

TOHONO O'ODHAM KI:KI ASSOCIATION

SECTION 2



Finance Department Policies & Procedures

1. *Financial Management & Accounting Policies & Procedures* - Approved by the Tohono O'odham Ki: Ki Association Board of Directors on May 2004.

Approved by the Tohono O'odham Ki: Ki Association Board of Directors on July 31, 2006. Resolution No. 06-ID-016.

Amended by the Tohono O'odham Ki: Ki Association Board on November 21, 2008. Resolution No. 11-01-08.

Approved Revision by the Tohono O'odham Ki:Ki Association Board of Directors on October 9, 2009. Resolution No. 10-01-09.

2. *Collections Policy* - Approved by the Tohono O'odham Ki:Ki Association Board of Directors on November 17, 2011.

Approved Revision by the Tohono O'odham Ki:Ki Association Board of Directors on April 18, 2019. Resolution No. 04-01-19.

Approved Revision by the Tohono O'odham Ki:Ki Association Board of Directors on June 10, 2019. Resolution No. 06-01-19.

3. *Disposition & Demolition Policy & Procedures* - Approved by the Tohono O’odham Ki:Ki Association Board of Directors on August 6, 2000.
4. *Inventory Policy* - Approved by the Tohono O’odham Ki:Ki Association Board of Directors on November 3, 2007 by Resolution No. 11-03-07.
5. *Investment Policy* - Approved by the Tohono O’odham Ki:Ki Association Board of Directors on October 23, 2004 by Resolution No. 10-03-05.

Approved Revision by the Tohono O’odham Ki:Ki Association Board of Directors on September 9, 2014. Resolution No. 09-04-14.

Approved Revision by the Tohono O’odham Ki:Ki Association Board of Directors on March 25, 2015. Resolution No. 03-01-15.

6. *Procurement Policies & Procedures* – Approved and Adopted by the Tohono O’odham Ki:Ki Association Board of Directors on November 8, 2002 – Resolution No.: 11-01-03.

Approved Revision by the Tohono O’odham Ki:Ki Association Board of Directors on August 06, 2018. Resolution No. 08-06-18.

7. *Program Income & Non-Program Income Policy & Procedures* - Approved and Adopted by the Tohono O’odham Ki:Ki Association Board of Directors on August 26, 2009 with Resolution: 08-02-09.

Approved Revision by the Tohono O’odham Ki:Ki Association Board of Directors on September 9, 2014. Resolution No. 09-04-14.

8. *Credit Card Policies & Procedures* - Approved by the Tohono O’odham Ki:Ki Association Board of Directors on May 1, 2006.

9. *Homeowner Repair Loan Program Policy – Procedures* - Approved by the Tohono O’odham Ki:Ki Association Board of Directors on July 13, 2015. Resolution No. 07-05-15.

Approved Revision by the Tohono O’odham Ki:Ki Association Board of Directors on July 9, 2018. Resolution No. 07-03-18.

10. *Procurement Policies & Procedures* – Approved and Adopted by the Tohono O’odham Ki:Ki Association Board of Directors on July 22, 2019 – Resolution No.: 07-06-19.

Tohono O'odham Ki:Ki Association

Finance Department Mission Statement

In a spirit of excellence, integrity, and dedication, the Tohono O'odham Ki:Ki Association (TOKA) Finance Department is committed to providing timely, accurate, clear and complete financial information and support to other TOKA departments, tribal members, and the Nation at large by upholding quality, transparency, integrity, leadership, and teamwork. The Department strives to be exemplary in all financial activities through continuously meeting and exceeding expectations.

Tohono O'odham Ki:Ki Association

Finance Department Vision Statement

The Tohono O'odham Ki:Ki Association (TOKA) Finance Department will consist of proactive leaders identifying issues and offering innovative solutions to enable all TOKA Departments to accomplish their respective goals and to provide quality services to our members more effectively and efficiently. We aspire to be the standard by which Tribally Designated Housing Entities will view and measure success.

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SECTION 2 - FINANCE DEPARTMENT POLICIES & PROCEDURES

CHAPTER 1 – FINANCIAL MANAGEMENT & ACCOUNTING POLICIES & PROCEDURES

1. Purpose:

The purpose of this Policy is to provide internal controls to ensure compliance with Federal, State, Tribal, HUD and TOKA policies in the administration and expenditure of TOKA funds. This policy is also intended to ensure the efficient and effective use of TOKA funds and provide periodic audits and reports of TOKA funds.

2. Definitions:

- A. *Annual Income* – Income includes wages, salaries, tips, commissions, self-employment income, farm self-employment income, interest, dividends, net rental income, or income from estate or trusts, social security or railroad retirement, supplemental security income, aid to families with dependent children, or other public assistance or public welfare programs, retirement, survivor, or disability pensions, any other sources of income received regularly, including Veterans' (VA) payments, and alimony.
- B. *Adjusted Income* – Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.
- C. *Accounting Consultant* - An outside accountant who provides services under a contract for a fee.
- D. *AEL* – Allowable Expense Level.
- E. *Budget* - The planning document that was written by management, and approved on an annual basis by the TOKA Board of Directors, in sufficient detail to be used to monitor the organization's planned activities against actual results, or to report details of a longer plan to funding and monitoring agencies.
- F. *DC & E* – Dwelling Construction Costs & Equipment.
- G. *HDS* (Housing Data System) - The tenant receivable sub ledger used to record tenant financial activity and maintain tenant receivable and trust liability balances.
- H. *HUD* - Refers to the Federal Agency - Housing and Urban Development.

- I. *IHBG* – Indian Housing Block Grant.
- J. *NAHASDA* - The “Native American Housing Assistance and Self-Determination Act of 1996” administered by HUD.
- K. *OMB* – Office of Management & Budget.
- L. *Mutual Help Program* - The home ownership program for Contribution Contracts executed after March 9, 1976.
- M. *WIP* - Work in Progress.

3. Budget & Financial Management:

A. *Financial Requirements - Budgets & Operations:*

- 1) *Budget* – The Executive Director shall, in cooperation with the Departments Budget Designee, prepare and annual TOKA operating budget. The Executive Director shall submit the annual operating budget to the Board of Directors, which shows that:
 - a) The proposed expenditures are necessary for the efficient and economical operation of the TOKA.
 - b) A source of funding exists which adequately covers all proposed expenditures.
 - c) The budget does not include federal funding in excess of the amount payable under the regulations.
 - d) Budgets are to be approved before the beginning of the fiscal year to which it applies. The budget designee should be concerned with assembling these budgets in order to achieve the goals of their department.
- 2) *Monitoring* - The monitoring by the TOKA Finance Department of budget income and expenditures shall include the following:
 - a) Record keeping procedures to track expenditures,
 - b) A comparison of actual expenditures to budgeted amounts,
 - c) Analytical review to determine the causes of variances and a capacity to develop solutions for budget overruns.
- 3) *Planning & Control Factors* - Budgeting decisions are based on information gathered from various sources, including:

- a) *Historical Data* - Information about prior year expenses, contracts and other available TOKA budgetary information;
- b) *HUD requirements* - Controls placed by HUD or other Federal agencies on expenditures pursuant to NAHASDA and OMB Circular A-87, shall restrict expenditures to those allowable by OMB Circular A-87, Principles for Determining Costs Applicable to Grants and Contracts with State, Local and federally recognized Indian Tribal Government. Subrecipients shall also comply with the provisions of 24 CFR Part 85 described in 24 CFR 1000.26. A Subrecipient may use up to 20% of its annual grant amount for administration and planning expenses, as defined in 24 CFR 1000.236. NHA shall comply with the Single Audit Act, requiring an audit if expenditures of federal funds exceed \$500,000 during a fiscal year;
- c) *Expense projections* - Projection of necessary equipment replacement, repairs, training, utility, costs, and other required expenses;
- d) *Salary & staffing projections* - Projections of salary changes due to inflationary factors and changing job responsibilities; and
- e) The number of housing units in Current Assisted Stock.

B. *Financial Requirements - Budgetary Planning & Control:*

- 1) *Operating Revenues* - The operating budget covers all planned expenditures and all sources of revenue which include:
 - a) *Mutual Help Program (including Project 33)* - The aggregate monthly administrative fee charged to homebuyers;
 - b) *Lease/Purchase* - monthly mortgage servicing fees charged to participants;
 - c) *Rental Programs* - Rental income is projected based on rent, number of units and vacancy ratio, rent charged to tenants;
 - d) Interest on investments; and
 - e) Other sources of funding.

C. *Operating Expenses:*

- 1) *Administrative Expenses* - This includes salaries, legal fees, travel expenses, telephone costs, publication costs, membership and dues expense, and sundry expenses;
- 2) *Routine Expenses* - This includes utilities, maintenance, and general expenses. For rental projects, routine expenses may also include tenant services and protective services;

- 3) *Non-routine Expenses* - This includes capital expenditures for equipment replacement, improvement and additions, or extraordinary maintenance expense.
 - 4) Each Department Director is responsible for the actual expenditures of his or her department in light of the budgeted amounts that are approved by the Board. This control is achieved through the operation of the procurement cycle, payroll, and approval for travel and personal expenses. Accounting is responsible for reporting these actual amounts versus the budget each month, and reviewing the outcomes with each Department Budget Designee.
 - 5) Budget Adjustments that have no change to the budget total are submitted to the Executive Director for approval. Budget Amendments that change the budget total must be submitted to the Board of Directors for approval.
- D. *Operating Reserves* - The TOKA may maintain an operating reserve to assure that sufficient funds are available to make disbursements.
- E. *Non-Program Income and Expenditures* – Income generated through Rental and sale of 1937 Act units.

4. Funding:

- A. *Development* - In order to develop housing projects, the following costs require funding:
- 1) *Administrative Cost* - Administrative cost is based on amount Per Unit Month (PUM) in the development budget. This can generally be multiplied by the number of units under development to arrive at the monthly amount.
 - 2) *Construction & Equipment Contractors* - When a prime contractor is employed, several sources are used to assess the appropriate amount of funds to be requested including a schedule of amounts due, periodic pay estimates and reports, and estimating the percentage of completed work.
 - 3) *Indian Health Service* - No other documentation is required after the Memorandum of Agreement (MOA) is executed.
 - 4) *Planning* - Expenses for ERR's, architects, surveyors, and inspectors.
- B. *NAHASDA Homeownership Program (Native American Housing Assistance and Self-Determination Act of 1996 through the U.S. Department of Housing and Urban Development):*
- 1) This is a Lease/Purchase program that allows the participant to pay less than the fair market value for a home.

- 2) Monthly Payment remains at One-twelfth (1/12th) of thirty percent (30%) of Adjusted Household Annual Income.
- 3) *Administrative Fee* – Tenant will pay a flat rate of \$200 for emergency repairs or additional charges outside the Lease Agreement.

C. *Non-Program Funds:*

- 1) The Non-Program Funds' processes and policies are contained in the Program income and Non-Program income policies and procedures.
- 2) Board Review and approval shall be consistent under the TOKA Procurement Policies & Procedures.
- 3) The Executive Director, Finance Director, or Accountant shall provide a report to the Board each month on any expenditures of non-program income.

5. Record Keeping & Financial Reporting:

- A. Maintain TOKA operating, transaction and historical records, as well as monitor development, operating and modernization programs;
- B. Prepare payroll checks and record the payroll amounts in the payroll module; maintain records of employee benefits and time worked;
- C. Reconcile accounting records to the amounts recorded in the General Ledger as part of the monthly process of closing the books of record, including but not limited to cash, payroll, Tenant Accounts Receivable and fixed assets;
- D. Prepare monthly, quarterly and annual financial reports, including reports required by taxing authorities;
- E. Assist in planning and budgeting; and
- F. Compute receivables and disbursements for cash control.

6. Accounting Controls:

A. *The Tohono O'dham Ki:Ki Association Accounting Responsibilities:*

- 1) Maintain daily transaction and historical files,
- 2) Monitor operating, development and modernization cost to prevent cost overruns,
- 3) Prepare operating and development budgets,
- 4) Prepare requisitions for development funds,
- 5) Prepare cash forecasts to determine the amount of funds to be either requisitioned or invested; preparing internal and external reports,

- 6) Report of interest earned from investments and savings,
- 7) Record payments and charges for each tenant in the Low Rent program and homebuyer in the Mutual Help Homeownership programs, and
- 8) Timely filing of all payroll tax returns and reports to HUD and other government agencies.

B. The Association recognizes the *Treadway Commission's COSO* definition and analysis of internal controls. These principles are codified in the Sarbanes-Oxley Act, and have also been adopted by the PCAOB (Public Company Accounting Oversight Board) in Standard No. 2 and by the AICPA (American Institute of Certified Public Accountants) in Statements on Auditing Standards 102 through 109.

These controls include but are not limited to:

- 1) Segregating the cash receipts and disbursements functions,
- 2) Segregating the functions of collecting cash receipts, compiling deposits, making deposits,
- 3) Verifying deposits before the deposit is made at the Financial Institution,
- 4) Independent reconciliation of Financial Institution statements in a timely manner,
- 5) Separating the functions of issuing purchase orders, paying invoices, and signing checks,
- 6) Requiring vendor checks to have two signatures, and payroll checks to have one signature or an electronic digital signature.
- 7) Obtaining Executive Director or authorized designee to approve all check requests,
- 8) Obtaining evidence of ownership of each process that affects the recording, reporting or summarizing of information in the accounting books, in the form of written procedures, dates and initials showing approval on large or sensitive transactions, training of the staff that performs the process owned, and at least monthly reconciliation to the general ledger accounts affected by the process owned, and
- 9) Maintaining a physical inventory of all fixed assets as specified in the TOKA Inventory Policy, Chapter 6.

C. *External Controls* - There are two primary forms of external control:

- 1) Annual audits by independent auditors; and
- 2) HUD fiscal review and performance monitoring.

7. Record Keeping:

A. *Fiscal Control* - The accounting function enhances fiscal control through the maintenance of records of all TOKA transactions by:

- 1) Providing a means to trace receipts, disbursements and financial institution account balances;
- 2) Providing a reasonably accurate picture of the receipts and disbursements by project or program for monitoring purposes;
- 3) Providing an accurate accounting of the financial status of each tenant or homebuyer relative to amounts billed, paid and owed;
- 4) Tracking investments and income;
- 5) Safe-guarding assets, and
- 6) Complying with HUD requirements contained in OMB circulars A-87, regarding allowable and unallowable expenses.

B. *Monitor Program Performance* - Program performance monitoring ensures that the TOKA is:

- 1) Providing safe, decent and sanitary housing to lower income families;
- 2) Carrying out statutory and regulatory guidelines and requirements;
- 3) Monitoring contractual obligations;
- 4) Avoiding mismanagement, waste or fraud; and
- 5) Providing adequate protection of TOKA's interest and investments.

C. *Cash Flow Control*:

- 1) *Collecting & Posting Cash Receipts* - Cash receipts are all monies collected or received by the TOKA. These receipts should be handled in the following manner:
 - a) Cash should be deposited frequently, preferably daily if collections are heavy, but at least once a week;
 - b) When cash is retained in the TOKA office overnight, it must be stored in a locked fireproof file or safe;
 - c) Checks received should be immediately stamped "For Deposit Only;"
 - d) Each employee who is authorized to receive payments will log on to HDS using personal username or the appropriate drop down menus to identify that he or she has received payment. This allows the TOKA to identify who received each payment;
 - e) A receipt must be issued for all cash or cash equivalents collected;
 - f) Receipts must be pre-numbered and at least two-part, preferably three-part, and one is filed numerically, and one is given to the

payee. Receipts must be issued in numerical sequence. Voided receipts must be retained for accounting and audit purposes; and

- g) Receipts issued must contain the following information:
 - i. The name, *Tohono O'odham Ki:Ki Association*,
 - ii. Project type and unit or account number,
 - iii. Name of the person paying and for whom, if different than person paying,
 - iv. Amount and form of payment (i.e., cash, check, E-check, money order), and
 - v. Date and cashier's name or initials.
- h) A deposit slip should be prepared for each day's cash received, even if the money is not deposited on that day. The deposit slip must include deposit and complete details as to coin, currency and checks deposited;
- i) Collections must be deposited intact;
- j) Cash received from tenants should be recorded daily in the individual tenant or homebuyer accounts receivable records in the Housing Data System even when the money is not deposited on the day received. Cash receipt ticket numbers should be referenced in the tenant/homebuyer accounts receivable records; and
- k) A segregation of duty shall take place between the person receiving the cash and the person creating the deposit.

2) *Posting Cash Disbursements* - Cash disbursements include all money paid out by the TOKA and should be handled as follows:

- a) All disbursements (other than petty cash) will be made by check, E-check, or credit card/debit card purchase. Purchases of investments and transfers between financial institutions can be accomplished through secured electronic transfers;
- b) All check copies must be retained for accounting and audit purposes;
- c) Unused checks must be adequately safeguarded and in the custody of a person not authorized to sign checks;
- d) Checks shall be prepared by someone other than the person(s) authorized to sign checks or to approve check requisitions for payment;
- e) All check requisitions must specifically identify the purpose of the payment and where the cost is to be charged;
- f) Checks must never be drawn to "cash", except for the replenishment of petty cash;
- g) Checks must never be signed or countersigned in advance;

- h) Supporting documentation must be assembled before payment can be made. The documentation must include an approved purchase order, indication that the goods or services have been received in good condition, an invoice from the vendor, and approved check requisition. Sole source vendors and Travel vouchers may also be used to support a decision to pay;
 - i) Any adjustments must be within 10% of the Purchase order. If the invoice is not within 10%, it will not be entered and the requestor will be notified. The requestor is responsible for any adjustments that need to be made on the P.O.;
 - j) Duties shall be segregated to ensure that no one employee has complete control over the disbursement function; and
 - k) Financial institution statements shall be reconciled by an employee who has no duties relating to the receiving or disbursing of cash or the maintenance of cash records.
- 3) *Transfer of Funds Between Accounts and/or Investments* – The TOKA Finance Director shall ensure with the approval of the Executive Director the following:
- a) Examine the cash position recorded in the general ledger periodically (generally at least weekly) to determine the cash position of the TOKA; and
 - b) Determine if the cash balance is sufficient to cover on-going operations and expenditures. Duties include:
 - i. Determining whether cash is or is not sufficient. If cash is sufficient, deposit and invest in certificates of deposit or other financial instruments or place in a savings account. If cash is not sufficient, obtain cash from savings first or liquidate matured certificates of deposit; and
 - ii. Transferring of funds between accounts will be accomplished through secured electronic transfers. After each transfer an electronic confirmation will be printed and filed accordingly.
- 4) *Bank Reconciliation* – the Finance Director shall ensure that bank reconciliations are performed monthly and approved by the Executive Director by:
- a) Receiving monthly bank statements;
 - b) Ensuring all cash disbursements and cash receipts are recorded in the financial data base system; and
 - c) Reconciling the check register.

- 5) *Petty Cash Fund* - The Finance Director shall ensure petty cash is stored in a secure place and is used responsibly by complying to the following procedures:
 - a) Only one employee shall be responsible for, and have access to, the petty cash fund;
 - b) Collection funds must not be mingled with petty cash funds. Petty cash funds must be kept in a separate cash box. The employee responsible for petty cash shall lock the cash box and store it each night in a locked, fireproof container;
 - c) Disbursements from petty cash must be supported by petty cash vouchers and receipts. Checks issued to replenish the funds must be supported by vouchers and receipts;
 - d) The petty cash is reconciled monthly; and
 - e) Periodically make unannounced audits of the petty cash fund.

- 6) *LOCCS (Line of Credit Control System)* - Funds are derived through the LOCCS administered by HUD.
 - a) The Tohono O’odham Ki:Ki Association shall have two (2) types of secure system users: an approving official and an authorized user of the VRS (Voice Response System). The approving official is the Board of Directors Chairperson, and the authorized user is the Executive Director. The Tohono O’odham Ki:Ki Association shall add users if needed.
 - b) The Tohono O’odham Ki:Ki Association must designate a financial institution to receive the grant funds. The Tohono O’odham Ki:Ki Association shall have on file the form HUD-27054 Voice Response System Access Authorization that is notarized.
 - c) Disbursements of the TOKA funds for grant activities are tracked as actual expenditures against budgeted project or operational amounts.
 - d) The Finance Department monitors and reconciles actual expenditures toward grant activities and produces monthly, quarterly, and annual financial reports.
 - e) A LOCCS Request Voucher for Grant Payment (form HUD-27053) is completed when performing a drawdown. Drawdowns are based on actual expenditures toward grant activities. All forms HUD-27053 must be kept in a drawdown file.
 - f) Once the funds are released and deposited in the bank account, they shall be verified during the monthly bank reconciliations.
 - g) *Three-day Rule* - To avoid excessive cash being held by grantees, the amount of the drawdown shall not be more than needed to meet the disbursement requirements for a three-day period. Any cash

balances due to excessive drawdown shall be returned to HUD for deposit as soon as possible. The Tohono O’odham Ki:Ki Association may drawdown the previous quarterly expenses to avoid the three-day rule.

8. Payroll Procedures:

Payroll Shall Be Administered As Follows:

- A. Determine salaries and wages for each TOKA employee, along with the correct federal withholding rates based on their most current W-4 and the correct state-withholding rate based on their most current A-4 or WECI;
- B. Compute the appropriate deductions for federal and state taxes and other deductions;
- C. Prepare the payroll checks, indicating the gross pay and itemized deductions. Determine the projects to which payroll costs apply based on operating and capital budget allocations;
- D. Post payroll to the general ledger as follows:
 - 1) Date;
 - 2) Payee;
 - 3) Check number;
 - 4) Amount of checks (net payroll);
 - 5) Deductions; and
 - 6) Project column(s) for gross payroll.
- E. Remit taxes and deductions as appropriate;
- F. Submit payroll register to the Executive Director and/or designee for approval and distribute checks and direct deposits to employees;
- G. File copies of the payroll checks and supporting documentation by pay period; and
- H. Monthly bank reconciliations shall be performed.
- I. *Early Payroll Distribution* - An employee may request an early payroll distribution. The standards for such request will be set forth by the Finance Director and Executive Director, which may be amended. Requests must be approved by the employee’s immediate supervisor and Executive Director.

9. Homebuyer & Tenant Accounting Procedures:

A. *Monthly Billings* - Monthly billings are generated by HDS, and the following procedures are as follows:

- 1) Determine all rent or homeowner rent charges per tenant,
- 2) Determine all maintenance and miscellaneous charges per tenant,
- 3) Generate a monthly billing with all charges determined in #'s one and two as mentioned above, including any delinquencies from previous months, and
- 4) Mail billing statements for payments.

B. *Monthly Collections* - Monthly collections are recorded into HDS, and the following procedures are as follows

- 1) Tenant shall pay by cash or check;
- 2) The TOKA cashier shall enter the payment into HDS and generate a payment receipt and issue any change back to tenant;
- 3) The receipt must contain the same information as found under Chapter 2, Section 2.7, (c.), *Cash Flow Control*, above; and
- 4) Any Delinquencies will be addressed under Chapter 3, *Collections Policy*, below.

C. *Tenants Accounts Receivables (TARs)*:

- 1) Prepare accounts receivable balances in the same manner as monthly balances; and
- 2) Prepare a reconciliation of HDS and the general ledger ensuring tenants accounts receivable are recorded properly for audit purposes;
- 3) Send each homebuyer an annual statement showing the status of his or her reserve and receivable accounts; and
- 4) Review files for recertification requirements and compliance; and
- 5) Investigate any Tenant Receivables that reflect serious delinquency and make sure the *Collection Policies* are followed as outlined in Chapter 3 below.

10. New Development & Modernization Projects Accounting Procedures:

A. *Development & Modernization Phases*:

- 1) *Preliminary Planning Stage* - During this stage the development budget, site surveys and initial design work are prepared. Assign a project number to the project that reflects the project identifier, type of project, location and source of funding. Planning costs are charged to this project number. Phase codes for assigning costs should also be

developed at this time so that financial accounting software package can track costs against budget in a way that facilitates analysis of project % complete and variances.

- 2) *Development Budget Stage* - During this stage, the first development budget is prepared. The budget should reflect a cost for each unit being built or rehabbed. Use the existing HDS numbering for existing structures, and design the HDS scheme for numbering new units in this phase. In this way, costs can be tracked for purposes of comparing the AEL and DC&E for each unit. Costs are charged to work in process.
- 3) *Contract Award Stage* - During this stage, the TOKA solicits bids, awards the main construction contract and prepares a contract award development budget. Costs are charged to work in process.

B. *Development Cost Ledger:*

- 1) Using the Purchase Orders for encumbrances and Project numbers that carry meaningful identifiers, current expenditures, total expenditures, comparison with budgets and budget balances can be reported. Funding sources will also have an available balance. Phase codes and WIP account numbers will allow an analysis by cost type and description.
- 2) Contracts will be defined as sub-purchase orders, as will change orders. A complete Purchase Order (PO) number has a department identifier in the first position, a 4-digit PO number, a decimal point followed by a 2-digit number to indicate primary or sub-purchases (such as contracts or change orders). In this way, there can be a corresponding encumbrance to contracts that allow an analysis of the remaining balance.
- 3) A Preliminary Planning Cost Ledger or register should be maintained in the same manner as the Development Cost Ledger. The preliminary planning cost ledger then becomes the development cost subsidiary ledger.

11. Audits:

- A. An independent financial audit shall be performed annually.
- B. Bids should be solicited from at least three (3) accounting firms.
- C. The letter requesting bids should include the following information:

- 1) Description of projects, number of units and status,
- 2) Periods to be audited (from - to dates),
- 3) Desired start and completion date,
- 4) Name and address of accounting consultant and date of last audit, and
- 5) Compliance with Sarbanes-Oxley Act.

D. *Finance Director's Steps in Preparing an Audit:*

- 1) Make sure that the Board's minutes are up to date, filed, and signed;
- 2) Management policies are current with Board-passed resolutions;
- 3) Bank reconciliations have been conducted monthly and signed by individuals performing them;
- 4) Copies of all bids and contracts are filed and documented;
- 5) Checks have proper invoices attached;
- 6) The TOKA office is organized so the auditor may be able to easily locate documentation;
- 7) Cash receipts are properly filed;
- 8) The staff is cooperative with the auditor; and
- 9) *HUD/LOCCS Drawdowns* - Review all NAHASDA-required forms for the audit year and ensure that receipts and expenditures listed on forms for individual Grant years are appropriately reflected in the general ledger.

CHAPTER 2 – COLLECTIONS POLICY

1. Purpose:

This Policy has been adopted by the Tohono O’odham Ki:Ki Association (“TOKA”) and shall be applicable to all United States Department of Housing and Urban Development (“HUD”) assisted housing. It shall apply to all Participants of TOKA’s Homeownership & Rental Program pursuant to an executed Mutual Help and Occupancy Agreement (“MHOA”), Lease Purchase Homeownership Program Agreement, Pathway to Homeownership Agreement, Market Rental Agreement, Low-Rent Agreement, and Low Income Housing Tax Credit Project Rental Agreement (“LIHTC”), all of which are collectively referred to herein as a “Rent Agreement”.

The Policy addresses the manner in which Participants shall pay their required monthly rent payments and all other Rental Agreement charges, (collectively referred to herein as “Rent”) and sets forth penalties for late payment or non-payment of Rent. The Tohono O’odham Ki:Ki Association’s Collections Officer shall enforce this Policy in an equitable and non-discriminatory manner. This Policy may be inclusive of procedures contained within the TOKA Residential Department Policies & Procedures. In addition to the policies and procedures set forth herein with respect to the payment, nonpayment and collection of Rent, TOKA may also enforce its Landlord rights under any Rental Agreement in the event of any breach thereof by a Participant in accordance with and as otherwise set for in Title 18, Chapter 4, of the Tohono O’odham Housing Code, as amended and in effect (the “Nation’s Housing Code”).

This Policy is intended to achieve the following goals:

- A. Maintain Participants accounts receivable at an acceptable delinquency rate;
- B. Establish Rent collection procedures;
- C. Establish payment arrangements for hardship and past due Rent; and
- D. Establish a legal process for non-payment of Rent.
- E. Establish a collections policy for the Conveyed Insurance Program, the Homeowner Repair Loan Program, and the Veterans Affairs Supportive Housing Program.

2. Rent Amount:

- A. *Mutual Help Program Adjusted Income* - The MHOA requires that participating families pay 30 percent of adjusted income for the required Rent payment. The Rent payment must not be lower than the administration charge. The maximum payment shall not be less than the

sum of the administration charge and the monthly debt service amount shown on the homebuyer's purchase price. Adjusted income is calculated by deducting from the Participant's gross income allowable expenses, such as child care, travel expenses up to 25 miles, medical expenses for the elderly and disabled and expenses for dependents and elderly household members.

- B. *NAHASDA Homeownership Program Adjusted Income* – With respect to TOKA's Lease Purchase Homeownership Program and the Pathway to Homeownership Program housing units, developed under NAHASDA, families pay no more than 30 percent of adjusted income for the required rent payment.
- C. *Rental Programs* – Rent payments for families participating in the following Rental Programs may not exceed the maximum amount allowed under the applicable Rental Program laws and regulations or applicable TOKA policies, whichever is the case:
 - 1) Market Rental Agreement; and
 - 2) LIHTC Rental Agreement
- D. *Annual Income & Loss of Income* – Rental Program Participants must report their income annually so that a Participant's Rent payment amount may be determined. Participants may be eligible for Rent reduction if they suffer a loss of income or an increase in allowable expenses.
- E. *Failure of Annual Certification* - Participants who fail to complete an annual recertification pursuant to the TOKA's Residential Policies & Procedures, Chapter 2, Section 2.8, and Chapter 4, Section 4.10, shall be assessed the maximum Rent up to the amount allowed under the applicable Rental Program laws and regulations.

3. Assessed Rent Payments:

Payment Method & Locations:

- A. Rent payments shall be paid on the first day of each month. Payment can be made by cash, debit/credit card, automatic clearing house, payroll deductions, personal checks, cashier's checks or money orders made payable to: the Tohono O'odham Ki:Ki Association in Sells, Arizona, or it can be mailed to: Tohono O'odham Ki:Ki Association, P.O. Box 790, Sells, Arizona 85634.

- B. A Participant may make arrangements with his or her employer to have their rent payment deducted from his or her earnings. The employer shall identify and designate the Participant, his or her TOKA account number, house number, amount of payment, and shall be responsible for mailing the Rent payment to the TOKA. It shall be the Rental Program Participant's responsibility to immediately notify his or her employer of Rent payment changes based on an amended payment charge occurring from annual recertification.
- C. A charge of \$25.00 shall be assessed for returned personal checks for insufficient funds. The TOKA shall not accept personal checks from Participants whose check has been returned for insufficient funds for a period not to exceed two (2) years, and after demonstration of consecutive on-time monthly payments to TOKA for a minimum of one (1) year.
- D. The office is open Monday through Friday (except holidays), from 8:00 a.m. to 4:30 p.m. Payment received after 4:00 p.m. shall be posted the next business day.

4. Partial Payments:

Partial Rent payments may be accepted at the discretion of the TOKA, but such payments do not waive the Participant's obligation to make Rent payments in full and on a timely basis. In the event that TOKA agrees to accept a partial Rent payment, a Payback Agreement ("Delinquent Payment Agreement"), approved and executed by TOKA in its sole discretion, shall accompany such payment. The TOKA form 'Delinquent Payment Agreement' is attached hereto as Appendix 2.

5. Payment Grace Period & Delinquent Date:

Participants shall have up to the tenth (10th) calendar day of the month to pay Rent. Participants who fail to make full payment of Rent by 4:30 p.m., on the tenth (10th) calendar day of months or ten (10) calendar days following the first day of the month in a month-to-month tenancy, shall be considered delinquent (the "Delinquent Date").

6. Late Fee Charge of \$25.00:

Participants who fail to make full payment of Rent by 4:30 p.m., on the tenth (10th) calendar day of the month or ten (10) calendar days following the first

day of the month in a month-to-month tenancy, shall be charged a \$25.00 late fee. This late fee charge will go into effect January 1, 2020.

7. Delinquent Monthly Payments:

A. *Non-Payment* - Timely monthly payment of Rent is a requirement for continued occupancy under all TOKA Rental Programs and Rental Agreements. Non-payment of Rent is a serious and material violation and a breach of a Rental Agreement, and in such cases, a Notice of Delinquency shall be issued by TOKA, as provided below.

B. *Notice of Delinquency* (Appendix 1):

- 1) Shall be given to the Participant by the Collections Officer, on the Delinquent Date. The Notice shall be sent by regular mail;
- 2) Shall state the past due amount;
- 3) Participant shall request an appointment with a Collections Officer at the TOKA office before the end of the month to discuss the Rent payment delinquency and attempt to resolve the delinquency;
- 4) Shall demand full payment of the past Rent due. If the participant offers full payment at this time, payment shall be accepted, and no further action shall be taken.

C. If the delinquency balance is not resolved or a payment agreement is not executed, or the Participant fails to comply with the appointment request, the Executive Director shall issue a Notice of Intent to Terminate the Rental Agreement.

8. Delinquent Payment Agreement:

A. *Financial Hardship* - In extenuating circumstances involving financial hardship as determined by the TOKA's Residential Policy and Procedures, Chapter 4 Section 9. R. Suspension of Scheduled Rent Payment, Participants may enter into a payback agreement ("Delinquent Payment Agreement") extending the Rent payment period and the delinquent Rent payments.

B. *Conditions for Delinquent Payment Agreements* - The Executive Director may approve requests for a Delinquent Payment Agreement only if all the following conditions are met:

- 1) A Delinquent Payment Agreement is agreed to and executed by the Participant in the form required set forth herein (see, Appendix 2); and
- 2) The Participant has the resources and capability to pay, taking into account the delinquent Rent balance; and

- 3) The Participant presents evidence of inability to make full payment due to hardship; and
- 4) The Participant has not defaulted on a previous Delinquent Payment Agreement.
- 5) Participant shall be encouraged to apply for payroll deduction if their employer provides the service or sign up for automatic clearing house payment.

If the Participant fails to make one (1) payment under the terms of a Delinquent Payment Agreement, the Participant will be issued a Notice of Intent to Terminate. If payment is otherwise received, the account will continue on the terms of the Delinquent Payment Agreement until the Participant has fulfilled all obligations and made all payments required under the Delinquent Payment Agreement. (Appendix 2).

C. *Budget Counseling & Assistance:*

- 1) *Counseling* - Participants who need assistance with financial problems may contact their Residential Services Counselor/Residential Resource Coordinator for budget counseling and referral to community agencies.

9. Termination:

Notice of Intent to Terminate (Appendix 3):

- A. If the Participant does not comply with the Notice of Delinquency and does not dispute the past due Rent amount in writing or has not filed a grievance regarding the Notice of Delinquency, a Notice of Intent to Terminate shall be given to the Participant signed by the Executive Director. The Notice shall inform the Participant that his or her Rental Agreement shall be terminated, with in thirty (30) calendar days after receipt of the Notice of Intent to Terminate, for failure to pay Rent. The tenant must set a meeting with the Executive Director or Designee to resolve the delinquent Rent.

The Notice of Intent to Terminate shall be delivered to the Participant in accordance with § 4303 of the Nation's Housing Code.

- B. The Notice of Intent to Terminate shall provide that the Participant may, within fifteen (15) calendar days of the receipt of the Notice of Intent to Terminate, request a meeting with the Executive Director. The request for a meeting shall be made in writing or by a telephone call to the Executive Assistant to the Executive Director. The Participant may be represented or accompanied by a person of his or her choice, including legal counsel.
- C. The Participant shall be given written notice by certified mail or hand delivery or a telephone call of the meeting date and time, by certified mail

or hand delivery. The Participant may request, in writing or by a telephone call to the Executive Assistant, to the Executive Director or Designee, a continuance of the meeting, not less than forty-eight (48) hours prior to the meeting.

- D. At the meeting, the Participant may enter into a Final Payment Agreement.
- E. Failure to appear at the meeting shall result in the automatic termination of the Rental Agreement and will be issued a Notice to Vacate.

10. Final Payment Agreement

- A. *Conditions for Final Payment Agreements* - The Executive Director may approve requests for a Final Payment Agreement only if all the following conditions are met:
 - 1) A Final Payment Agreement is agreed to and executed by the Participant in the form required set forth herein (see, Appendix 5); and
 - 2) The Participant has the resources and capability to pay, taking into account the delinquent Rent balance.
- B. If the Participant fails to comply with any terms of the Final Payment Agreement, an automatic Notice to Vacate shall be issued.

11. Notice To Vacate (Appendix 4):

- A. When TOKA seeks to obtain possession of a dwelling unit, and when there is a legally valid reason to evict the Participant as set forth in § 4301 of the Nation's Housing Code, TOKA shall give a Notice to Vacate to the Participant and to quit possession of the Premises in accordance with the provisions set forth herein, the Participant shall not be provided any further opportunity to remedy the delinquency, and the TOKA shall not accept further Rent payment.
- B. If the Participant and all occupants of the rental unit fail to comply with the Notice To Vacate and refuse to voluntarily vacate the rental unit and property (the "Premises"), the matter shall be referred for eviction of the Participant and all occupants from the Premises through the courts of the Tohono O'odham Nation in accordance with Article 4 of the Nation's Housing Code.
- C. If the Participant and all occupants of the Premises voluntarily abandon the Premises in accordance with § 4207 of the Nation's Housing Code, no

court eviction action shall be necessary. However, TOKA reserves the right to initiate and pursue legal proceedings to otherwise collect any delinquent Rent payment amounts in accordance with paragraph 13.B below.

12. Rent Dispute & Grievance:

Participants who dispute the amount of Rent or other charges under a Rental Agreement may do so through the TOKA's Grievance Procedure as set forth in the TOKA Residential Policies & Procedures, Chapter 6, incorporated herein by reference. Copies of the Grievance Procedure are available at the TOKA Office. The Residential Service Counselor staff can assist Participants with informally settling the grievance or scheduling any subsequent hearing.

13. Eviction – Court Proceedings:

A. Eviction Complaint:

- 1) Upon the Participant's failure to comply with the demand to vacate the Premise pursuant to a Notice to Vacate, a Civil Complaint ("Complaint") shall be filed in the Judicial Court of the Tohono O'odham Nation (the "Court") in accordance with Title 4 of the Nation's Housing Code, seeking the payment of all delinquent Rent and the forcible eviction from the Premise of the Participant and all occupants thereof, in accordance with § 4413 of the Nation's Housing Code.
- 2) The Complaint shall be served upon the Participant in accordance with the rules of the court.
- 3) TOKA legal counsel may, at TOKA's direction and request, dismiss the Complaint if the Participant pays in full any delinquent balance plus any incurred legal fees before the date that a final Court judgement for eviction is entered by the Court. Consideration for reinstatement of the Participant's Rental Agreement shall be at the sole discretion of the Executive Director.
- 4) In the event of a Participant's nonpayment of all delinquent Rent, TOKA legal counsel shall request the Court enter a Court judgement ordering the Participant to pay the delinquent amount and to vacate the premise within five (5) business days. Counsel may also request the court to order the Participant to reimburse TOKA for its legal fees incurred in connection with the eviction proceeding and the collection of delinquent Rent.
- 5) Any order of eviction shall be by written order of the Court, and shall be delivered to the Participant in the manner set forth in § 4412 of the Nation's Housing Code.

- 6) Following forcible eviction of the Participant and/or occupants of the Premise, the former occupant's personal property shall be stored by TOKA for at least thirty (30) calendar days, either on the Premise or at another suitable location. In order to reclaim their property, the former occupant(s) of the Premise shall pay TOKA's reasonable costs of its removal and storage. If such costs are not paid within thirty (30) calendar days, TOKA is authorized to sell the property in order to recover its costs. Upon request by the former occupants, TOKA shall provide such occupants with pertinent information concerning the sale, including the time, date, and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to TOKA.

B. Payment Collection Complaint:

- 1) Where the Participant has a delinquent balance and has voluntarily vacated the Premise, TOKA, at its sole option and discretion, may initiate and/or otherwise continue legal proceedings to collect any delinquent Rent payment amounts.
- 2) The Tohono O'odham Ki:Ki Association shall attempt to obtain a judgment from the Court against a delinquent Participant, for any delinquent Rent payment balances and associated legal fees.
- 3) TOKA legal counsel, at TOKA's direction, discretion and approval, may settle a Complaint and/or Court judgement against a Participant upon agreement/settlement with the former Participant in connection with a Delinquent or Final Payment Agreement under such terms as may be acceptable by TOKA.

C. Eviction Expenses- The Tohono O'odham Ki:Ki Association reserves the right to pursue action for collection costs from Participants who are involuntarily evicted or who voluntarily vacate their Premise with a delinquent balance. The Tohono O'odham Ki:Ki Association shall utilize all available legal remedies for such collection action, in addition to sending it to an outside collection agency.

14. Bad Debt and Write off Process

A. Doubtful debts

- 1) Doubtful debts – means past due financial obligations/debts owed to TOKA (accounts receivable) by individuals or entities who are unable to fulfill their obligation to pay an outstanding debt due to personal or financial problems. When such a debt occurs it is prudent to add this debt or portion thereof to the doubtful debt reserve.

- 2) Doubtful debt reserve - Also known as a bad debt reserve, is a contra account listed within the current asset section of the balance sheet. The doubtful debt reserve holds a sum of money to allow a reduction in the accounts receivable ledger due to non-collection of debts. This can also be referred to as an allowance for bad debts. Once a doubtful debt becomes uncollectable, the amount shall be considered to be written off.
- 3) Allowance for bad debt - Allowance for bad debts are amounts expected to be uncollected, but still with possibilities of being collected.

B. Methods to account for bad debt

- 1) Allowance method (GAAP) - an estimate is made at the end of each fiscal year of the amount of bad debt. This is then accumulated in a provision which is then used to reduce specific receivable accounts as and when necessary. Because of the matching principle of accounting, revenues and expenses should be recorded in the period in which they are incurred. When a sale is made on account, revenue is recorded along with account receivable. Because there is an inherent risk that clients might default on payment, accounts receivable have to be recorded at net realizable value. The portion of the account receivable that is estimated to be not collectible is set aside in a contra-asset account called Allowance for doubtful accounts. At the end of each accounting cycle, adjusting entries are made to charge uncollectible receivable as expense. The actual amount of uncollectible receivable is written off as an expense from Allowance for doubtful accounts.
- 2) Direct write off method (Non-GAAP) - a receivable which is not considered collectible is charged directly to the income statement. The Low Income Housing Tax Credit Partnerships prefer using the direct write off method.

C. Bad debt expenses

- A. If TOKA used any IHBG NAHASDA funds in connection with the conveyance-eligible homes, TOKA may not charge the bad debt expenses to the IHBG program. Other than accounts receivable for bankrupt or deceased individuals and debts less than one (1) year old that are subject to third party payer rules which do not allow billing after a certain period of time, TOKA cannot write-off uncollectible accounts receivable before 6 years of collectability. **NOTE: TOKA, as a federal grant recipient, must use non-federal funds to fund any bad debt expense.**

D. *Process for bad debt*

- 1) Initiate and pursue collection of debt (written notice and demand for payment, Repayment Agreement, Tribal Court contract enforcement proceedings, etc.).
- 2) Prior to the end of TOKA's then - current fiscal year, accounts receivable older than one (1) year will be included on the account receivable list of doubtful/bad debt. Recognize allowance for bad debt.
- 3) The account receivable list of doubtful/bad debt may also include accounts receivable for bankrupt or deceased individuals and debts less than one (1) year old that are subject to third party payer rules which do not allow billing after a certain period of time. The list will provide information regarding the collection history of each potential doubtful/bad debt.
- 4) If deemed uncollectible (older than six (6) years old and no judgment has been issued by the Nation's Tribal Court), present list of uncollectible bad debts to TOKA Board of Directors, together with recommendation and request for write-off approval.
- 5) A copy of the minutes reflecting the TOKA Board of Directors' approval to write off bad debts shall be forwarded to the TOKA Finance Department to use for backup when removing bad debts from the accounts receivable balance. TOKA's Finance Department shall write off Board of Director-approved bad debts as an expense and use non-federal funds to fund bad debt expense.
- 6) TOKA's Finance Department shall file bad debt backup documentation so that information may be reviewed by TOKA management and/or auditors.

APPENDIX 1

RE: NOTICE OF DELINQUENCY

AZ 26-

Dear Ms. :

Prompt payment is a requirement of your Agreement for continued occupancy. Payments not received by the Tohono O’odham Ki:Ki Association (“TOKA”) office by the TENTH (10th) of each month are considered delinquent. **NOTICE:** Delinquent accounts will be charged a \$25.00 late fee effective January 1, 2020.

Your total delinquent balance is now \$_____. A demand is hereby made for payment in full of the delinquent balance.

You are **required to make an appointment with the Collections Officer before the end of the month** to remedy your delinquency. Please call 520-383-2202 to schedule your appointment.

If you have not complied with this Notice before the end of the month, the TOKA shall serve you with a Notice of Intent to Terminate your Agreement.

Sincerely,

TOHONO O’ODHAM KI:KI ASSOCIATION

Collection Officer

cc: Participant File

*****IMPORTANT NOTE: If you have cleared your balance with the TOKA prior to the receipt of this notice, PLEASE DISREGARD THIS NOTICE.**

APPENDIX 2

DELINQUENT PAYMENT AGREEMENT

This DELINQUENT PAYMENT AGREEMENT is made this _____ day of _____ 20____, by and between the Tohono O’odham Ki:Ki Association (“TOKA”) and Participant, _____.

WHEREAS, The TOKA and Participant entered into an agreement for the purchase/lease of a program home (the “Agreement”),

WHEREAS, The Participant had defaulted in the payment pursuant to their Agreement and has accrued delinquent payment balance, and

WHEREAS, The parties wish to settle this default and forego termination and eviction action.

In consideration of the mutual promises set forth herein, the parties agree as follows:

1. **Delinquent Payment.** Participant has failed to make the required monthly payment under the Agreement and has accrued a delinquent payment amount of \$_____ (“Delinquent Payment Amount”).
2. **Amount of Payment.** Participant shall pay \$_____ to the TOKA monthly, starting _____ and thereafter every month until balance is paid in full which shall be applied as follows \$_____ for monthly charge and \$_____ to the Delinquent Payment Amount of \$_____.
3. **Payment of Regular Monthly Payment.** Participant understands and agrees to pay the delinquent payment and the regular required monthly payment each month as long as there is a Delinquent Payment Amount.
4. **Effective Date.** Participant’s obligation to pay the Delinquent Payment Amount shall begin _____.
5. **Default.** If the Participant fails to make one (1) payment on or before the Payment Due Date or makes a partial payment, the Participant hereby waives all rights under the Delinquent Payment Agreement and the Participant will be issued a Notice of Intent to Terminate.
6. **Waiver of Termination and Eviction.** As long as the Participant is not in default of this Delinquent Payment Agreement and makes timely payments, as promised herein and does not otherwise violate other terms of the Agreement, the TOKA agrees not terminate the Agreement or seek eviction of the Participant.

7. **Terms of Agreement Effective.** All terms and provisions of the Agreement remain in full force and effect, and only the default provisions of the Agreement are hereby suspended pending the Participant's timely payment of the Delinquent Payment Amount, as herein specified.

TOHONO O'ODHAM KI: KI ASSOCIATION

Executive Director:

Participant:

Account No.

Date:

cc: FILE

APPENDIX 3

RE: NOTICE TO TERMINATE

AZ 26-

Dear Ms. _____ :

The Tohono O’odham Ki:Ki Association (“TOKA”) hereby serves notice that your Agreement for the use and occupancy of the above-referenced housing unit shall be terminated thirty (30) days after the receipt of this notice for failure to pay the required monthly rent payment and/or delinquent rent amount. The total amount owed is \$_____.

A NOTICE OF DELINQUENCY was served, and you have not complied with our demand for payment of the delinquent amount.

You may request a meeting with the Executive Director within fifteen (15) days after receipt of this Notice to respond to the termination. At this time, he or she will consider any evidence or testimony you wish to submit. You may be represented or accompanied by a person of your choice, including legal counsel.

If you are unable to attend the scheduled meeting, you are required to submit a written or telephonic request to reschedule the meeting within forty-eight (48) hours before the meeting date.

The final decision of the TOKA whether to rescind or extend this NOTICE TO TERMINATE or to affirm the termination of your Agreement shall be made by the Executive Director, in consultation with the Board of Directors, within ten (10) business days after the meeting.

Sincerely,

TOHONO O’ODHAM KI:KI ASSOCIATION

Executive Director

cc: Tenant File

*****IMPORTANT NOTE: If you have paid and cleared your balance with the TOKA prior to the receipt of this notice, PLEASE DISREGARD THIS NOTICE.**

APPENDIX 4

FINAL PAYMENT AGREEMENT

This FINAL PAYMENT AGREEMENT is made this _____ day of _____ 20____, by and between the Tohono O’odham Ki:Ki Association (“TOKA”) and Participant, _____.

WHEREAS, The TOKA and Participant entered into an Agreement for the purchase/lease of a program home,

WHEREAS, The Participant has defaulted in the payment obligations pursuant to their Agreement and has accrued a delinquent payment balance, and

WHEREAS, The parties wish to settle the Participant’s default under the Agreement and forego Agreement termination and an eviction action against the Participant.

In consideration of the Mutual promises set forth herein, the parties agree as follows:

8. **Delinquent Payment.** Participant has failed to make the required monthly payment under the Agreement and has accrued a delinquent payment amount of \$_____ (“Delinquent Payment Amount”).
9. **Amount of Payment.** Participant shall pay \$_____ to the TOKA monthly, starting _____ and thereafter every month until balance is paid in full which shall be applied as follows \$_____ for monthly charge and \$_____ to the Delinquent Payment Amount of \$_____.
10. **Payment of Regular Monthly Payment.** Participant understands and agrees to pay the delinquent payment and the regular required monthly payment each month as long as there is a Delinquent Payment Amount.
11. **Effective Date.** Participant’s obligation to pay the Delinquent Payment Amount shall begin _____.
12. **Default.** If the Participant fails to make one (1) payment upon the due date or makes a partial payment, the Participant hereby waives all rights under the Final Payment Agreement. Including grievance and the Final Payment Agreement shall be automatically terminated. The Participant shall surrender the premise and shall vacate the premise within five (5) calendar days after receipt of a Notice To Vacate from the TOKA.
13. **Waiver of Termination and Eviction.** As long as the Participant is not in default of this agreement and makes timely payments, as promised herein and does not

violate other terms of the Agreement, the TOKA agrees not terminate the Agreement or seek eviction of the Participant.

14. **Terms of Agreement Effective.** All terms and provisions of the Agreement remain effective, and only the default provisions are hereby suspended pending the Participant's payment of the Delinquent Payment Amount, as herein specified.

TOHONO O'ODHAM KI: KI ASSOCIATION

Executive Director:

Participant:

Account No:

Date:

cc: FILE

Certified Mail #

APPENDIX 5

RE: NOTICE TO VACATE

AZ

Dear Mr. :

Your Agreement has been terminated for failure to pay your monthly charge. You are hereby served Notice To Vacate the premises five (5) business days after the date this Notice is received.

If you do not comply with this Notice, a civil complaint will be filed in the Tohono O'odham Tribal Court for your eviction. In addition, the Tohono O'odham Ki:Ki Association will be asking for full payment of your outstanding balance of \$ _____ plus all court costs.

In order to avoid the court action, you must pay the unpaid balance in full and vacate the premises, as demanded herein.

Should you have any questions, please do not hesitate to contact the office during business hours.

Sincerely,

TOHONO O'ODHAM KI:KI ASSOCIATION

Executive Director

cc: Participant File

Certified Mail #

ATTENTION

**YOU HAVE BEEN HEREBY SERVED
NOTICE OF TERMINATION
EFFECTIVE TODAY**

You have 30 days to contact the
Tohono O’odham Ki:Ki Association Office
Attempts were made to hand deliver Termination Notice
to you on:

A Certified letter was sent to you thru postal mail on:

Served By Collections

Date

ATTENTION

YOU HAVE BEEN HEREBY SERVED
NOTICE TO VACATE
EFFECTIVE TODAY

You have 5 days to vacate

Attempts were made to hand deliver Vacate Notice to you
on:

Certified letter was sent to you thru postal mail on:

Served By

Date

Witnessed By

Date

CHAPTER 3 - DISPOSITION & DEMOLITION POLICY & PROCEDURES

1. Purpose:

It is the intent of this policy to ensure that the Tohono O’odham Ki:Ki Association (“TOKA”) has sensible, flexible, and Housing and Urban Development (“HUD”) compliant Disposition and Demolition Policy and Procedures.

2. Disposal of Property & Supplies:

The Tohono O’odham Ki:Ki Association may undertake disposals or sale of excess property (personal property and equipment) and supplies pursuant to the applicable management and disposition stipulations contained in 24 CFR 85.23. The 24 CFR 85.23 regulations stipulate:

- A. Items of equipment with a current per-unit fair market value less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency.
- B. Items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained or sold, and the awarding agency shall have the right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency’s share of the equipment.
- C. When acquiring replacement equipment, the grantee or sub-grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.
- D. If the grantee or sub-grantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- E. Under 24 CFR 1000.26(a)(8) where NAHASDA funded activities are stated, the proceeds from the sale of equipment shall always result in program income. Program income can be retained by the TOKA and utilized for other affordable housing activities.

3. Board Approval:

- A. The Board of Directors of the TOKA must approve in writing any sale, destruction, abandonment, or donation of any property or supplies, by the TOKA, with an estimated sales value of \$5,000 or more. A record of the disposition, of the property will be kept by the TOKA as per the TOKA’s *Record Retention Policy*.
- B. The Executive Director shall make every effort to dispose of excess property and supplies as outlined above. However, if the excess property

or supplies have no scrap or salvage value, and a purchaser cannot be found, the Executive Director shall document this and dispose of the property or supplies as appropriate.

4. Disposal or Demolition of Housing Units:

A. *The Tohono O’odham Ki:Ki Association may undertake a planned demolition or disposal of current assisted housing units owned by the TOKA in the following circumstances;*

- 1) *Cost Effective* - A financial analysis demonstrates that it is more cost effective or housing program effective to demolish or dispose of the housing unit than to continue to operate or own it;
- 2) *Condemnation* - The housing unit has been condemned by the governmental entity, which has jurisdiction and authority over the housing unit (Refer to Maintenance Section 4, Chapter 6, *Destruction of Dwelling Units*);
- 3) *Threat to Health & Safety* - The housing unit is an imminent threat to the health and safety of housing residence; and
- 4) *Cultural or Historical Reasons* - Continued habitation of a housing unit is inadvisable due to cultural or historical considerations.

B. *Notice to HUD:*

- 1) No action to demolish or dispose of housing units can be taken until HUD has been notified in writing of the intent to demolish or dispose of the housing units.
- 2) Written notice must set forth the analysis used to justify the decision to demolish or dispose of the housing unit.

C. *Obligations with Respect to BIA Master Lease, District Land, &/or Allotment Assignments:*

In the event of a disposition or demolition, the TOKA will work to release or relieve itself from any legal obligations with respect to any applicable BIA Master Lease, District Lease, and/or Allotments.

CHAPTER 4 – INVENTORY POLICY

1. Purpose:

The purpose of this policy is to promote consistency and accuracy in the recording of TOKA's inventory, and to ensure that TOKA's inventory is properly safeguarded.

2. Inventory:

A. General:

Property acquired by the Tohono O'odham Ki:Ki Association ("TOKA") through use of any type of funds, including but not limited to Indian Housing Block Grant funds or other HUD program funds, must be in compliance with HUD regulations. Property acquired by funding sources other than HUD shall be according to specifications of the TOKA or funding source.

- 1) The Tohono O'odham Ki:Ki Association's officers and employees shall maintain and adhere to inventory policies, processes, and procedures to ensure:
 - a) Maintenance of effective control and accountability for all real and personal property and other assets;
 - b) Adequate safeguard of all such property; and
 - c) Assurance that such property is used solely for authorized purposes.
- 2) The Finance Director shall have primary responsibility for setting inventory policy and criteria, which includes disposition of items, subject to the approval of the Executive Director.

B. *Schedule of Inventory for Capitalized Property, Real Property, Equipment & Supplies:*

- 1) The Tohono O'odham Ki:Ki Association shall, at all times, maintain the Schedule of Inventory for all housing stock and personal property owned or under the control of the TOKA with a value exceeding \$5,000. Assets that have a useful life greater than one year and has a book value of \$5,000 or greater is considered a Capital Asset. The Schedule of Inventory shall include:
 - a) A description of the property,
 - b) The serial number,

- c) The purchase date, and
 - d) The purchase price.
- 2) The Tohono O’odham Ki:Ki Association shall perform a complete physical inventory on an annual basis to coincide with the fiscal year end.
 - 3) If the inventory discloses that items of equipment have been lost, stolen, or destroyed, the Executive Director will obtain all relevant information for each case and determine:
 - a) The person involved in the loss, theft or destruction is to be relieved of that responsibility.
 - b) If the person involved is determined to be a TOKA employee or a Board member, he or she will be required to reimburse to the TOKA a determined amount if that person is responsible for the loss. At the TOKA’s discretion, the reimbursement may be withheld from a person’s paycheck, provided that the amount does not exceed one hundred dollars (\$100) per pay period.
 - c) If the person involved is an employee, and it is determined that the loss is due to theft, the employee may be subject to disciplinary action up to termination, in accordance with the TOKA’s *Human Resources Policies & Procedures*.
 - 4) If the person responsible is not an employee, Human Resources will turn over the information the Tohono O’odham Police Department (“TOPD”) immediately, and legal action will be taken.

C. *Schedule of Inventory for Tools & Information Technology:*

- 1) The Tohono O’odham Ki:Ki Association shall, at all times, maintain the Schedule of Inventory for all tools and information technology owned or under the control of the TOKA with a value exceeding fifty dollars (\$50). The Schedule will include: the description of property and identification number.
- 2) The Tohono O’odham Ki:Ki Association shall perform a complete physical inventory on an annual basis. If the inventory discloses that items equipment have been lost, stolen, or destroyed, the Executive Director will obtain all relevant information for each case, following the above mentioned procedures.

- 3) If the person responsible is not an employee, the information will be turned over to the Tohono O’odham Police Department (“TOPD”) immediately, and legal action will be taken.

CHAPTER 5 – INVESTMENT POLICY

1. Purpose:

The purpose of this Policy is to establish an investment policy for sound investment of NAHASDA funds and program income as allowed under the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”). This Policy sets forth guidelines for authorized investments for the purpose of carrying out affordable housing activities under NAHASDA and provides procedures to ensure that the Tohono O’odham Ki:Ki Association (“TOKA”) has the administrative controls to responsibly manage investment of NAHASDA funds and program income.

2. Definitions:

- A. *HUD* – United States department of Housing & Urban Development.
- B. *ONAP* – United States Department of Housing & Urban Development, Office of Native American Programs.
- C. *Self-Governance Tribe* – For purposes of this notice, a self-governance Indian Tribe is an Indian Tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450, et seq.).
- D. *Significant & Material Audit Findings* – For purposes of this Notice, a significant or material finding is one that: (1) identifies a material weakness in financial or accounting controls; or (2) a finding of substantial financial mismanagement or misapplication of funds that has not been resolved; or (3) has any questioned costs for HUD Programs which were subsequently disallowed which total five (5) percent or more of the total expenditures for HUD Programs identified in the audit.

3. Investment Requirements:

- A. *Investment Requirements* - The Executive Director and Chief Financial officer shall prepare and present to the Board of Directors for approval plans or application for investment of NAHASDA funds, together with all required and/or supporting documentation.
- B. *Administrative Capacity & Controls* - Prior to any investment decision, the Executive Director shall ensure that the TOKA has the administrative capacity and controls to responsibly manage the investment and is in compliance with the following:

- 1) There are no unresolved significant and material audit findings or exceptions in the most recent independent financial audit prepared in accordance with generally accepted auditing principles;
 - 2) The financial management systems comply with 24 CFR § 85.20. This includes accurate, current and complete financial reporting, adequate accounting records, effective internal controls, budget control and reasonable procedures for cash management; and
 - 3) There are no outstanding findings as a result of a HUD audit or review (including Inspector General Audits) that affects the administrative capacity and controls to responsibly manage the investment.
- C. *Maturity Schedule* - Investments shall not be for a period longer than two (2) years. The Executive Director shall schedule the proposed investments to mature on the approximate dates the funds will be needed and that investment maturity dates do not exceed two (2) years.
- D. *Internal Controls* - The Executive Director and Chief Financial Officer shall implement the following internal controls to assist in controlling investments and preventing loss or misuse:
- 1) Investment transactions shall be authorized by the Board of Directors by resolution and documented in the Board minutes;
 - 2) Investment documents shall be kept in a safe fire-resistant locked file cabinet, safe deposit box, or other similarly secured location;
 - 3) Individuals responsible for custody of securities shall be someone other than an individual maintaining the accounting records;
 - 4) Investments shall be maintained in a custodian or trust account;
 - 5) Investments shall be in the name of the TOKA;
 - 6) Investments shall be recorded in detail in an investment ledger;
 - 7) A system shall be in place to insure that all interest earned is collected and credited to the appropriate TOKA records;
 - 8) Investments shall be reconciled periodically to the detailed record (investment ledger); and
 - 9) The Board of Directors shall be provided a monthly investment report.

4. Determination of Investment Type:

- A. *Safety and Optimum Return* - The determination for the best or appropriate types and mixtures of investments is dependent on several factors. The primary objective is safety. Once that objective is attained, the optimum return on the investment should be consistent with the goals of the TOKA cash management program.

B. *Investment Factors* - The factors that should be taken into consideration include the following:

- 1) *Safety* - Safety is achieved through adherence to the list of permitted investments which are backed by the full faith and credit of, or a guarantee of principal and interest by, the U.S. Government, a Government agency, or issued by a Government –sponsored agency, coupled with an appropriate maturity date.
- 2) *Yield* – The Tohono O’odham Ki:Ki Association should strive to achieve the highest yield consistent with the other factors of the investment policy. Tax-exempt securities are not appropriate for investment because TOKA would not benefit from the tax advantage.
- 3) *Liquidity* - All investments must be capable of being liquidated on one day’s notice. Therefore, no investments may be made which impose a longer notice period for redemption or which are not readily marketable.
- 4) *Maturity* - Investments should be scheduled to mature when the funds are needed and shall not exceed two (2) years. Sale of securities prior to maturity should be avoided due to the inherent risk. (If the market interest rate increases above the yield of the investment, the market value of the securities will decline). Investments shall be limited to securities maturing in periods of up to two (2) years or such lesser period that coincides with the expected disbursements by the TOKA.
- 5) *Amount* - The best or most appropriate type of investment depends, to some degree, on the amount available for investment because certain investments require a large initial amount.
- 6) *Administrative Cost* - The administrative work involved shall be considered particularly with regard to investments of short duration. Substantial amounts can be invested for periods as short as one or two days. However, the administrative costs with small amounts may be greater than the return of the investment, thus would not be justified or cost effective. Administrative costs will be higher with a more frequent turnover of investments and must be taken into account together with the yield and term in determining the optimum investment strategy.

5. Eligible Investment Instruments:

- A. *Authorization* - In compliance with 24 CFR § 1000.58 (c), TOKA shall invest NAHASDA funds only in obligations of the Federal Government or accounts insured by an agency of the Federal Government.
- B. *Obligations of the Federal Government* - These include director obligations of the United States; obligations issued by government-sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or
- C. *Accounts Insured by Federal Government Agency* - These include accounts that are insured by an agency or instrumentality of the United States or accounts that ensure the continuous and full collateralization of deposits that are in excess of FDIC insurance amounts to ensure protection of the funds, even in the event of bank failure. Collateralization shall consist of identifiable U.S. Government securities as prescribed by HUD and specific authority contained in the agreement permitting HUD to exercise its rights pursuant to 24 CFR § 1000.60.

6. Banking Services:

- A. *Depository Agreement* - NAHASDA funds shall be held in one or more accounts separate from other funds of the TOKA. The Chief Financial Officer shall insure that each of these accounts shall be subject to a general depository agreement. The depository must be a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).
- B. *Collateralization of Deposits* - All deposits regardless of type that are in excess of the FDIC insured amount shall be continuously and fully secured. The pledging or setting aside collateral of identifiable U.S. Government securities may accomplish this. The depository shall own such securities and the manner of collateralization shall provide the TOKA with a continuing perfected security interest for the full term of the deposit in the collateral in accordance with applicable laws and Federal regulations. Such collateral shall, at all times, have a market value at least equal to the amount of the deposits so secured.

7. Non-NAHASDA Funds, Non-Program Income and Other Unrestricted TOKA Funds:

The purpose of this Policy is to:

- A. establish an investment policy for sound investment of TOKA's non-NAHASDA funds, non-program income and any other unrestricted TOKA funds or assets (hereinafter referred to collectively as the "Unrestricted Funds");
- B. set forth guidelines for authorized investments of such Unrestricted Funds for the purpose of carrying out TOKA's housing activities as the Tribally Designated Housing Entity ("TDHE") of the Tohono O'odham Nation; and
- C. provide procedures to ensure that TOKA has the administrative controls to responsibly manage investment of the Unrestricted Funds. Additionally, as it relates to such Unrestricted Funds, this Policy is to:
 - 1) Define TOKA's investment objectives and its tolerance for risk;
 - 2) Describe TOKA financial objectives;
 - 3) Serve as a plan that allows sufficient flexibility in the management process to capture investment opportunities, while giving parameters to ensure prudence and care in the execution of the TOKA's investment objective;
 - 4) Describe investment guidelines for TOKA's Investment Manager(s) (each of whom is referred to herein as a "Manager");
 - 5) Specify standards to be used in monitoring TOKA's investment performance; and
 - 6) Establish duties of the TOKA Board of Directors, TOKA's Chief Financial Officer and Manager(s) with respect to the investment of such funds.

In the absence of the creation of an TOKA Investment Committee, the TOKA Board of Directors will have responsibility for investment of TOKA's Unrestricted Funds as outlined herein and, in such circumstances, any references herein to the "Investment Committee" shall be deemed to refer to the "Board of Directors". In addition, the Unrestricted Funds shall be held in one or more accounts separate from other restricted funds of the TOKA.

8. Role of TOKA Executive Director

The TOKA Executive Director will have the following responsibilities for/over the Unrestricted Funds (generally, the TOKA Executive Director will make recommendations that must be approved by the TOKA Board of Directors:

- A. Recommend to the Board from time to time a target asset allocation for each asset class of investments ("Asset Class") of the such funds and for the other unrestricted TOKA assets within the range set forth for such Asset Class as set forth on Exhibit A to this Policy;

- B. Determine the level of risk acceptable for TOKA and any other portfolio of assets and for each Manager;
- C. Identify and make recommendations to the Board with respect to the hiring of one or more Managers;
- D. Regularly review the investment performance of the Unrestricted Funds and any other unrestricted TOKA assets, as well as the individual performance of each Manager and thereafter make recommendations to the Board for the termination of any Manager(s);
- E. Comply with TOKA's policies and procedures with regard to conflicts of interest and sign a "Conflict of Interest Statement". Any member of the Investment Committee who has a conflict of interest with respect to any investment or other matter upon which the Board will be voting will excuse himself or herself from any vote on such investment or matter; and
- F. Take such other actions as may be identified for the Investment Committee in this Policy.

9. Investment Objectives

- A. *Primary Objective* - The primary investment objective of the Unrestricted Funds is to achieve a reasonable total return on the invested assets over the long-term (with maturity dates of up to 10 years) expressed in inflation-adjusted (real) dollars. Total return is to be measured as both income from dividends and interest and realized and unrealized appreciation.
- B. *Level of Risk* - The Investment Committee and each Manager should assume a level of risk consistent with the foregoing investment objective. Unnecessary levels of total risk are to be avoided, and diversification, insofar as it reduces portfolio risk, is encouraged. Specific long-term investment objectives of TOKA are:
 - 1) Preservation of capital in real terms over the long-term;
 - 2) Achievement of an annual real rate of return of 3% over inflation (CPI) while assuming a moderate level of risk; and
 - 3) Provision of sufficient liquidity to meet the current operating needs and spending requirements of TOKA.
- C. *Board Designated Funds* - For those Unrestricted Funds that are Board designated funds to be used for specific purposes within a specific time period, the investment objective is to maximize the total return on such assets while preserving the corpus and providing for the required liquidity.

A minimal level of risk should be assumed for the investment of these assets.

10. Spending Policy

- A. *Limit* - Unless otherwise restricted by the terms of a grant, no more than 5% of the “value” of the invested Unrestricted Funds may be distributed in any year for funding of TOKA housing projects or operations, unless otherwise determined and approved by a two-thirds majority of the Board upon the recommendation of TOKA's Executive Director. The “value” of the invested Unrestricted Funds shall be the average of the investment fund's value at the end of each of the prior 8 calendar quarters. Funds for spending may be taken from current income of such fund or from the appreciation in the value of the principal. Although not optimal, it is understood that spending may, over time, reduce the real value of the invested fund's corpus.
- B. *Board Designated Funds* - For Unrestricted Funds that are Board designated funds that will be used for a specific purpose within a specific time period; there is no limit on the amount that can be spent in any given year. Funds for spending may be taken from current income from these assets or the principal amount of the assets.

11. Investment Managers

- A. *Selection* - It is the intent that professional investment management organizations (firms that are registered advisors under the Investment Act of 1940 or appropriately exempt from registration) shall be retained. This would include primarily mutual fund companies, but may include independent money-management firms, insurance companies, and bank trust departments. The Managers will be preliminarily selected in accordance with TOKA's procurement policies and procedures and then recommended to the Board of Directors for approval, as applicable. In selecting Managers, it is expected that TOKA will examine, among other items, the investment philosophy, performance, education, experience, and licensing of each Manager, and the resources and operational capability of each Manager. A Manager may be selected to manage a single asset class or multiple asset classes. Tactical investment decisions as to individual security selection, position size, industry exposures, and turnover are the responsibility of the Managers, subject to specific guidelines or restrictions established by the Investment Committee from time to time.
- B. *Investment Manager Guidelines* - The general guidelines which apply to all Managers are:

- 1) Purchases and sales, security selection, and portfolio implementation of investment strategies are delegated to the discretion of the Manager, subject to compliance by such Manager with this Investment Policy and any other directions given to such Manager by TOKA from time to time.
- 2) The following transactions are prohibited without the written consent of the Board of Directors: private placements; letter stocks; short sales; margin transactions; or other specialized investment activities. Investments in, private equity/venture capital funds are prohibited.
- 3) Any transaction that involves a broker acting as a “principal” where such broker is also the Manager who is executing the transaction is prohibited.
- 4) Transactions shall be executed at a reasonable cost, taking into consideration prevailing market conditions and services and research provided by the executing broker.
- 5) Proxy voting is delegated to the Manager.
- 6) Cash and Cash Equivalents - Outside of liquidity requirements, cash should be utilized solely as a residual investment if there are times when attractive stock or bond purchases could not be made. Based on the time horizon of the investment portfolio, it is highly unlikely that cash should exceed the proposed target level of allocation for any reasonable period of time.
- 7) U.S. Equities - The Investment Committee will give each Manager responsibility for stock selection and diversification, subject to (a) a restriction that such Manager may not commit more than 10% of such Manager's portfolio market value to any individual security, and (b) a restriction that such Manager may not commit more than 50% of such Manager's portfolio value to any industry sector, based upon cost. Diversification will be employed by security, industry, and sector.
- 8) Fixed Income - Individual fixed income securities purchased for the portfolio shall have an investment grade rating of BBB/Baa or better from Moody's, Standard & Poor's, or an equivalent rating service. Limited exposure to high yield fixed income through purchase of mutual or fixed income funds may be purchased upon recommendation by TOKA's Financial Advisor and upon approval of TOKA's Chief Financial Officer. For an issue with a split rating, the higher quality designation shall govern. In the event of a downgrade below BBB/Baa after the time of purchase, the security may be sold at the sole discretion of the Manager at the earliest beneficial

opportunity. Convertible bonds may be purchased. A Manager may not make a fixed income purchase which would cause a holding to exceed 5% of the issue outstanding. In addition, no more than 40% of a Manager's portfolio shall be invested in the securities of any single issuer with the exception of the United States Government and its agencies and instrumentalities.

- 9) Use of Mutual Funds – The Investment Committee acknowledges that it may not be cost effective or provide sufficient diversification to purchase individual securities in any of the asset classes. Therefore, the Manager may satisfy its investment obligations through mutual funds or index funds.

12. Asset Allocation

A. *Factors* - The allocation of assets among various asset classes shall be recommended by the TOKA Chief Financial Officer and approved by the Board. The asset allocation shall be within the range set forth for such Asset Class as set forth on Exhibit A to this Policy and predicated on the following factors:

- 1) The historic investment returns (including income) of the major asset classes: real assets, equities, fixed income and cash equivalents, adjusted for inflation.
- 2) The correlation of returns among these asset classes.
- 3) The perception of future economic conditions, including the various global economies, inflation, currency exchange rates, and interest rate assumptions.
- 4) The continuing relative growth of Non-U.S. economies and investment opportunities.
- 5) Funds selected will have documented track records in terms of return and risk taken, and documented investment objectives and strategies. All funds must have readily ascertainable market values and be easily marketable. The Board does not intend to invest directly in precious metals, or other assets traded in illiquid markets. Direct commodity trading, including all futures' contracts, and option trading are prohibited (except for hedging current investments).

B. *Liquidity* - The Board realizes that patience is required and allowing managers the full three-to-five year market cycle may be necessary to achieve the expected rate of return. Notwithstanding this time horizon and subject to any applicable maturity dates of investments, the Board reserves

the right to liquidate any Unrestricted Funds investment account and reinvest the proceeds at its discretion. The Board also recognizes that financial markets may, for meaningful spans, not support attainment of its long-term goals. During such periods, progress towards attainment of these goals will be evaluated.

- C. *TOKA Chief Financial Officer Allocation Responsibility* - The TOKA Chief Financial Officer has the responsibility to review target asset allocations for the invested funds and any other portfolio of investments at least twice a year and make any recommended changes to the Board. Exhibit A sets forth the current Asset Classes for investment and the range of exposure to each Asset Class for each portfolio. In addition, the TOKA Chief Financial Officer will have the responsibility for directing each Manager and for review of the portfolios on a monthly basis.

13. Rebalancing and Cash Flows

The TOKA Chief Financial Officer will give such directions to Managers as may be appropriate at least annually in order to rebalance the invested funds to the target asset allocations previously established for each such portfolio. Significant movements in the markets or the inflow of significant new assets may require that the TOKA Chief Financial Officer rebalance such portfolios more often.

14. Performance Benchmarks

The invested Unrestricted Funds must be managed in accordance with and be reported based on Global Investment Performance Standards (“GIPS”), with the exception of cash, money market funds and Certificates of Deposit held at a commercial bank. Furthermore, the TOKA Chief Financial Officer will determine the return on investment of the invested funds portfolio on an annual basis and compare the return to TOKA's objective of earning at least 3% (real) annually over inflation (CPI). In addition, the TOKA Chief Financial Officer shall from time to time set the GIPS for each asset class.

15. Reporting and Oversight

- A. *Annual Review* - The Board of Directors will meet with the TOKA Chief Financial Officer at least semi-annually to review the allocation of the assets, the return on investment of the Unrestricted Funds portfolio, the performance of each Manager, the spending needs of TOKA, and the inflow of any significant new assets. More frequent meetings will be conducted as necessary during especially challenging market environments or to address special projects.

- B. *Manager Monthly Reports* - Each Manager shall provide the TOKA Chief Financial Officer, as of the end of each month, a report describing the portfolio's asset class weightings, individual security positions showing both cost and market value, all transactions, including all buys and sells, and realized and unrealized capital gains and losses. In addition, any Manager is required to inform the TOKA Chief Financial Officer of any change in firm ownership, organizational structure, key professional personnel, fundamental investment philosophy, or any event likely to affect materially their management, professionalism, integrity or financial position. The TOKA Chief Financial Officer shall update the Board semi-annually on the investments account's performance.

16. Revisions

The Board and the TOKA Chief Financial Officer shall review the guidelines for Managers set forth herein at least annually. The Board reserves the right to revise or amend the investment policies set forth herein and the Investment Manager Guidelines at anytime.

APPENDIX A

TOHONO O'ODHAM KI:KI ASSOCIATION

ASSET ALLOCATION GUIDELINES FOR UNRESTRICTED FUNDS

<u>Asset Class:</u>	<u>Not to Exceed:</u>	<u>TOKA's Target Allocation:</u>
Cash	100%	3%-20%
Core Fixed Income	75%	25%-50%
Equities	50%	25%-50%
International Equities	27%	0%-27%
Real Estate Investment Trusts	10%	0%-10%
Real Estate	10%	0%-10%
Hedge Funds	10%	0%-10%
Private Equity	0%	0%
Mutual Funds	as may be recommended or as may be a component of other asset classes above and subject to the respective percentage amounts	

CHAPTER 6 – PROCUREMENT POLICIES & PROCEDURES

This Procurement Policy ("Policy") complies with the Native American Housing Assistance and Self Determination Act of 1996 ("NAHASDA"), as amended, and the implementing regulations at 24 CFR 1000, 24 CFR 1003, and the procurement standards of 2 CFR 200.

1. **Policy Statement:**

The Board of the Tohono O’odham Ki:Ki Association ("TOKA") recognizes the fact that it is necessary to procure all supplies, materials, equipment and contracted services, in order to effectively administer the Tohono O’odham Nation’s housing programs and that such activities be conducted in conformance with the Native American Housing Assistance and Self- Determination Act and any other applicable federal, state, local, or tribal laws or regulations along with any other TOKA requirements.

The Board appoints and delegates procurement authority and administration to the Executive Director or designee. The authorization of a designee must be in writing from the Executive Director. The Executive Director is responsible for the execution and administration of all the TOKA contracts. The Executive Director or designee shall be responsible for the procurement of all supplies, materials, equipment, and/or contracted service. The execution of such responsibility shall be in the best interest of the TOKA and in the conformance with the TOKA’s policy and procedures.

This Policy and any later changes shall be submitted to the Board for approval. The Board is responsible for ensuring that policies to be adopted are appropriate for the TOKA. It is the TOKA’s policy to resolve all contractual issues informally at the TOKA level, without litigation. The TOKA shall to the greatest extent feasible provide preference to Indian-owned economic enterprises and Indian organizations.

2. **Purpose:**

The purpose of this Policy is to: (1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the TOKA; (2) assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the TOKA; (3) promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and (4) assure that the TOKA’s purchasing actions are in full compliance with applicable federal standards and regulations along with any applicable tribal, state and/or local laws.

The policies set forth herein, are provided as procedural guidance only and confer no rights upon individual TOKA employees or third parties.

3. Definitions:

- A. *Bidder Prequalification* - means a prospective bidder or offeror that satisfies the criteria for being included on the bidding list as determined by rules adopted based on this Policy.
- B. *Business* - means any corporation, partnership, limited liability company, limited liability partnership, individual, sole proprietorship, joint venture or other private legal entity.
- C. *Contract* - means all types of TOKA agreements, regardless of what they may be called, for the procurement of materials, services or construction or the disposal of materials.
- D. *Contract Modification* - means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
- E. *Contracting Officer* - means the person responsible for all procurement transactions who also administers and executes contracts. The Contracting Officer shall be the Executive Director or a designee. The authorization of a designee must be in writing from the Executive Director.
- F. *Contractor* - means any person who has a contract with the TOKA.
- G. *Data* - means documented information regardless of form or characteristics.
- H. *Day(s)* - means business days. (Except as noted)
- I. *De Minimis Purchase* – means the purchase of goods and services valued up to \$5,000 under the existing statutory *de minimis* procurement exemption in section 203(g) of the Native American Housing Assistance and Self-Determination Act of 1996, 25 USC § 4133(g).
- J. *Designee* - means an authorized representative, designated in writing, by the TOKA Executive Director.
- K. *Employee* - means an individual classified as an employee by the TOKA Human Resources Policy and Procedure.
- L. *Executive Director* - means the Executive Director of the TOKA who is responsible for all TOKA operations.
- M. *Invitation for Bids* - means all documents, whether attached or incorporated by reference, which are used for the solicitation of bids in accordance with the procedures.
- N. *Materials* - means all property, including equipment, construction items and supplies.

- O. *Micro-Purchase Threshold*¹ – means the dollar amount, as established by TOKA in accordance with 2 C.F.R. § 200.320(a)(1) and Section 4.b. of these Policies, up to which TOKA may purchase property or services using Micro-Purchase methods. Non-Federal entities, like TOKA, adopt micro-purchase procedures in order to expedite the purchase of items costing less than the Micro-Purchase Threshold. The Micro-Purchase Threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and is adjusted periodically for inflation.
- P. *Person* - means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- Q. *Procurement* - means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- R. *Request for Information* - means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
- S. *Request for Proposal/Bid/Qualifications* - means all documents which are used for soliciting proposals/bids/ *qualifications* in accordance with this Policy.
- T. *Responsible Bidder or Offeror* - means a person who has the capability to perform the contract requirements and the integrity and reliability to assure good faith performance.
- U. *Responsive Bidder or Offeror* - means a person who submits a bid or offer that conforms in all material aspects to the invitation for bids or request for proposals.
- V. *Services* - means the furnishing of labor, time, or effort by a contractor or subcontractor as stated in the provisions of the contract for services. Services do not include employment agreements, collective bargaining or union agreements.

¹ In accordance with the Office of Management and Budget (OMB) Final Guidance issued on August 13, 2020, revising sections of OMB’s Guidance for Grants and Agreements, and as set forth in HUD Notice PIH 2023-01, issued January 19, 2023 ("Notice PIH 2023-01"), 2 C.F.R. § 200.320(a)(1) was revised to allow non-Federal Entities (including Tribes and TDHEs) to establish a micro-purchase threshold up to \$50,000 based on certain conditions, as set forth in 2 C.F.R. § 200.320(a)(1) and Section 4.b. of these Policies, which include maintaining necessary records and self-certification of compliance in accordance with 2 C.F.R. § 200.334 and 24 C.F.R. § 1000.552 to be made available to ONAP and auditors upon request.

- W. *Simplified Acquisition Threshold* – means the dollar amount below which a non-Federal entity may purchase property or services using Small Purchase methods. Non-Federal entities adopt Small Purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold. The Simplified Acquisition Threshold for Small Purchases is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and is adjusted periodically for inflation.
- X. *Subcontractor* - means a person who contracts to perform work or render services to a contractor as defined by this section or another subcontractor as a part of a contract with the TOKA.

4. **Application:**

The Procurement Policy ("Policy") enacted herein supersedes and rescinds all previous procurement policies and procedures and is the official Procurement Policy of the TOKA. It is intended to standardize procurement procedures and shall be reviewed periodically to assure compliance with guidelines established by the Tohono O'odham Nation, United States Department of Housing and Urban Development ("HUD") and Native American Housing Assistance and Self Determination ("NAHASDA") Act of 1996.

- A. Per 2 CFR 200.318(a), TOKA, as a non-Federal entity, must use its own documented procurement procedures which reflect applicable tribal, state and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. Therefore, this Policy applies to all contracts for the procurement of supplies, services, and construction entered into by TOKA after the effective date of this Policy. It shall apply to every expenditure of funds by TOKA for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent TOKA from complying with the terms and conditions of any grant, contract, gift, or bequest that are otherwise consistent with applicable law.

The Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the TOKA after the adoption of funds, including contracts, which do not involve an obligation of funds; however, nothing in the Policy shall prevent the TOKA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with applicable law.

- B. Per 2 C.F.R. § 200.320(a)(1), and as set forth in HUD Notice PIH 2023-01, TOKA may establish and self-certify a Micro-Purchase Threshold amount of up to \$50,000.00, by self-certifying a threshold amount up to \$50,000.00 on an **annual** basis.

The TOKA Micro-Purchase Threshold is \$19,999.99. TOKA must maintain documentation of the annual self-certification of Micro Purchases in accordance with 2 C.F.R. § 200.334 and 24 C.F.R. § 1000.552 (the "Annual Self-Certification") to be made available to ONAP and auditors upon request. Under 2 C.F.R. § 200.320(a)(1)(iv), the Annual Self-Certification must include the following elements (the "Annual Self-Certification Requirements"):

- 1) Clear identification of the threshold amount;
- 2) Justification for the threshold amount; and
- 3) Supporting documentation of any of the following:
 - a) A qualification as a low-risk auditee, in accordance with the criteria in 2 C.F.R. § 200.520 for TOKA's most recent audit; or
 - b) An annual internal institutional risk assessment described below to identify, mitigate, and manage financial risks.

NOTE: In accordance with the Single Audit Act, single audits or programmatic audits are required for any recipient that expends \$750,000 or more in Federal funds during its fiscal year. A qualification as a low-risk auditee, in accordance with the criteria in 2 C.F.R. § 200.520, on TOKA's most recent audit may support the self-certification. Recipients expending less than \$750,000 are not subject to the Single Audit Act and may consider performing and documenting annual internal institutional risk assessments to identify, mitigate, and manage financial risks as support for the self-certification. To conduct an internal institutional risk assessment that supports a Micro-Purchase Threshold up to \$19,999.99, TOKA must use and maintain all of the recipient versions of ONAP's Monitoring Plans as (i) provided on Code Talk, and (ii) attached to HUD Notice PIH 2023. A Micro-Purchase Threshold higher than \$50,000 must be requested in letter format and approved in writing by ONAP. In such event, TOKA must submit any such request that includes the Self Certification Requirements set forth above to the Area ONAP for approval. Any increase of the Micro-Purchase Threshold above \$10,000 is valid until there is a change in status in which the justification was approved. For example, a change in status would result from a subsequent audit that shows an auditee is no longer considered low risk.

- C. When both federal and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Policy must be applied to the work and materials financed by HUD; if it is not possible to separate the funds, the provisions of this Policy shall be applied to the total project. 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 materials, supplies and equipment.

- D. The TOKA Board delegates the authority for procurement to the Executive Director. Purchase requisitions of more than the Micro-Purchase Threshold must be submitted to the Board for review and approval. A resolution shall be used to certify the Board's approval of the purchase requisition.

5. Retention of Procurement Records:

In accordance with 2 CFR 200.334 and 24 CFR 1000.552, all financial and programmatic records, supporting documents, and statistical records are required to be retained for a period of three (3) years after the completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later. A separate vendor file for each procurement action shall be maintained for quick reference and/or review.

6. Procurement Authority & Administration:

The Initiating Officer, who shall be the Executive Director or another TOKA employee authorized by the Executive Director, in writing, shall administer all procurement transactions.

The Executive Director or his or her designee shall ensure that:

- A. Purchases utilizing the Requisition form and Purchase Order form for *open Purchase Order accounts* shall be restricted to staff designated by the Executive Director or his or her designee;
- B. Any (1) De Minimis Purchase, and (2) Micro Purchase up to \$19,999.99, shall be approved prior to such purchase by the responsible department manager;
- C. Any Micro Purchase over \$10,000 and up to the Micro-Purchase Threshold, as determined by TOKA from time to time (up to \$19,999.99 in any fiscal year that TOKA has met the Annual Self-Certification Requirements set forth herein), utilizing a Purchase Order form, shall be approved prior to such purchase by the Executive Director or his/her designee;
- D. Procurement activities should be coordinated with the performance objectives described in the TOKA's Indian Housing Plan ("IHP") to assure efficient and economical purchasing;
- D. Procurement contracts and modifications shall be in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including, at a minimum, the method of procurement chosen, the selection of

the contract type, the rationale for selecting or rejecting offers, and for Small Purchase procurements in excess of the Simplified Acquisition Threshold, a price or cost analysis supporting the basis for the contract price;

- E. For procurements in excess of the Simplified Acquisition Threshold, 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 thirty (30) days (Calendar) for major construction contracts and fifteen (15) days (Calendar) (*or other time period if required by state or local law*) for other contract types are provided for the preparation and submission of bids or proposals; and notice of contract award is made available to the public;
- F. Solicitation procedures are conducted in full compliance with federal standards stated at 2 CFR 200.320 and the Indian Preference requirements at 24 CFR 1000.52;
- G. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the Small Purchase limitation; and a cost or price analysis is conducted for each of the responses received for all procurements;
- H. Contract award is made to the responsive and responsible bidder offering the lowest price, consistent with Indian Preference requirements (*for sealed bid contracts*); or contract award is made to the offeror whose proposal offers the greatest value to the TOKA, considering price, technical qualifications, and other factors as specified in the solicitation, including Indian Preference (*for contracts awarded based on competitive proposals*); unsuccessful firms are notified within ten (10) days of the contract award;
- I. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (*including change orders*); work is inspected before payment; and payment is made promptly for contract work is performed and accepted;
- J. A contract administration system is maintained and performed to insure 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; and
- K. Effective monitoring of the contractor's performance is conducted.

7. Indian Preference and Section 3 of the HUD Act of 1968:

- A. Indian Preference:
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 in excess of the De Minimis Purchase amount funded with NAHASDA funds. In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA. In the absence of tribal employment and contract preference laws, TOKA shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.

- 1) All preferences shall be publicly announced in the IFB and RFP and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, TOKA shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years after the end of the program year during which the funds were expended.
- 2) Contractors applying for eligibility for Indian preference shall submit the following:
 - a) Evidence showing that the majority ownership of the firm (51% or greater) consists of one or more persons who are members of a federally recognized Indian tribe. A certificate of Indian blood or census card from each owner will suffice.
 - b) Evidence showing that the owners claiming tribal membership are actively involved in the management of the firm and participate proportionately in the profits. A statement from the owners will suffice.
 - c) 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.
- 3) If TOKA or its prime contractor determines an applicant ineligible for Indian preference, TOKA or the prime contractor shall notify the applicant in writing before contract award.
- 4) Solicitation notices shall include the following information:
 - a) TOKA shall incorporate the following clause (referred to as the section 7(b) clause) in each solicitation and included in all contracts and subcontracts, as follows:

- i. 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: (1) preference and opportunities for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian organizations or Indian-owned economic enterprises.
 - ii. The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.
 - iii. 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.
 - iv. 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 TOKA or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.
- b) A statement as to whether TOKA maintains lists of Indian owned economic enterprises and Indian organizations by trade specialty that are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
 - c) A statement that requires contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions;
 - d) A statement that requires TOKA to submit a list of core crew employees, if available, and that contractors are required to provide preference to the greatest extent feasible by hiring qualified Indians in all positions.
- 5) Methods of Providing Indian Preference:
- a) **For purchases below the De Minimis Purchase amount**, per 24 CFR 1000.52(d), the TOKA is not required to use Indian Preferences.
 - b) **For (i) purchases above the De Minimis Purchase amount but below the Micro-Purchase Threshold, and (ii)**

purchases above the Micro-Purchase Threshold but below the Small Purchase Simplified Acquisition Threshold, TOKA 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, TOKA must include as part of its documentation a statement explaining the reasons for lack of Indian participation. As an alternative, TOKA's solicitation may be unrestricted to allow both non-Indian and qualified Indian-owned economic enterprises or organizations to submit quotes and an award shall be made to the qualified Indian-owned economic enterprises or organizations with the lowest responsive quote, if the quote is within ten percent (10%) of the lowest non-Indian quote and the price is determined reasonable. If no responsive quotation by a qualified Indian-owned economic enterprises or organizations is within ten percent (10%) of the lowest non-Indian quote, award shall be made to the source with the lowest quote. An optional method of providing Native Preference, the "X- Factor", is provided below.

- c) **For sealed bids,** TOKA 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, TOKA may select any one of the methods below, as follows:
- i. 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
 - ii. Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or
 - iii. Use a two-stage preference procedure, as follows:

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.

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

An optional method of providing Native Preference, the "X- Factor", is provided below.

d) **For competitive proposals**, TOKA 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, TOKA may select any one of the methods below, as follows:

- i. 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 set aside for Indian preference (or at TOKA's option, in lieu of providing Indian preference, the application of the "X-Factor," as provided below, for qualified Indian owned economic enterprises or organizations) as one of the evaluating factors to consider other than price; or
- ii. Restrict the solicitation to qualified Indian-owned economic enterprises or organizations; or
- iii. Use a two-stage preference procedure, as follows:

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

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

e) If TOKA selects a method of providing preference, in b. or c. above, that results in fewer than two (2) responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable cost, then TOKA shall:

- i. Re-advertise the contract using any of the methods described above at b. or c. for sealed bids and competitive proposals respectively; or

- ii. 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, TOKA 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
- iii. If one approvable bid or proposal is received, TOKA may request ONAP review and approval of the proposed contract and related justification and procurement documentation in accordance with 2 CFR 200.320(f)(3).

f) **Monitoring and Remedies.** TOKA 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 TOKA for lack of participation shall be documented in the procurement file.

6) X Factor & X Factor Chart:

In accordance with this Procurement Policy and NAHASDA regulations (*24 CFR 1000.52*), awards shall be unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within 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 qualified bidder. The "X" factor is determined as follows:

X FACTOR CHART	
X = Lesser of:	
When the lowest responsive bid less than \$100,000	10 % of that bid or \$9000
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 \$25,000
At least \$500,000 but less than \$1 million	5% of that bid or \$40,000
At least \$1 million but less than \$2 million	4% of that bid or \$60,000
At least \$2 million but less than \$4 million	3% of that bid or \$80,000
At least \$4 million but less than \$7 million	2% of that bid or \$150,000
\$7 million and over	1% of the lowest responsive bid

7) Restricted Solicitations:

If the solicitation is restricted to qualified Indian owned economic enterprises and organizations, and two (2) or more (*or a greater number determined by the TOKA and stated in the invitation*) 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 state, tribal, or local law. If fewer than the minimum number of qualified Indian owned economic enterprises or an organization submits responsive bids, all bids shall be rejected, and the TOKA shall cancel the solicitation. The TOKA may accept a single bid received from a responsible bidder, subject to HUD approval, in unusual circumstances, such as if the TOKA determines that, based on a cost or price analysis, the bid price is fair and reasonable, or the TOKA determines that the delay of re-soliciting would subject the project to higher costs.

8) Unrestricted Solicitations:

If the TOKA is not able to award a contract based on the procedures

described in the previous section, in accordance with 24 CFR 1000.52 (b)(2), the TOKA shall re-advertise the contract inviting bids from non-Indians as well as Indian owned economic enterprises or organizations.

9) Verification:

In accordance with 24 CFR 1000.52 (e), the TOKA may require information from prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises.

10) Complaints:

Complaints arising from any of the methods the TOKA utilizes to implement Indian preference shall be conducted in accordance with the procedures described at 24 CFR 1000.54.

B. Section 3 of the HUD Act of 1968:

- 1) TOKA shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.
- 2) Per 24 CFR 1000.42(c), TOKA is considered to be meeting the Section 3 requirements through its and its contractors and subcontractors compliance with employment and contract preference laws adopted by the Tohono O'odham Nation in accordance with Section 101(k) of NAHASDA.

8. Procurement Process:

A. *General Principle:*

To save cost and to ensure the purchase of the highest-quality goods and services from the most responsive responsible bidder or offeror, the TOKA shall, prior to procurement, determine:

- 1) The need for a particular item or service,
- 2) The availability of funds for the purchase of goods or services,
- 3) The precise nature of the good or service required to satisfy the need,

- 4) Alternative ways of obtaining the item of service,
- 5) Cost and price,
- 6) The method of procurement to be used, and
- 7) If, applicable, the role of HUD in the purchase,
- 8) The quality of the goods or services,
- 9) The value and benefit of expediency, and
- 10) The purchase of the goods or services is budgeted.

B. *Check for Unnecessary or Duplicative Items:*

The TOKA shall avoid the purchase of unnecessary or duplicative items by:

- 1) Checking inventories to see if the item is needed;
- 2) Waiting to buy items in a general, consolidated procurement or considering breaking out or buying only needed products, depending upon which method is more economical; and
- 3) Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

C. *Procurement Initiation & Process:*

Procurement activities and procurement obligations are initiated by the execution of a Purchase Requisition form, Check Request or Request for Contract. The detail of each is described as follows:

- 1) The Purchase Requisition forms and Purchase Orders are the primary source documents to initiate the procurement process for the purchase of goods and services less than the Small Purchase Simplified Acquisition Threshold of \$250,000.
- 2) The Check Request is used primarily for the purposes of fulfilling "*Open*" Purchase Order; an "*Open*" Contract or a procurement activity that has been initiated to fulfill "*one-time*" special needs procurement or in the case where a vendor will not accept a Purchase Order.
 - a) The Request for Contract may be used for contracting purposes when a Purchase Order is inappropriate for the type of procurement that is being used. An issued Purchase order will accompany the contract.

Process Example:

PROCUREMENT PROCESS:

- i) Originator Purchase Request,
- ii) Purchasing Specialist – Logs in purchase request and obtains quotes or the Originator may submit quotes for review,
- iii) Send Quotes to Originator for Approval, (If needed)
- iv) Purchasing Creates Purchase Order and Obtains Purchase Signatures, and
- v) Approved Purchase Orders Will Be Emailed to Vendor/Originator & Warehouse.

D. *Preparations of Work Orders:*

Work Orders will be prepared in accordance with internal procedures. They are to be typed or neatly hand-written. Purchase Orders may be written against the approved Work Order and shall reference the project number assigned.

E. *Requisition Form Initiates Purchase Orders:*

- 1) Requisition forms will be typed or neatly hand-written and submitted five (5) workdays in advance to the Finance Office. The Finance Office, after approving the funding for the requisition, shall submit the approved Requisition form to the Procurement Office at least three (3) workdays in advance.
- 2) Requisition forms missing any of the information requested will be returned to the department initiating the request. The request will not be processed until all relevant information has been included on the form. All Requisition forms must be signed by the requestor and the requestor's department manager. The documents will list in detail:
 - a) The items to be purchased,
 - b) The quantity of items to be purchased,
 - c) The vendor's name and the vendor's contact information,
 - d) The timeframe in which the materials are needed,

- e) The correct project number and the IHBG (*year*) the material is to be charged to shall be assigned by the Finance Office,
 - f) The name and signature of the person responsible for department (*department manager*), and
 - g) The name and signature of the person responsible for initiating the Requisition form.
 - h) The department manager may authorize an employee within the department to sign the purchase requisition in the department managers' absence. The department manager must submit a written authorization for that employee to sign on his/her behalf. The authorization letter will only be valid for two weeks or less. The authorization must be specific to the purchase of items and date timeline.
- 3) Only the Procurement Office is authorized to purchase goods. The Executive Director may assign a staff member as a designee. The designation shall be in writing, by the Executive Director, and the authorized staff members shall be forwarded a copy of such designation.
 - 4) Vendors shall be notified that if they accept and process a Purchase Order from unauthorized personnel, the purchase order shall be invalid.

F. *Purchase Order Preparation:*

- 1) Purchase Orders may be used for vendors that have an established account with the TOKA or an "Open Purchase Order." Purchase Orders shall be issued by authorized staff for those supplies, materials, tools or equipment that are not available through the TOKA Warehouse inventory.
- 2) Regardless of the dollar amount, single purchases for which an emergency or a sole source exception is made, the Purchaser shall obtain the signed approval of the Executive Director or designee on the Purchase Order. The Procurement Office shall prepare a memorandum, which documents the emergency or special circumstances. The memo shall be signed by the Executive Director and attached to the Purchase Order. If the contract is federally funded, the vendor must comply with payroll reporting requirements when labor is involved (*as described below*). It is the responsibility of the Initiating Office and/or Procurement Office to obtain the required

documentation from the contractor before payment is made for the goods or services.

- 3) The Purchase Order will be generated electronically, sequentially pre-numbered and properly labeled with the billing information for the TOKA. Copies of the Purchase Order shall be distributed to Finance/Accounts Payable (*original*), Warehouse/Central Receiving, Procurement Office, and Vendor's copy will be faxed, mailed or emailed to the vendor.
- 4) The Purchase Order shall identify the account code and/or Project Number that has been assigned by the Finance Office.
- 5) The Purchase Order shall contain the information that identify the following:
 - a) The date of purchase,
 - b) The project number,
 - c) The vendor name,
 - d) The vendor contact information and mailing address,
 - e) The quantity of item(s) being purchased under this Purchase Order,
 - f) The description of item(s) being purchased,
 - g) The unit price of item(s) being purchased,
 - h) The extended price of item(s) being purchased,
 - i) The proper coding,
 - j) The listing or any special instructions, such as delivery address, date and/or time delivery is expected (*if necessary*), and
 - k) Required authorized signatures and dates.

9. Procurement Amounts & Approval Process:

- A. De Minimis Purchases under \$5,000 and Micro Purchases up to \$19,999.99 may be submitted to the Procurement Office by authorized personnel (*i.e., department managers*) only. The department manager may authorize an employee within the department to sign the purchase order in the Department Managers absence. The department manager must submit a written authorization for that employee to sign on his/her behalf. The authorization

letter will only be valid for two (2) weeks or less. The authorization must be specific to the purchase of items and date timeline.

- B. Micro Purchases of \$10,000 but less than \$20,000.00 shall be approved and authorized by the Executive Director or designee; and
- C. Board of Directors. An approved Board resolution will accompany the Purchase order for any procurement of \$20,000.00 and greater.

Amount of Purchase	Authorized by Department Personnel & Executive Director or designee	Authorized by Executive Director or designee	Authorized by Executive Director and Board of Directors
\$1 - \$9,999.99	•		
\$10,000 - \$19,999.99	•	•	
\$20,000 - & Over			•

D. The Purchase Order is used as the primary contract document for contracts, material(s) and supply purchase(s) under the Micro-Purchase Threshold in effect on the date of such purchase. At all times, the TOKA procedures for informal solicitations shall be followed. For all purchases of \$100,000 or more, a Purchase Order shall be assigned to a contract. Note the following information:

- 1) Procurements that are expected to be \$5,000 or more and include labor may be prepared utilizing a Request for Contract document, a Purchase Order, and shall be administered by the TOKA Procurement Office and/or Manager for the Requestor Department.
- 2) Procurements that are more than the Micro-Purchase Threshold in effect on the date of such purchase, but less than the Small Purchase Simplified Acquisition Threshold of \$250,000, ***and*** do not include labor shall be prepared utilizing the TOKA information solicitations Invitation For Bids ("IFB") or Request For Proposals ("RFP") format, and shall be coordinated through the TOKA Procurement Office and assigned a Purchase Order.
- 3) For the procurement of professional services (*i.e., consultant, design professional, etc.*) the primary contract document shall be a professional services contract executed between the professional and the TOKA. A Purchase Order for a professional services agreement must be approved by the Executive Director (*less than the Micro-Purchase Threshold in effect on the date of such procurement*). If the professional services agreement is greater than the Micro-Purchase

Threshold in effect on the date of such procurement, the agreement shall require the Board's approval and a resolution certifying the approval.

10. Procedures:

A. *Purchase Orders: \$1 & less than \$5,000 (De Minimis Purchases):*

- 1) *Procurement Office* - The Procurement Office shall ensure that the Requisition form and Purchase Order for all procurement is in compliance with procedures listed below:
 - a) The Requisition form and Purchase Order will be filled out legibly by hand, typewritten, or computer generated;
 - b) All information pertinent to the purchase shall be identified on the Requisition form and Purchase Order;
 - c) All purchase descriptions shall detail the supplies/materials or services that are being purchased;
 - d) All individual prices are noted and all prices are extended and totaled;
 - e) Proper coding has been noted;
 - f) All other copies forwarded as described above or on the Requisition and Purchase Order; and
 - g) If there are any attachments to the Requisition form or Purchase Order, ensure copies of the attachment accompany all copies of the Purchase Order.
- 2) Requisition forms and Purchase Orders, numbered sequentially, shall be stored in a safe and secure location until assigned. The Procurement Office shall maintain an electronic Purchase Order Log Report identifying which numbered Purchase Orders are given to which employee.
- 3) It shall be the responsibility of each department to maintain a log of the Purchase Orders received and to whom they are assigned or to which vendors they have been issued.
- 4) Purchases of more than \$5,000 and up to \$19,999.99 may be awarded without soliciting competitive quotations and only one price quote is required, provided the quote is considered reasonable based on research, experience, purchase history or other information and maintain the associated documents to support this approach within the

recipient files per 2 CFR 200.404. Quotes may be obtained orally (*either in person or by telephone*), by catalog, fax, or e-mail. If the purchase is made for reason other than price, the file must clearly describe the reason for the purchase. Under no circumstances will a purchase be broken down into more than one action in order to meet the Micro Purchase threshold. The Micro Purchase must be documented by an authorized purchase order or contract. To the extent practicable, TOKA must distribute micro-purchases equitably among qualified suppliers.

- 5) Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under small purchases apply.
- 6) Indian preference not required per 24 CFR 1000.52(d).

B. *Purchase Orders \$5,001 or More But Less Than the Micro-Purchase of \$19,999.99:*

The Purchase Order Preparations in Section 6.8.F, which shall be used for all procurement activities.

- 1) *Procurement Office* - The Procurement Office shall ensure that all procurement is in compliance with the policies and procedures found in this document. The Procurement Office shall perform the procedures cited in this Section 6.10.
- 2) *Procedures Performed by the Finance Office* - The Finance Office shall perform the procedures below.

C. *Purchase Orders more than the Micro-Purchase Threshold in effect on the date of such purchase But Less Than \$250,000 (Small Purchase - 2 CFR § 200.67 - Simplified Acquisition Threshold):*

- 1) *Procurement Office* - The Procurement Office shall ensure that all procurement information is correct and in compliance with the Purchase Order Preparations cited in Section 6.8.F.
- 2) *Executive Director's or Designee's Responsibilities* - The Executive Director or designee, in conjunction with the Procurement Office, shall perform the following procedures:
 - a) Review all Requisitions and Purchase Orders for completeness, accuracy and ensure procurement activity is in compliance; and

- b) Submit procurement information to Executive Assistant for inclusion into the Board packet. All contracts/purchases more than the Micro-Purchase Threshold in effect on the date of such purchase shall be approved by the Board and certified by resolution.

D. *Finance Department Responsibilities:*

The Finance Officer shall perform the following procedures:

- 1) Check the departmental budget and year-to-date expenditures to verify that funds are available to pay for the purchase by reviewing all outstanding Purchase Orders, expenditures, and comparing the purchase amount to the remaining budgeted funds;
- 2) Submit the Purchase Requisition form to the Procurement Office;
- 3) Verify or assign program and general ledger code;
- 4) If the purchase price exceeds the available budget, return the Requisition form to the initiation department, note on the Requisition form that funds are not available in the budget to process the purchase request. Inform the Executive Director or designee of the action taken.
- 5) If the purchase is for non-expendable, capitalized equipment (\$5,000+); the Finance Office shall identify the capital equipment on both the original and the copy of the receiving document. Warehouse/Central Receiving personnel shall ensure a pre-numbered TOKA decal or barcode label is issued to the recipient of the item. It shall be the responsibility of Central Receiving personnel and the recipient to ensure the decal is affixed to the piece of equipment in such a manner as to prohibit removal by unauthorized personnel.
- 6) Upon receipt of the Finance copy of the Purchase Order and the vendor's original receipt, the Account Payables Office shall ensure that the items are correctly charged against the specific account or ID number for which the items were purchased. Purchases less than \$5,000 shall be expensed against the proper account(s); purchases \$5,000 or more shall be encumbered against the proper account(s). Items purchased for re-stocking the inventory at the warehouse shall be charged to the general ledger account for such purchases.

E. *Central Receiving Personnel Responsibilities:*

- 1) Upon receipt of the goods, the receiver shall sign and date the vendor's delivery receipt or packing slip only after verifying quantity and condition of the goods received from the Purchase Order. Upon preparation, the receiver should forward the original and the signed

copy of the vendor's delivery receipt, and Back Order Receipt (*if applicable*) to the Finance Office. A duplicate copy of the vendor's delivery receipt or packing slip should be attached to the Purchase Order and filed.

- 2) *Over-Order Quantity* - If the shipment contains more products than specified in the Purchase Order, the over shipment will be returned to the vendor at the vendor's expense.
- 3) *Partial Shipments* - In the event of a partial shipment, the Purchase Order will be marked with the received quantity and the date by line item. A copy of the Purchase Order will be made, marked as a "*Partial Shipment*," including Back Order Receipt and forwarded to the Finance Office. The vendor's delivery receipt will be filed with the Purchase Order and Back Order Receipt. This process will continue until all goods are received or the order is canceled. If the order is canceled, the original request should be forwarded to the Finance Office.

F. *Accounts Payable Office Responsibilities:*

- 1) Upon receipt of the vendor's delivery receipt, the document shall be filed with the Purchase Order, and Back Order Receipt, if applicable, in the "*Open Purchase Order*" file (*if the invoice has not been received*) or the "*Vouchers to be Paid*" filed (*when the invoice, purchase order, and vendor's delivery receipt have been matched*). **NOTE:** The Central Receiving personnel shall match the packing slip or shipping receipt to the purchase order and vendor's invoice.
- 2) Upon receipt of the invoice, the Accounts Payable personnel shall attach the invoice to the check requisition. If the purchase order, invoice, and vendor's delivery receipt match, the Accounts Payable personnel shall prepare a check in accordance with current vendor terms. An invoice shall not be paid without a matching vendor's delivery receipt and purchase order.
- 3) *Special Circumstances* - Contracts with Labor Costs for federally funded labor contracts, a release from the Procurement Office is required to pay for a contractor billing. If progress payments are made to the vendor, then a "*fee to retain*" shall be withheld in accordance with the procedures for federally funded labor contracts.
- 4) *Final Distribution* - The documents shall be distributed as follows: The payment voucher, which consists of the invoice, purchase request form, purchase order, vendor's delivery receipt and check copy, shall be alphabetically filed by vendor name in the Account Payable office. The originating department shall file a copy of the request, purchase order and vendor's delivery receipt in the departmental vendor files.

G. *Executive Director or Designee Responsibilities:*

The Executive Director or designee shall review the Purchase Order for completeness and compliance with procurement procedures. The Executive Director or designee should then approve the Purchase Order by signing and dating it. After approval, the Purchase Order will be forwarded to the Procurement Office for further processing.

11. Cost & Price Analysis:

A. *General:*

A cost or price analysis shall be performed for all procurement actions in excess of the Small Purchase Simplified Acquisition Threshold of \$250,000, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement action. TOKA shall perform an independent cost or price estimate prior to receiving bids or proposals. A cost or price analysis may also be required for smaller purchases at the discretion of TOKA. The method of analysis shall be determined based on the criteria listed below:

Submission of Cost or Pricing Information:

- 1) A cost analysis shall be conducted for all competitive proposals (e.g., when contracting for professional, consulting, or architect/engineer services), for all noncompetitive proposals and when adequate price competition is lacking. The analysis shall be for sole source procurements, including contract modifications or change orders. Price reasonableness can be established on the basis of a catalog or market price of a commercial product sold to the general public or based on prices set by law or regulation. A price analysis shall be used to determine the reasonableness of the proposed contract price.
- 2) The TOKA shall negotiate profit as a separate element of the price for each contract in which there is not price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, contractor's investment, amount of subcontracting, quality of the contractor's record of past performance and industry profit rates in the surrounding geographical area for similar work.
- 3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal costs principles. Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

- 4) The cost-plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- 5) A comparison of prices shall be used in all cases other than those described in cost analysis above.
- 6) A price analysis shall be conducted on any sealed bid prior to awarding a contract. TOKA shall perform a comparability of prices received in relation to the independent cost estimate, to ensure the price is reasonable and within funds budgeted.

12. Procurement Methods:

A. *Selection of Method:*

The TOKA shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement and the available vendors. TOKA shall provide a rationale in its supporting documentation as to why it selected that particular method. In accordance with 2 CFR § 200.320, any procurement not exceeding the Simplified Acquisition Threshold of \$250,000 in the aggregate may be conducted in accordance with the small purchase procedures described in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under these policies and procedures.

B. *Definitions:*

- 1) *Single Purchases:* Single purchases for the purpose of this policy and procedure shall be considered to mean the total cost of one or more similar items to be obtained at any one time from a single source and listed on a single source and listed on a single purchase order.
- 2) *Services:* Contractual services for the purpose of these policies and procedures shall be considered to mean any purchase, which requires the contractor to employ labor to perform the work on the site of any property owned or controlled by the TOKA, including personal services of a technical or professional nature. Service contracts should not be confused with contracts involving labor, which are reportable to the Department of Labor (*federally funded labor contracts*).

13. Micro Purchases:

- ### **A. *General.***
- Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold in effect on the date of such purchase (§200.67 Micro-purchase). Any procurement not exceeding the Micro-Purchase Threshold in effect on the date of such purchase may be conducted in accordance with the Micro-Purchase procedures authorized in this section. A lower dollar amount

may be used if desired or required to conform to tribal law. Contract requirements shall not be artificially divided so as to constitute a micro-purchase under this section, except as may be reasonably necessary in instances where breaking out such procurements can be shown to result in more economical purchases.

- B. *Indian preference.* Required per 24 CFR 1000.52(d).
- C. *Petty Cash Purchases.* Petty cash purchases should be kept to a minimum, since purchasing in limiting quantities does not provide for the best price and all administrative requirements under Small Purchases apply.
- D. *Obtaining Quotes.* To the extent practicable, the tribe/TDHE must distribute Micro-Purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable per 2 CFR 200.404. The employee requesting quotations shall document the following information for the quotations received:
 - 1) The name of the business including contact information (*i.e., phone and fax numbers, e-mail*);
 - 2) The contact person;
 - 3) The date and time the quote or solicitation was provided to the TOKA; and
 - 4) Whenever practicable, the employee making the requests shall obtain the price quotations in writing. If the TOKA does not receive the appropriate number of quotations, a memorandum shall be prepared by the department initiator, which documents the attempts made to obtain the quotations. The sole quotation received may be accepted only in unusual circumstances (*such as an emergency threatening public health and safety*).

E. *Identified Categories:*

The following procurement procedures pertaining to certain identified categories of supplies and materials, and the total annual value of the purchases are less than the Micro-Purchase Threshold in effect on the date of such purchase shall apply. Each year the Procurement Office shall:

- 1) Analyze the prior year's purchases to establish a list of categories to be covered using Small Purchase procedures such as office supplies, small tools, and maintenance supplies and materials;
- 2) Establish a list of common use items in each category and determine the normal purchasing schedule (*weekly, monthly, quarterly, annually*);

- 3) Gather information on purchasing patterns and determine the best purchasing pattern and method to achieve the best price over a fixed period of time (*i.e., an entire month's or quarter's supply of an item was purchased at one time to achieve best price and avoid expensive emergency purchases*);
- 4) Establish the period of time for which the vendor selection for each category will be effective. The timeframe for various categories may vary;
- 5) Develop vendor lists from catalogs, local businesses, national businesses, Internet, business networking, trade shows, business enterprise centers, Contractor Out Reach Education (CORE) program, etc.;
- 6) Solicit quotes verbally, by telephone, advertising, electronically, or in writing from an adequate number of vendors. The Procurement Office shall determine the adequate number of vendors to contact. A tabulation of solicitations made and quotations received shall be kept on file that include price comparisons, time period covered, and any limitations to the purchase process such as delivery times, etc.;
- 7) Select a vendor based on lowest purchase price along with the delivery price less any discounts or other credits. As an example, it may be more cost effective to pay a vendor who delivers to the office rather than to have an employee travel to a Tucson area store to purchase the product;
- 8) Purchase of the items in the established categories shall be made from the selected vendor(s) for the established time period unless there is a documented emergency situation necessitating purchases to be made in an expeditious manner to prevent collateral damage and/or additional expense;
- 9) If the cost of an item from another vendor is on sale or discounted and is below an item's cost from the selected vendor, purchases made are made at the lower cost without further analysis; and
- 10) Each vendor file for the procurement of the identified categories of supplies and materials shall contain documentation of price quotes, specifications and any other pertinent information.

14. Small Purchase Procedures

- A. *General.* Any procurement not exceeding the Simplified Acquisition Threshold in effect on the date of such purchase, may be conducted in accordance with the Small Purchase procedures authorized in this section. Small Purchase procedures are those relatively simple and informal

procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with this section or in instances where breaking out such procurements can be shown to result in more economical purchases).

- B. *Indian preference.* See above Section 7 of this Policy.
- C. *Obtaining Quotes.* TOKA shall solicit price quotations by phone, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, TOKA shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. TOKA shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within 30 days of the oral quotation or by the due date for submitting quotations. The names, addresses, and telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.
- D. *Competition.* TOKA shall attempt to obtain quotations from a minimum of two (2) (preferably three (3)) qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least two quotations. Solicitation of fewer than two sources is acceptable if TOKA has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety) and with approval by HUD and must also be consistent with the requirements of 2 CFR 200.320(b).
- E. *Award based on price.* For Small Purchases award is generally based on price and fixed specifications taking into account the method of providing Indian preference.
- F. *Blanket Purchase Agreements (BPA).* Once a BPA has been established, task or delivery orders can be placed without further competition. BPAs may be used for a variety of expendable supplies and services and are particularly attractive when the exact items, quantities and delivery requirements are not known in advance. The process to setup a BPA will save TOKA time and money while making its purchasing quicker and easier. Prior to following the small purchasing procedures established above, TOKA will have conducted an historical database on their re-occurring purchases. After obtaining an estimate on the volume or quantities of a list of products, TOKA may use that information to solicit quotes or discount rates from a number of vendors. By using the purchasing power of greater quantities, TOKA secures better pricing. The maximum total value of the Small Purchase BPA may not exceed the Simplified Acquisition Threshold in effect on the date of such purchase.

G. *Soliciting Proposals*: For the purpose of soliciting written proposals for Small Purchases that are less than the Simplified Acquisition Threshold in effect on the date of such purchase, one or more of the following methods shall be used:

- 1) Advertisement placed in a newspaper of general circulation,
- 2) A written notice to potential vendors by TOKA, and/or
- 3) Electronic distribution such as telephone, fax or e-mail.

15. Wage Requirements:

The Initiating Office Manager shall determine the use of labor wage rates by accepting the Tribally Determined Wages ("TDW") or the Davis Bacon wage rates, in regard to contracts requiring labor or workforce needs.

The Davis Bacon wage rates are determined by the Department of Labor using the HUD request for wage rate determination form and must be requested at least forty-five (45) days prior to the initial solicitation. This determination must be provided to the bidder at the time the quote is requested. At least ten (10) days before award of the contract, the Procurement Office shall confirm the wage rates with HUD's regional labor relations office. The Department of Labor will provide the determination if work is considered eligible for Davis- Bacon in accordance with 24 CFR 1000.16.

16. Debarment:

In accordance with 24 CFR 1000.44 and 24 CFR part 24, the TOKA shall not hire, contract with, or otherwise do business, either directly or indirectly, with contractors or individuals which have been debarred, suspended, or subjected to a Limited Denial of Participation ("LPD") by the U. S. Government.

Prior to contract award (*i.e.*, the preparation of the Notice to Proceed), the Procurement Office shall verify that the contractor has not been debarred, suspended, or on the LDP listing by reviewing the most updated publication of "*Lists of Parties Excluded from Federal Procurement or Non-procurement Programs.*" This list can be obtained at: www.sam.gov or from the Government Printing Office ("GPO"). The Procurement Office shall document the review by printing a copy of the website page that contains the debarred search for the contractor and place it in the contract file.

17. Sealed Bids (Formal Solicitations):

Sealed bidding is the preferred method for construction procurement for all construction contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

In accordance with the requirements of 2 CFR 200.320(c), contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available;

two or more responsible bidders are willing and able to compete effectively for the work; 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.

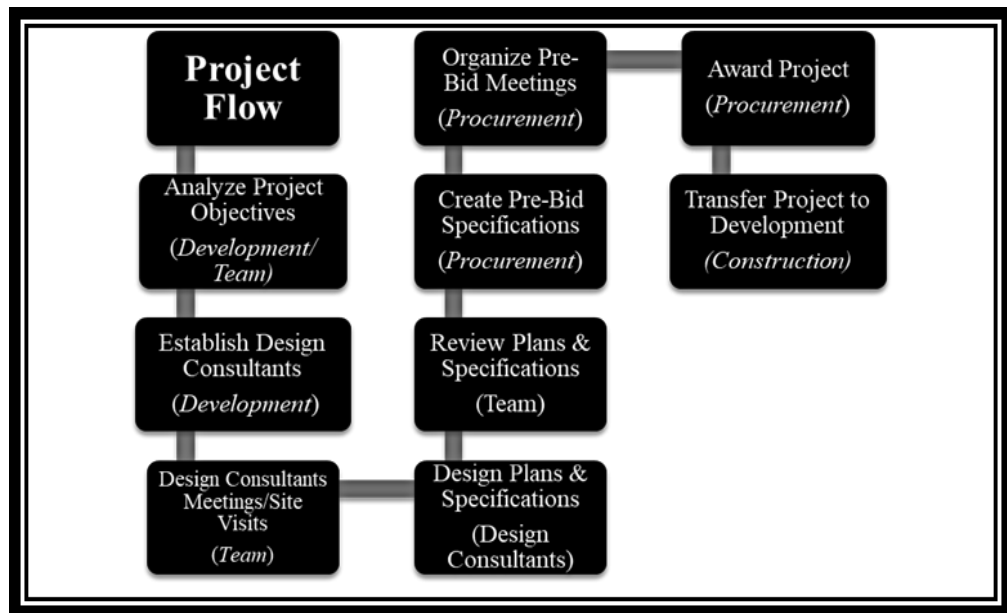
A. Pre-Bid Process:

- 1) *Specifications & Estimates* - The Procurement Office must receive project work plan specifications and cost estimates for the contract. The detailed information of the cost estimate and the degree of analysis shall depend on the complexity of the contract.

The specifications shall serve as evaluative criteria at the completion of the contract, and the estimates serve as a reference for proper evaluation of the solicited bids. (See "*Cost & Price Analysis*" – See Section 11 for further detail.)

Sample Project

Pre-Bid Project Team Members: Development Department, Consulting Firms, Procurement and Construction Departments.



- 2) *Budget Approval* - The Procurement Office shall assign a contract number to the contract and forward it to the Finance Office.
 - a) The Finance Office shall approve or reject the request based on the fund availability, program and account coding, and/or the estimated amount of the contract.
 - b) If funding is available, the Finance Office shall provide a project number to the Procurement Office and open a file for the proposed contract. The contract shall be forwarded to the Executive Director for review and approval.
- 3) Wage Requirement: See Section 15.
- 4) Wage Determination: Section 15.
- 5) *Invitation for Bids*:

The invitation for bids shall be prepared in the form prescribed by TOKA. The invitations shall define the goods or services for the bidder to properly respond. The invitations shall date of the events: Pre Bid Conference, Bid Close Date and Public Bid Opening. The bid acceptance period shall be specified, and the bidders shall be informed that TOKA reserves the right to reject any or all bids received.

All invitation for Bids ("IFB") shall contain the TOKA Indian Preference Statement which delineates the responsibility of the bidders toward ensuring the project, contractor and all sub-contractors meet the requirements of the Indian Preference regulations in accordance with 24 CFR 1000.48.

B. *Bid Document Contents: (Including but not limited to)*

- 1) *Instructions to Bidders for Contracts* - The bid package shall contain the *Instructions to Bidders for Contracts* form. The Procurement Office shall mark all places required within the instructions. The *Instructions to Bidders for Contracts* shall be used to inform interested bidders of the general bidding requirements, the responsibilities of each party, and the factors to be considered in determined the successful bidder.
- 2) *Representations, Certifications, & Other Statements of Bidders Form* - For all construction contracts over **\$2,000**, the bidder shall be required to submit a "*Representations, Certifications, and Other Statement of Bidders*" form with the bid. The Procurement

Office shall mark the form highlighting all required statements (as applicable).

If a form is not submitted with the bid, the bid may be considered incomplete and non-responsive. No contract award shall be made without a properly executed "*Representations, Certifications, and Other Statements of Bidders*" form.

- 3) *General Conditions* - Provisions of the general conditions reflect federal statutes, executive orders, and/or established TOKA policy. The Statement of General Conditions shall be included in the solicitation.
- 4) *Project Manual* - The Procurement Office shall ensure construction specifications, documents, working drawings or other description of supplies and/or services are signed for by the requestor (if applicable). These documents may be paper, emailed or delivered by computer disk form.
- 5) *Bid Form* – One original (1) of the actual bid form will be required to be submitted in compliance with the invitation for bids. The bidder shall be required to quote prices and specify completion or delivery date.
- 6) *Non-Collusive Affidavit* - For all construction and equipment contracts over **\$50,000**, the bidder shall be required to submit a "*Non-Collusive Affidavit*" with the bid.

If the affidavit is not submitted with the bid by the low bidder, the Procurement Office shall require submission within three (3) working days. If the affidavit is submitted after that date, the bid shall be considered non-responsive and rejected. The contract may then be awarded to the second low bidder. No contract award shall be made without a properly executed non-collusive affidavit.

- 7) *Contract Form* - The contract shall be prepared by the Procurement Office and reviewed and approved by the Executive Director or designee.
- 8) *Insurance Requirements* - Before the notice to proceed is authorized, the contractor and each subcontractor (if requested) shall furnish the Procurement Office with certificates of insurance, which demonstrate that the insurance requirements are in force and will insure all operations under the contract. Insurance requirements must be in accordance with the "*General Conditions*" document and the contract.

- a) All insurance shall be carried by the companies, which are financially responsible and authorized to do business in the TOKA service area. The Procurement Office shall verify the insurance company is acceptable to the TOKA.
- b) The Procurement Office shall notify the contractor to stop work if the required insurance coverage is not in force at the time the work begins or if the coverage expires before the work is accepted.
- c) The Procurement Office shall also notify the contractor that any such work stoppage is an infraction of the contract and the contractor is liable for any losses or delays.

C. *Solicitation for Bids:*

- 1) *General* - Once the bid documents and/or specifications have been approved, the Procurement Office shall prepare a copy of the invitation to bid, with a request for publication, along with the bid packages to be disbursed. The Initiating Office and Procurement Office shall number sequentially each copy of the bid package for control purposes. (If applicable).
- 2) *Restricting Solicitations* - The invitation may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the TOKA has a reasonable expectation of receiving the required minimum number of responsive bids. The TOKA shall solicit bids from non-Indian as well as Indian-owned economic enterprises and Indian organizations, if:
 - a) The TOKA decides not to restrict the solicitation,
 - b) There are an insufficient number of qualified Indian-owned economic enterprises;
 - c) Organizations submit responsive bids in response to the solicitation; or
 - d) A single bid is not acceptable.
- 3) *Pre-Bid Conference* - The Procurement Office may hold pre-bid conferences to inform the bidders about the requirements of the bid documents, scope of work and also give a walkthrough of the project. Attendance to the pre-bid conference may be made mandatory.

- 4) *Publication* - The Procurement Office shall give full opportunity for open and competitive bidding by publishing the invitation for bids at least twice and for (2) consecutive weeks in local newspapers or trade publications. The Procurement Office shall also extend an invitation to known potential vendors.
- 5) *Bid Period* - Emergencies as certified by the Executive Director or designee are not required to be advertised and are considered non-competitive procurements. The invitation for bids shall be first published not less than ten (10) days prior to the date specified for the Pre Bid Conference. However, if an Addendum is issued, the Procurement Office may consider the magnitude of change and allow at least five (5) working days as an extension to the Bid close date.

D. *Methods for Soliciting Bids:*

For the purpose of soliciting bids, the following methods shall be used:

- 1) *Public Notification* - The solicitation period shall be for a period of not less than thirty (30) calendar and advertisement shall be placed in a newspaper of general circulation, in the project area. The advertisement shall run in the legal section for a period, at minimum, of for two consecutive weeks, thus allowing firms adequate time for preparation of bids and/or preparation to attend the Pre-Bid Conference (as applicable);
- 2) *Community & Local Notification* - Advertisement at designated Tohono O'odham community and Regional Plan Review centers.
- 3) *Plans Fee* - The Finance Office may require a plans fee for each bid package in an amount that is determined by the Procurement Office and is based on local practice. The fee should be sufficient to offset the cost of reproducing the bid package. A fee is not required for bid packages issued to plan centers. All checks or drafts shall be made payable to: *the TOKA* and may be non-refundable.
- 4) *Alternate Bids* - The Initiating Office may request alternate bids (*e.g., two different structural systems*) or specify the most expensive system as the base bid and list additive or deductive alternates in priority order. In the event that the bids are higher than the cost estimates (*i.e., which may result in a budget overrun*), the TOKA may choose an alternate bid, which is equal to or less than the available funds.

E. *Addendum To Bid Package:*

The Procurement Office shall issue changes to the standard bid package in the form of an Addendum.

- 1) The Procurement Office shall not interpret the meaning of bid documents except by Addendum. Each addendum shall be numbered sequentially by the Procurement Office who will provide a copy to each bidder of record to each place where bidding documents are on file and, if necessary, to the funding agency (*when the Procurement Office is required to submit construction and bid documents before advertisement*).
- 2) The Addendum also shall specify, if applicable, the revised deadline date for submission of bids. If the Addendum is issued within five (5) working days of the date of the bid submission date, the bid closing date may be moved at least five (5) days from the date of the issued Addendum.

F. *Control Record:*

The Procurement Office shall maintain a record of all bidding documents. This record all identify the following for each individual or firm that requested a bid package:

- 1) The bid package control number, (If applicable)
- 2) The name of the company,
- 3) The address and telephone number of the company,
- 4) The contact person,
- 5) The date and time of bid package receipt,
- 6) The number of Addendum sent to the company,
- 7) The date sent,
- 8) The amount and date of any deposits received, and
- 9) The date the bidder (*i.e., contact person*) was notified as to the successful low bidder.

G. *Bid Opening & Evaluation:*

- 1) *Restricted Solicitations* - If the solicitation is restricted to Indian-owned economic enterprises and organizations, and two or more

(or a greater number determined by the Procurement Office and stated in the invitation) qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, drawing lots or similar random method shall make award, unless otherwise provided by state or local 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 TOKA shall cancel the solicitation and re-solicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations. The TOKA may accept a single bid received from a responsible bidder, in unusual circumstances (*i.e., the TOKA determines that the delays caused by re-solicitation would result in higher construction costs and the bid is considered fair and reasonable based on the cost or price analysis prepared by the TOKA.*)

- 2) *Unrestricted Solicitations* - If the solicitation is not restricted to Indian owned economic enterprises and organizations, award shall be made to the qualified Indian owned economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited and the bid is within the range specified in the policy statement. If equal low bids are received from qualified Indian owned economic enterprises or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided in state, tribal, or local law. If no responsive bid by a qualified Indian owned economic enterprise or organization is within this range, award shall be made to the lowest responsive bidder after applying any additional Indian Preference requirements or procedures described in Section 11 of this Policy.
- 3) *Bid Opening* - Upon receipt of each bid, the Contracting Department shall mark the date and time on the envelope and keep it unopened in a secure place. At the date and time specified in the invitation for bids, the bids shall be opening in public and read aloud by the Procurement Office with an additional TOKA representative present. The Procurement Office shall record all bids on a spreadsheet, copies of which will be forwarded to the Executive Director and the Finance Office along with the bids.

- 4) *Securing Certified Checks* - The Finance Office will secure all certified or cashier's checks in a safe location. The use of a facsimile machine to communicate the bids to the TOKA is not considered acceptable when sealed bids are requested.
- 5) *Late Bids* - Any bids received after the date and time specified in the invitation for bids shall be returned unopened to the bidder with a letter indicating that the bids was not received by the deadline.
- 6) *Bid Rejection or Withdrawal* - After the public opening, the Procurement Office may allow a bidder to withdraw a bid only if it is apparent that the bidder has made a mistake.
- 7) *Withdrawal* - If a bidder seeks to withdraw a bid before the end of the bid acceptance period or the execution date of the contract, whichever is earlier, the Procurement Office shall secure the following before approving or disapproving the withdrawal request:

A notarized statement from the bidder indicating that an error was made with an explanation of how it occurred and a copy of the bidder's cost estimating worksheets or other evidence provided by the bidder in support of the withdrawal request.

- 8) *Rejection* - The Procurement Office shall reject any bid that is incomplete (i.e., the bid bond is not submitted with the bid or the bid fails to conform to the essential items of the invitation for bids as indicated in the Bid package).

If the TOKA proposes to reject the lowest bidder for reasons other than an incomplete bid, TOKA shall give the bidder an opportunity, within a time specified in the bid documents, to delete objectionable conditions from a bid only if the conditions do not concern the substance of the bid (such-as the price, quantity, quality, or delivery of items offered). After a specified time, TOKA shall make a final decision on whether or not to reject the offer.

- 9) *Bidder Notification* - The Procurement Office shall notify the bidder, no later than the specified bid-holding period, as to whether the withdrawal request has been approved, disapproved or the bid has been rejected. If appropriate, the Procurement Office shall return the bid bond to the bidder.

- 10) *Rejection of All Bids* - The Procurement Office and Executive Director may elect to reject all bids. Possible reasons may include the following:
 - a) The bids received were higher than the funds available to procure the contract; or
 - b) None of the bids received met the technical requirements of the bid.
- 11) *Reasons for Rejection* - The Procurement Office and Executive Director shall review the bids received to determine the reason that the contract cannot be awarded. The purpose of this review is to ascertain that:
 - a) The bid amount exceeds the approved budget amount;
 - b) The bids are unreasonably high due to unusual circumstances affecting construction in the housing market area;
 - c) The project is over-designed; or
 - d) The award cannot be made for other identified causes. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.
- 12) *Over-Design* - If it is determined that the high bids are due to project over-design, the Procurement Office and the architect shall identify design modifications that would likely result in lower bids. The architect shall be held responsible for making any design modifications under the terms of the architect's contract.
- 13) *Invitation for Bids* - Upon the approval of the revised construction documents, the Procurement Office shall be authorized to issue a subsequent invitation for bids.

H. *Re-Solicitations:*

The re-solicitation shall be for a shorter period of time, but not less than twenty-one (21) days.

I. *Bid Protests:*

See Appeals & Remedies Section of this policy.

J. *Selection of Award:*

The Procurement Office shall provide the Executive Director and Board of Directors with a bid spreadsheet and the file containing the documentation for the bid that the Procurement Office proposes to accept. The Executive Director and Board of Directors, using the Contract File Checklist, shall review the Procurement Office's acceptance recommendation. The checklist shall contain a list of required documents to award the contract.

K. *General Requirements:*

After the bid opening, the Procurement Office shall perform the procedures listed below. When prior funding agency review and approval are required before contract award, the Procurement Office shall submit the following documents to the funding agency:

- 1) The bid spreadsheet, certified to completeness by the Procurement Office,
- 2) The name and address of the bidder,
- 3) The amount of the bid,
- 4) The amounts of any alternates,
- 5) The amount and type of bid bond, and
- 6) The bid documents for the proposed award, including a copy of the bid bond and the non-collusive affidavit.

L. *Contract Award Process:*

- 1) *Notice of Award* - The Procurement Office shall prepare a notice of award letter and forward it to the Executive Director. If acceptable, the Executive Director shall sign the notice of award letter and return it to the Procurement Office for distribution. The Procurement Office must request that the contractor provide the assurance of completion (*bonding*) in the amount identified in the bid (*and as specified in the general condition of the contract*). Before executing the contract, the Procurement Office shall ensure that the assurance of completion meeting the requirements of the TOKA.
- 2) *Distribution of Executed Documents* - The Procurement Office shall retain one (1) original copy of the performance and payment bond (*or other assurance*), the power of attorney, and a signed set of the contract documents for its files. The Procurement Office

shall retain the contractor's copy for attachment to the TOKA's notice to proceed.

- 3) *Pre-Contracts Conference Minutes* – After the Pre-Contracts meeting is held, the minutes of the meeting and a list of attendees shall be prepared and kept in the contract file. The Executive Director should review the minutes.
- 4) *Notice To Proceed* - The Procurement Office shall prepare one (1) original notice to proceed to be issued to the contractor together with the contractor's set of the executed contract documents. The notice to proceed is the official TOKA order directing the contractor to start work.
 - a) For all federally assisted labor contracts, work is not allowed to begin until the notice to proceed has been issued and signed by all required parties. The date of completion is counted from the date of the notice to proceed. The contractor shall be required to sign the notice to proceed, designed receipt and acceptance, and return the signed original to the TOKA. The executed Notice to proceed will become an Addendum to the project documents.
 - b) The signed original is to be kept in the contract file. A copy shall be sent to the Department of Labor for all federally funded contracts involving labor over \$2,000.
- 5) *Assurance of Completion* - For construction contracts \$250,000 or more, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to TOKA and in compliance with 2 CFR 200.325(a). The following methods may be used to provide performance and payment assurance:
 - a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "*bid guarantee*" shall consist of 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 his bid, execute such contractual documents as may be required within the time specified;
 - b) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A "*performance bond*" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;

- c) A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A "payment bond" is one executed in connection with a 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.

- 6) *Use of a Surety* - If the contractor uses a surety company, the surety must be a guarantee of Surety Company acceptable to the government. U.S. Treasury Circular No.: 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as Acceptable Reinsuring Companies," is published annually in the "Federal Register." The circular lists companies approved to act as a surety on bonds securing government contracts. It also provides the maximum underwriting limits on each contract bonded, and the states in which each company is licensed to do business. The TOKA must refer to this circular when a surety is used. The circular can be obtained by contacting the Surety Bond Branch of the Financial Management Service (*Department of the Treasury* www.fms.treas.gov).

18. Competitive Proposals:

- A. *General* - The technique of competitive proposals is normally conducted in accordance with the requirements of 2 CFR 200.320(d) with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the TOKA determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited (*i.e., there is not a complete, adequate, and realist specification or purchase description available and selection of the successful bidder cannot be made principally on the basis of price*).

- B. *Architect/Engineer Services* - Architect/Engineering in excess of the Small Purchase Limitation may be obtained by either the competitive proposal process or qualifications-based selection procedures. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, a competitor's qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of a fair and reasonable contract amount. Price is not used as a selection factor under this method. These procedures shall not be used to purchase other types of services even though architect/engineering firms are potential sources.

- C. *Qualifications* - Qualifications-based selection procedures shall not be used to purchase other types of services.
- D. *Management Improvement Procedures* - Improvement contract procedures for management improvement contracts and other professional services utilizing competitive proposals shall be based on:
- 1) *Determination of Need* - The Executive Director working in cooperation with the governing body shall determine the need for management improvements and other professional services.
 - 2) *Solicitation* - The TOKA shall prepare a request for proposal ("RFP"), which clearly identifies the relative importance of price and other evaluation factors and sub-factors on the award decision (*i.e., the weight given to each technical factor and sub-factor*). A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established by the TOKA before the solicitation is issued.
- E. *Evaluation Factors* - The RFP for the procurement of management improvement contracts and other professional services shall include evaluation factors that clearly identify the criteria that are going to be used in the award decision. The proposals shall be evaluated only on the criteria stated in the request for proposal. Such determining factors may include Indian ownership, Indian training and employment opportunities, availability of materials, ability to meet the delivery schedule, shipping methods, price, etc. When this method is used, prior to the issuance of the solicitation, scoring criteria shall be developed, as part of the solicitation packet, which outlines the criteria and their respective weights that will be used to determine contract award. The scoring criteria shall be made an integral part of the RFP packet that is distributed to an adequate number of possible respondents.
- F. *Restrictions* - The request for proposal ("RFP") may be restricted to qualified Indian-owned economic enterprises and Indian organizations if the TOKA has a reasonable expectation of receiving offers from two (*or a greater number stated in the RFP*) such entities.

The TOKA shall solicit proposals for non- Indian as well as Indian-owned economic enterprises and Indian Organizations if:

- 1) The TOKA prefers not to restrict the RFP;
- 2) There are an insufficient number of qualified Indian-owned economic enterprises or Indian organizations to satisfactorily respond to a restricted RFP; or
- 3) A single proposal is received but not accepted.

G. *TOKA Preparation of RFP:*

- 1) The Initiating Department of the TOKA shall prepare the Scope of Work and the Procurement office will complete the RFP. The RFP shall at a minimum, contain the following information:
 - a) A brief description of TOKA and the project contemplated,
 - b) The specific professional services required and a description of the scope of work for the services to be provided to TOKA,
 - c) The timeframe for provision of the services,
 - d) The evaluation factors and their relative importance in the award of the contract,
 - e) The submission deadline, and
 - f) The name of TOKA's contact person.
- 2) The RFP shall request that the respondent provide a proposal that:
 - a) Demonstrates an understanding of the required services needed and the firm's or individual's ability to perform the services in a timely and effective manner (*including a profile of the firm's principles, staff, and facilities*),
 - b) Provides a cost estimate to perform the work, and
 - c) Includes any forms required by TOKA.
- 3) *Advertisement of RFP* - The Procurement Office shall advertise the RFP through public announcement in local newspapers and, if appropriate, trade publications, Tribal centers and other Tohono O'odham public areas. The advertisement shall run in the legal section for a period of two (2) consecutive work weeks allowing firms adequate time for preparation of bids or proposals. The Procurement Office shall furnish all interested parties with a copy of the RFP.
- 4) *Pre-Proposal Conference* - The Initiating Department and/or Procurement office may hold pre-proposal conferences to inform the prospective proposal respondents of the requirements, scope of work, and give a walkthrough of the proposed project, if applicable.
- 5) *Addendum to RFP* - The Procurement Department shall issue changes to the standard RFP package in the form of an Addendum. The Procurement Office shall not interpret the meaning of RFP documents

except by Addendum. Each Addendum shall be numbered sequentially by the Procurement Department and a copy of the Addendum will be provided to each prospective proposal respondent of record. The Addendum also shall specify, if applicable, the revised deadline date for submission of proposals. If the Addendum is issued within five (5) working days of the date of the RFP submission date and the RFP closing date may be moved at least five (5) working days from the date of the issued Addendum.

- 6) *RFP Submission Date* - Upon receipt of each proposal, the Procurement Office shall mark the date and time on the envelope and keep it unopened in a secure place. At the date and time specified in the Request for Proposals, it shall be noted that the time for submission had occurred and a list of firms submitting proposal shall be compiled for the public record, copies of which will be forwarded to the Executive Director and the Finance Office along with the proposals.

Any RFPs submitted after the date and time specified in the Request for Proposals shall be date and time stamped and returned unopened, to the proposal respondent with a letter indicated that the proposal was not received by the deadline.

- 7) *Review of Proposals Received:*

Within five (5) working days after the RFP deadline, the Initiating Office Manager and/or the Procurement Office shall perform a completeness review of all proposals received utilizing a checklist made up of items listed under the "*Minimum Submission Requirement*" section of the RFP. Any omissions may render the proposal incomplete and therefore non-responsive. Once the review has been completed, the Initiating Office Manager and/or Procurement Office shall notify the Executive Director of the results, select a review committee, and schedule the preliminary review conference to discuss the technical review process, evaluation factors, and objective of the contract award.

The review committee shall independently review all proposals in accordance with the Evaluation Factors for the RFP. Each reviewer shall score each proposal in accordance with the rating points established for each proposal in accordance with the rating points established for each evaluation factor and sub-factor. Once all members of the review committee have completed the review of all proposals, the committee will meet to review and discuss the results of the scoring. Based on a final discussion, the proposals shall be ranked with the firm receiving the most points as the "*Top Ranked Firm*" for that RFP.

- 8) *Negotiations* - The purpose of the negotiations is to seek clarification of TOKA questions and, if considered appropriate, advise the respondent of deficiencies in the technical or solicitation requirements and price aspects of their proposals that may impact the offer.

Negotiations shall be conducted by the Initiating Office Manager, Procurement Department, Executive Director, and respondent of the proposal. The negotiation shall determine if the respondent has a reasonable chance of being selected for award, based on an evaluation of the technical and price factors as specified in the RFP. Such offers shall be afforded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.

No respondent shall be provided information about any other respondent's proposal, and no respondent shall be assisted in bringing its proposal to the level of any other proposal. The respondent shall not be advised or directed to reduce their proposed prices to a specific amount in order to be considered for award.

A deadline shall be established for receipt of proposal revisions during the negotiations. The deadline shall be the same for all respondents. The Procurement Office shall determine if all required forms and/or documents are included in the submitted proposals.

- 9) *Award:*

- a) After evaluation of the proposals (*and any revisions*), the contract shall be awarded to the responsible firm whose qualifications, price, and other factors considered are the most advantageous to TOKA.
- i. The TOKA shall not order or agree to any changes in the contract work when prior funding agency approval is required.
 - ii. Contract changes shall include a description of the proposed change in work, the fixed cost (*credit, debit, or no change*) of the change, and an estimate of any additional time required to complete the work.
- b) For solicitations restricted to qualified Indian-owned economic enterprises and Indian organizations, if two (*or a greater number stated in the RFP*) such entities submit acceptable proposals, the award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity.

- c) If a fewer number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals:
 - i. The TOKA shall consider re-soliciting the RFP without restriction to qualified Indian-owned economic enterprises, Indian organizations and non-Indian organizations.
 - ii. The TOKA may accept the sole proposal received, subject to HUD approval, in unusual circumstances (*such as when the TOKA determines that the delays caused by re-soliciting the RFP would cause higher costs or when the TOKA determines that the proposal has a fair and reasonable price*).
- d) If the solicitation is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid, if that bid is within the maximum total contract price established for the specific project or activity being solicited, and the bid is within the range specified in the Attachment to this Statement. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.

10) Mistakes in Bids:

- a) Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is clear or the bidder submits convincing evidence that a mistake was made.
- b) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of TOKA or fair competition shall be permitted.

11) *Contract Review & Approval:*

- a) Once the Executive Director, Initiating Office and Procurement department have reviewed and approved the RFP process and award, a contract will be prepared which contains the following:
 - i. A clear statement of the specific services and task to be performed,
 - ii. A description of the methodology to be used in carrying out the services,
 - iii. An identification of the type and frequency of written reports to be provided to TOKA,
 - iv. A timeframe for completion of all services,
 - v. A payment schedule that is related to the successful completion of specific tasks, and
 - vi. The total cost of the project.
- b) All contracts shall be reviewed and approved by legal counsel prior to contracts being submitted to the Board for approval.

19. Abandonment or Termination:

In the event of abandonment of the project or termination of the contract for any cause, under the respective sections of the contract, the terms of any settlement between the TOKA and the service provider shall be subject to approval by the Executive Director or designee and the Procurement Office, if required.

The TOKA shall not disburse any monies to the service provider after the notice of abandonment or termination has been issued until the Executive Director or designee, Procurement Office and the funding agency (*if required*) has approved the settlement agreement.

20. Noncompetitive Procurement Proposals:

A. *Conditions for Use* - Procurements shall be conducted competitively to the maximum extent possible. However, in accordance with the requirements of 2 CFR 200.320(f), procurement by noncompetitive proposal may be used when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

- 1) The item is available only from a single source based on a good faith review of available sources and the Contracting Officer so certifies in writing;

- 2) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the TOKA, 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; or
 - 3) The emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency. In cases where labor is involved, Davis-Bacon wage rates will apply and a determination has to be acquired if the amount of the work is over the \$2,000 threshold;
 - 4) HUD/ONAP specifically authorizes the use of noncompetitive proposals; or
 - 5) After solicitation of a number of sources, competition is determined inadequate.
- B. *Justification* - Procurement based on a noncompetitive proposal shall be supported by a written justification for using such procedures. The justification shall be documented in writing by the Procurement Office and approved by the Executive Director.
- C. *Price Reasonableness* – The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described under the *Cost & Price Analysis* section.

21. Cancellation of Solicitations:

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

- B. A solicitation may be canceled and all bids or proposals that have been received may be rejected if:
 - 1) The supplies, services, or construction are no longer required;
 - 2) Ambiguous, or otherwise inadequate specifications were part of the solicitation;
 - 3) The solicitation did not provide for consideration of all factors of significance to the TOKA;
 - 4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - 5) There is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - 6) For good cause of a similar nature when it is in the best interest of the TOKA.
- C. The reasons for cancellation shall be documented in the procurement file. The TOKA shall provide the reasons for cancellation and/or rejection upon request to any respondent solicited.
- D. A notice of cancellation shall be sent to all offers solicited, which if appropriate, shall explain that the respondent will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the TOKA shall cancel the solicitation, and either:
- F. Re-solicit using a request for proposal; or
- G. If only one bid is received at an unreasonable price, the TOKA should consider using the noncompetitive proposals method.

22. Types of Contracts & Clauses:

- A. *Contract Types:*
 - 1) *General* - Any type of contract that is appropriate to the procurement action and which will promote the best interest of the TOKA may be used, provided that the cost plus a percentage of cost and percentage of construction cost methods are prohibited.

- 2) *Clauses & Provisions* - All procurement actions shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the TOKA's needs otherwise.
 - 3) *Time & Materials Contract* - A time and materials contract should only be used if a written determination is made that no other contract type is suitable, and the contract includes limits or prices that the contractor exceeds at his own risk.
- B. *Options* - Options for additional quantities or performance periods may be included in contracts, provided that:
- 1) The option is contained in the solicitation or Bid documents;
 - 2) The option is a unilateral right of the TOKA;
 - 3) The contract states a limit on the additional quantities and the overall term of the contract;
 - 4) The options are evaluated as part of the initial competition; the contract states the period within which the options may be exercised;
 - 5) The contract states the period with which the options may be exercised;
 - 6) The options may be exercised only at the price specified in or reasonably determinable from the contract; and
 - 7) The options may be exercised only if it is determined to be more advantageous to the TOKA than conducting a new procurement action.
- C. *Specifications* - All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the TOKA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.

Functional or performance specifications are preferred. Detailed product specifications should be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical result. For equipment purchases, a lease versus purchase analysis shall be performed to determine the more economical form of procurement.

- D. *Contract Provisions* - Pursuant to 2 CFR 200.326, the entire contract provisions described in Appendix A to Part 200 - Contract Provisions for non-Federal Entity Under Federal Awards must be included in all contracts.

23. Contract Clauses & Solicitation Notices:

Solicitation Notices - Solicitation notice shall include at least the following information:

- A. A statement of the applicability of Indian preference to the solicitation and a time before the due date for offers by which offers must submit evidence of eligibility for Indian preference;
- B. The preference requirements stated in 24 CFR 1000.52;
- C. Information as to whether the TOKA maintains lists (*Tribal Employment Rights Office certification list*) of Indian-owned economic enterprises and Indian organization by trade specialty which are available to contractors and subcontractors for use in meeting Indian preference responsibilities;
- D. A requirement that respondent provides a statement describing how Indian preference will be utilized in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained;
- E. The TOKA's description of the information to be submitted on Indian preference;
- F. The factors that the TOKA will use in judging the adequacy of the Indian preference information submitted;
- G. A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer;
- H. A requirement that each contractor and subcontractor submit a certification and supporting evidence to the TOKA whenever it is not feasible to provide Indian preference in subcontracting;
- I. For request for proposals that are not restricted to Indian-owned economic enterprises of Indian organizations, the percentage of number of points set aside for Indian preference and the method for allocating these points;
- J. A requirement in unrestricted RFP's that subcontractors using request for proposals solicit subcontractors by reserving up to ten (10) points of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals; and

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

24. Contract & Subcontract Clauses:

The following shall be included:

- A. The clause prescribed in 24 CFR 1000.52 implementing Section 7(b) of the Indian Self-Determination and Education Assistance Act in connection with the development or operation of TOKA programs;
- B. The grounds(s) for termination of a contract or the penalties for improper subcontracting or false certification as to subcontracting with Indian enterprises or organizations; and
- C. Pursuant to 2 CFR 200.326, all contracts and subcontracts must also contain the applicable provisions described in Appendix II to Part 200 - Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

25. Monitoring & Remedies:

The TOKA shall monitor the implementation of Indian preference in its contracts, subcontracts, training, and employment, and take appropriate action (*including cancellation of contracts and assessment of penalties*) to ensure compliance.

26. Appeals & Remedies:

- A. *General:*

It is the TOKA's policy to resolve all procurement or contractual issues informally at the TOKA level without litigation. When appropriate, the TOKA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute to help resolve any differences.

- B. *Bid Protests:*

- 1) Any actual or prospective individual or contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.
- 2) Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) working days

for contracts \$250,000 or more, and five (5) working days for contracts less than \$250,000, after contract award, or the protest will not be considered.

- 3) All bid protests shall be in writing, submitted to the Procurement Office, who shall issue a written decision on the matter.
- 4) The Executive Director may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

27. Protest Involving Indian Preference:

Complaints arising out of any of the methods of providing Indian Preference shall be handled in accordance with the procedures in 24 CFR 1000.54.

28. Cooperative Purchasing:

- A. The TOKA may enter into state, regional, and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specific inspection, acceptance, termination, payment, and other relevant terms and conditions.
- B. The TOKA encourages the use of federal or state excess and surplus property instead of purchasing new equipment and property whenever such use is economically feasible and reduces costs.

29. Assistance to Small & Other Businesses:

Regulations & Law:

- A. In accordance with the HUD Act of 1968, the TOKA shall make efforts to ensure that small 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 a TOKA project are used when possible.
- B. *Equal Opportunity for Business & Lower Income Persons* - For all construction contracts over \$200,000, the contractor is required to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 in accordance with 24 CFR 1000.42. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to

business concerns which are located in the area or to businesses owned in substantial part by persons residing in the area of the project. However, per 24 CFR 1000.42(c), TOKA is considered as meeting the Section 3 requirements as it complies with employment and contract preference laws adopted by the Nation in accordance with section 101(k) of NAHASDA.