

	Northwestern Band of the Shoshone Nation Housing Services	
	Policy & Procedures Manual Indian Preference Policy	
	Revision Number & Date Version Number 3 – 18 June 2024	Document Control Number NWBSN HS-PM-IP-003

Indian Preference Policy

INTRODUCTION

A. Purpose

In an effort to support members of our Tribal Community and to run projects developed and operated with assistance under 24 CFR Part 1000.48, et. al., are subject to the following:

1. That any contract, sub-contract, grant, or sub-grant 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;
 - b. Preference in that award of contracts and sub-contracts shall be given to Tribally-owned and Tribal Community member-owned enterprises as defined in Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

2. The NWBSNHS is not required to apply Indian Preference with respect to any procurement with an aggregate amount less than \$10,000.00.

B. Methods of Providing Indian Preference

1. 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 NWBSNHS 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

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enterprises.

2. 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, NWBSNHS 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.

D. Determination of Ineligibility

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

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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 NWBSNHS 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 requirements.
6. A statement that NWBSNHS 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

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the greatest extent feasible by hiring qualified Indians in all positions.

F. Providing Indian Preference for Small Purchases

The NWBSNHS 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 quotations are solicited or received from Indian-owned economic enterprises, the NWBSNHS must include, as part of its documentation, a statement explaining the reasons for lack of Indian participation. As an alternative, a NWBSNHS 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 “X” 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 “X” percent of the lowest non-Indian quote, award shall be made to the source with the lowest quote. The “X” factor Indian Preference Chart is attached to this policy.

G. Providing Indian Preference for Sealed Bids

The NWBSNHS prior to solicitation shall decide on the method it will use in applying Indian Preference depending on the individual procurement. In accordance with 24 CFR 1000.52, the NWBSNHS 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

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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 NWBSNHS 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 NWBSNHS 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 NWBSNHS 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 NWBSNHS shall:
 - a. Re-advertise the contract using any of the methods described above at 1, 2, or

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

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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 or 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 NWBSNHS utilizes to implement Indian Preference shall be conducted in accordance with the procedures described at 24CFR 1000.54.

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Attachment A

Using the X-Factor for Indian Preference (Optional) The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 1000.52.

Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	X = lesser of:
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid or \$
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000



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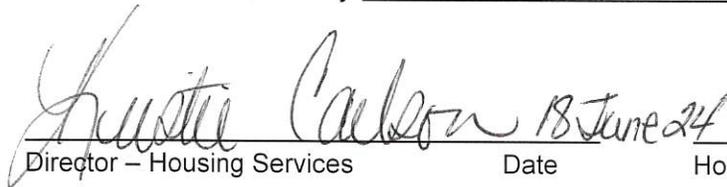
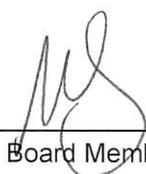
REVISION HISTORY

The **Indian Preference Policy** was **UPDATED** as part of the **Procurement Policy** by the Northwestern Band of the Shoshone Nation Housing Authority Board of Commissioners on **26 December 2002**.

- Motion carried by 5 YES and 0 NO, and 0 ABSTENTION & 0 ABSENT.

The **Indian Preference Policy** was **UPDATED** by the Northwestern Band of the Shoshone Nation Housing Services Board of Commissioners on **18 June 2024**. Motion was made by **Tara Hawks** and seconded by **Mason Shepherd**.

- Motion carried by 4 YES and 0 NO, and 0 ABSTENTION & 1 ABSENT.

 18 June 24  6/19/24
Director – Housing Services Date Housing Board Member Date

The **Indian Preference Policy** was further formalized by Resolution **06-21-2024-03** of the Northwestern Band of the Shoshone Nation Tribal Council on **21 June 2024**. Motion was made by **Cale Worley** and seconded by **Shane Warner**.

- Motion carried by 6 YES and 0 NO, and 1 ABSTENTION AND 0 ABSENT.



Dennis A. Alex
Chairman

Bradley J. Parry
Vice Chairman

NORTHWESTERN BAND OF THE SHOSHONE NATION

2575 Commerce Way

Ogden, Utah 84401

**RESOLUTION OF
THE NORTHWESTERN BAND OF THE SHOSHONE NATION
HOUSING SERVICES Resolution Number 06-21-2024-03**

Approving an Indian Preference Policy ADOPTION for the NWBSN Housing Services.

At a duly called meeting of the Tribal Council of the Northwestern Band of the Shoshone Nation on **21 June 2024**, the following resolution was presented:

WHEREAS: The Tribal Council is the governing body of the NWBSNHS with the authority to adopt laws and rules to govern Housing Services; and

WHEREAS: The NWBSN Housing Services is a Tribal Program authorized to manage homeownership and rental housing programs and such management requires the adherence to Policies and Procedures set forth by The Department of Housing and Urban Development; and

WHEREAS: The Housing Services Board of Commissioners has received and reviewed an updated Indian Preference Policy at a duly called meeting on 9 April 2024 as prepared by the Housing Services Director and has been approved by vote of a quorum of the Housing Services Board of Commissioners.

Vote of 4 in favor, 0 opposed, 0 abstentions and 1 absent on 18 June 2024.

NOW THEREFORE, BE IT RESOLVED that the NWBSN Tribal Council hereby approves the Indian Preference Policy as reviewed and corrected. (See Attached)



Dennis A. Alex
Chairman

Bradley J. Parry
Vice Chairman

NORTHWESTERN BAND OF THE SHOSHONE NATION

2575 Commerce Way
Ogden, Utah 84401

Authority for this resolution was duly adopted by the Tribal Council of the Northwestern Band of the Shoshone Nation at a duly called meeting on **21 June 2024**, by a vote of 6 in favor (DA, BP, AM, KH, SW, CW), 0 Opposed, 0 Absent, 1 (JW) Abstain; pursuant to the authority contained under Article VI, Section 1 & 2 and Article XI, Section 2 of the Tribal Constitution and By-laws approved August 24, 1987; Tribal Housing Ordinance, ORD-95-001, Amended 09 April 1996.

DATED: 21 June 2024

DENNIS A. ALEX, CHAIRMAN
CERTIFICATION:

I HEREBY CERTIFY that the foregoing resolution was passed while a quorum of the Tribal Council was present by a vote of 6 in favor, 0 opposed, 1 abstention on the date this bears.

Alicia Martinez, Secretary