

NORTHERN CHEYENNE TRIBE

PROCUREMENT AND PURCHASING MANUAL

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PROCUREMENT AND PURCHASING MANUAL

SECTION 1 – GENERAL PROVISIONS

A. Purpose and Application

(1) Purpose and Principles.

The purpose of this Manual is to provide for the fair and equitable treatment of all persons involved in public purchasing by the Northern Cheyenne Tribe, maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. Additional purposes of the tribal procurement management system are to provide procedures for:

- Specifying a need for procurement;
- Selecting the appropriate means and sources of acquiring the goods or services;
- Evaluating proposals to meet the needs;
- Selecting the appropriate suppliers of the goods or services; and
- Monitoring the performance of the suppliers.

The procedures set forth in this Manual are designed to meet the following principles of procurement:

- Purchases will be conducted in a manner that provides maximum free and open competition and does not arbitrarily restrict or eliminate competition.
- The Northern Cheyenne Tribe shall treat all prospective contractors in a fair, uniform, and equitable manner.
- The Northern Cheyenne Tribe will maintain an arms-length relationship with all contractors such that unwarranted gain does not accrue to the Northern Cheyenne Tribe, the Tribe's employees or its contractors.
- Contractual relationships shall provide opportunity for remedy.
- The Northern Cheyenne Tribe shall contract only with responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
- The Northern Cheyenne Tribe shall insure that the prices paid by the Tribe are fair and

reasonable.

(2) Application.

This Manual applies to contracts for the procurement of supplies, services, and construction, entered into by the Northern Cheyenne Tribe after the effective date of this Manual, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to the expenditure of public funds by the Northern Cheyenne Tribe for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this Manual shall prevent the Northern Cheyenne Tribe from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(3) Authority of the Tribal Council.

The Tribal Council may, in its sole discretion, deviate from the policies set forth in this Manual when the Council determines that it is in the best interest of the Northern Cheyenne Tribe to do so, and when doing so would not violate applicable federal law and regulations governing use of federal funds. For example, the Council may choose not to use established procurement procedures in renewing contracts with longstanding providers of unique professional services, where continuation of the contract with the same provider is in the Tribe's best interest, or contracts with third parties which must be procured on short notice for a specialized purpose, such as experts to support litigation, when such a contract is in the Tribe's best interest.

B. Definitions

(1) Architectural/Engineering Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Montana. Also referred to as A/E services or A&E services.

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

(3) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

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

- (5) **Competitive Range.** In a procurement by competitive proposals, those offerors whose proposals have a reasonable chance of being selected for award, considering the evaluation criteria and the basis for award as stated in the RFP. The competitive range determination is a qualitative judgment based on the factual content of the proposals, and it must carefully consider both technical merit/performance and price.
- (6) **Contract Modification.** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract, *i.e.* a bilateral change.
- (7) **Construction.** The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (8) **Contractor.** Any person having a contract with the Northern Cheyenne Tribe or a using agency thereof.
- (9) **Cost Analysis.** The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (10) **Cost Data.** Factual information concerning the cost of labor, overhead, and other cost elements which are expected to be incurred or that have been actually incurred by the contractor in performing the contract.
- (11) **Cultural Services.** Items, supplies and/or services required for Northern Cheyenne cultural and/or religious events that are made, prepared or provided in accordance with Northern Cheyenne traditional beliefs and practices.
- (12) **Emergency.** A situation where life, health or safety is endangered.
- (13) **Fiscal Year.** The period beginning on October 1 and ending on September 30 of the following calendar year.
- (14) **Gratuity.** A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, whether actually presented or promised, unless consideration of substantially equal or greater value is received.
- (15) **Immediate Family.** Any of the following named members of the employee's household at the time he/she reports for work:
- (a) Spouse;
 - (b) Domestic partner;

- (c) Children of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee, of the employee's spouse, or of the domestic partner; and an unborn child(ren) born after the employee's effective date of transfer;
 - (d) Dependent parents (including step and legally adoptive parents) of the employee, of the employee's spouse, or of the employee's domestic partner; and
 - (e) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.
- (16) Indian Owned Business.** Any business certified by the Tribe as being 51% or more owned, managed and controlled by an Indian who is a member of a federally-recognized tribe, consistent with the Northern Cheyenne Tribe's TERO Ordinance.
- (17) Invitation for Bids (IFB).** All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (18) Person.** Any business, individual, union, committee, club, other organization, or group of individuals.
- (19) Price Analysis.** The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (20) Pricing Data.** Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (21) Procurement.** The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (22) Public Exigency.** A situation where acquisition of goods or services is necessary to continue to provide for the public welfare.
- (23) Qualified Bidders List.** An approved list of bidders or offerors prepared by the Tribe in advance of solicitation for the purpose of providing notice to potential contractors who

have previously demonstrated certain qualifications to the Tribe's satisfaction.

- (24) **Qualified Products List.** An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the Northern Cheyenne Tribe has determined will meet the applicable specification requirements.
- (25) **Request for Proposals (RFP).** All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (26) **Request for Quotations (RFQ).** All documents, whether attached or incorporated by reference, utilized for soliciting quotations.
- (27) **Responsible Bidder or Offeror.** A business that has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity, record of past performance, facilities, equipment, and credit which will assure good faith performance.
- (28) **Responsive Bidder.** A business that has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bids.
- (29) **Services.** The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include agreements or collective bargaining agreements.
- (30) **Small Business.** A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation as defined by the Small Business Administration.
- (31) **Specification.** Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (32) **Supplies.** All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.
- (33) **TERO.** The Northern Cheyenne Tribal Employment Rights Ordinance, as adopted and amended by the Tribal Council.
- (34) **Using Agency.** Any department, commission, board, or entity of the Northern Cheyenne Tribe requiring supplies, services, or construction procured pursuant to this Manual.

C. Public Access to Procurement Information

Procurement information shall be a public record to the extent provided in this Manual and shall be available to the public as provided in accordance with Federal and Tribal law.

SECTION 2 – OFFICE OF THE PROCUREMENT OFFICER

A. Establishment, Appointment, and Tenure.

(1) Establishment of the Position of Procurement Officer.

There is hereby created the position of Procurement Officer, who shall be the Northern Cheyenne Tribe's principal public purchasing official. The Procurement Officer shall be assisted by a Procurement Clerk for clerical functions in purchasing and contract administration.

(2) Appointment.

The Procurement Officer shall be a permanent position under the general administrative direction of the Treasurer. The Procurement Officer shall have a minimum of 5 years of experience in public purchasing within 2 years preceding the date of appointment.

(3) Tenure.

The Procurement Officer shall be appointed to serve an indefinite term and may be removed from office by the Treasurer only upon a showing of just cause.

B. Authority and Duties.

(1) Principal Purchasing Official.

Except as otherwise provided herein, the Procurement Officer shall serve as the principal purchasing official for the Northern Cheyenne Tribe, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Manual.

(2) Duties.

In accordance with this Manual, and subject to the general administrative direction of the Treasurer, the Procurement Officer shall:

- (a) procure or supervise the procurement of all supplies, services, and construction needed by the Northern Cheyenne Tribe; and
- (b) establish and maintain programs for specification development, contract administration, and inspection and acceptance, in cooperation with the using agencies.

(3) Operational Procedures.

Consistent with this Manual and with the approval of the Treasurer and the President, the Procurement Officer may adopt operational procedures relating to the execution of its duties. These may be set forth in a Procurement Handbook or similar guidance documents.

C. Delegations to Other Northern Cheyenne Tribe Officials or Outside Professionals.

With the approval of the President, the Procurement Officer may delegate authority to purchase certain supplies, services, or construction items to other Northern Cheyenne Tribal officials including program directors, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding the provisions of Section 2.B. of this Manual, procurement authority with respect to certain supplies, services, or construction may be delegated to other officials by the Treasurer with the approval of the President, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction. In such delegations, responsibility for the conduct of the procurement and award of the contract might be retained by the Procurement Officer, while the technical definition of the requirements for use during procurement and/or monitoring a contractor's technical performance of the contract requirements, might be handled by another Northern Cheyenne Tribe official possessing the necessary specialized skills or knowledge.

When faced with an especially complex procurement, such as a complex construction project, the Northern Cheyenne Tribe may find it necessary to temporarily appoint a highly qualified construction management professional as a construction procurement officer for that project as set forth in Section 6.A of this Manual. As an alternative, the Northern Cheyenne Tribe may choose to contract for the services of a construction management team to oversee all phases of the project. As a Northern Cheyenne Tribe contractor, this team would be closely supervised in its performance by the Procurement Officer, Treasurer and other appropriate Northern Cheyenne Tribe officials. In selecting and utilizing such a construction management team, the Northern Cheyenne Tribe should be certain to insure that the contractors providing this management function are independent of those contractors providing construction or other project services to the Northern Cheyenne Tribe. Consistent oversight by the President and Treasurer will be essential for the successful completion of such complex construction projects.

SECTION 3 – SOURCE SELECTION AND CONTRACT FORMATION

A. Pre Procurement Planning

- (1) The Procurement Officer will request that Tribal programs communicate their forecasted procurement and purchasing needs to the Procurement Officer no later than 30 days before the expiration of the Fiscal Year.
- (2) The Procurement Officer is responsible for obtaining a "Qualified Bidders List" from the TERO Director to assure an available base of qualified competitors and sources of

supply.

- (3) The Procurement Officer will solicit from each Tribal program the names of individuals authorized to generate a Purchase Requisition..
- (4) The Encumbrance Office will assist Tribal department heads in processing their purchasing requests and keep all departments informed when changes in the process occur.
- (5) The Encumbrance Office is responsible for verifying that funding is available and has been approved by Central Finance.
- (6) The Procurement Officer is responsible for assuring compliance with 2 C.F.R. Part 200 and 25 C.F.R. Part 900, Subpart F, standards for state and local governments for purchases made with federal grant and contract funds.

B. Requisition Process

- (1) Purchase requisitions will be generated by Program Directors or authorized Tribal Officials. Programs will be responsible for keeping copies of requisitions on file. Purchase requisitions must be approved by the authorized Tribal official before submission to Encumbrance Office.
- (2) The Encumbrance Office examines purchase requests for completeness. (Requestors are authorized, all blanks filled out properly, funds appropriated and available, legal expenditures, prior approval required). Should a request be incomplete or otherwise unacceptable, it will be stamped "Unacceptable," specific reasons provided and returned to originator within three working days.
- (3) Programs submit requisitions to Encumbrance Office and record the information in requisition log book.
- (4) If a requisition is incomplete, requestor will be notified by written memo within three working days of what is necessary to correctly complete the requisition.
- (5) Completed purchase request forms are transmitted to Procurement Officer, who shall estimate the cost of the order and determine potential vendors or sources of supply.
- (6) Estimated cost is written on requisition as obtained from vendor's catalogs or inquiries of potential vendors, or other cost sources as permitted in this Manual. A cost or price analysis must be performed for every procurement action in excess of \$100,000 before receiving bids or proposals.
- (7) Procurement Officer determines whether the total estimated cost is between:

- (a) Less than or equal to \$3,000 (qualifies for Micro-Purchase Procedure)
- (b) Greater than \$3,000 but less than or equal to \$100,000 (qualifies for Small Purchase Procedure)
- (c) Greater than \$100,000 (qualifies as a Major Purchase)

C. Methods of Purchasing

Different procurement methods are appropriate in different situations as set forth below. In all instances, the Procurement Officer shall document the rationale for selecting the particular method of procurement used, the selection of contract type, contractor selection or rejection, and the basis for the contract price.

(1) Micro-Purchase Procedure

If the estimated cost of the anticipated purchase of supplies or services is less than or equal to \$3,000, then micro-purchase procedures shall be utilized. The program submitting the requisition shall not subdivide the need to get the purchase under the \$3,000 threshold.

To the extent practicable, the Tribe must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Tribe considers the price to be reasonable.

The Procurement Officer shall obtain one quote from the identified supplier. The Procurement Officer shall then certify and document that the price is reasonable by conducting a Price Analysis. Price analysis may be done by comparing to historical prices, prices from other vendors or from the reliable sources including Internet sources. The price analysis and supporting documentation shall be maintained as a record of the basis for the contract price.

The Procurement Officer shall then award the contract to the identified supplier with an Award Notice and issue the Purchase Order.

(2) Small Purchase Procedure

Any purchase greater than \$3,000 but less than or equal to \$100,000.00 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section. The Procurement Officer shall not use small purchase procedures for purchase of items whose estimated cost of the foreseeable annual need exceeds \$100,000.00. Foreseeable need shall incorporate the annual budgets of tribal programs.

- (a) Insofar as it is practical for small purchases in excess of \$3000.00, no less than three (3) businesses shall be solicited to submit written price or rate quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be

recorded and maintained as a public record. Solicitation shall be by submission of a written Request for Quotations to no less than three businesses. At all times, the Procurement Officer shall ensure full and open competition subject to the Tribe's preference for contracting with Indian-owned firms as set forth in Section 11.B of this Manual.

(b) The following small purchase procedures will be used for all purchases greater than \$3,000 but less than or equal to \$100,000:

(i) *Planning*. The tribal program personnel will prepare a "Requisition" describing the goods or services desired and justifying this need.

(ii) *Solicitation*. The tribal program personnel will suggest at least three (3) sources for the goods or services desired from whom the Procurement Office will obtain price or rate quotes. Procurement may contact additional sources over and above those suggested by the program. The Procurement Officer may obtain quotes from potential contractors in any written format, including email quotes, internet-based quotes, and faxed quotes.

(iii) *Indian Preference and Other Applicable Preferences*. Solicitation of Indian-owned businesses must occur in accordance with Section 11.B of this Manual if not prohibited by applicable law.

(iv) *Evaluation*. On receipt of quotations, the Procurement Officer shall recommend the lowest reasonable quotation offered by any vendor.

(v) *Award*. After selection the Procurement Officer shall concur, sign the requisition and award the contract to the vendor with an Award Notice. The Procurement Officer shall then issue the Purchase Order.

(c) Small Purchases- Internal Procedures

(i) *Policy*. All payments for expenses incurred by programs by the Northern Cheyenne Tribe will be processed according to the procedures outlined below based on the type of payment.

(ii) Encumbrance Payments: Payments that require a Requisition/Purchase Order such as

- Purchase of Equipment
- Purchase of Supplies
- Payment of Contract Services

(iii) Procedure:

Responsible Person

Action

1. Program Director

Prepares Requisition form. The following items are required to be completed:

- Requisitioner
- Program Name
- Fund Description
- General Ledger No.
- Fund No.
- Dept. No.
- Vendor No. (3 suggested vendors)
- Vendor Name (3 suggested vendors)
- Vendor Address/Phone (3 suggested vendors)
- Item(s) or Catalog No.(s)
- Description of Items (identify minimum essential salient characteristics of specifications)
- Quantity
- Unit Price and Extended Price (from each vendor's estimated prices)
- Estimated aggregate total for all items
- Approval (Signature)
- Date

Note: Listing of Vendor Numbers can be obtained from the Finance Office. Program Director will be responsible for the accuracy, completeness of information submitted to Finance. If information is incomplete or incorrect, the requisition will be returned to the program. The timeline for completion will be dependent on accuracy and completeness of information submitted by the program director. This list will be updated at least annually by the Procurement Officer and made available to programs at the beginning of each fiscal year. Attach back-up documentation to Requisition form (i.e. bid sheets, catalogs, supplier spec sheets, etc.)

2. Program Director

Submits requisition with back-up documentation to Procurement/ Encumbrance Office. Prior to submission, the Program Director shall ensure that the purchase is in compliance with procurement standards and are allowable.

3. Program Director

Cutoff Times to submit shall be:

Monday - Requisition submission deadline 3:00 pm (to be processed by 3:00 pm Tuesday)

Wednesday - Requisition submission deadline 11:00 am (to be processed by close of business Thursday)

Requisitions will be processed on Monday and Wednesday only.

Compares request to available budget line items funds

4. Encumbrance Office
Compares quotations with other known suppliers and makes changes to vendor, items and price if necessary.

5. Procurement Clerk
Enters requisition information in Encumbrance system to generate Purchase Order

6. Procurement Clerk
Forwards copy of Purchase Order to Vendor (mail or Fax)

Forwards copy of Purchase Order to Program Director

7. Property Officer
Maintains files of outstanding Purchase Orders

8. Encumbrance Officer
Receives equipment and supplies and verifies against Purchase Order and prepares Receiving Report. Property shall not accept without a valid Purchase Order. Telephone orders will not be accepted. In the event supplies are ordered without a purchase order the Property Officer shall return the items to the vendor and shall not receive or sign for the supplies or goods.

Receives invoice and matches to Purchase Order and to Receiving Report by Monday at 3:00 pm.

9. Encumbrance Officer / Procurement Officer
Prepares payment voucher for payment by Wednesday at 4:00 pm. Submits to Office Manager.

10. Program Personnel
Records Date and time on payment voucher and sends to Accountant.

11. Staff Accountant
Reviews payment voucher based solely on cash management and submits to Accounting Clerk by 10:00 am Thursday. Note: Accountant shall provide programs with cash-on-hand financial reports.

Accounting Clerk produces check for payment of Purchase Order by

- 12:00 Thursday.
12. Accounting Clerk
Routes checks to Tribal Officials for check signing
13. Office Manager
Approves payment by signing check
Approves payment by signing check
14. Tribal Official (1)
15. Tribal Official (2)
16. Central Finance
17. Central Finance
18. Accounting Clerk
19. Accounting Clerk
20. Central Finance
- Forwards Check to Program Managers to send to vendor
Forwards copy of Check to Program Directors
Distributes copy of payment documents to Encumbrance Clerk. Files copy of check in permanent file in check number order.
- Finance shall route final checks back to program personnel by 10:00am Friday.

(3) Major Purchases: Competitive Sealed Bidding

(a) Conditions for Use.

Competitive Sealed Bidding shall be used for purchases greater than \$100,000 and where a complete, detailed, adequate and realistic specification or purchase description is available, two or more responsible 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 upon the basis of price.

All construction contracts and contracts for Major Purchases by the Northern Cheyenne Tribe shall be awarded by competitive sealed bidding except as otherwise provided in this Manual. However, competitive sealed bidding will be the method for procuring all construction services even if the acquisition total is less than \$100,000.

(b) Process. The Tribe shall use the procedures established below for Competitive Sealed Bidding.

(i) *Pre-Procurement Planning.* The Tribal program personnel shall prepare a "Requisition" documenting the item or service required. Detailed product specifications and description from program personnel shall be submitted with original request. The Procurement Officer examines product specifications to ensure compliance with competitive bidding process and to prevent restrictions on competitive bidding as set forth in 2 C.F.R. § 200.319 and any other applicable law.

(ii) *Cost or Price Analysis.* The Procurement Officer will conduct a cost or price analysis in accordance with Section 3.E.(4), sufficient to result in the preparation of independent estimates before receiving any bids.

(iii) *Invitation for Bids.* The Procurement Officer will then prepare the "Invitation for Bid package" (IFB). The IFB package will contain:

- a. Bid Summary
- b. Instructions to Bidders (including forms)
- c. General Terms and Conditions
- d. Special Conditions
- e. Specifications and Purchase Description
- f. Evaluation Criteria
- g. Applicable Indian-owned business preference factor
- h. Time and Place of Bid Opening

The Procurement Office shall ensure that the IFB includes all pertinent attachments and defined the items or services sought in order for the bidders to properly respond.

(iv) *Public Notice.* Adequate public notice of the invitation for bids shall be given a

reasonable time, not less than 10 business days prior to the date set forth therein for the opening of bids. The public notice shall also state the place, date, and time of bid opening. Construction projects estimated to cost over \$100,000.00 shall be advertised for at least 30 calendar days. Such notice may include publication in a newspaper of general statewide circulation as well as local media for a reasonable time prior to bid opening. The Procurement Officer will prepare a "Synopsis" of the procurement action that will be used to advertise the IFB and will transmit the advertisement to the media and prospective contractors. The Procurement Officer will provide a copy of the IFB to all businesses that request a copy as a result of the advertisement and to other business who are on the "Qualified Bidders List" maintained by the TERO Director. The Procurement Officer will ensure that the incumbent bidder (if a repetitive bid) and any known Indian-owned businesses are contacted by letter. The Procurement Officer will file the IFB, the advertisement for bids, the purchase request and specifications in Pending Bid File on or before the bid offering date.

- (v) *Bid Filing.* The Procurement Officer will receive bids from and file the sealed bids in the Pending Bid File, ensuring that the bids remain unopened until the publicly-announced bid opening. The Procurement Officer will retrieve bids at the closing date, including all information in file pertaining to the bid.
- (vi) *Bid Opening.* At the date and time stated in the IFB, the Procurement Officer will conduct the public bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Procurement Officer deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1.C, Public Access to Procurement Information.
- (vii) *Bid Acceptance.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual.
- (viii) *Bid Evaluation Criteria.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, Indian-owned firm preference and total or life cycle costs. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. Any or all bids may be rejected if there is a sound documented reason.

- (ix) *Evaluation of Responsiveness.* The Procurement Officer will convene an Evaluation Panel consisting of the tribal program personnel with the expertise to evaluate the bid. The Evaluation Panel, with the assistance of the Procurement Officer, will determine the responsiveness of each bid. Nonresponsive bids will be rejected by the Procurement Officer.
- (x) *Ranking of Responsive Bids.* The Procurement Officer will then rank order all responsive bids in order of preference by price, with the lowest-price responsive bid ranked highest. The Procurement Officer will then determine the impact of any other factors on price (such as discounts, freight, Indian-owned firm preference, minority firm, etc.) in accordance with this Manual, the IFB, and applicable Tribal law.
- (xi) *Evaluation of Responsibility.* The lowest responsive bid will then be evaluated to determine responsibility. Contracts must be awarded only to responsible bidders possessing the ability to perform successfully under the terms and conditions of the proposed procurement. The Procurement Officer and Evaluation Panel shall investigate the contractor's integrity, compliance with public policies and laws, record of past performance, financial resources and technical resources. The Procurement Officer shall also conduct a background check to determine if the bidder has been debarred, convicted or indicted by any federal, state, local or tribal entity.
- (xii) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, the bid price actually intended and that the mistake was apparent on the face of the bid. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Northern Cheyenne Tribe or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
- a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b. the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Officer.
- (xiii) *Selection of Winning Bidder.* Upon completion of the evaluation, the Procurement

Officer and Evaluation Panel shall select the lowest bid from a bidder who is both responsive and responsible as those terms are defined in this Manual. The Procurement Officer and Evaluation Panel shall consider the findings of the background investigation prior to any award. In the event of a single bid, the Procurement Officer and Evaluation Panel may, upon written determination of the Procurement Officer that competition is inadequate, proceed to Non-Competitive Procurement methods outline in Section 3.D.(3) of this Manual. However, any or all bids may be rejected if there is a sound documented reason. If a bidder is selected as the lowest responsive and responsible bidder, the Procurement Officer, with concurrence of Program Director, will prepare a "Contract Award" document to be given to the selected bidder. Procurement Officer will issue notices of non-selection to remaining bidders. The contract award shall be a firm fixed price contract. The contract award document will contain the price, purchase description and specification, and all necessary terms and conditions as determined by the Procurement Officer in consultation with the Program Director and Tribal officials.

(xiv) *Award.* A firm fixed price contract award shall be made in writing with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Negotiation of sealed bids in federally funded projects is prohibited. However, in all federally funded contracts in which a cost analysis is performed, the Tribe shall negotiate profit as a separate element of the price under Section 3.E.4. The Procurement Officer will ensure preparation of contract award, mailing of letters of non-selection, and placing of appropriate documentation in the Bid File. The Procurement Clerk will prepare purchase contract, attach Bid Award and Purchase Requests, and record them in the purchase order log. The completed purchase contract is routed to Procurement Officer, Program Director, and Treasurer for review of completeness and accuracy and on to Tribal President for authorized signature.

(xv) The Procurement Clerk will transmit appropriate purchase contract copies to:

- a. Contractor (along with Bid Award)
- b. Accounting Office
- c. Tribal Treasurer
- d. Property Management for purchase order file along with purchase requests, bid documentation and price quotations.

(4) Major Purchases: Competitive Proposals

(a) Conditions for Use.

When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Northern Cheyenne Tribe, procurement for major purchases may proceed by competitive proposals. The Procurement Officer will use competitive proposals whenever a complete, adequate and

realistic specification cannot be obtained and where selection is to be based on factors other than price. Typically this method will be used for purchase of professional, non-construction services over \$100,000 including consultants, architectural/engineering (A&E) services, audit services, legal services and other professional services, subject to the Tribal Council's discretion under Section 1.A(3) of this Manual.

In general, "practicable" denotes a situation that justifies a determination that a given factual result can occur. A typical determination would be whether or not there is sufficient time or information to prepare a specification suitable for competitive sealed bidding. "Advantageous" connotes a judgmental assessment of what is in the Northern Cheyenne Tribe's best interests. Illustrations include determining:

- (i) whether or not to utilize a fixed-price or cost-type contract under the circumstances;
- (ii) whether quality, availability, or capability is overriding in relation to price in procurements of research and development, technical supplies, or services (for example, developing a planning management system);
- (iii) whether the initial installation needs to be evaluated together with subsequent maintenance and service capabilities and what priority should be given these requirements in the best interests of the Northern Cheyenne Tribe; or
- (iv) whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals, but evaluation and discussion of them before making the award (for example, computer software programs).

(b) Process.

- (i) *Pre-Procurement Planning*. The tribal program personnel will prepare a "Requisition" documenting the need for and the description of the item(s) or service(s) to be procured.
- (ii) *Price or Cost Analysis*. The Procurement Officer will conduct a cost or price analysis in accordance with Section 3.E.(4), sufficient to result in the preparation of independent estimates, before receiving any proposals.
- (iii) *RFP Preparation*. Proposals shall be solicited through a Request for Proposals. The Request for Proposals shall state all evaluation factors and the relative importance of both price and other evaluation factors, including any applicable Indian-owned firm preference or other preferences as required by Tribal law, and the relative importance of both price and other evaluation factors. The Procurement Officer will prepare a "Request for Proposal Package" containing:
 - a. Proposal Summary
 - b. Technical Specifications/Statement of Work

- c. Administrative Instructions to Offerors (with forms)
- d. Technical Instructions (with technical evaluation criteria which will be listed, weighted and related to the price factor)
- e. Business Instructions (with cost breakdown forms to be completed and instructions for the vendor to submit detailed cost proposals)
- f. General terms and conditions
- g. Special terms and conditions
- h. Applicable Indian-owned business preference factor
- i. Due date and time for submission of proposals

(i) *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3.D.(3)(b)(iv) (Competitive Sealed Bidding, Public Notice). The Procurement Officer will prepare a "synopsis" of the procurement action which will be advertised in a newspaper with statewide circulation not less than 10 days before due date of proposals.

(iv) *Solicitation.* The Procurement Officer will provide a copy of the RFP to all businesses requesting the RFP, to other businesses on the "Qualified Bidders List" maintained by the TERO Director, and to all known Indian-owned businesses.

(ii) *Receipt and Filing of Proposals.* The Procurement Officer will receive proposals and maintain them in an RFP File until the due date set forth in the RFP. The Procurement Officer will not accept proposals received after due date and time set forth in the RFP. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the review process. The Procurement Office shall prepare a register of proposals containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

(iii) *Evaluation.* The Procurement Officer will convene an Evaluation Panel consisting of the tribal program personnel with the expertise to evaluate the proposals. Proposals shall be evaluated using only the evaluation factors and applicable preferences stated in the Request for Proposals. Relative importance shall be shown by use of weighting each evaluation factor.

- a. The evaluation panel will conduct a technical evaluation of the proposals received. Proposals will be ranked according to the technical evaluation factors in the RFP. Those proposals found to be technically unacceptable may be rejected at this time.
- b. Based on the relationship between technical and cost factors, the evaluation panel will then identify those offerors whose proposals are within the Competitive Range, considering all evaluation criteria. All offerors outside the competitive range will be sent a notice of rejection.

- c. Contracts must be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. For each proposed contractor that has submitted a technically-acceptable proposal and had been identified as within the competitive range, the Procurement Officer and evaluation panel shall investigate the proposed contractor's integrity, compliance with public policies and laws, record of past performance, financial resources and technical resources. The Procurement Officer shall also conduct a background check to determine if the proposed contractor has been debarred, convicted or indicted by any federal, state, local or tribal entity.
- d. An in-depth cost analysis shall be performed on cost proposals for those firms deemed technically acceptable, within the competitive range, and responsible.
- e. If proposals are not received from an adequate number of qualified sources, all of the proposals may be rejected and the RFP may be modified and re-advertised as needed, or the Procurement Officer may determine in writing that competition is inadequate and proceed to Non-Competitive Proposals under Section 3.D(5) if appropriate.

(iv) *Discussion with Responsible Offerors and Revisions to Proposals.* After identification of the responsive and responsible offerors in the competitive range, the Procurement Officer shall issue a formal notice calling for discussions with those offerors. The Evaluation Panel will conduct discussions with firms for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. The Evaluation Panel will not share technical information between offerors, nor auctioneer to obtain lower price, nor attempt to make all firms technically level. On completion of discussions, Procurement Officer will issue a formal notice to close discussions and request a "Best and Final Offer." On receipt of a "Best and Final Offer," the Evaluation Panel will again conduct an evaluation using the original evaluation criteria. The Evaluation Panel will select the responsible firm whose offer is most advantageous to the Tribe, considering both technical and cost factors.

(v) *Award.* An award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Northern Cheyenne Tribe, taking into consideration price and the other evaluation factors set forth in the Request for Proposals, and the results of any background checks and/or investigations authorized by this Manual. The contract file shall contain the basis on which the award is made. The contract award document will contain the price,

purchase description and specification, and all necessary terms and conditions as determined by the Procurement Officer in consultation with the Program Director and Tribal officials. The award will be either a fixed price or cost-reimbursement contract as appropriate. The Procurement Officer will prepare a "Contract Award" document. The contract award document will contain the price, purchase description and specification, and all necessary terms and conditions as determined by the Procurement Officer in consultation with the Program Director and Tribal officials. In all federally funded contracts in which a cost analysis is performed, the Tribe shall negotiate profit as a separate element of the price under Section 3.E.4.

- (c) A/E Services. For architectural/engineering professional services only, competitive proposals will be evaluated and the most qualified competitor selected as set forth above, with the exception that the selection is made subject to negotiation of fair and reasonable compensation. Furthermore, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and the size of the project, to compete for the contract. These provisions apply only to procurement of professional A/E services.

(5) Procurement by Non-Competitive Proposals.

- (a) Conditions for Use. A contract may be awarded without competition when:
 - (i) An emergency or public exigency so requires as set forth in Section 3.E.(6) below;
 - (ii) the Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or item;
 - (iii) the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Tribe or tribal entity; or
 - (iv) after solicitation of a number of sources, the Procurement Officer determines in writing that competition is inadequate.

In such instances, procurement proceeds by solicitation of a proposal from only one source, *i.e.*, sole source procurement. The Procurement Officer, in concurrence with Program Director, shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.

- (b) Procedures. For purchase actions over \$100,000 for which there is only one available source, the Procurement Officer shall use the procedures for Competitive Proposals set forth in Section 3.D.(4) above, except that during Pre-Procurement Planning, the program personnel shall prepare a "Requisition" identifying the item or services required that will also specify the justification for using sole source procurement as

set forth in Section 3.E.(5)(a), Conditions for Use.

- (c) Negotiation of Profit. In all procurements where there is no price competition, the Tribe must negotiate profit as a separate element of the price for the contract under Section 3.E.(4)(c) of this Manual.

(6) Emergency Procurement.

Notwithstanding any other provisions of this Manual, the Procurement Officer may make or authorize others to make emergency procurement of supplies, services, or construction items only when there exists a threat to public health, welfare, or safety pursuant to a directive from the President or DES; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Non-competitive negotiation is permitted when a public emergency or public exigency will not permit delay associated with competitive solicitation.

Lack of planning on the part of the using agency shall not constitute an emergency or public exigency for purposes of using this section and/or restricting competition.

A written determination of the basis for the emergency procurement and for the selection of the particular contractor shall be included in the contract file.

The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

(7) Procurement of Cultural Items or Services

The Northern Cheyenne Tribe shall conduct procurement of Cultural Services in a non-competitive manner as defined below, except where not allowed by applicable federal law and regulations.

The Program Director shall specifically identify activities, items for purchase, and potential sources for all Cultural Services in an annual spending plan (budget narrative) which shall follow the Budget Process as outlined in the Financial Management Manual and shall be approved prior to the beginning of each fiscal year. The spending plan shall be broken down into unit price per item and activity. The potential activity source or items shall also be defined in the program award.

In the event that the Program Personnel desires to add, delete, change or otherwise revise the cultural spending plan (budget narrative) in exceedance of 10% of the total budget, the Program Director shall obtain written approval from the funding agency or grant officer.

Program Directors shall submit requisitions for Cultural Services procurement actions to the Procurement Officer.

The Program Director shall obtain a quote for the planned services from the source identified by the program and shall award the contract to the identified supplier.

D. Additional Issues, Qualifications and Duties

(1) Cancellation of Invitations for Bids or Requests for Proposals.

- (a) An invitation for bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals received may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the Northern Cheyenne Tribe, and when such sound reason for rejection is documented. The reasons therefor shall be made part of the contract file.
- (b) Each solicitation issued by the Northern Cheyenne Tribe shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the Northern Cheyenne Tribe. Notice of cancellation shall be sent to all businesses solicited, all bidders and/or all sources submitting proposals. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

(2) Determination of Responsibility of Bidders and Offerors.

- (a) Determination of Non Responsibility. The Procurement Officer shall prepare a written determination of non-responsibility, setting forth the basis for the determination, when a bidder or offeror who otherwise would have been awarded a contract is found non-responsible. The unreasonable failure of a bidder or offeror to promptly supply information requested by the Tribe with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and a public record, provided that information furnished by the bidder or offeror is protected in accordance with Section 3.E.(2)(b) below.
- (b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section 3.E.(2)(b) shall not be disclosed by the Northern Cheyenne Tribe outside of the office of the Procurement Officer, or the using agency, without prior written consent by the bidder or offeror.

(3) Cost or Pricing Data.

- (a) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive bidding, competitive proposals or by sole source procurement authority.
- (b) Exceptions to Section 3.E.(3)(a). The submission of cost or pricing data relating to the award of a contract is not required when:
 - (i) the contract price is based on adequate price competition;
 - (ii) the contract price is based on established catalogue prices or market prices; or
 - (iii) the contract price is set by law or regulation.
- (c) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$2,000.
- (d) Exception to Section 3.E.(3)(c). The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.
- (e) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (f) Price Adjustment Provision Required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the Northern Cheyenne Tribe, including profit or fee, shall be adjusted to exclude any significant sums by which the Northern Cheyenne Tribe finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the Northern Cheyenne Tribe and the contractor.

(4) Cost or Price Analysis.

- (a) The Procurement Officer is required to perform a cost or price analysis in connection with every procurement action in excess of \$100,000, including contract modifications, and for every construction contract procurement including change orders, and for every sole source procurement. The method and degree of analysis is dependent upon the facts surrounding the particular procurement action. The Procurement Officer shall make independent estimates of cost or price before receiving bids or proposals. A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:
 - (i) specific elements of costs and their allowability per 48 CFR Part 31.205 and applicable federal cost principles;
 - (ii) the necessity of certain costs;
 - (iii) the reasonableness of amounts estimated for the necessary costs;
 - (iv) the reasonableness of allowances for contingencies;
 - (v) the basis used for allocation of indirect costs;
 - (vi) the appropriateness of allocations of particular indirect costs to the proposed contract; and
 - (vii) the reasonableness of the total cost or price.
- (c) In all procurements where a cost analysis is performed or where there is no price competition, the Tribe must negotiate profit as a separate element of the price for the contract. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (d) Costs or prices based on estimated costs for contracts under a Federal award are allowable only to the extent that costs incurred or costs estimates included in negotiated prices would be allowable for the Tribe under 2 CFR Part 200 Subpart E— Cost Principles.
- (e) Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of prices for the same or similar items or services. Price analysis will be

conducted by the Procurement Clerk for all Competitive Sealed Bid procurements and for all small purchases. In making a price analysis, consideration must be given to any differing terms and conditions. Examples of price analysis criteria include, but are not limited to:

- (i) price submissions of prospective bidders or offerors in the current procurement;
- (ii) prior price quotations and contract prices charged by the bidder, offeror, or contractor;
- (iii) prices published in catalogues or price lists;
- (iv) prices available on the open market; and
- (v) in-house estimates of cost.

(5) Bid and Performance and Payment Bonds.

Bid, Performance and Payment bonds shall be required on all construction or facility improvement contracts in excess of \$100,000 in accordance with 2 CFR 200.325 and Section 6.B. of this Manual.

Bid and performance bonds or other security may be requested for other contracts including supply contracts or service contracts as the Procurement Officer deems advisable to protect the Northern Cheyenne Tribe's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror responsibility.

(6) Geographic Preferences.

The Procurement Officer shall ensure that procurements are conducted in a manner that prohibits the use of geographical preferences in the evaluation of bids or proposals, except where applicable law expressly mandates or encourages geographic preference and as allowed under Section 3.D(5)(c) of this Manual for A/E services procurement.

SECTION 4 – TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION

A. Types of Contracts.

(1) General Authority.

Subject to the limitations of this Manual, any type of contract which is appropriate to the procurement and which will promote the best interests of the Northern Cheyenne Tribe may be

used, provided that the use of cost-plus-a-percentage-of-cost or percentage-of-construction-cost contracts is prohibited. In selecting a contract type, the Procurement Officer must be certain that the Northern Cheyenne Tribe and the contractor have the management structures and personnel resources needed to properly administer performance of the contract type selected. For example, if a cost reimbursement-type contract is to be used, the contractor's accounting system must be capable of providing timely cost data in a form that will permit proper administration by the Northern Cheyenne Tribe. Similarly, the Procurement Officer must ensure that Tribal procurement personnel are adequately trained and capable of interpreting and auditing the cost data submitted by the contractor.

(2) Standard Contracts.

- (a) Firm Fixed Price. Awards pursuant to micro purchase, small purchase and competitive sealed bidding procedures shall normally be firm fixed-price contracts. Competitive proposal contracts may be fixed-price or cost reimbursement-type contracts. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Northern Cheyenne Tribe than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (b) Time-and-Materials. The Northern Cheyenne Tribe may use time-and-materials type contracts only after a determination that no other type of contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to the Tribe is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the Northern Cheyenne Tribe, when awarding such a contract, shall maintain a high degree of oversight by the using agency's Program Director in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(3) Multi-Term Contracts.

- (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the Northern Cheyenne Tribe, provided the term of the contract and conditions of renewal or extension, if any, are included in the original solicitation and funds are

available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

- (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - (i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (ii) that such a contract will serve the best interests of the Northern Cheyenne Tribe by encouraging effective competition or otherwise promoting efficiencies in Northern Cheyenne Tribe procurement.

- (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(4) Multiple Source Contracting.

- (a) General. A multiple source contract award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the Northern Cheyenne Tribe's actual requirements is limited by the terms of the agreement. Such contracts have been variously referred to as "open-end contracts," "term contracts," "blanket contracts," "blanket orders," "serial awards," and "progressive awards." Competitive sealed bidding is the conventional procurement method for establishing such contracts, although competitive sealed proposals, small purchase procedures, and emergency procurements may be used where appropriate and allowed by this Manual.

- (b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3.D. of this Manual, as applicable. Multiple source awards shall not be made when a single award will meet the Northern Cheyenne Tribe's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

- (c) Contract and Solicitation Provisions. All eligible using agencies of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of

such using agencies that can be met under the contract be obtained in accordance with the contract, provided that:

- (i) the Northern Cheyenne Tribe shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract; and
- (ii) the Northern Cheyenne Tribe shall reserve the right to take bids separately if the Procurement Officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the Northern Cheyenne Tribe.

(d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the Northern Cheyenne Tribe shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) Determination Required. The Procurement Officer shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(5) Indefinite Quantity/Indefinite Delivery Contracting.

When the Procurement Officer determines that the exact quantities needed at a specific time are not determinable, the Procurement Officer shall consider use of a requirements-type contract. Guidance for the use of such contracts can be found in 48 C.F.R. Part 16.5.

B. Contract Clauses and Their Administration.

(1) Contract Clauses.

All of the Northern Cheyenne Tribe's contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Officer, after consultation with the Northern Cheyenne Tribal Attorney, may require clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

- (a) the unilateral right of the Northern Cheyenne Tribe to order in writing changes to the work within the scope of the contract;
- (b) the unilateral right of the Northern Cheyenne Tribe to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (c) variations occurring between estimated quantities in the contract and actual quantities;
- (d) defective pricing;

- (e) liquidated damages;
- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the Northern Cheyenne Tribe;
- (i) suspension of work on a construction project ordered by the Northern Cheyenne Tribe; and
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (i) when the contract is negotiated;
 - (ii) when the contractor provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Price Adjustments.

- (a) Adjustments in price resulting from the use of contract clauses required by Section 4.B.(1) shall be computed in one or more of the following ways:
 - (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (ii) by unit prices specified in the contract or subsequently agreed upon;
 - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (iv) in such other manner as the contracting parties may mutually agree; or
 - (v) in the absence of agreement by the parties, by a unilateral determination by the Northern Cheyenne Tribe of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the Northern Cheyenne Tribe, as accounted for in accordance with reference to applicable cost principles and subject to the provisions of Section 8, Appeals and Remedies.
- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3.E.(3), Cost or Pricing Data.

(3) Standard Clauses and Their Modification.

The Procurement Officer, after consultation with the Northern Cheyenne Tribal Attorney, may

establish standard contract clauses for use in Northern Cheyenne Tribe contracts. If the Procurement Officer establishes any standard clauses addressing the subjects set forth in Section 4.B.(1), such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variation, and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.

(4) Required Clause for Federal Fund Awards.

All contracts made by the Tribe under a Federal fund award must contain clauses addressing the provisions set forth in 2 C.F.R. Part 200, Appendix II, including:

- (a) Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, including appropriate sanction and penalties, for every contract in excess of \$100,000;
- (b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Tribe including the manner by which it will be effected and the basis for settlement;
- (c) Equal Employment Opportunity clauses;
- (d) Davis-Bacon Act clauses;
- (e) Contract Work Hours and Safety Standards Act clauses;
- (f) Rights to Inventions Made Under a Contract or Agreement clauses;
- (g) Clean Air Act and Clean Water Act clauses;
- (h) Debarment and Suspension clauses; and
- (i) Byrd Anti-Lobbying Amendment clauses.

(5) Contract Administration.

The Procurement Officer, in cooperation with the Program Directors of the using agencies, shall maintain a contract administration system designed to ensure that all contractors are performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract.

With respect the administration of supply and service contracts, the Procurement Officer will have prime responsibility with the assistance of the Procurement Clerk to administer contracts but will also need the close cooperation of the using agencies actually using the supplies or services.

(6) Cost Reimbursement Contract Provisions.

If a contract is being funded in whole or in part by assistance from a federal agency, then reimbursement to contractors under a Cost Reimbursement type award for incurred costs or cost estimates included in negotiated prices shall be subject to appropriate federal cost principles, *e.g.*, 48 CFR Part 31.2 and, where applicable, 2 CFR Part 200 Subpart E (§ 200.400 et seq.). The solicitation shall so state that such federal cost principles apply to the contract award. The Northern Cheyenne Tribe shall incorporate contract provisions in such cost reimbursement

contracts granting the Tribe authority to inspect the contractor's facilities and the right to audit contractor records for cost allowability.

(7) Reporting of Anti-Competitive Practices.

When, for any reason, collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General for the State(s) and/or jurisdictions where the bidders or offerors are incorporated and the appropriate legal officer for the Tribe as the jurisdiction conducting the procurement.

(8) Northern Cheyenne Tribe Procurement Records.

- (a) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Northern Cheyenne Tribe in a contract file by the Procurement Officer.
- (b) Retention of Procurement Records. All procurement records, including solicitations, purchase orders, contracts, payment histories and records applicable to significant decisions, shall be retained and disposed of by the Northern Cheyenne Tribe in accordance with records retention guidelines and schedules approved by the Tribal Council but shall be retained no less than three years from the completion of the program for which the purchase was made, or three years from the date of final payment, whichever is later.

SECTION 5 – SPECIFICATIONS

A. Maximum Practicable Competition

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the Northern Cheyenne Tribe's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the Northern Cheyenne Tribe by architects, engineers, designers, and draftsmen.

B. Qualified Bidders and/or Products Lists.

The Northern Cheyenne Tribe will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the Northern Cheyenne Tribe will not preclude other potential offerors from qualifying after bid submission but during the solicitation period (*i.e.*, prior to award).

C. Brand Name or Equal Specification.

(1) Use.

Brand name or equal specifications may be used only when the Procurement Officer determines in writing that:

- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of the Northern Cheyenne Tribe's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the Northern Cheyenne Tribe's best interests.
- (e) Use of a Brand Name for Medical commodities shall be authorized when required by the medical requisitioner.

(2) Designation of Several Brand Names.

Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. The phrase "or equal" must be used in the solicitation and the Northern Cheyenne Tribe shall consider all other brands which are substantially equivalent.

(3) Required Characteristics.

Unless the Procurement Officer determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the minimum essential design, functional, or performance characteristics which are required.

(4) Nonrestrictive Use of Brand Name or Equal Specifications.

Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

D. Technical Specification.

All specifications shall incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

SECTION 6 – PROCUREMENT OF CONSTRUCTION SERVICES

A. Management of Construction Contracting

The Procurement Officer, with the advice of the head of the program responsible for the construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the responsible official shall consider the Northern Cheyenne Tribe's requirements, its resources, and the potential contractor's capabilities. The designated official shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

(1) Methods.

It is recognized that at least the following methods currently are being used for control and coordination of construction projects:

- (a) a single prime contractor (including a turnkey or design-build contractor); or
- (b) multiple prime contractors managed by:
 - (i) a designated general contractor;
 - (ii) a construction manager; or
 - (iii) a Tribal official such as the Procurement Officer or a Program or Project Director.

(2) Complex Construction Projects.

Complex construction projects require intensive, coordinated management to be completed on time and within budget. The Procurement Officer may wish to consider contracting for the services of a program management team to augment the Northern Cheyenne Tribe's full-time staff. The program management team may be structured to include skills needed by the Northern Cheyenne Tribe, to include planning, design, procurement, financial management, and contract administration, as well as the construction manager mentioned in the preceding paragraph. In selecting and utilizing such a program management team, the Northern Cheyenne Tribe must make every reasonable effort to be certain that the contractor providing these expert services is independent of those other contractors the team is supervising on behalf of the Northern Cheyenne Tribe. The potential additional services shall be subject to availability of funds in the Tribe's general fund.

(3) Prevention of Fraud.

The Procurement Officer and the TERO Director shall be responsible for insuring that all construction contractors do not defraud the Northern Cheyenne Tribe. The Procurement Officer shall accomplish this function by investigation of Contractor bids, proposals, cost and price analysis and investigation of contractor responsibility in accordance with the Purchasing Manual and applicable guidance. The Procurement Officer shall perform these functions in a manner equivalent to an internal auditor's role.

- (a) The Northern Cheyenne Tribe shall appoint an inspector for each construction project

- and shall require that the contractor under penalty of fraud certify as to the work performed and materials used and billed for. Certification shall cite 18 U.S.C. § 1001.
- (b) The Northern Cheyenne Tribe shall require that for all construction contract work on the reservation, the contractor shall put in place proper security procedures to prevent theft. Such procedures shall be reviewed by the Procurement Officer and the TERO Director. The approving official of the Northern Cheyenne Tribe should review construction contracts prior to award to assure that statements of work to be performed are not duplicated in another procurement.
 - (c) The Procurement Officer, the TERO Director and any other Tribal personnel or agents delegated responsibility for managing construction contracts shall take necessary measures to detect and prevent fraud.

B. Bid Security and Performance Bonds

(2) **Bid Security.**

- (a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction or facility improvement contracts when the price is estimated by the Procurement Officer to exceed \$100,000. Bid security shall accompany a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. Bid security shall be a bond provided by a surety company approved by the federal government, authorized to do business in the State of Montana, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Northern Cheyenne Tribe including certified check or negotiable instrument. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$150,000 when the circumstances warrant but in no instance shall excessive bonding be required.
- (b) Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the bid price.
- (c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
- (d) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3.D.(3)(b) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be had against the bidder or the bid security.

(3) **Contract Performance and Payment Bonds.**

- (a) When Required; Amounts. When a construction or facility improvement contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to the Northern Cheyenne Tribe and shall become binding on the parties upon the execution of the contract:
 - (i) a performance bond satisfactory to the Northern Cheyenne Tribe, executed by a surety company approved by the federal government, authorized to do business in

the State of Montana or otherwise secured in a manner satisfactory to the Northern Cheyenne Tribe, in an amount equal to 100% of the price specified in the contract; and

(ii) a payment bond satisfactory to the Northern Cheyenne Tribe, executed by a surety company approved by the federal government, authorized to do business in the State of Montana or otherwise secured in a manner satisfactory to the Northern Cheyenne Tribe, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(b) Authority to Require Additional Bonds. Nothing in this Section shall construed to limit the authority of the Northern Cheyenne Tribe to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in this Section, however in no instance shall excessive bonding be required.

(4) Copies of Bond Forms.

Any person may request and obtain from the Northern Cheyenne Tribe a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

C. Fiscal Responsibility

Every contract modification, change order, or contract price adjustment in excess of \$5,000 under a construction contract with the Northern Cheyenne Tribe shall be subject to prior approval by the Tribal President in conference with the Procurement Officer as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

SECTION 7 – DEBARMENT OR SUSPENSION

A. Authority to Debar or Suspend

After reasonable notice to the person or business involved and reasonable opportunity for that person or business to be heard, the Tribal Council, after consulting with the Northern Cheyenne Tribal Attorney, is authorized to debar a person or business for cause from consideration for award of contracts. The debarment shall be for a period up to but not more than five years. After consultation with the Northern Cheyenne Tribal Attorney, the Tribal Council is authorized to suspend a person or business from consideration for award of contracts if there is probable cause to believe that the person or business has engaged in any activity that might lead to debarment. The suspension shall be for a period not to exceed three months.

B. Cause for Debarment

The causes for debarment include:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Northern Cheyenne Tribe contractor;
- (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify debarment action, such as:
 - (a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) any other cause the Procurement Officer determines to be so serious and compelling as to affect responsibility as a Northern Cheyenne Tribe contractor, including debarment by another governmental entity for any cause listed in this Manual; and
- (6) for violation of the ethical standards set forth Section 9 (Ethical Standards).

C. Decision to Debar or Suspend

The Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended entity involved of its rights concerning judicial or administrative review.

D. Notice of Decision

A copy of the decision required by this Section shall be mailed or otherwise furnished immediately to the debarred or suspended entity.

E. Finality of Decision

A decision under this section shall be final and conclusive unless fraudulent, or the debarred or suspended person takes an appeal to the Tribal Council or commences a timely action in court in accordance with applicable law within 10 days after receipt of the decision.

SECTION 8 – APPEALS AND REMEDIES

A. Bid Protests

(1) Right to Protest.

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer. Protestors are urged to seek resolution of their complaints initially with the Procurement Officer. A protest with respect to an invitation for bids or Request for Proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within 5 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) Stay of Procurement During Protests.

In the event of a timely protest under Section 8.A.(1), the Procurement Officer shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Treasurer makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Northern Cheyenne Tribe.

(3) Entitlement to Costs.

In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

(4) Tribal Responsibility.

The Northern Cheyenne Tribe alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the Northern Cheyenne Tribe of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the Northern Cheyenne Tribe unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

(5) Protest Procedures.

The Northern Cheyenne Tribe will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest

to the awarding agency. Protest procedures shall provide contractor with a hearing and contractors shall be afforded all rights of due process. A protestor must exhaust all administrative remedies with the Northern Cheyenne Tribe before pursuing a protest with the federal agency if such protest to a federal agency is allowed under applicable law. Reviews of protests by the federal agency will be limited to:

- (a) Violations of federal law, regulations, and/or purchasing standards; and
- (b) Violations of the Northern Cheyenne Tribe's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the Northern Cheyenne Tribe.

B. Contract Claims.

(1) Decision of the Procurement Officer.

All claims by a contractor against the Northern Cheyenne Tribe relating to a contract, except bid protests, shall be submitted in writing to the Procurement Officer for a decision. The contractor may request a conference with the Procurement Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Notice to the Contractor of the Procurement Officer's Decision.

The decision of the Procurement Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Section 8.B.(3).

(3) Finality of Procurement Officer's Decision; Contractors Right to Appeal.

The Procurement Officer's decision shall be final and conclusive unless, within 5 calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Tribal Council or commences an action in a court of competent jurisdiction.

(4) Failure to Render Timely Decision.

If the Procurement Officer does not issue a written decision regarding any contract controversy within 5 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

C. Delegation to a Hearing Officer or Appeals Board.

This Manual provides for the Procurement Officer to hear and decide both bid protests and contract claims. The Procurement Officer may decide to delegate his or her authority to a hearing officer (other than the Procurement Officer) or a part-time board (Tribal Appeals Board) that does not include the Procurement Officer. If the Procurement Officer chooses to delegate his or

her authority, s/he must carefully consider the scope of authority delegated to the hearing officer or board. Among the issues to be considered are the following:

- (1) whether the decisions rendered by the hearing officer or board will be advisory decisions or final decisions that bind the Northern Cheyenne Tribe;
- (2) whether the hearing officer or board will be authorized to decide questions of fact only or both questions of fact and law; and
- (3) whether the hearing officer or board will be free to fashion remedies providing appropriate redress to the prevailing party.

D. Access to Northern Cheyenne Tribe Courts.

The Northern Cheyenne Tribe and the aggrieved party may mutually agree to permit the Tribal Court to hear and decide bid protests, contract claims, and appeals from suspensions and debarments imposed by the Procurement Officer. If the aggrieved party agrees to such remedy, the decision of the Tribal Court shall be final.

E. Authority Given to Procurement Officer to Settle Bid Protests and Contract Claims.

The Procurement Officer is authorized to settle any protest regarding the solicitation or award of a Northern Cheyenne Tribal contract, or any claim arising out of the performance of a Northern Cheyenne Tribal contract, prior to an appeal to the Tribal Appeals Board or the commencement of an action in a court of competent jurisdiction.

F. Remedies for Solicitations or Awards in Violation of Law.

(1) Prior to Bid Opening or Closing Date for Receipt of Proposals.

If prior to the bid opening or the closing date for receipt of proposals, the Procurement Officer, after consultation with the Northern Cheyenne Tribal Attorney, determines that a solicitation is in violation of federal or Tribal law, then the solicitation shall be canceled or revised to comply with applicable law.

(2) Prior to Award.

If after bid opening or the closing date for receipt of proposals, the Procurement Officer, after consultation with the Northern Cheyenne Tribal Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal or Tribal law, then the solicitation or proposed award shall be canceled.

(3) After Award.

If, after an award, the Procurement Officer, after consultation with the Northern Cheyenne Tribal Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Northern Cheyenne Tribe; or
 - (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- (b) if the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Northern Cheyenne Tribe.

SECTION 9 – ETHICAL STANDARDS FOR PROCUREMENT AND CONTRACTING

A. Conflicts of Interest- Code of Conduct.

- (1) The following code of conduct shall govern all Tribal Council members, employees and agents of the Northern Cheyenne Tribe. The Procurement Officer shall ensure that the code of conduct set forth in this Section shall be followed.
- (2) No Tribal Council member, officer, employee or agent of the Tribe that has a real or apparent conflict of interest shall participate in the selection, award or administration of a contract that is being supported by federal funds.
- (3) A conflict of interest would arise when any of the following parties has a financial or other interest in or a tangible personal benefit from the firm considered or selected for a procurement award:
 - (a) a Tribal Council member, officer, employee or agent of the Tribe;
 - (b) An immediate family member of a person listed in (a);
 - (c) A partner or member of a company owned by a person listed in (a); or
 - (d) An organization that employs or is about to employ any of the above.
- (4) The Procurement Officer shall insure that none of the individuals included within Section 9.A.(3) above shall participate in the selection, award or administration of a contract if such individual has a financial or other interest in a firm considered for award.
- (5) A financial interest includes, but is not limited to, any of the following interests:
 - (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has received within the past year, or is presently or in the future entitled to receive, more than \$100.00 per year or its equivalent;
 - (b) Ownership of 5% or greater of any property or business; or
 - (c) Holding a position in a business such as officer, director, trustee, partner, employee or similar, or holding any management position.
- (6) It shall be a violation of this policy for any Northern Cheyenne Tribal employee to participate directly or indirectly in a procurement action when the Northern Cheyenne

Tribal employee knows that:

- (a) the Northern Cheyenne Tribal employee or any member of the Northern Cheyenne Tribal employee's immediate family has a financial interest or other interest pertaining to the procurement action; or
 - (b) any other person, business, or organization with whom the Northern Cheyenne Tribal employee or any member of a Northern Cheyenne Tribal employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (7) A Northern Cheyenne Tribal employee or any member of a Northern Cheyenne Tribal employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (8) If a real or apparent conflict of interest exists with respect to a procurement, the conflicted employee, Council member or agent shall remove himself or herself or abstain from any such participation during all elements of the procurement.
- (9) Program and purchasing personnel shall be required to submit a financial disclosure form when requested by the Procurement Officer or when required by this Manual or any Tribal procurement policies for the purpose of determining whether a conflict of interest, real or apparent, exists.
- (10) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.
- (11) When a person is disqualified from participating in a procurement decision due to a real or apparent conflict of interest, the fact of the disqualification and the reason for it must be reported to others involved in the decision.

B. Gratuities and Kickbacks.

(1) Policy.

- (a) No Tribal Council member, officer, employee or agent of the Tribe shall either solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors. If the contractor provides a gift of nominal value to the Northern Cheyenne Tribe which has not been solicited by the Northern Cheyenne Tribe, then such gift may be retained provided that such gift does not accrue to the benefit of any one individual. The gratuity or gift must be available to all members of the Northern Cheyenne Tribe.
- (b) The procurement officer and purchasing staff shall neither solicit nor accept gratuities, favors or anything of monetary value from vendors, potential vendors or

parties to some agreements. Gratuities or favors or items of monetary value provided by any vendor which are unsolicited and less than \$25 in value will be recorded and provided for the benefit of all employees of the tribal organization. The Tribal Treasurer will be informed of the receipt of such items. A record will be kept of such receipt and the items will be furnished for the available use of all tribal employees. Violation of this Section 9.B(2) by any member of the purchasing staff and/or the responsible official will be cause for immediate dismissal of such staff or officials.

(2) Gratuities.

It shall be a violation of this policy for any person to offer, give, or agree to give any Northern Cheyenne Tribal employee or former Northern Cheyenne Tribal employee, or for any Northern Cheyenne Tribal employee or former Northern Cheyenne Tribal employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(3) Kickbacks.

It shall be a violation of this policy for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) Contract Clause.

The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(5) Reporting and Investigating.

Tribal personnel shall immediately inform their supervisor and the Procurement Officer of any gratuities or kickbacks offered or suspected bribery. The Procurement Officer shall diligently investigate all such reports and take appropriate action as set forth in this Manual.

C. Prohibition Against Contingent Fees

It shall be a violation of this policy for a person to be retained, or to retain a person, to solicit or secure a Northern Cheyenne Tribal contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

D. Contemporaneous Employment Prohibited

It shall be a violation of this policy for any Northern Cheyenne Tribal employee who is participating directly or indirectly in the procurement process to become or to be, concurrent with employment by the Northern Cheyenne Tribe, the employee of any person or entity contracting with the Northern Cheyenne Tribe.

E. Use of Confidential Information

It shall be a violation of this policy for any employee or former employee of the Tribe knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

F. Sanctions

(1) Employees.

The Treasurer may impose any one or more of the following sanctions on a Northern Cheyenne Tribal employee for violations of the ethical standards in this Section 9:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for specified periods of time; or
- (c) termination of employment.

(2) Nonemployees.

The Northern Cheyenne Tribe may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts; or
- (c) debarment or suspension as provided in Section 7.

(3) Tribal Officials.

The Tribal Council may take any action allowed under the Tribal Constitution to sanction, reprimand or remove any Tribal official that violates these ethical standards.

G. Recovery of Value Transferred or Received in Breach of Ethical Standards

(1) General Provisions.

The value of anything transferred or received in breach of the ethical standards of this policy by a Northern Cheyenne Tribal employee or a nonemployee may be recovered from either the Northern Cheyenne Tribal employee or nonemployee.

(2) Recovery of Kickbacks by the Northern Cheyenne Tribe.

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Northern Cheyenne Tribe and will be recoverable hereunder

from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

H. Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of applicable law, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Section. Any existing and available criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this Manual shall not be impaired or preempted by this Manual.

SECTION 10 – INTERNAL CONTROLS FOR PURCHASING

A. Procurement Authorization

- (1) **Intent to Purchase (Requisition).** Program personnel shall inform the President or designee of the need to purchase and shall obtain approval. Upon receipt of approval, program personnel (personnel, manager, staff, consultant, etc.) shall contact accounting to determine availability of funds. All procurements using federal funds shall obtain prior approval from the funding agency.
- (2) **Purchasing Action.** Prior to obligation, all activities must be reviewed and authorized by the President or designee to determine completeness and compliance as well as reasonableness of cost. Purchasing activity will not be done by program staff but will be handled by Purchasing Department staff based on a detailed description of the requirement furnished by the end user.

B. Multiple Documentation

- (1) **Intent to Purchase.** Intent to purchase will be documented by a four-part Purchase Requisition.
- (2) **Purchase Action.** Purchase obligations will be documented by a four-part Purchase Order.
- (3) **Purchase Procedures.** Use of the procedures discussed herein will be documented in accordance with the procedures discussed below. Documentation will be retained by program.

C. Separation of Duties. The obligation of a purchase action shall not be performed by either the program or accounting to insure separation of duties.

D. Control of Purchases-Internal Procedures

- (1) Any staff member may submit a request for purchase of goods or services in writing. Three copies will be prepared. One copy will be submitted to the Procurement Officer and one copy to Accounting.
- (2) The Treasurer may authorize the purchase provided sufficient funds are available and that

- the purchase is in compliance with all applicable state, federal, or Tribal guidelines.
- (3) The Procurement Officer will advise the Treasurer if the purchase is in compliance with stated guidelines.
 - (4) The Treasurer will inform staff accountant of approval.
 - (5) The Procurement Officer shall conduct procurement as set forth in Section 3 of this Manual based upon whether the purchase is micro, small, or major, and other considerations as set forth in this Manual.
 - (6) The Procurement Officer shall select the contractor based on the considerations set forth in this Manual.
 - (7) The Encumbrance Clerk will prepare the purchase order or contract. Purchase order or contract will state the terms of agreement, price, quantity, method of shipment, and other terms as agreed on. Purchase order will then be submitted to Treasurer for signature. Purchase orders will be pre numbered.
 - (8) The Encumbrance Clerk will mail the original copy and first copy (acceptance copy) to the supplier as a request to purchase and as authority to ship the merchandise listed. The contractor will return signed acceptance as indication of agreement.
 - (9) The Encumbrance Clerk will file the first copy of purchase order in a pending file with a copy of the purchase requisition.
 - (10) The Encumbrance Clerk will file the second copy of purchase order in numerical sequence in a binder.
 - (11) On receipt of goods, the shipping document will be attached to first copy of purchase order and filed by alphabetical order according to supplier in a pending invoice file.
 - (12) On receipt of invoice, the invoice, shipping document, purchase order, and purchase requisition will be examined by Procurement Officer and submitted to the staff accountant and placed in the accounts payable file by date due according to the accounts payable procedures stated earlier.
 - (13) Contracts for consultant or contracted services shall be monitored periodically during contract by the Treasurer. Contractor and/or consultants shall submit periodic reports and a final report. Final payment for services shall be based on satisfactory completion of contracted services and submission of final report.

SECTION 11 - USE OF INDIAN-OWNED AND UNDERREPRESENTED FIRMS

A. Policy

The Northern Cheyenne Tribe shall take affirmative steps to assure that small and minority businesses, women's businesses, labor surplus area firms and Indian-owned businesses (hereinafter, "underrepresented firms") are utilized as sources of supply for goods or services when possible, including:

- (i) Placing qualified underrepresented firms on solicitation lists;
- (ii) Assuring that underrepresented firms are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or

- quantities to permit maximum participation by underrepresented firms;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by underrepresented firms;
- (v) Using the assistance and services, where appropriate of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

However, the Northern Cheyenne Tribe will use such underrepresented firms for acquisition of goods and services only where they are qualified, responsive and responsible and where consistent with effective and efficient performance of the program.

B. Indian Preference in Procurement and Contracting

(1) Tribal and Federal Law.

In accordance with existing Northern Cheyenne laws and policies, the Tribe exercises a preference for Indian-owned businesses in contracting. The Northern Cheyenne tribal employment rights ordinance (TERO) is hereby incorporated by reference for implementing Indian-owned business preference in contracting. All contracting for goods and services within the Northern Cheyenne Reservation is subject to the Tribe's TERO. Furthermore, the Northern Cheyenne Tribe shall adhere to the provisions of 25 U.S.C. § 450e and 25 CFR § 900.48(d)(2) concerning the preference for Indian-owned firms in contracting.

(2) Internal Procedures.

The following procedures shall govern the Procurement Officer's implementation of the Tribe's Indian-owned business preference. In employing the preference for Indian-owned businesses over other open market commercial vendors, the Procurement Officer shall also use the Northern Cheyenne TERO as guidance.

- (a) The Procurement Officer shall solicit quotations, proposals and/or bids from qualified Indian-owned businesses certified by the Tribe's TERO director.
- (b) In conducting a procurement under the Small Purchase Procedure set forth in Section 3.D.(2), the following steps shall be taken.
 - (i) If a P.L. 93-638 contract or grant provides funding for the purchase in an amount greater than 50% of the cost of the item, then the purchase action shall be offered first to Northern Cheyenne Indian-owned businesses provided that three or more qualified Northern Cheyenne Indian-owned business are solicited. This shall be termed a "tribal set-aside."
 - (ii) If fewer than three Northern Cheyenne Indian-owned businesses exist or are qualified but three or more Indian-owned businesses exist and if a P.L. 93-638 contract or grant provides funding for the purchase in an amount greater than 50% of the cost of the item, then the solicitation shall be offered only to Indian-owned businesses. This shall be termed an "Indian set-aside."

- (iii) If funding is provided from a source other than a P.L. 93-638 contract or grant, i.e. tribal funds or other kinds of federal grants, and three or more Indian-owned businesses exist then the solicitation shall be offered only to Indian-owned businesses. This shall be termed an “Indian set-aside.”
- (iv) If fewer than three qualified Indian-owned businesses are available, or if the Indian-owned businesses identified are not determined to be responsive or responsible, the Northern Cheyenne Tribe shall then offer the purchase action to all vendors with preference given to tribal member owned businesses or Indian owned businesses using a percentage factor for sealed bids (as defined in the TERO ordinance) or a weighted point factor in evaluation and selection for Competitive Proposals as defined below.
- (c) In conducting a procurement via Competitive Sealed Bidding under Section 3.D.(3), the Procurement Officer shall ensure that the contract will be awarded to the responsible firm submitting the lowest responsive bid. However, the award will be made to a responsive and responsible Indian-owned firm if the Indian-owned firm’s bid is within 5% of the lowest bid and the lowest bid was submitted by a non-Indian-owned firm. The bid solicitation shall contain the following statement: “Contract will be awarded to the lowest responsive, responsible firm. Award will be made to a responsive, responsible 51% or more Indian-owned, managed and controlled firm only if the Indian-owned firm’s bid is within 5% of a lower non-Indian firm’s bid.”
- (d) In conducting a procurement via Competitive Proposals under Section 3.d.(4), Indian-owned firms shall receive a preference in evaluation scoring equivalent to 5% of the total points available under the evaluation rubric (*i.e.*, if 100 total points are available, Indian-owned firms receive 5 points for Indian preference). The request for proposals shall contain the following statement: “Indian-owned firms shall receive a 5% preference in scoring if the firm is 51% or more Indian-owned, managed and controlled.”
- (e) Sole source acquisition from Indian-owned businesses shall not be permitted. If only one source of supply is available from an Indian-owned business, then the Procurement Officer shall use weighted evaluation and selection factors in open market competition set forth in Section 11.B.(2)(d) above.

(3) Conflicting Law.

In the event of a conflict between the Northern Cheyenne Tribe’s policy toward using Indian preference in procurement and 2 C.F.R. § 200.319 with respect to the administration of federal funds, the federal regulation shall prevail.

C. Eligibility.

Any person or business claiming eligibility for a preference in contracting set forth in this

Manual or elsewhere in Tribal or federal law shall be required to demonstrate to the satisfaction of the Northern Cheyenne Tribe the eligibility for the preference.

SECTION 12 - POLICY CHANGES AND REVISIONS

A. Amendments and Changes

(1) Amendments

If and when it seems desirable and in the interest of good purchasing administration, the Tribal Council may, after a majority vote, make additions or amendments to these policies.

(2) Effective Date

These policies, once adopted by the Tribal Council, shall hereby rescind and repeal all prior policies, resolutions, ordinances, and memorandums on purchasing administration to the extent that these policies are inconsistent with prior policies. These policies shall remain in effect until rescinded, revised or amended by the Tribal Council.

(3) Initiation of Changes

Changes to or interpretation of these policies shall not be made without review by the Procurement Officer, the Policy Review Committee and legal review by the tribal attorney as well as by other Tribal advisors. Upon completion of review, any changes recommended shall be submitted to the Tribal Council for action.

- (a) Initiation: Any tribal employee may suggest a change, amendment, or revision to this Manual. Any suggestion will be submitted in writing to the Tribal President for review and analysis.
- (b) Preparation and Development: The Tribal President shall submit the suggestions along with comments and recommendations to the Policy Review Committee.
- (c) The Committee shall be comprised of three Program Directors, two Executive Officers, two Tribal Council members and two Tribal employees. The members of the Committee shall be selected by the President and approved by the Council.
- (d) The Committee shall obtain input and comment from the Tribal Attorney, the department responsible for the affected manual and from other knowledgeable individuals including those outside the Tribe.
- (e) Based on the input and the issues involved, the Committee shall prepare a draft change, amendment or revision. The draft shall then be further reviewed prior to final version.
- (f) The Policy Review Committee shall then submit the proposed change, amendment, or revision to the Tribal President for comment and concurrence. After incorporation of and recommendations from the President, the draft shall be submitted to the Council.
- (g) Upon acceptance and passage by the Council, the department responsible for the

manual shall replace the relevant section of the manual with the change, revision or amendment. The change shall be dated and the manual notated to insure accuracy.

B. Conflicts, Order of Precedence and Severability

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