

PUEBLO OF JEMEZ HOUSING DEPARTMENT PROCUREMENT POLICY

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I.PREFACE

This Procurement Policy is established by the Pueblo of Administration for the Pueblo of Jemez Housing Department and approved by Pueblo of Jemez Tribal Council by resolution to provide the staff with a set of policies for procurement of supplies, equipment, services and construction activities for the Pueblo of Jemez Housing Department.

II.GENERAL PROVISIONS

A. GOAL OF THE PROCUREMENT POLICY

This Procurement Policy is established to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Pueblo of Jemez Housing Department; assure that supplies, equipment, services, and construction activities are procured efficiently, effectively, and at the most favorable prices available to the Pueblo of Jemez Housing Department; promote competition in contracting; provide safeguards by maintaining a centralized procurement system of quality and integrity; and to assure that Pueblo of Jemez Housing Department purchasing actions are in full compliance with applicable Federal standards, HUD regulations and Tribal law.

The objective of the POJ Finance Contracting/Procurement Department is to add value to the Pueblo of Jemez Housing Department through the procurement of quality goods, services and construction at a fair and reasonable cost. The Contracting/Procurement Division will encourage contractors to seek resident employment, as well as provide maximum contracting opportunities for Native American owned businesses. On competitive proposals, the Pueblo of Jemez will place a higher value during the selection process on those contractors who succeed with resident employment and provide maximum contracting opportunities for Native American owned businesses.

The POJ Finance Contracting/Procurement Department will provide an introduction to the *Pueblo of Jemez Housing Department and Pueblo of Jemez Finance Department Procurement policy* a briefing to new employees, and will provide continuous training for the staff on current issues, laws, regulations and procurement innovations.

B. APPLICATION

This Procurement Policy applies to all contracts and procurement actions undertaken by the Pueblo of Jemez Housing Department. It shall apply to every expenditure of funds by the Pueblo of Jemez Housing Department for public purchasing, regardless of the source of the funds. Nothing in this Procurement Policy shall prevent the Pueblo of Jemez Housing Department from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement," as used in this Procurement Policy includes Purchase Orders, Contracts and Contract Modifications, used to obtain supplies, equipment, services, construction activities, and the lease or rental of supplies, equipment or facilities.

C. UNAUTHORIZED OBLIGATIONS

Under no circumstances, are funds to be obligated by the Pueblo of Jemez and members of its staff unless authorized through the proper procurement process as outlined in this Policy.

D. NO PRE-PAYMENT / PAYMENT IN ADVANCE FOR GOODS OR SERVICES

The Pueblo of Jemez Housing will only authorize payments to vendors or contractors if the following conditions are met: for services, the work must have been rendered and is deemed acceptable; for goods, the items must have been received and accepted; the price is determined to be fair and reasonable. Payments to governmental agencies and public utilities will be made in conformance with the requirements of those entities.

E. COST AND PRICE ANALYSIS

A cost or price analysis shall be performed for all procurement actions, including contract modifications, in order to determine price reasonableness.

F. CANCELLATION OF SOLICITATIONS

1. An Invitation for Bid, Request for Proposal, Request for Qualifications or other solicitation may be cancelled anytime before opening.
2. A solicitation may be cancelled and all bids or proposals that have already been received will be returned at any time prior to the awarding of a contract.
3. Any and all bids may be rejected if there is a sound documented reason.

G. AMENDING PROCUREMENT POLICY OR PROCEDURES

1. The Procurement Policy of the Pueblo of Jemez Housing Department as stated within this document will only be amended through resolution and approval of the Tribal Council.
2. The Procurement Procedures for the Pueblo of Jemez Housing Department may be amended at any time at the discretion of the Housing Director, all amendments require Tribal Council approval.

H. ECONOMIC OPPORTUNITIES FOR PUBLIC HOUSING RESIDENTS

1. In order to ensure that employment opportunities are available to Pueblo of Jemez Housing residents, the Pueblo of Jemez expects all contractors to adhere to the requirements outlined under Section 3 of the Housing and Urban Development Act of 1968 as stated in 24 CFR 135, Determination and Order No. D-109 of Commission Resolution 4604 - Determination and Order to Establish a Goal of Hiring Residents to Constitute a minimum of twenty-five Percent (25%) of the total workforce for all construction contracts performed by the Housing Department.

III. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. CONTRACTING OFFICER

The Pueblo of Jemez Governor is the Contracting Officer with the authority to act on behalf of the Pueblo of Jemez Housing's contracting program.

B. PROCEDURES

The Pueblo of Jemez Housing Department shall issue operational procedures to implement this Procurement Policy, which shall be based on 24 CFR 85.36 Procurement, HUD's Handbook 7460.8, "Procurement Handbook for Public Housing Agencies", HUD's Annual Contributions Contract, 24 CFR 941 Public Housing Development for Public Housing Agencies, 24 CFR 135 Contracting Opportunities for Project Area Businesses, 24 CFR 963 Contracting With Resident Owned Businesses.

C. REVISIONS

This Procurement Policy and any later changes shall be submitted to the POJ Tribal Council for approval. The Tribal Council appoints and delegates procurement authority to the POJ Finance Controller and is responsible for ensuring that any procurement policies adopted are appropriate for the Pueblo of Jemez Housing Department.

D. CENTRALIZED PROCUREMENT

The Pueblo of Jemez Finance Department maintains a centralized procurement process although specific actions relating to procurement may be performed outside the contracting department. The POJ Finance Controller is responsible for implementing the Procurement Policy. The Contract/Procurement Division ensures that the Housing Director and the Housing Department staff of the Pueblo of Jemez is properly executing Procurement Policies and Procurement Procedures as well as Federal laws, HUD regulations, guidelines and all tribal laws. This will be accomplished through direct participation and reviews of portions of the procurement process performed by Pueblo of Jemez Housing Department staff by other departments and divisions.

E. PROCUREMENT THRESHOLDS

1. The Housing Director shall approve all commitments of funds, Housing Director has the authority to commit funds up to \$99.99 dollars.
2. The Housing Director with a co-signature of the Tribal Administrator shall approve all commitments of funds of \$1,000.00 to \$4,999.99 dollars.
3. The Housing Director with a co-signature of the Tribal Administrator and Governor shall approve all commitments of funds of \$5,000 or more dollars.

IV. PROCUREMENT METHODS

One of the following procurement methods shall be utilized based on the nature and anticipated dollar value of the total procurement:

A. SMALL PURCHASES

Small purchase procedures are a simplified method for acquiring supplies, materials, and services (including professional and construction) that do not exceed the small purchase threshold of \$99,999.99 dollars.

1. General: Any procurement not exceeding \$99.99 dollars may be made in accordance with HUD's Small Purchase procedures and as authorized in this section.
2. Petty Cash Purchases: Small purchases under \$25 which can be satisfied by local sources may be processed through the use of a Petty Cash

Account located in the Finance Office. Petty cash is available to authorized staff, documentation of purchases is still required.

3. **Micro Purchase option for expenditures of IHGB FUNDS ONLY:** The 2008 reauthorization of NAHASDA authorizes the following procedures for Purchases less than \$4,999: For small purchases but not exceeding \$5,000, also known as Micro Purchases, only one price quote is required, provided the quote is considered reasonable. Quotes may be obtained orally (either in person or by telephone), by catalog, fax, or email. If the purchase is made for reasons other than price, the file must clearly describe the reason for the purchase. A price cost analysis is required, comparing the quoted price to prices recently paid for the same or similar items, price lists, or catalog prices. The completion of the Purchase Order by the Procurement Officer signifies the Procurement Officer's determination that the price is reasonable, based on prior purchases of a similar nature or other sources of information.
4. Purchases over \$5,000: For small purchases in excess of \$5,000 but not exceeding \$99,999. no less than three offertories shall be solicited to submit a price quotation, bid or proposal depending on the complexity of the procurement. Quotations for small purchases may be obtained in writing (hard copy or email), orally, by fax, via catalogs, by letter, through electronic means, e.g., the Internet, through paid advertisement, or by displaying the solicitation in a public place.

B. PROHIBITION AGAINST BID SPLITTING

The staff shall not break down requirements aggregating more than the small purchase micro threshold into multiple purchases that are less than the applicable threshold (commonly called "bid Splitting" or "unbundling") Merely to permit the use of small purchase procedures or avoid any requirements that apply to purchases that exceeds those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the POJ Procurements. POJ Staff shall document in the contract file the reasons for breaking down larger requirements.

C. SEALED BIDS

For all Pueblo of Jemez Housing Contracting requirements that exceed the small purchase threshold, competitive procurements are conducted by inviting sealed bids or by requesting competitive proposals. Sealed bidding is the preferred method for procuring construction, supply and non-complex service contracts in excess of the small purchase threshold used for all construction and equipment contracts.

D. COMPETITIVE PROPOSALS

Competitive proposals are the primary alternative to sealed bidding for contract requirements that exceed the small purchase threshold. The award is normally made on the basis of the proposal that represents the best overall value to the

Pueblo of Jemez, considering price and other factors set for in the solicitation and not solely the lowest price.

1. Request for Proposals (RFP): Competitive proposals may be used if there is an adequate method of evaluating technical proposals. Where the Pueblo of Jemez Housing Department determines that conditions are not appropriate for the use of sealed bids, an adequate number of qualified sources shall be solicited and given sufficient time to provide a responsive proposal.
2. Request for Qualifications (RFQ): The Pueblo of Jemez Housing Department and Finance Department requires the selection of professional services which includes architectural, landscape architectural, engineering, environmental, land surveying or construction project management firms be procured by the Qualification Based Selection Process.

E. METHOD OF SOLICIATION

While any of the following methods can be employed, the Housing Director shall choose a method, which, considering matters of economy, provides for full and open competition to meet the requirement for full and open competition and to avoid potential protests..

1. Advertising in newspaper or other print mediums of local or general circulations.
2. Advertising in various trade journals.
3. Posting of RFP or RFQ on the Pueblo of Jemez Web site Bid/RFP section.

F. NONCOMPETITIVE PROPOSALS

1. Conditions for Use: Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
 - a. The item is available only from a sole source, determined by market research or there is a reasonable basis that the Pueblo of Jemez Housing Departments minimum need can only be satisfied by a unique supply, service or trade.
 - b. A public exigency or an emergency situation exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Pueblo of Jemez Housing Department, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency

- procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- c. Pueblo of Jemez is required to submit proposed noncompetitive contracts to HUD for pre-award review and approval.
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification as to the necessity of using this method in accordance with the procedure as described.
 3. Price reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.
 4. Approval to award a contract resulting from a non-competitive proposal does not eliminate or alter any requirements of governing the contract

G. COOPERATIVE PURCHASING

The Pueblo of Jemez may enter into Federal, State of New Mexico and local intergovernmental agreements to purchase or use common goods and services as authorized by law. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency and results in a cost saving to the Tribe. The Pueblo of Jemez may enter into an agreement without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to the Tribe. Prior to the agreement, the Pueblo of Jemez Housing Department shall compare the cost and availability of the identified supplies or services on the open market with the cost or purchasing them through another unit of government to determine if it is most economical and efficient method;
2. The agreement is used for common supplies and services that are of a routine nature only.
3. Pueblo of Jemez must ensure that any supplies and services obtained using another's agency's contract are purchased in compliance.
4. Pueblo of Jemez must maintain files that contain a copy of the agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and compared annually.

V. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsive and responsible contractors and vendors, who have the technical and financial competence to perform and who have a satisfactory record of integrity.

B. SUSPENSION AND DEBARMENT

Purchase Orders or Contracts shall not be awarded to any firm at any tier (subcontractors) which is debarred, suspended, or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

VI. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**A. CONTRACT TYPES**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Pueblo of Jemez Housing Department may be used, however cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited.

B. OPTIONS

Options for additional quantities or performance periods may be included in contracts, as long as there is a written determination in file which includes the fund availability, statement as to the continuing need for the item, indication as to whether the option was included and evaluated as part of the basic contract, and a review of the market price to indicate whether the option is still economical for the Pueblo of Jemez Housing Department, consistent with Pueblo of Jemez Housing Department Procurement Procedures.

C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include all clauses required by Federal statutes, executive orders, and their implementing regulations.

D. CONTRACT ADMINISTRATION

After the award of a contract, a Project Manager will be assigned by the Department Director, to ensure that the contractors work and performance is acceptable and that they are paid accordingly. The Department Director will assure that this individual has the adequate procurement training to exercise their responsibility prior to issuing an appointment letter to the Project Manager, outlining their responsibilities (monitor and review payment submittals, assure contractor performance in accordance with the terms and conditions of the contract, monitoring the contractors efforts to assure the minimum 25% resident hiring, approve or reject progress schedules, etc.).

E. CONTRACT MODIFICATION

The Housing Director is authorized submit all contract modifications however final approval rest with the Pueblo of Jemez Governor. All modifications (change orders) will require a written justification as to the reasons (differing site conditions, change of schedule, unforeseen conditions, etc.) and to validate the reasonableness of price.

VII. SPECIFICATIONS AND PURCHASE REQUEST

- A. All specifications shall be drafted to encourage full and open competition. Requester must ensure that they are not unduly restrictive, and do not represent unnecessary or duplicative items. Specification must be included with the Purchase Request.
- B. All procurement actions will require a Purchase Order Requisition to initiate a process signed and approved by the Pueblo of Jemez Finance Department. This is an internal form prepared by a department in response to a requirement. It is the responsibility of the requesting department to provide complete and accurate purchase information necessary to initiate the procurement action.

VIII. APPEALS AND REMEDIES**A. GENERAL**

It is the Pueblo of Jemez Housing Department policy to resolve all contractual issues informally at the Pueblo of Jemez Housing Department level and in conformance with the requirements of the dispute clauses in the contract.

B. BID PROTESTS

A protest against a solicitation must be received in writing before the due date for receipt of bids or proposals and submitted to the Pueblo of Jemez Finance Controller. Protest against the award of a contract must be received in writing and submitted to the Tribal Administrator's Office. Bid protests will be resolved in conformance with the requirements of the bid documents.

C. CONTRACT CLAIMS

All claims by a vendor or contractor relating to performance of a contract shall be submitted in writing to the Pueblo of Jemez Finance Controller or designee for a written decision. The Pueblo of Jemez Housing Department, within 60 days, will decide the claim or notify the contractor of the date by which the decision will be made. The contractor may request a conference on the claim. Claims will be resolved in conformance with the requirements of the contract. The Pueblo of Jemez Finance Controller or designee's decision shall inform the vendor or contractor of their appeal rights.

IX.ASSISTANCE TO WOMEN OWNED BUSINESSES, SMALL AND MINORITY OWNED BUSINESSES

A. REQUIRED EFFORTS

Consistent with Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Pueblo of Jemez Finance Controller or designee shall make efforts to ensure that small and Native American and minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of an Pueblo of Jemez development are used when possible.

B. OUTREACH

The Pueblo of Jemez Finance Controller or designee 's goal is that contractors and vendors doing business with the Pueblo of Jemez Housing Department reflect the diversity of the residents. For each procurement, maximum outreach will be made into the women and minority business community. When appropriate, proposal evaluations will provide additional consideration for offerors providing a higher level of women or minority owned business participation or a higher level of resident employment.

X.ETHICS IN PUBLIC CONTRACTING

The Pueblo of Jemez Housing and Finance Staff shall adhere to the following code of conduct, consistent with applicable Federal or Tribal law:

A. CONFLICT OF INTEREST

No employee, officer or agent of this Pueblo of Jemez Finance or Housing Department or designee shall participate directly or indirectly in the selection or in the award or administration of any procurement if a conflict, **real or apparent**, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
3. His/her partner; or,
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

B. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

Pueblo of Jemez Finance or Housing Department employees or designee shall not

solicit or accept gratuities, favors, or anything of monetary value from vendors or contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

C. PROHIBITION AGAINST CONTINGENT FEES

Vendors or contractors shall not retain a person to solicit or secure a Pueblo of Jemez Finance or Housing Department employee or designee contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

XII. REFERENCE DOCUMENTS

- **24 CFR 85.36 - Procurement**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr85_00.html
- **24 CFR 135 - Contracting Opportunities for Project Area Businesses**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr135_00.html
- **24 CFR 941 - Public Housing Development for Public Housing Agencies**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr941_00.html
- **24 CFR 963 - Contracting with Resident Owned Businesses**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr963_00.html
- **HUD Handbook 7460.8 - Procurement Handbook for Public Housing Agencies**
Website: <http://www.hud.gov/pih/publications/7460-8h/7460-8h.html>
- **HUD's Annual Contributions Contract**
Website: http://www.hud.gov/pih/ffmd/finmanagement_faq.html
http://www.hudclips.org/sub_nonhud/cgi/pdf/22829a.pdf
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