

**CONSTRUCTION
PROCUREMENT POLICY OF
THE WINNEBAGO TRIBE OF
NEBRASKA**

Document Approval and Change History

1. Revision History:

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2. Document Approvals:

The Tribal Council has read and approved of the contents of this policy. All proposed policy changes must be approved by the CFO then recommend the changes to the Tribal Council for approval and documented in meeting minutes. Future revisions will use the naming convention included in the document to reference different versions.

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CONSTRUCTION PROCUREMENT POLICY OF THE WINNEBAGO TRIBE OF NEBRASKA

PURCHASING

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 construction related services by the Tribe; assure that construction related services are procured efficiently, effectively, and at the most favorable prices available to the Tribe; 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 the procurement of construction and related services entered into by the Tribe for public purchasing, irrespective of the source of funds; however, nothing in this Policy shall prevent the Tribe from complying with the terms and conditions of any grant, contract or bequest that is otherwise consistent with law.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

All procurement transactions shall be administered by the Chief Financial Officer (CFO) or other individuals he or she has authorized in writing. The CFO shall issue operational procedures, including procedures for the processing of purchase orders, to implement this Policy. Violation of this policy, including the ethical standards described in Section VII below, shall constitute insubordination and shall be subject to the sanctions described in the Winnebago Tribe of Nebraska's' Employee Handbook.

The CFO or his/her designee shall ensure that:

- A. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing:
 - 1) Solicitation procedures are conducted in full compliance with applicable federal and tribal standards, and Indian Preference requirements;
 - 2) The Tribe adheres to its procurement policies and program
 - 3) The Tribe complies with applicable review requirements, as provided in the operational procedures implementing this Policy.
 - 4) 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 CFO and is responsible for ensuring that any procurement policies adopted are appropriate for the Tribe.

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III. PROCUREMENT METHODS

SELECTION METHOD

When satisfying its need by procurement for construction related services, the Tribe shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

Unless otherwise stated, regardless of purchasing means all invoices/ receipts will be submitted to Finance following current Accounts Payable Procedures no more than 10 business days of the receipt of goods or services.

A. MICRO PURCHASE

Micro Purchase Procurement:

- 1) For contracts of \$0 and up to \$5,000, also known as Micro Purchases, the purchase requisition process will be used, which, upon approval, will result in a purchase order to be issued. Supporting documentation such as a quotation (preferred method) or written details (description, quantity, and price) of the item to be purchased is required. Micro-purchases may be awarded without soliciting competitive quotations if the department considers the price to be reasonable and documents the conclusion in the supporting documentation.
- 2) Under no circumstance may a purchase be broken down into more than one action in order to meet the Micro Purchase threshold. The Micro Purchase must be documented by an authorized Requisition Form. During the Requisition sign off review, the Department Director or CEO or CFO or any Tribal Council member may request details of additional quotes. The CFO at their discretion may audit any purchase by requesting additional quotes.
- 3) 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. SMALL PURCHASE

Small Purchase Procurement:

- 1) Any procurement valued at \$5,001 to \$10,000.00 may be conducted in accordance with the Small Purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a Small Purchase under this section.
- 2) Obtaining Quotes: The Tribal Procurement Department or the originating department shall solicit price quotations by phone, letter, or other informal procedures that allows participation by a reasonable number of competitive sources. Verbal quotations may be used. All verbal quotations must be documented in writing by the Department and attached to the requisition.

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All verbal quote documentation will include the date, the company and person's name providing the quote, the price and terms as well as any other information to allow the Department to support its decision for the purchase. 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. A written quotation is preferred under the Small Purchase procurement; 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 public record.

- 3) Competition: The Tribal Procurement Department or the originating department shall attempt to obtain quotations from a minimum of three qualified sources and document procurement 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. Documentation of the Department's efforts to obtain three quotations must be attached to the purchase requisition. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).

Sole source procurement is allowed if such procurement is made out of an existing contract between the Tribe and a vendor or as outlined below in F.
NONCOMPETITIVE PROPOSALS

4) Award

- a) 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.
- b) 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 to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. The solicitation shall reserve 15% of the total evaluation points for providing Indian preference. Award shall be made to the best proposal or quotation in accordance with the stated ratings system.

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All Small Purchase procurements shall be processed in accordance with procedures issued by the CFO pursuant to this Policy.

D. COMPETITIVE PROPOSALS

Competitive proposals (or Request for Proposal (RFP)) will be used when the procurement cost of the good or services are expected to be greater than \$10,001. An RFP is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- A. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical, or;
- B. Proposals must be solicited from an adequate number of qualified sources;
- C. The Department must have a written method for conducting technical evaluations of the proposals received and for selecting recipients. Selection of the winning bidder must be based on evaluation of the proposals received. Evaluation may include factors such as price, prior history with the Tribe, quality of product or services received, knowledge of the bidding company (positive or negative) by the evaluation committee;
- D. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the Tribe, with price and other factors considered. The evaluation committee will recommend approval of the contract to Tribal Council; and
- E. The department may use competitive proposal for qualifications (or Request for Qualifications (RFQ))-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

E. SEALED BIDS

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 bidder whose bid, conforming to 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, if the conditions in paragraph A. of this section apply.

- A. In order for sealed bidding to be feasible, the following conditions should be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;

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- ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. The procurement lends itself to a firm fixed price or unit price contract and the selection of the successful bidder can be made principally on the basis of price.
- B. If sealed bids are used, the following requirements apply:
- i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - iii. All bids will be opened publicly and read aloud at the time and place prescribed in the invitation for bids.
 - iv. A firm fixed price or unit price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - v. Any or all bids may be rejected if there is a sound documented reason.

F. NONCOMPETITIVE PROPOSALS

Conditions for Use:

- 1) 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, micro, small purchase, 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;

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- 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 Procurement Department or the originating department and approved by the CEO and CFO and to be submitted to with the purchase requisition along with the non-competitive for consideration and approval. Procurement may not be made by non-competitive proposals unless approved by the CEO and CFO.

IV. 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.

V. INDIAN PREFERENCE REQUIREMENTS

- A. 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 Attachment I to this document. 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.
- B. Monitoring and Remedies: The Tribal Council shall monitor the implementation of Indian preference in its contracts, subcontracts, and training. The CEO of the Tribe along with the Tribal Human Resources Office shall implement and monitor the Indian preference in employment. The Tribal Council shall take appropriate remedial action (including cancellation of contracts and assessment of penalties) to ensure compliance.

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VI. Procurement During a Declared Emergency

Procurement procedures and approvals may be suspended for a period of seventy-two (72) hours when an emergency has been declared by the Tribal Council. The Tribe's Emergency Manager, CEO, CFO or Tribal Council officer may use available Tribal resources during this period and will follow direction in Section F. 1) Noncompetitive Proposals list above. This does not alleviate the requirement that all purchases be supported by adequate receipts or invoices after the immediate emergency has passed.

VII. 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 Winnebago Tribe of Nebraska. 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.

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D. 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.

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VIII. TYPES OF CONTRACT, CLAUSES, AND CONTRACT ADMINISTRATION

E. 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.

F. OPTIONS

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

- 1) The option is contained in the solicitation;
- 2) The option is an 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.

G. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts under a Federal Award 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, as applicable:

1. All contracts in excess of \$150,000 must include 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. All contracts in excess of \$10,000 must include termination for cause and for convenience.
3. Termination for default.

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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. Clean Air Act and Clean Water Act.
14. Energy efficient standards.
15. Bid protests and contract claims.
16. Value engineering.
17. Procurement of recovered materials.
18. Certification the contractor is not subject to Debarment and Suspension
19. Payment of funds to influence certain Federal Transactions.
20. Insurance requirements and indemnification responsibilities.
21. Applicable warranties.
22. Compliance with the Laws of the Winnebago Tribe of Nebraska.
23. Submission to the jurisdiction of the Tribal Courts of the Winnebago Tribe of Nebraska.
24. Express retention of the sovereign immunity of the Winnebago Tribe of Nebraska.
25. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining

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any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

H. CONTRACT APPROVAL

Proposed contracts must be presented to the Tribal Council for approval. It shall be the responsibility of the procurement department to ensure the proposed contract has been reviewed by the CEO and CFO prior to the presentation of the contract to the Tribal 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.

I. CONTRACT ADMINISTRATION

A contract administration system designed to insure 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.

IX. 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

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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).

X. 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 CEO and/or CFO. 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 CEO and/or CFO. A complaint must be filed with the CEO and/or CFO 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 CEO and/or CFO 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 complaint, in writing, within 30 calendar days of the submittal of the complaint to the Tribe. The decision of the

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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 CEO and/or CFO. A complaint must be filed with the CEO and/or CFO 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 CEO and/or CFO 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. The decision of the Tribe shall constitute final administrative action on the complaint.

XI. 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 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

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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 Attachment I to this policy. 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

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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 laws of the Winnebago Tribe of Nebraska;
- 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

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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 CEO of the Tribe along with the Tribal Human Resources Office shall implement and monitor the Indian preference in employment. The Tribal Council shall take appropriate remedial action (including cancellation of contracts and assessment of penalties) to ensure compliance.

XII. Ethics

A. GENERAL

The Tribe shall adhere to the following code of conduct, consistent with applicable law.

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, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer, or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, 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.

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C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

Tribal officers, employees or agents shall not solicit gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. 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.

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