

YAKUTAT TLINGIT TRIBE


PROCUREMENT POLICY


January 4, 2023

CERTIFICATION

Adopted at a duly convened meeting of the Yakutat Tlingit Tribe at which a quorum of members was present, by a vote of 5 for, 0 against, and 0 abstained, this 4th day of January, 2023.

ATTEST:



John P. Buller, Tribal President

Victoria L. Demmert, Tribal Secretary

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1. PURPOSE AND SCOPE

This Procurement Policy is established to administer Yakutat Tlingit Tribe (YTT) procurements consistently, to provide for fair and equitable treatment of all persons or firms involved in purchasing by the Tribe, to assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable price available to the Tribe, to promote competition in contracting when appropriate, and to administer tribal purchasing decisions and activity in a manner that is fully compliant with applicable Tribal and Federal standards, regulations, and laws.

1.2 Applicability. This Policy applies to all contracts for the procurement of supplies, services, equipment, and materials entered into by the Tribe for purchase using federal funds, and for non-federal purchases where a different method has not been authorized by the Chief Executive Officer or Tribal Council. When both federal and non-federal funds are used for a project, the work to be accomplished with those funds should be separately identified. The term “procurement,” as used in this policy, includes both contracts and modifications (including change orders) for construction, services, supplies, lease, or rental of supplies and equipment, and other purchases.

1.3 Disclosure of Procurement Information. Procurement information shall be disclosed only to the extent provided by the federal Freedom of Information Act or similar law, as applicable. Disclosure of procurement information prior to a procurement being formally published may create an ethical violation or signal a conflict of interest. If questions arise, contact the Chief Executive Officer.

1.4 Documents to be Preserved. All financial and programmatic records, supporting documents, statistical records, including litigation, claims, negotiations, audits and reports of grantees or sub-grantees, are required to be retained for a period of 3 years after the completion of the action and resolution of all issues which arise from it or until 3-years after the relevant project or activity has been completed, whichever is later.

1.5 Unrestricted funds. This Procurement Policy does not apply to funding received from sources that do not mandate compliance with federal procurement regulations. In such cases, the Council or Chief Executive Officer may elect to use alternative procurement methods, or this Policy. The Council or Chief Executive Officer shall prepare written justification to include in the procurement file that explains the grounds for using alternative methods. The justification must analyze the need for the alternative procurement method and state the grounds for use of that method.

2. PROCUREMENT AUTHORITY AND ADMINISTRATION

2.1 Contracting Officer. All procurement transactions shall be administered by the Contracting Officer, who shall be the Chief Executive Officer or designee. The Chief Executive Officer may adopt operational procedures to implement this Policy, through a procurement handbook or standard operating procedures. Sanctions for violations of this policy, ethical standards, or applicable law may be adopted by the Council for implementation by the Chief Executive Officer or designee. In the absence of additional Council-adopted procedures, the Chief Executive Officer shall determine the appropriate sanction for employee violations.

2.2 Contracting Officer Duties. The Contracting Officer / Chief Executive Officer or designee shall ensure that:

- 2.2.1 Procurement requirements are subject to a planning process to assure efficient and economical purchasing, preferably on an annual basis;
- 2.2.2 Contracts and modifications are in writing, clearly specify the desired supplies, services, equipment or construction, and are supported by sufficient documentation regarding the history of the procurement, including at a minimum, the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
- 2.2.3 For procurements other than small purchases, public notice is given of each upcoming procurement at least 10 days before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 30 days for construction contracts and 15 days for other contracts is provided for preparation and submission of bids or proposals; and notice of contract award is made available to bidders or proposers. These time windows may be waived in the event of emergency or natural disaster.
- 2.2.4 Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR 200.1-.405 or grant documents, and if applicable, with Indian and/or tribal preference to the maximum extent feasible.
- 2.2.5 An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;

- 2.2.6 Contract award is made to the responsive and responsible bidder offering the lowest price or greatest value, depending on the type of proposal, and the price, technical, and other factors as specified in the solicitation are followed and considered, including Indian preference, if applicable. Award notice will be provided to bidders within 10 days whenever feasible.
- 2.2.7 There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted,
- 2.2.8 Procedures for inventory control storage and protection of goods and supplies, and issuance of, or other disposition of, supplies and equipment are established,
- 2.2.9 Effective contract administration and monitoring of contractor's performance is adequately supervised to provide YTT with the greatest value for its contract dollar.

2.3 Policy Amendments. This Policy and any later changes shall be submitted to Tribal Council for approval.

3. ETHICS IN PUBLIC CONTRACTING

3.1 General. All YTT staff and representatives shall adhere to the following code of conduct, consistent with applicable law.

3.2 Conflict of interest. No employee, officer or agent of the Tribe shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, real or apparent, would be involved. A conflict of interest arises when a financial or other interest in or a tangible personal benefit from a firm considered or selected by the Tribe for the contract is held by:

An employee, officer, or agent involved in making the award;

- A. His or her immediate family relative (including father, mother, son, daughter, brother, sister);
- B. His or her partner; or
- C. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

3.3 Gratuities and kickbacks. Tribal officers, employees, or agents shall not solicit gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. Tribal officers, employees, or agents shall not knowingly use confidential information for actual or anticipated tangible personal gain. Where the procurement is supported by federal or state funds, tribal officers, employees, or agents shall abide by any and all additional restrictions imposed by the funding agency.

3.4 No contingent fees. Contractors shall not retain a person to solicit or secure a Tribal contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees.

4. PROCUREMENT METHODS

YTT shall select one of the following procurement methods based on the nature and dollar value of the required procurement. Note that the term “Small Purchase” may be used to describe Petty Cash purchases, Micro-purchases, as well as larger purchases and contracts that do not exceed \$250,000.

4.1 Petty Cash Purchases (\$500 or less)

Petty Cash Purchases. Small purchases under five hundred dollars [\$500] which can be satisfied through local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that the account is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals can access the account; the account is periodically reconciled and replenished; and the account is periodically audited by the Contracting Officer or his or her designee to validate proper uses and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

YTT will not use credit cards or debit cards to cover purchases except as authorized by the Chief Executive Officer in writing and to the extent card usage is timely tracked and reconciled by the CFO. An employee may be reimbursed for petty case purchases using the employee’s credit card, check, or cash, provided that proper back-up substantiating the purchase is provided, reviewed, and approved by an authorized member of the finance department and an authorized check signer.

4.2 Micro-purchases (\$10,000 as per 2 CFR 200.1)¹

¹ “Micro-purchase threshold” means \$10,000, except it means-

(1) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500. Federal law may provide for a different “micro purchase” threshold by regulation or grant authority.

4.2.1 General. YTT may elect to use the procurement method for small purchases of \$10,000 or less.

4.2.2 Procedure. For purchases of less than \$10,000, also known as Micro Purchases, only one price quote is required, provided the quote is reasonable. Quotes may be obtained orally (either in person or by telephone, catalog, fax, or email). If the purchase is made for reasons other than price, the file must clearly describe the reason for the purchase. Under no circumstances will a purchase be broken down into more than one action in order to meet the Micro Purchase threshold. The Micro Purchase must be documented by an authorized purchase order or contract.

4.2.3 Reasonableness of Price. YTT may award purchases of \$10,000 without first soliciting competitive quotes if the Tribe considers the price to be reasonable.

4.3 Small Purchase Procedures (not to exceed \$250,000 – the simplified acquisition threshold)

4.3.1 General. The Tribe may elect to use small purchase procedures for any purchase, contract or acquisition that does not exceed the simplified acquisition threshold, which at the time of this policy adoption, is \$250,000.² This threshold increases automatically when the threshold is raised under federal law.

4.3.2 Tribal and Indian Preference. YTT shall, to the greatest extent feasible, give preference to tribal and Indian-owned economic enterprises and Indian organizations and shall, to the extent feasible, maintain and refer to lists of qualified tribal and Indian supply sources. YTT shall require a statement from all contractors agreeing to provide Indian preference to subcontracting, training, and employment, and shall specify the method to be used. YTT will document efforts in providing Indian preference. If no quotes are solicited or received from Indian-owned economic enterprises or Indian organizations, YTT shall document the procurement file with the reasons for the lack of Indian participation.

4.3.3 Obtaining Quotes. YTT shall solicit price quotes by phone, letter, internet or other informal procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, YTT shall inform the sources solicited of the specific item being

² 48 CFR § 2.101.

procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. YTT shall obtain written quotes, and a written quote may be a confirmation of a previous unwritten quote if the written quote is submitted within 10 days after the quote or by the due date for submission of quotations. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation, shall be recorded and maintained as a public record.

4.3.4 Competition. YTT shall attempt to obtain quotations from a minimum of 3 qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least 3 quotes. Solicitation of fewer than 3 sources is acceptable if YTT has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).

4.3.5 Small Purchase Determination. If YTT decides to use the small purchase procedures described above for a procurement, but then discovers that YTT can reasonably expect the cost of the procurement to exceed \$250,000, YTT must proceed with either the Competitive Sealed Bids or Competitive Proposals methods described below.

4.3.6 Award.

A. Award based on price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiation), YTT may make award to the qualified tribally-owned or Indian owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and no more than 10% higher than the lowest responsive quotation received. If no responsive quotation from a qualified Indian-owned economic enterprise or organization is within 10% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.

B. Award based on factors other than price. For small purchases to be awarded based on factors other than price, a formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. YTT may reserve 15% of the total evaluation points for providing Indian

preference, at its option. An award shall be made to the best proposal or quotation in accordance with the stated rating system.

4.3.7 Mandatory Documentation:

A) Use the Cost Quote Tabulation Sheet for purchases based on price: The basis for selecting a specific vendor, product or service will be documented using the Cost Quote Tabulation Sheet (See *Procurement Procedure Overview* under attachments). The Cost tabulation sheet may be completed by tribal staff but must be reviewed, approved, and signed by the CEO prior to purchase. At the time of purchase, the Cost quote sheet and supporting documentation are uploaded into YTT's designated accounting system.

B) Use the RFP Score Sheet, for purchases based other factors than just price: The basis for selecting a specific vendor, product or service will be documented using the Request for Proposal (RFP) Score Sheet (See *Procurement Procedure Overview* under attachments). The RFP Score sheet may be completed by tribal staff but must be reviewed, approved, and signed by the CEO prior to purchase. At the time of purchase, the RFP score sheet and supporting documentation are uploaded into YTT's designated accounting system.

4.4 Sealed Bids

4.4.1 General. YTT will use the procurement method of competitive sealed bids when all of the following conditions are present:

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

Sealed bidding is the preferred method for construction procurement.

4.4.2 Solicitation and Receipt of Bids.

A. The Invitation for Bids (IFB). An Invitation for Bids (or IFB) shall be issued including specifications and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment within 7 days of the scheduled bid opening, the bid opening shall be postponed until at least 7 days after issuing the amendment. The IFB shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

B. Restricted Tribal/Indian solicitations. The invitation may be restricted to qualified tribal- or Indian-owned economic enterprises and organizations if YTT reasonably expects that the required minimum number of bids will be received from them.

4.4.3 Bid opening. Bids shall be opened publicly and in the presence of at least one witness. A summary of the bids shall be recorded and the bids shall be available for inspection. If a bid has been withdrawn before the opening, it shall be listed as “withdrawn” without opening. Bids that are later disqualified or found to be nonresponsive will be listed in the summary.

4.4.4 Award. Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:

A. Award shall be made to the lowest responsible, responsive bidder. If Indian or tribal preference is applied, the award shall be made to the lowest responsible and responsive bidder, subject to the solicitation’s preference provisions for Tribal/Indian bidders, and provided that sufficient evidence of Tribal/Indian ownership and management is provided with the bid. Ties will be broken by drawing lots or similar measures.

4.4.5 Mandatory Documentation for selecting Sealed Bids: The basis for selecting a specific vendor, product or service will be documented using the Sealed Bid Tabulation Sheet (See *Procurement Procedure Overview* under attachments). The Sealed Bid Tabulation Sheet may be completed by tribal staff but must be reviewed, approved, and signed by the CEO prior to purchase. At the time of purchase, the RFP score sheet and supporting documentation are uploaded into YTT’s designated accounting system.

4.4.6 Mistakes in Bids.

A. Procedure. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or faxed 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 if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

B. Signature of Contracting Officer. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Tribe or fair competition shall be permitted.

4.5 Competitive Proposals Method (RFP)

4.5.1 General. YTT shall use competitive requests for proposals (RFP) where:

- A.** There is an adequate method for soliciting and rating technical, professional, qualifications-based or other services to be provided to the Tribe, and
- B.** YTT has determined that conditions are not appropriate for the use of competitive sealed bidding. An adequate number of qualified sources shall be solicited. The RFP process shall always be used to procure engineering or architectural services.

4.5.2 Solicitation Procedure.

A. General. Where Indian or tribal preference applies, YTT may elect to restrict its RFP to qualified tribal-, Indian-owned economic enterprises and organizations, if YTT has a reasonable expectation of receiving offers from two or more entities. In all cases, a mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.

B. Evaluation Factors. The RFP shall identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. YTT may set-aside preference points

for tribal and/or Indian-owned entities, as well as local entities, at its option, to the extent not prohibited by law or the grant agency.

4.5.3 Negotiations. In those situations where YTT deems negotiations to be necessary or advisable, negotiations shall be conducted with the offeror or offerors who submit proposals with a reasonable chance of being selected for the award or who has scored highest in the rating system. YTT may elect to negotiate exclusively with the top-rated offeror. Negotiations generally may seek clarification regarding deficiencies in technical and price aspects of the proposal or proposals, seek to assure full understanding of and conformance to solicitation requirements, and notify the offeror of any particular budget or specification restraints. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. If more than one offeror is selected to engage in negotiations, YTT shall establish a common deadline for receipt of proposal revisions based on negotiations.

4.5.4 Award. After evaluation, including any negotiations and proposed revisions allowed under the previous paragraph, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to YTT, provided that the contract can be completed within any maximum total contract price established for the specific project or activity. YTT may accept the sole proposal received in unusual circumstances, such as when YTT determined the delay caused by re-soliciting would cause higher costs, or where YTT determines the proposal has a fair and reasonable price.

4.5.5 Mandatory Documentation for selecting Competitive Proposals: The basis for selecting a specific vendor, product or service will be documented using the Request for Proposal (RFP) Score Sheet (See *Procurement Procedure Overview* under attachments). The RFP Score sheet may be completed by tribal staff but must be reviewed, approved, and signed by the CEO prior to purchase. At the time of purchase, the RFP score sheet and supporting documentation are uploaded into YTT's designated accounting system.

4.6 Large Acquisitions

Procurements exceeding \$250,000 must use either sealed bidding or competitive proposals (depending on the nature of the procurement) and must receive approval of the Council.

4.6.1 Mandatory Documentation: The procurement of large acquisitions exceeding \$250,000 requires the completion of two forms as follows:

A) Sealed Bid Tabulation Sheet: The basis for selecting a specific vendor, product or service exceeding the simplified acquisition threshold (currently \$250,000) will be documented using the Sealed Bid Tabulation Sheet (See *Procurement Procedure Overview* under attachments). The Bid Tabulation Score sheet may be completed by tribal staff but must be reviewed, approved, and signed by the CEO.

B) Contract Review and Approval Form: Purchases for products or services exceeding \$250,000 cannot be initiated without review and approval *by the Tribal Council*. To ensure compliance with this policy, all contracts and purchases exceeding \$250,000 must be documented using the Contract Review and Approval Form (see separate YTT Contract Management Policy, Procedures, and form).

C) Accounting Software: At the time of purchase, the signed Contract Review and Approval Form, Sealed Bid Tabulation sheet and other supporting documentation are uploaded into YTT's designated accounting system.

4.7 Noncompetitive Procurements

4.7.1 Conditions For Use. Procurement shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using other methods, and at least one (1) of the following conditions applies:

A. A public emergency or exigency for the requirement does not favor delay which would result from competitive solicitation. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods,

and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency; or

- B. Only one source of supply is available, and the Chief Executive Officer determines it is infeasible to locate another source of supply;
- C. The procurement is for the renewal of a professional services agreement for legal, or other highly specialized professional services; or
- D. After solicitation of a number of sources, the Contracting Officer determines that competition is inadequate.

4.7.2 Justification. Each procurement based on non-competitive proposals shall be supported by a written justification with stated findings for using such procedures. Said justifications shall be prepared based on non-competitive proposals, and approved by the Chief Executive Officer.

4.7.3 Price Reasonableness. The reasonableness of the price for all procurements using non-competitive methods shall be determined by performing a cost analysis.

5. COST AND PRICE ANALYSIS

5.1 General. YTT shall perform a cost or price analysis for all procurement actions, including contract modifications, exceeding \$1,000. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts of the procurement, and prudent judgment. YTT will obtain an independent price analysis for before receiving bids or proposals for construction exceeding \$20,000.

5.2 Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, if only one offer is received, or where YTT deems necessary in other procurements, the offeror shall be required to submit:

- A. A cost breakdown showing projected costs and profit;
- B. Commercial pricing and sales information sufficient to enable YTT to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
- C. Documentation showing that the offered price is set by law or regulation.

As a condition of contract, YTT may require construction bidders to provide YTT with accurate, contemporaneous, and detailed bidding and pricing information in a sealed format, to be retained by YTT in sealed form, to be opened by YTT with notice to the contractor in the event of any subsequent formal contract dispute over pricing

modifications or changes, overruns, Acts of God, claims for additional time or money, claims for unknown or unforeseeable conditions, disputes over change orders, equitable claims by the Contractor, or other breach of contract claims.

5.3 Cost Analysis. YTT shall perform a cost analysis if a contractor is required to submit a cost breakdown as part of its proposal. YTT shall perform a cost analysis of individual cost elements. YTT shall have the right to audit the contractor's books and records pertinent to those costs. The profit shall be analyzed by YTT separately. Costs shall be allowable only to the extent they are consistent with applicable Federal cost principles. In establishing profit, YTT shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area are similar work.

5.4 Price Analysis. Where YTT does not conduct a cost analysis, a comparison of prices shall be used in all other cases.

6. CANCELLATION OF SOLICITATIONS

6.1 General. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if YTT no longer requires the supplies, services or construction, YTT can no longer reasonably expect to fund the procurement, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable, or other similar reasons. The solicitation shall state YTT's rights to cancel a solicitation for any reason that is in YTT's best interests, and is not prohibited by law. The solicitation shall also state that YTT will not be responsible for any bid or proposal preparation expenses of the bidders/offerors.

6.2 Cancelling a Solicitation. A solicitation may be canceled and all received bids or proposals may be rejected under the following circumstances:

- A. the supplies, services, or construction are no longer required;
- B. ambiguous or otherwise inadequate specifications were part of the solicitation;
- C. the solicitation did not provide for consideration of all factors of significance to YTT;
- D. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- E. there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;
- F. a condition for canceling a solicitation and re-soliciting is met; or

- G. for any other good cause which is in the best interest of YTT, including mistakes, deficiencies, or errors in YTT's issuance of the solicitation.

6.3 Reasons for Cancellation. YTT shall document all reasons for in the procurement file, and shall provide the reasons for cancellation and/or rejection to any offeror solicited, upon their request.

6.4 Notice of Cancellation. YTT will send a notice of cancellation to all offerors solicited or individuals who have requested bidding packets, and, if appropriate, send a notice if there will be an opportunity to respond to a re-solicitation or future procurement of similar items.

7. COOPERATIVE PURCHASING

General. YTT may enter into State and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. YTT is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

8. USE, MANAGEMENT, AND DISPOSITION OF EQUIPMENT AND SUPPLIES

8.1 Equipment

8.1.1 Equipment Use. Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. The property must not be encumbered without prior approval of the awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the awarding agency, in the following order of priority:

- A. Activities under a federal award from the federal awarding agency which funded the original program or project; then
- B. Activities under federal awards from other federal awarding agencies, including consolidated equipment for information technology systems.

- 8.1.2 Use of Equipment For Other Programs.** During the time the equipment is used on the project or program for which it was acquired, YTT must also make equipment available for use on other projects or programs currently or previously supported by the federal government, provided that use will not interfere with the work on the projects or programs for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the federal awarding agency that financed the equipment. Second preference must be given to programs or projects under federal awards from other federal awarding agencies. Use for non-federally funded programs or projects is also permissible, and user fees should be considered, if appropriate.
- 8.1.3 Use of Equipment For a Fee.** Notwithstanding the encouragement to earn program income, YTT, grantees, or sub-grantees must not use equipment acquired to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by federal statute for as long as the federal government retains an interest in the equipment.
- 8.1.4 Replacement Equipment.** When acquiring replacement equipment, YTT, grantee, or sub-grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- 8.1.5 Equipment Management.** Procedures for managing equipment, whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
- A.** Property records must be maintained that include a description of the property, a serial number or other identification number, source, who holds title, acquisition date, cost, percentage of Federal participation in the cost, location, use and condition of the property; and any ultimate disposition data including the date of disposal and sale price.
 - B.** A system of charging the cost of materials and supplies to the contract, organizational unit or enterprise for which they are ultimately used.
 - C.** A physical inventory of the property must be taken and reconciled with the property records at least once every year.

- D. A control system must be developed to ensure adequate safeguards to prevent loss damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- E. Adequate maintenance procedures must be developed to keep the property in good condition.
- F. If authorized or required to sell the material, equipment, or property, proper sales procedures must be established to ensure the highest possible return.

8.1.6 Equipment Disposition. When original or replacement equipment acquired under a grant or sub-grant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

- A. Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency.
- B. Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale of the equipment by the federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the federal awarding agency may permit the grantee or sub-grantee to deduct and retain from the federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- C. The Grantee or sub-grantee may transfer title to the property to the federal government or to an eligible third party provided that in such cases, the grantee or sub-grantee must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- D. In cases when a grantee or sub-grantee fails to take appropriate disposition actions the awarding agency may direct the grantee or sub-grantee to take excess and disposition actions.

8.2 Supplies

8.2.1 Supplies Disposition.

- A.** Title to supplies vests in YTT upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, YTT, grantee, or sub-grantee must retain the supplies for use in other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.

- B.** As long as the federal government retains an interest in the supplies, YTT, grantee, or sub-grantee must not use supplies acquired under a federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by federal statute.

9. CONTRACTOR QUALIFICATIONS AND DUTIES

9.1 Contractor Responsibility. YTT shall only award contracts to qualified and responsible contractors possessing the ability to successfully perform the terms and conditions of the proposed procurement. In determining contractor qualification, YTT shall review the contractor's ability to perform the contract successfully, considering several factors, including:

- A. Contractor integrity;
- B. Contractor compliance with public policy;
- C. The record of the contractor's past performance; and
- D. The contractor's financial and technical resources.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

9.2 Suspension and Debarment. Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible in accordance with 2 CFR 200.213 when necessary to protect YTT in its business dealings. YTT may suspend or debar a contractor under State, borough or local laws, as applicable.

9.3 Bonds. For construction or facility improvement contracts or subcontracts exceeding \$3,000 where there is no determination that YTT's financial interests are

otherwise adequately protected, YTT may require the bidder to submit forms of assurance:

- A. A bid guarantee from each bidder equal to 5% of the bid price.
- B. A performance bond from the contractor for 100% of the total contract price.
- C. A payment bond from the contractor for 100% of the total contract price.

For all construction projects exceeding \$5,000, YTT will require performance and payment bonds, at not less than 50 percent of the contract price. This minimum threshold requirement may be increased in order to meet grant or regulatory requirements, as applicable.

10. TYPES OF CONTRACTS, CLAUSES AND CONTRACT ADMINISTRATION

10.1 General. Any type of contract which is appropriate to the procurement and which will promote the best interests of YTT may be used, provided that the cost plus a percentage of cost and percentage of construction cost methods is generally inadvisable and may be prohibited outright, depending on the source of funding. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

10.2 Cost Reimbursement Contracts. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy YTT 's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1).

10.3 Time and Materials Contract. A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

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

- A. the option is contained in the solicitation;
- B. the option is a unilateral right of YTT ;
- C. the contract states a limit on the additional quantities and the overall term of the contract;
- D. the options are evaluated as part of the initial competition;
- E. the contract states the period within which the options may be exercised;
- F. the options may be exercised only at the price specified in or reasonably determinable from the contract; and

G. the options may be exercised only if determined to be more advantageous to YTT than conducting a new procurement.

10.5 Contract clauses. In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200, Appendix II, such as the following:

- A. Termination for convenience
- B. Termination for default
- C. Equal Employment Opportunity
- D. Anti-Kickback Act
- E. Davis-Bacon Act
- F. Contract Work Hours and Safety Standards Act
- G. Reporting requirements
- H. Patent rights
- I. Rights in data
- J. Examination of records by Comptroller General
- K. Retention of records for [three] years after closeout
- L. Clean air and water
- M. Energy efficiency standards
- N. Bid protests and contract claims
- O. Value engineering
- P. Payment of funds to influence certain Federal transactions

If all required clauses are not included in procurement contracts and subcontracts, then YTT shall attach any additional clauses to contract documents. Any operational procedures issued by YTT to implement this policy shall contain the text of all clauses and required certifications, such as non-collusive affidavits, used by the Tribe. YTT shall include the contract clauses and solicitation notices for Indian preference described above.

10.6 Contract Management

Please review YTT policy entitled “**Contract Management**” for specific requirements regarding contract review, approval, and monitoring procedures. The provisions within the Contract Management Policy are applicable to all purchases that require YTT to enter into a legally binding agreement, such as a contract, MOA, or MOU. Since many purchases subject to this Procurement Policy will also be subject to the Contract Management Policy, please be advised that additional documentation will be required for initiating and monitoring all contractual agreements.

For example:

- All contract agreements must be reviewed and approved by the owner, the Chief Financial Officer (CFO), Chief Executive Officer (CEO) and Legal Council (if applicable).
- The CEO has the authority to approve and sign contracts under \$250,000
- Contracts exceeding \$250,000 must be authorized by the Tribal Council before the CEO can sign a contractual agreement.

10.7 Waiver of Tribal Sovereign Immunity

A party to a contract with YTT may request a clause waiving tribal sovereign immunity. YTT will consider such a request by a contracting party on a case-by-case basis, and the Contracting Officer will submit the request to legal counsel for approval and drafting of a satisfactory clause.

11. ASSISTANCE TO SMALL AND OTHER BUSINESSES AND INDIAN / ALASKA NATIVE PREFERENCE

11.1 Required Efforts. YTT shall make efforts to ensure that small and minority firms, women's business enterprises, and labor surplus areas and individuals or firms located in or owned in substantial part by persons residing in the area of a YTT project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules where the requirement permits which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Administration;
- F. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project; and
- G. Requiring prime contractors, when subcontracting is anticipated, to take the above described steps.

11.2 Definitions.

- A. A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation.
- B. A business concern located in the area of the project is defined as an individual or firm located within the relevant project area and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the project area, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged and meeting the definition of small business above.

11.3 Indian Preference Requirements. Projects developed and operated with assistance from qualified federal funds are subject to Section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that to the greatest extent feasible, preference shall be given to Indian organizations and Indian-owned economic enterprises in the award of all contracts and subcontracts. Where Indian preference is determined not to be feasible, YTT shall document the procurement file with the basis for its findings. Indian preference applies not only to on-site, or within YTT's jurisdiction, but also to contracts with firms that operate outside these areas. Indian preference shall apply during all phases of the procurement process, including solicitation, evaluation, and award. In no case shall YTT authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations based on particular YTT affiliation or membership.

11.4 Eligibility. Eligibility for tribal preference shall be established by YTT's Council. To qualify for *Indian* preference, the owner must be an enrolled member of a Federally Recognized Indian Tribe. If YTT or its prime contractor determines an application is ineligible for Indian preference, YTT or prime contractor shall notify the applicant in writing before awarding the contract, filling the position or providing the desired training.

11.5 Contract clauses and solicitation notices. Solicitations and contracts will include the following information at YTT's option and where not prohibited by federal law:

- A. A statement that the Indian and/or tribal preference applies, and a time before the due date for offers by which contractors must submit evidence of eligibility for preference;

- B. Any applicable preference requirements properly enacted and adopted by the Tribal Council,
- C. A requirement that offerors and subcontractors provide a statement describing how they will provide preference in subcontracting, training, and employment, including the number or percentage of Indians to be employed and trained;
- D. The Tribe's description of the information to be submitted in order to qualify for preference;
- E. The factors that the Tribe will use to judge or rank the adequacy of the submitted preference information and how the Tribe will rank or rate the offeror's qualification for preference;
- F. The grounds for termination of a contract or the imposition of penalties for subcontracts entered into in violation of the Indian Preference Requirements or false certification as to subcontracting with Indians, Indian Organizations, or Indian-Owned economic enterprises, and
- G. If any or all required clauses and provisions are not intended on contract forms, then the Tribe shall attach any additional clauses for provisions to the contract forms used in solicitations and contract documents.

11.6 Monitoring and Remedies. YTT shall monitor the implementation of the Indian preference in its contracts, subcontracts, training and employment, and take appropriate remedial action, including cancellation of contracts and assessment of penalties, to ensure compliance.

12. SPECIFICATIONS

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

12.2 Limitations. The following specification limitations shall be avoided:

- A. geographic restrictions;
- B. unnecessary bonding or experience requirements;
- C. brand name specifications (unless a written determination is made that only the identified item will satisfy YTT's needs);

D. brand name or equal specifications (unless they are used to identify minimum essential characteristics and standards to which the item must conform to satisfy its intended use – e.g., “of same quality or better than”).

Nothing in this procurement policy shall preempt any State, borough, or local licensing laws or taxes. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the YTT’s computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

13. APPEAL AND REMEDIES

13.1 General. It is YTT’s policy to resolve all contractual issues informally at YTT level, without litigation. Contractual and administrative issues relating to source evaluation, protests, disputes and claims shall not be referred to formal dispute resolution until the claimant exhausts tribal administrative remedies. Violations of law may be referred to the local, state, or federal authority with proper jurisdiction.

13.2 Bid Protests. Any actual or prospective contractor may submit a protest to the Contracting Officer. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within 5 days of bid or proposal opening. All protests shall be in writing, submitted to the Contracting Officer or designee. The Contracting Officer may suspend the procurement pending resolution of the protest, if warranted by the facts presented. The Contracting Officer will advise the protestor of the outcome of review, with a brief written statement.

13.3 Contract Claims. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee. The contractor may request a conference on the claim.

ATTACHMENTS:

- Procurement Procedures Overview
- Cost Quote Tabulation sheet
- Request for Proposal (RFP) Score Sheet
- Sealed Bid Tabulation sheet

PROCUREMENT PROCEDURES OVERVIEW

Micro Purchases- under \$10,000

- Purchases under \$10,000 do not require completing the Cost Quote Tabulation Sheet, however, best practice is to collect cost quotes whenever possible.

Small Purchases- over \$10,000 but under \$250,000



Use the Cost Quote Tabulation Sheet

- While Low-bid solicitations and proposal-based solicitations are not necessary for small purchases under the simplified acquisition threshold of \$250,000, when there is sufficient time, and the Tribe will benefit from a detailed selection process, the use of sealed bids or Proposals is the preferred method for small purchases.
- If you discover that the quotes received are over \$250,000, this project will not qualify as a small purchase. You will need to proceed with either the Competitive Sealed Bids or Competitive proposal methods.

Large Purchases - over \$250,000



Use the RFP (Request for Proposal) Score Sheet

OR

Use the Sealed Bid Tabulation sheet

- All purchases over \$250,000 require prior authorization from the Tribal Council.

Contract Management

- All Contracts must be approved using the Contract Review and Approval Form and uploaded to the accounting software. For more information, please review the YTT Contract Management Policy.

**COST QUOTE Tabulation Sheet
(Procurement Less Than \$250,000)**

<p align="center">Yakutat Tlingit Tribe YTT DEPARTMENT and PROJECT NAME HERE</p>						
	QUOTE # 1	QUOTE # 2	QUOTE # 3	QUOTE # 4	QUOTE # 5	QUOTE # 6
Company Name	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number
Date company contacted for Quote	Enter Date	Enter Date	Enter Date	Enter Date	Enter Date	Enter Date
Price	Enter Cost Quote Here	Enter Cost Quote Here	Enter Cost Quote Here	Enter Cost Quote Here	Enter Cost Quote Here	Enter Cost Quote Here
<p align="center">ATTACH QUOTE DOCUMENTATION TO THIS FORM</p>				<p align="center">Lowest Cost Quote Enter Name here</p>		
						<p align="center">Approved by: Chief Executive Officer (or Designee)</p>
<p>Reference: See Procurement Policy 4.3 Small Purchase Procedures</p>				Signature		Date

REQUEST FOR PROPOSAL (RFP) Score Sheet

<p align="center">Yakutat Tlingit Tribe PROJECT NAME HERE</p>								
		Proposal # 1	Proposal # 2	Proposal # 3	Proposal # 4	Proposal # 5	Proposal # 6	
CATEGORY	Total Possible Points	Company Name	Company Name	Company Name	Company Name	Company Name	Company Name	
Responsive Proposal?		Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No	
Cost	20							
Experience/Qualifications	20							
Past Performance/Reference Checks	20							
Presentation of Proposal	20							
Indian Preference	20							
Total Points	100	0	0	0	0	0	0	
ATTACH RFP DOCUMENTATION TO THIS FORM								
<p align="center">Winning Proposal NAME HERE</p>				<p align="center">Approved by: Chief Executive Officer (or Designee)</p>				
<p>Reference: See Procurement Policy, 4.5 Competitive Proposals</p>				<p align="center">Signature</p>			<p align="center">Date</p>	

SEALED BID Tabulation Sheet

Yakutat Tlingit Tribe INVITATION FOR BIDS PROJECT NAME HERE						
	BID # 1	BID # 2	BID # 3	BID # 4	BID # 5	BID # 6
Company Name	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number	Enter Company name, address, contact name, email, phone number
Date YTT mailed or emailed Invitation for Bid (IFB) Documents	Enter Date	Enter Date	Enter Date	Enter Date	Enter Date	Enter Date
Responsive to Invitation For Bid?	Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No	Enter Yes or No
Price	Enter Bid Price here	Enter Bid Price here	Enter Bid Price here	Enter Bid Price here	Enter Bid Price here	Enter Bid Price here
ATTACH BID DOCUMENTATION TO THIS FORM				Lowest Responsive Bid: Enter Name and Bid Amount Here		
				Approved by: Chief Executive Officer (or Designee)		
Reference: See Procurement Policy 4.4.2 Solicitation and Receipt of Bids				Signature	Date	