

**YAVAPAI-APACHE NATION  
PROCUREMENT CODE**

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## **INTRODUCTION**

Procurement is the formal process by which the Yavapai-Apache Nation purchases the goods and services needed to provide essential governmental services to the Nation and its citizens. The procurement process is intended to inform and guide the Nation's decisions when agreeing to purchase goods and services from internal and outside sources. The procurement process is intended to ensure the Nation receives needed goods and services at the best possible price, after considering quality, quantity, timing, terms governing the purchase, and other factors affecting price.

Because the Nation is a recipient of federal funds, both directly from the United States and as an indirect sub-recipient from state sources, the Nation's Procurement Code sets out the rules that govern the way the Nation purchases goods and services using federal funds. This Procurement Code applies to all expenditures of funds received by the Nation through federal grants, whether direct or indirect. While the Procurement Code sets out the Nation's law and policy on the procurement of goods and services using the Nation's funds, it is also intended to establish and maintain consistency with federal requirements for all procurement's utilizing federal funds.

The Procurement Code is intended to provide information and direction on the following issues:

- What rules govern the Nation's procurement actions using only the Nation's funds?
- What rules govern the Nation's procurement actions when using federal funds or a mix of federal and Nation funds?
- What methods of Procurement may the Nation use when purchasing goods and services?
- When and to whom is the Nation required to provide a preference in its procurements?
- What are the ethical standards related to conflicts of interest that are required of the Nation's officials and employees responsible for making procurement decisions?
- What are the record-keeping requirements of the Nation's Procurement Code?
- What measures must the Nation take to ensure that contractors can provide quality goods and services and otherwise perform according to the requirements of the funding agency and the contractual agreement?

## **CHAPTER 1 – GENERAL PROVISIONS**

### **Section 101 – Purpose, Scope and Applicability**

- A. The purpose of this Procurement Code (the "Code") is to establish uniform policies and standards for the acquisition of goods and services by the Yavapai-Apache Nation government (the "Nation"), to conserve and efficiently allocate the Nation's limited financial resources, assure that goods, supplies, services, and construction are procured at the most favorable prices and quality available to the Nation, promote competition in contracting, provide safeguards for maintaining a procurement system of quality and integrity, and assure that the Nation's procurement actions are in full compliance with applicable requirements of various federal funding sources.
- B. Except as otherwise provided herein, this Code applies to all actions taken and contracts entered by the Nation for the procurement of goods, equipment, supplies, services, and

construction. The Code applies to every expenditure of funds by the Nation for public purchasing, irrespective of the source of funds; however, **certain outside funding sources, such as federal and federally funded state grants and contracts, may require application of specific procurement laws, rules, regulations, policies and procedures that take precedence over this Code in whole or in part**, and nothing in this Code shall prevent the Nation from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with applicable law. When both Federal and the Nation's funds are used for a project, the work to be accomplished with the funds should be separately identified when possible, and Federal Indian preference regulations (when applicable), together with all other applicable Federal regulations ("federal requirements"), shall be applied to the work paid for by the federal funds. If such separation of work is not possible, then the applicable federal requirements shall be applied to the entire project. The term "procurement," as used in this Code, includes both contracts and modifications to contracts (including change orders) for construction or services, as well as purchases, leases, or rental of supplies and equipment.

- C. In accordance with 24 CFR §1000.52, the Yavapai-Apache Nation Housing Department (YANTH) shall apply this Code and the Nation's tribal employment and contract preference laws (including regulations, ordinances and codes) when issuing procurements using the Nation's funds or federal funds provided to the Nation under NAHASDA (Native American Housing Assistance and Self Determination Act of 1996, 25 UDC §§4101 et seq.).
- D. This Procurement Code shall supersede and replace all prior procurement policies of the Nations and the same are hereby rescinded, including the Procurement provisions of the "Yavapai-Apache Tribe Procurement, Property Management and Record-Keeping Manual" adopted by Tribal Council Resolution 06-95. The Property Management and Record Keeping provisions of said manual shall remain in effect until such time as revised by the Tribal Council.

### **Section 102 - General Policy on Efficient Use of Resources; Fair Business Practices**

- A. All the Nation's Directors and Managers shall act to ensure that all procurement costs incurred are reasonable and necessary, that the Nation's resources are efficiently utilized, and that all procurements are conducted in compliance with this Code. Director's and Managers shall avoid acquisition of unnecessary or duplicative goods and services.
- B. All procurement actions shall be made consistent with accepted business practices and shall ensure that all providers of goods and services are treated fairly and professionally in each transaction.

### **Section 103 - Consistency with Applicable Federal Regulations Required**

- A. In general, the Nation's policies and procedures adopted under this Code shall be interpreted and applied consistent with applicable federal regulations in all cases where the procurement utilizes Federal funds.

- B. The provisions of 2 CFR Chapter II, Part 200 (2 CFR §200.318-200.326) related to procurement activities (federal standards), *except those provisions which are not applicable to Indian tribes (for example, where the provisions of federal statutes or regulations differ from the provisions of 2 CFR Part 200, the provisions of the federal statute or regulation will govern)*, are hereby adopted and incorporated into this Code by reference and the same shall be applied to all procurements utilizing federal funds.
- C. Any Director or Manager responsible for authorizing procurements utilizing federal funds shall be responsible for compliance with any other applicable rules and regulations that are a condition of the federal funding source.
- D. While the Nation may utilize its own procurement procedures as documented in this Code, all procurements utilizing federal funds (subject to the exception stated above in Section 103 (B)) must conform to applicable federal law and standards identified under 2 CFR 200.318-200.326, which in general require the following:
1. Written selection procedures governing all procurements;
  2. Oversight by the Nation to ensure that contractors perform in accordance with the terms and conditions of the agreements under which goods or services are procured;
  3. Written standards of conduct governing conflicts of interest (including internal organizational conflicts) aimed at ensuring no real or apparent conflicts arise during procurement actions and that responsible officials and employees adhere to a code of ethics;
  4. Avoidance of acquisitions of unnecessary and duplicative items;
  5. If available and applicable, excess federal property should be considered before purchasing new equipment;
  6. Use of value engineering requirements in contracts for construction of sufficient size to warrant value engineering;
  7. That Contracts will be awarded only to responsible contractors having the demonstrated ability to successfully perform the requirements of the contract;
  8. Detailed records of the history of each procurement must be maintained, stating the reasoning behind the method of procurement used, selection of the type of contract used, contractor selection or rejection, and the basis for the contract price;
  9. The Nation must assume responsibility for settlement of all contractual and administrative issue arising from procurements;
  10. All procurements must be conducted in a manner providing full and open competition consistent with the federal standards;
  11. Procurements must be conducted in a manner that prohibits the use of locally imposed (imposed by Nation) geographic preferences in the evaluation of bids or proposals, except where federal law requires or encourages such geographic preferences, or where no federal funds are used in the procurement;
  12. Maintenance of written procedures for procurement transactions that provide for clear and accurate descriptions of the goods or services being solicited;
  13. Provide that all pre-qualified list 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. Potential bidders may not be prohibited from qualifying during the solicitation process;
14. All necessary affirmative steps must be taken to assure that minority business enterprises and labor surplus area firms are used when possible;
  15. When requested by the funding agency, technical specifications on proposed procurements will be provided to the agency for its review;
  16. Applicable bonding requirements will be enforced; and
  17. Applicable federal contract provisions must be included in all procurement contracts.

## **Section 104 - Definitions**

A. The following definitions shall apply in the administration of this Code:

1. Construction. The process of building, altering, repairing, remodeling, improving, or demolishing any building, road, utility infrastructure, or other tangible improvements of any kind, on any real property. Construction is considered a “Service” under this Code. All materials, goods, equipment, etc., to be incorporated into any Construction are considered “Goods” under this Code.
2. Contract. An approved and executed written agreement for the benefit of the Nation that establishes a binding legal relationship between the Nation and a “Contractor” for the procurement of goods and/or services, obligating the Contractor to furnish specifically identified goods and/or services within a specified timeframe, and the Nation to pay a specified price for such goods and/or services. All contracts, regardless of size, must be reviewed and approved by the Nation’s Office of Attorney General prior to being forwarded to the Chairperson or the Tribal Council for final approval.
3. Contractor. An individual, partnership, firm, corporation, joint venture, seller, vendor, or other legal entity providing goods and/or services, whether acting directly or through agents or employees under the terms of a contract with the Nation.
4. Nation Funds. All funds administered by the Nation for procurements under this Code. Funds of the Nation include funds derived from the Nation’s General Revenues, as well as from federal funds made a part of the Nation’s Governmental Operations funds. The Nation may procure goods and services under this code (i) using only Nation funds, exclusive of Federal Funds, (ii) using only Federal Funds, or (iii) using a mix of Nation Funds and Federal Funds.
5. Goods. Any tangible item of personal property including, but not limited to, supplies, merchandise, equipment, building and construction materials of any kind, asphalt, concrete, machinery, tools, furniture, and computers, etc.
6. Nation. The Yavapai-Apache Nation, including the Nation’s departments, programs, Subordinate Economic Organizations (“SEO”), and other businesses owned by the Nation.

7. Nation-owned Business. Any business or business activity that is wholly owned by the Nation regardless of its form of organization.
8. Federal Funds. Any source of federal, state (federal funds passed through the state), or other funds, providing funds to the Nation that do not come directly from the Nation's General Revenues or Governmental Operations Fund. Generally, this include federal funds received from the federal or state government (Federal Funds passed through the state) under a governmental grant, contract, or intergovernmental agreement.
9. Procurement. Buying, renting, leasing, contracting for, or otherwise acquiring any goods and/or services including all functions and actions that pertain to identifying, pricing and obtaining any goods and/or services, including providing a description of requirements, selection and solicitation of sources and preparation and award of contract.
10. Request for Bids (RFB). A process by which a written solicitation is issued by the Nation inviting contractor/seller/vendor/ responses when specific goods and/or services have been identified for procurement and price quotations are needed from several contractors/sellers/vendors for provision of said goods and/or services.
11. Request for Proposal (RFP). A written solicitation issued by the Nation that conveys to contractors/sellers/vendors, a requirement for goods and/or services that the Nation is considering for procurement and invites their proposal to provide such goods or services. The RFP process may include the Nation's consideration of whether the contractor/seller/vendor's experience, qualifications, demonstrated quality of work, and proposed solution may take precedence over price, unless such consideration is prohibited by federal requirements.
12. Services. Time, effort, and work-product provided by a contractor that results in a benefit to the Nation, but that may not always result in the delivery of a tangible good to the Nation. Examples include, but are not limited to construction, repair work, consulting, and professional services.
13. Subordinate Economic Organization. The Nation's business enterprises established under the laws of the Nation; including the Cliff Castle Casino, Yavapai-Apache Sand and Rock, Distant Drums RV Resort, Yavapai-Apache Whitehills, and the Market Place are considered Subordinate Economic Organizations ("SEO's") of the Nation.
14. TERO. The Yavapai Apache Nation Tribal Employment Rights Office Code.
15. Tribal Council (Council). The governing body of the Yavapai-Apache Nation as established under Article IV of the Constitution of the Yavapai-Apache Nation.
16. Vendor. A contractor, seller, supplier, retailer, or individual or firm that provides goods to or performs services for the Nation.

## **CHAPTER 2 – ADMINISTRATION OF PROCUREMENT ACTIONS**

### **Section 201- Procurement Officer – Delegation of Authority**

- A. All procurement actions shall be administered by the Procurement Officer, who shall be the Nation’s Chairperson or other individual(s) the Chairperson has delegated procurement authority to in writing. The Chairperson shall have authority to issue such written operational procedures, regulations and interpretations as needed to implement this Code.
- B. The Chairperson or his/her designee shall ensure that:
  - 1. To the greatest extent practical, procurement requirements are subject to an annual planning process, including budgetary planning as part of the Nation’s annual budgeting process.
  - 2. Contracts and contract modifications (including all amendments and change orders) have been reviewed and approved by the Nation’s Office of Attorney General, are in writing, clearly specifying the desired supplies, services, or construction scope of work, terms and conditions, and all modifications thereto.
  - 3. All awarded contracts are supported by sufficient documentation of the history of the procurement; including at a minimum the method of procurement chosen, the selection of the contract type, the bid/offer documents, the rationale for selecting or rejecting bids/offers, and the basis for the contract price agreed to.
  - 4. Contract award is made to the responsive and responsible bidder offering the lowest price, consistent with applicable Indian preference requirements (for sealed bid contracts), and is made to the offeror whose proposal offers the greatest value to the Nation, considering price, quality, technical, and other factors as specified in the solicitation, including Indian preference (for contracts awarded based on competitive proposals), and that unsuccessful firms are notified within ten days (or other time period required by applicable law) after contract award.
  - 5. There are enough unencumbered and budgeted Funds of the Nation available to cover the anticipated costs of each procurement before issuing a contract award or modification (including change orders), and that work is inspected and approved before payment, and payment is made promptly for contract work performed and accepted. All procurement expenditures shall be subject to the requirement that the expenditure be traceable and attributable to the Nation’s then-current operating and capital budgets as approved by the Tribal Council under the budget approval process.
  - 6. That all procurements using federal funds are conducted in accordance with applicable federal and Nation procurement and Indian Preference requirements.

## **Section 202 - Delegation of Approval Authority for Procurement Actions Not Exceeding \$50,000; Reporting**

- A. Procurement approval authority vested with the Tribal Council is hereby delegated to the Chairperson or his/her duly authorized representative (including the Vice-Chairperson), for all procurement actions not exceeding \$50,000 in value and for which budget authority has been provided by the Council through the Nation's annual budget process; with the exception of the following matters for which the Tribal Council reserves approval authority to itself:
1. Selection and engagement of Legal Counsel (Attorney General and outside legal counsel).
  2. Selection and engagement of Independent Auditors.
  3. Selection and engagement of other professional advisors and consultants to the Tribal Council for which an ongoing relationship is anticipated.
  4. Any contract or procurement, including a purchase order, that is made by or on behalf of a Subordinate Economic Organization of the Nation, which requires Council approval under applicable laws of the Nation, including any law establishing the Subordinate Economic Organization (see the Business Codes of individual SEO's) shall be referred to the Council for consideration, provided that the Council may adopt laws delegating such authority to the applicable board of directors or employees of such subordinate organization for all procurements not requiring Council approval.
- B. The Chairperson may delegate a portion of his/her procurement authority to Directors and Managers and other officials under his/her direction, provided that such delegation shall:
1. Be in writing and shall specify the authority and limits of authority which are individually delegated.
  2. Be applicable only to procurements undertaken in acquiring needed goods and services for the Nation, in conjunction with the assigned employee's duties (for example, the acquisition of supplies and other routine items needed for day-to-day operations within the department or program).
  3. Be made only to individuals who meet necessary educational and experience requirements for such delegation, are fully advised as to the Nation's policies, and are fully trained and aware of the Nation's policies.
  4. Be made only to employees of the Nation (not to contractors or temporary employees) and shall expire upon termination of employment or when earlier withdrawn by the Chairperson.



5. Be immediately withdrawn based on failure of the employee to follow established policies and procedures.
  6. Put the employee on notice that failure to follow established procedures shall result in withdrawal of such authority and/or other disciplinary action depending upon the nature of the issue and the severity of the failure.
- C. The Treasurer's monthly financial reports to the Tribal Council shall include information regarding the procurement actions taken during the prior month for any amounts less than \$50,000.00, which includes a list of contracts, agreements, and/or purchase orders made by or on behalf of the Nation with their respective amounts and essential terms of agreement.

**Section 203 - Procurement Approval Authority for Procurement Actions of More than \$50,000 are Reserved to Tribal Council**

- A. The Tribal Council reserves to itself the approval authority for all procurements exceeding \$50,000, with the following exceptions:
1. Procurements delegated to the Nation's Subordinate Economic Organizations under the laws of the Nation (see Business Codes of the individual SEO's); and
  2. Specific procurements authorized directly by Council resolution.
- B. Except as provided above, all procurements exceeding \$50,000 shall be authorized by resolution of the Tribal Council.
- C. Contingency Reduction of Approval Limits. During periods of unexpected and negative economic impacts, as reported by the Treasurer and acknowledged by the Tribal Council, the above-stated procurement approval limits shall be reduced as directed by the Tribal Council.

**Section 204 - Authority for Execution of Contracts and Other Obligor Documents**

Procurement contracts and other obligor procurement documents shall be executed by the Chairperson or Vice Chairperson as the Chairperson may delegate, or as otherwise authorized by the Tribal Council and reflected in meeting minutes or resolution of the Tribal Council.

## CHAPTER 3 - PREFERENCE IN CONTRACTING

### Section 301 - Nation-Owned Businesses

#### A. Procurement Preference Required

##### 1. General

- a. This Section specifies the methods and procedures the Nation (including its Departments, Programs, SEO's and other Nation-Owned Businesses, collectively the "Nation") must follow in order to comply with the requirement of providing preference to Nation-owned businesses when contracting for any goods and/or services;
- b. Except as provided under this Section 301, procurement by the Nation's subordinate economic organizations is governed by the business code under which the organization was established by the Tribal Council. No employee of the Nation's subordinate organizations shall be delegated procurement authority or the power to execute any contract except in accordance with said applicable business code.
- c. **Unless prohibited by federal law and regulation as referenced herein**, all Contactors (including the Sub-contractors of any Contractor) contracted by the Nation or its Departments, Programs or SEO's must adhere to the methods and procedures of this Section when subcontracting;
- d. This Section shall apply to all procurements conducted by the Nation as well as to any person or entity contracting with the Nation, with the exception noted in A.1.d immediately below;
- e. Preference is not given for restaurants, food vendors, and caterers. Therefore, this Section does not apply to such vendors;
- f. This Section shall not be interpreted in any way to prevent the Nation from rejecting any bid or proposal on the ground that the bid or proposal is unresponsive or for any other reason provided in this Code.

##### 2. Preference Required for Nation-Owned Businesses

- a. The Nation shall give preference to Nation-owned businesses when awarding contracts for the procurement of goods and services as provided in this Code.
- b. All RFB's and RFP's, or other invitations for bids or contract solicitations issued by the Nation shall contain a statement that preference, as defined in this Code, applies in the award of the contract and in the procurement of all goods and/or services under the contract and a copy of this Code shall be included in all bid and contract documents;

- c. **The Preference established by this Section 301 will apply to all procurement actions, unless otherwise prohibited as an organizational conflict of interest by an Outside Funding Source under federal or state procurement policies required by federal or state grants and contracts administered by the Nation. See for example 2 CFR §200.318(c)(2).**

B. Process for Procuring Goods/Services from Nation Owned Businesses

1. If a Nation-owned business can provide the solicited good or service sought under the procurement, quotes will not be obtained from any other source, nor will competitive procurement methods be utilized. If no Nation-owned business can provide the solicited goods or services, then procurement may be sought from any other available source in accordance with this Code.
2. The Nation-owned business will be deemed a sole source and the Nation, through its Department or Program engaged in the procurement, will negotiate a price for the good or service being procured.
3. If a mutually acceptable negotiated price cannot be agreed to between the Nation and the Nation-owned business proposing to supply the goods or services, the Nation, Department, or Program seeking the procurement may then look to sources other than the Nation-owned business to obtain quotes and an agreement for procurement of the required goods or services in accordance with this Code.

**Section 302 – Preference in Contracting and Subcontracting**

- A. As provided in the Nation’s TERO Code, in the acquisition of goods and services (including construction contracts), using only the Nation’s non-federal funds, preference shall be provided to qualified firms as follows:
  1. Certified Firms: (a) Certified Yavapai-Apache firms whose principal place of business is located on Yavapai-Apache Lands; (b) Certified Yavapai-Apache firms whose principal place of business is located outside of Yavapai-Apache Lands; (c) Certified American Indian owned firms; (d) Non-certified firms with 60-percent American Indian ownership; and (e) All other firms.
  2. Qualified Firms. Under this Chapter the Term “Qualified Firms” shall mean Firms that have been Certified by the Procurement Officer as eligible for the preference provided under this Chapter.
  3. Certification. An applicant seeking to qualify for the preference in contracting and subcontracting under this Chapter shall submit proof of the applicant’s Indian Ownership to the Procurement Officer. The Procurement Officer shall provide written certification of Indian ownership to applicants who qualify under this Chapter. Proof of Indian Ownership shall include, but not be limited to:

- a. Certification by a federally recognized Indian tribe or the U.S. Bureau of Indian Affairs (BIA) that the applicant is a member of a federally recognized Indian tribe and therefore eligible to receive preference. The Nation shall accept an original certification (not a copy) of a federally recognized tribal government or the BIA that an individual is a tribal member. Such tribal or federal certification shall be the only acceptable evidence of Indian status. Applicants, contractors, or subcontractors found to have negligently or willfully misrepresented their Indian status to a tribal agency or contractor shall not be allowed to contract with any tribal agency or contractor for 60 months after a finding of such misrepresentation. The Procurement Officer shall give written notice to all the Nation's departments and programs of the fact and duration of such a disbarment from contracting.
- b. Evidence (including but not limited to stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the Indian-owned enterprise or organization) that the applicant enterprise or organization is at least 60 per cent Indian owned and that at least 60 percent of all profits will flow to the Indian owner(s) during all portions of the contract or subcontract term.
- c. No Indian/non-Indian joint venture shall be provided a preference under this Chapter in contracting or subcontracting unless the Indian portion of the joint venture can successfully demonstrate that it has the capability to manage all the work on the project on its own and has entered into the joint venture because the non-Indian firm provides only limited backup capability such as bonding, specialized expertise, or capital.
- d. A firm seeking a contracting or a subcontracting preference under this Chapter shall submit evidence sufficient to demonstrate to the satisfaction of the Nation and/or the contractor, as appropriate; that the applicant has the technical, administrative, and financial capability; and/or the necessary license(s) and ability to secure bonding; to perform contract work of the size and type involved, and within the time provided, under the terms of the proposed contract or subcontract.
- e. The Nation may state in its solicitation that bidders or persons and entities submitting proposals, must submit evidence of certification as an Indian contractor and entitlement to the preferences provided for in this Chapter, within a specified time period before a scheduled bid opening.
- f. The Procurement Officer shall review the status of all certified Indian contractors on at least an annual basis. If the Procurement Officer, or a contractor determines that an applicant is ineligible for Indian preference, the Procurement Officer, or the contractor shall notify the applicant in writing as set out in this Chapter.
- g. No contractor or subcontractor shall qualify for preference if Indian ownership in, or control of, the business is less than 60% at any time during the bidding stage, the proposal stage, or the performance of the contract.

4. Indian Preference in the Award of Contracts and Subcontracts. Preference in the award of Contracts and subcontracts procured under a RFB process (construction contracts and material supply contracts), as well as well as for all procurements falling below the small purchase amount, will be provided in accordance with this Chapter and as specified under Chapters 4 and 5 hereinbelow. This requirement applies to all such contracts, regardless of the source of funding for the procurement, unless the federal standards require application of federal preference standards.
- B. Contracts for construction and materials supply shall be awarded under preference to a qualified firm who is responsible and when its bid is responsive to all other conditions and does not exceed the lowest bid received in response to the solicitation by the following percentages, when the lowest bid is:
    1. \$0 to \$10,000: 15%
    2. \$10,001 to \$50,000: 10%
    3. \$50,001 to \$100,000: 5%
    4. Over \$100,000: 3%
  - C. For purposes of this Section, the definition of “firms” shall include sole proprietorships, partnerships, limited liability companies, firms, corporations and not-for-profit corporations, and other Indian owned organizations and Indian-owned Economic Enterprises, where the ownership interest of their members or directors and management consist of at least 60% or more of the ownership and controlling interest of said qualified firms as identified in Subsection (A) above.
  - D. Indian Preference requirements of a federal funding source established under federal law and regulation, which are not otherwise eligible to be supplanted by this Code, shall be followed.**
  - E. Goods and services to be acquired shall, when practical, be specified in enough detail to make price the deciding factor in selection of the successful bidder. All prospective bidders shall be put on notice of the bidding preference policy in accordance with Subsection E below.
  - F. Regardless of tribal affiliation, preference is not required to be afforded to contractors who do not have the ability to perform successfully under the terms and conditions of the proposed procurement as determined in accordance with Section 401 of this Code, or where the quality of the goods proffered under the procurement fails to satisfy the Nation’s specification and quality requirements.
  - G. Where the provision of preference is determined by the Nation not to be feasible, the Nation shall: (1) document in writing its determination and the basis for its findings; and (2) shall maintain for three years the documentation in its files; and The written determination shall be public information.

#### H. Federal Indian Preference Requirements (when determined to be applicable):

1. Projects developed and operated using federal funding sources may be subject to federal Indian preference requirements under Section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. §5307(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. Preference must be provided in accordance with the methods set forth in federal regulations governing procurements issued by the funding source. Where Indian preference is determined not to be required or is not feasible, the Nation shall document the procurement file with the basis for its findings of non-applicability. Indian preference in the solicitation, evaluation, and award process shall be as described in any federal regulations determined to be applicable or under the requirements of this Code where the federal regulations defer to tribal preference codes and policies. In no case where the federal preference applies shall the Nation authorize or provide a preference for Indians, Indian-owned economic enterprises, or Indian organizations, based on a particular tribal affiliation or membership (Indian preference is permitted but a tribal specific preference is not allowed). However, under federal law, the Nation may apply its preference to procurements funded with Indian Self-Determination Contract funds under 25 U.S.C. §5307(c), (P.L. 93-638 Contracts).
2. Eligibility. Eligibility for Federal Indian preference shall be determined in accordance with applicable federal regulations. If the Yavapai-Apache Nation or its prime contractor determines an applicant ineligible for Federal Indian preference, the Yavapai-Apache Nation or prime contractor shall notify the applicant in writing before contract award.
3. Required Preference Clauses in Contracts and Solicitation Notices. Contract Solicitations (Bids/RFP's/RFQ's) where the federal Indian preference is determined applicable shall include the following information:
  - a. A statement of the applicability or inapplicability of Federal Indian preference to the solicitation and a time before the due date for bids/offers by which bidders/offerors must submit proof of eligibility for Indian preference.
  - b. The Nation's preference requirements stated in Section 301 (A) above, together with a copy of the Nation's TERO Code.
  - c. Information as to whether the Nation maintains lists of Indian-owned economic enterprises and Indian organizations by trade specialty which are available to contractors and subcontractors for use in meeting Indian preference requirements.
  - d. A requirement that bidders/offerors (and their subcontractors, if required by the Nation) provide a statement describing how they will provide Indian preference in subcontracting, training, and employment; including any TERO Compliance Agreement.

- e. The Nation's description of the information to be submitted to establish eligibility for Indian preference.
  - f. The factors that the Nation will use in judging the adequacy of the Indian preference information submitted.
  - g. A statement that failure to submit the required Indian preference statements on subcontracting, training, and employment shall be grounds for rejection of the offer.
  - h. A requirement that each contractor and subcontractor submit a certification and report to the Nation detailing the reasons why the contractor or subcontractor has concluded it is not feasible to provide Indian preference in subcontracting.
  - i. For RFP's that are not restricted to Indian-owned economic enterprises or Indian organizations, the percentage or number of points set aside for Indian preference and the method for allocating these points.
  - j. A requirement in unrestricted RFPs that subcontractors using requests for proposals solicit subcontractors by reserving 15% of the available rating points for Indian preference in subcontracting and the criteria to be used in evaluating subcontractor proposals.
  - k. Solicitations, contracts, and subcontracts shall include the following:
    - (1) The applicable clause prescribed in federal regulations implementing Section 7(b) of the Indian Self Determination and Education Assistance Act in connection with the Nation's projects (e.g. IHS, EPA, BIA, BOR, and other funding agencies).
    - (2) The grounds for termination of a contract or the imposition of penalties for improper preference certification.
4. Monitoring and Remedies. The Nation shall monitor the implementation of 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.

## **CHAPTER 4 – PROCUREMENT OF CONSTRUCTION CONTRACTS**

### **Section 401 - Responsibility and Qualifications of Construction Contractors**

- A. The Nation shall contract only with responsible and responsive contractors who can perform successfully under the terms and conditions of a proposed procurement, as determined by the Nation. All construction contracts submitted to the Council for approval shall be accompanied by a brief written report summarizing the review and evaluation of contractor responsibility and qualifications required below.
- B. Determination of Contractor Responsibility:
1. Qualification as a “Responsible Contractor” is limited to contractors who (1) have demonstrated the technical competence and financial ability to perform the work under the terms and conditions of the proposed contract, and who (2) have a demonstrated record for integrity and successful completion of contracts similar in scope to the work of the contract for which the Contractor is being considered for award. Before awarding a contract, the Nation shall review and evaluate the proposed contractor’s ability to successfully perform the contract, considering factors such as the contractor’s demonstrated integrity, compliance with public policy, the record of past performance on the Nation’s projects or any other projects (including contacting previous clients of the contractor), and financial, administrative, and technical capability to perform contract work of the scope involved and within the time provided under the proposed contract. The unreasonable failure of a contractor to promptly supply information requested by the Nation with respect to responsibility may be grounds for a determination of non-responsibility with respect to such contractor.
  2. The Nation shall also review the proposed contractor’s past compliance with the laws of the Nation, as well as the laws of the United States and any state. A proposed contractor shall not be considered responsible if they have a history of non-compliance with said laws, or if the Nation’s review and evaluation of the contractor’s ability to successfully perform the contract results in a negative evaluation. 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.
- C. Determination of Contractor Qualifications
1. The Nation shall not contract with any construction contractor who fails to satisfy the following criteria:
    - a. The construction contractor must be registered with and licensed by the Arizona Registrar of Contractors.
    - b. The Contractor must be in good standing with the Arizona Registrar of Contractors and any other state agency responsible for regulating the contractor.



- c. The Contractor, and/or any individual principal of the contractor, must not be listed on the System for Award Management (“SAM” [www.sam.gov](http://www.sam.gov)) maintained by the United States General Services Administration to identify businesses and individuals who have been determined to be excluded, disqualified, debarred, suspended, proposed for debarment, or otherwise declared ineligible for receiving federal contracts or financial assistance.
- d. The Contractor must be in good standing with the Nation and shall not be listed on any list of debarred or suspended contractors maintained by the Nation.

D. Qualified Bidder Lists:

Interested businesses and contractors shall be given an opportunity to be included on any qualified bidder’s lists developed and maintained by the Nation. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services (including construction contracts), shall be kept current and shall include enough qualified sources to ensure competition. Lists of pre-qualified Indians, Indian Organizations or Indian-Owned economic enterprises, and non-Indian firms may be developed and maintained by the Nation. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, qualified suppliers. All pre-qualified bidders shall be subject to satisfying all requirements of this Section as a condition to a contract award.

E. Business License

Contracts shall not be awarded to contractors who do not possess a Business License issued by the Nation. The Office of the Treasurer/Finance Director shall establish the requirements for issuance of a Business License.

E. Bonds

- a. Bid Bonds shall be required of all bidders for construction contracts exceeding \$100,000 equal to 5% of the bid.
- b. In addition to satisfying the other requirements of this Code, for construction contracts awarded under the sealed bid process and that exceed \$100,000, the successful bidder shall be required to submit one of the following forms of assurance, as specified by the Nation in the solicitation (or as required under applicable federal regulations), within 10 days after the prescribed contract forms are presented for signature:
  - i. Separate Performance and Payment bonds for 100% of the total contract price.
  - ii. A cash escrow deposited with the Yavapai-Apache Nation of not less than 25% of the total contract price, subject to reduction, during the warranty period commensurate with potential risk.

- iii. An irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of the Yavapai-Apache Nation, subject to reduction, during the warranty period commensurate with potential risk.
  
- c. The determination of which form of assurance to require shall be in the complete discretion of the Nation based upon the scope, complexity, cost or risk of any construction or facility improvements. The determination shall be in accordance with any funding agency requirements under applicable federal law or regulation. The specified bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the State of Arizona. Individual sureties shall not be acceptable. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory where required by federal regulations.

#### **Section 402 - Contractor Debarment and Suspension**

- A. Contracts shall not be awarded to contractors who have been debarred, suspended, or otherwise determined to be ineligible for contracts, as determined by the Nation, or by any federal or state agency having a responsibility for monitoring and reporting on the activities and eligibility of contractors. Contractors may be suspended or debarred by the Nation when necessary to protect the Nation. Contracts shall not be awarded to, nor purchase orders entered with, debarred, suspended, or ineligible contractors or vendors.
  
- B. Procedure for Debarment and Suspension
  - 1. After reasonable notice to the person, business, or contractor involved and reasonable opportunity for that person, business or contractor to be heard, the Tribal Council, after consulting with the Attorney General, is authorized to debar a person, business or contractor for cause from further consideration by the Nation for award of contracts. The debarment shall be for a period up to but not more than five years as determined by the Tribal Council.
  
  - 2. After consultation with the Attorney General, the Tribal Council is authorized to suspend a person, business or contractor 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.
  
- C. 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 tribal (any tribe, including the Nation), 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 contractor.
3. Conviction under tribal, 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 Nation to be so serious as to justify debarment action, such as:
  - a. Deliberate failure without good cause to perform in accordance with the plans and specifications or within the time limit provided in the contract.
  - b. A recent (within the last 5 years) 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 a basis for debarment.
5. Being currently listed on the System for Award Management (“SAM”) maintained by the United States General Services Administration to identify businesses and individuals who have been determined to be excluded, disqualified debarred, suspended, proposed for debarment, or otherwise declared ineligible for receiving federal contracts or financial assistance.
6. Any other cause the Nation determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in this Manual.

#### D. Decision to Debar or Suspend

The Nation, acting through the Council, 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 of the debarment or suspension. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended entity.

#### E. Finality of Decision

A debarment/suspension decision issued by the Council under this section shall be final and not subject to appeal.

## CHAPTER 5 - PROCUREMENT METHODS AND PROCEDURES

### Section 501 - Authorized Methods of Procurement

Varying methods of procurement will apply to the Nation's procurements depending on the dollar-value of the Procurement. There are five methods of procurement as follows:

- Micro Purchases, up to \$10,000, no competitive quotes if price determined reasonable;
- Small Purchases, up to \$250,000, simple informal process, based on price or rate quotes;
- Sealed Bid Purchases, over \$250,000, formal bid process, applies to all construction projects regardless of price, except where the Tribal Council authorizes proceeding by Competitive Proposal, price is a major factor;
- Competitive Proposal purchases over \$100,000, fixed price or cost reimbursement, RFP required with evaluation of qualifications and price; and
- Non-competitive or sole-source purchases limited to special circumstances.

When procuring construction contracts, the Nation may utilize one of the following three procurement methods:

- Design-Bid-Build - under which the Nation first procures the project design under a separate contract and then submits the resulting design and contract documents to formal competitive bidding or competitive proposals under the procedures specified hereinbelow.
- Design-Build - under which the selected contractor provides both design services and construction of the project. The Nation procures the Design-Build contract through competitive proposals.
- Construction Manager at Risk (CMAR) - under which the selected contractor oversees the entire project, providing both design (some or all) and construction services. Under this method the Nation may elect to have the contractor provide all design services or alternatively to work with a design professional selected by the Nation to produce final design and construction documents, including final project costs estimates through value-engineering. The project costs estimates will form the basis of the CMAR's Guaranteed Maximum Price under the CMAR contract. The CMAR then acts as the Nation's representative in each step of the construction process; including pre-construction, design, bidding, and construction. The Nation procures the CMAR contract through competitive proposals.

When procuring goods and services for its governmental operations, the Nation shall choose one of the following authorized procurement methods, based on the nature and anticipated dollar value of the procurement:

#### A. Micro-Purchases

1. Procurements **not exceeding \$10,000**, or the amount set forth in any applicable federal procurement standards as amended.
2. Micro Purchase Procedure. Micro Purchases (typically supplies or consulting services) may be awarded based on documented verbal, written or online quotations

with appropriate competition. No competitive quotes are required if the Procurement Officer or other awarding official with delegated authority determines that the price is reasonable. A cost or price analysis is not required. The Nation will, to the extent practicable, distribute micro-purchases equitably among qualified suppliers.

## B. Simplified Procurement - Small Purchases

1. Procurements **not exceeding \$250,000**, or the amount set forth in any applicable federal procurement standards as amended, do not require competitive (sealed) bids (except for construction contracts, which will require either competitive bidding or competitive proposals as authorized by the Council under the procedures set out below) and competitive proposal procurement methods shall not be applied to small purchases; provided that, competition shall be obtained in small purchase procurements to the maximum extent practicable.
2. Small Purchase Procedure
  - a. To ascertain whether competition is adequate, informal price or rate quotations shall be obtained from at least three qualified sources, if available, including a qualified Indian preference source when available. Contract requirements shall not be artificially divided to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section 501 A.2 of this Code).
  - b. Indian Preference. The Preference requirements specified under Chapter 3 above shall, to the greatest extent feasible, be applied to small purchases. The Nation shall document its efforts in providing Indian preference. If no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations, the Nation shall document the procurement file with the reasons for the lack of Indian participation. Procurement may then proceed to award of the purchase.
  - c. Obtaining Quotes. The Nation shall solicit price quotations by phone, letter, internet, or other informal procedure that allows participation by a reasonable number of competitive sources (more than one). When soliciting price/rate quotations, the Nation shall inform the sources solicited of the specific item being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. When soliciting quotations, the Nation shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation if it is submitted within 10 days of the oral quotation or by the due date for submitting quotations. The names, addresses, and/or telephone numbers of the sources contacted, and the date and amount of each quotation shall be recorded and maintained by the Nation as an official record. If not soliciting quotations, price/rate quotations may be obtained in writing, orally, from vendor price list on vendor websites, and through on-line web searches. All such quotes shall be documented in writing for the record.
  - d. Competition. The Nation shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer

than three sources is acceptable if the Nation has attempted but has been unable to obtain at least three quotations. The inability to obtain three quotes shall be documented in writing for the record.

e. Award

(1) Award Based on Price. For small purchases awarded based on price and fixed specifications (i.e., not subject to negotiation) the Nation shall make award to the qualified Indian-owned economic enterprise or organization (if any) with the lowest responsive quotation if it is reasonable and no more than 3% higher than the lowest responsive quotation received. If no responsive quotation from a qualified Indian-owned economic enterprise or organization is within 3% of the lowest responsive quotation from any qualified source, then award shall be made to the source with the lowest quotation.

(2) Award based on factors other than price. For small purchases awarded based on factors other than price (based on an evaluation and rating system), 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 of price. The solicitation shall reserve 10% of the total evaluation points for providing Indian preference for qualified firms. Award shall be made to the best proposal or quotation in accordance with the stated rating system.

C. Major Procurement – Request for Bids

1. **Procurements exceeding \$250,000** shall require formal bidding procedures or formal competitive proposals provided in writing to the Procurement Officer or other awarding official, as appropriate. All construction procurements shall require competitive bidding, except where: (i) a complete adequate, and realistic specification or purchase description is not available or readily developable, (ii) the Nation cannot obtain bids from two or more responsible bidders, (iii) the procurement does not lend itself to a firm fixed-price contract and it is impossible to select a contractor on the basis of price, or (iv) the Council authorizes proceeding by competitive proposals.

2. Major Procurement Procedures – Bids and Competitive Proposals

a. Bids: Except as otherwise provided herein, bids are required for all procurements over \$250,000. Formal bid solicitation (Request for Bids) is required, and the fixed price “lump-sum or unit price” is awarded to the responsive and responsible bidder whose bid conforms to all material terms of the solicitation and is the lowest in price. Time and Materials (T&M) contracts can be used only when (i) no other contract is suitable for the work (e.g., where the scope of the work or the duration of the work is unclear and not subject to a firm bid); and (ii) the contract includes a ceiling price that the contractor exceeds at its own risk or (iii) as otherwise approved by the Council. Cost-plus contracts may not be used for procurement.

- b. Competitive proposals: Competitive proposals are generally used to procure professional services such as architects and engineers. However, the Nation may use competitive proposals for procurement of construction contracts when authorized by the Council. Competitive proposals include procurement of professional services and construction contracts (as authorized by the Council) having a contract amount over \$100,000, require formal solicitation, are used where either a fixed price (including a Guaranteed Maximum Price (GMP)) or cost-reimbursement (fees and expenses) contract will be awarded, and are used when bids are not appropriate. The contract should be awarded based on the most advantageous proposal submitted to the Nation, with the price being one of the various factors considered.

### 3. Major Procurement - Bid Procedure

- a. General. The Nation shall use the bid procurement method for procurements over \$250,000, and for all construction contracts regardless of price, except when the Council authorizes proceeding by competitive proposals.
- b. Bids are appropriate when the following conditions are present: A complete, adequate, and realistic specification or purchase description is available; two or more reasonable 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. Bidding shall be used for all construction projects, except when the Council authorizes proceeding by competitive proposals, and for equipment contracts exceeding the small purchase limitation. For professional services contracts, competitive proposals should be used.
- c. Request for and Receipt of Bids
  - (1) Request for Bids and Amendment. A Request for Bids (RFB) shall: (i) be issued by formal advertising (ii) be solicited from an adequate number of qualified known providers of the service to be procured, (iii) provide a complete, adequate, and realistic specification or description of the service to be procured, together with a description of all contractual terms and conditions applicable to the procurement; (iv) provide sufficient response time prior to the time set for bid opening, and (v) provide for public opening of the bids at a time and place set in the RFP. Any amendments to the RFB shall be in writing, and if it is necessary to issue an amendment within seven days of the bid opening, the bid opening shall be postponed until at least seven days after the issuance of the amendment. 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.
  - (2) Restricted Solicitation. The Nation may, but is not required to, restrict the RFB to qualified Indian-owned economic enterprises and Indian organizations if the

Nation has a reasonable expectation of receiving the required minimum number of bids from such organizations (see subsection e. (1) below). The Nation shall solicit bids from non-Indian as well as Indian-owned economic enterprises and Indian organizations if the Nation decides not to restrict the solicitation; or if an insufficient number of qualified Indian-owned economic enterprises or organizations submit responsive bids in response to a solicitation, or where only one Bid is received and not accepted.

- d. Bid Opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded, and the bids shall be available for public inspection.
- e. Award. Award shall be made as provided in the RFB by written notice to the successful bidder, as follows:
  - (1) Restricted Solicitations. If the Nation restricts the RFB to Indian-owned economic enterprises and organizations, and two or more [or a greater number determined by the Nation and stated in the invitation] qualified Indian-owned economic enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If equal low bids are received, award shall be made by drawing lots or similar random method, unless otherwise provided in applicable law. If fewer than the minimum number of qualified Indian-owned economic enterprises or organizations submit responsive bids, the Nation shall cancel the solicitation and resolicit, inviting bids from non-Indian as well as Indian-owned economic enterprises and organizations.
  - (2) Unrestricted Solicitations. If the RFB is not restricted to Indian-owned economic enterprises and organizations, award shall be made to the qualified Indian-owned economic enterprise or organization with the lowest responsive bid in accordance with Section 301 above. If equal low bids are received from qualified Indian-owned economic enterprise or organizations, award shall be made by drawing lots or similar random method, unless otherwise provided in applicable law. If no responsive bid by qualified Indian-owned economic enterprise or organization is within this range, award shall be made to the lowest responsible, responsive bidder.
- f. Mistakes in Bids
  - (1) Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or electronic 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 clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price intended. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clear on the face of the bid document, but the



intended bid is unclear, or the bidder submits convincing evidence that a mistake was made.

- (2) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Procurement Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Nation or fair competition shall be permitted.

#### D. Major Procurement - Competitive Proposals

1. General. The Nation shall use the procurement method of competitive proposals for purchases over \$100,000 (i) when there is an adequate method of evaluating technical proposals (including turnkey proposals for development and professional service contracts) and (ii) where the Nation determines that conditions are not appropriate for the use of sealed bidding; or (iii) when the Council approves proceeding by competitive proposals. An adequate number of qualified sources should be solicited.
2. Solicitation – Request for Proposals
  - a. General. The request for proposals (RFP) may be restricted by the Nation to qualified Indian-owned economic enterprises and Indian organizations if the Nation has a reasonable expectation of receiving offers from two [or greater number stated in the RFP] such qualified entities. The Nation shall solicit proposals from non-Indian as well as Indian-owned economic enterprises and Indian Organizations if the Nation prefers not to restrict the RFP; or if an insufficient number of qualified Indian owned economic enterprises or Indian organizations satisfactorily respond to a restricted RFP; or where a single proposal is received but not accepted. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
  - b. Evaluation Factors. The RFP shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. The Nation shall reserve 15% of the total number of available rating points in unrestricted solicitations for the provision of Indian preference in the award of contracts and subcontracts, and up to an additional 10% for evaluation of the offeror's statement regarding training and employment of Indians. The proposals shall be evaluated only on the criteria stated in the request for proposals.
  - c. Negotiations. In those situations where negotiations are deemed necessary, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification

of offeror's proposal and to address any deficiencies in both the technical and price aspects of their proposals to assure offeror's full understanding of and conformance to the solicitation requirements. 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 proposal prices to a specific amount to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- d. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Nation, provided that the price is within the maximum total contract price established for the specific project or activity. For solicitations restricted to qualified Indian-owned economic enterprise or Indian organizations, if two [or greater number stated in the RFP] such entities submit acceptable proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal, provided that the price is within the maximum total price established for the specific project or activity. If fewer than this number of Indian-owned economic enterprises or Indian organizations submits acceptable proposals, the Nation shall reject all proposals and resolicit without restricting the RFP to qualified Indian-owned economic enterprises and Indian organizations. The Nation may accept the sole proposal received, in unusual circumstances, such as when the Nation determines that the delays caused by resoliciting would cause higher costs, or where the Nation determines that the proposal has a fair and reasonable price.

#### E. Sole Source Procurement.

1. A Sole Source Procurement is any contract, purchase agreement, purchase order, invoice, or any other method of acquiring goods and services, approved by the Nation without a competitive process, based on a justification that only one known source exist or that only one single supplier can fulfill the requirements of the procurement.
2. When the procurement involves the use of the Nation's Funds only, Sole source procurement is authorized in any one or more of the following situations:
  - a. The goods and/or services are available from only one responsible source (as determined by documented research) and no reasonable alternative source exist that meets the Nation's requirements;
  - b. Only one source meets the Nation's business needs, such as compatibility or other unique feature of the product being procured, with the Nation's existing systems for maintenance and update purposes (e.g., proprietary system replacement parts, additional software licenses, updates, information technology, laboratory equipment, public safety equipment, etc.);
  - c. A compelling or unusual public urgency or emergency for the goods and/or services exists and will not permit a delay resulting from competitive solicitation;

- d. Procurement of public utility services;
  - e. Where a sales territory or product availability limits availability within limited geographic boundaries
  - f. After solicitation from several sources, competition is determined to be inadequate.
  - g. It is necessary to award the contract to a particular source:
    - (1) To maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of an emergency or to achieve industrial mobilization.
    - (2) To procure the services of an attorney or expert for use, in any litigation or dispute involving the Nation, in any trial, hearing, or proceedings before a court, administrative tribunal, or agency.
  - h. A contractor has a previous or ongoing relationship with the Nation under which a unique institutional knowledge of the Nation's governmental system and operational needs, geography, or land/water resources has been developed by the contractor, which knowledge would be difficult for a new contractor to quickly gain and where continuity of services is a concern to the Nation.
  - i. After solicitation of several sources, competition is determined inadequate.
  - j. In any other instance approved by the Council where such approval is not inconsistent with applicable federal regulations.
3. When the procurement involves the use of federal Funds only, or a mix of federal and Nation funds, Sole source procurement is authorized in any one or more of the following situations:
- a. The goods or services is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit will not permit the delay resulting from competitive solicitation;
  - c. The federal awarding agency or pass-through entity authorizes non-competitive proposals in response to a written request from the Nation; or
  - d. After solicitation of several sources, competition is determined inadequate.

#### 4. Sole Source Procurement Procedure

- a. The Chairperson is authorized to approve sole source awards not exceeding \$50,000 when the circumstances require, and it is in the best economic interest of the Nation to do so, except when applicable laws or regulations dictate a lower dollar value. The Tribal Council shall have authority to approve sole source awards exceeding \$50,000.
- b. Where procurement is from a sole source, a written justification shall be included in the purchase documentation justifying the reason and/or necessity for procuring the goods and/or services from a sole source. The justification must be approved by the procurement officer. A lack of advanced planning resulting in an urgent need for the goods or services is not adequate justification for procuring from a sole source.
- c. Price reasonableness. The reasonableness of the price for all procurement based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section 601.C below.

#### F. Miscellaneous Requirements

1. Architect/Engineer Services. Architect/Engineer services exceeding \$100,000 shall be obtained by either the competitive proposals method or qualifications-based selection procedures (Request for Qualifications). Sealed bidding shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation.
2. Cooperative Purchasing. The Nation may enter into State and local inter-governmental 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. The Nation encourages the use of Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.
3. Required Contract Provisions. When contracting using federal funds, the Nation's written contracts shall include the applicable provisions described in 2 CFR, Part 200, Appendix II, "Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

## CHAPTER 6 – SOLICITATIONS – COST ANALYSIS AND CANCELLATION

### Section 601 - Cost or Price Analysis

- A. General. A cost or price analysis as provided in this Section 601 shall be performed for all procurement actions exceeding \$250,000, including contract modifications. The degree of analysis shall depend on the facts surrounding each procurement. All cost analysis shall start with the Nation performing research and an independent estimate of prices prior to receiving bids or proposals.
- B. Submission of cost or pricing information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Nation (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
1. A cost breakdown showing projected costs and profit; or
  2. Commercial pricing and sales information, sufficient to enable the Nation 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
  3. Documentation showing that the offered price is set by law or regulation.
- C. Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted, a cost analysis shall be performed of the cost elements; the Nation may request to audit the offeror/contractor's books and records pertinent to such costs for verification purposes.
- D. Price Analysis. A comparison of prices shall be used in all procurements except those described in Section 501 A and B above – “Micro Purchases” and “Simplified Procurement”.
- E. Requirements for Cost and Price Analysis. In conducting Cost and Price Analysis, the Nation will observe the following requirements:
1. The Nation will conduct an independent estimate of cost or price prior to receiving bids or proposals;
  2. The Nation will negotiate profit as a separate element of the price for each contract in which there is no price competition, and in all cases where cost analysis is performed;
  3. In establishing a fair and reasonable profit, the Nation will consider the complexity of the work to be provided, the risk borne by the contractor, the contractor's investment, the amount of subcontracting involved in the work, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
  4. Costs or prices based on estimated costs for contracts under awards using federal funds

are allowable only to the extent that costs incurred or costs estimates included in negotiated prices would be allowable for the Nation under 2 CFR, Subpart E – Cost Principles. The Nation may reference its own cost principles if those principles follow federal cost principles.

5. The cost plus a percentage of costs and percentage of construction costs methods may not be used in procurement.

### **Section 602 - Cancellation of Solicitations and Rejection of Bids**

A. An request for bids, request for proposals, or other solicitation may be cancelled before offers are due if: the Nation no longer requires the supplies, services or construction; or, the Nation can no longer reasonably expect to fund the procurement; or, proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or for other similar reasons.

All bids received in response to a solicitation may be rejected if: the supplies, services, or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to the Nation; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, 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; or, for good cause of a similar nature when it is in the best interest of the Nation.

B. The reasons for cancellation and/or rejection shall be documented in the procurement file and the reason for cancellation and/or rejection shall be provided upon request to any offeror solicited.

C. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation for future procurement of similar items.

D. For solicitations that are not restricted to Indian-owned economic enterprises or Indian organizations, if all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the Nation shall cancel the solicitation and either:

1. Reissue the solicitation using a request for proposals; or

2. Complete the procurement by using the competitive proposals method, (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method (when only one bid is received at an unreasonable price); provided, that the Procurement Officer determines in writing that such action is appropriate, all bidders are informed of the Nation's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

## **CHAPTER 7 – Code of Conduct**

### **Section 702 – Ethics in Public Contracting - Code of Conduct**

In administering this Procurement Code, the Nation shall adhere to the following code of conduct, consistent with applicable federal law and laws of the Nation:

- A. Conflicts of Interest. No employee, officer or agent of the Nation shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
  - 1. An employee, officer or agent involved in making the award.
  - 2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in law, son-in-law, daughter-in-law, brother-in-law, sister in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister).
  - 3. His/her relationship partner.
  - 4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above individuals.
- B. Gratuities, Kickbacks, and Use of Confidential Information. Yavapai-Apache Nation officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.
- C. Prohibition Against Contingent Fees. Contractors shall not retain a person to solicit or secure a Yavapai-Apache Nation contract for a commission, percentage, brokerage, or contingent fee, except for bona-fide employees of the contractor.