

Omaha Tribe of Nebraska

Procurement Policy and Procedures

GENERAL PROVISIONS

I. PURPOSE

This document establishes standards and guidelines for the procurement of supplies, equipment, construction, and services for all operations of the Omaha Tribe including those related in whole or 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 Omaha Tribe.
2. Promote that supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available to Omaha Tribe; promote competition in contracting
3. Provide safeguards for maintaining a procurement system of quality and integrity
4. Assure that Omaha Tribe purchasing actions are in full compliance with applicable Federal Statutes OMB Circular 2 CFR 200, the Uniformed Administrative Requirements and Tribal Laws.

Personnel Employment Contracts are negotiated separately. This policy does not apply to personnel employment contracts.

II. AUTHORITY

These Procurement and Property and Control Policies and Procedures are established in accordance with the authority vested in the Tribal Council pursuant to the Constitution of the Omaha Tribe. **Within these procedures, Tribal Council's review and approval is also reserved for authorization of contracts.**

III. CODE OF CONDUCT

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.

IV. PROCUREMENT POLICY AMENDMENTS

This Policy and any changes made hereto shall be submitted to the Tribal Council for approval. The Tribal Council delegates procurement authority to the Chief Tribal Officer and is responsible for ensuring that any procurement policies adopted are appropriate for the Omaha Tribe.

Ultimate responsibility for all procurement activities, is vested in the Chief Tribal Officer, and the Tribal Council. Authority shall be delegated to each individual program director to perform the following:

V. PROGRAM DIRECTORS and PROGRAM STAFF

Program Directors and their staff members that complete check requests/purchase requisitions are

responsible for knowing and understanding the Uniformed Guidance 2 CFR Part 200 requirements. Program Directors are responsible to know what costs are allowable and not-allowable under their specific program requirements.

No purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless (a) funds have been appropriated and (b) are available for the purchase.

Purchases or contracts made in the name of the Tribe without an authorized purchase order or contract signed by the Procurement Officer is considered a personal obligation of the person making the purchase and not an obligation to the Tribe.

Program Directors are responsible for requesting and tracking the return of the annual property inventory for each program at the end of each fiscal year. They will also maintain on file each program's inventory record. It is the responsibility of the Procurement Officer to request and track each program's Capital Asset Inventory at the beginning of each fiscal year.

VI. FINANCE STAFF

It is the responsibility of the various finance staff to ensure compliance with the Uniformed Guidance 2 CFR Part 200.

Accountants are responsible for ensuring that account codes are correct, and funds are available.

Grant Administrators are responsible to facility service to achieve program deliverables and to help ensure program compliance with all applicable requirements. Program directors encouraged to contact grant administration to resolve procurement issues.

Procurement is responsible for ensuring the requests for proposals for competitive purchases are published for the Omaha Tribe. They are also responsible for issuing purchase orders to the requester. The overall all function is to provide service to the Grant Administration.

Accounts Payable clerks are responsible for determining if a Check Request/Purchase Order has all required information before issuing a check.

Chief Financial Officer is responsible for overall compliance with the Procurement Manual.

VII. PROCUREMENT METHODS TO BE FOLLOWED (2 CFR 200.320)

The first step in the procurement cycle is to decide what property is needed to achieve an objective of the Tribes organization, grant, cooperative agreement with a federal agency, or Public Law 93-638 contract. The office of Management and Budget (OMB) requires that all non-federal entities must use one of the following methods of procurement when expending Federal funds:

- A. Procurement by Micro-Purchase as currently identified in Federal Acquisition Regulations.
- B. Procurement by Small-Purchase Procedures to \$150,000.00
- C. Procurement by Competitive Proposal \$150,001 and + \$250,000
- D. Procurement by Sealed Bid \$250,000 and above
- E. Procurement by Noncompetitive Proposal (sole source)

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. The method for micro-purchasing will be a purchase request, approved by program director. Special emergency procurement flexibilities of FAR 18.202 available will be followed by Omaha Tribe.

- 1) Micro- Purchases as currently identified by Federal Acquisition Regulations (approval by Program Director , Grant Administrator)

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. Omaha Tribe will implement the following purchase milestones:

- 1) Small Purchases to \$150,000.00 (Approval by Program Director/Department head & Grant Administrator of the respective Grant/638 Contract, Approved by CTO & CEO, Approval by Tribal Council minutes & resolution.

The most common method for small purchases will be through the issuance of a *purchase order*, issued by the procurement officer after receiving a purchases request that follows the approvals outlined in above. 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.

Tribal Preference (TERO title 27, Omaha Tribal Title (2003)): The Omaha Tribe 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). See TERO title 27, Omaha Tribal Title (2003) '*Native American Preference – Contracting and Procurement*'

C. PROCUREMENT BY COMPETITIVE PROPOSALS (Uniformed Guidance 200.320 (d))

This is the required methods of procurement for items costing > \$150,001 to \$250,000 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:

The Program Director shall be responsible to prepare Request for Proposals and identification of all evaluation factors and their relative importance.

The Program Director will deliver the Request for Proposals to the Procurement Officer. (Approval by Program Director/Department head & Grant Administrator of the respective Grant/638 Contract, approval by CTO & CEO, and approval by Tribal Council minutes & resolution.)

The Procurement Officer shall be responsible to ensure publication of the competitive proposal.

The Omaha Tribe TERO title 27, Omaha Tribal Title (2003) applies to all methods of Procurement. Refer to TERO title 27, Omaha Tribal Title (2003) for specific determination factors for award selections.

D. PROCUREMENT BY SEALED BID (Uniformed Guidance 200.320 (c))

Procurement by sealed bids begins for purchases >\$250,000.

Please note in addition for Head Start/Early Head Start the Head Start Performance Standard 1303

Subpart E Facilities applies to all procurement procedures.

(Approval by Program Director/Department head & Grant Administrator of the respective Grant/638 Contract, approval by CTO & CEO, and approval by Tribal Council minutes & resolution.)

BID INVITATION

The Procurement Officer shall handle the formal advertising and responsible for bid invitation and serve as collection point for all bids submitted. In order for sealed bidding to be feasible, the following conditions should be present:

- (1). A complete, adequate, and realistic specification or purchase description is available;

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.

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 determine 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 Procurement Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Omaha Tribe 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 INVITATION FOR BIDS 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 10% of the next higher responsive, responsible non-Indian bidder

pursuant to the range specified in the applicable TERO Title 27 Omaha Tribal code (2003)

CANCELLATION OF SOLICITATIONS

The Omaha Tribe shall adhere to the following provision whenever it cancels solicitations:

Before Offers Are Due

An INVITATION FOR BIDS, RFP, or other solicitations may be canceled before offers are due if:

- a) The Omaha Tribe no longer requires the supplies, services or construction; or,
- b) The Omaha Tribe 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 (INVITATION FOR BIDS) 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 Omaha Tribe; or,
- d) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or
- e) There is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

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 Omaha Tribe.

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 offer upon request.

Notice of Cancellation

A notice of cancellation shall be sent to all bidders 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 INVITATION FOR BIDS are at unreasonable prices, or only one bid is received and the price is unreasonable, the Omaha Tribe shall cancel the solicitation and either:

- a) Re-solicit 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),

E. PROCUREMENT BY NONCOMPETITIVE PROPOSAL –Sole Source (Uniformed

Guidance 200.320(f) (Approval by Program Director/Department head & Grant Administrator of the respective Grant/638 Contract, approval by CTO & CEO, and approval by Tribal Council minutes & resolution.)

See 200.320 (f) 1 through 4.

(f) Procurement by noncompetitive proposals. 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 public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
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.

VIII. 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.

See Uniformed Guidance 200.321 (a), (b) 1 through 6.

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 title 27, Omaha Tribal Title (2003) :

The Omaha Tribe 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 Omaha Tribe shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the Omaha Tribe shall document in the procurement file with the reasons for the lack of Indian participation. See TERO title 27, Omaha Tribal Title (2003) 'Preference Requirements'

- Construction

IX. Cooperative Purchasing

The Omaha Tribe 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 Omaha Tribe 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. Cooperative Purchasing is encouraged and acceptable for the Carl T Curtis Health Center Pharmacy and the Omaha Tribe

acknowledges the intergovernmental agreement to purchase Pharmacy supplies with the Indian Health Service /Oklahoma City Area Indian Health Service.

X. 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.

See 200.323 Contract Cost and Price a) through d)

Cost Analysis

The Omaha Tribe 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.

*a) Applicability to **Competitive Proposals***

- 1.A cost analysis must be performed when the offer 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, offers are required to submit proposals that show significant elements (labor, materials, overhead, and profit) of their proposed cost or price.
- 2.The Omaha Tribe 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 **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).

XI. REQUIRED AFFIRMATIVE ACTION EFFORTS (2 CFR 200.321)

The Omaha Tribe 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 an Omaha Tribe project are used when possible.

XII. TRIBAL PREFERENCE REQUIREMENTS (TERO Title 17, Omaha Tribal Title (2003))

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 Omaha 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 Omaha Tribe's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference in the solicitation, evaluation, and award process shall be as described in Section 4-1 above. In no case shall the Omaha Tribe 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 Omaha Tribe may provide Tribal preference if so defined in the solicitation.

Eligibility - Eligibility for Indian preference shall be established in accordance with the procedure in P.L. 93-638, 25 U.S.C. 450e(b). 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 Omaha Tribe determines an applicant ineligible for Indian preference, the Omaha Tribe shall notify the applicant in writing before the contract award.

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 title 17, Omaha Tribal Title (2003)) preference requirements properly enacted by the tribal governing body (or advise offers to contact the Omaha Tribe TERO department to determine any applicable preference requirements);
3. Reference to the NAOB (Native American Owned Business) registry maintained by the Omaha Tribe TERO department;
4. A requirement that offer or (and their subcontractors, if required by the Omaha 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;

5. The Omaha Tribe' description of the information to be submitted to qualify for Indian preference including ownership, management, control and tribal affiliation;
6. The factors that the Omaha Tribe 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 Omaha Tribe 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.
10. Bid (Invitation for Bid) (TERO Title 27 Omaha Tribe Title (2003)) - The percentage that the Indian owned economic enterprise must be within of the non-Indian bidder to be considered for award (X factor), or
11. Competitive "weighted average" bid process (RFP) ((TERO Title 27 Omaha Tribe Title (2003)) - The percentage or number of points set aside for Indian preference and the method for allocating these points; or
12. Requests for Proposal (RFP) (TERO Title 27 Omaha Tribe Title (2003))

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

B. Including Required Clauses (see section)

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

C. Monitoring and Remedies (TERO Title 27, Omaha Tribal Title (2003))

The Omaha Tribe 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.

XIII. CONTRACTOR QUALIFICATIONS AND DUTIES

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 Omaha Tribe 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) 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.

SUSPENSION AND DEBARMENT (2 CFR200.12)

Contracts shall not be awarded to debarred, suspended or ineligible contractors. The Omaha Tribe shall review the Federal Government excluded parties list at 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 Omaha Tribe in its business dealings. The Omaha Tribe may suspend or debar a contractor under state, local or tribal laws as applicable.

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.

BONDS (2 CFR 200.325)

The Omaha Tribe shall require for construction or facility improvements or subcontracts that exceed the Simplified Acquisition Threshold to obtain assurance of performance. Bonds shall be obtained from a federally-approved surety.

See Uniformed Guidance 200.325 (a) through (c)

XIV. CONTRACT ADMINISTRATION - DOCUMENTATION AND PROVISIONS**RECORDS (2 CFR 200.333)**

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.

XV. 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 Omaha Tribe 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 Omaha Tribe. The Omaha Tribe 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 seq) 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 contract, 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 Omaha Tribal Attorney

XVI. 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 (2 CFR 200.338)

See 2 CFR 200.338 (a) through (f)

GENERAL

It is the Omaha Tribe' policy to resolve all contractual issues informally at the Omaha Tribe level, without litigation. Disputes shall not be referred to Federal government until all informal and/or administrative remedies have been exhausted at the Omaha Tribe level. When appropriate, the Omaha Tribe may consider the use of arbitration.

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.

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 Title 27, Omaha Tribal Title (2003)

COMPLAINT

- 1) TERO Complaint: Title 27, Omaha Tribal Title (2003)

All complaints associated with procurement are to be addressed in accordance with Omaha Tribe TERO Title 27, Omaha Tribal Title (2003)

Procurement Officer/Agencies Complain Responsibility

Upon receipt of complaint under this section, the Procurement Officer 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 Procurement 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.

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 Title 27, Omaha Tribal Title (2003).

XVII. SERVICE FUNCTION.

The Procurement function at the Omaha Tribe is intended to simultaneously be a compliance function and a service function. Accordingly, it is the stated policy of the Council that the Procurement function should be performed in such a way that,

1. Under the direction of Grant Administrators, it ensures compliance with applicable OMB, Council Policy, and contract guidelines. Where there is a question regarding proper procedure or decision, the Grant Administrators should make the decision subject to the final say of the CFO, or the CTO.
2. With the oversight of Grant Administrators, it ensures that programs are timely and carefully promoted and served in their purposes. To promote timely service, it is the policy of the Tribe that no request should remain "in-process" from the date it was first submitted for longer than ten business days. Ideally it should be processed within four business days. At the end of ten business days the Grant Administrator is to see that the request is either favorably processed, or if necessary, rejected for non-compliance of some sort. If the requisition is rejected, then it must be resubmitted fresh if it continues to be desired by the Program Director.
3. The Procurement process is not intended to become a supervisory function to the Program Directors. While compliance with necessary guidelines is important, that process should not be implemented in such a way that the Program Directors decisions are frequently being subjected to second guessing. However, this statement while applicable to Procurement it is not applicable to Grant Administrators.
4. To maximize both the compliance and service responsibilities of Procurement, it is encouraged, where possible, that the Procurement function report to and operate under the direction of Grant Administrator