

	Northwestern Band of the Shoshone Nation Housing Services	
	<h1>Procurement Policy</h1>	
	<b>Revision Number &amp; Date</b> Revision Number 4 – 9 July 2024	<b>Document Control Number</b> NWBSN HS-PM-P-004

# Procurement Policy

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## I. GENERAL PROVISIONS

### A. Applicability

This Policy applies to the Northwestern Band of the Shoshone Nation Housing Services (NWBSNHS) 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 NWBSNHS 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 NWBSNHS to comply with all applicable Federal standards, as well as applicable Tribal code for all procurement actions covered by this Policy. When conflict between the two policies arise, the Northwestern Band of the Shoshone Nation Tribal Procurement Policy will supersede this document except where HUD regulations prevent a change in 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 Northwestern Band of the Shoshone Nation 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 NWBSNHS.
2. To provide documented procurement procedures that reflect applicable state, local, and 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 NWBSNHS 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.

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4. To promote competition and ensure that the NWBSNHS awards contracts only to responsible contractors possessing the ability to perform successfully.
5. To provide safeguards for maintaining a procurement system of quality and integrity and assure that the NWBSNHS' procurement actions are in compliance with applicable Federal standards and Tribal laws or regulations.
6. To provide oversight ensuring that contractors and vendors perform in accordance with terms, conditions, and specifications of their contracts or purchase orders.
7. To maintain written standards of conduct covering Conflicts of Interest, and governing selection, award, and administration of contracts.
8. 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 Housing Services Director or other individual he or she has delegated in writing, or such other individual specified by the Housing Services Board of Commissioners. The Housing Services Director shall issue operational procedures to implement this statement. In administering this Policy, the Contracting Officer shall exercise sound business judgment and protect the interests of the NWBSNHS. 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 30 days for main

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construction contracts and 7 days for other contracts 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. 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 NWBSNHS must make independent estimates before receiving bids or proposals.
11. 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

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quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

12. 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 NWBSNHS under Subpart E - Cost Principles of 2 CFR § 200.
13. 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 NWBSNHS, 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 Board of Commissioners of the NWBSNHS, comprised of 1-2 members of NWBSN Tribal Council and 3-4 other members of the Tribe who are nominated by the Housing Services Director and approved by appointment by the NWBSN Tribal Council.
4. Competitive Proposals: Procurement Method 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

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5. Contract: A legal instrument by which the NWBSNHS purchases property, or services needed to carry out a project or program.
  
6. Contractor: An entity that receives a contract.
  
7. Contracting Officer: The NWBSN Housing Services Director or individual he or she identifies in writing, or such other individual specified by the Housing Services Board of Commissioners shall be responsible under this Policy for the solicitation, negotiation, administration, close-out, and termination of contracts. The Housing Services Director shall issue operational procedures to implement this Statement and, when necessary, shall also establish a system of sanctions for violations of the ethical standards described in this Statement.
  
8. 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.
  
9. Debarment & Suspension: The Federal Government 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>).
  
10. Non-Federal Funds: Includes funds that are sourced from general funds, indirect cost pool, and state sourced grants.
  
11. Department: Business unit of the NWBSN where the contract requirement is generated.
  
12. 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 NWBSNHS. The Housing Director is authorized to approve emergency procurements, provided that the NWBSNHS Board of Commissioners must ratify such emergency procurements at a future meeting of the NWBSNHS Board.

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13. Funding: Includes funds from Federal grants and state funding that are pass-through funds from Federal sources. Procurements using those funds will be subject to this Policy
  
14. 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.
  
15. Major Purchases: Purchases with an acquisition cost greater than the Simplified Acquisition Threshold of \$250,000 or as adjusted by Federal law.
  
16. Micro-Purchases: Procurement Method where 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.
  
17. Noncompetitive Proposals: Procurement Method, using Formal Advertising, that may only be used when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals.
  
18. 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.
  
19. 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.
  
20. 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

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by the NWBSNHS.

21. **Procurement:** The acquiring by contract of supplies and services by and for the use of the NWBSNHS 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 NWBSNHS needs are established and includes the description of requirements to satisfy NWBSNHS 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 NWBSNHS needs by contract.
22. **Purchasing:** The process of ordering and receiving goods and services, as a subset of the wider procurement process.
23. **Sealed Bid:** Procurement Method for Construction Contracts or Contracts exceeding the Simplified Acquisition Threshold of \$250,000.
24. **Small Purchases:** Procurement Method for purchases with an acquisition cost below the Simplified Acquisition Threshold of \$250,000 but greater than the \$10,000 Micro-Purchase threshold.
25. **Sub-award:** An agreement for the purpose of carrying out a portion of a Federal award, which creates a Federal assistance relationship with the sub-recipient.
26. **Sub-recipient:** A Non-Federal entity that receives a sub-award from a pass-through entity to carry out part of a Federal program.
27. **Tribe:** The Northwestern Band of the Shoshone Nation Tribal Community.
28. **Vendor:** An entity that provides services, supplies, or other property for Micro-Purchases and/or Small Purchases.

**E. Authority of the Northwestern Band of the Shoshone Nation Housing Services Board of Commissioners & Northwestern Band of the Shoshone Nation Tribal Council**

The Board of Commissioners (BOC) retains authority over the implementation and interpretation of this Policy and the procedures herein. Any and all changes to this

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Policy shall be submitted to and approved by the BOC with further adoption and resolution made by the Northwestern Band of the Shoshone Nation Tribal Council.

### F. Sub-recipient and Contractor Determinations

The NWBSNHS may concurrently receive or award Federal awards as a recipient, a sub-recipient, and/or a contractor, depending on the substance of its agreements with Federal awarding agencies. Therefore, the NWBSNHS must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds fits the role of a sub-recipient 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. NWBSNHS staff shall utilize and maintain the Sub-recipient Versus Contractor Determination Checklist to determine whether the NWBSNHS should award Federal awards to a sub-recipient or a contractor. The sub-recipient and contractor determinations should be made by the NWBSN before contracting or issuing a sub-award. Documentation of that determination must be maintained by the project proponent.

1. Sub-recipients – A sub-award is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the sub-recipient. Characteristics which support the classification of a sub-recipient relationship (either when the NWBSNHS is a sub-recipient of another organization or the NWBSNHS awards sub-recipient funding to another NWBSN 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 NWBSNHS.
  
2. Contractors – A contract is for the purpose of obtaining goods and services for the NWBSNHS entity’s own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between

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the NWBSNHS and a contractor are when the relationship between the NWBSNHS 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 NWBSNHS and another entity casts the latter as a sub-recipient 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 NWBSNHS must use judgment in classifying each agreement as a sub-award 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.
3. Using noncompetitive pricing practices.
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.

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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 NWBSNHS 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 following:

1. That any contract, subcontract, 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 the award of contracts and subcontracts 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 less than an aggregate amount less than \$10,000.

*(See Indian Preference Policy)*

## **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 NWBSNHS shall, to the greatest extent feasible, give

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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, 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; and

### **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.

### **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

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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 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

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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 particular 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
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:

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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 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

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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.

### **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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### 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 NWBSNHS 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.

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## 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 newsletter or newspapers of record and/or other such publications as necessary to ensure adequate notice and solicitation of bids. This will primarily ensure notification to Indian-

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owned and Indian-operated business entities.

- (iii) Invitations to bid should be published in local newspapers to attract a larger cross-section of qualified, responsible parties.
- (iv) 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.
- (v) All bids must be opened publicly at the time and place specified in the invitation for bids.
- (vi) 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/Indian 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.
- (vii) 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

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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 / best value to the NWBSNHS, 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).

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- 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. Written approval from the NWBSNHS's Contracting 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 which represents the sole funding source, are exempt from the formal procurement methods, regardless of their amount. Written approval from the NWBSNHS's Contracting Officer is required along with approval from the NWBSN Housing Board of Commissioners (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.



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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 must:

1. Be approved by the Contracting Officer, and
2. After approval by the Contracting Officer, the Contracting Officer will issue a Purchase order to be signed by the Executive Director and delivered to the Finance Department and prepare the appropriate contract forms, or
3. After approval by the Contracting Officer, the designated Department Staff will prepare the appropriate contract forms

### 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

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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.
5. If a contract was previously funded by NWBSNHS or NWBSN 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.
6. In the event a contractor is debarred or suspended during the performance of a contract, the NWBSNHS, 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

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\$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 sub-grantee, 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 sub-grantees 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 sub-grants 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 and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

## VIII. BONDING REQUIREMENTS

Bonding requirements include, but may not be limited to:

### 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.

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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.

### D. Applicability

For construction or facility improvement contracts or subcontracts, the Contracting Officer shall decide whether or not to apply bonding requirements or equivalent for procurements under \$150,000. All procurements exceeding \$150,000 shall comply with the aforementioned bonding requirements set forth in this section.

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

The NWBSNHS 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

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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 NWBSNHS shall adhere to the following Code of Conduct governing the performance of their employees, officers, board, or agents engaged in the award and administration of contracts consistent with applicable State, Tribal or local law, and shall comply with the limitations imposed by 2 CFR 200.318(c) and 24 CFR 1000.30:

### A. Employee Conflict of Interest

No employee, officer, or agent of the NWBSNHS 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.

Per 24 CFR 1000.30(b), no person who participates in decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom that have business or immediate family ties. Immediate family ties are determined by the NWBSNHS in its operating Policies.

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Employees, agents, and grantees who any have acquired confidential and privileged information during their tenure with the NWBSNHS are prohibited from publicly disclosing that information and from using that information for personal purposes. Former Board Members and employees are prohibited from acquiring a contract or other financial interest, direct or indirect, in any NWBSNHS project or activity that is affected by that confidential or privileged information.

Per 24 CFR 1000.30(c), nothing in this section shall prohibit a tenant, homebuyer, or program participant, who is a Board Member, employee, officer, or agent from fully participating in NWBSNHS activities and decision making so long as the person is low income and otherwise eligible applicant and selected for assistance in accordance with the NWBSNHS’s written policies for eligibility, admission and occupancy for housing assistance with IHBG Funds

- a. The NWBSNHS must make a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the person
- b. The NWBSNHS shall provide ONAP with a copy of the disclosure before the assistance is provided to the person

**B. Gratuities, Kickbacks, and Use of Confidential Information**

The NWBSNHS’s officers, employees, or agents, shall not solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain. It is determined that providing meals, entertainment or gifts in an amount in excess of twenty-five dollars (\$25.00) per gift or meal, or a total per calendar year of meals, entertainment or gifts in excess of one hundred fifty dollars (\$150.00) per individual by an individual company, including all related concerns and individuals, is determined to be of monetary value and is therefore prohibited.

**C. Prohibited Use of Confidential Information**

Board Members, employees, or agents shall not knowingly use confidential information gained in the procurement process for personal tangible gain.

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**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.

**C. 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 Northwestern Band of the Shoshone Nation Indian Tribal Community’s sovereign immunity from unconsented suit.

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## XII. SUB-RECIPIENT VERSUS CONTRACTOR DETERMINATION CHECK LIST

### A. Staff Recommendation

NWBSNHS procurement staff will make a recommendation to the Housing Services Director regarding the method of entering into an agreement for services via a sub-recipient agreement or contractor award.

### B. Differentiation Between Sub-recipient and Contractor

Differentiating between sub-recipient and contractor must be made in order to determine allocation of responsibilities; if the designation is sub-recipient, then there are certain terms and conditions of the award that must be complied with by the sub-recipient. Additionally, it determines the procurement process to be used and the appropriate form of agreement.

### C. Housing Services Director Authority to Create Procedure

The Housing Services Director is authorized to create a procedure as a tool for NWBSNHS employees to use when making case-by-case determinations of whether the award of funds NWBSNHS received from a Federal grant should be awarded to a sub-recipient or a contractor.

This Policy may be updated from time-to-time without full approval process where limited change and necessary change is required, such as updating 2-CFR and other source document coding, making spelling, grammatical or other formatting changes, etc.

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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:

<b>When the lowest responsive, responsible bid is:</b>	<b>X = lesser of:</b>
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 **Procurement Policy** was **ADOPTED** by the Northwestern Band of the Shoshone Nation Housing Authority Board of Commissioners on **29 November 1997**. Motion was made by **Jon Warner** and seconded by **Lila Jones**.

- Motion carried by 3 YES and 0 NO, and 0 ABSTENTION & 2 ABSENT.

The **Procurement Policy** was **UPDATED** by the Northwestern Band of the Shoshone Nation Housing Authority Board of Commissioners on **26 October 2002**. Motion was made by **Curtis Warner** and seconded by **Pat Martinez**.

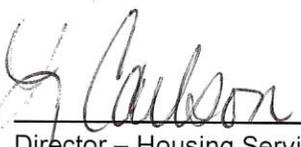
- Motion carried by 5 YES and 0 NO, and 0 ABSTENTION & 0 ABSENT.

The **Procurement Policy** was **UPDATED** by the Northwestern Band of the Shoshone Nation Housing Authority Board of Commissioners on **15 January 2015**. Motion was made by **John Zundel** and seconded by **Christina Martinez**.

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

The **Procurement Policy** was **UPDATED** by the Northwestern Band of the Shoshone Nation Housing Services Board of Commissioners on **9 July 2024**. Motion was made by **Mason Shepherd** and seconded by **Riley Bramwell**.

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

 Director – Housing Services	19 July 2024 Date	 Housing Board Member	7/19/24 Date
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The **Procurement Policy** was further formalized by Resolution **07-19-2024-01** of the Northwestern Band of the Shoshone Nation Tribal Council on **19 July 2024**. Motion was made by **Cale Worley** and seconded by **Shane Warner**.

- Motion carried by 7 YES and 0 NO, and 0 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 07-19-2024-01

#### **Approving a Procurement Policy UPDATE for the NWBSN Housing Services.**

At a duly called meeting of the Tribal Council of the Northwestern Band of the Shoshone Nation on **19 July 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 Procurement Policy at a duly called meeting on 9 July 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 5 in favor, 0 opposed, 0 abstentions and 0 absent on 9 July 2024.**

**NOW THEREFORE, BE IT RESOLVED** that the NWBSN Tribal Council hereby approves the Transfer 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 **19 July 2024**, by a vote of 7 in favor (DA, BP, AM, KH, JW, SW, CW), 0 Opposed, 0 Absent, 0 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: 19 July 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 7 in favor, 0 opposed, 0 abstentions on the date this bears.



Alicia Martinez, Secretary

