PROCUREMENT POLICIES

Procurement Including Subcontractor Monitoring

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Introduction

The purpose of this policy is to provide for the fair and equitable treatment by the Kickapoo Tribe in Kansas (Tribe) of all persons or firms involved in purchasing; assure that supplies, services and construction procurements are effective, efficient and at the most favorable costs and conditions available to the Tribe; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity to the greatest extent feasible; promote Indian preference in the award of contracts and subcontracts; assure that purchasing actions are in full compliance with applicable Tribal and federal standards, regulations and law; and to establish a standard procurement and property control practice for the Tribe, including the Tribal Council, Tribal Committees or Commissions, Department Directors, managers and employees of the Kickapoo Tribe in Kansas.

This policy applies to every expenditure of funds by the Tribe for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds, (such as concession contracts).

This Statement of Procurement Policy complies with the procurement standards of 2 CFR 200, Subpart D and the requirements of Section 7(b) of the Indian SelfDetermination Act (25 U.S.C. 450e(b).

Definitions

The following words and phrases, when used in this manual, have the following meanings unless otherwise clearly indicated in the content.

Addendum A written addition to an instrument or documented contract which modifies it in some way.

Amendment Addendum.

Award Notice to a bidder of the acceptance of the submitted bid.

Bid A complete and properly signed instrument proposing to provide goods or services in consideration for stated sums and which shall conform to bidding requirements.

Bid Closing The date and time announced as the deadline for receipt of bids.

Bid Documents The advertisement or invitation to bid, instructions to bidders, bid forms and all other documents identified as such in the Invitation to Bid.

Bid Guarantee Bond A form of security assuring that a bidder: (1) will not withdraw a bid within the period specified for acceptance, and (2) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of specified forms.

Bid Opening The date, time, and place set for the opening of competitive bids.

Bidding Period The span of time starting on the date of the invitation to bid and ending on the time and date set for the receipt of bids.

Blanket Purchase Request An open purchase request issued to a vendor for a specified period of time and/or maximum dollar amount based on a bid award or negotiations covering items to be purchased.

Bond A written instrument executed by a bidder or contractor, and a third party, to assure to the Tribe fulfillment of the contractor's obligations. If the contractor's obligations are not

	met, the bond assures payment, to the extent stipulated, of any loss sustained by the Tribe.
Business Day	As opposed to calendar day, this is a day when the Tribe is open for business; business hours may vary according to Tribal needs.
Change Order	(See Addendum) – A written agreement authorizing a change in the contract work or an adjustment in the price or time due to unforeseen events or costs.
Construction	The process of building, altering, repairing, improving or demolishing any public building, road or other public improvement of any kind to any Tribal real property. It does not include the routine operation, routine repair or routine maintenance of any building, road or real property.
Contract	A legally binding agreement between two or more parties.
Contracting Officer	A person appointed to administer each project or contract on behalf of the Kickapoo Tribe. The Contracting Officer may be the Tribal Administrator, Director of Finance, a Program Director or other authorized employee. At no time will a member of the Tribal Council serve as a Contract Officer.
Conflict of Interest	A situation occurring when an individual or organization is involved in multiple interests, one of which could possibly compete with the best interests of the procurement processes or the benefit of the Kickapoo Tribe.
Cost	The amount of the invoice or contract on a purchased asset (less discounts received for early payment), plus all ancillary costs incurred to prepare the asset for operations, including shipping costs.

Davis Bacon Act Usually cited as a requirement in the award of federal contracts, the Davis Bacon Act was passed in 1931 to require that those laborers and tradesmen employed in federallyfunded construction projects shall be paid no less than the prevailing wages for those persons employed in similar vocations in the region where the work is being done. Subcontractors are subject to the same requirements and the fact shall be stipulated in the Request for Bids.

Employee, Officer or Agent Any elected official, or employee or other person officially appointed to represent the Tribe.

Equipment A functional item having a value of $5,000 or more with a useful life of one year or more.

Fixed Asset Real property, buildings, equipment, machinery, vehicles, and assets of a durable nature that are owned by the Tribe, with an acquisition value of $5,000 or more.

Formal Bid Process The process through which purchases exceeding $10,000 are advertised and solicited from qualified vendors.

FOB Free on Board. The method by which the vendor places the goods aboard a transporting carrier and ships them to a designated point without cost to the buyer. The stated FOB point is usually the location where title to the goods passes from the seller to the buyer; the buyer is then responsible for freight charges and damage after the passing of title.

Functional Specification A description of the intended use of products or services required. This description may include a statement of the qualitative nature of the products or services required and when necessary, may set forth those minimum basic attributes and standards to which such products or services must conform to satisfy the intended use.

Indian Preference A law governing certain Tribal contracts by which Native American firms or individuals are given preference in contracting according to a predetermined system for providing such preference.

Informal Bid	The process of soliciting vendor quotations for purchases ranging in cost from $1,000 to $10,000. Quotations may be either verbal or in writing, but if they are verbally accepted the person who receives the bid shall make a written record of the time, date, name of bidder and amount of bid for the Tribe's procurement records.
Invitation to Bid (IFB)	A written solicitation to submit a sealed bid for the procurement of materials, goods, services or construction. The invitation shall specify clearly and accurately the technical requirements of the project and the methods that will be used to evaluate each bid.
Lowest Responsive Bidder	The lowest bidder who substantially complies with all prescribed bidding procedures and requirements and who has not been disqualified pursuant to Procurement Policy rules.
Minority Firm	A business that is at least 51% owned or controlled by a member or members of a minority group, including ethnic minorities and women.
Non-Competitive Proposal; Single or Sole Source Procurement	A purchase made without inviting competition when the customary competitive procedures are impractical or not feasible, or other specific circumstances exist that do not permit competition.
Non-Expendable Personal Property	Tangible personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit.
Payment Bond	A bond assuring payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.
Performance Bond	Secures performance and fulfillment of the contractor's obligations under a contract.
Petty Cash	A small amount of cash on hand available to pay for locally purchased, non-repetitive items.
Personal/Professional Service Agreement	An agreement between the Tribe and another party for the provision of personal or professional services to the Tribe.

Procurement The act of obtaining or buying, leasing, renting or other acquisition of goods, services and construction. The process includes preparation and processing of a requisition as well as the end receipt and approval of payment.

Progress Payment A regular or fixed payment made to the contractor at intervals during the progress of a consulting or a construction project, usually upon the satisfactory completion of a certain percentage of the project or upon reaching certain milestones toward completion.

Project Manager The person responsible for the actual day-to-day management of a major project. This person cannot be the Contracting Officer.

Proposal An offer to provide personal or professional services that describes the services to be performed and clearly states all attendant costs. The Tribe may require the credentials and qualifications of the parties designated to provide the actual services.

Purchase Requisition (PR) The Tribe's internal document used to initiate a procurement transaction with a vendor. The Purchase Requisition shall provide for:

- The date of purchase
- The Project Number, (used in construction contracts)
- Vendor's Name and address
- Quantity of items being ordered
- Description(s) of items being ordered
- Unit Price(s) of items being ordered
- Extended price of items being purchased

- Proper coding
- Special instructions (delivery address, date required etc.)
- Signature blocks (Requestor, Purchasing Agent, Director of Finance, etc.)

Purchasing Agent The person(s) designated by the Tribe to purchase goods and services within the guidelines of this Policy.

Reasonable Cost A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. (2 CFR 200.404).

Request for Proposal (RFP) A solicitation often made through a bidding process by the Tribe to potential suppliers to procure a commodity, service or valuable asset, or to submit business proposals. The RFP shall specify the technical requirements for the services to be performed and the factors to be considered in the evaluation of the proposals submitted.

Small Business Concern A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Tribal contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard applicable to the invitation for bids.

Small Disadvantaged Business Concern A small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a public owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

Specifications A complete and accurate statement or set of statements describing the physical, functional and/or technical characteristics and requirements of goods or services sought. The specifications may include drawings, maps and/or references to codes or manuals, as well as descriptions of any requirements for inspection or testing and may set forth performance standards. A specifications manual states all the technical and contractual requirements of a project.

Subcontractor	An individual or firm procured on a contracted basis to accomplish a portion of a contract.
Subrecipient	An entity that receives a sub-award from a pass-through entity to carry out part of a federal program, but does not include a beneficiary of such a program.
Surplus	Property that is no longer useful to a department, due to damage, wear and tear, outdated technology, etc.
Technical Review	A supplemental review of a proposed purchase that is intended to supply additional relevant information. Technical review may be for purchase of computer equipment, evaluation of environmental impacts, construction specifications, or other specialized areas.
Terms	The conditions governing an agreement, including the time schedule for payment.
Tribal Preference	As in "Indian Preference," except that Kickapoo Tribal members or member-owned firms are given preference in contracting before other Native American firms or individuals.
Useful Life	The number of hours, months or years that property is expected to be used in operations, normally expressed in numbers of years.
Value Engineering	An organized effort directed at analyzing designed building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest life cycle cost consistent with required performance, quality, reliability, and safety.
Vendor	The seller which provides a good or service to the Tribe.
Vendor Files	The files maintained by the Tribe which contain information about suppliers of goods and services, including an evaluation of the vendor's product and course of dealing with the Tribe.
Waiver	A written exemption from certain provisions of the Procurement Policy by Resolution of the Tribal Council.

Chapter 1 ~ General Provisions

1.1 Applicability

This policy applies to all procurements of the Kickapoo Tribe in Kansas of supplies, services and construction entered into by the Tribe, its departments and its entities. It shall apply to every expenditure of funds by the Tribe for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds, (such as concession contracts). Due to differences in federal regulations, this policy does not apply to HUD contracts.

1.2 Governing Principles

The Tribe will adhere to all applicable federal and state regulations in procurement funded in whole or in part with federal or state funds. The Tribe will also comply with any terms, conditions or laws pertaining to any grant, contract, gift or bequest in all of its procurement activities. If there is a conflict between this policy and the applicable Code of Federal Regulations (CFR), the CFR shall govern.

1.3 Sovereign Immunity

The Kickapoo Tribe is a Sovereign Nation organized under the Laws of the United States. As such, Federal or state laws do not apply on Tribal lands unless so mandated by specific legislation of the United States Congress or by decision of the Federal Courts. In some cases, the Kickapoo Tribe may agree to observe a particular Federal or state law as a condition for receiving a grant or other benefit. With these exceptions, Federal and state laws do not apply within the Kickapoo Tribe lands or, in most cases, to employees of the Tribe while on official Tribal business regardless of their location. Accordingly, nothing contained in this Procurement Policy shall in any way be construed as being a waiver or diminishment of the sovereign immunity of the Kickapoo Tribe, or the immunity of the Tribe's officers, employees, agents and/or representatives when acting in their official capacities.

1.4 Supersession & Amendment

This policy supercedes and replaces the prior Procurement Policy dated March 5, 2012 (amended 6-10-21 KT21-88) and all other prior Tribal Procurement Policies. No modifications or changes may be made to this policy unless made as an amendment hereto and approved by Resolution of the Kickapoo Tribal Council.

1.5 Federal Regulations

Procurement with federal dollars has heretofore been regulated under 25 CFR 900 and under OMB Circulars A-87, A-102, A-110, and the National

Environmental Policy Act, (NEPA). While 25 CFR 900 and NEPA still apply, OMB Circulars have been reorganized and slightly modified under 2 CFR Chapters I and II; the OMB Circulars are still referred to as the basis for the new CFR.

This Procurement Policy has been modified to conform to the requirements of 2 CFR Chapters I and II, (See the Federal Register, Volume 78, Number 248 December 26, 2013.) It is intended that this Policy will meet or exceed the federal requirements. In the event of conflict between this Policy and applicable federal regulations regarding procurement with federal funds, federal regulations shall prevail. Further guidance is provided under 2 CFR II 200.318 thru 200.325.

1.6 Federal Sources of Supply

The Tribe will consider Government sources/prices for the purchase of supplies and equipment prior to obtaining cost estimates from commercial vendors. For example, computers, copiers, and other major equipment items may be purchased direct from the company at federal government contract prices (GSAGeneral Service Administration contract prices), which are substantially less costly then purchasing the item from a local retail store. If office supplies or a piece of equipment is proposed for purchase, the nearest distributor of the item can be contacted to inquire as to the process to obtain GSA prices.

The Tribe will use, where possible, established sources of supply for goods and services. The Director of Finance or designated procurement official will first determine if the established sources from the federal government can supply the needed item. In selecting the sources from which to acquire the goods the following priority listing may be used:

(1) Excess property from federal agencies as listed in GSA bulletins or excess property listings from the federal agencies themselves. The procurement officer will, as required, obtain periodic excess listings from GSA Area Utilization Officers.
(2) Schedule of products made in federal penal and correctional institutions.

(3) Procurement list from the Committee for Purchases from the Blind and Other Severely Handicapped.

(4) GSA supply catalog

(5) Federal supply schedules

1.7 Grant or Contract Funds

Whenever grant or contract funds are used to purchase goods and/or services, grant guidelines as stipulated in the terms of the grant supercede Tribal guidelines.

1.8 Use of Self-Determination Act Funds

All subcontracts awarded by the Tribe under a self-determination contract shall contain a provision informing the recipient that their award is funded with Indian Self-Determination and Education Assistance Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive orders. The Tribe may identify all or a portion of such requirements, and if so identified, these requirements shall be identified in the subcontract.

1.9 Dispute Resolutions

All dispute resolutions will take place within the current judicial system of the Kickapoo District Court, unless expressly agreed to otherwise by the Tribal Council.

1.10 Waiver of Purchasing Requirements

Only the Tribal Council has the authority to waive the purchasing requirements contained herein. Every waiver of a procurement policy requirement requires explicitly documented justifications accompanied by a signed Resolution of the Tribal Council authorizing such deviation. The waiving of purchasing requirements shall only be exercised to meet emergencies which threaten life, limb, property, the reputation or integrity of the Kickapoo Tribe in Kansas.

1.11 Authority and Administration

All procurement transactions shall be administered by the Tribal Administrator or designee. The Director of Finance or designee may develop operational procedures to implement this Policy, including procedures for the processing of purchase orders. Any such operational procedures shall become effective when approved by the Tribal Administrator or designee.

1.12 Director of Finance or Designee

The Tribal Administrator or designee shall ensure that:

A. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing

B. Contracts have been reviewed and approved by the Tribe's attorney, as required, and clearly specify the desired supplies, services or construction are supported by sufficient documentation regarding the procurement.

C. There are sufficient unencumbered funds budgeted and available to cover the anticipated cost of each procurement before contract award, work is inspected for compliance with terms and specifications, and payment is made promptly for work performed and accepted.

1.13 Tribal Council

Although the Tribal Council has appointed and delegated procurement authority to the Tribal Administrator or other designee, the Tribal Council may take action it deems appropriate at any time to ensure procurement activities are appropriate for and in the best interests of the Tribe.

Chapter 2 ~ Procurement Conduct

2.1 Procurement Standards of Conduct

All persons involved in the procurement processes of the Kickapoo Tribe shall be subject to and shall adhere to the following standards:

A. All procurement transactions shall be accomplished in a manner above reproach, free from any indiscretions, gratuities, or favors that would cast doubt or suspicion on the employee or the Tribe. Employees and officials must refrain from using their official positions unethically to advance personal interests or the interest of their friends or family.

B. No employee, officer, elected official or agent of the Tribe shall participate in the selection, award or administration of procurement if a conflict of interest, real or apparent, would be involved.

2.2 Conflicts of Interest

Employees have an obligation to conduct business within guidelines that prohibit actual, apparent or potential conflicts of interest.

An actual, apparent or potential conflict of interest occurs when an employee is in a position to influence a decision which may result in a personal gain for that employee or relatives as a result of the Tribe's business dealings. For the purpose of this policy, a relative is any person who is an immediate family member or relative (including spouse, domestic partner, child, father, mother, mother-in-law, father-in-law, grandparent, sister, brother, aunt, uncle, niece, nephew).

No 'presumption of guilt is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving Tribal purchases, contracts or leases, it is imperative that they disclose to their supervisor as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Additionally, the Tribe must disclose in writing any potential conflict of interest to the Federal Awarding Agency or pass-through entity, (2 CFR 200.112).

2.3 Gratuities & 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, nor shall they knowingly use confidential information for tangible personal gain. Where the procurement is supported by federal or state funds,

Tribe officers, employees or agents shall abide by any and all additional restrictions imposed by the funding agency.

2.4 Unauthorized Contact with Vendors and Contractors

Unauthorized contact with vendors and contractors by Kickapoo Tribe personnel is of principal concern. The Tribe has delegated purchasing contract authority to the Tribal Chairperson and Tribal Council. Other persons, such as the Tribal Administrator, Director of Finance or a Contracting Officer, may be delegated purchase contracting authority by the Tribal Council. Persons who do not have contracting authority are not permitted to:

A. Permit or instruct a contractor to change the technical provisions of a contract

B. Modify or alter the scope of effort defined in an existing contract.

C. Make statements regarding a contract, bid, project, or proposal, which may be construed as a commitment by the Tribe.

D. Sign letters of intent to purchase.

E. Sign license agreements.

F. In addition, no employee or official of the Tribe, regardless of contracting authority status may:

- Tell contractors or bidders about their competitors' bids or proposals; or
- Request or accept from contractor a loaned piece of equipment, software, free sample, extra work, (on the site or at a contractor site) for any reason.

Such activity compromises established contracting procedures and seriously risks fair and impartial buying practices. Tribal employees and officials engaging in these types of contacts are subject to disciplinary action and may be held personally financially liable. Bypassing established procedures may give a particular vendor an advantage over others and is expressly forbidden.

Chapter 3 ~ Indian Preference and Minority Firms

3.1 General Guidelines

Each contract shall observe the requirements of Tribal or Indian Preference, which means that to the greatest extent feasible, preference and opportunities for training and employment shall first be given to citizens of the Kickapoo Tribe

in Kansas and then to other Native Americans; and preference in the awards of contracts and subcontracts shall be first given to Tribe or Native American organizations and Tribal or other Native American-owned economic enterprises, consistent with the standards for quality in the delivery of goods and services and applicable licensing requirements. The Kickapoo Tribal Employment Rights Ordinance (TERO) applies.

Where Kickapoo Tribe or other Indian Preference is determined not to be feasible or in violation of federal law, the Tribe shall document the procurement with the basis for its findings. Indian Preference applies on-site, on the reservation, or within the Tribe's jurisdiction or service area on trust or fee lands.

The Tribe shall first apply preference to businesses or enterprises owned and operated as a Tribal Enterprise, then to citizens of the Tribe or businesses owned and operated by at least 51% citizenship in the Tribe, and who also live within the service area of the Kickapoo Tribe. Should there be insufficient or no sources within this definition, then preference shall be extended to Native Americans in general. If there are still insufficient qualified Tribal or other Indian Preference bidders, and two or more non-Native bids are equally qualified, then preference shall be given to minority-owned, women-owned or small businesses within the local area.

3.2 Indian Preference in Contracting

The Kickapoo Tribe shall employ ONE of the following methods for granting Indian Preference in Contracting:

A. Method #1

Limiting eligibility to bid to qualified citizens of the Tribe, enterprises owned by the Tribe, or ither Native American owned enterprises. The advertisement and/or solicitation shall state that only qualified Tribal citizens, Tribal enterprises or other qualified Native American owned enterprises may bid a proposal on the contract.

B. Method #2

A two-stage preference may be utilized applying the following procedure:

(1) Invite Tribal or Indian-owned economic enterprises to submit a statement indicating their intent to respond to a bid announcement or Request for Proposals (RFP) limited to Tribal or Indian Preference economic enterprises;

(2) If more than one response is received from firms which qualify for Indian Preference, the purchasing agent shall advertise and solicit bids limited to Tribal or Native American economic enterprises.

C. Method #3

Bids or proposals shall be invited from all qualified bidders, but the IFB (Invitation for Bid) shall state that any qualified and responsible Tribal or Native American firm whose bid is within 5% of the lowest responsible bid shall be awarded the project based on Indian Preference. For RFP's, the announcement shall state that a minimum of 15% of the evaluation points shall be granted to bidders who demonstrate entitlement to Tribal or Indian Preference, which points shall not be available to non-Indian bidders.

All preferences shall be announced in the solicitation and in the contract documents.

3.3 Non-Response

A. If either Method #1 or Method #2 is used limiting bidding to qualified Kickapoo Tribal Members or Native Americans, and fewer than two responsible qualified organizations or enterprises submit a statement of intent to submit a bid or proposal at a reasonable cost, the IFB or RFP shall be republished and/or re-solicited inviting bids from all qualified bidders.

B. This requirement does not apply if Method #3 is used and the IFB announces that qualified Kickapoo or Indian Preference firms whose bids are within X% of the lowest bid will be given preference, or if the RFP announces an evaluation method that allots a percentage of points to proposals from qualified Indian organizations or entities.

3.4 Small Purchases

The purchasing agent also shall, to the greatest extent feasible, provide Kickapoo or Indian preference to small purchases.

3.5 Eligibility for Preference

Any individual, firm or organization claiming Kickapoo Tribe or Indian Preference shall submit a qualification stating the following:

A. Evidence showing fully the extent of Tribal or other Indian ownership, control and interest (at least 51%). A list of owners, managers and/or investors must contain each name, tribal membership and roll number or tribal identification number.

B. If an individual, certification by the Tribe or another federally recognized tribe(s) that the bidder is a citizen of the Tribe or Native American.

C. Evidence of stock ownership, structure, management, control and financing affecting the qualified Native American extent of the enterprise.

D. Evidence that the individual or firm has the technical, administrative and financial capability to perform contract work of the scope, size and type involved.

E. If the Tribe or prime contractor determines an applicant ineligible for Tribal or Indian Preference, it shall notify the applicant in writing before the contract or subcontract is awarded.

F. The Tribe's TERO Department will have the responsibility to determine eligibility for Indian Preference.

3.6 Required Contract Clause

The following clause or equivalent shall be included in each federally funded contract awarded:

"The work to be performed under this contract is on a project subject to Section
7 (b) of the Indian Self-Determination and Education Assistance Act [25 USC 450e (b)] (Indian Act). Section 7 (b) requires that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment shall be given to Indians; and
(2) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

"The parties to this contract shall comply with the provisions of Section 7 (b) of the Indian Self-Determination and Education Assistance Act. In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives. The contractor shall include this Section 7 (b) clause in every subcontract in connection with the project and shall, at the direction of the Kickapoo Tribe, take appropriate action pursuant to the subcontract upon a finding by the Tribe or the federal funding agency that the subcontractor has violated Section 7 (b) clause of the Indian Act."

Contracts paid with non-federal funds should also include a Tribal or an Indian Preference clause approved by the Tribal Council or the Tribe's attorney.

3.7 Granting Indian Preference

Subject to the requirements of this Policy, the following formula shall be used when applying Indian Preference:

A. An award from an IFB shall be made to the Tribe or other Indian Preference enterprise or organization with the lowest responsive bid if:

(1) The bid is within the budgetary constraints for the project or activity.

(2) The difference in the bid amount is not more than X% of the total bid price of the lowest responsive bid from any qualified non-Indian bidder. "X" is determined as the lesser of:

- When the lowest responsive bid is less than $100,000 – 10% of that bid, or $9,000;
- At least $100,000, but less than $200,000 – 9% of that bid, or $16,000;
- At least $200,000, but less than $300,000 – 8% of that bid, or $21,000;
- At least $300,000, but less than $400,000 – 7% of that bid, or $24,000;
- At least $400,000, but less than $500,000 – 6% of that bid, or $25,000;
- At least $500,000, but less than $1,000,000 – 5% of that bid, or $40,000;
- At least $1,000,000, but less than $2,000,000 – 4% of that bid, or $60,000;
- At least $2,000,000, but less than $4,000,000 – 3% of that bid, or $80,000;
- At least $4,000,000, but less than $7,000,000 – 2% of that bid, or $105,000;
- $7,000,000 or more – 1% of the lowest responsive bid with no dollar limit.

B. An award resulting from a RFP shall be made in accordance with the evaluation factors contained in the RFP, including a percentage of points (15%) allotted to Kickapoo Tribe or other tribal organizations or entities eligible for Indian Preference.

3.8 Complaints Regarding Indian Preference

The following procedures apply only to complaints specifically relative to the methods for providing Tribal or Indian Preference.

A. Each complaint shall be made in writing, signed and filed with the Contracting Officer selected for the project who is assigned to administer a project or contract.

B. A complaint shall be filed no later than five (5) business days from the date of the action or omission upon which the complaint is based.

C. Upon receipt of a complaint, the Contracting Officer will promptly stamp the date and time of receipt upon the complaint and immediately acknowledge its receipt.

D. Within 15 business days of receipt of a complaint, the Contracting Officer shall either meet or communicate by mail or telephone with the complaining party in an effort to resolve the matter.

E. The Contracting Officer may, and is encouraged to, consult with legal counsel. The Contracting Officer shall issue a determination on the complaint in writing to the complaining party within 30 calendar days of submittal of the complaint.

F. The decision of the Contracting Officer shall be the final administrative action on the complaint.

3.9 Waivers of Indian Preference Requirements

If a qualified Kickapoo Tribe or Native American business is unable to meet a specific term, condition or requirement of a contract or purchase action, the Tribal Chairperson may waive such specific term, condition or requirement with appropriate justification and, if necessary or appropriate, replacing such term, condition or requirement with alternative or additional terms, conditions, or requirements. The documents will specify the term, condition or requirement being waived, the justification for the waiver, and any alternative proposed. A waiver may be allowed only if all of the following conditions are met:

A. The Tribal or Native American business is qualified, responsive and responsible except for meeting the term, condition or requirement.

B. The Tribal or Native American business legitimately cannot or is legitimately unable to meet the term, condition or requirement and has sufficiently demonstrated the same. Unwillingness or refusal to meet the term, condition or requirement is not sufficient.
C. Granting the waiver is not inconsistent with effective and efficient performance of the program, contract or purchase action.

D. Any appropriate possible alternatives to the term, condition or requirement being waived that the KTIK or Native American business is able to meet are included in the contract or purchase action and agreed to by the Tribal or Indian business.

E. The waiver is not detrimental to:

- the rights or interests of the Tribe
- security or guarantee of performance of the contract, or
- enforcement of the contract or its performance, or an alternative to the waived term, condition or requirement or an addition to the contract or purchase action that adequately protects any rights or interests of the Tribe impacted by the waiver is provided and agreed upon, including additional or alternative security, enforcement methods or provisions.

3.10 Minority Businesses

The Tribe must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists

B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources

C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises

D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises

E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce

Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (A) through (E) of this section.

Chapter 4 ~ Purchasing Levels, Guidelines and Procedures

4.1 General Guidelines

The Kickapoo Tribe committed to a policy of full and open competition, consistent with the provisions of this policy.

4.2 Micro Purchases ($10,000 or less)

Although internal approval is required for any purchases of $500 or more, no competition is required to purchase items, goods or services that cost $10,000 or less, ($2,000 if the contract is subject to the Davis-Bacon Act). The KTIK internal purchasing procedures shall be followed. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. Micropurchases may be awarded without soliciting competitive quotations if the Tribe considers the price (after adequate price analysis) to be reasonable.

4.3 Simplified Acquisitions or Small Purchases (Above $10,000 But Not Above $250,000)

A. The purchase of items, goods or services in this price range requires competition consistent with this Chapter.

B. The purchaser shall obtain price or rate quotations from an adequate number of qualified sources, (generally three or more) in accordance with the Small Purchase procedures set forth in this Chapter.

C. The purchaser shall inform the sources solicited of the specific goods or services being procured, the time and date by which quotations must be submitted, and the information required to be submitted with each quote.

D. The Tribal Department employee/purchaser may accept either verbal or written price quotes, but if the quote is received verbally the purchaser shall document the price quotes.

E. The Tribal Department employee/purchaser shall select the firm or source from which the purchase will be made. If the selected vendor is not the lowest bidder, (i.e.: the selected vendor is an Indian Preference owned firm

or the goods/services cannot be provided by the specified date), the purchaser agent shall annotate the reason in the procurement file. The purchaser will initiate the established PR (purchase request) process and will obtain required approvals.

4.4 Purchases Above $250,000

The Kickapoo Tribe shall procure items in this price range by publishing a formal Invitation for Bids or sending a Request for Proposals in accordance with procedures outlined in this Chapter:

A. Sealed Bids (Common for construction projects)

Formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conforms to all material terms and is the lowest in price, (subject to Indian Preference).

The Invitation for Bid (IFB) procedure is used for the purchase of goods and materials or for construction services which include materials.

(1) An invitation to submit sealed bids shall be published when the following conditions are present:

- The purchaser has a complete, adequate and realistic specification or purchase description of requirements available.
- Two or more responsible and qualified bidders are willing and able to compete effectively for the business.
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

The IFB method of procurement is the method most often used for construction projects. An IFB for a construction project will ordinarily not be published until a contracting official has been named for the project and a Specifications Manual has been published which includes instructions for bidders.

If an amendment to the specifications is issued, it shall be in writing. The designated contract official shall be responsible for promptly ascertaining that published amendments have been provided to any party who has received the Specifications Manual. If the amendment cannot be

delivered to all of those who have received bid packets at least fifteen (15) days prior to the closing date, the closing date must be adjusted accordingly.

(2) Contents of an IFB

- The IFB must identify how the bidder may obtain the specifications and any pertinent attachments, and shall define the goods or services in order for the bidder to properly respond.
- The IFB must state the required credentials and qualifications of bidders and any factors which will be used to evaluate the bid.
- The IFB must provide instructions for submitting a sealed bid.
- The IFB must provide an adequate time period, generally a minimum of two weeks prior to the deadline for vendors to prepare submission of bids, and must state the closing date and time.
- The IFB must provide the date, time and place of the opening of the bids.
- The IFB must state if Tribal or other minority preference will be a factor in selection of the winning bid.
- The IFB must state the contract will be awarded to the lowest responsive and responsible bidder as determined by the purchaser, subject to Indian Preference.
- The IFB must state that bids from individuals or firms included in the GSA debarment list will be rejected.
- The IFB must state whether or not a Bid Guarantee Bond is required and in what amount, (generally, 5% of the bid amount). This is to ensure that the bidder, if successful, will continue through the process of acceptance and award.
- The IFB must state whether or not a performance bond will be required and in what amounts, (100% of the contract price).
- The IFB must specify that a Payment Bond will be required in the amount of 100% of the contract price to ensure that laborers and suppliers are paid.
- The IFB must state what insurance requirements will apply.
- The IFB must state that the Tribe reserves the right to reject any or all bids received.

(3) An IFB may be published by

- Publication in a newspaper of general circulation
- Direct solicitation of bids from an adequate number of known suppliers or sources

(4) Receipt of sealed bids

- As each bid is received, it shall be examined to ascertain it is sealed. It shall then be stamped "Received" and initialed by the purchaser; the date and time of receipt shall also be written on the outside of the envelope. The bids shall be kept in a safe and secure location until bid opening.
- Any bid received after the closing time and date shall be returned to the bidder unopened.

(5) Opening of bids

- All bids shall be opened at the stated time and place with at least three witnesses attending.
- Bidders may attend the bid opening.
- The contract official, under direction and supervision of the Department or Program Director, shall maintain a schedule of all bids received which lists the names of the bidders and the amounts of bid. Bids not opened due to not being received by the closing time shall also be listed and noted that the bid was returned unopened.
- The schedule shall also include a checklist to determine if all required submittals are included as required in the IFB.
- If, after applying Indian Preference as provided for in Chapter 3, two or more bids are in all respects the same, Indian or minority preference shall be granted to the Indian or minority firm. If only one bid is received, it may be accepted if it conforms to the published criteria and comes from a responsible bidder, and if the bid price is reasonably close to the cost estimates.
- Any or all bids may be rejected within the discretion of the Kickapoo Tribe.
- A Selection Committee consisting of at least three persons shall be established prior to the bid opening. There are no particular requirements for committee membership other than that no bidders or bidder representatives may participate and no committee member may have a conflict of interest with any bidder.
- All of the bids shall be opened at the date, time and place specified in the IFB. At least one neutral witness shall be present. Neutral means not a bidder, not the Contracting Officer, not the Program Director or Department Director, any of which who may attend; but the attending witness shall be someone not listed herein. The

purpose of the witness is to ascertain and attest that bid-opening procedures are followed. All bidders or their representatives may and are encouraged to attend.

B. Competitive Proposals

Requires formal solicitation, fixed-price or cost-reimbursement contracts and is used when sealed bids are not appropriate. The contract should be awarded on the most advantageous basis to the program, with price being one of the various factors. A Request for Proposal (RFP) will be published when the procurement involves professional or other services other than construction. The purchaser will accept competitive proposals for contracts based on a fixed price or cost reimbursement basis using the following prescribed procedures:

(1) Contents of an RFP

- The RFP must clearly describe the services that are sought in order to allow the party submitting the proposal to properly respond.
- The RFP must state the required credentials and qualifications of parties submitting a proposal.
- The RFP must identify all evaluation factors and their relative importance.
- The RFP must provide instructions for submitting a proposal.
- The RFP must provide an adequate time period prior to the deadline for vendors to prepare submission of bids, and must state the closing date and time.
- The RFP must state if Tribal or other minority preference will be a factor in selection of the winning bid.
- The RFP must state that the contract will be awarded to the lowest and most responsible party or proposer as determined by the purchaser.
- The RFP must state what insurance requirements will apply.
- The RFP must state that the Kickapoo Tribe reserves the right to reject any and all proposals.

(2) An RFP may be published by

- Publication in a newspaper of general circulation.
- Direct solicitations of proposals from adequate known sources that are reasonably able to respond and fulfill the contract.

(3) Receipt of Sealed Bids or Proposals

- Proposals for professional or consulting services do not require a sealed bid process.
- Otherwise, as each bid is received, it shall be examined to ascertain it is sealed. It shall then be stamped "Received" and initialed by the Director of Finance or designee; the date and time of receipt shall also be written on the outside of the envelope. The bids shall be kept in a safe and secure location until bid opening.
- Any bid received after the closing time and date shall be returned to the bidder unopened.

(4) Evaluating Proposals

The Program or Department Director will evaluate the proposals for conformance to the published criteria and may:

- Select the proposal that is most advantageous to the Tribe considering price and the other enumerated factors
- Opt to negotiate an acceptable contract price with more than one of the sources submitting offers
- Reject all submitted proposals

(5) Architect, Engineer, Land Surveyor or Other Highly Specialized Services

Such services may be obtained by either the competitive bid or qualification-based selection procedures unless applicable law or regulations specify the method. Sealed bidding shall not be used to obtain these services.

Under qualification-based selection procedures, competitor's qualifications are evaluated and weighed against requirements for the proposed project or service and the most qualified competitor is selected, subject to the negotiation of a fair and reasonable compensation and budgetary constraints. This is the method most often required by federal agencies with respect to architects and engineers and similar professions which require performance by a registered and licensed architect, land surveyor or engineer.

4.5 Sole Source

Can only be used when specific criteria are met:

A. Product/service is only available from a single source

B. Public emergency

C. Federal awarding agency authorization, (the federal agency specifically authorizes a non-competitive procurement after a written request from the Tribe

D. Inadequate competition after solicitation of multiple sources

E. The procurement is for recurring or continuing professional or consulting services.

F. The item is an associated capital maintenance item that only can be secured directly from the manufacturer or supplier of the item to be replaced and the price of such item is no higher than the price paid for like items by other customers.

Each procurement based on a noncompetitive proposal shall be supported with a written justification for using such procedures.

4.6 Blanket Purchase Requests

There may be circumstances where recurring orders for supplies occur over a period of time, such as in the purchase of office supplies. A cost analysis shall be performed annually to determine that the firm(s) selected for blanket purchase orders continue to overall be the most qualified, lowest-cost source for the type of supplies being procured. Additionally, if the cost of an item from another vendor is lower than that of the vendor under a blanket purchase agreement, the item may be obtained at the lower cost without further analysis. The Tribal Administrator or designee shall provide the vendor with a list of persons authorized to place orders against the Blanket Purchase Order; it shall also be the responsibility of the Purchasing Agent to notify the vendor when a listed employee is terminated or otherwise no longer authorized to make such purchases.

4.7 Purchase Authorization

Consistent with the provisions of this Policy, the Tribal Administrator, with approval from the Tribal Council, shall establish internal procurement procedures including necessary approvals and approval levels.

4.8 Purchasing Request

A Purchasing Request will be processed for all Tribal procurements, regardless of size. The requisition is the official document which identifies the specific goods or services required by the program. The items of information that are contained within this document describe what needs to be purchased, when it needs to arrive, and how many products/services are necessary (or any other pertinent information). The following items are found in the requisition:

- Vendor Name (or requested/suggested vendor)
- Date
- Quantity of Item
- Unit of Measure (i.e., carton, box, case, each, etc.)
- General ledger account number
- Non-technical itemized description of item(s) requested, as applicable
- Digital approval/Signature of Requestor
- Digital approval/Signature of department director or authorized signer
- Other Notes, if required (e.g., special packing, shipping or transportation needs)
- Digital approval/signature of Treasurer or his/her designee*

* Modified on 4/11/25, Resolution KT25-73

4.9 Purchase Justification

Justification of all purchases is necessary to show the relationship of the purchased items to the objectives of the program. It is a violation of Tribal Policy and 2 CFR Title II to purchase an unnecessary or duplicative item. Justification shall be made on the basis of need and utilization as listed below:

A. Basis of Need

- New or expanded program
- Desired increase in production or efficiency
- New or revised procedures
- Increased workload
- Need for replacement
- Needed for health, safety or protection

B. Utilization Considerations

- No similar property on hand
- Similar property on hand is being used for approved purposes to the maximum extent possible

- Property requiring replacement cannot be economically continued in use while meeting applicable use and replacement standards, if any
- Value of the property (in services) to the program warrants its acquisition cost
- Item is required by programmatic criteria-statute, regulations, or terms and conditions

4.10 Review of Request

After receipt of the requisition, it will be reviewed to determine if it contains adequate information to describe the service/products needed. If the Department Director wishes to sole-source or limit the number of sources, the requisition must contain reasons and documentation (if applicable) to back up this recommendation.

4.11 Technical Review

The purpose of a Technical/Administrative review is to ascertain that significant or material issues related to a proposed expenditure have not been overlooked or inadequately addressed. Review by one or more departments may be necessary. This review will include all of the following:

A. Identifying Necessary Reviews

The Tribal Administrator or designee will request technical reviews. When a Department Director deems that a technical review is necessary, the director should note such on the requisition.

B. Results of Technical Review

The reviewer must discuss any concerns noted with the requesting Department Director. It may be necessary to refer the review to an outside, qualified source. Any reviewer concerns and/or comments must be written and attached to the requisition.

C. Issues and Concerns Noted

Issues and concerns received by the Tribal Administrator or designee that could have a significant negative impact on the Tribe or the nature of the purchase or contract will be referred to the funding agency for further review and determination.

4.12 Estimate/Cost Analysis

The Kickapoo Tribe shall prepare a cost estimate /cost analysis before a solicitation is issued to establish a cost range for goods and services to be solicited. A cost estimate/cost analysis shall also be prepared in advance of

negotiating contract modifications. The cost estimate is for internal use only and
not to be shared with proposed vendors. The requesting department or program shall determine that there are sufficient unencumbered funds available to cover the anticipated cost of procurement before a solicitation is issued.

4.13 Budgetary and Agency Constraints

The agency may have established additional parameters providing for procurement specifications, technical review, bidding procedures, contract oversight, etc.; these must be followed. If sufficient funds do not exist, budgetary modifications must be made and approved according to the Tribe's Fiscal Policy.

4.14 Cancellation of Solicitations

A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if the supplies, services or construction are no longer required, availability of funding has expired or for other good reasons. The reason(s) for cancelation shall be documented in the procurement file and shall be provided to any offeror upon request. A notice of cancellation shall be submitted to all parties submitting a bid or a proposal.

4.15 Mistakes in Bids

Correction or withdrawal of inadvertently erroneous bids may be allowed before bid opening by written, emailed or faxed notice confirmed to have been received by the purchasing agent prior to opening of bids. Mistakes or errors discovered after the bid opening can be adjusted if the bidder can show by clear and convincing evidence that the mistake was of a non-judgmental error, (i.e.; clerical error in the computation of a price); such adjustments must be approved by the Tribal Administrator or designee.

4.16 Receiving Purchased Goods and Supplies

A. The Contract Official, Department Head or Program Manager shall be responsible for receiving all purchased goods; however, he or she may designate another staff member to perform the tasks associated with verifying receipt of the purchase.

B. Upon receipt of a delivery, the Purchase Request and the packing slip shall be compared for correctness and completeness.

C. The designated receiving person will verify receipt of the goods or services:

- The quality, part numbers and descriptions of materials received agrees with the Purchase Request and the items are not damaged.
- All prior payments are correctly noted on the Purchase Request and vendor invoice.

D. Once all documentations are complete and correct, they are to be forwarded to the Finance Department for payment.

E. If the shipment contains more products than specified in the order, the overshipment shall be returned to the vendor at the vendor's expense.

F. In the event of a partial shipment, the person receiving the good must contact the Director of Finance or designee for further instruction as to how to proceed.

4.17 Management Review

In addition to the above procedures, the Department Director and the Tribal Administrator or designee will determine:

A. Risk Management and Insurance

Do the resultant operations or property acquisitions present any risk not covered by insurance? If adequate insurance coverage is not in place, the Tribal Administrator or designee will determine insurance needs and initiate appropriate action.

B. Technical/Legal Review

The Tribal Administrator or designee will determine whether or not legal or additional technical review is warranted. If the Tribe's attorney performs a review, he/she will make an assessment of the Tribe's legal exposure, ramifications and rights (e.g.; legal liability that may result from this purchase). The attorney also has the responsibility of pointing out other potential legal ramifications of the proposed purchase. Other technical reviewers as well will rely on their expertise in their respective fields when performing technical reviews.

4.18 Long-term Lease vs. Purchase

Obtaining the use of property, plant, and equipment through long-term leases is often a viable alternative to outright purchase. A lease allows the Tribe to use the property without a large cash outlay up front. A lease is basically renting the property instead of buying it, and can be viewed as a financing option to purchase the property. Leases vary in term, assumption of expense, and many other

details. The purchase versus lease decision should be based upon net cost, considering:

- Cash flow
- Tax treatment (if applicable)
- Speed at which technology changes for this fixed asset

For assistance with financial calculations related to lease v. buy options, the Tribal Administrator or designee should consider:

- Term of the lease (# of months)
- Total cost if asset were bought today (including delivery charge)
- Interest rate to be used for lease
- Cost to buy the asset at termination of lease (option to buy)
- Other lease terms as deemed appropriate

4.19 Additional Considerations

A. It is essential that prospective bidders be given sufficient time to prepare fully qualified and compliant responses; a minimum of thirty (30) days shall be provided between the date the IFB or RFP is advertised or solicited unless otherwise provided for by the granting agency.

B. It is required that a method be established for the evaluation of bids consistent with this Chapter, and this method may vary from procurement to procurement based upon the type of procurement and other factors to be considered. Once the method of evaluation is established, it must be included in the solicitation for bids.

C. The Award of Contract shall be concluded with reasonable promptness after the bid opening to the best qualified and responsible bidder with the lowest price and in accordance with this Policy.

D. Where all bids are higher than the funds available for a project and the lowest, best qualified bid does not exceed 5% of the available funds, the Tribal Administrator or designee may negotiate with such bidder to reduce or alter the scope of the contract to bring the price within funds available, where the process of re-soliciting bids will exceed time constraints or when there are changing economic conditions.

E. Prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include, but not be limited, to such lists.

F. Regarding construction projects in the amount of $50,000 or more, a satisfactory payment bond shall be provided for the protection of all persons and companies supplying labor and material to the contractor or subcontractor for the performance of the work provided for in the contract. Unless otherwise provided for by the agency, the amount of bond shall be 100% of the price specified in the contract.

G. In contracts which include labor costs, a release from the Contracting or Purchasing Officer is required to pay for a contract billing. When progress payments are made to a vendor, then a certain amount will be withheld in accordance with the procedures for federally-funded labor contracts.

H. When bidders provide certified or cashier checks as bid-guarantees, copies of said checks shall be attached to the bid packet received; the originals shall be given to the Finance Office.

I. Davis Bacon wages on federally-funded or partially federal-funded contracts over $2,000 will apply.

J. The description of the item, product or service requested should set forth the functional characteristics and any physical description of the item. In large purchases, if the description limits or seems to restrict the purchase to one manufacturer or supplier, or if the description unduly limits the number of suppliers, a letter of justification will need to be attached.

Chapter 5 ~ Purchasing Standards

5.1 Contractor Capability

The Kickapoo Tribe shall not award a contract until the prospective contractor has demonstrated to the Tribal Council or Program or Department Director that it has the technical, administrative and financial capability to perform contract work of the scope, size and type involved and within the time provided under the contract.

5.2 Debarment

The Tribe shall not award a contract to a person or firm on the List of Parties Excluded from Federal Procurement and Non-procurement Programs,

(Debarment List), or to a person or firm which is subject to a limited denial of participation issued by the KTIK.

The System for Award Management (SAM) found at www.sam.gov will be used to verify debarment and eligibility status. The Tribal Administrator or designee will perform the verifications in SAM before any contracts will be approved. Searches within SAM must be conducted in accordance with guidance available on the site. If there are questions or a contractor cannot be found within SAM, it should be documented and the search result printed out for the file. In addition, the person conducting the verification will attach documentation with their signature verifying the results of the search.

If a contractor is found to be on the excluded list, the Tribal Administrator or designee will immediately be notified so that the contract/procurement process can be suspended.

5.3 Agency Approval

Where prior agency approval is required, it is the responsibility of the Program Director to obtain such approval in writing. Many contracts for professional services require prior agency approval.

5.4 Contract Limits

All contracts must stipulate a fixed amount, or an amount "not to exceed." Written addendums must be secured for any modifications in cost or scope, and these require agency approval.

5.5 Use of Subcontractors

Where the contractor is using subcontractors:

- The agreement must be in writing
- The agreement must identify the interested parties, their authorities, and the purposes of the contract.
- The agreement must describe the scope of work to be accomplished under the subcontract.
- The agreement must state the process for making any claim, the payments to be made and the terms of the contract, which shall be fixed.

5.6 Federal Excess and Surplus Property

The KTIK shall use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

5.7 Time and Material Contracts

The Tribe will employ time and material contracts only when it is determined that no other type of contracting is suitable and if the contract includes a ceiling price that the contractor exceeds at his own risk. See 2 CFR II 200.318 (j).

5.8 Contracts for Design

Contractors used for the purpose of preparing plans, specifications, drawings and other requirements for procurement may not bid on the proposed contract. See 2 CFR III 319.

5.9 Cooperative Purchasing

The Tribe may enter into tribal, state, regional and local intergovernmental agreements to purchase or use common goods and services. The decision as to whether to use such an agreement or to 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.

5.10 Prohibited Actions The

Tribe will not allow:

- Placing unreasonable requirements on firms in order to prevent them from qualifying to do business
- Requiring unnecessary experience or excessive bonding;
- Noncompetitive contracts to consultants who are on a retainer basis;
- Organizational conflicts of interest;
- Any arbitrary action in the procurement process.

Chapter 6 ~ Construction Contracts Using Federal Dollars

6.1 Application

In addition to the provisions of all other chapters of this Policy, this Chapter applies specifically to contracts for construction using federal dollars. This includes requirements for issuing fixed-price or cost-reimbursable contracts to provide design, construction, repair, improvement, expansion, replacement, erection of new space, or demolition and other related work. Such contracts may include the provision of moveable equipment, tele-communications and data processing equipment, furnishings (including works of art), and special purpose equipment when within the construction contract. The provisions contained in this Chapter may or may not apply to construction contracts under HUD or Indian Reservations Roads programs.

Information specific to Construction Contracts can be found at 25 CFR Subpart J, 900.110 through 900.137.

6.2 Provisions of Law

Unless otherwise agreed to by the Tribe, no provision of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive Orders) shall apply to any construction project conducted under section 509 of the Act [25 U.S.C. 458aaa-8]. The Secretary and the Tribe may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction project agreement or funding agreement. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

6.3 Redesign

In the event all bids come in higher than anticipated, it may be that the project was over-designed. In such event, the Contract Official and architect shall identify design modifications that would likely result in lower bids and the project shall be re-advertised. When a responsible bid comes in nominally higher than projected budget, and where there are no design modifications to be considered, the Tribe may negotiate with the bidder in an attempt to bring the project within budgetary constraints.

6.4 Pre-construction Conference Minutes

If a pre-construction meeting is held, as it generally should be, the minutes of the meeting and a list of attendees shall be prepared and kept in the contract file.

6.5 Notice to Proceed

Before a contractor can start construction, a Notice to Proceed must be issued by the Contract Official. Two copies shall be made, one to be attached to the contractor's copy of executed documents. The Notice to Proceed is the official KTIK order directing the contractor to start work; the notice must be signed by all required parties prior to issuance. The date of completion is counted from the date of the Notice to Proceed. Once the contractor has received his copy, he must sign it and return the copy to the Contracting Officer for inclusion in the contract file. A copy must be sent to the Department of Labor on all federally-funded contracts in excess of $2,000.

6.6 Surety

If the contractor uses a surety company in lieu of a cashier or certified check, the surety must be a guarantee or surety company acceptable to the Tribe and/or the federal government. See U.S. Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," published annually in the Federal Register.

Chapter 7 ~ Selecting a Responsible Contractor

7.1 In General

A. There are no standards by which all suppliers can be judged because of the wide variety of materials, equipment, and services required by the Kickapoo Tribe. There are, however, several major considerations and sources of information which the purchaser may use to locate main sources and to provide guidance in the selection of suppliers. The selection of suppliers of vendors is the responsibility of the requesting department and Tribal Administrator or designee.

B. The KTIK will award contracts only to those prospective contractors who have the ability to successfully perform under the terms and conditions of the proposed contract, (i.e., those who have the technical and financial competence to perform and who have a satisfactory record for integrity).

7.2 Factors

The following factors will be considered in selection of a prospective contractor. Where the contractor intends to use subcontractors, they should also be evaluated in this process. These factors shall be equally applied to persons or firms who are eligible for Tribal, Indian or minority preference:

A. Record of Past Performance

- Has the bidder previously performed a contract of the scope, size and type being proposed?
- Did the bidder perform or complete other projects on time?
- Were the projects or services free of disputes?
- What was the quality of the work performed or goods delivered?

- Did the workmanship conform to the specifications, codes and standards of the industry?

B. Administrative Capability

- Does the bidder have adequate staff and resources to administer the contract?
- How well has the bidder observed administrative requirements in the past?

C. Financial Resources

- Is the bidder able to secure required bonding for construction projects?
- Does the bidder have the financial resources to meet labor, equipment and supply costs incurred before interim performance payments commence?
- Does the bidder's financial statement reflect a financially stable organization?
- Is the bidder a well-established supplier?
- Are required insurance policies in place?

D. Technical Resources

- Does the bidder have the equipment, tools and trained manpower to do the job?
- Does the bidder have the necessary licenses and certifications required for the type of work anticipated by the contract? (Has the Tribe verified that the contractor is licensed where licensing is required?)
- Does the bidder have prior satisfactory experience?

E. Overall Advantages to the Tribe

- Is the location of the bidder's place of business advantageous to the Tribe?
- Are there other factors of importance to the Tribe that would make the selection of a particular bidder advantageous?
    - Bid or proposal best conforms to specifications ○ Delivery schedule or completion time is most advantageous ○ Payment terms or discounts are available ○ Repair or maintenance service is available ○ Previous good service or

prompt delivery ○ Previous satisfactory experience with product ○ Bid includes an incentive bonus for on-time, below cost completion of the project

- ○ Prior working relationships between the contractor and the Tribe have been satisfactory ○ Prior work with other tribes or in Indian Country or with programs/offerings designed especially for tribes.

F. Disqualification of Contractor

Steps required when a bidder is to be disqualified on the basis of not meeting the criteria as a responsible bidder:

- Document Tribe's area of concern, (i.e., unfavorable references, poor work history, lack of adequate working capital).
- Consult with legal counsel.
- Notify bidder in a timely manner.
- Debarred, suspended or unlicensed.

Chapter 8 ~ Contract Terms and Conditions

8.1 Standardized Contracts

The Tribe may develop and use a standard contract for each type of contract it uses, which should include the provisions for jurisdiction, scope of work, costs, payment and related administrative matters. Standard contracts shall only be used for the purpose and type of contract they are intended for; other requirements of this policy remain in effect.

A. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or break contract terms, and which provide for such sanctions and penalties as may be appropriate.

B. All contracts for $10,000 or more shall contain suitable provisions for termination by the Tribe, 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 for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor or the Tribe.

8.2 Required Provisions for Contracts with Federal Funding Involved

Contractual agreements with the federal government will generally stipulate what provisions shall be included in a particular procurement contract. The Kickapoo Tribe may include any or all of such provisions in a contract awarded with totally non-federal funds. The inclusion of a federal contract clause or provision in no way constitutes a waiver of the sovereignty, sovereign immunity or rights of selfgovernment of the Kickapoo Tribe in Kansas. Below are some of the standard provisions:

A. Arbitration Clause

Provides that in the event of a contractual dispute which cannot be resolved by the parties involved, the dispute shall first be referred for arbitration prior to the undertaking of any legal action.

B. Byrd Anti-Lobbying Amendment

Contractors that apply for or bid for an award of $100,000 or more shall certify that they have not and will not use federal 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 any federal contract, grant or other award covered by 31 USC 1352.

C. Claims Provision

Governs the submittal of claims and the resolution of disputes.

D. Clean Air Act & Clean Water Act

Contracts and subcontracts of $100,000 and over shall contain a provision that requires the recipient to agree to comply 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 CFR 15) which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. Violations shall be reported to the grantor agency and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement, (EN-39).

E. Compliance with the laws, ordinances and regulations of the Kickapoo Tribe

Requires contractors, subcontractors and their employees to comply with the laws of the Tribe during the contract.

F. Copeland Anti-Kickback Act

All construction or repair contracts procured through a federal grant source shall include a provision for compliance with the "Copeland Anti-Kickback Act," (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR 3). This Act provides that each contractor or sub-grantee shall be prohibited from inducing by any means any person employed in the construction, completion or repair of public works, to give up any part of the compensation to which he is otherwise entitled. The Tribe shall report all suspected or reported violations to the federal grantor. (Note: Construction contracts over $2,000 also trigger payroll rules and reporting under this Act, different than those under Davis-Bacon).

G. Data, Patent & Copyrights

Specifies who owns the rights to data, inventions and original works of documents, research, development, experiment, photographs, maps and drawings or demonstration work created as a result of the contract.

H. Davis-Bacon Act

All construction contracts awarded by federal grant sources over $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a277a), and as supplemented by Department of Labor regulations, (29 CFR 5). In addition, contractors shall be required to pay wages not less often

than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award shall be conditioned upon the acceptance of the wage determination.

The grantee shall report all suspected or reported violations to the federal grantor.

I. Energy Efficient Standards

A provision requiring that lighting, appliances and other equipment meet the energy efficient standards developed by the Department of Energy, and in compliance with the Energy Policy and Conservation Act, (PL 94-163).

J. Equal Opportunity Employment

All construction contracts awarded from federal grant sources having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by Department of Labor regulations, (41 CFR 60). However, this Equal Opportunity Employment provision will apply only after the Indian and Minority Preference requirements have been met.

K. Examination of Records

A provision that the Tribe, the federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives shall have access to any papers, books, documents and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts and transcriptions.

L. Federal Tort Claims Act (FTCA):

Protection under the FTCA does not extend to subcontractors of the Tribe, (generally referred to herein as a "contractor"), or to their subcontractors. However, individuals performing personal services under a contract to provide health care may receive protection.

M. Indian Preference Act – See Chapter 3.

N. Insurance Requirement and Indemnification Responsibilities

A clause specifying what insurance coverages the contractor shall provide, (i.e., workman's compensation, general liability, automobile), and providing

that the contractor will indemnify the Tribe against litigation arising from third parties as a result of actions of the contractor or its employees.

O. Jurisdiction Clause

A clause specifying where the court of primary jurisdiction is located in the event of litigation, generally the Tribal Court.

P. National or Tribal Historical Preservation Act

A provision that a Cultural Officer or observer appointed by the Tribal Historical Preservation Officer, (THPO), shall be present during construction for the purpose of ascertaining compliance with the Act and the Tribe's Historical Preservation Ordinance regarding the uncovering of cultural, historical or archaeological artifacts.

Q. Native American Graves Protection and Repatriation Act

This clause is primarily directed at the inadvertent discovery of Native American remains, but also contains language somewhat similar to the NHPA.

(1) "Public Law 101-601, Section 3 (d) 'Ownership.'

(2) Any person who knows, or has reason to know that such person has discovered Native American Cultural items on federal or Tribal lands after the date of enactment of this Act shall notify in writing the Secretary of the Department, or head of any other agency or instrumentality of the United Sates having primary management authority with respect to federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands that have been selected by an Alaskan Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, the head of any agency or instrumentality of the United States or appropriate Indian tribe or Native Hawaiian Organization that notification has been received, the activity may resume after 30 days of such certification.

(3) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this subsection.

(4) If the Secretary of Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department, (other than the Department of Interior), or the head of any other agency or instrumentality may be designated to the Secretary with respect to any land managed by such other Secretary or agency head."

R. Occupation Safety and Health Act (OSHA)

Provides safety standards for construction activities, maintenance and the workplace.

S. Payment of Funds to Influence Certain Federal Transactions

(1) The definitions and prohibitions contained in the clause, at FAR 52.20312, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(2) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 –

a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

b) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with this solicitation, the officer shall complete and submit, with its offer, OMB standard form LLL,

Disclosure of Lobbying Activities, to the Contracting Officer; and

c) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(3) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure."

T. Reporting Requirements

Requirements for submitting scheduled or periodic progress reports, inspection reports, delivery reports, etc.

U. Retention of Records

The Tribe shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

V. Subcontracts

Certain provisions of the Indian Self-Determination and Education Assistance Act require a provision that their award is funded with Indian Self-Determination funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations and Executive Orders.

W. Termination Provision

All contracts of $10,000 and over shall contain suitable provisions for termination by the Tribe, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor or the Tribe.

X. Value Engineering

In the design phase of federal building development, properly applied value engineering considers alternative design solutions to optimize the expected

cost/worth ratio of projects at completion. Value engineering elicits ideas on ways of maintaining or enhancing results while reducing life cycle costs.

Y. Warranties

Provides what warranties the contractor agrees to provide regarding construction and/or equipment. (i.e.; 10 years on roofing, etc.)

Z. Work Hours and Safety Standards Act

"Housing Contracts in excess of $2,000, or of $2,500 for contracts which involve the employment of mechanics and laborers, compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR 5). For other than Housing contracts, The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts and federal and federally assisted construction contracts over $100,000.

"Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate 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 health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies, materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence."

Chapter 9 ~ Awarding the Contract

9.1 Legal Review

All contracts and addendums to existing contracts in the amount of $50,000 or above must be reviewed by the Tribe's attorney before execution. The attorney will review contractual obligations imposed on both parties to the contract. Generally, the Tribe's attorney will not review for subject matter; however, as vendors/contractors may attempt to modify certain terms of the agreement in the scope of work, the Tribe's attorney will review the contract in its entirety and will address any issues and concerns. The Tribe's attorney may impose amendments and require changes to specific contract wording in order to adequately protect the Tribe.

9.2 Steps for Awarding an IFB Contract

A. All of the bids shall be tallied on a schedule of bids which lists the names of the bidders and the amounts of bid, as well as the names of bidders whose bid is returned unopened due to missing the close of bids date and time. The schedule shall also include a checklist to determine if all required submittals as stated in the IFB have been submitted for each bidder.

B. Eligible bids shall be ranked from the most preferred and qualified to the least preferred and qualified for use in the event that, for some reason the award is not made to the apparent low bidder.

C. The "apparent low bidder" shall be named by the Selection Committee after making the required calculations to provide Indian or Minority Preference in those instances where such preference has been included in the bid process.

D. It shall be announced that all bids will remain in effect throughout the bid period and that bid bonds will be retained until after the closing of the effective period or until the contract is awarded.

E. The Selection Committee will determine if the apparent low bidder is a responsible bidder within the requirements of this Policy. The KTIK may reject any bid that does not conform to the bid requirements or that comes from a bidder determined to be unqualified or not responsible.

F. The Tribe will issue a written award to the successful bidder within the time period specified in the IFB.

G. The Tribe will arrange for the signing of the contract. Those persons who sign on behalf of the contractor shall provide sufficient evidence to ascertain their authorization to bind the firm or entity entering the contract.

H. If the contract is for construction, the successful bidder shall provide any required bonding and/or insurance coverage before signing. The effective date of the bond shall be the same as the contract and any insurance provided shall be effective through the end of the contract period. If for any reason the successful bidder cannot provide the required bond and/or insurance coverage, the bid bond is forfeited and the next lowest responsible bidder may be selected from the ranking list or a new IFB can be issued. All bonding shall be placed in the name of the Kickapoo Tribe in Kansas.

9.3 Steps for Making an Award Resulting from a RFP

All contracts for professional or consulting services involving the use of federal funds shall be approved by the Tribal Council.

A. A Selection Committee, appointed by the Tribal Council or the Tribal Administrator, will evaluate the proposals received as a result of a Request for Proposals and shall develop and use a Proposal Evaluation Form.

B. The Evaluation Form should list the criteria for selection contained in the RFP, such as licensing requirements, professional experience, costs, completion dates and Indian Preference. The evaluation form should also provide for other subjective factors such as the presentation of the proposal, reputation of the firm and other factors which may influence the selection of the contractor.

C. Each evaluation factor shall be assigned a maximum number of points. Each person scoring a proposal should assign all or a portion of the allowable points to each factor. Where Tribal or Indian Preference is allowed, each qualified proposal shall be assigned all of the additional points allotted.

D. The proposals will be ranked by score. The Selection Committee shall decide which proposal to accept, taking into account the relative scores and any advantages of any given proposal to the Tribe.

E. The Contracting Officer will offer the successful party a contract. The contract shall include all of the governing terms and conditions.

9.4 Notification to Non-Selected Bidders

A. Once an award has been made and the contract has been signed, all nonselected bidders shall be notified in writing that they are being released from the terms of their proposals and their bid bonds shall be returned.

NOTE: Bidders are not required to keep their bids open after the stated effective date. If the date is approaching and the contract has not yet been awarded, the Tribe should contact its legal counsel as to how to keep the bids viable so that a project does not have to be re-advertised.

B. For all contracts where the lowest bid was not chosen and a different selection was made on the basis of being the most advantageous to the Tribe or Indian Preference was applied, a written statement shall be prepared outlining the reasons why the award was not made to the lowest bidder. This statement will be maintained as part of the file.

9.5 Insurance Coverage for Site Work

Typically, minimum requirements for insurance are general liability in the amount of $1,000,000 and automobile insurance in the amount of $1,000,000. These amounts are subject to change in regard to the type of equipment operated by the contractor and any additional insurance that may be required that would not otherwise be covered under these two types of insurance. For insurance that is scheduled to lapse within thirty (30) days of submittal of bid and/or before the completion of the proposed project, a copy of the insurance renewal must be submitted to the Contracting Officer. Insurance needs will be assessed on a case-by-case basis through the department requesting the work and the Contracting Officer.

9.6 Notification of Award

The Contract Officer will verbally notify the vendor and will determine who the vendor's authorized contract signer is and forward this information to the Tribe's attorney as required under this policy. The attorney will determine contract language and in conjunction with the department director will generate the contract for signature.

9.7 Authority to Sign

Authority to sign contracts vests with the Tribal Chairperson or Council designee.

9.8 Expired Contracts

A contract which is nearing its date of expiration may be extended by addendum or modification when the work can be completed within a reasonable time and at no additional cost to the Tribe. All expired contracts between the Tribe and outside entities with which the Tribe desires to continue to do business shall be

subject to the same criteria as new contracts. Contracts shall be renegotiated prior to expiration, when possible.

Chapter 10 ~ Claims and Disputes

10.1 Guiding Principle

The Kickapoo Tribe will endeavor to conduct its procurement in good faith and in such a manner as to avoid the necessity for escalation of a dispute to arbitration or litigation. It is the Tribe's general policy to resolve all issues informally at the administrative level. The parties must agree to such resolution effort. The Tribal Council shall review all such disputes, protests or complaints, and may conduct a hearing on the matter. The Chair shall issue a written statement of the Council's findings.

10.2 Errors on Formal Bids

In compliance with the provisions of this Policy:

A. If a bidder discovers that his bid contains an error, he may correct it in one of the following ways prior to the scheduled bid opening:

   (1) Withdraw the bid
   (2) Substitute a corrected bid
   (3) Submit a correction to the original bid in writing in the same manner as the original bid was submitted, referencing the original bid.

B. Errors discovered after bid opening cannot be corrected unless the error is obvious and would cause the bidder to suffer a severe loss. In such a case, the bid may be withdrawn. Final determination that an obvious error has been made shall be made through consultation with the Contracting Officer, Tribal Administrator, designee or consultants.

10.3 Disputes About the Award of Contract

If a dispute arises concerning whether a contract was properly awarded, the party challenging the award shall submit a written complaint to the Contracting Officer or designee within five (5) business days after contract award; otherwise, it will not be considered. The Tribal Administrator or designee may, pending its investigation, suspend the procurement if warranted by the facts presented and if doing so would not prejudice the interests of the Tribe.

Within 10 calendar days of receipt of a complaint, the Contracting Officer shall meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Contracting Officer shall make a determination on the complaint within 10 calendar days of KTIK's receipt of the written complaint. The decision of the Contracting Officer shall constitute the final administrative action on the complaint.

10.4 Disputes About Work Related to the Contract

A. If a dispute arises between the parties to a contract concerning the contract itself, the language of the contract shall control. Each contract shall contain a "claims" clause which will govern how a claim may be submitted and what relief may be available.

B. If a dispute arises between a contractor and any subcontractor, the Tribe shall refuse to intervene. If either party contacts the Tribe that party shall be referred to the entity or firm with whom it has directly contracted.

10.5 Claims Against the Kickapoo Tribe's Procurement

Any protest asserting that Tribe has not followed this Policy, applicable federal law or regulations when procuring goods or services shall be made in writing to the Contract Officer ten (10) calendar days of the discovery of the issue. The protest shall be signed and indicate the exact matter which is being protested. The Contract Officer will conduct a hearing to review the protest and will respond to the protester within 15 calendar days of receipt of the protest and, if necessary, halt the procurement process while the dispute is being resolved.

The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the KTIK, such as the Tribal Administrator or a designated Board member, or a Procurement Appeals Board. The Tribe's attorney may be consulted in this process.

If a further protest is received, the Contracting Officer shall disclose the information regarding the protest to the federal agency, (if any). A protester must resolve all administrative remedies with Tribe before pursuing a protest with the federal agency. Reviews of protests by the federal agency will be limited to:

- Violations of federal law or regulations
- Violations of the Tribe's protest procedures for failure to review a complaint or protest.

10.6 Claims or Disputes Regarding Application of Indian Preference

Refer to Section 3.8

Chapter 11 ~ Contract Administration

11.1 Contracting Official

A Contracting Officer shall be appointed who will have the responsibility to monitor the contract and to communicate with the contractor on behalf of the Kickapoo Tribe regarding all aspects of the contract and the contract performance.

11.2 Operational Procedures

The Tribal Administrator or designee will establish procedures for the inspection of supplies, services or construction, as well as monitoring contractor performance, status reporting on construction projects, and similar matters.

11.3 Changes to the Contract

If the parties agree to change the contract terms, conditions or specifications, the change shall be accomplished through the use of a Change Order or Amendment, duly signed by both parties to the contract, and according to the manner set forth in the contract. No resulting change in the contract can exceed the total contract award amount or the amount budgeted for the project without the approval of the Tribal Council. Authorization for payment for overruns shall be in writing and must be approved or permitted by the federal agency involved, if any, prior to payment and/or commencement of additional financial obligation of funds.

11.4 Periodic Progress Reports

The contract may provide for particular intervals or occurring contract events to make a Progress Report; this Progress Report may or may not be tied to periodic payments to the contractor upon completion of certain phases of the contract. The Contracting Officer shall meet periodically with the contractor to ascertain the contractor's progress and to determine whether the contractor is on schedule for completion of the work.

11.5 Notice to Bonding Company

If the contract is for a construction project and it appears that the construction will be delayed or other serious problems may interfere with completion of the work, the Contracting Officer will prepare a written notice to the bonding company thereof.

11.6 Payments

Payments shall be made in accordance with the compensation section of the contract.

11.7 Records

The Contracting Officer shall ensure that all required records, reports, warranties, drawings, data files and other documentation required by the contract are maintained by the Contractor.

11.8 Contract Completion

The Contracting Officer will obtain all required releases and settlement documents to accomplish a formal closure of the contract. This may include a final inspection and acceptance.

11.9 Contract File(s)

The Contracting Officer will maintain the official file or files that shall include all pertinent documents related to the contract as described in this Policy, as well as all official contract actions. These files shall be forwarded to the Director of Finance or designee for records retention when the contract is completed

11.10 Purchase of Travel

The purchase of travel is to be accomplished through the process outlined in the Kickapoo Tribe's Travel Policy contained in the Fiscal Policy, Chapter 8.

11.11 Procurement of Capital Assets (Inventorial Purchases)

The procurement of capital assets shall be subject to this policy and the Tribe's Fiscal Policy.

A. The Director of Finance or designee shall be notified of all inventorial purchases received. Inventorial purchases are those purchases of assets $5,000 and over. Also, included in this category are 'sensitive' assets as defined by the Tribe's Fiscal Policy.

B. The Director of Finance or designee shall inventory and tag these assets. If any assets are disposed of in accordance with Tribal policies, the designated officer will delete the item from the inventory list.

11.12 Notice to Agency

When prior funding agency review and approval are required before contract award, the following documents shall be forwarded to the funding agency:

- Bid spreadsheet certified to completeness by the Contracting Officer and identifying the following documents for each bid received:
  - Name and address of the bidder
  - Amount of the bid
  - Amounts of any alternates
  - Amount and type of bid bond
- The bid documents for the proposed award, including a copy of the bid bond and the non-collusive affidavit.
- Anything else the agency requires.

11.13 Reviewing Procurements

The Tribe shall maintain records sufficient to detail the significant history of procurement, including evidence that:

A. The solicitation and award procedures were conducted in compliance with applicable Tribal and federal laws or requirements, including requirements for Indian preference and wage rates.

B. The award does not exceed the approved budget amount and is not being made on the basis of a single bid or proposal, unless otherwise provided for in this Policy.

C. The Contracting Officer reviewed the contractor's credentials and qualifications, verified the contractor was not disbarred, and determined the contractor has the capacity to successfully complete the work or services under the terms and conditions of the contract.

11.14 Subcontractor Monitoring

A. When a contractor uses a subcontractor to accomplish all or part of a contract, the subcontractor must be subjected to the same standards and performance requirements to which the contractor is obligated and, therefore, to the provisions of this Policy.

B. Just as it is the responsibility of the Tribe to monitor the contractor, so is it the responsibility of the Tribe to monitor the subcontractor to ensure compliance with the awards plans, specifications, this Policy and applicable federal requirements.

C. Regular site inspections must be provided for in the award contract. For the most part, onsite technical inspections and certified percentage of completion

data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and sub-awards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

D. The federal awarding agency must be notified when:

- Problems, delays or adverse conditions arise which will materially impair the ability to meet the objective of the contract. This disclosure must include a statement of the action taken or contemplated, and any assistance needed to resolve the problem.

- Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

E. The federal agency may visit the site at any time as warranted by contract needs.

F. Records of all inspections and/or audits of contractors or sub-contractors must be maintained in the contract file.

11.15 Records Retention

The Tribe shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection and the basis for the contract price, (25 CFR 900.48 (f). The Tribe shall maintain the following procurement records for a minimum period of three years after the date of procurement or the date of the end of the fiscal year during which a contract is completed. If litigation or audit of the contract is commenced before the three-year period expires, all records shall be retained until the action is resolved and all final actions have been taken. All records regarding contracts or purchases provided to federal agencies are subject to the Freedom of Information Act through the federal agency they are provided to. In addition, the funding agreement may contain provisions regarding FOIA.

A. Bid Schedules

The current schedule of contracts out for bid, including bid due dates. All bid schedules shall be completed and maintained in the Tribe's procurement files.

B. Contract Records

All documents related to the completion of the contract including correspondence with the contractor.

C. Formal Bids

The Tribe shall maintain all formal bids received in response to a solicitation in the file.

D. Informal Cost Quotes

A written record of cost quotes shall be available for review to confirm that the required inquiries were made.

E. List of Firms Pre-Qualified for Indian Preference

Firms determined to be eligible for Tribal or Indian Preference.

F. Maintenance Service Agreements

Files shall be maintained on all maintenance or service agreements and warranties.

G. Program Budgets

Records of budgets and expenditures shall be available within the contract files for reference.

H. Records of Contractor Selection or Rejection

All files and notes used by the Tribe in the selection or rejection of a bid shall be maintained.

I. Specification Manuals

The Specification Manual for each project includes all bidding information, contract documents and specifications for construction.

Chapter 12 ~ Receiving Goods

12.1 Overview

The physical receipt of all purchased goods is the responsibility of the requesting department. The requesting department will inspect goods for conformity with specifications on purchase orders. Quantities will be verified by counting and comparing the packing slip with the purchase order. Receipt and acceptance of a shipment will be documented on the receiving report, with the copy of the receiving document being routed to the Finance Department to verify receipt in anticipation of vendor payment.

12.2 Receiving Documentation

At a minimum, the completed receiving document must contain the following information:

- Date of receipt - The date goods were physically received.
- Quantity received - The actual quantity of goods received.
- Acknowledgement - Signature of employee receiving the goods.

12.3 Approval of Services Received

Services received will be inspected or reviewed by the requesting department to determine that the work was done in accordance with the original Purchase Order or contract. The requesting department director will sign and date all vendor invoices submitted for payment to indicate approval for payment. For services received which no real "receiving" function occurs, the requesting department will sign the vendor's invoice to acknowledge receipt and to request payment.