

**PROCUREMENT POLICY  
OF THE  
COLORADO RIVER INDIAN TRIBES**

This Procurement Policy is established for the Colorado River Indian Tribes (Tribe) by Resolution No. 76-10, dated March 30, 2010, becomes effective on May 1, 2010 with amendments approved by Resolution No. 163-15 dated May 6, 2015 and by Resolution No. 216-17 dated June 27th, 2017 with an effective date of October 1, 2017.

**I. GENERAL PROVISIONS**

**A. PURPOSE**

The purpose of this Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Tribe; assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to the Tribe; promote competition in contracting; provide that the Tribe purchasing actions are in full compliance with applicable Tribal and Federal standards, regulations, and laws.

**B. APPLICATION**

This Policy applies to all contracts for the procurement of supplies, services, equipment and materials entered into by the Tribe for public purchasing, irrespective of the source of funds (such as concession contracts); however, nothing in this Policy shall prevent the Tribe from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified. The term “procurement”, as used in this Policy, includes both contracts and modifications (including change orders) for construction services, as well as the purchase, lease, or rental of supplies and equipment.

**C. PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a matter of public record as provided for by Article VI, Section 1(h) of the Constitution of the Colorado River Indian Tribes.

**II. PROCUREMENT AUTHORITY AND ADMINISTRATIONS**

**A.** All procurement transactions shall be administered by the Controller or other individuals he or she has authorized in writing. The Controller shall issue operational procedures (such as a procurement handbook or standard operating procedures), including procedures for the processing of purchase orders, to implement this Policy. Violation of this policy, including the ethical standards described in Section IX below, shall constitute insubordination and shall be subject to the sanctions described in the Colorado River Indian Tribes’ Employee Handbook.

**B. The Controller or his/her designee shall ensure that:**

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. Contracts and modifications have been reviewed and approved by the Office of the Attorney General, are in writing and clearly specify 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 the basis for the contract price;

3. Purchases are made only from persons, as that term is defined in Section 1-103 of Article I of the Business and Professions Code of the Colorado River Indian Tribes, who are in full compliance with the provisions of said Code;
4. For procurement other than Check Request and Requisition purchases, public notice is given of each upcoming procurement at least 10 days (or other time period if required by the terms of a grant, contract or applicable law) before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 30 days for main construction contracts and 15 days (or other time period if required by the terms of a grant, contract or applicable law) for other contracts is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
5. Solicitation procedures are conducted in full compliance with applicable federal and tribal standards, Indian Preference requirements, and all purchases funded by federal grants or contracts comply with 2 CFR Part 200 Subpart E Cost Principles;
6. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement using federal funds above the Check Request, Requisition purchase limitation and Purchase Order requisition, and a cost or price analysis is conducted of the responses received for all procurements using federal funds;
7. 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 Tribe, considering price, technical, and other factors as specified in the solicitation, including Indian Preference (for new contracts awarded based on competitive proposals); unsuccessful firms are notified within 10 days (or other time period if required by the terms of a grant, contract or applicable law) after contract award;
8. There are sufficient unencumbered funds budgeted for and 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 performed and accepted;
9. Procedures for inventory control, storage and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established in accordance with applicable tribal standards;
10. Procedures for tracking vendors, developed in conjunction with the Office of the Attorney General, which shall track the responsibility of businesses and individuals, as described in Section IV(A) below, from whom the Tribe procures goods or services;
11. The Tribe adheres to its procurement policies and program;
12. The Tribe complies with applicable review requirements, as provided in the operational procedures implementing this Policy.

C. This Policy and any later changes shall be submitted to the Tribal Council for approval. The Tribal Council appoints and delegates procurement authority to the Controller and is responsible for ensuring that any procurement policies adopted are appropriate for the Tribe.

### **III. PROCUREMENTS METHODS**

#### **SELECTION METHOD**

When satisfying its need by procurement, the Tribe shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. Programs funded by federal grants or contracts must comply with the procurement methods outlined by the funding agency and applicable federal regulations.

#### **A. CHECK REQUEST PURCHASE**

1. Check Request Purchase Procurement: For purchase of less than \$3,000.00, also known as Check Request Purchases, no bids or quotes are required. Under no circumstance will a purchase be broken down into more than one action in order to meet the Check Request Purchase threshold. The Check Request Purchase must be documented by an authorized purchase order or contract. During the Check Request sign off review, the Controller may request additional quotes. The Controller at their discretion may audit any purchase by requesting additional quotes.
2. Indian Preference: To the greatest extent permissible and feasible, the Tribe shall give preference in the award to qualified Indians, Indian Organizations and Indian-Owned economic enterprises. To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.

#### **B. REQUISITION PURCHASE**

1. Requisition Purchase Procurement: For purchase of \$3,000.00 but less than \$5,000.00, also known as Requisition Purchases, supporting documentation documenting at least three price quotations is required. Under no circumstance may a purchase be broken down into more than one action in order to meet the Requisition Purchase threshold. The Requisition Purchase must be documented by an authorized Requisition Form. During the Requisition sign off review the Controller may request additional quotes. The Controller at their discretion may audit any purchase by requesting additional quotes.
2. Indian Preference: To the greatest extent permissible and feasible, the Tribe shall give preference in the award to qualified Indians, Indian Organizations and Indian-Owned economic enterprises. To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.

#### **C. PURCHASE ORDER PURCHASE**

1. Purchase Order Procurement: Any procurement valued at \$5,000.00 to \$149,999.99 may be conducted in accordance with the Purchase Order purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a Purchase Order under this section.
  - a) Obtaining Quotes: The Department wishing to make the procurement shall solicit price quotations by phone, letter, or other informal procedures that allows participations by a reasonable number of competitive sources. When soliciting quotations, the Department 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. The Department shall obtain written quotation; however, the written quotation may be a confirmation of a previous oral quotation only if it's submitted within 10 days of the oral quotation or by the due date for submitting quotation. The names, addresses,

and/or telephone numbers of the offerors and person contacted, and the date and amount of each quotation shall be recorded and maintained as a part of the Accounting and Department record.

b) Competition: The Department wishing to make the procurement shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable only if the Department 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).

c) Award

(1) Award based on Price: For purchases awarded based on price and fixed specifications (i.e., not subject to negotiation) the Tribe shall make award to the qualified Indian, Indian Organization or Indian-Owned economic enterprise with the lowest responsive quotation if it is reasonable and no more than 10% higher than the lowest responsive quotation received. If no responsive quotation from a qualified Indian, Indian Organization or Indian-Owned economic enterprise received is within 10% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation. To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.

(2) Award Based on Factors Other Than Price: For purchases to be awarded based on factors other than price, formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price, and providing for Indian preference. Award shall be made to the best proposal or quotation in accordance with the stated rating system.

2. All Purchase Order procurements shall be processed in accordance with procedures issued by the Controller pursuant to Section II(A) of this Policy.

#### **D. SEALED BID**

1. General: Procurements valued at more than \$150,000 shall be conducted in accordance with the sealed bid purchase procedures authorized in this Section. If sealed bidding is required by a federal or state contract or grant for procurements valued at less than \$150,000 then these requirements shall be applied.

2. Conditions for Use: 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. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.

3. Solicitations and Receipt of Bids.

a) Issuance and Amendment: An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within

seven days of the bid opening, the bid opening shall be postponed until at least seven days after issuance of the amendment. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

- b) Solicitations: The Tribe shall solicit bids from non-Indian as well as Indian, Indian Organizations or Indian-Owned economic enterprises unless the Tribe decides to restrict the solicitation. The Tribe shall also solicit bids from non-Indian as well as Indian Organizations or Indian-Owned economic enterprises when an insufficient number of qualified Indians, Indian Organizations or Indian-Owned economic enterprises submit responsive bids in response to a restricted solicitation or a single bid is not accepted. In all unrestricted bid solicitations, Indian Preference shall be applied in accordance with Attachment I to this Policy.
  - c) Restricting Solicitations: The invitation may be restricted to qualified Indians, Indian Organizations or Indian-Owned economic enterprises if the Tribe has a reasonable expectation of receiving the required minimum number of bids from them (see Section 5(a) below). To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.
4. Bid-Opening: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection.
5. Award: Award shall be made as provided in the invitation for bids by written notice to the successful bidder. Awards made pursuant to restricted solicitations shall be made as follows:
- a) Restricted Solicitations. If the solicitation is restricted to Indians, Indian Organizations or Indian-Owned economic enterprises, and two or more (or a greater number determined by the Tribe as stated in the invitation) qualified Indians, Indian Organizations or Indian-Owned economic enterprises submit responsive bids, the award shall be made to the qualified Indian, Indian Organization or Indian-Owned economic enterprise with the lowest responsive bid. If equal low bids are received, bid award shall be made by drawing lots or similar random method, unless otherwise provided by the laws of the Colorado River Indian Tribes. If fewer than the minimum number of qualified Indians, Indian Organizations or Indian-Owned economic enterprises submit responsive bids, all bids shall be rejected, and the Tribe shall cancel the solicitation and resolicit, inviting bids from non-Indian as well as Indian, Indian Organizations or Indian-Owned economic enterprises. The Tribe may accept a single bid received from a responsible bidder in unusual circumstances, such as if the Tribe determines that, based on a cost or price analysis, the bid price is fair and reasonable, or the Tribe determines that the delay of resoliciting would subject the project to higher construction costs.

6. 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 mistake of a non-judgmental character (i.e. clerical error) was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental 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 unclear 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 determination by the Tribal Council. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Tribe or fair competition shall be permitted.

## E. COMPETITIVE PROPOSALS

1. General: The Tribe shall use the procurement method of competitive proposals when the use of the sealed bid method is not appropriate due to the specialized skills required. The use of competitive proposals is appropriate where the award is normally made on the basis of the proposal that represents the best overall value to the Tribe, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.
2. Conditions for Use: Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the Tribe determines that conditions are not appropriate for the use of sealed bidding. An adequate number of qualified sources shall be solicited.
3. Solicitation:
  - a) General: The Tribe shall invite or otherwise solicit responses to a Request for Proposals (RFP). A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
  - b) Evaluation of Factors: The RFP shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. Evaluation criteria may include evaluation of factors such as (a) quantification and experience in projects of similar size, (b) cost, (c) contractor integrity and/or ability to meet project schedule, (d) financial and technical resources, and (e) whether contractor meets Indian preference. The Tribe may reserve 15% of the total number of available rating points in unrestricted solicitations for the provision of Indian Preference in the award of contracts and sub-contracts, and up to an additional 10% of evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
  - c) Application Fee: The RFP may require respondents to submit a non-refundable application fee as a part of their response to cover the Tribe's cost of review.
  - d) Restricted Solicitations: The invitation may be restricted to qualified Indians, Indian Organizations or Indian-Owned economic enterprises if the Tribe has a reasonable expectation of receiving the required minimum number of statements of intent. The Tribe shall solicit proposals from non-Indian as well as Indian, Indian Organizations or Indian-Owned economic enterprises if the Tribe decides not to restrict the solicitation; or, an insufficient number of qualified Indians, Indian Organizations or Indian-Owned economic enterprises submit responsive proposals in response to a solicitation; or, a single proposal is not accepted. To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.
4. Negotiations: In those situations where negotiations are deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity

for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and to advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposals, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposal price to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

5. Award: After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Tribe, provided that the price is within the maximum total contract price established for the specific property or activity. For solicitations restricted to qualified Indians, Indian Organizations or Indian-Owned economic enterprises, if two (or a greater number stated in the RFP) such entities submit acceptable proposals, award shall be made to the qualified Indians, Indian Organizations or Indian-Owned economic enterprises with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than two Indians, Indian Organizations or Indian-Owned economic enterprises submit acceptable proposals, the Tribe shall re-solicit or otherwise proceed in accordance with Section III(D)(3) above. The Tribe may accept the sole proposal received, when the Tribe determines that the delays caused by re-soliciting would cause higher costs, or where the Tribe determines that the proposal has a fair and reasonable price.
6. Architect/Engineer, Legal, or Other Highly Specialized Professional Services: Architect/Engineer, legal, or other highly specialized professional services may be obtained by either the competitive proposal method or qualifications-based selection procedures, unless applicable law mandates the specific procedure. Sealed bidding shall not be used to obtain architect/engineer, legal or other highly specialized professional services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation.

## **F. NONCOMPETITIVE PROPOSALS**

1. Conditions for Use: Procurement shall be conducted competitively to the maximum extent possible. Procurement by non-competitive proposals may be used only when the award of a contract is not feasible using check request, requisition, purchase order, sealed bids, or competitive proposals, and one of the following applies:
  - a) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Tribe, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, litigation 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
  - b) Only one source of supplies is available and the Department Head so certifies in writing;
  - c) The procurement is for the renewal of a professional services agreement for legal, or other highly specialized professional services; or
  - d) After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Each procurement based on non-competitive proposals shall be supported by a written justification for using such procedures. Said justifications shall be prepared by the Department Head seeking procurement based on non-competitive proposals and submitted to

the Tribal Council for consideration. Procurement may not be made by non-competitive proposals unless approved by the Tribal Council.

3. Price Reasonableness: The reasonableness of the price for all procurements utilizing federal funds based on non-competitive proposals shall be determined by performing a cost analysis, as described in Section III(G) below.

## **COST AND PRICE ANALYSIS**

1. General: A cost or price analysis shall be performed for all procurement actions utilizing federal funds, including contract modifications. The method of analysis shall be determined as set forth below. The degree of analysis shall depend on the facts surrounding with procurement.
2. Submissions of Cost of Pricing Information: If the procurement is based on non-competitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Tribe (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
  - a) A cost breakdown showing project costs and profit; and
  - b) Commercial pricing and sales information, sufficient to enable the Tribe to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - c) Documentation showing that the offered price is set by law or regulation.
3. Cost Analysis: Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted:
  - a) A cost analysis shall be performed of the individual cost element;
  - b) The Tribe shall have a right to audit the contractor's books and records pertinent to such costs; and,
  - c) Profit shall be analyzed separately.

Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles. In establishing profit, the Tribe shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

4. Price Analysis: A comparison of price shall be used in all cases other than those described in Section III(F)(1) above.

## **H. CANCELLATION OF SOLICITATIONS**

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if:
  - a) The Tribe no longer requires the supplies, services or construction; or,
  - b) The Tribe can no longer reasonably expect to find the procurement; or,
  - c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or,

- d) Similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if:
    - a) The supplies, services, or construction are no longer required; or
    - b) Ambiguous or otherwise inadequate specifications were part of the solicitation; or,
    - c) The solicitation did not provide for consideration of all factors of significance to the Tribe; or,
    - d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or,
    - e) 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,
    - f) A condition for canceling a solicitation and re-soliciting, as specified in Section III(D)(3)(b) above, is met; or,
    - g) Loss or significant delay of funding or direction by a funding agency cancel a solicitation or reject bids; or
    - h) For good cause of a similar nature when it is in the best interest of the Tribe.
  3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
  4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitations or future procurement of similar items.
  5. For solicitation that are not restricted to Indians, Indian Organizations or Indian-Owned economic enterprises, if all otherwise acceptable bids received in response to any invitation for bids are at unreasonable prices, or only one bid is received and the price is reasonable. The Tribe shall cancel the solicitation and either:
    - a) Re-solicit using a request for proposals; or
    - b) Complete the procurement by using the competitive proposals method, following Sections III(D)(3)(b) above (when more than one otherwise acceptable bid has been received), or by using the non-competitive proposals method and following Section III(F)(2) above (when only one bid is received at an unreasonable price); provided, that the Tribal Council determines in writing that such actions are appropriate, that all bidders are informed of the Tribe's intent to negotiate, and that each responsible bidder is given a reasonable opportunity to negotiate.

## **I. COOPERATIVE PURCHASING**

The Tribe may enter into Federal, State and Local Inter-Governmental agreements to purchase or use common goods and services. The decision to use an Inter-Governmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the Inter-Governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination,

payment, and other relevant terms and conditions. The Tribe encourages the use of Federal or State excess and surplus property whenever such use is feasible and reduces project costs.

#### **IV. CONTRACTORS QUALIFICATION AND DUTIES**

##### **A. CONTRACTOR RESPONSIBILITY**

Procurement shall be conducted only with responsible contractors (i.e., those who have the technical and financial competence to perform and who have a satisfactory record for integrity.) Before awarding a contract, the Tribe shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-Procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contracting previous clients of the contractor), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. The Tribe shall also review the proposed contractor's compliance with the laws of the Colorado River Indian Tribes. A proposed contractor shall not be considered responsible if they have a history of non-compliance with said laws. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

##### **B. SUSPENSION OR DEBARMENT**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended or debarred when necessary to protect the Tribe in its business dealings. The Tribe may suspend or debar a contractor under applicable law.

##### **C. QUALIFIED BIDDER'S LISTS**

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified Indians, Indian Organizations or Indian-Owned economic enterprises may be maintained by the Tribe. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such qualified suppliers.

##### **D. BUSINESS LICENSE**

Contracts shall not be awarded to businesses until they obtain a Business License in accordance with the requirements of the Business and Professions Code.

##### **E. BONDS**

The standards under this section shall apply to construction contracts that exceed \$150,000 awarded under sealed bidding. There are no bonding requirements for other purchases or awards. However, the Tribe may require bonds in other purchases and contracts, including construction contracts which are less than \$150,000, when deemed appropriate.

1. Bid Bonds. For construction contracts exceeding \$150,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid prices.
2. Payment Bonds. For construction contracts exceeding \$150,000, the successful bidder shall furnish an assurance of satisfactory completion. This assurance may be any one of the following five:
  - a) A performance and payment bond in a penal sum of 100% of the contract price;

- b) Separate performance and payment bonds, each for 50% or more of the contract price;
- c) A 20% cash escrow deposit of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;
- d) A 25% irrevocable letter of credit of the total contract price, unconditionally payable upon demand of the Tribe, subject to reduction during any warranty period commensurate with potential risk; or
- e) A 10% irrevocable letter of credit of the total contract price, unconditionally payable upon demand of the Tribe, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

The determination of which assurance to require shall be in the discretion of the Tribe based upon the scope, complexity, cost or risk of any construction or facility improvements. The determination shall be in accordance with any funding agency requirements under federal or state law or regulation. These bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory where required by a funding agency pursuant to federal or state law or regulations.

## **V. TYPES OF CONTRACT, CLAUSES, AND CONTRACT ADMINISTRATION**

### **A. CONTRACT TYPES**

Any type of contracts (pricing arrangements), which is appropriate to the procurement and which will promote the best interests of the Tribe may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction costs methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities unless it is likely to be less costly or it is impracticable to satisfy the Tribe needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles. Time and materials contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

### **B. OPTIONS**

Options for additional quantities of performance periods may be included in contracts, provided that:

- 1) The option is contained in the solicitation;
- 2) The option is a unilateral right of the Tribe;
- 3) The contract stated a limit on the additional quantities and the overall term of the contract;
- 4) The options may be exercised only at the price specified in or reasonably determined from the contract; and,
- 5) The options may be exercised only if determined to be more advantageous to the Tribe than conducting a new procurement.

### **C. CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by tribal law, Federal Statutes, executive orders, and their implementing regulations, or grant requirements including but not limited to the following:

1. Administrative, contracted, or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may be appropriate.
2. Termination for cause and for convenience.
3. Termination for default.
4. Equal Employment Opportunity
5. Anti-Kickback Act.
6. Davis-Bacon Act.
7. Contract Work Hours and Safety Standards Act.
8. Reporting requirements.
9. Patent rights.
10. Rights in data and copyrights.
11. Examination of records by Comptroller General.
12. Retention of records for three years after closeout.
13. Clear Air Act and Clean Water Act.
14. Energy efficient standards.
15. Bid protests and contract claims.
16. Value engineering.
17. Payment of funds to influence certain Federal Transactions.
18. Insurance requirements and indemnification responsibilities.
19. Applicable warranties.
20. Compliance with the Laws of the Colorado River Indian Tribes.
21. Submission to the jurisdiction of the Tribal Courts of the Colorado River Indian Tribes.
22. Express retention of the sovereign immunity of the Colorado River Indian Tribes.

If all required clauses are not included on the contract form, then the Tribe shall attach any additional clauses to the contract forms used in contract documents. The operational procedures required by Section II(A) of this Policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the Tribe. The Tribe shall include the contract clauses and solicitation notices for Indian Preferences described in Section VIII(C)(3) below. All contracts shall be reviewed and approved by the Office of the Attorney General prior to presentation to the Tribal Council. All expenditures in proposed contracts must be reviewed by the

Controller to ensure sufficient funds have been budgeted to satisfy the Tribe's obligations under the proposed contract.

#### **D. CONTRACT APPROVAL**

Proposed contracts must be presented to the Administrative Committee for review and the Tribal Council for approval. It shall be the responsibility of the department or enterprise seeking the contract to place the proposed contract on the appropriate Committee or Council Agenda and to ensure the proposed contract has been reviewed by the Office of the Attorney General and Controller prior to the presentation of the contract to the Committee or Council. Any contract containing a waiver of sovereign immunity, agreement to arbitration or submission to a jurisdiction other than the Tribal Court shall require specific approval by resolution of Tribal Council.

#### **E. CONTRACT ADMINISTRATION**

A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section II(A) above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in the cost in FAR Subpart 31.2.

### **VI. SPECIFICATIONS**

#### **A. GENERAL**

All specifications shall be drafted so as to promote overall economy or the purposes intended and to encourage competition in satisfying the Tribe'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 specification shall be avoided whenever possible, except if the Tribe is attempting to standardize equipment for maintenance ease and/or inventory convenience. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

#### **B. LIMITATIONS**

The following specification limitations shall be avoided; geographic restrictions not mandated or encouraged by applicable Federal Law (except) for architect-engineer contracts, which may include geographic location as a selection factor if adequate completion is available; unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the Tribe's needs); brand name or equal specifications (unless the list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Specification shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the Tribe's computer needs and then allowing that consultant to complete for the subsequent contract for the computers).

### **VII. APPEALS AND REMEDIES**

#### **A. GENERAL**

It is the Tribe's policy to resolve all contractual issues informally and without litigation. When appropriate, the Tribe may consider the use of informal discussions between the parties to resolve differences.

#### **B. BID PROTESTS**

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing and

submitted to the Tribal Council through the Attorney General. The Tribal Council shall issue a written decision on the matter. The Tribal Council may, at its discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

### **C. CONTRACT CLAIMS**

All claims by a contractor relating to the performance of a contract shall be submitted in writing to the Attorney General. A complaint must be filed with the Attorney General no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based. Upon receipt of a complaint, the Attorney General or designee shall promptly stamp the date and time of receipt upon the complaint, and acknowledge its receipt. Within 20 calendar days of receipt of a complaint, the Tribal Council shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Tribal Council shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the Tribe. Tribal Council may extend the time to make its determination if necessary to gather all necessary information or evaluate a complex claim. The decision of the Tribe shall constitute final administrative action on the complaint.

### **D. PROTESTS INVOLVING INDIAN PREFERENCE**

Complaints arising out of any of the methods of providing for Indian Preference shall be handled in accordance with the Tribe's Indian Preference procedures. Each complaint shall be in writing, signed, and filed with the Attorney General. A complaint must be filed with the Attorney General no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based. Upon receipt of a complaint, the Attorney General or designee shall promptly stamp the date and time of receipt upon the complaint, and acknowledge its receipt. Within 20 calendar days of receipt of a complaint, the Tribal Council shall either meet, or communicate by mail or telephone, with the complaint in an effort to resolve the matter. The Tribal Council shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the Tribe. Tribal Council may extend the time to make its determination if necessary to gather all necessary information of evaluate a complex claim. The decision of the Tribe shall constitute final administrative action on the complaint.

## **VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **A. REQUIRED EFFORTS**

The Tribe shall make efforts to ensure that small businesses and individuals or firms located in or owned in substantial part by persons residing in the area of a tribal project/activity are used when possible. Such efforts shall include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration;
6. Including in the contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents for the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project; and

7. Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in A(1) through A(6) above. Goals may be established by the Tribe periodically for participation by small businesses and business concerns which are located in, or owned in substantial part by person's residing in the area of the project/activity, in the Tribe's prime contracts and subcontracting opportunities.

## **B. DEFINITIONS**

1. A small business is defined as a business, which is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used until the Tribe adopts standards of its own.
2. A business concern located in the area of the project/activity is defined as an individual or firm meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project/activity is defined as a business concern which is 51% or more owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged and meeting the definition of small business above.

## **C. INDIAN PREFERENCE REQUIREMENTS**

1. General: To the greatest extent feasible, preference shall be given to Indians, Indian Organizations or Indian-Owned economic enterprises in the award of all contracts and subcontracts. Where Indian preference is determined not to be feasible or in violation of federal law, the Tribe shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the Tribe's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be as described in Section III above. In no case shall the Tribe authorize or provide a preference for Indians, Indian Organizations or Indian-Owned economic enterprises, based on particular tribal affiliation or membership. To qualify as Indian one must be an enrolled member of a Federally Recognized Indian Tribe.
2. Eligibility: Eligibility for Indian Preference shall be established by the Tribal Council. If the Tribe or its prime contractor determines an applicant ineligible for Indian preference, the Tribe or prime contractor shall notify the applicant in writing before contract award, filling the position or providing the desired training.
3. Contract clauses and solicitation notices:
  - a) Solicitations shall include the following information where not prohibited by federal law:
    - 1) A statement of the applicability of Indian Preference to the solicitation and a time before the due date for offers by which offerors must submit evidence of eligibility for Indian Preference;
    - 2) The employment preference requirements as required under the Labor Code of the Colorado River Indian Tribes;
    - 3) Any applicable locally imposed preference requirements properly enacted by the Tribal governing body and adopted by the Tribe (or advise offerors to contact the Tribal governing body to determine any applicable preference requirements);
    - 4) Information as to whether the Tribe maintains lists of Indians, Indian Organizations or Indian-Owned economic enterprises by trade specialty which

are available to contractors and subcontractors for use in meeting Indian preference responsibilities;

- 5) A requirement that offerors (and their subcontractors, if required by the Tribe) provide a statement describing how they will provide Indian preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained;
  - 6) The Tribes description of the information to be submitted on Indian preference;
  - 7) The factors that the Tribe will use in judging the adequacy of the Indian preference information submitted;
  - 8) A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer;
  - 9) A requirement that each contractor and subcontractor submit a certification and supporting evidence to the Tribe whenever it is not feasible to provide Indian preference in subcontracting;
  - 10) For requests for proposals that are not restricted to Indians, Indian Organizations or Indian-Owned economic enterprises, the percentage or number of points set aside for Indian preference and the method for allocating these points.
  - 11) A requirement in unrestricted RFP's that subcontractors using requests for proposals solicit subcontractors by reserving 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals; and
  - 12) A requirement that offerors 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.
- b) Solicitations, contracts, and subcontractors shall include the following:
- 1) The grounds for termination of a contract or the imposition of penalties for subcontracts entered into in violation of the Indian Preference Requirements or false certification as to subcontracting with Indians, Indian Organizations or Indian-Owned economic enterprises; and
- c) If any or all required clauses and provisions are not intended on contract forms, then the Tribe shall attach any additional clauses for provisions to the contract forms used in solicitations and contract documents.
4. Monitoring and Remedies: The Tribal Council shall monitor the implementation of Indian preference in its contracts, subcontracts, and training. The Tribal Employment Rights Office (TERO) shall monitor the implementation of Indian preference in employment. Both the Tribal Council and TERO shall take appropriate remedial action (including cancellation of contracts and assessment of penalties) to ensure compliance.

## **IX. ETHICS IN PUBLIC CONTRACTING**

### **A. GENERAL**

The Tribe shall adhere to the following code of conduct, consistent with applicable law. Failure to abide by this code of conduct shall subject employees to discipline in accordance with the Employee Handbook, up to and including termination. Failure to abide by this code of conduct shall subject agents or contractors to contract termination or other penalties as permitted under the terms of the contract or agreement.

## **B. CONFLICT OF INTEREST**

No employee, officer or agent of the Tribe shall participate directly or indirectly in the selection of, or in the award of, or administration of any contract if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

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

Employees, officers, or agents who are directly involved in the selection, award, or administration of any contract supported by federal funds must prepare and sign a Conflict of Interest Certification form indicating there is no conflict of interest. This form must be submitted to the Controller if no conflict of interest is indicated. If the employee indicates a conflict of interest exists then corrective action shall be taken at the direction of the Chairman. Corrective action may include, but are not limited to, assigning another employee or agent to the procurement or excluding the vendor, bidder or offeror from performance, where practicable. These requirements apply to all contractors, including Indians, Indian Organizations and Indian-Owned economic enterprises.

## **C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION**

Tribal officers, employees or agents shall not solicit or accept gratuities (cash or cash equivalents such as gift cards), favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. However, nominal items (such as pens, notepads) or meals of less than \$25.00 in value may be accepted if offered to any similarly situated tribal employee, officer, or agent, but cannot be solicited. Items of nominal value, such as gift baskets provided during the holidays, by any vendor which are unsolicited will be available for use of all tribal employees within the respective department. Tribal officers, employees or agents shall not knowingly use confidential information for tangible personal gain. Where the procurement is supported by federal or state funds, Tribal officers, employees or agents shall abide by any and all additional restrictions imposed by the funding agency.

## **D. PROHIBITION AGAINST CONTINGENT FEES**

Contractors shall not retain a person to solicit or secure a Tribal contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

## **X. RECORDS**

### **A. Process**

1. All original bid or quote documents shall be provided to the Accounting Department.

2. All original bid or quote documents shall be filed in the appropriate grants or contracts folder.
3. The Grants Specialist will review all check requests from departments utilizing federal or state grant or contract funds to ensure compliance with the funding agency's requirements.
4. The Grants Specialist will review all such check requests for compliance with the Procurement Policy.
5. The Grants Specialist will not process any check request that does not have the required information. If such documentation is not attached to the check request, the Grants Specialist will contact the Department Head for further information and advise the appropriate Grants/Contracts Accountant of the missing information and that the check cannot be processed.
6. After the Grants Specialist is satisfied that the Procurement Policy has been followed, the check request will be sent to the Controller for review and approval.
7. After the Controller has reviewed the check request and determined that it complies with the Procurement Policy, it is then sent to Tribal Council for final approval.
8. Once the check request has been approved by two Tribal Council members, it will be returned to Accounting- Accounts Payable for final processing and issuance of the check.

#### **XI. CONSULTANT RATES**

Federal regulations governing federal grants or contracts may have limitations on the compensation for individual consultant services. Generally, the compensation for consultant services is to be reasonable and consistent with that paid for similar services in the marketplace. Each grant-making agency and component periodically establishes a prior approval threshold consultant rate. Departments are responsible for ensuring consultants are not paid compensation higher than the consultation rate maximum limit established unless prior approval from the grant-making agency or component is obtained.

**ATTACHMENT I  
INDIAN PREFERENCE FORMULA**

The following formula shall be used when applying Indian Preference to unrestricted solicitations under this Policy to the lowest responsive bid (or proposal as applicable) from a qualified Indian, Indian Organization or Indian-Owned economic enterprise within the maximum total contract price established for the specific project or activity being solicited. If the bid is no more than “X” higher than the total bid price of the lowest responsive from any qualified bidder. The factor “X” is determined as follows:

X = lesser of:

|   |                                      |
|---|--------------------------------------|
| When the lowest responsive bid<br>Is less than \$ 100,000                                 | 10% of that bid, or \$ 9,000         |
| When the lowest responsive bid<br>Is at least \$ 100,000, but less<br>Than \$200,000      | 9% of that bid, or \$ 16,000         |
| When the lowest responsive bid<br>Is at least \$ 200,000, but less<br>Than \$ 300,000     | 8% of the bid, or \$ 21,000          |
| When the lowest responsive bid<br>Is at least \$ 300,000, but less<br>Than \$ 400,000     | 7% of that bid, or \$ 24,000         |
| When the lowest responsive bid<br>Is at least \$ 400,000, but less<br>Than \$ 500,000     | 6% of that bid, or \$ 25,000         |
| When the lowest responsive bid<br>Is at least \$ 500,000, but less<br>Than \$ 1 Million   | 5% of that bid, or \$ 40,000         |
| When the lowest responsive bid<br>Is at least \$ 1 Million, but less<br>Then \$ 2 Million | 4% of that bid, or \$ 60,000         |
| When the lowest responsive bid<br>Is at least \$ 2 Million, but less<br>Than \$ 4 Million | 3% of that bid, or \$ 80,000         |
| When the lowest responsive bid<br>Is at least \$ 4 Million, but less<br>Than \$ 7 Million | 2% of that bid, or \$ 105,000        |
| When the lowest responsive bid<br>Is at least \$ 7 Million or more                        | 1% of that bid, with no dollar limit |

**ATTACHMENT II  
CERTIFICATION OF CONFLICT OF INTEREST FORM**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Department: \_\_\_\_\_

Federal or State Contract/Grant Name and Number: \_\_\_\_\_

Contractor(s): \_\_\_\_\_

I understand that employees, officers, and agents of the Colorado River Indian Tribes may not participate, directly or indirectly, in the selection, award or administration of any contract supported by Federal or State funds where a conflict of interest, real or apparent, exists.

If you do not have a conflict of interest please check the following:

- I hereby certify that neither I nor my relative, partner, or an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of myself, my relative or partner, has a financial or other interest in or with the contractor listed above currently or within the past two years.

If you have a conflict of interest please provide a written explanation of why you cannot certify you do not have a conflict of interest with this procurement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below I certify that the answers provided above are true to the best of my knowledge and belief as of the date of my signature below. I also certify that I understand the conflict of interest provisions under the Procurement Policy and federal or state grant/contract to which I am subject. I agree to contact the Chairman and Controller with respect to any new interests that may raise a potential conflict of interest during the course of my duties.

\_\_\_\_\_  
Signature of Employee, Agent or Officer

\_\_\_\_\_  
Date

**DETERMINATION BY CHAIRMAN**

The above notice of a possible conflict of interest has been evaluated. The Chairman finds:

- No Conflict
- Conflict-corrective action required as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Chairman

\_\_\_\_\_  
Date

CC: Controller