committee when applicable, the Proponent should mark the date of review and approval by the committee(s) and any of the committee’s recommendations on the Contract and Subaward Review Form.
4. Board Approval:
   ✓ The Proponent will need to draft and submit a resolution for review/approval to the OTA, including a copy of the contract/subaward.
   ✓ The Proponent will need to upload the approved resolution and contract/subaward into Novus for Board, by or before the deadline set by Board’s Executive Assistant.
5. Signature of Board Chair or designee:
   ✓ The Proponent must include a copy of the Contract and Subaward Review Form showing the required approvals when the Proponent submits the contract/subaward to the Board Chair or designee for signature.
   ✓ The Proponent should obtain signature by the Board Chair or designee and then submit the agreement to the contractor/consultant for signature, requesting a copy of the agreement be returned to the Proponent after the contractor/consultant has signed the contract. Do NOT provide the contractor/consultant with a copy of this Contract and Subaward Review Form.
   ✓ The Proponent should maintain a copy of the agreement signed by both the Board Chair or designee and the contractor/consultant and is responsible for providing one copy of the agreement signed by both the Board Chair or designee and the contractor/consultant to the Board’s Executive Assistant.

XIV. Subrecipient Versus Contractor Determination Checklist
INSTRUCTIONS:
This checklist is designed as a tool for Swinomish employees to use when making case-by-case determinations of whether the award of funds Swinomish received from a Federal grant should be awarded to a subrecipient or a contractor. Differentiating between subrecipient and contractor is important because it determines the allocation of responsibilities; if the designation is subrecipient, then there are certain terms and conditions of the award that must be complied with by the subrecipient.

Complete Sections One and Two of the Checklist by marking all characteristics that apply to the outside entity Swinomish is considering awarding Federal funds to. The section with the greatest number of marked characteristics indicates the likely relationship. On occasion, there may be exceptions to the type of relationship indicated by the Checklist, and in such a situation the substance of the relationship should be given greater consideration than the form of the agreement. Section Three of the Checklist should be completed to document and justify the determination of either a subrecipient or a contractor relationship. For examples, see the Supplemental Information Including Examples of Characteristics.

Name of Outside Entity: ________________________________________________

XV. SECTION ONE: SUBRECIPIENT

A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Subaward means an award provided by the SHA to a sub-entity in order for the sub-entity to carry out part of the Federal award received by the SHA. A subaward does not include payments to a contractor, or payments to an individual, that is a beneficiary of a Federal program. Subrecipients may have one or more of the following characteristics:

XVI. Yes No N/A

☐ ☐ ☐ 1. Entity determines assistance eligibility of individuals as part of subaward performance;

☐ ☐ ☐ 2. Entity’s performance is measured relative to objectives of the Federal program being met;

☐ ☐ ☐ 3. Entity is responsible for programmatic decision making;

☐ ☐ ☐ 4. Entity is responsible for ensuring Federal requirements outlined in award are followed; and

☐ ☐ ☐ 5. Entity uses the Federal funds to carry out a program for a public purpose as opposed to providing goods or services for the benefit of the SHA (as an entity).

XVII. SECTION TWO: CONTRACTOR

A contract is for the purpose of obtaining goods and services for use by the SHA (as an entity) and creates a procurement relationship with the contractor. A contractor may have one or more...
XVIII. **Yes**

<table>
<thead>
<tr>
<th>No</th>
<th>N/A</th>
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</thead>
</table>

1. Entity provides the goods and services as part of its normal business operations;
2. Entity provides similar goods or services to many different purchasers;
3. Entity normally operates in a competitive environment with other like vendors;
4. Entity provides goods or services that are secondary support to the programmatic activities or operation of the Federal program (e.g., office equipment, supplies, body-cameras, copying/printing, etc.); and
5. Entity is not subject to flow-down compliance requirements of the Federal program as a result of the procurement contract (though similar requirements may apply for other reasons).

XIX. **SECTION THREE: JUSTIFICATION**

In determining whether the entity is a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics above may not be present in all cases and you must use your judgment in classifying each agreement as either a subrecipient or a contractor. Considering the characteristics checked above, provide a written justification for the final determination of either a subrecipient or a contractor relationship.

**Determination of Relationship:**
- [ ] Subrecipient
- [ ] Contractor

**Justification of Determination:**

______________________________
______________________________
______________________________
______________________________
______________________________

**Determination made by:**

______________________________
Print Name, Title

**Signature:**

______________________________
**Date:**

______________________________

*KEEP THIS DOCUMENT IN THE PRIME GRANT AWARD FILE FOR DOCUMENTATION PURPOSES*

*SUPPLEMENTAL INFORMATION INCLUDING EXAMPLES OF CHARACTERISTICS*

**SUBRECIPIENT**
1. Determines assistance eligibility of individuals as part of subaward performance. For example:
   a. Outside entity determines whether a potential customer meets a program’s eligibility requirements for assistance under that program.

2. Performance is measured relative to objectives of the Federal program being met. For example:
   a. SHA holds the outside entity responsible for meeting performance targets that are tied to program objectives.
   b. SHA holds the outside entity responsible for meeting expenditure targets to maximize the use of program funds.
   c. SHA requires outside entity to submit regular oral or written progress reports and/or explanations of variance relating to program objectives and/or fund maximization.
   d. SHA may sanction the outside entity if program objectives are not met.
   e. Outside entity must submit a comprehensive closeout package at the end of the agreement.

3. Responsible for programmatic decision making for managing its part of the award. For example:
   a. Outside entity has latitude to make decisions within terms of agreement.
   b. Outside entity makes policy decisions governing how it carries out a program.
   c. Outside entity makes operational decisions governing how it carries out a program.
   d. Outside entity makes decisions regarding the appropriate assistance for a particular customer.

4. Responsible for ensuring Federal requirements outlined in award are followed. For example:
   a. SHA holds the outside entity responsible for compliance with applicable program statutes, regulations, rules, policies (including local policies) and guidance.
   b. Outside entity receives technical assistance or training from the SHA relating to program requirements.
   c. SHA monitors the outside entity for compliance with applicable program requirements.

5. Uses the Federal funds to carry out a program for a public purpose as opposed to providing goods or services for the benefit of the SHA (as an entity). For example:
   a. Outside entity performs all or a portion of the scope of work or objectives of the award received by the SHA.
   b. Outside entity’s role requires more than dealing, distributing, or selling goods or services that support a program.
   c. SHA identifies the outside entity’s programmatic involvement as a separate scope of work and budget that must be approved by the SHA.
   d. A principal investigator has been identified at the outside entity and functions as a “Co-Investigator.”
   e. There is the expectation that the outside entity will retain ownership rights in potentially patentable or copyrightable technology or products that it produces in the course of fulfilling its scope of work; and that publications may be created or co-authored by the outside entity.

**CONTRACTOR**

1. Provides the goods and services as part of its normal business operations. For example:
   a. Outside entity exists for the purpose of providing particular goods or services.
   b. Outside entity receives little, if any, instruction from the SHA as to how the outside entity
goes about producing the goods or services.

c. Outside entity generally receives payment after delivery of a particular good or service.
d. Outside entity invoices SHA in the outside entity’s normal way and is not required to submit a comprehensive closeout package at the end of the agreement.
e. Outside entity assumes the risk of cost if performance increases or requires more time than expected.
f. Outside entity has its performance measured against whether it meets specific contract deliverables rather than a program’s performance outcomes.
g. Outside entity is providing specified services in support of, or ancillary to, the research; outside entity has not significantly participated in the design of the research program itself, but is implementing the research plan or program activities of the SHA’s investigator; outside entity does not expect to have its employees credited as co-authors on papers that emerge from the research or programmatic work; the expectation is that work will not result in patentable technology or copyrightable products that would be owned by the outside entity.

2. Provides similar goods or services to many different purchasers. For example:
   a. Outside entity provides similar goods or services to a number of entities in addition to the SHA.
   b. Services provided are of a repetitive nature.
   c. Goods provided are commonly available.

3. Normally operates in a competitive environment with other like vendors. For example:
   a. Outside entity competes with other entities to provide similar goods or service.

4. Provides goods or services that are secondary support to the programmatic activities or operation of the Federal program. For example:
   a. Outside entity aids or supports the program in a subsidiary capacity.
   b. Outside entity provides a good or service (in a manner that does not create a subrecipient relationship) which enables the SHA to carry out a program.
   c. Outside entity provides a particular good or service that enables the SHA to operate, e.g., office supplies, janitorial services, equipment, staff development, printing, travel, etc.

5. Not subject to flow-down compliance requirements of the Federal program as a result of the procurement contract (though similar requirements may apply for other reasons). For example:
   a. Outside entity is not responsible for compliance with applicable program statutes, regulations, rules, policies or guidance.
   b. SHA does not provide the outside entity with technical assistance or training with regard to program requirements.
   c. SHA does not monitor the outside entity for compliance with program requirements.
Date Revised: 1/1/15  
Owner: CRASH (Community Resources for Affordable Senior Housing)  
Project Title: Velocity Apartments  
Project Location: Nevada  
Project Description: 38 accessible senior rental units, with community room, exercise room, patio, interior hallways, elevator

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<th>Predevelopment Sources</th>
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<tbody>
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<td>IHBG</td>
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<tr>
<td>Bank grant</td>
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<tr>
<td>Other HOME funds</td>
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<td>$135,196</td>
<td>$560,209</td>
<td>$695,405</td>
<td>Released when HUD EA complete</td>
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<td>Other: Developer predev loan</td>
<td>$22,848</td>
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<td>$122,673</td>
<td>Repay once const starts if possible</td>
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<td>Other</td>
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<tr>
<td><strong>Totals</strong></td>
<td>$22,848</td>
<td>$195,371</td>
<td>$599,859</td>
<td>$818,078</td>
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</table>
# OPERATING PROFORMA

**Rent Increase**: 2.00%

**Expense Increase**: 3.00%

<table>
<thead>
<tr>
<th>Income</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
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<tbody>
<tr>
<td>Rents</td>
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<td>-</td>
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<td>Interest Income</td>
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<tr>
<td>Laundry Income</td>
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<td>Tenant Charges</td>
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<td>Other Income</td>
<td>-</td>
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<tr>
<td><strong>Gross Income</strong></td>
<td>-</td>
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<tr>
<td><strong>Less Vacancy (5%)</strong></td>
<td>-</td>
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<tr>
<td><strong>Effective Gross Income</strong></td>
<td>-</td>
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<table>
<thead>
<tr>
<th>Expenses</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
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<td>Utilities</td>
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<td>Operations &amp; Maintenance</td>
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<td>Audit</td>
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<td>Replacement Reserve</td>
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<tr>
<td>Other</td>
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<tr>
<td><strong>Total Expenses</strong></td>
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<td>-</td>
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</table>

| Net Operating Income        | -      | -      | -      | -      | -      |

| Debt Service                | -      | -      | -      | -      | -      |

| Debt Coverage Ratio         |        |        |        |        |        |
### Sources & Uses Budget
#### Predevelopment Budget Worksheet

<table>
<thead>
<tr>
<th>Use/Description</th>
<th>Estimated Budget</th>
<th>Uses Before Construction Starts</th>
<th>Total Predev</th>
<th>Notes</th>
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<td>Concept</td>
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<td>HUD Environmental Assessment</td>
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<td>Survey Costs</td>
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<td>Soils Study (Geotechnical Study)</td>
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<td>Construction Supervision (Owner)</td>
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<tr>
<td>Sewer</td>
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<tr>
<td>Streets, paths, retention pond, access roads, guardrails</td>
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<td>Misc. Site work hard costs</td>
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</tr>
<tr>
<td>Soft Cost Contingency</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Appraisal Costs</td>
<td>$</td>
<td></td>
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<tr>
<td>Use/Description</td>
<td>Estimated Budget</td>
<td>Uses Before Construction Starts</td>
<td>Total Predev</td>
<td>Notes</td>
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<td>Predevelopment</td>
<td>Development</td>
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<td>Funding Application Fees</td>
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<td>Market Study</td>
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<tr>
<td>Occupancy Ramp Up Reserve</td>
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<tr>
<td>Totals</td>
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<td>CONCEPTUALIZATION</td>
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<td>DEVELOPMENT</td>
<td>CONSTRUCTION</td>
<td>OPERATION</td>
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<tr>
<td>Development Opportunities</td>
<td>Commitment to explore it further.</td>
<td>Deal-Making &amp; Negotiating</td>
<td>Construction &amp; Start-Up</td>
<td>Managing or Resale</td>
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<tr>
<td>• Ideas</td>
<td>• Feasibility &amp; Market Analysis</td>
<td>• Source Identification</td>
<td>• Contracting</td>
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<td>• What the product is</td>
<td>• Assemble Team</td>
<td>• Business &amp; Financial Packaging</td>
<td>• Construction Monitoring</td>
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<tr>
<td>• Who the market is: buyer/user</td>
<td>• Site Availability &amp; Costs</td>
<td>• Pre-leasing Program</td>
<td>• Indian Preference Monitoring</td>
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</tr>
<tr>
<td>• Where it’s to be located</td>
<td>• Product--Definition, Costs</td>
<td>• Acquire Property</td>
<td>• Marketing &amp; Pre-Leasing</td>
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<tr>
<td>• How it might be financed</td>
<td>• Market—Need/Demand/Trends</td>
<td>• Secure Permanent Finance</td>
<td>• Management Plan</td>
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<tr>
<td>• How it might be managed</td>
<td>• Competition-Penetration &amp; Capture Rates</td>
<td>• Secure Construction France</td>
<td>• Staffing Up</td>
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<tr>
<td>• How it fits with the mission &amp; goals</td>
<td>• Id Funding Sources</td>
<td>• Secure Operations Contracts</td>
<td>• Orientation</td>
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<td></td>
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</tr>
<tr>
<td>• Why the organization should do it</td>
<td>• Financing constraints</td>
<td>• Secure Contractor-bidding &amp; reference checks</td>
<td>• Accepting Site Control</td>
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</table>

OUTCOME: Completed Assessment
Site Identification
Visual of concept

OUTCOME: Market &/or Feasibility Study
Go or No Decision: Yes, it fits, we can make it work we are willing to take the risks.

OUTCOME: Applications, Designs, Contracts
Go or No Go Decision: To sign the agreements, mortgages & contracts

OUTCOME: Staff up
• Orient
• Rent up
• Provide Services
• Operate
Language of Leveraging

LEVERAGING RATIOS

Most real estate lending is secured lending, which means that assets are pledged as collateral. The lender will typically view the houses being constructed as the main asset pledged. The lender usually requires a mortgage to be recorded against the property. The mortgage is a lien that establishes the lender’s interest in the property. A lender has two main concerns:

• How will the money be paid back?

• If the borrower cannot make the payments, how will the lender’s investment be protected?

If HUD guarantees the loan, there is an added incentive for the lender to participate in the funding of a tribal project. Lenders, investors, and developers use a variety of ratios to determine if a project is feasible. Lenders primarily rely on three underwriting ratios:

• Debt Coverage Ratio (DCR)

• Loan-To-Value Ratio (LTV)

• Break-Even Point

DEBT COVERAGE RATIO = NET OPERATING INCOME
DEBT SERVICE

The DCR compares debt service to the project’s net operating income (NOI). It measures the expected cash available to repay the loan (NOI) in relation to the cash required to repay the loan or the debt service. This figure is computed by dividing the NOI by the amount of annual debt payment. This ratio is used by lenders to determine both risk and project feasibility. In short, conventional (bank) lenders require a property to have more money left over each month than is owed to the lender. This cushion helps ensure the property can make the debt payment even in a month with lower revenue or higher expense than expected. Most lenders want a DCR of 1.15 or better. A DCR of 1.2 means the NOI is 120% of the amount of the annual debt service, or 20% more.

Example: 

<table>
<thead>
<tr>
<th>Net Operating Income (NOI)/ Debt Service (Payment)</th>
<th>Debt Coverage Ratio (DCR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$26,449 ÷ $22,998 = 1.15</td>
<td></td>
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</table>
In the example above the debt coverage ratio is 1.15. What this means is that there is $1.15 in NOI for every $1.00 of debt service. If there is a higher vacancy rate or uncollected payments or the operating costs are higher than expected, there is sufficient income to pay the debt service.

In addition to the minimum DCR, some public funders also set maximum DCR targets. This is to ensure that the property has borrowed as much conventional debt as possible, so as to minimize the amount of public subsidy needed. Applying the required DCR to the NOI is one way to calculate how much conventional debt a property can support.

Example

<table>
<thead>
<tr>
<th>Net Operating Income (NOI)/ Debt Coverage Ratio (DCR)</th>
<th>= Debt Service (Payment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$18,200 ÷ 1.2 = $15,166</td>
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</tr>
</tbody>
</table>

**LOAN-TO-VALUE RATIO = LOAN VALUE**

The Loan-to-Value (LTV) of a particular loan is the percent of the appraised value of a property (or the sale price of that property, if it is lower) that can be loaned. It is simply the amount the lender will loan divided by the appraised value of the property. Most lenders use the LTV ratio as a tool to limit their risk by assessing the loan amount as compared to the value of the project. They lend only a portion of the value of the property, thus in the event of a foreclosure they are more likely to recover the full amount of their outstanding debt.

Example:

<table>
<thead>
<tr>
<th>Loan Amount ÷ Appraised Value = Loan-To-Value Ratio (LTV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300,000 ÷ $805,000 = 37%</td>
</tr>
</tbody>
</table>

In the example, if the project was appraised at $805,000 and the loan amount is $300,000, then the loan to value ratio is 37%. Acceptable LTV ratios are 70% to 90%. A lower LTV ratio of 37% is very attractive to a lender because if the loan went into default, the lender would be able to sell the property and recover their money.

**BREAK-EVEN RATIO = EXPENSES + DEBT SERVICE / GROSS RENT**

The break-even point identifies the percentage of occupancy required to cover the operating expenses and the debt service. A low break-even point makes the project more attractive to the lender. This ratio is computed by dividing the operating expenses and the project’s annual debt
service by the gross rent. An important distinction to note in the formula is that it calls for the expenses to be added to the debt service. In this formula expense means all expenses even though some make not be categorized as operating expenses, such repayment of equity, lease payments, etc. This ratio is used by both investors and lenders to determine risk.

Example:

\[
\text{Break-Even Ratio} = \frac{\text{Expenses + Debt Service}}{\text{Gross Rent}}
\]

\[
\frac{($47,000 + $9,550)}{$58,000} = 97.5\%
\]

In the above example, the project needs to collect 97.5% of the potential gross rent in order to cover the operating expenses and debt service.

**PRO FORMA TERMS FOR RENTAL PROJECTS**

The following key financial elements represent the basis for financial analysis of alternative housing development.

- **Rents and Income** - This section contains detailed information on the rental income for the project. The data in this section are especially important for generating the project’s operating pro-forma.

- **Development Costs** - This section includes detailed data on the costs of the project during the development phase. It also addresses information on your construction loan (if applicable).

- **Operating Expenses** - This section uses monthly data on the project’s operating expenses to generate a total operating expense for its first year in service. The total operating expense for subsequent years is generated by entering a fixed percentage increase in operating expenses per year. Operating expenses are a critical component of the operating pro forma and help to determine the project’s profitability.

- **Financing Sources** – Included in this category is the plan for financing the project. All sources and terms of funds must be described. A typical project uses an array of funding sources, including equity, first and second mortgages, etc.

- **Operating Pro Forma** - This section provides a year-by-year projection of the project’s income and expenses based upon the information provided in the previous sections. These projections of a project’s long-term viability are of particular interest to investors and lenders. Investors use the operating pro-forma to assess their return on investment, while lenders use it to determine the likelihood that their loans will be repaid.
**Gap Analysis** - This section summarizes the project's sources and uses and calculates any gap between the amount of financing obtained and the total funding needed for the project. If a positive gap in financing exists, the project is not viable unless costs are reduced or the amount of financing is increased. If the gap in financing is negative, the project has more funding than necessary.

**PRO FORMA TERMS FOR RENTAL PROJECTS**

The procedures for preparing a pro forma are the same for a new project and an existing project. The pro forma is a projection or forecast of the project’s future operating statements based on projected rental performance, rental increases, and operating expenses.

- **Gross Income** is the total amount of income generated by the income producing property. It includes income from all sources including late fees, laundry facility income, parking, etc.

  \[
  \text{Gross Income} = \text{Number of Units} \times \text{Monthly Rent/Unit} + \text{Other Income}
  \]

  \[
  10 \times 500 + 150 = 5,150
  \]

  \[
  5,150 \times 12 = 61,800 \text{ (Annual Gross Income)}
  \]

- **Effective Gross Income (EGI)** is the Gross Income minus uncollectible rents and vacancies. Vacancy is expressed as a percentage and is determined by market factors for the type of project.

  \[
  \text{Annual Gross Income} \times \text{Vacancy Rate} = \text{Vacancy Allowance}
  \]

  \[
  61,800 \times 0.05 = 3,090
  \]

  \[
  \text{Gross Income} - \text{Vacancy Allowance} = \text{Effective Gross Income (EGI)}
  \]

  \[
  61,800 - 3,090 = 58,710 \text{ (EGI)}
  \]

- **Operating Expenses**: Operating expenses are those expenses incurred in the day-to-day operations of an income producing property. Operating expenses for multi-family rental property include, but are not limited to the following:

  Administrative fees
  Utilities
  Insurance
Taxes  
Repair and Maintenance  
Property Management  
Legal and Accounting  
Reserves  
Marketing  

- **Net Operating Income (NOI):** The amount of income left after total operating expenses have been paid out of EGI.

## RENTAL HOUSING  
### LEVERAGING RATIOS  

<table>
<thead>
<tr>
<th>Ratio</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loan-to-Value:</strong></td>
<td>Loan Amount / Value</td>
</tr>
<tr>
<td><strong>Debt Coverage Ratio:</strong></td>
<td>NOI / Debt Service</td>
</tr>
<tr>
<td><strong>Break Even Point:</strong></td>
<td>Expenses + Debt Service / Gross Rent</td>
</tr>
</tbody>
</table>


## Housing Development Expenses

<table>
<thead>
<tr>
<th>Land/Building Acquisition</th>
<th>Information Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Common Components</strong></td>
<td></td>
</tr>
<tr>
<td>Acquisition</td>
<td>Realtors</td>
</tr>
<tr>
<td>Demolition</td>
<td>Seller</td>
</tr>
<tr>
<td>Property taxes</td>
<td>Purchase Option</td>
</tr>
<tr>
<td>Appraisal for acquisition loan</td>
<td>Appraisal</td>
</tr>
<tr>
<td>Points and fees for acquisition loan</td>
<td>Assessor (for carrying costs)</td>
</tr>
<tr>
<td>Closing costs for acquisition loan</td>
<td>Vendor quotes (for purchase and carrying costs)</td>
</tr>
<tr>
<td>Interest on land loan</td>
<td></td>
</tr>
<tr>
<td>Relocation</td>
<td></td>
</tr>
<tr>
<td><strong>Construction/Rehabilitation Costs</strong></td>
<td></td>
</tr>
<tr>
<td>Environmental remediation</td>
<td>Marshall &amp; Swift</td>
</tr>
<tr>
<td>Off-site improvements</td>
<td>State Housing Agency</td>
</tr>
<tr>
<td>Site work</td>
<td>Public records of Low Income Housing Tax Credit cost certifications</td>
</tr>
<tr>
<td>Structures</td>
<td>Contractor experience</td>
</tr>
<tr>
<td>Landscaping</td>
<td>Architect/Engineer experience</td>
</tr>
<tr>
<td>Contractor overhead</td>
<td>Contractor bids</td>
</tr>
<tr>
<td>Contractor general requirements</td>
<td>Recommended practices by National Council of State Housing Finance Agencies</td>
</tr>
<tr>
<td>Contractor profit</td>
<td></td>
</tr>
<tr>
<td>General liability insurance</td>
<td></td>
</tr>
<tr>
<td>Performance bond</td>
<td></td>
</tr>
<tr>
<td>Construction contingency</td>
<td></td>
</tr>
<tr>
<td>Building permits</td>
<td></td>
</tr>
<tr>
<td>Hook-up fees</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Construction Related Soft Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Architect</td>
<td>Vendor quotes</td>
</tr>
<tr>
<td>Engineer</td>
<td>Lender quotes</td>
</tr>
<tr>
<td>Survey</td>
<td>State Housing Agency</td>
</tr>
<tr>
<td>Appraisal</td>
<td>Recommended practices by National Council of State Housing Finance Agencies</td>
</tr>
<tr>
<td>Financing costs and fees</td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td></td>
</tr>
<tr>
<td>Studies</td>
<td></td>
</tr>
<tr>
<td>Developer overhead and fees</td>
<td></td>
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</tbody>
</table>

When gathering cost information, remember to make adjustments by comparing conditions at other properties with your proposed project. Consider the following:

- Building configuration
- Site conditions
- Unit types
- Per unit
- Per square foot
- Time elapsed
- Climate
- Building season
- Local government fees or requirements

Tribal Housing Excellence Academy