

# Sault Ste. Marie Tribe of Chippewa Indians

Amended By: Robert Schulte-CFO

Approved By: BOD 06/12/18

## **Tribal Purchasing Policy**

Effective Date: 09/30/2008

Revised Date: 06/12/2018

### **SECTION I: MISCELLANEOUS**

**1.1 Purpose.** This policy is adopted by the Sault Ste. Marie Tribe of Chippewa Indians (“Tribe”) in order to codify procurement practices. This policy is intended to include the purchasing of goods and services. The selection of vendor shall be conducted with the goal of purchasing with responsible vendors 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 intended to cover all purchases made by the Tribe listed on Addendum A.-Purchasing Guide Inclusions

**1.2.1 Exclusions.** This policy does not govern the purchases made by the Tribe listed on Addendum B-Purchasing Guide Exclusions.

**1.2.2 Exceptions.**

- a. Purchases are exempt from this policy if the grant or funding sources specifies otherwise. If the funding source allows the Tribe to select between this policy and another procedure for purchase, the Tribe shall choose to follow this policy unless good cause exists not to.
- b. Except as precluded by a grant or funding sources, any department, program, entity or wholly owned government instrumentality is exempt for this policy if the purchase is made from another department, program or entity.

**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.

## Sault Ste. Marie Tribe of Chippewa Indians

**1.4 Federal Procurement.** For all procurement of goods and services using federal and grant funds, care shall be taken to ensure that all applicable acquisition regulation and guidelines of the respective funding agencies are followed. This includes but not limited to the following: maximum daily/hourly rate for consultants, contracts, and all other goods and services requiring special consideration.

### **SECTION II: PURCHASE OF GOODS OR SERVICES OVER \$3,000**

**2.1 General.** All requests for goods or services, not covered by a contractual agreement, with an estimated total purchase price of over \$3,000, will require formal solicitation of bids as set forth below.

**2.1.1.** All requests for goods and/or services for Sault Tribe Construction, not covered by a contractual agreement, with an estimated total purchase price of over \$5,000 will require formal solicitation of bids as set forth below.

#### **2.2 Invitation/Solicitation.**

**2.2.1** A Request for Pricing (RFP) will be issued to at least 3 potential vendors. (In the case in which less than 3 vendors can not be obtained, disclosure must be made on the Bid Recommendation.) The RFP shall contain the specifications, as well as the major terms and conditions applicable to the purchase.

**2.2.2** A minimum of two suppliers is acceptable for verbal requests between \$1 and \$2,999, providing the Purchasing Agent is familiar with the market and prices of the good/service in question. In the case of proprietary items, more than one price is often not possible and should be noted on the Bid Recommendation.

**2.2.3** The RFP shall be expedited in accordance with the following: (1) should be given as early in the process as practical; (2) shall state the scope of work; (3) deadline for response from vendor; (4) contact information for any questions; (5) form of bid response, such as sealed or unsealed; and (6) date and time of bid opening, if applicable.

**2.2.4** All RFP's for service with an estimated dollar amount of over \$10,000 must be sealed. (*See reference 2.8*)

**2.2.5** All RFP's for goods with an estimated dollar amount of over \$10,000 must be sealed.

**2.2.6** Construction RFP will require at least five business days for bidder to respond to RFP pricing requests.

## Sault Ste. Marie Tribe of Chippewa Indians

**2.2.7** During an RFP walk through/meeting the scope of the work will be reviewed with potential bidders and scope may need to be updated or improved to ensure work is handled with highest amount of integrity. The host of the walk through will be required to keep a sign in sheet to record who attended the walk through event. Changes to scope during the walk through/meeting will be summarized in an addendum, signed off by requisitioning department and sent out to bidders via the Purchasing Agent within 24 business hours.

**2.2.8** Bidders having prior knowledge of RFP project specifications will not be disqualified from bidding on known RFP projects.

### **2.3 Bid Openings.**

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

**2.3.2** Bid openings are to be conducted by the Purchasing Department. Representation from the Requesting Department may also attend. Vendors that submitted proposals are welcome to attend. Bid openings will only determine the **apparent** low bidder. **Apparent** low bidder is defined as the bidder with 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.

**2.3.3** Information contained in a particular bid shall be made public only as follows: (1) The Purchasing Department, in concurrence with the Requesting Department (who may rely on contracted professionals), shall determine what information shall be read aloud at the bid opening.

**2.4 Amendments to Bids.** After the bid opening, corrections to bids shall be permitted only if the vendor can show by clear and convincing evidence that a mistake, error, or omission of a non-judgmental character was made. The vendor must demonstrate the nature of the mistake and must demonstrate the bid price actually intended.

**2.5 Acceptance or Rejection.** The Purchasing Department shall have the right to reject any and/or all bids, to waive irregularities in bidding, and to accept bids which do not conform in every respect to the bidding requirements. Bids which are accepted in this manner must be reported to the Chairperson/CEO, Tribal CFO, Executive Director, or the Tribal Casino CEO via a Bid Recommendation with full disclosure as to the reasons of the decision.

## Sault Ste. Marie Tribe of Chippewa Indians

**2.6 Negotiations.** In situations where negotiations are deemed necessary, negotiations will be conducted by the Purchasing Department with the vendors who have a reasonable chance of being selected for award based on evaluation against technical and price factors specified in the RFP. Negotiations may be conducted with representation from the Requesting Department.

The purpose of negotiations is to seek clarification with regard to deficiencies in both the technical or price aspects of their bid. This is to ensure full understanding of conformance to the requirements outlined in the scope of work.

**2.7 Recommendation.** After an evaluation of proposed revisions, if any, the Purchasing Department shall award the bid to the responsible vendor whose qualifications, price, and other factors, is the most advantageous to the Tribe. The Purchasing Agent will prepare a Bid Recommendation, which may include, but is not limited to the following: (1) Name of Vendors solicited; (2) final price of product/service; (3) warranty information; (4) details regarding the solicitation; (5) Vendor recommended; (6) applicable cost savings; and (7) length of time that pricing is valid. All applicable information will be forwarded to the Requesting Department.

**2.7.1 Concurrence.** If the Requesting Department concurs with the recommendation made by the Purchasing Department, the appropriate individual that has been authorized to make the purchase will sign the recommendation and return to the Purchasing Department attached to a completed requisition.

**2.7.2 Non-concurrence.** If the Requesting Department does not concur with the recommendation made by the Purchasing Department, the Requesting Department has the sole obligation of obtaining written approval from the Tribal Chairperson/CEO, Tribal CFO, Executive Director, or the Tribal Casino CEO

The written approval must be attached to the Bid Recommendation and returned to the Purchasing Department.

**2.8 Video Recording of Bid Opening.** Tribal sealed bid policy requires sealed bid to be video recorded. Department directors will be responsible to ensure policy and procedures are followed. (See Procedure for Video recordings of sealed bids)

**2.9 Background Checks.** Background checks may be required for bidders and their staff who are awarded a tribal bid. Most grant funded projects and some tribal projects may require winning bidder to pass appropriate backgrounds checks through our Gaming Commission. The Gaming Commission will run the background checks and verify eligibility of winning bidder. These background checks will be paid for by the requisitioning department and/or awarded bidder. Background checks will be valid for 12 months. All background checks results will be considered confidential.

## Sault Ste. Marie Tribe of Chippewa Indians

**2.10 Challenge.** A vendor may challenge a determination made under this Section. Within five (5) business days of date on notification of non-award letter, an aggrieved vendor may submit in writing a request for an informal hearing to challenge the determination of non-award. 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(s) of the Requesting Department and the Purchasing Department. If the parties assigned to this committee deem it necessary, they may invite any representative from another tribal department or program. In addition, they also may invite any individual who they feel may offer some guidance on a given issue. The Committee shall issue a written decision in the matter.

### **SECTION III: LOWEST BIDDER**

**3.1 General.** The lowest bidder shall be the vendor submitting the lowest “real cost” bid. Real cost is determined by evaluation of unit cost, delivery/warehousing fees, set-up fees, rebates, warranties, etc.

**3.2 Ability to provide.** The Requesting Department and Purchasing Department, with assistance from other tribal departments, programs, or individuals as deemed necessary, shall determine whether the vendor is capable of providing the goods/services as described in the RFP and/or Scope of Service in a satisfactory manner.

**3.3 Vendor Qualification.** A prospective vendor shall submit, upon request, sufficient evidence that demonstrates the vendor has the technical, administrative, and financial capability to carry out the requirements of the RFP and/or Scope of Service, within the time and location requested.

### **SECTION IV: NATIVE PREFERENCE**

**4.1 “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.

**4.2 Eligibility/Certification.** The vendor claiming to be an Indian Economic Enterprise must have satisfied the requirements of eligibility/ certification. Eligibility would include proof that a member/vendor is an Enrolled Tribal Member of a Federally Recognized Indian Tribe. Certification of eligibility for native preference could include: Bureau of Indian Affairs Certification, Michigan Minority Business Development Council, Small Business Administration, and Certification of membership from another Tribe. Eligibility/Certification shall be submitted with the bid response.

## Sault Ste. Marie Tribe of Chippewa Indians

**4.3 Qualification Statement.** A prospective vendor seeking to qualify for preference shall 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 service.

### SECTION V: CONTRACT PREFERENCE

**5.1 General.** All purchases covered under this policy shall be subject to the native preference found in Section IV. Any qualified vendor 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 vendor by more than the percentage described below. (Preference percentages are applied to **actual** cost, not **apparent** cost.).

<u>Total Actual Purchase Cost</u>	<u>Preference</u>
At least \$1 but less than \$3,000	5%
At least \$3,000 but less than \$10,000	4.5%
At least \$10,000 but less than \$25,000	4%
At least \$25,000 but less than \$50,000	3.5%
At least \$50,000 but less than \$100,000	3%
At least \$100,000 but less than \$150,000	2%
Over \$150,000	1%

**5.2 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.

## Sault Ste. Marie Tribe of Chippewa Indians

### SECTION VI: CONFLICT OF INTEREST

**6.1 Defined.** No employee, officer, or agent (“Conflicted Party”) of the Tribe shall participate directly, or indirectly in the selection of, in the award of, or administration of, (“Process”) any purchase 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 vendor 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, husband, wife and/or significant other, which includes all in-law relationships mentioned above; (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 (1) through (3) above. (See employee handbook for the tribal General Conduct, Conflict of Interest and Confidentiality Policies.)

**6.2 GRATUITIES, GIFTS AND KICKBACKS.** Employees, officers, and agents of the Tribe shall not solicit or accept a gift, gratuity, favor, or any other item of monetary value from a contractor, potential contractor, or a party to a subcontract. Acceptance of any such gift, gratuity, or other item of value is deemed to create a conflict of interest within the intent of this policy.

This does not prohibit the Tribe from receiving charitable donations or gifts, but ownership of any such gift shall vest in the Tribe itself, and not an employee, officer, or agent of the Tribe

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

**6.4 Disclosure.** Disclosure regarding any conflict of interest must be submitted in writing to the Purchasing Department, Requesting Department, or Board of Directors, 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.

## Sault Ste. Marie Tribe of Chippewa Indians

### **SECTION VII: EMERGENCY PURCHASES**

In the event of an emergency, the Requesting Department is authorized to make purchases of equipment, goods, and/or services which are deemed necessary to protect the public health, safety and welfare, as well as disaster recovery and business continuity, without complying with the purchasing requirements set forth in the guidelines. The purchase shall be limited to those supplies, services, and/or equipment necessary to meet the emergency.

### **SECTION VIII: DISQUALIFICATION**

**8.1 Default.** No bid shall be accepted from, or awarded to:

**8.1.1** A vendor which is in default on any agreement with the Tribe.

**8.1.2** A vendor which has previously demonstrated bad faith in dealing with the Tribe.

**8.1.3** A vendor which has previously sold **any** product/service to the Tribe, and the result of that agreement was not to the Tribe's satisfaction.

**8.1.4** A vendor who appears on the National Labor Departments debarred list.

**8.2 Notice.** If it is determined that a vendor is disqualified, a written determination of ineligibility will be prepared and included in the vendor 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.

**8.3 Challenge.** A vendor may challenge a determination made under this Section. Within five (5) business days of notice under subsection 8.2 being given, an aggrieved vendor 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, and the Legal Department. 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.



## Sault Ste. Marie Tribe of Chippewa Indians

**8.4 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.

**8.5 Term.** The term of disqualification under this Section shall be at least 3 months 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 allowed to bid. A notice indicating the Purchasing Department’s finding shall be given in accordance with Subsection 8.2. A vendor receiving such notice shall have the rights accorded it in Subsection 8.3.

### SECTION IX: NATIVE AMERICAN ARTS & CRAFTS

**9.1 Statement of Policy.** No items represented as or intended to be resold as Native American arts or crafts shall be purchased from any vendor unless the vendor and the item are in full compliance with the provisions of the Indian Arts and Crafts Act of 1990, PL 101-644, as amended.

**9.2 Proof of compliance.** Any vendor offering to sell or provide any items represented as or intended to be resold as Native American arts or crafts shall provide proof of compliance with the Indian Arts and Crafts Act of 1990. In the case of purchases from individual artists, the artist shall be required to provide a copy of an identification card or other official documentation establishing that the vendor is an enrolled member of a state or federally recognized tribe, a Canadian First Nation, or possesses a Certificate of Degree of Indian Blood from the Bureau of Indian Affairs.

**9.3 Penalty.** Any vendor claiming to produce work or products later determined to be in violation of the Indian Arts and Crafts Act of 1990 shall be prohibited from providing products to the Tribe for no less than 1 calendar year from the date of that determination.

### SECTION X: INCLUSIONS AND EXCLUSIONS

**10.1 Addendum A – Purchasing Guide Inclusions**  
**Addendum B – Purchasing Guide Exclusions**