

**THE TULALIP TRIBES OF WASHINGTON**

**PROCUREMENT POLICY**

## TABLE OF CONTENTS

Preface .....	2
Chapter 1 Introduction .....	3
Chapter 2 Authority, Policy, and Responsibility .....	9
Chapter 3 Procurement Methods .....	11
Chapter 4 Assistance to Indian, Small and Other Disadvantaged Businesses .....	19
Chapter 5 Contractor Qualifications and Duties .....	22
Chapter 6 Specifications.....	23
Chapter 7 Contract Documentation and Provisions .....	24
Chapter 8 Disputes, Protests, Claims and Appeals and Remedies .....	27
Appendix .....	30

## **PREFACE**

This Policy of Procurement complies with the procurement standards in OMB Super Circular 2 CFR 200 and the P.L. 93-638 procurement standards at 25 C.F.R. 900, Subpart F.

When inconsistencies exist between the procurement system and the terms of any grant or contract, the terms of the grant or contract shall govern.

Applicable federal law shall take precedence if conflicts exist between these policies and applicable Federal Law. If conflict exists between these policies and applicable Federal Law, only the conflicting section of these policies shall be voided. All other severable policies shall remain in force.

# INTRODUCTION

## CHAPTER 1

### 1-1 PURPOSE

This document establishes standards and guidelines for the procurement of supplies, equipment, construction, and services for all operations of the Tulalip Tribes including those related in whole or in part to Federal, State and Private awards. This policy shall ensure that the acquisition of materials and services are obtained efficiently, economically, and in compliance with the provisions of applicable Federal statute, regulation, or Executive Orders.

This Procurement Policy is designed to:

- 1) Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Tulalip Tribes
- 2) Assure that supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available to the Tulalip Tribes; promote competition in contracting
- 3) Provide safeguards for maintaining a procurement system of quality and integrity
- 4) Assure that Tulalip Tribes purchasing actions are in full compliance with applicable Federal statutes and Tribal laws.

### 1-2 APPLICATION

This Procurement Policy shall apply to all contracts for the procurement of supplies, services, and construction entered into by the Tulalip Tribes after the effective date of this Policy. It shall apply to purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall affect the terms and conditions of any grant, contract, gift, or bequest that are otherwise consistent with law. When both Federal and non-Federal funds are used for a project, the work to be accomplished with the Federal funds should be separately identified, and Federal Government's Indian preference regulations must be applied to the work financed by the Federal government. If it is not possible to separate the funds, then the Federal Government's Indian Preference regulations shall be applied to the total project.

### 1-3 DEFINITIONS

The terms used in this Policy shall be defined as set forth in OMB Circular 2 CFR 200, the Common Rule, Section .36 and as set forth below:

*Acquisition Cost* - Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with Generally Accepted Accounting Principles.

*Architect-Engineer and Land Surveying Services* - Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State.

*Awarding agency means:*

- 1) Federal or State agency with respect to a grant or contract, and
- 2) The Pass-thru Entity (non-federal) that awarded a federal or state grant to another non-federal entity

*Brand Name or Equal Specification* - A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet Tribe's requirements, and which provides for the submission of equivalent products.

*Change Order* - A written order signed and issued by the Procurement Officer, directing the contractor to make changes which the "Changes" clause of the contract authorizes the Procurement Officer to order unilaterally with or without the consent of the contractor.

*Confidential Information* - Any information which is available to an employee only because of the employee's status as an employee of The Tulalip Tribe and is not a matter of public knowledge or available to the public on request.

*Construction* - The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

*Contract Modification (bilateral change)*. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

*Contract* - (except as used in the definitions for "grant" and "sub grant" in this section and except where qualified by "Federal") a legal instrument by which a non-federal entity purchases property or services needed to carry out a project or program. See 2 CFR200.22 contract.

*Contractor* - Any person or entity having a contract with the Tulalip Tribes of Washington.

*Cost Analysis* - The evaluation of the separate elements (e.g., labor, materials) that make up a total cost proposal or price to determine if they are allowable, reasonably priced, and are directly related to the requirements of the project, services or purchase being sought.

*Cost Data* - Information concerning the cost of labor, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

*Cost-Reimbursement Contract* - A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Manual, and a fee or profit, if any.

*Cost-type contract* - A contract or subcontract under a grant or contract in which the contractor or subcontractor is paid based on the costs it incurs, with or without a fee.

*Direct or Indirect Participation* - Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

*Disadvantaged Business* - A small business that is owned, managed, and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

*Employee* - An individual drawing a salary or wages from the Tulalip Tribes, whether elected or not; any non-compensated (volunteer) individual performing personal services for the Tribe or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the Tribe; and any non-compensated individual serving as an elected official of the Tribe.

*Equipment* - Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

*Financial Interest*

- 1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100.00 per year, or its equivalent;
- 2) Ownership of 5% of any property or business; or
- 3) Holding a position in a business such as officer, director, trustee, partner, employee or the like, or holding any position of management.

*Gratuity* - A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal intrinsic value, present or promised, unless consideration of substantially equal or greater value is received.

*Immediate Family* - As defined in the Tulalip Employee Handbook: spouse, children, parents, siblings, nieces, nephew, grandparents, grandchildren, uncles, aunts, first cousins, step and foster children, step grandchildren, parents who have lost an unborn child, brothers-in law, sisters-in-law, parents-in-law, siblings-in-law, nieces-in-law, nephews-in-law, grandparents-in-law, uncles-in-law, aunts-in-laws, and first cousin-in-law.

*Indian Owned Business* - Any business which is owned, managed and controlled as defined in the TERO Code which is hereby incorporated by reference for purposes of determination of Indian status and eligibility.

*Invitation for Bids* - All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

*Obligations* - Orders placed for property or services, contracts and sub grants awarded, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

*Office of Management and Budget* – OMB is the Executive Office of the President, Office of Management and Budget.

*Percentage of Completion Method* - A system under which payments are made for construction work according to the percentage of completion of the work performed, rather than to the grantee's cost incurred.

*Price Analysis* - The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

*Pricing Data* – Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

*Prior approval* – Refers to documentation evidencing consent prior to incurring specific cost.

*Procurement* - The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Qualified Products List* - An approved list of supplies, service, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the Tribe has determined will meet the applicable specification requirements.

*Real Property* - Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Request for Proposals* - All documents whether attached or incorporated by reference utilized for soliciting proposals.

*Responsible Bidder or Offeror* - A person who has the capability in all respects to perform fully the contract requirements and the tenacity, quality, perseverance, experience, integrity, reliability, capacity, record of past performance, facilities, equipment, and credit which will assure good faith performance.

*Responsive Bidder* - A party who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bid.

*Services* - The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end-product other than reports, which are merely incidental to the required performance. This term shall not include agreements or collective bargaining agreements.

*Small Business* - A United States business that is independently owned and is not dominant in its field of operation, or is not an affiliate or subsidiary of a business dominant in its field of operation as defined by the Small Business Administration.

*Specification* - Any description of the physical, performance or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

*Supplies* - All tangible personal property other than "equipment" as defined in this part.

*Terms of a grant or sub grant or contract* - Refers to all requirements of the grant or sub grant or contract, whether in statute, regulations, or the award document.

This policy does not include payment conditions issued in accordance with Treasury Circular 1075, or individual grantee requirement that usually accompany grant awards under "special conditions."

# AUTHORITY, POLICY AND RESPONSIBILITY

## CHAPTER 2

### 2-1 AUTHORITY

Authority to contract, as well as ultimate responsibility for all procurement activities, is vested in the Executive Director and the Board of Directors. Authority shall be delegated to each individual program supervisor to perform the following:

- Procure goods and services necessary for their particular program
- Make purchases by public bid.
- Control and manage receipt and shipment of all goods related to their program.
- Control and manage material that may be stored or stocked for overall economy or to maintain services.
- Control the acquisition and utilization of property, make declaration of excess material, and authorize the disposal of excess property and salvage materials.
- Control the acquisition, construction, and repair of real property.
- Determine the type of contracts that will promote the best interest of the Tulalip Tribes and make determinations require in connections as to costs, fee and incentive type contracts.
- Terminate contracts for default or for the convenience of the Tulalip Tribes on notification of noncompliance.

### 2-2 CONTRACTING OFFICER/CONTRACTING AGENCY

All procurement transactions shall be administered by the Contracting Officer/Agency, who shall be the Executive Director or other individual the Executive Director designates in writing. The Contracting Officer may issue operational procedures (such as a procurement handbook or standard operating procedures) to implement this Policy. The Contracting Officer shall also establish a system of sanctions for violations of the ethical standards described herein, consistent with applicable Federal or Tribal law.

### 2-3 DUTIES OF CONTRACTING OFFICER/CONTRACTING AGENCY

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

**A. Form:** Contracts and modifications are in writing, clearly specifying the desired supply or hardware item, 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.

**B. Bid Solicitation Timelines** (excludes micro and small purchases): Public notice is given for each upcoming procurement at least 10 days before a solicitation is issued. A minimum of 30 days for major construction contract and 15 days for other contracts is provided for preparation and submission of bids or proposals. Notice of contract awards is made available to the public.

**C. Methods of Procurement:** Solicitation procedures are conducted in full compliance with Federal standards stated in OMB Circular 2 CFR 200 and the Indian preference requirements and methods of procurement at 25 U.S.C. §450e.

**D. Contract Cost and Price:** A cost or price analysis (2 CFR200.323) is performed with every procurement above the Simplified Acquisition Threshold (2 CFR 200.088), including contract modifications.

**E. Sealed Bids & Competitive Proposal:** For sealed bid contracts, contract award is made to the responsive and responsible bidder offering the lowest price, consistent with the Indian Preference

requirements. For Competitive proposals, the contract award is made to the offeror whose proposal is most advantageous and which offers the greatest value to the Tulalip Tribes, considering price, technical, and other factors as specified in the solicitation, including Indian Preference. Unsuccessful firms are notified in writing.

**F. Budget:** There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including any change order) is made. All work shall be inspected before payment, and payment shall be issued promptly for contract work performed and accepted.

**G. Safe Guarding of Assets:** 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 OMB Circular 2 CFR 200.313 (d)3.

**H. Compliance:** The Tulalip Tribes adhere to the procurement and program requirements of OMB Circular 2 CFR 200 and 25 C.F.R. Part 900, Subpart F; The Tulalip Tribes comply with applicable Federal compliance requirements, as provided in the this Policy and grant award notice.

**I. Documentation:** Sufficient records are maintained to detail the significant history of a procurement including, but not limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

#### **2-4 PROCUREMENT POLICY AMENDMENTS**

This Policy and any changes made hereto shall be submitted to the Board of Directors for approval. The Board appoints or delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the Tulalip Tribes.

**2-5 CODE OF CONDUCT (TERO CODE 9.05.130)** Any individuals shall be disqualified from any actions involving the decision process of employment or contracting where they have a personal interest or ownership in or involve an immediate family member. This may include personal relationship where there is a perception or appearance that they cannot act fair and without bias. [Res. 2012-257]

#### **Prohibition Against Contingent Fees**

Contractors shall not retain a person to solicit or secure the contract for a commission, percentage, brokerage, or contingent fee.

Penalties, sanctions or other disciplinary actions for the violation of these standards and policies will be enforced in accordance with the Tulalip Tribes Employee Handbook.

## PROCUREMENT METHODS

### CHAPTER 3

#### 3-1 ESTABLISHING NEED

The first step in the procurement cycle is to decide what property is needed. The property requisition must JUSTIFY spending the money to achieve an objective of the Tribes organization or grant. Justification shall include the following:

- 1) Identification of the need
- 2) Approval from the funding agency (if required) in the case of a grant, or approval from the appropriate authority for Tribes ordinary operations,
- 3) Identification of the person (Contracting Officer/Agency) within the Tribe who will initiate the request for property acquisition.
- 4) Relevancy and Benefit and contribution to program objectives.

Executive Directors are responsible for ensuring that the objectives of their program or grants are met, and have the authority to issue a request to purchase property. The individual who makes the request must also justify the need for such property. He/She must define what the need for the property is, what the property will be used for, and any other important considerations. This justification shall be furnished to the federal agency (if required) when the funds are coming from federal grants before the property is acquired.

Before acquiring new property, the property request shall be reviewed by a tribal official to be sure that existing property (i.e. - similar property from some other part of the organization) cannot meet the need. When appropriate, analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical procurement.

If it is of primary importance that the tribal organization keeps records of sufficient detail:

- The request for purchase
- The supporting justifications (rational for method of procurement)
- Basis of price/cost of procurement
- The approval of the funding agency (if required), if a grant or the approval of the appropriate tribal official.

For grant related purchases, the requisition form must be filled out (see appendix) one copy shall be submitted to the funding agency if required and other copy must be kept in the tribal organization's property records. If the approval was not in the grant award, the written approval from the *funding agency* must be attached to the property requisition.

#### 3-2 METHODS OF PROCUREMENT TO BE FOLLOWED (2 CFR 200.320)

The office of Management and Budget (OMB) requires that all non-federal entities must use one of the following methods of procurement:

- A. Procurement by Micro-Purchase
- B. Procurement by Small-Purchase Procedures
- C. Procurement by Sealed Bid
- D. Procurement by Competitive Proposal
- E. Procurement by Noncompetitive Proposal (sole source)
- F.

## **A. MICRO – PURCHASING**

Procurement by micro-purchase is used to secure supplies or services (non-construction) with an aggregate dollar amount not to exceed the micro-purchase threshold (2 CFR 200.67); however, if practical the Tribe shall distribute micro purchases equitably among qualified suppliers. Micro purchases may be awarded without soliciting competitive quotations if the Tribe considers the price to be reasonable. Contracts/purchases shall not be artificially divided as to constitute a micro purchase under this section.

## **B. 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 (2 CFR 200.88). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Contracts/purchases shall not be artificially divided as to constitute a small purchase under this section.

Tulalip will implement the following purchase milestones:

- 1) Purchases <\$10,000
  - a. On face of purchase order make a written notation that a price check comparison was made with 1 (one) competing vendor (identify vendor).
- 2) Purchases >\$10,000 but < \$25,000
  - a. On face of purchase order make a written notation that a price check comparison was made with 2 (two) competing vendor (identify vendors).
- 3) Purchases >\$25,000 but <\$50,000
  - a. On face of purchase order make a written notation that a price check comparison was made with 3 (three) competing vendor (identify vendors).
- 4) Purchases >\$50,000 but < \$150,000
  - a. RFP (Request for Proposal) required.

The most common method for small purchases will be through the issuance of a *purchase order*, signed by the accounts payable clerk after receiving a purchases request signed by the responsible Executive Director (or delegate). This is a document addressed to the supplier requesting future delivery of supplies, or the future performance of non-personal services, in accordance with the terms of the purchase order in exchange for a promise by the buyer to pay the price stated in the purchase order in the event of such delivery or performance. However, at all times, the executive director shall be analyzing the cost and questioning whether it is reasonable, and periodically checking if prices or services are better elsewhere.

**Tribal Preference (TERO Code 9.05.110):** The Tulalip Tribes shall to the greatest extent feasible, provide preference to Indian-owned economic enterprises and Indian organizations and shall endeavor to maintain and/or refer to lists of qualified Indian supply sources (NAOB registry). The Tulalip Tribes shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training, and employment and shall specify the method to be used. The Tulalip Tribes shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the Tulalip Tribes shall document the procurement file with the reasons for the lack of Indian participation. See TERO code '*Native American Preference – Contracting and Procurement*' 9.05.110

### **C. PROCUREMENT BY SEALED BID**

Competitive Sealed Bids (formal advertising), bids are publicly solicited and a firm-fixed price contract (Lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with ALL the material terms and conditions of the invitation for bid, is lowest in price (lowest *responsive*, responsible bid). This is the preferred method for procuring construction and equipment.

In order for Sealed Bidding to be feasible, appropriate condition must be present, including as a minimum, the following:

- 1) A complete, adequate and realistic specification or purchase description is available. The invitation for bids will include any specifications and pertinent attachments and shall define the items or services in sufficient detail in order for the bidder to properly respond with a price. (See appendix for requirements).
- 2) Two or more responsible suppliers are willing and able to complete effectively for the business.
- 3) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

If Sealed Bids are used for procurement, the following requirements shall apply:

- 1) Allowing sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers, at least three (3). In addition, the invitation shall be publicly advertised in an appropriate media at least statewide.
- 2) The invitation for bids, including specification and pertinent attachments, shall clearly define the times or services needed in order for the bidder to properly respond.
- 3) All bids shall be opened publicly at the time and place stated in the invitation for bids.
- 4) A firm-fixed-price contract award shall be made by written notice to that responsive, responsible bidder whose bid, conforming to the invitation for bids, is the lowest. Where specified in the bidding documentation, factors such as Tribal Preference, prompt payment discounts, transportation cost and taxes shall be considered in determining the lowest bid. Payment discounts may be used to determine low bid when prior experience of the Tulalip Tribes organization indicates that such discounts are generally taken.
- 5) Any or all bids may be rejected when there are sound documented business reasons in the best interest of The Tulalip Tribes. Sound documented reasons are those defined in 48 CFR Part 14.

#### **Tulalip Bid Award Process (TERO Code 9.05.320)**

Refer to TERO code for specific determination factors for award selections.

### **D. PROCUREMENT BY COMPETITIVE PROPOSALS**

In competitive negotiation proposals are requested from a number of sources and the request for proposal is publicized. Negotiations are normally conducted with more than one source submitting offers, and either a fixed price or cost reimbursement type contract is awarded, as appropriate. It is generally used when conditions are not appropriate for sealed bids. This is the required methods of procurement for items costing more than \$150,000 unless sealed bid procurement is possible pursuant to 2 CFR 200.320(c) and is typically

used for purchase of professional services. If competitive proposals are used for procurement, the following requirement shall apply:

- 1) Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with nature and requirements of procurement.
- 2) The request for proposal shall be publicized and identify all evaluation factors and their relative importance. Reasonable request by other sources to compete must be considered to the maximum extent practicable.
- 3) The request for proposal shall identify all significant, evaluation factors, including price or cost where required and their relative importance, and the time frame for performance.
- 4) The Tribe shall provide mechanisms (Score Sheet, see Appendix) for technical evaluations of the proposals received; for determination of responsible bidders; for the provision of written or oral discussions/negotiation of both technical information and cost data; and selection for contract awards.
- 5) Contracts must be awarded to the responsible offeror whose proposal will be most advantageous to the Tribe, with price and other factors considered. Unsuccessful bidders shall be notified promptly.
- 6) The Tribe may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms are a potential source to perform the proposed effort.

The invitation for bids will include any specifications and pertinent attachments and shall define the items or services in sufficient detail in order for the bidder to properly respond with a price.

#### **Tulalip Bid Award Process (TERO Code 9.05.320)**

Refer to TERO code for specific determination factors for award selections.

#### **E. PROCUREMENT BY NONCOMPETITIVE PROPOSAL (SOLE SOURCE)**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source
- 2) The Tribal need, public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (see TERO code '*Imminent need and emergency award process*' 9.05.360)
- 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or

- 4) After solicitation of a number of sources, competition is determined inadequate.
- 5) Such solicitation efforts must be supported by written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer/Agency.

Additional innovative procurement methods may be used in relationship to grants with the approval of the grantor agency. A copy of such approval may be sent to the Office of Federal Procurement Policy (OFPP)

### **3-3 CONTRACTING WITH SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (2 CFR 200.321)**

Steps must be taken to ensure that small or minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following

- 1) Giving preference to Indian businesses in solicitation and award of bids.
- 2) Including qualified small, women owned, or minority businesses on solicitation lists.
- 3) Assuring that small, women owned or minority businesses are solicited whenever they are potential sources.
- 4) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small, minority and women business participation.
- 5) When the requirements permit, establishing delivery schedules which will encourage participation by small, minority and women businesses.
- 6) Using the services and assistance of the small business administration, office or minority enterprise of the department of commerce.
- 7) If any subcontracts are to be let, requiring the prime contractors to take the affirmative steps listed above.
- 8) Tribal offices are encouraged to procure goods and services from labor surplus areas.

Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor's integrity, compliance with public policy, record of past performance, quality, and financial and technical resources.

#### **Tribal Preference (TERO Code 9.05.250):**

The Tulalip Tribes shall, to the greatest extent feasible, provide preference to Indian-owned economic enterprises and Indian organizations and shall also endeavor to maintain and/or refer to lists of qualified Indian supply sources. The Tulalip Tribes shall require a statement from all contractors agreeing to provide Indian preference in subcontracting, training, and employment and shall specify the method to be used. The Tulalip Tribes shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the Tulalip Tribes shall document in the procurement file with the reasons for the lack of Indian participation. See TERO code 'Preference Requirements' - Construction 9.05.250. See Tulalip Tribes directive March 14, 2009 #10 below.

**Tulalip Tribes Directive March 14, 2009 # 10** Tribal Business – reads as follows “ Motion carried to mandate all out-sourced business (contractors, services, or supplies) to Tribal owned, be awarded to Tribally owned business “if qualified”.

### **3-4 BID OPENING**

All bids will be publicly opened at the time and place prescribed in the invitation for bids and in the presence of at least one witness. An abstract of bidders and their bids shall be recorded and the bids shall be available for public inspection. Bid opening shall be open to all persons.

## **1) Bid Evaluation**

Bids shall be ranked to determine the lowest bidder. Where specified in bidding documents, price related factors such as Tribal Preference, cash discounts, transportation cost shall be considered to adjust prices to determining which bid is lowest. The lowest bid shall then be evaluated to determine price reasonableness by conducting a price analysis. If the price is determined fair and reasonable, the low bidder shall then be evaluated to determine responsibility. If responsible, the bid shall then be evaluated to determine if it is responsive – i.e. conforming with all the material terms and conditions of the invitation for bids. The lowest responsive, responsible bid shall then receive the award.

### **Mistakes in Bids**

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 the Tulalip Tribes or fair competition shall be permitted. All mistakes in bid must be apparent on the face of the document.

### **Award**

Awards for sealed bids shall be made as provided in the IFB by written notice to the successful bidder, as follows: (Note: Negotiations and discussions with the bidders are prohibited in sealed bidding.)

Award shall be made to the lowest, responsive, responsible qualified Indian-owned economic enterprise if their bid is within X% of the lower responsive, responsible non-Indian bidder pursuant to the range specified in the applicable TERO code (9.05.320).

## **2) Cancellation of Solicitations**

The Tulalip Tribes shall adhere to the following provision whenever it cancels solicitations:

### **Before Offers Are Due**

An IFB, RFP, or other solicitations may be canceled before offers are due if:

- a) The Tulalip Tribes no longer requires the supplies, services or construction; or,
- b) The Tulalip Tribes can no longer reasonably expect to fund the procurement; or,
- c) Proposed amendments to such solicitation will be of such magnitude that a new solicitation would be desirable, or similar reasons.

### **After Offers Have Been Received**

An Invitation for Bids (IFB) may be canceled and all bids that have already been received may be rejected only if:

- a) The supplies, services or construction are no longer required;
- b) Ambiguous or otherwise defective specifications were given;
- c) The solicitation did not provide for consideration of all factors of significance to the Tulalip Tribes; or,
- d) 4) 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.

A Request for Proposal (RFP) may be cancelled for good cause of a similar nature to the above or when it is in the best interest of the Tulalip Tribes.

### **Documentation of Cancellation**

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided to any offeror upon request.

### **Notice of Cancellation**

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.

### **Unreasonable Bids**

If all otherwise acceptable bids are received in response to an IFB are at unreasonable prices, or only one bid is received and the price is unreasonable, the Tulalip Tribes shall cancel the solicitation and either:

- a) Resolicit using a request for proposal; or
- b) Complete the procurement by using the competitive proposals method, (when more than one otherwise acceptable bid has been received),

### **3) Cooperative Purchasing**

The Tulalip Tribes may enter into intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement (federal, state, county or city) 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 specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Tulalip Tribes is encouraged to use Federal or state excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

### **3-4 CONTRACT COST AND PRICE (2 CFR200.323)**

Federal Cost Principles do not permit the use of the 'Cost plus a percentage', or the 'Percentage of construction cost' method of contracting when grantor funds are involved. Cost or prices based on estimated cost for contracts under grant shall be allowed only to the extent that costs incurred or costs estimated included in negotiated prices are consistent with Federal cost principles.

- 1) The non-federal entity must perform a cost or price analysis for all procurement in excess of the **Simplified Acquisition Threshold** including contract modifications. The non-Federal entity must make independent estimates before receiving bids or proposals.
- 2) The non-Federal entity must negotiate profit as a separate element (cost analysis) of the price for each contract in which *there is no price competition* and in all cases where no price analysis is performed.
- 3) The Tulalip Tribes will use time and material type contracts only- After a determination that no other contract is suitable, and
- 4) If the contract includes a ceiling price, the contractor exceeds at its own risk.

### **Cost and Price Analysis**

A Cost or Price analysis *is required* when there is no price competition.

The Tulalip Tribes shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold. The method and degree of analysis is dependent on the facts

surrounding the particular procurement situation, but as a starting point, the Tribe must make independent estimates before receiving bids or proposals.

## Cost Analysis

### a) Applicability to *Competitive Proposals*

1. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., for acquiring professional, consulting, and architectural engineering services contracts. Under the competitive proposal method, offerors are required to submit proposals that show significant elements (labor, materials, overhead, and profit) of their proposed cost or price.
2. The Tulalip Tribes will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work

### b) Applicability to *Sole Source*

1. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements. When sole sourcing is justified, a cost breakdown shall be obtained from the contractor and an analysis shall be performed to determine its reasonableness and to determine an estimated cost.

### c) Applicability to *Modifications*

1. A cost analysis will be necessary when adequate price competition is lacking, including contract modifications or change orders. When presented with modifications or change orders, a detailed breakdown of the contractor's proposed price shall be obtained before acceptance of the change in price.
2. Modifications that change the work beyond the original scope of the contract must be justified in accordance with 24 CFR85.36 or 24 CFR84.43. If out of scope work cannot be justified, the modification must be procured competitively.

Costs or prices based on estimated costs for contracts under Federal award will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under Federal cost principles (Subpart E-Cost Principles).

### **Cost Analysis *not required* when:**

Cost Analysis is not required when the price can be established based on catalog or market prices of commercial product or services sold in substantial quantities to the public. A product is considered to be 'substantially sold' when the regular sales volume is large enough to constitute a real commercial market. A cost analysis is not required when a price is set by law or regulation.

## Price Analysis

A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. Generally, a price analysis should be used when comparing lump-sum prices (i.e. Sealed Bids).

## ASSISTANCE TO INDIAN, SMALL AND OTHER DISADVANTAGED BUSINESSES

### CHAPTER 4

#### 4-1 REQUIRED AFFIRMATIVE ACTION EFFORTS (2 CFR 200.321)

The Tulalip Tribes shall make efforts to ensure that small, minority businesses, women-owned business enterprises, veteran owned and disadvantaged businesses and individuals or firms residing in the area of a Tulalip Tribes project are used when possible. Such efforts shall include, but shall not be limited to:

- 1) Mandatory when using Federal Funds; unless grant explicitly allows for Indian Preference
- 2) Including such firms, when qualified, on solicitation mailing lists;
- 3) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- 4) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- 5) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- 6) Using the services and assistance of the U.S. Small Business Administration; or
- 7) Requiring prime contractors, when subcontracting is anticipated, to take the steps listed in 3-1 (a. through f.).

#### 4-2 TRIBAL PREFERENCE REQUIREMENTS (TERO Code 9.05.250)

Projects developed and operated with Federal assistance are subject to Section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and to Indian-owned economic enterprises in the award of all contracts and subcontracts and to Indians in employment and training. Preference must be provided in accordance with the methods set forth below. Where Indian preference is determined not to be feasible, the Tulalip Tribes shall document the procurement file with the basis for its findings. Indian preference applies not only on-site, on the reservation, or within the Tulalip Tribes' 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 4-1 above. In no case shall the Tulalip Tribes authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on particular tribal affiliation or membership unless funded wholly by P.L. 93-638. If funded by P.L. 93-638, the Tulalip Tribes may provide Tribal preference if so defined in the solicitation.

- A. **Eligibility** - Eligibility for Indian preference shall be established in accordance with the procedure in P.L. 93-638, 25 U.S.C CFR 1003.510. The applicant shall be required to demonstrate greater than 51% Indian ownership, and greater than 51% Indian management and greater than 51% Indian control. The applicant must also demonstrate that the Indian parties possess the requisite qualifications. The applicant must also demonstrate that the finances and the equipment was obtained by the Indian parties. The term "Indian" shall be defined to mean "membership in a federally-recognized tribe." If the Tulalip Tribes determines an applicant ineligible for Indian preference, the Tulalip Tribes shall notify the applicant in writing before the contract award.

**B. Contract clauses and solicitation notices:** Solicitations shall include the following information:

1. A statement of the applicability of Indian preference to the solicitation;
2. Any applicable tribally-imposed (TERO Code) preference requirements properly enacted by the tribal governing body (or advise offerors to contact the Tulalip Tribes TERO department to determine any applicable preference requirements);
3. Reference to the NAOB (Native American Owned Business) registry maintained by the Tulalip Tribes TERO department;
4. A requirement that offeror (and their subcontractors, if required by the Tulalip Tribes) 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;
5. The Tulalip Tribes' description of the information to be submitted to qualify for Indian preference including ownership, management, control and tribal affiliation;
6. The factors that the Tulalip Tribes will use in judging the adequacy of the Indian preference information submitted;
7. A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for determination of non-responsibility;
8. A requirement that each contractor and subcontractor submit a certification and supporting evidence to the Tulalip Tribes whenever it is not feasible to provide Indian preference in subcontracting;
9. Solicitations:  
Shall identify which rating system will be used to evaluate the proposals.
  - Bid (IFB) (TERO Code 9.05.330) - The percentage that the Indian owned economic enterprise must be within of the non-Indian bidder to be considered for award (X factor), or
  - Competitive "weighted average" bid process (RFP) (TERO Code 9.05.340) - The percentage or number of points set aside for Indian preference and the method for allocating these points; or
  - Requests for Proposal (RFP) (TERO Code 9.05.350)

**C. Other Required Clauses: Solicitations, contracts, and subcontracts shall include the following:**

1. The clause implementing Section 7(b) of the Indian Self- Determination and

Education Assistance Act (24 CFR 1003.510) in connection with the development or operation of Tribal 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 enterprises or organizations; and

**D. Including Required Clauses (see section 7-2)**

If all required clauses and provisions are not included on forms, then the Tulalip Tribes shall attach any additional clauses or provisions to the Federal forms used in solicitations and contract documents.

**E. Monitoring and Remedies (TERO Code 9.05.300)**

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

**Tulalip Tribes Directive March 14, 2009 # 10 Tribal Business** – reads as follows “ Motion carried to mandate all out-sourced business (contractors, services, or supplies) to Tribal owned, be awarded to Tribally owned business “if qualified”.

# CONTRACTOR QUALIFICATIONS AND DUTIES

## CHAPTER 5

### 5-1 CONTRACTOR RESPONSIBILITY

Procurement shall be conducted only with responsible contractors, i.e., those that have the technical, administrative and financial competence to perform contract work of the size and type involved and within the time frame provided under the contract and who have a satisfactory record of integrity. Before awarding a contract, the Tulalip Tribes shall review the proposed contractor's ability to:

1. Perform the contract successfully, considering factors such as the contractor's integrity.
2. Review of System for Award Management published by the U.S. General Services Administration ([www.sam.gov](http://www.sam.gov)) as well as review of debarred and suspended parties from State debarment sites and from Tribal debarment actions.
3. Compliance with the public policy, record of past performance (including contacting previous clients of the contractor).
4. Financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract.
5. 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.

### 5-2 SUSPENSION AND DEBARMENT (2 CFR200.12)

Contracts shall not be awarded to debarred, suspended or ineligible contractors. The Tulalip Tribes shall review the Federal Government excluded parties list at [www.sam.gov](http://www.sam.gov) prior to award of a contract. Contractors may be debarred, suspended or determined ineligible by Federal Government in accordance with Federal regulations when necessary to protect the Tulalip Tribes in its business dealings. The Tulalip Tribes may suspend or debar a contractor under state, local or tribal laws as applicable.

### 5-3 QUALIFIED BIDDERS LISTS

Interested businesses shall be given an opportunity to be included on a qualified bidders list. Any prequalified 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 insure competition. A List (NAOB) of qualified Indians, Indian enterprises, or Indian organizations are maintained by the TERO department. Firms who have not been prequalified shall not be precluded from submitting and qualifying during the solicitation period. Solicitation mailing list shall include, but not be limited to, such qualified suppliers.

### 5-4 BONDS (2 CFR 200.325)

The Tulalip Tribes shall require for construction or facility improvements or subcontracts that exceed the Simplified Acquisition Threshold (\$150,000) to obtain assurance of performance. Bonds shall be obtained from a federally-approved surety.

- 1) A **Performance bond** for 100% of the total contract price submitted prior to notice to proceed
- 2) A **Payment bond** for 100% of the total contract price submitted prior to notice to proceed
- 3) A **Bid bond** equivalent to 5% of the total contract price or cash escrow deposited with the Tulalip Tribes of not less than 5 % of the total contract price. Bond is to be submitted with the bid.

## ***SPECIFICATIONS***

### ***CHAPTER 6***

#### **6-1 GENERAL**

All specifications shall be drafted to promote overall economy for the purposes intended and to encourage competition in satisfying the Tulalip Tribes' needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurement to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

#### **6-2 LIMITATIONS (2 CFR 200.319)**

The following specification limitations shall be avoided:

- 1) 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 competition is available).
- 2) Unnecessary bonding or experience requirements.
- 3) Brand name specification (unless a written determination is made that only the identified item will satisfy the Tulalip Tribes' needs).
- 4) Brand name or equal description specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any tribal licensing laws. However, tribal licensing shall not be grounds for restriction of the firms solicited. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur. (For example, it is prohibited to have a consultant perform a study of the Tulalip Tribes' computer needs and then allow that consultant to compete for the subsequent contract for the computers). Further, in order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

# CONTRACT ADMINISTRATION - DOCUMENTATION AND PROVISIONS

## CHAPTER 7

### 7-1 RECORDS

Records shall be maintained with sufficient to detail document the history of procurement. These records shall include (but not be limited to) information pertinent to the following:

- 1) Rationale for the method of procurement
- 2) Selection of contract type
- 3) Contractor selection or rejection
- 4) The basis for the cost or price. (Suggested forms are located at the Appendix page). When procurement is with grant or contract funds copies of documentation must be sent to the Grant/Contracts office and filed in appropriate folder.

### 7-2 CONTRACT PROVISIONS REQUIRED CLAUSES (2 CFR 200.326)

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations including those provided. OMB Circular 2 CFR 200. Additional clauses tailored to the type of contract, the commodity being acquired and any other needed remedy shall be included.

If all required clauses are not included on the forms, the Tulalip Tribes shall attach any additional clauses to the forms used in contract documents. The operational procedures of this Policy may contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the Tulalip Tribes. The Tulalip Tribes shall include the contract clauses and solicitation notices for Indian preference.

In addition to provisions defining a sound and complete procurement contract, the following contract provisions or conditions shall be included in all procurement contracts and subcontracts.

- a) Contract for more than the Simplified Acquisition Threshold shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where a contractor violates or breaches contract terms, and provide for such sanctions and penalties as may be appropriate.
- b) All contracts in excess of \$10,000 shall contain suitable provisions for termination for convenience or termination for default by the Tribes including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated because of circumstances beyond the control of the contractor.
- c) Equal Employment Opportunity. All contractors awarded in excess of \$10,000 by the Tribes and its contractor or sub grants shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in U.S. Department of Labor regulations (41 C.F.R. Part 60).

The Tribe shall, to the greatest extent feasible, give preference and opportunities for:

- 1) Employment and training to Indians.
- 2) Give preference in the award of subcontracts to Indian organizations and to Indian owned economic enterprises.
- 3) Give preference to Indians for employment and training.

- 4) Shall be required to put their bid submissions a plan to achieve maximum use of Indian personnel.
- d) Copeland “Anti-kickback”. All contract and sub grants for construction or repair shall include a provision for compliance with the Copeland “Anti-kickback” Act (18 USC 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of compensation to which he is otherwise entitled. The Tribe shall report all suspected or reported violations to the grantor agency.
- e) Davis Bacon Act. When required by the federal grant program legislation, all construction contracts in excess of \$2,000 awarded by the tribes and sub grantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 3141 et sec) as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under this Act contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Tribes or contractor shall place a copy of the current prevailing wages determination and the contract shall be conditioned upon the acceptance of the wages determination. The Tribes or contractor shall report all suspected or reported violations to the grantor agency.
- f) Contract Work Hours and Safety Act. Where applicable, all contracts awarded by the Tribes and sub grantees in excess of \$100,000 which involve the employment of mechanics or laborers, shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327 et sec) as supplemented by Department of Labor regulations (29 C.F.R., Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of each mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less and 1 ½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies of materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- g) Rights to Inventions Made Under a Contract. The contract shall include notice of tribal and/or grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental experimental or demonstration work with respect to any discovery or invention which arises, or is developed in the course of, or under such contact, and of tribal and/or grantor agency requirement and regulation pertaining to copyrights and right in data.
- h) Access to Records. All negotiated contracts (except those awarded by small purchases procedures) awarded by the Tribes shall include a provision to the effect that the tribes, the federal grantor agency, the comptroller general of the united states, or any of their duly authorized representatives, shall have access to any books, document, papers and records of the contractor which are directly pertinent to the specific contract, for the purpose of making audits, excerpts, and transcriptions.

The Tribes shall require contractors to maintain all required records for three years after the Tribes makes final payment and all other pending matters close.

- i) Clean Air Act. Contracts, subcontracts of amount in excess of \$150,000 shall contain provisions which

require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h), Section 508 of the Clean Water Act (33 USC 1368) Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R. Part 15), which prohibit the use under non-exempt federal contracts grants or loans of facilities included in the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor and to the USEPA Assistance Administrator for Enforcements (EN-329) (See appropriate federal legislation for more information)

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the Tribes or the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL-94-163)

- j) In all contracts for construction or facility improvement awards exceeding the Simplified Acquisition Threshold, the Tribe shall observe bonding requirements.

In the case of grants, grantor agencies are permitted to require change, remedies, change conditions access and record retention and suspension of work clause approved by the Office of Federal Procurement Policy.

All contracts shall be reviewed by the office of Reservation Attorney

### **7-3 CONTRACT ADMINISTRATION**

The Tribes shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions and specifications of their contract or purchase order. The operational procedures shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status of 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 costs principles in 48 CFR 31.2. The responsibility lies upon the individual Executive Director (or delegate) to monitor the performance of the contractor.

# DISPUTES, PROTESTS, CLAIMS AND APPEALS AND REMEDIES

## CHAPTER 8

### 8-1 GENERAL

It is the Tulalip Tribes' policy to resolve all contractual issues informally at the Tulalip Tribes level, without litigation. Disputes shall not be referred to Federal government until all informal and/or administrative remedies have been exhausted at the Tulalip Tribes level. When appropriate, the Tulalip Tribes may consider the use of informal discussion between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences.

Reviews of protests by the Federal agency will be limited to:

- 1) Violations of Federal law or regulations, and
- 2) Violations of the grantee's or sub grantees protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the Tribe.

### 8-2 TRIBAL RESPONSIBILITY

The Tribe is responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contracts, grants, or daily operations. This includes, but is not limited to; disputes, claims, protest of awards, sources evaluation, or other matters of a contractual nature. Matters concerning violations of law are to be referred to the Tribal, Federal, or other authority, which has proper jurisdiction.

### 8-3 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. See TERO code 9.05.430 thru 9.05.470.

### 8-4 COMPLAINT

- 1) TERO Complaint: Per TERO Code, 9.05.440

All complaints associated with procurement are to be addressed in accordance with Tulalip Tribes TERO Code 9.05.440

#### **Contracting Officer/Agencies Complain Responsibility**

Upon receipt of complaint under this section, the Contracting Officer/Agency shall:

- a) Immediately initial and date when a complaint is received
- b) Communicate with the complainant within seven (7) days to attempt to resolve the issue
- c) The contracting officer/agency shall take appropriate steps to remedy any noncompliance issues or violations of the code immediately upon notification.
- d) If the matter is not resolved within 10 days of the initial complaint, the complainant may file a written complaint with TERO (see section (2) above) and shall serve the document on the contracting agency.

**8-5 PROTESTS INVOLVING TRIBAL PREFERENCE**

Complaints arising out of any of the methods of providing for Indian Preference shall be handled in accordance with the procedures defined in the Tribal TERO code Article V - Enforcement.

## APPENDIX

1. Bid Comparison Award Form
2. Sole Source Justification Form
3. Tabulation of offers
  - a) Competitive Bid Award (TERO 9.05.330)
  - b) Competitive “weight of award” bid process (TERO 9.05.340)
4. Request for Proposal