

# **Contract Procurement**

*Approved by Tribal Council August 25, 2005  
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## **Application:**

This Policy applies to all contracts for the procurement of Independent Contractor Agreements and construction services entered into by the Tribe. It shall apply to every expenditure of funds by the Tribe for consultant or construction services, nothing in the 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. The term "procurement," as used in this policy, includes both contracts and change orders for construction or service, contract amendments, as well as purchase, lease or rental of supplies and equipment for construction.

All contract procurement transactions shall be reviewed by the Chief Financial Officer and Director of Administrative Programs & Compliance or other individual authorized by the Tribal Council.

## **Procurement by small purchase procedures:**

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 fixed at USC 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be solicited from a minimum of three qualified sources.

## **Procurement by sealed bids (formal advertising):**

Bids are publicly solicited and a firm- fixed- price contract (lump sum or unit price) is awarded to the responsible, responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.

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 of the responses received for all procurement.

Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:

- 1) A complete, adequate and realistic specification or purchase description is available,
- 2) Two or more responsible bidders are willing and able; to compete effectively for the work,
- 3) The procurement lends itself to a firm fixed price contract, and
- 4) The selection of the successful bidder can be made principally on the basis

of price.

**Solicitation and receipt of Bids:**

An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Public notice is given of at least ten days before a solicitation is issued, responses to such notice are honored to the maximum extent practical, a minimum of thirty days for main construction contracts and fifteen days for other contracts is provided for preparation and submission of bids or proposals, and notice of contract awards is made available to the public,

- 1) The invitation for bids shall state the time and place for the receipt of bids and the public bid opening. Any amendments to the invitation shall be in writing, and within seven days of the bid opening. All bids received shall be time-stamped and stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
- 2) The invitation for bids will include any specifications and pertinent attachments and will define the items or services in order for the bidder to properly respond.
- 3) 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.

Contract Award will be made if there are sufficient unencumbered funds available to cover the anticipated cost of each procurement. Contract award is made to the responsive and responsible bidder offering the lowest price, consistent with Indian preference requirements, 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; unsuccessful firms are notified within ten days after contract award. If equal low bids are received, award shall be made by drawing lots.

**Mistakes in bids:**

- 1) Correction or withdrawal of inadvertently erroneous bids may be permitted before bid opening by written notice received in the office designated for receipt of bids.
- 2) After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of non-judgmental character was made, the nature of the mistake, and the bid price actually intended.
- 3) 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.

- 4) 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 price or other provision of bids prejudicial to the interest of the Tribe or fair competition shall be permitted.

Contracts and change orders are to be in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price.

**Change orders:**

Change orders will be issued if there are sufficient unencumbered funds available to cover the anticipated cost of each change order. Work will be inspected and accepted before payment, and payment will be made promptly for contract work performed and accepted,

**Small purchases of \$100,000 or less:**

- a) Obtaining Quotes: The Tribe shall solicit price quotations by phone, fax, letter or in person to allow a reasonable number of competitive sources. When soliciting quotations, the Tribe 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 Tribe shall obtain written quotations by the due date. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as public record. See fiscal document-Procurement Documentation.
- b) Competition: The Tribe shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if the Tribe has attempted to obtain sufficient quotations. A sole quotation received may be accepted only in emergencies threatening public health and safety.
- c) Award:
  - 1) Award based on price: For small purchases awarded based on price and fixed specifications the Tribe shall make award to a qualified contractor.
  - 2) Award based on factors other than price: For small purchases to be awarded based on factors other than price, a formal solicitation shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including price. Award shall be made in accordance with the stated rating system.

### **Competitive Proposals (RFP):**

- a) Conditions for Using Competitive proposals 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.
- b) Solicitation.
  - 1) A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposal.
  - 3) Evaluation Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors, including the weight given to each technical factor. Tribe's shall reserve 15% of the total available points for the provision of Indian preference in the award of contracts, and up to an additional 10% for evaluation of the offerors statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
  - 4) Negotiations. If negotiations are deemed necessary, they shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected, based on evaluation against technical and price factors 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 of deficiencies in technical and price aspects of proposals and to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, be assisted in correcting deficiencies, or be directed to reduce their proposed prices to be considered for an award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
  - 5) Award. After evaluation of revisions, 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 project. The Tribe may accept a sole proposal received, if the Tribe determines that the delays caused by re-solicitation would cause higher costs, or were the Tribe determines the proposal has a fair and reasonable price.
  - 6) Architect/Engineer Services. A/E services in excess of the small purchase limitation may be obtained by the competitive proposals method. Sealed bidding shall not be used. This procedure shall not be used to purchase other types of services even though A/E firms are potential sources.

### **Non-Competitive Proposals:**

- a) Conditions for use. Procurement shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
  - 1) an emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Tribe (flood, earthquake, epidemic, riot, equipment failure, etc). 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
  - 2) only one source of supply is available, and is so certified in writing; or
  - 3) after solicitation of a number of sources, competition is determined inadequate, or
  - 4) the funding agency specifically authorized the use of the supplier/contractor or the use of noncompetitive proposals.
- b) Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Chief Financial Officer and the Contract Compliance Specialist.
- c) Price Reasonableness. The reasonableness of the price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis.

### **Cost and Price Analysis**

A cost analysis shall be performed for all procurement actions, including change orders.

### **Cancellation of Solicitations**

An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if the Tribe no longer requires the supplies, services or construction, can no longer reasonably expect to fund the procurement, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable or other similar reasons.

A solicitation may be canceled and all bids or proposals that have already been received may be rejected if the supplies, services or construction are no longer required, ambiguous or otherwise inadequate specifications were part of the solicitation. If prices exceed available funds, or if there is reason to believe that bids or proposals may not have been independently arrived at in open competition, or there may have been collusive or submitted in bad faith, the Tribe may elect to cancel the solicitation for those reasons.

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.

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-solicitation or future procurement of similar items.

If only one bid is received and the price is unreasonable, the Tribe shall cancel the solicitation and either re-solicit using a request for proposals, or complete the procurement by using the competitive proposal method, or by using the noncompetitive proposals method, provided it is determined in writing that such action is appropriate, all bidders are informed of the Tribe's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

### **Contractor Qualifications and Duties**

Procurement shall be conducted only with responsible contractors, (those who have the technical and financial competence to perform and who have a satisfactory record of 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, compliance with public policy, record of past performance, and financial, administrative and technical capability to perform contract work of the size and type involved and within the time frame provided under the contract. 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.

### **Suspension and Debarment:**

Contracts shall not be awarded to debarred, suspended or ineligible Contractors. Please refer to website <http://epls.arnet.gov> for information regarding debarred or suspended contractors.

### **Appeals:**

It is the Tribe's policy to resolve all contractual issues informally at the Tribe level, without litigation. 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 before the due date of receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer, who shall issue a written decision on the matter. The Contracting Officer may suspend the procurement pending resolution of the protest, if warranted by the facts presented.

### **Assistance to Small and Other Businesses**

The Tribe shall make efforts to ensure that small businesses and individuals located in or owned substantially by persons residing in the area of a Tribal project are used when possible. A small business is defined as a business which is, independently owned, not dominant in its field of operation, and is not an affiliate or subsidiary of a business dominant in its field of operation.

### **Indian Preference Requirements.**

In order to apply a fair, financially responsible application of Native American Preference to the award of contracts for the Karuk Tribe, staff shall observe the following policy,

To the greatest extent feasible, and in accordance with grant or contract agreements legal requirements, preference shall be given to Indian owned economic enterprises in the award of all contracts. Preference will be provided in accordance with the Karuk Tribe TERO for business that are 51% Indian owned and Indian controlled. "Indian-owned Economic Enterprise or Native American owned " means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51% of the enterprise, and that ownership shall encompass active operation and control of the enterprise. Any contractor claiming Indian preference shall complete and submit, with his bid, the form entitled "Statement of Qualifications, Alaska Native or Indian Owned Enterprise" (which can be obtained by contacting the Karuk TERO Department).

Where Indian preference is determined not to be feasible, the TRIBE shall document to procurement file with the basis for its findings. Indian preference applies not only on-site, but also to contracts with firms that operate outside the area.

**Eligibility:**

Indian Preference will apply in the selection process in accordance with the Indian Preference Act of 1934 (Title 25, USC, Section 47) and/or the Tribal Employment Rights Ordinance (TERO), based on funding source requirements. If the Tribe or its prime contractor determines an applicant ineligible for Indian preference, they shall notify the applicant in writing before contract award.

Prior to the advertisement of the request for proposals/qualifications and the application of this policy to any contract award, Tribal Staff are required to consult their grant terms and conditions for any restrictions to the application of this Indian Preference policy. Appropriate and clearly stated Indian Preference language must be included in the Request for Proposal/Qualifications unless such preference is not allowed by the terms and conditions of the grant award.

A maximum of one percent (1%) of the low bid shall be calculated and applied as an allowance for awarding contracts that are either below \$50,000 or are for purposes other than construction, modernization and rehabilitation to Native American and Tribal Member owned and controlled businesses. For contracts for construction, modernization and rehabilitation whose budget exceeds \$50,000, a maximum of three percent (3%) of the low bid shall be calculated and applied as an allowance for awarding the contract to other Native American bidders. However, a maximum of 5% of the low bid shall be calculated and applied as an allowance for Karuk Tribal Member bidders. The total amount of the contract with the Native American owned or Karuk Tribal Member owned firm must be within the approved budget. Award may only be made to the lowest responsive bid for a qualified Indian owned bidder or other bidder provided that a justification for the basis of rejecting the lowest bid is documented.

**Examples of bidding situations:**

Karuk Tribal Member/ Native American Bidders –All Professional Services Contracts for Non Construction and Construction Projects Less than \$50,000:

Budget for project is	\$50,000.
Non Indian Bid:	\$40,000
Native American/ Karuk Bid:	\$40,360

1% of low bid is \$400, Indian owned/ Karuk bid is \$360 over or within the allowance **and under budget**, award contract to Indian owned firm.

Native American Bidders- Construction Over \$50,000 :

Budget for project is \$100,000.

Non Indian Bid: \$97,000

Native American Bid: \$99,000

3% of low bid is \$2,910, Native American bid is \$2,000 over the low bid , and within the allowance **and under budget**, award contract to Native American owned firm.

Karuk Tribal Member Bidder- Construction Over \$50,000:

Budget for project is: \$100,000

Non Indian Bid: \$90,000

Karuk Tribal Member Bid \$91,950

5% of low bid is \$4,500, Karuk Tribal Member bid is \$1,950 over and within the allowance and under budget, award contract to Karuk Tribal Member owned firm.

Non Native Bidder Construction Award Over \$50,000:

Budget for project is: \$100,000

Non Indian Bid: \$90,000

Karuk Tribal Member Bid \$95,000

5% of low bid is \$4,500, Karuk Tribal Member bid is \$5,000 over and although they are not over the budget, **they are not within the 5% allowance**, so you will award contract to Non Indian owned firm.

**Solicitations (Request for Proposals):**

Solicitations shall include a statement of the applicability of Indian preference to the solicitation. Including:

- 1) any applicable locally improved preference requirements property enacted by the tribal governing body and adopted by the Tribe,
- 2) information as to whether the Tribe maintains lists of Indian-owned economic enterprises, or individuals, which are available to contractors for use in meeting Indian preference responsibilities,
- 3) a requirement that offerors 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,
- 4) the Tribes description of the information to be submitted on Indian preference,
- 5) the factors the Tribe will use in judging the adequacy of the Indian

preference information submitted,

- 6) a statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer,
- 7) 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,
- 8) a requirement that offerors submit a list of core crew employees with their offers, as defined in the Indian Preference Act and/or TERO Ordinance, 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.

Solicitations, contracts, and subcontracts shall include the following:

- 1) the clause prescribed in the Indian Preference Act and/or TERO Ordinance in connection with the development or operation of Tribe projects,
- 2) the grounds for termination of a contract or the imposition of penalties for improper subcontracting or false certification as to subcontracting with Indian preference.

**Monitoring and Remedies.**

The Karuk Tribe TERO shall monitor the implementation of Indian preference in its contracts, subcontracts, training and employment, and take appropriate remedial action to ensure compliance.