

12.14.14.12.CIF



TSUU T'INA NATION PROCUREMENT POLICY AND PROCEDURES



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1 GENERAL

Title

This Policy shall be referred to as the "*Tsuu T'ina Nation Procurement Policy and Procedures*".

Statement of Purpose & Broad Policy Objective

The Nation, the Nation Administration, and all Tsuu T'ina Entities will follow consistent and predictable procurement policies and procedures designed to:

- (a) ensure honesty, integrity and fair dealing in relation to the awarding of Contracts for goods and services;
- (b) eliminate conflicts of interest;
- (c) promote a merit based and equitable distribution of Contracts keeping in mind the interests of the Nation as a whole;
- (d) foster economic development opportunities for Citizens and Citizen-Owned Companies;
- (e) stand the test of public scrutiny;
- (f) promote accountability among representatives of the Nation, the Nation Administration and all Tsuu T'ina Entities involved in the procurement of goods and services;
- (g) ensure the availability of suitable quantities of goods and services for the Nation, the Nation Administration and all Tsuu T'ina Entities, based on value for money, competitive prices and keeping in mind the interests and the values of the Nation; and
- (h) ensure compliance with all applicable legislation and regulations, and all Nation directives.

1.1 APPLICATION OF POLICY

This Policy applies to the procurement of goods and/or services by the Nation, the Nation Administration and Tsuu T'ina Entities with respect to all Contracts, except any application in relation to land, or any interests in land (including but not limited to leases, permits, licenses or other rights or interests in land of the Nation or of any other entity or person).

1.2 DEFINITIONS

In this Policy, whether appearing before or after this section, the following terms shall have the following meanings:

- (a) "**Bid**" means a bid, a proposal or an offer to contract made to the Nation, the Nation Administration or to any Tsuu T'ina Entity to undertake work for a stated or estimated price, and may include supplementary bids, proposals or offers where appropriate.
- (b) "**Bid Committee**" means one (or more) committee(s) of individuals that, from time to time, are assigned responsibility by the Procurement Board for preparing, administering and evaluating **Bids** as provided for in this Policy (with the assistance of advisors where deemed necessary), in each case in the absence of a conflict of interest.

- (c) **"Bid Evaluation"** has the meaning ascribed in Article 10.
- (d) **"Bid Proposal"** means the Bid package or proposal received from a Firm, Citizen or Citizen-Owned Company desiring to bid on a Contract.
- (e) **"Bidding Strategy"** means one of the following bidding strategies, namely
 - (i) a Sole Source Procedure;
 - (ii) a Call for Tenders Procedure;
 - (iii) a Request For Proposals Procedure;
 - (iv) a Price Comparison Procedure; or
 - (v) an Emergency Contract Procedure;
 and **"Bidding Strategies"** includes all of such strategies unless otherwise indicated.
- (f) **"Call For Tenders Procedure"** has the meaning ascribed in Article 5.
- (g) **"Chief Executive Officer"** means the duly appointed chief executive officer of the Nation in place from time to time.
- (h) **"Citizen"** means an individual 18 years of age or older whose name appears on the Nation's *"Citizenship List"* (as defined by the Tsuu T'ina Nation Citizenship Code).
- (i) **"Citizen-Owned Company"** means a company, a corporation or other legal entity that is at least 51% owned, controlled and operated, directly or indirectly, by one or more Citizens and, in the case of a body corporate, *"51% owned and operated"* means that at least 51% of the shareholders and directors must be Citizens.
- (j) **"Committee member"** means an individual that serves on a committee or on a Board established pursuant to this Policy.
- (k) **"Conflict of interest"** has the meaning ascribed in Article 15.
- (l) **"Contract"** means any contract, commitment or obligation of the Nation, the Nation Administration or any Tsuu T'ina Entity relating to the provision of goods and/or services from time to time and includes, without limitation, contracts, commitments or obligations relating to construction services, consulting services and general labour, whether such goods or services are required on or off the Reserve, but excludes any contract, commitment or obligation relating to land or any interest in land.
- (m) **"Council"** means the elected Chief and Councillors of the Nation, collectively.
- (n) **"Department or Portfolio"** means one of the administrative departments or Portfolios of the Nation Administration.
- (o) **"Eligibility List"** means the list maintained by the Procurement Board of those Firms, Citizens and Citizen-Owned Companies that meet the eligibility criteria for being awarded Contracts under this Policy, which Eligibility List may be broken down into categories of work for which Firms, Citizens and/or Citizen-Owned Companies are eligible.

- (p) **"Emergency Contract"** means a Contract, which must be awarded immediately because the health, property or safety of any individual, of the general public, or of the Nation, is at risk.
- (q) **"Executive Director"** means one of the Nation's "executive directors" as designated by Council from time to time for purposes of this Policy and being, as of the date hereof, the Nation's Executive Director of Legislative Procedures, its Executive Director of Finance, its Executive Director of Economic Development, its Executive Director Companies and its Chief Executive Officer (and their respective designates as permitted by this Policy), and **"Executive Directors"** means all of such executive directors, collectively.
- (r) **"Firm"** includes an individual, a corporation, a joint venture, a general or limited partnership or any other entity attempting or intending to provide goods and/or services to the Nation and, unless otherwise indicated, may also include a Citizen or Citizen-Owned Company, where applicable.
- (s) **"Grievance Hearing Committee"** means a committee of individuals that have been assigned responsibility by the Procurement Board to hear grievances as provided for in this Policy, in each case in the absence of a conflict of interest.
- (t) **"Inactive"** means a Firm, Citizen or a Citizen-Owned Company that:
 - (i) has not been awarded any Contract; or
 - (ii) has not submitted a Bid;
 for at least two (2) years.
- (u) **"Invitation to Tender"** means a formal process of sourcing Bids (which Bids must be in writing but will not be opened publicly) from a select number of known suppliers through written invitation, when exact requirements of the Contract are known.
- (v) **"Nation"** means the Tsuu T'ina Nation.
- (w) **"Nation Administration"** means the administration of the Nation, including all of its Departments and Portfolios.
- (x) **"Price Comparison Procedure"** has the meaning ascribed in Article 5.
- (y) **"Procurement Board"** means a group of five (5) individuals appointed by Council from time to time (following consultation with Legislative Procedures, the Nation Administration and the Executive Director of Legislative Procedures, three (3) of whom shall be Citizens and two (2) of whom shall be independent, non-Citizens, and all Procurement Board members shall be individuals that are:
 - (i) trustworthy;
 - (ii) of good reputation;
 - (iii) have a good understanding of business; and
 - (iv) where possible, have experience in the procurement of goods and services and contracts related thereto.

- (z) **"Public Tender"** means, for purposes of this Policy only, a formal process for sourcing Bids (which Bids must be in writing) through advertising to the public of the Nation when exact requirements are known.
- (aa) **"Recommended Bid"** means the recommendation of the Bid Committee to the Procurement Board for the awarding of a Bid to a Firm, Citizen or Citizen-Owned Company.
- (bb) **"Request for Proposal Procedure" or "RFP Procedure"** has the meaning ascribed in Article 5.
- (cc) **"Reserve"** means the reserve land of the Nation from time to time.
- (dd) **"Scope of Supply"** means all of the specifications involved with the goods or services required.
- (ee) **"Sole Source Procedure"** has the meaning ascribed in Article 5.
- (ff) **"Tender Documents"** means all the information to go to the general public in order to inform them of the requirements for the provision of goods and/or services.
- (gg) **"this Policy"** means this policy as the same may be amended from time to time in accordance with the terms hereof.
- (hh) **"Tsuu T'ina Entity"** means any corporation, limited partnership, Department or Portfolio, branch, agency, board, tribunal, commission, committee, society or other administrative Portfolio or unit of the Nation, or any corporation or other entity that is wholly owned, or controlled, directly or indirectly, by the Nation.
- (ii) **"Work Order"** means a standard form agreement developed by the Nation for use on behalf of the Nation, the Nation Administration and/or any Tsuu T'ina Entity, and which contains commercially reasonable contract terms including the Contract price, a detailed description of the goods and/or services to be provided pursuant to the Contract, the location for performance of the Contract and the expected date of completion.

1.3 RESPONSIBILITIES OF EXECUTIVE DIRECTORS

- (a) Any authority given to one or more of the Executive Directors under this Policy may be delegated to a Procurement Board member where, in the opinion of the Executive Director(s), it is practical and expedient to do so.
- (b) The authority given to an Executive Director by this Policy must be delegated to a member of the Procurement Board whenever the Executive Director has a conflict of interest.
- (c) Subject always to the provisions of this Policy and the direction of the Procurement Board; Executive Directors are responsible for selecting the contracting and tendering procedure appropriate for any given Contract in accordance with this Policy.

1.4 LEGAL FRAMEWORK FOR TENDERING CONTRACTS

None of the Nation, the Nation Administration or any Tsuu T'ina Entity intends to create any contractual or other legal relationship (either express or implied) with any Firm, Citizen or Citizen-Owned Company submitting a Bid in connection with any Bidding Strategy or related Procedure, unless and until a formal Work Order (or such form of contract as may be acceptable to the Procurement Board) has been finalized,

signed and delivered by all parties to the Contract. Accordingly, until such time, a Firm, Citizen or Citizen-Owned Company may at any time withdraw its Bid by giving notice to that effect to the Procurement Board.

1.5 COMMENCEMENT

This Policy shall be effective as of the date that it is approved by Council pursuant to a written resolution of Council, or as of such other date as may be specified by Council pursuant to such resolution.

1.6 INTERPRETATION

- (a) In the event of a conflict between this Policy and any other enactment of the Nation relating to the subject matter hereof, the provisions of this Policy shall prevail.
- (b) Words importing the singular shall include the plural and *vice versa*, and words importing gender shall include both genders as the context may require.

2 ESTABLISHING THE PROCUREMENT BOARD AND COMMITTEES

2.1 ESTABLISHING THE PROCUREMENT BOARD

Council will establish the Procurement Board, or such other board or committee in the interim, to:

- (a) administer all procurement activities under this Policy including, in particular, those that require either a Price Comparison Procedure, a Request for Proposals Procedure or a Call for Tenders Procedure (whether such Call for Tenders Procedure occurs by means of an Invitation to Tender or a Public Tender); and
- (b) administer all procurement activities pursuant to this Policy.

2.2 PURPOSE OF ESTABLISHING PROCUREMENT BOARD COMMITTEES

- (a) The purpose of using the Procurement Board and the Committees under this Policy is to eliminate conflicts of interest in the selection, review, evaluation and grievance processes under this Policy.
- (b) Any authority given to Executive Directors under this Policy may be delegated to a Procurement Board member where, in the opinion of the Executive Director(s), it is practical and expedient to do so.
- (c) The authority given to an Executive Director by this Policy must be delegated to a member of the Procurement Board whenever the Executive Director has a conflict of interest.
- (d) In selecting members of any Bid Committee and the Grievance Hearing Committee under this Policy, the Procurement Board may elect to use a rotating method of selection to avoid the selection of the same members on subsequent assignments, unless in the opinion of the Procurement Board it is impractical to do so in a particular instance.
- (e) The authority given to Council to select Procurement Board members may not be delegated.

3 FIRMS, CITIZENS AND CITIZEN-OWNED COMPANIES

This Article 3 applies to awarding Contracts to Firms, Citizens and Citizen-Owned Companies.

Policy

The Nation will create and maintain an Eligibility List of qualified Firms, Citizens and Citizen-Owned Companies for the purpose of awarding Contracts to Firms, Citizens and Citizen-Owned Companies under this Policy. Firms, Citizens and Citizen-Owned Companies must be registered on the Eligibility List in order to be considered for work or to be eligible for Contracts under this Policy.

3.1 ELIGIBILITY REQUIREMENTS

- (a) In order to be considered for registration on the Eligibility List, Firms, Citizens and Citizen-Owned Companies must apply to the Procurement Board using the prescribed application process in this Policy and as established by the Procurement Board from time to time.
- (b) Within ninety (90) days from and after the date that the Nation issues Tsuu T'ina Nation business licenses, it shall be a requirement of maintaining registration on the Eligibility List that such Tsuu T'ina Nation business license be obtained and maintained.
- (c) Citizens or Non Citizens employed on a full time basis by the Nation, the Nation Administration or by any Tsuu T'ina Entity are eligible for registration on the eligibility list during the term of their employment upon signing a declaration for disclosure and conflict of interest form.
- (d) Citizens or Non Citizens employed by the Nation, the Nation Administration or by any Tsuu T'ina Entity on a seasonal basis are eligible for registration on the eligibility list upon signing a declaration for disclosure and conflict of interest form.
- (e) The Chief and Councillors of the Nation are eligible for registration on the Eligibility List during their tenure on Council upon signing a declaration for disclosure and conflict of interest.
- (f) Firms, Citizens and Citizen-Owned Companies must identify the type(s) of work or services in respect of which they are applying for registration on the Eligibility List.
- (g) In the case of any individual Citizen applying for registration on the Eligibility List, the following information is, unless otherwise indicated, mandatory:
 - (i) Unless such requirement has been waived by the Procurement Board, evidence that the individual is listed on the Nation's Citizenship List.
 - (ii) Unless the Procurement Board has waived such requirement, evidence that the individual is at least 18 years of age at the time of the application.
 - (iii) Such additional information as may be requested by the Procurement Board from time to time including, without limitation, such evidence of previous employment, contracting experience and/or suitability for working in the selected field as may be requested by the Procurement Board.

- (h) In the case of a Citizen-Owned Company applying for registration, the following information is mandatory:
 - (i) a copy of a registry search dated within thirty (30) days preceding the date of application; and
 - (ii) proof that at least 51% of the directors and shareholders of the Citizen-Owned Company are listed on the Nation's Citizenship List, which proof may include, as sufficient evidence thereof, a letter dated within thirty (30) days of the date of application and signed by the Nation's Citizenship Registrar, confirming that at least 51% of the directors and shareholders are Citizens.
- (i) Until an applicant has submitted all information required under the application process, the application will not be reviewed by the Procurement Board (or by any subcommittee established by the Procurement Board for such purpose).
- (j) Upon receipt of an application and all supporting materials, the Procurement Board (or a subcommittee established by the Procurement Board for such purpose) will review the application and use its best efforts to determine whether:
 - (i) the applicant is a *bona fide* Citizen-Owned Company or Citizen;
 - (ii) material benefits will, in fact, accrue to Citizens of the Nation if a Contract is awarded to such applicant; and
 - (iii) the applicant otherwise satisfies all of the eligibility requirements and has adequate qualifications to be registered on the Eligibility List and, if so, the type(s) of work for which the applicant will be registered on the Eligibility List.
- (k) Personnel from the Procurement Board (or from a subcommittee established by the Procurement Board for such purpose) may choose to meet with and/or obtain supplementary information from the applicant as part of the application process should additional information be required.
- (l) Following review of an application and any supplementary materials, personnel from the Procurement Board (or a subcommittee established by the Procurement Board for such purpose) will send a letter to the applicant advising whether the application is approved or denied and, if denied, the reason(s) for the denial.
- (m) Upon an application for registration being approved by the Procurement Board (or a subcommittee established by the Procurement Board for such purpose), the Procurement Board will place the name of the Firm, Citizen or the Citizen-Owned Company, as applicable, on the Eligibility List.
- (n) Procurement Board personnel are to use their best efforts to ensure that each Firm, Citizen and each Citizen-Owned Company on the Eligibility List meets the requirements of this Policy and have the qualifications for the types of work for which they are being registered.

3.2 ELIGIBILITY LIST – EXTENSION AND REMOVAL

- (a) Subject to this Policy, each Firm, Citizen and each Citizen-Owned Company registered on the Eligibility List will remain on the Eligibility List indefinitely, provided that a Tsuu T'ina Nation business license (when and if available) is obtained and maintained.

- (b) Each Firm, Citizen and Citizen-Owned Company on the Eligibility List that is Inactive will receive a letter from the Procurement Board to determine whether they wish to remain on the Eligibility List.
- (c) Should the Firm, Citizen or Citizen-Owned Company wish to remain on the Eligibility List, a letter must be forwarded to the Procurement Board within ninety (90) days by the Firm, Citizen or Citizen-Owned Company indicating their intention to remain on the Eligibility List for another two (2) years, in which case such two (2) year extension shall, subject always to the remaining provisions of this Article, be granted. Should the Firm, Citizen or Citizen-Owned Company not forward a letter to the Procurement Board within the prescribed time, the Firm, Citizen or Citizen-Owned Company will be removed from the Eligibility List and the Procurement Board will send a letter to the Firm, Citizen or Citizen-Owned Company advising of such removal.
- (d) Any Firm, Citizen or Citizen-Owned Company wishing to be removed from the Eligibility List may submit a letter to the Procurement Board making that request. Upon receiving a letter from a Firm, Citizen or Citizen-Owned Company requesting removal from the Eligibility List, the Procurement Board will remove the Firm, Citizen or Citizen-Owned Company from the list and send a letter of confirmation to the Firm, Citizen or Citizen-Owned Company, as applicable.
- (e) Any Citizen registered on the Eligibility List who ceases to be registered on the Nation's Citizenship List (or in the case of a Citizen-Owned Company, whose required percentage of shareholders or directors ceases to be registered on the Nation's Citizenship List) will be automatically removed from the Eligibility List and a letter will be sent to that Citizen or Citizen-Owned Company by the Procurement Board advising of the removal from the Eligibility List.
- (f) Any Citizen-Owned Company that has a change in its equity holders or directors must notify the Procurement Board in writing within thirty (30) days of the change together with confirmation that any new equity holders or directors are Citizens.
- (g) Any Citizen-Owned Company registered on the Eligibility List that fails to correct any deficiency may be removed from the Eligibility List on thirty (30) days' notice by the Procurement Board.
- (h) If a Citizen or Citizen-Owned Company is removed from the Eligibility List, the Citizen or Citizen-Owned Company may re-apply for registration in accordance with this Policy.
- (i) Before awarding any Contract, the Procurement Board may require that evidence of continuing compliance with the provisions of this Policy be provided.
- (j) Should the Procurement Board determine that a Firm, Citizen or a Citizen-Owned Company has:
 - (i) provided the Nation, the Nation Administration, any Tsuu T'ina Entity or the Procurement Board with false or substantially misleading information regarding their eligibility to be on the Eligibility List;
 - (ii) provided the Nation, the Nation Administration, any Tsuu T'ina Entity or the Procurement Board with false or substantially misleading information regarding their skills, education and/or qualifications for a certain type of work; or
 - (iii) otherwise structured their affairs in a manner intended to circumvent the intention of the Nation to provide Contracts to Citizens and *bona fide* Citizen-Owned

Companies and to thereby provide financial benefits arising from such Contracts to, and foster economic development opportunities for, Citizens and Citizen-Owned Companies (as opposed to for non-Citizens and non-Citizen-Owned Companies);

such Firm, Citizen or Citizen-Owned Company may, at the discretion of the Procurement Board, be immediately removed from the Eligibility List by the Procurement Board and, in addition, such Firm, Citizen or Citizen-Owned Company (including any corporation, partnership, business or other entity in respect of which such Firm, Citizen or Citizen-Owned Company are, as applicable, an equity holder, officer or director) shall not be eligible for registration on the Eligibility List for a minimum of two (2) years and up to a maximum of five (5) years from the date of their removal.

4 PLANNING

This Article 4 applies to awarding Contracts to Firms, Citizens and Citizen-Owned Companies.

4.1 PLANNING

Once the need to purchase a good or service has been identified, the Procurement Board or Executive Directors, as applicable, responsible for procurement must consider the following issues:

- (a) Is there a Firm, Citizen or Citizen-Owned Company on the Eligibility List suitable for the provision of the required good or service?
- (b) Will Bids be obtained, and if so, will they be obtained informally or through the use of a Public Tender Procedure or an Invitation to Tender Procedure?
- (c) Will the procurement be made by way of a Work Order, or an alternate form of Contract?
- (d) Who needs to have input into the purchase procurement process: engineering, personnel, purchasing, financing or legal?
- (e) If a Scope of Supply is required, who will prepare it?
- (f) Will the Contract require progress payments?
- (g) Will the Contract involve a lien holdback?
- (h) Will proof of insurance, proof of Workers' Compensation coverage, a performance bond and/or a payments bond be required?
- (i) Will there be any taxes applicable to the materials or services being purchased?
- (j) Are taxes in any other jurisdiction that may be applicable?
- (k) Are there any tax exemptions available?
- (l) Are customs duties payable in connection with the purchase of materials or supplies?
- (m) Will the services of a custom broker be required?
- (n) Will the Nation, the Nation Administration or the Tsuu T'ina Entity need to be involved in making transportation arrangements?

- (o) What is the correct entity to execute the Contract – the Nation, the Nation Administration or a Tsuu T'ina Entity?

5 PURCHASING PROCEDURES

5.1 INTRODUCTION

This Article 5 describes, in general terms, the purchasing processes and procedures (individually a "**Procedure**" and collectively the "**Procedures**"), which are permitted under this Policy for all Contracts.

5.2 CALL FOR TENDERS PROCEDURE

A "**Call for Tenders Procedure**" is a Procedure that replaces all negotiation with bidders with competition on price only. It is typically used as a means of obtaining the best possible price where the exact requirements for a purchase are known.

Under a Call for Tenders Procedure:

- A "**Call for Tenders**" is issued, which describes the Call for Tenders Procedure in detail and includes the Instructions to Bidders, Scope of Supply, the Bid evaluation criteria, and the form of Contract.
- A Call for Tenders Procedure may be implemented as a Public Tender (through public advertising of the Call for Tenders).
- A Call for Tenders Procedure may also be implemented as an Invitation to Tender (by inviting only selected bidders to submit Bids).
- Bids are evaluated by the Bid Committee against the evaluation criteria prescribed in the Instructions to Bidders in order to select the successful bidder.
- The successful bidder is required to sign the prescribed form of Contract, without negotiating any Contract terms.

5.3 REQUEST FOR PROPOSALS PROCEDURE

A "**Request for Proposals Procedure**" is a Procedure that uses a competitive process to select a preferred bidder but retains the flexibility to conduct negotiations to finalize a Contract. It is typically used where different solutions or approaches may be available for the goods or services required.

Under a Request for Proposals Procedure:

- A "**Request for Proposals**" is issued which describes the Request for Proposals Procedure in detail and includes the Instructions to Bidders, a general description of the goods or services required, the Bid evaluation criteria, and may include a proposed form of Contract or Work Order.
- Like a Call for Tenders Procedure, a Request for Proposals Procedure may be implemented by an invitation to selected bidders or may be advertised publicly.
- Bids are then evaluated by the Bid Committee against the prescribed evaluation criteria in order to identify one or more preferred bidders.

- The Procurement Board or Executive Directors may negotiate with one or more preferred bidders in the manner described in the Instructions to Bidders. Negotiations may include all aspects of the Bid, including the Scope of Supply, pricing and other Contract terms.

5.4 PRICE COMPARISON

A ***“Price Comparison Procedure”*** is a Procedure that involves an informal means for comparing prices from different suppliers. It is typically used when the publicly-advertised prices and terms of sale for lower value goods or services will not likely to be improved through a Call for Tenders Procedure or a Request for Proposals Procedure.

Under a Price Comparison Procedure:

- Verbal, written or electronic price listings or price quotes for a stock or commodity item are obtained from potential suppliers.
- Such pricing information is then used to select the supplier that provides the best value.

5.5 SOLE SOURCE PROCEDURE

A ***“Sole Source Procedure”*** is a Procedure that involves negotiations with only one chosen supplier.

Under a Sole Source Procedure:

- The Procurement Board or the Executive Directors identify a preferred supplier for the required goods or services.
- The Procurement Board or the Executive Directors negotiate the best deal possible with the chosen supplier, including the Scope of Supply, pricing and Contract terms.

For greater certainty, recommended uses for Sole Source Procedure include the following:

- To complete a purchase pursuant to an Emergency Contract.
- Where there is only one supplier able to supply the particular goods or services (of any value).
- Where the expected contract value for services is less than **\$15,000.00** and the cost or delay of undertaking a Request for Proposals Procedure or a Call for Tenders Procedure would outweigh any benefit.

6 SOLE SOURCE PROCEDURE

6.1 POLICY

In order to expedite the completion of projects or work with an estimated cost of **\$15,000.00** or less, such projects or work may be awarded on a Sole Source Procedure basis when there is one supplier known to have the necessary supplies required at competitive prices. Written justifications are required for Sole Source Procedure purchases. Copies of the written justifications must be forwarded to all members of the Procurement Board or Executive Directors and must also accompany the requisition for payments submitted to accounting department of the Nation Administration or the relevant Tsuu T'ina Entity, as applicable.

The following procedure shall apply in such a case:

- (a) Upon identifying a Contract with an estimated cost of **\$15,000.00** or less, the Nation's Executive Director of Finance and, as applicable, one (1) of the Chief Executive Officer the Executive Director of Economic Development or the Executive Director Companies, will review the Eligibility List to determine the Firm, Citizens and Citizen-Owned Companies eligible for the type of work involved in the Contract.
- (b) For greater certainty:
 - (i) all reviews, decisions and approvals on the part of the Executive Director of Economic Development or the Executive Director Companies pursuant to this Policy should, wherever reasonably possible, relate to those areas of responsibility of the Executive Director of Economic Development or the Executive Director Companies, as applicable; and
 - (ii) all reviews, decisions and approvals on the part of the Chief Executive Officer pursuant to this Policy should, wherever reasonably possible, relate to those areas of responsibility of the Chief Executive Officer.
- (c) The Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, may contact any Firm, Citizen or Citizen-Owned Company listed on the Eligibility List for the type of work involved in the Contract and may award the Contract to that Firm, Citizen or Citizen-Owned Company on such terms as they may mutually agree, provided that the Contract price shall not exceed **\$15,000.00** and provided that such Executive Directors do not have a conflict of interest.
- (d) In order to document the terms on which the Contract has been awarded to the Firm, Citizen or Citizen-Owned Company, the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, will arrange for a Work Order to be issued to the Firm, Citizen or Citizen-Owned Company. The parties shall meet and sign the Work Order prior to the commencement of the Contract work. Should the parties not be able to reach an agreement on the terms, then the Contract will be offered to Non-Citizens.
- (e) In order to avoid allegations of favouritism, the Executive Directors must rotate the Firm, Citizens or Citizen-Owned Companies chosen for Contracts under this Sole Source Procedure where there is more than one name on the Eligibility List from which to choose for the type of work involved in the Contract.

6.2 SOLE SOURCE PROCEDURE – EMERGENCY CONTRACTS

In order to deal in a timely fashion with situations requiring Emergency Contracts (being, for greater certainty, a Contract which must be awarded immediately because the health, property or safety of any individual, of the general public, or of the Nation, is at risk), and provided that such Emergency Contracts have an estimated cost of **\$15,000.00** or less, such Emergency Contracts may be awarded on a Sole Source Procedure basis to a Firm, Citizen or a Citizen-Owned Company listed on the Eligibility List for the type of work involved in the Contract. The following procedure shall apply in such a case:

- (a) Upon identifying an Emergency Contract with an estimated cost of **\$15,000.00** or less, the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, will, time permitting, review the Eligibility List to determine if any Firm, Citizen or Citizen-Owned Company is listed for the type of work involved in the matter.

- (b) If the nature of an Emergency Contract is such that the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, is not able to review the Eligibility List, the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, has the discretion to contact any Firm, Citizen or Citizen-Owned Company that is available and qualified for the Contract on an immediate basis whether such Firm, Citizen or Citizen-Owned Company is listed on the Eligibility List or not, as long as such Executive Directors do not have a conflict of interest.
- (c) If, after making diligent inquiries to determine whether any Firm, Citizen or Citizen-Owned Company is available and qualified for the type of work involved in the Emergency Contract, the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, is of the opinion that there are no Firms, Citizens or Citizen-Owned Companies available on an emergency basis, the Nation's Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies may award the Contract to a qualified individual who is not a Firm, Citizen or Citizen-Owned Company, provided that such Executive Directors do not have a conflict of interest.
- (d) Work on an Emergency Contract may only begin after the parties have reached an agreement on the price and other relevant terms.
- (e) Wherever possible, prior to any work on an Emergency Contract being commenced, the Nation's Executive Director of Finance and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, will arrange for a meeting to sign a Work Order. Should the issuance of a Work Order not be possible due to the urgency of the situation, the parties will meet as soon as possible after the Contract work is completed to execute the Work Order and properly document the matter.
- (f) In the case of an Emergency Contract, the Executive Director of Finance will submit a written report to the Procurement Board justifying the emergency purchase, within one (1) week after awarding the Emergency Contract.

7 THE BIDDING STRATEGY

7.1 BIDDING STRATEGY

The Procurement Board, following consultation with the Executive Directors, has the authority to determine the appropriate Bidding Strategies to employ, keeping in mind the following factors:

- (a) Timeline;
- (b) Scope of Supply;
- (c) Availability of suppliers; and
- (d) General market conditions for the good and/or service in question.

Once the determination of the appropriate Bidding Strategy has been determined by the Procurement Board, the Procurement Board will determine, where applicable and appropriate, the appropriate tender

documents (the "**Tender Documents**"). If Tender Documents are required, they should include the following:

- (a) Scope of Supply;
- (b) Deadline for submission;
- (c) Sample contract, if at all possible;
- (d) Architectural or engineering drawings (where applicable and available); and
- (e) Any other material the Procurement Board believes could have a material impact on the resulting Bid.

The foregoing list is not meant to be exhaustive and the final determination of what materials will be beneficial as part of the Tender Documents shall be determined by the Procurement Board.

7.2 ADVERTISING FOR PUBLIC TENDER

The Procurement Board is required to do the appropriate advertising for each Public Tender. The Procurement Board should endeavour to ensure that as many suppliers as practical are given the opportunity to quote.

7.3 NO COMPETITIVE SUPPLY MARKET

Where, in the opinion of the Procurement Board, no competitive supply market exists, purchasing practices may imply such value to analysis and negotiations as the Procurement Board considers appropriate for obtaining acceptable goods or services at the lowest possible price.

7.4 COMPETITIVE BIDDING REQUIREMENTS

- (a) *Public Tender* – Public Tender shall be advertised within the public of the Nation pursuant to this Policy or, if determined by the Procurement Board, to members of the general public. All advertisements shall be placed by the Procurement Board or the Bid Committee. The advertising content and format shall be consistent with generally accepted industry practice relating to the good or service, or as otherwise approved by the Procurement Board. Reasonable attempts shall be made to obtain three (3) or more Bids.
- (b) *Invitation to Tender* – reasonable attempts shall be made to obtain three (3) or more Bids.
- (c) *Price Comparison* – reasonable attempts shall be made to obtain at least three (3) quotes/Price Comparisons.
- (d) *Request for Proposals* – reasonable attempts shall be made to obtain three (3) or more proposals.

8 GENERAL PURCHASING PROCEDURES

8.1 CALL FOR TENDERS PROCEDURE

Where the Procurement Board has selected a Call for Tenders Procedure, the following procedures will be followed.

- (a) The Procurement Board shall develop a Call for Tenders package which includes the following:
 - (i) Instructions to Bidders;
 - (ii) Scope of Supply;
 - (iii) Bid Form;
 - (iv) Evaluation Criteria; and
 - (v) Form of Contract.
- (b) The Procurement Board shall also determine applicable requirements relating to, without limitation, insurance, security deposits, bonding and Workers' Compensation.
- (c) The Procurement Board will determine whether to conduct the Call for Tenders Procedure by Invitation to Tender or by Public Tender.
- (d) In the case of an Invitation to Tender Process, the Procurement Board will make a list of the potential suppliers to be invited to Bid.
- (e) The Procurement Board will establish a Bid Committee.
- (f) The Bid Committee will review the Call for Tenders and (if applicable) the list of potential suppliers, and may recommend to the Procurement Board:
 - (i) that a different Procedure be applied;
 - (ii) that changes be made to the Call for Tenders;
 - (iii) that changes be made to the list of suppliers to be invited to Bid; or
 - (iv) that the Call for Tenders and list of suppliers be approved as presented.
- (g) The Procurement Board and the Bid Committee will resolve any recommendations of the Bid Committee to their mutual satisfaction.
- (h) The Procurement Board will implement the Call for Tenders as approved by the Bid Committee.
- (i) The Call for Tenders shall be:
 - (i) sent to the approved list of suppliers, in the case of an Invitation to Tender; or
 - (ii) published as appropriate, in the case of a Public Tender.
- (j) Once the Call for Tenders has been issued, members of the Bid Committee will avoid communicating with any bidder except as specifically permitted by the Call for Tenders.
- (k) The Bid Committee will evaluate the Bids in accordance with this Policy and make recommendations to the Procurement Board

8.2 REQUEST FOR PROPOSALS PROCESS

Where the Procurement Board has selected a Request for Proposals Procedure, the following procedures will be followed.

- (a) The Procurement Board will develop a Request for Proposals which includes the following:
 - (i) Instructions to Bidders;
 - (ii) Scope of Supply;
 - (iii) Bid Form;
 - (iv) Evaluation Criteria; and
 - (v) Form of Contract, if appropriate.
- (b) The Procurement Board shall also determine applicable requirements relating to, without limitation, insurance, security deposits, bonding and Workers' Compensation.
- (c) The Procurement Board may make a list of the potential suppliers to be invited to submit Bids, or may elect to issue the Request for Proposals publicly.
- (d) The Procurement Board will establish a Bid Committee.
- (e) The Bid Committee will review the Request for Proposals and (if applicable) the list of potential suppliers, and may recommend to the Procurement Board:
 - (i) that a different Process be applied;
 - (ii) that changes be made to the Request for Proposals;
 - (iii) that changes be made to the list of suppliers to be invited to Bid; or
 - (iv) that the Request for Proposals and list of suppliers be approved as presented.
- (f) The Procurement Board and Bid Committee will resolve any recommendations of the Bid Committee to their mutual satisfaction.
- (g) The Procurement Board will implement the Request for Proposals as approved by the Bid Committee.
- (h) The Request for Proposals will be:
 - (i) sent to the approved list of suppliers, if a list has been prepared and approved; or
 - (ii) published as appropriate.
- (i) Once the Request for Proposals has been issued, members of the Bid Committee will avoid communicating with any bidder except as specifically permitted by the Request for Proposals.

- (j) The Bid Committee will evaluate the Proposals in accordance with this Policy and will make recommendations to the Procurement Board, in order to select one or more preferred suppliers.
- (k) The Procurement Board may negotiate with one or more preferred suppliers as recommended by the Bid Committee, according to the terms of the Instructions to Bidders.
- (l) The final terms of any contract negotiated with a preferred supplier will be subject to the approval of the Procurement Board.

8.3 PRICE COMPARISON PROCESS

Where the Procurement Board has selected a Price Comparison Procedure, the following procedures will be followed.

- (a) The Procurement Board or its designate will seek at least three verbal, written or electronic price lists or price quotes for comparison.
- (b) The Procurement Board or its designate will document all prices considered.
- (c) The Procurement Board or its designate will be responsible for selecting the supplier that will provide best value for the goods or services in question.
- (d) The Procurement Board shall also determine applicable requirements relating to, without limitation, insurance, security deposits, bonding and Workers' Compensation.

9 CONDUCT OF THE BIDDING PROCESS

9.1 FIRMS, CITIZENS OR CITIZEN-OWNED COMPANY POLICY

Unless otherwise unanimously agreed by the Procurement Board, Contracts with an estimated cost above **\$75,000.00** that have more than one Firm, Citizen or Citizen-Owned Company listed on the Eligibility List for the type of work involved in the Contract must be offered using the Call for Tenders Procedure or an RFP Procedure in accordance with this Section of this Policy, as follows:

- (a) Prior to issuing a Call for Tenders notice or an RFP notice (a "**Notice**") the Nation's Executive Director of Finance, and one (1) of the Chief Executive Officer, the Executive Director of Economic Development or the Executive Director Companies, as applicable, shall consult with the Procurement Board to determine the appropriate Bidding Strategy.
- (b) The Notice must provide the following information:
 - (i) that only a Firm, Citizen or Citizen-Owned Company on the Eligibility List may submit a Bid;
 - (ii) how to obtain a copy of the Bid instructions;
 - (iii) the relevant Department or Portfolio or Tsuu T'ina Entity making the request;
 - (iv) a general description of the Contract;
 - (v) project deadlines, if any; and

- (vi) closing date, time and delivery method for Bids.
- (c) The Notice must be posted on the public bulletin board located at the Chief Joseph Big Plume Building for a prescribed period of time (as determined by the Procurement Board or, if applicable, by the Bid Committee) prior to the deadline for submission of Bids.

9.2 CONDUCT OF BIDDING PROCESS

Subject always to the discretion of the Procurement Board, the following guidelines will be observed for the conduct of the bidding process for any Contract under this Policy:

- (a) The Procurement Board (or, if applicable, the Bid Committee) shall not accept Bid Proposals after the time as set in the Tender Document.
- (b) The Procurement Board (or, if applicable, the Bid Committee) shall not allow a Bid to be altered, unless doing so will affect the Bid Evaluation.
- (c) The Procurement Board (or, if applicable, the Bid Committee) shall allow for a Bid to be withdrawn, even after the deadline has passed.
- (d) The Procurement Board (or, if applicable, the Bid Committee) shall ask for clarification if a Bid Proposal is received that is materially different from other Bids received.
- (e) The Procurement Board (or, if applicable, the Bid Committee) may choose to prepare a short list of Bid Proposals for further evaluation. This further evaluation may include an interview if deemed necessary by the Procurement Board (or, if applicable, the Bid Committee).

9.3 INVITATION TO TENDER

Any Invitation to Tender or Public Tenders must include the following in their Bids in order to be considered by the Procurement Board (or, if applicable, the Bid Committee):

- (a) Scope of Supply;
- (b) General terms and conditions;
- (c) Special terms and conditions;
- (d) Payment and performance milestones;
- (e) Performance tests; and
- (f) Payment Schedule.

10 EVALUATING BID PROPOSALS

10.1 BID EVALUATION

Subject to the discretion of the Procurement Board, the Procurement Board and each Bid Committee shall observe the following guidelines:

- (a) Bids will be evaluated against the criteria set out in Article 10.2.

- (b) One individual member of the Procurement Board (or, if applicable, the Bid Committee) will be designated to communicate with all bidders.
- (c) A summary of the results of the evaluation will be prepared for all purchase transactions.
- (d) All respondents requesting Bid requests will be advised of the outcome, however caution must be exercised in order not to share sensitive or competitive information.
- (e) Debriefing of unsuccessful bidders will be made on request, after Contract award. Such debriefing may include an outline of the reason the Bid was not successful, making reference to the evaluation criteria, however the confidentiality of other Bids must be protected.
- (f) Preferential treatment may be granted to Citizens and Citizen-Owned Companies, within the limits established through this Policy, or as otherwise established by Council from time to time.
- (g) Where in the opinion of the Procurement Board (or, if applicable, the Bid Committee), no competitive supply market exists, purchasing practices may imply such value to analysis and negotiations as the Procurement Board (or, if applicable, the Bid Committee) considers appropriate for obtaining acceptable materials at the lowest possible price.

10.2 EVALUATION CRITERIA

The Procurement Board (or, if applicable, the Bid Committee) will evaluate the Bid proposals based on any reasonable and relevant evaluation criteria as it sees fit to help ensure selection of the best overall Bid. Evaluation criteria that the Procurement Board (or, if applicable, the Bid Committee) may, without limitation, take into account the following (in no particular order of importance):

- (a) Whether the bidder is a Firm, a Citizen or a Citizen-Owned Company. Preference for bids must be made in the following order: (1) Citizens or Citizen-Owned Companies, with preference shown to Citizen-Owned Companies based upon the highest percentage of ownership by Citizens; (2) Firms with established family ties to a Citizen; and (3) Firms.
- (b) Pricing and associated value for money.
- (c) The ability and capacity of the Bid proposal to meet the requirements of the Nation, the Nation Administration or the Tsuu T'ina Entity generally.
- (d) Contractual terms that the bidder is prepared to offer and/or accept.
- (e) Performance in any interactive sessions or interviews.
- (f) Reputation of the bidder.
- (g) Value-adds the bidder can provide.
- (h) Previous experience of the bidder, particularly in relation to First Nations.
- (i) Financial stability of the bidder.
- (j) Reference checks in respect to the bidder.
- (k) The prior experience of the Nation, the Nation Administration and/or any Tsuu T'ina Entity with the bidder.

- (l) Any of the above in addition to the Bids/Proposals acceptance criteria.

10.3 RECOMMENDATION

All things being equal, the Procurement Board will accept (or, if applicable, the Bid Committee will recommend to the Procurement Board for acceptance) the best qualified Bid that meets the specifications called for in the Tender Documents. For greater certainty, a "*qualified*" Bid means that, in the opinion of the Procurement Board (or, if applicable, the Bid Committee), the Firm, Citizen or Citizen-Owned Company has the expertise, experience and ability, both physically and financially, to supply the goods and/or to perform the services (in each case of the quality desired), in a manner satisfactory to the Procurement Board (or, if applicable, the Bid Committee). In the case of RFP's, the Procurement Board (or, if applicable, the Bid Committee) shall recommend the Bid Proposal which, in the opinion of the Procurement Board (or, if applicable, the Bid Committee), best meets the requirements of the Nation, the Nation Administration and/or the Tsuu T'ina Entity, as applicable. For greater certainty, in all cases the Procurement Board reserves the right where the Procurement Board deems it to be in the best interests of the Nation, the Nation Administration and/or a Tsuu T'ina Entity to do so:

- (a) to review all any or all tenders, Bids or Bid Proposals;
- (b) to reject all tenders, Bids or Bid Proposals;
- (c) to adopt another Bidding Strategy under this Policy; and/or
- (d) to obtain competitive Bids from non-Citizens and non-Citizen-Owned Companies.

10.4 CITIZEN AND CITIZEN-OWNED COMPANY PREFERENCE

Notwithstanding anything in this Policy, the Procurement Board may extend preference to a Citizen or Citizen-Owned Company over non-Citizens and non-Citizen-Owned Companies provided that a qualified Bid or Bid Proposal has been received from the Citizen or Citizen-Owned Company and the same is no more than 5% higher than the lowest qualified Bid otherwise received.

11 AWARDING OF CONTRACT

11.1 RECOMMENDATION OF CONTRACT

- (a) Once the Bid Committee has recommended to the Procurement Board that a Contract be awarded, the Procurement Board shall, if it accepts such recommendation and subject to the terms of this Policy, arrange for the proper execution of the Contract with the successful bidder.
- (b) Following the Bid Evaluation meeting, a Procurement Board representative will meet with the successful Firm, Citizen or Citizen-Owned Company, as applicable, to arrange for execution and delivery of the Work Order or Contract by the successful Firm, Citizen or Citizen-Owned Company, as applicable, and by the Nation's Executive Director of Finance and Chief Executive Officer.
- (c) Should the successful Firm, Citizen or Citizen-Owned Company not sign the Work Order or Contract, as applicable, then after a Procurement Board representative has made diligent but unsuccessful attempts to contact the Firm, Citizen or Citizen-Owned Company, as applicable, the Firm, Citizen or Citizen-Owned Company will not be awarded the Contract. In such an event, the Procurement Board representative will contact the Firm, Citizen or Citizen-Owned Company with the second highest rank or, as the case may be, the next lowest Bid, notifying them that the Contract will be awarded to

them and make arrangements to meet with the Firm, Citizen or Citizen-Owned Company to sign the Work Order or Contract as contemplated herein.

- (d) Following the signing of the Work Order, the Procurement Board representative will send a letter to the other Firms, Citizens and Citizen-Owned Companies that submitted Bids for the Contract, advising them that the Contract has not been awarded to them.
- (e) The Procurement Board shall advise the Chief and Council on a quarterly basis of all Contracts that have been awarded under this Policy, using the Council's prescribed process.

12 GRIEVANCES

12.1 GRIEVANCES

Policy

Any Firm, and Citizen or Citizen-Owned Company listed on the Eligibility List that has concerns about this Policy, including its application, interpretation and/or the award process in relation to a specific Contract, shall have the right to have their concern(s) heard according to the grievance process provided for below, namely:

- (a) Firms, Citizens or Citizen-Owned Companies must submit their grievance(s) to the Procurement Board in the form of a grievance letter.
- (b) All grievance letters must contain the following information:
 - (i) the name of the person submitting the grievance;
 - (ii) a brief description of the Contract;
 - (iii) a description of the grievance; and
 - (iv) the remedy sought by the person but, for greater certainty, such remedy must be limited to the specific types of remedies available under this Policy.
- (c) Within a prescribed period of receiving a grievance letter, not to exceed forty five (45) days, a member of the Procurement Board shall investigate the grievance and write to the person, on behalf of the Procurement Board, to acknowledge and respond to the grievance.
- (d) If after receiving the response letter from the Procurement Board, the person submitting the grievance remains unsatisfied, the person may submit a written request for a hearing (a "**Grievance Hearing**") to the Procurement Board.
- (e) Any request for a Grievance Hearing must be delivered to the Procurement Board with a specified payment not to exceed \$50 within thirty (30) days from the date of the letter from the Procurement Board, and must contain copies of all correspondence related to the grievance.
- (f) Within a prescribed period of receiving a request for a Grievance Hearing, the Procurement Board will consult with individuals from the Procurement Board, advise of the name of the Firm, Citizen or Citizen-Owned Company that requested the Grievance Hearing, and the Procurement Board shall select a Grievance Hearing Committee and

Chair. The Chair of the Grievance Hearing Committee will then establish a date for the Grievance Hearing and will notify the aggrieved party of the date and time for the hearing.

- (g) Persons appearing at a Grievance Hearing are not entitled to have lawyers or agents representing them.
- (h) Persons appearing at a Grievance Hearing are entitled to state their concerns and the relief sought.
- (i) Persons appearing at a Grievance Hearing that prefer to speak the language of the Nation at the Grievance Hearing may do so (with the assistance of an interpreter if necessary).
- (j) In hearing a grievance, the Grievance Hearing Committee is entitled to consider any matter relevant to the issue, including reviewing documents and other materials that would assist the Grievance Hearing Committee in giving full consideration to the matter.
- (k) Within a prescribed period following the Grievance Hearing, the Chair of the Grievance Hearing Committee will send a letter to the person submitting the grievance, advising of the Grievance Hearing Committee's recommendations.
- (l) Only the following types of relief (in the form of recommendations) may be granted by the Grievance Hearing Committee:
 - (i) recommending to the Chief and Council that this Policy be altered by adding, deleting or modifying sections; and/or
 - (ii) recommending to the Chief and Council that an individual not be eligible to serve on a pre-grievance stage Committee under this Policy in the future; and/or
 - (iii) recommending to the Chief and Council that any individual involved in making a decision to award a Contract to a Firm, Citizen or Citizen-Owned Company should be investigated for allegedly failing to perform their duties in accordance with this Policy and/or making a decision in the presence of a conflict of interest.
- (m) For greater certainty, the Grievance Committee has no authority to make any order, or to amend, retract or otherwise alter the terms of any Contract awarded pursuant to this Policy.
- (n) All recommendations made by the Grievance Hearing Committee are final and are not subject to appeal.

13 INDEPENDENT CONTRACTOR

13.1 INDEPENDENT CONTRACTOR

The relationship between the Nation, the Nation Administration and/or any Tsuu T'ina Entity and any Firm, Citizen or Citizen-Owned Company contracted with under this Policy is one of independent contractor, and does not constitute an employee/employer relationship.

13.2 NO EMPLOYMENT BENEFITS

- (a) A Firm, Citizen or Citizen-Owned Company awarded a Contract under this Policy is not to be provided by the Nation, the Nation Administration or by any Tsuu T'ina Entity with employment benefits of any kind, including Workers' Compensation coverage.
- (b) Any individual, Firm, Citizen or Citizen-Owned Company awarded a Contract under this Policy shall be solely responsible for providing their employees with employment benefits and other coverage deemed necessary by the individual, Firm, Citizen or Citizen-Owned Company, or otherwise required by law, including the provision of Workers' Compensation benefits to their employees.

13.3 HIRING OF OTHER NATION CITIZENS & CITIZEN-OWNED COMPANIES

- (a) Any Firm, Citizen or Citizen-Owned Company awarded a Contract under this Policy must, where additional labour is required to complete the Contract, use their best efforts to hire other Citizens or Citizen-Owned Companies in consultation with the Nation's human resources department.
- (b) Where a Firm, Citizen or Citizen-Owned Company:
 - (i) is awarded a Contract;
 - (ii) has made their best efforts in consultation with the Nation's human resources department to locate and hire other Citizens or Citizen-Owned Companies; and
 - (iii) has determined, acting reasonably, that no other Citizens or Citizen-Owned Companies have any interest in working on a Contract or that qualified Citizens or Citizen-Owned Companies do not exist for the type of work involved in a Contract;

then the Firm, Citizen or Citizen-Owned Company that was awarded the Contract may hire non-Citizens and/or non-Citizen-Owned Companies to complete the Contract.

14 PUBLIC DISCLOSURE

14.1 POLICY

The matter of disclosure under this Policy seeks to balance the competing interests of the privacy of the Firm, Citizen or Citizen-Owned Company whose information is being sought and the general principles of transparency and accountability, which are central to this Policy. As such:

- (a) Unless the same is otherwise posted in a public place on the Nation, then upon receipt of a written request by any Firm, Citizen or Citizen-Owned Company, a list of the Contracts awarded under this Policy during the last twelve (12) months and the name of the Firm, Citizen or Citizen-Owned Company awarded each Contract will be made available by the Procurement Board.
- (b) The amounts paid to any Firm, Citizen or Citizen-Owned Company under this Policy will not, unless otherwise directed by Council or required by law, be disclosed by the Procurement Board or any of its members, or by the Nation, the Nation Administration, any Tsuu T'ina Entity, or any of their respective employees or elected officials (as applicable).

15 CONFLICT OF INTEREST POLICY

15.1 STATEMENT OF PRINCIPLE

The Nation, the Nation Administration and each of the Tsuu T'ina Entities recognize the importance of protecting the Nation, the Nation Administration and each of the Tsuu T'ina Entities from conflicts of interest, while preserving the rights of Office Holders to participate as private Citizens in the life of the community.

15.2 INTERPRETATION

In this Article of this Policy, the following terms shall have the following meanings:

- (a) "**associate**" means:
 - (i) any person or other entity with which an Office Holder has an actual or proposed contractual or business relationship of any kind, including any relationship involving actual or potential ownership of securities or any other interest in a body corporate, partnership, joint venture or similar arrangement; and
 - (ii) anyone in a close personal or friendship relationship with an Office Holder, whether or not that relationship is conjugal;
- (b) "**Chief**" means the Chief of the Nation;
- (c) "**conflict of interest**" has the meaning ascribed thereto in Article 15.6;
- (d) "**Council**" means the Nation's Chief and Council;
- (e) "**Director**" means a director of a Tsuu T'ina Entity;
- (f) "**Family**" means any person related by marriage, blood or adoption, and also includes anyone living with an Office Holder;
- (g) "**Including**" shall be deemed to be followed by the statement "without limitation" and shall not be construed to limit any word or statement which it follows to the specific or similar items or matters immediately following it;
- (h) "**Office**" means a directorship, office, job, board membership or any other office or appointment;
- (i) "**Office Holder**" means:
 - (i) all members of Chief and Council;
 - (ii) Executive Directors, Directors and Officers;
 - (iii) each person who is an employee of the Nation, the Nation Administration or of any Tsuu T'ina Entity;
 - (iv) each person who is a member of the Procurement Board, a Bid Committee, or the Grievance Hearing Committee; and
 - (v) any other Nation employee, Officer or Office Holder of any kind designated by the Chief or his designate from time to time; and

- (j) **"Officer"** means an officer of a Tsuu T'ina Entity.

15.3 PRIVATE INTEREST

For the purposes of this Policy, **"private interest"** means any material financial or other advantage or benefit to an Office Holder, to a member of his or her family, or to an associate which might reasonably be perceived by a well informed observer as capable of compromising the fair and impartial making of a decision or the carrying out of a duty or function on the basis of considerations properly related to that decision, duty or function, and for greater certainty:

- (a) includes any material (actual or promised):
 - (i) direct or indirect financial interest;
 - (ii) appointment, contract or other arrangement for the provision of goods or services of any kind by the Office Holder or other person or by any body corporate or other entity in which he or she has an interest;
 - (iii) offer of employment or promotion;
 - (iv) other advantage or benefit (other than that provided by the Nation, the Nation Administration, a Tsuu T'ina Entity, or other Nation organization) to relevant Office Holders;
- (b) does not include an interest arising from the exercise of an official power or the performance of an official duty or function that:
 - (i) applies to the general public;
 - (ii) affects an Office Holder as one of a broad class of Nation Citizens;
 - (iii) concerns the remuneration or benefits of an Office Holder as such.

15.4 BODY CORPORATE

For the purposes of this Policy, a body corporate is controlled by the Nation if:

- (a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of the Nation; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate; or
- (c) if the Nation is otherwise entitled to appoint a majority of the directors of the body corporate.

15.5 APPLICATION

This Policy applies to all Office Holders.

15.6 CONFLICT OF INTEREST

For the purposes of this Policy, an Office Holder has a conflict of interest when he or she carries out a duty or function of his or her office or employment, and at the same time knows that in carrying out the duty or function there is an opportunity to further his or her private interest.

15.7 CONFLICT OF INTEREST PROHIBITION

An Office Holder must not carry out or participate in the carrying out of a duty or function, including the making of any decision, if he or she has a conflict of interest. An Office Holder must not use his or her office to seek to influence a decision, to be made by another person, to further the Office Holder's private interest.

15.8 INSIDER INFORMATION AND USE OF ASSETS

An Office Holder shall not knowingly use information that is obtained in the course of carrying out his or her duties that is not generally available to Citizens to further or seek to further his or her private interest. An Office Holder shall not use assets owned, controlled or provided by the Nation, the Nation Administration, a Tsuu T'ina Entity, or other Nation organization, as the case may be, to further his or her private interest, or otherwise except for approved purposes.

15.9 ACCEPTING EXTRA BENEFITS

An Office Holder must not accept a fee, gift or any other private benefit of any kind that is connected directly or indirectly with the performance of his or her duties as such, except to the extent duly authorized by the board of the relevant Tsuu T'ina Entity, and by Council or its designate.

15.10 INCIDENTAL BENEFITS

Article 15.9 does not apply to a gift or private benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

15.11 MAXIMUM VALUE OF INCIDENTAL BENEFITS

If the value of a gift or private benefit referred to in Article 15.10 exceeds \$100 in value, or if the total value received directly or indirectly from one source in any 12-month period exceeds \$350, the Office Holder must immediately disclose particulars of the gift or benefit in writing to the board of the relevant Tsuu T'ina Entity, if any, and the Chief or his designate, indicating:

- (a) the nature of the gift or private benefit;
- (b) its source;
- (c) the circumstances under which it was given and accepted;

and shall transfer the gift or benefit to the Nation or otherwise if directed to do so by the Chief or his designate.

15.12 PROCEDURE ON CONFLICT OF INTEREST

An Office Holder who has reasonable grounds to belief he or she has a conflict of interest must immediately:

- (a) disclose the general nature of the conflict; and

- (b) if present at a meeting or participating in any other process considering the matter, withdraw from the meeting or other process without participating in the discussion, making any comment or voting on the matter; or
- (c) if the matter is other than a meeting or other process to consider the matter, refrain from participating in the carrying out of that duty or function.

15.13 REMEDY UPON BREACH OF THIS POLICY

If an Office Holder breaches this Policy, and the Office Holder, or his or her family member or associate thereby realizes any financial gain, the Office Holder shall on demand pay the amount so gained to the Nation, together with all reasonable legal and accounting fees and disbursements and other costs incurred by the Nation and any body corporate controlled by the Nation to investigate and enforce such claim.

15.14 RULINGS

On the request of the relevant Office Holder, the Chief or his designate shall be entitled to conclusively determine:

- (a) whether a private interest exists within the meaning of Article 15.3;
- (b) whether a conflict of interest exists within the meaning of Article 15.6; and
- (c) whether, in the event a course of action would or may constitute a breach of this Policy, the requirements of this Policy should be waived.

The Chief or his designate may in so deciding take reasonable account of the fact that there are family and other relationships between many Citizens, and that the Nation wishes to enable its Citizens to be employed by the Nation and to hold office as often as reasonably possible, and to carry out their duties in those capacities, while maintaining confidence in the impartial administration of Nation business, the procurement of goods and services, the granting of Contracts in relation thereto, and other affairs.

16 REVIEW AND AMENDMENTS

16.1 POLICY REVIEW

- (a) Council or the Procurement Board may determine when a review of this Policy is necessary. The Procurement Board shall submit request to the Legislative Procedures Executive Director for the Legislative Process.
- (b) When the Procurement Board conducts and completes a review of this Policy from time to time, it shall recommend to the Legislative Procedures Executive Director whether this Policy should be revised or amended.

16.2 AMENDMENTS AND REPEAL

- (a) This Policy shall only be amended by means of the Tsuu T'ina Legislative Process.
- (b) This Policy shall only be repealed by means of the Tsuu T'ina Legislative Process.

