

**POLICY FOR CONSTRUCTION RELATED SERVICES**  
**SECTION I: MISCELLANEOUS**

**1.1 Purpose.** This policy is adopted by the Sault Ste. Marie Tribe of Chippewa Indians (“Tribe”) in order to codify construction contracting bid procedures, and provide preference in the award of construction contracts to Indian owned economic enterprises. This policy is intended to include the invitation, solicitation, bidding and awarding of construction contracts. The selection of contractors shall be conducted with the goal of contracting with responsible contractors who have the technical and financial competence to perform in a professional manner, and who have a satisfactory record of integrity.

**1.2 Scope.** This policy is meant to cover all construction contracts being solicited by the Tribe that are over Ten Thousand Dollars (\$10,000.00) in value. All construction contracts that are below Ten Thousand Dollars (\$10,000.00) in value are not covered by this policy.

**1.3 Implementation/Operation.** The duties called for under this policy shall be carried out, and where necessary, enforced, by the Purchasing Department. If the policy delegates a duty to a stated department, program, or position, then that delegation controls.

**1.4 Exceptions.** This policy will govern the solicitation of bids unless the funding source specifies otherwise. If the funding source allows the Tribe to select between this policy and another procedure for solicitation and awarding of bids, the Tribe shall choose to follow this policy unless good cause exists not to.

**1.5 Definitions.**

**1.5.1 Construction Contract.** Any contract put to bid under this policy. If a single Construction Project is broken down into a number of construction contracts **with the intent of subverting compliance** with this policy, and any or all of the construction contracts have a value of less than Ten Thousand Dollars (\$10,000.00), those construction contracts shall be subject to this policy.

**1.5.2 Construction Projects.** Any new construction, additions to existing structures, remodeling of existing structures, repairs to existing structures, grading, road or parking lot paving, masonry, landscaping, water and sewer infrastructure, any and all mechanical services, and any other construction activity that can reasonably be considered to fall under the policy. Also, a project that can be considered a “goods and services” contract where the services are more than ancillary to the project. (When determining whether or not a proposed project is subject to this policy the Purchasing Department and the Requesting Department are advised to look to the definition of “fixtures” as it is used in the construction industry.)

**1.5.3 Requesting Department.** The tribal department, tribal program, tribal business, or casino department that has been charged with, or is seeking, the construction project.

**1.5.4 STC Capability.** The capability of STC shall be excavation, septic systems, snow plowing and removal, trucking, demolition, landscaping, masonry, cement work, rough and finish

carpentry, flooring, drywall, and general remodeling.

At the time this Policy is adopted this list shall be considered complete. If at any time in the future, should STC's capability permanently change from that found herein, STC shall inform the Purchasing Department of the change in capability and the Purchasing Department shall ensure that their implementation of this policy reflects the changed capability. (This is intended to allow this policy to operate without need for frequent amendments.)

Capability shall also mean STC's ability to provide the required construction services: (a) in a timely manner; (b) for an acceptable dollar amount; and (c) at an acceptable level of quality.

## **SECTION II: RIGHT OF FIRST REFUSAL**

**2.4 Right of First Refusal.** Sault Tribe Construction ("STC") shall be given the right of first refusal on all construction projects.

**2.4.1** STC shall be offered all construction projects that are within STC capability before bids can be let under this policy.

**2.4.2** If a construction project is reasonably believed to be outside STC capability the construction project does not have to be offered to STC and can proceed to bid. If a construction project is not offered to STC under this section and STC believes that the construction project in question is within STC capability, the Requesting and/or Purchasing Department shall first attempt to resolve the issue internally. If internal resolution fails; the issue shall be addressed by tribal or casino administration.

**2.4.3** STC shall only accept those construction projects that are within STC's capability, as defined in Section 1.5.4. STC must submit in writing a letter stating those construction projects which are not within STC's capability at that time.

**2.4.4** A failure of STC to respond in writing under this section within five (5) business days shall be deemed a STC rejection of the construction project and the construction project can proceed to bid.

**2.4.5** Upon STC acceptance of a construction project, should the Requesting Department and/or the Purchasing Department subsequently believe that the construction project is not within STC's capability, the Requesting Department, and/or the Purchasing Department and STC shall first attempt to resolve the issue internally. If that attempt fails, the issue shall be addressed by the Executive Director, Tribal CFO or Casino COO.

**2.4.6** Construction projects that are within STC's capability, and have been accepted by STC, shall be awarded to STC based on pricing negotiations with a representative of the Requesting Department, Purchasing Department and STC. Negotiations must be conducted and concluded within a reasonable time frame. Any and all disagreements or complaints that arise out of a negotiation under this section shall be resolved by Executive Director, Tribal CFO or Casino COO.

## **SECTION III: PURCHASE OF CONSTRUCTION SERVICES OR CONSTRUCTION CONTRACTS OVER \$10,000**

**3.1 General.** All Construction Contracts over Ten Thousand Dollars (\$10,000.00) will require a formal solicitation of bids as set forth below.

### **3.2 Invitation/Solicitation.**

**3.2.1** An invitation for bid(s) shall be issued. The invitation shall contain the specifications, as well as the major contract terms and conditions, applicable to the construction project and its contract documents.

**3.2.2** The publication of the notice of bid shall be performed in accordance with the following: (1) should be given as early in the process as is practical; (2) placed in publications whose circulation is optimal for informing prospective bidders of the notice to bid; (3) shall indicate where complete specifications are available; (4) shall state the time and place of both the receipt of bids and the public bid opening (if opening is public). A short statement reflecting the native preference clause found in Section V shall be included in each solicitation for bid(s).

**3.3 Amendments to Invitation/Solicitation.** Any amendments to the invitation shall be in writing. If it is necessary to issue an amendment, said amendment shall be issued within five (5) business days of the bid opening. If an amendment is issued the bid opening will be postponed five (5) business days from the date the amendment was issued.

**3.4 Notice to Perspective Bidders.** A notice inviting perspective bidders may be sent by mail to any/all vendors identified by the Tribe as likely to be interested in bidding.

**3.5 Refunds.** A reasonable deposit for plans and specifications may be required. Bid Bonds or performance bonds may be required by the Tribe. Unsuccessful bidders shall be notified within ten calendar days (10) after the contract is awarded and at that time they are entitled to the return of any deposit made with the bid. A successful bidder shall forfeit any deposit or be subject to the calling of any bond upon failure to enter into a contract within thirty (30) calendar days of award.

### **3.6 Bid Openings.**

**3.6.1** All sealed bids will be time-stamped but not opened and stored in a secure place until bid opening. A bidder may withdraw his bid at any time prior to the bid opening.

**3.6.2** Bid openings are to be conducted by the Requesting Department and the Purchasing Department. Depending upon the complexity of the project, bid openings may be open to the public or closed. This will be determined prior to the solicitation/invitation of bids and is at the discretion of the Tribe. Public bid openings will only determine the *apparent* low bidder. *Apparent* low bidder is defined as the pre-qualified bidder with the lowest submitted bid. Criteria to determine the *actual* low bidder include, but are not limited to the following:

warranty, set-up/delivery costs, payment terms, production facilities, etc. The *actual* low bidder will be determined as defined in subsequent sections.

**3.6.3** Information contained in a particular bid shall be made public only as follows. The Purchasing Department, in concurrence with the Requesting Department (who may rely on contracted professionals), shall determine what information shall be read allowed at a public bid opening. No information whatsoever, including that information previously read allowed at a bid opening, shall be given out at any time after the bid opening. This section is intended to be read in the strictest sense and shall not be deviated from.

**3.7 Amendments to Bids.** After the bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake, error, or omission of non-judgmental character was made. The bidder must demonstrate the nature of the mistake and must demonstrate the bid price actually intended. A representative of the Requesting Department shall be responsible for seeking clarification of any bid mistakes, errors, or omissions. The Requesting Department may request assistance from the Purchasing Department.

**3.8 Acceptance or Rejection.** The Purchasing Department shall have the right to reject any or all bids, or to waive irregularities in bidding, and to accept bids which do not conform in every respect to bidding requirements. Bids which are accepted in this manner must be reported to the Board of Directors via a Bid Recommendation with full detail disclosed as to the reasons of the decision.

**3.9 Negotiations.** In situations where negotiations are deemed necessary, negotiations will be conducted with the bidders who have a reasonable chance of being selected for award based on evaluation against technical and price factors specified in the solicitation. Negotiations shall be conducted with representation from the Requesting Department, Purchasing Department, and the project manager/contract officer. The purpose of negotiations is to seek clarification with regard to, and advise bidders of, deficiencies in both the technical or price aspects of their bids. This is to ensure full understanding of conformance to the requirements outlined in the scope of services.

**3.10 Bid Tabulation.** If the Requesting Department has contracted for the services of an architect and/or professional construction or project manager, the architect and/or professional construction or project manager shall prepare a bid tabulation form. The bid tabulation form shall include, but is not limited to, the name of the contractor or individual bidder, the amount of their bid, any special comments, whether native preference applies, the date of the bid opening, and signature lines for the parties in attendance at the time of bid opening. The Requesting Department shall affix to the tabulation form a written approval of the bid tabulation form.

If the Requesting Department has not contracted for the services of an architect and/or professional construction or project manager, the Purchasing Department shall prepare a bid tabulation form containing the information indicated above. The Purchasing Department shall also prepare a memo indicating Purchasing Department's recommendation for award. The bid tabulation form and the memo of recommendation shall be provided to the Requesting

Department.

**3.11 Approval of Recommendation.** If the Requesting Department has contracted for the services of an architect and/or professional construction or project manager, the Requesting Department shall facilitate the architect and/or professional construction or project manager's preparation of a recommendation for award memorandum. The memorandum, along with the final bid tabulations, shall be submitted to the Executive Director, Tribal CFO or Casino COO for final approval. The Executive Director, Tribal CFO or Casino COO may sign the recommendation to accept or reject any or all recommendations/bids. The signed recommendation shall be returned to the Requesting Department.

If the Requesting Department has not contracted for the services of an architect and/or professional construction or project manager, the Purchasing Department shall prepare a recommendation for award memorandum. The memorandum, along with the final bid tabulations, shall be submitted to the Requesting Department, who, after having an opportunity to examine the documents, shall forward the documents to the Executive Director, Tribal CFO or Casino COO for final approval. The Requesting Department may disapprove of Purchasing Department's recommendation and submit their own recommendation of award memorandum, provided that Purchasing Department's recommendation of memorandum is attached and the Requesting Department provides a brief explanation for their action. The Executive Director, Tribal CFO or Casino COO may sign the recommendation to accept or reject any or all recommendations/bids. The signed recommendation shall be returned to the Purchasing Department with a copy to the Requesting Department.

**3.12 Award.** After an evaluation of proposed revisions, if any, the Purchasing Department shall award the contract to the responsible bidder whose qualifications, price, and other factors, is the most advantageous to the Tribe.

**3.13 Construction Documents.** Letters of award, contracts, bonds and other legal instruments relating to procurement of construction related services under this section shall be reviewed and approved by the Sault Ste. Marie Tribe of Chippewa Indians Legal Department.

#### **SECTION IV: Lowest Qualified Bidder**

**4.1 General.** The "Lowest Qualified Bidder" shall be the bidder submitting the lowest responsive bid.

**4.2 Ability to provide.** The Requesting Department and Purchasing Department, with assistance from other tribal departments, programs, or individuals if necessary, shall determine whether the bidder is capable of providing the contracted services as described in the scope of services and solicitation for bids in a satisfactory manner.

**4.3 Bidder Qualification.** A prospective bidder seeking a contract or subcontract shall submit sufficient evidence that demonstrates the bidder has the technical, administrative, and financial capability to perform contract work of the size and type involved, and within the time provided,

under the proposed contract.

**4.4 Qualification.** All contractors wishing to do business with the Tribe must have completed a Qualification Application. The Purchasing Department shall provide qualification documentation to all prospective bidders by placing the materials in all bid packages. In addition, the Purchasing Department shall, from time to time, solicit pre-qualification information from prospective bidders in order to compile and maintain a permanent list of qualified bidders.

Failure to complete the application or attached required documentation will result in disqualification. A contractor disqualified will be unable to bid on tribal construction projects. A contractor can qualify by submitting the required documentation at any time

## **SECTION V: NATIVE PREFERENCE**

**5.1 “Indian Economic Enterprise”** means any business entity which is at least 51 percent owned by one or more members of a federally recognized Indian Tribe; and has one or more of the tribe members involved in the daily business management of the economic enterprise; and a majority of the earnings from said Economic Enterprise benefits said member or members.

**5.2 Eligibility/Certification.** The bidder claiming as an Indian Economic Enterprise must have satisfied the requirements of eligibility/ certification. Certification of eligibility for native preference could include: Bureau of Indian Affairs Certification, Sault Ste. Marie Tribe of Chippewa Indians, Michigan Minority Business Development Council, Small Business Administration, and Certification of membership from another Tribe or Michigan Commission on Indian Affairs Certification. Certification shall be submitted with the bid package.

**5.3 Qualification Statement.** A prospective bidder seeking to qualify for preference shall submit completed qualification application documentation shall include evidence showing extent of Indian ownership and interest. Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontractors and purchase agreements; materials or equipment supply arrangement; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest. Evidence to demonstrate that the contractor has the technical, administrative, and financial capability to perform work of the size and type involved. The Indian Economic Enterprise must submit a letter as evidence of Indian ownership and control certifying that the enterprise will continue to meet requirements necessary to sustain Indian ownership and control throughout the period of construction of the project.

## **SECTION VI: CONTRACT PREFERENCE**

**6.1 General.** Any construction contract whose total dollar value is between Ten Thousand Dollars (\$10,000.) and Two Hundred and Fifty Thousand Dollars (\$250,000) shall be subject to the native preference found in Section IV. Any lowest qualified bidder who qualifies as an Indian Economic Enterprise under Section IV shall be given a preference as found in the table below, if the Indian Economic Enterprise submits the lowest responsive bid, not exceeding the

lowest bid submitted by any other responsible bidder by more than the percentage prescribed above.

<u>Contract or Sub-contract Value</u>	<u>Preference</u>
At least \$10,000 but less than \$25,000	3%
At least \$25,000 but less than \$50,000	3.5%
At least \$50,000 but less than \$100,000	4%
At least \$100,000 but less than \$150,000	4.5%
At least \$150,000 but less than \$250,000	5%

**6.1.1 Right of First Refusal.** The Indian Economic Enterprise shall be given the right of first refusal on all construction projects with a value under \$10,000. All bids submitted by Indian Economic Enterprises must be submitted 48 hours prior to the actual bid closing date.

**6.2 Housing.** When the Requisitioning Department is Sault Tribe Housing it shall comply only with the Department of Housing and Urban Development's Indian preference in contracting regulations.

## **SECTION VII: CONFLICT OF INTEREST**

**7.1 Defined.** No employee, officer, or agent ("Conflicted Party") of the Tribe shall participate directly, or indirectly, in the selection of, or in the award of, or administration of, ("Process") any Construction Contract if a conflict of interest, real or apparent, would be found. Such a conflict would arise when a financial or other interest in a prospective bidding entity is held by: 1) a Conflicted Party that is directly involved in the Process; 2) a Conflicted Party's father, mother, son, daughter, brother, sister, paternal and maternal grandparents, and significant other; 3) a Conflicted Party's business partner or business associate; and 4) any organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of a Conflicted Party of any party listed in subsections 1 through 3 above.

**7.2 Contingency Fees.** A prospective bidder shall not retain a person to solicit or secure an award under this policy for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of a prospective bidder. This prohibition shall apply retroactively to bidders who have been awarded a bid.

**7.3 Affirmative Duty.** A Conflicted Party has an affirmative duty to disclose any conflict of interest identified under this section. A prospective bidder has an affirmative duty to disclose any conflict of interest identified under this section if the prospective bidder should have reasonably known that some conflict existed.

**7.4 Disclosure.** Disclosure regarding any conflict of interest must be submitted in writing to the Purchasing Department or the Requesting Department, whichever is reasonable. The department receiving the disclosure shall use its best efforts to ensure that the disclosure is provided to the proper department and/or persons.

## **SECTION VIII: EMERGENCY PURCHASES**

In the event of an emergency the Requesting Department, with concurrence of the Executive Director, Tribal CFO or Casino COO, which is to be obtained within a reasonable time frame, is authorized to make purchases of equipment or services which are deemed necessary to protect the public health, safety and welfare without complying with the purchasing requirements set forth in the guidelines. The purchase shall be limited to those supplies, services, or construction necessary to meet the emergency.

## **SECTION IX: DISQUALIFICATION**

**9.1 Default.** No bid shall be accepted from, or a construction project contract awarded to:

**9.1.1** A person or contractor who is in default on any contract with the Tribe.

**9.1.2** A person or contractor who has previously demonstrated bad faith in dealing with the Tribe.

**9.1.3** A person or contractor or has previously performed under **any** contract or provided **any** services to the Tribe, and the result of that association was not to the Tribe's satisfaction.

**9.2 Notice.** If it is determined that a person or contractor is disqualified, a written determination of ineligibility will be prepared and included in the contract file. The person or contractor will be notified of the reasons for this determination. The Legal Department shall draft and send a notice based upon information received from the Purchasing Department.

**9.3 Challenge.** A person or contractor may challenge a determination made under this Section. Within five (5) business days of notice under subsection 9.2 being given, an aggrieved person or contractor may submit in writing a request for an informal hearing to challenge the determination of disqualification. Any challenges received beyond the five (5) days shall not be considered. All challenges shall be submitted to the Director of Purchasing. The Director will convene a committee consisting of a representative of the Requesting Department, the Purchasing Department, the Legal Department, and representation from the Board of Directors. If the parties assigned to this committee deem it necessary, they may invite any representative from another tribal department or program. In addition, they may also invite any individual who they feel may offer some guidance on a given issue. The Committee shall issue a written decision in the matter within five (5) business days of receiving the written notice from the aggrieved person or contractor. The decision of the committee is final and the person or contractor is not awarded the right to appeal this decision.

**9.4 Implementation.** It shall be the responsibility of the Purchasing Department to investigate all proposed disqualification determinations under this Section. The Purchasing Department may use any means reasonable to discover and/or verify information relevant to a determination under this section. The Purchasing Department shall maintain a master list of entities disqualified under this Section.



**9.5 Term.** The term of disqualification under this Section shall be at least (1) to (3) years. Upon expiration of the term the disqualified person or contractor shall be free to bid. However, upon receipt of a bid from a recently “un-disqualified” person or contractor, the Purchasing Department shall review the facts of the original disqualification and determine whether that person or contractor should be disqualified again or is free to bid. A notice indicating the Purchasing Department’s finding shall be given in accordance with Subsection 9.2. A person or contractor receiving such notice shall have the rights accorded it in Subsection 9.3.