

## ADDENDUM A

### REQUIREMENTS FOR TRIBAL PROCUREMENT OF SANITATION FACILITIES, INCLUDING MATERIALS, CONSTRUCTION, AND SERVICES UNDER P.L. 86-121 MOA.

#### A. PROCUREMENT STANDARDS:

The Tribe shall use a system of contract administration that ensures performance by its contractors in accordance with the terms and conditions of the contract and compliance with OMB Circular A-102 (45CFR92). The Tribe shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to source evaluation, protests, disputes, and claims.

No employee, officer or agent of the Tribe shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (a) the employee, officer, or agent, (b) any member of his immediate family, (c) his or her partner, (d) or an organization which employees, or is about to employ, any of the above, has a financial or other interest in the firm selected for the award.

The tribal officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

#### B. COMPETITIVE PROCUREMENT PRACTICES:

1. Competition - All tribal procurement under the MOA shall be competitive and based on firm fixed prices. The following requirements apply:
  - a) Materials, Construction and Services (non A/E) Estimated at Less than \$2,000: The Tribe shall solicit a verbal or written quote from one or more source qualified to do the work. The Tribe shall award a purchase order to the qualified source with the lowest quote.
  - b) Materials, Construction and Services (non A/E) Estimated at More than \$2,000 and Less than \$100,000: The Tribe shall solicit a written quote from a minimum of three (3) sources qualified to do the work and likely to submit a quote. The Tribe shall award a purchase order to the responsive, responsible source with the lowest quote.
  - c) Materials, Construction and Services (non A/E) Estimated at \$100,000 or more: The Tribe shall advertise formally for a minimum of 15 calendar days for sealed bids to be opened publicly at a specified time, date, and place. The Tribe shall award a contract to the responsive, responsible source which has submitted the lowest bid price.
  - d) Architect/Engineer (A/E) Services: The Tribe shall solicit competitive proposals from potentially interested professional firms. The Tribe shall establish objective selection criteria before soliciting proposals. The Tribe then shall select the firm determined by selection criteria to be most qualified to perform the work. The Tribe shall attempt to negotiate with this firm to set fair and reasonable compensation. If negotiations with one firm are not successful, the Tribe may proceed to negotiate with the next most qualified firm. This process may continue until agreement is reached.
2. Indian Preference: If the Tribe has enacted an Indian preference ordinance of general applicability and agrees to apply the terms of that ordinance, the Indian preference requirements of that ordinance shall apply in lieu of IHS requirements as long as the effect is similar to that of IHS requirements. The Tribe may not give preference to tribal members or tribal companies only, nor limit preference geographically, including restriction to those within reservation boundaries.

In the absence of a formally adopted Indian preference policy by the Tribe, preference shall be given in the award of construction and service contracts to those firms (or joint ventures) whose levels of ownership and control by enrolled Indians (or Alaska Natives) each equal at

least 51 percent of the total on a continuing basis for the duration of the contract. Firms (or joint ventures) which satisfactorily document at the time of bid or quotation such ownership and control shall have an amount equal to 5 percent of their total bid deducted from the bid price for comparison with other bids. Once this deduction is made for qualified Indian firms (or joint ventures), the award will be made by the Tribe to the responsive, responsible bidder with the lowest resulting bid.

C. REQUIRED NOTICE TO PROSPECTIVE BIDDERS:

The Tribe shall notify the vendors and contract bidders of the following:

- a) Indian Preference policy for contracting/subcontracting.
- b) Minimum percentage of work to be performed by the prime contractor (33-1/3%, unless otherwise specified).
- c) Responsibility of the Tribe for compliance with and enforcement of the contract (i.e., the contract is not a Federal contract).
- d) Restrictions on liens (State lien laws do not apply on Federal trust land).
- e) Remedy for disputes, as provided for under General Provisions (Schedule B in the Appendix).
- f) The role of the IHS, such as technical advisor and construction inspector for the Tribe.

D. WAGE RATES:

Davis-Bacon wage rates shall apply for all construction contracts exceeding \$2,000 in value executed by a Tribe and funded by Federal agencies, except for work funded with HUD CDBG funds. The Tribe is responsible to review payroll information submitted by the contractor for compliance with Davis-Bacon requirements, in accordance with attached Labor Provisions (Schedule C in the Appendix).

Unless it requests IHS to obtain wage rates, the Tribe shall request applicable wage rates directly from U.S. Department of Labor.

E. BONDING REQUIREMENTS:

For construction contracts on Federal Trust Land exceeding \$100,000, the Tribe shall require bid, payment, and performance bonds, as described below. For construction contracts on non-trust land in excess of \$5,000, payment and performance bonds shall be required. The IHS may accept the bonding policy and requirements of the Tribe, provided that IHS determines that its interest is adequately protected. In lieu of such a determination, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price.
- (2) A payment bond on the part of the contractor for 100 percent of the contract price.
- (3) A performance bond on the part of the contractor for 100 percent of the contract price.

F. SUBCONTRACT LIMITS:

The prime contractor shall be required to perform with its employees and equipment at least 33.3 percent of the total amount of the work included in the contract. Copies of subcontract agreements may be required to verify the amount of work performed.

G. ADMINISTRATIVE PROVISIONS:

The Tribe's contract shall contain the following provisions:

- a) Administrative, contractual, or legal remedies in instances where contractors violate or

- breach contract terms, and provide for such sanctions and penalties as may be appropriate (except small purchases).
- b) Termination for cause and for convenience by the Tribe including the manner by which it will be effected and the basis for settlement. (Contracts exceeding \$10,000.)
  - c) Compliance with the "Equal Employment Opportunity" Executive Order 11246 as amended: (Contracts and subcontracts exceeding \$10,000.)
  - d) Compliance with the Copeland "Anti-kickback" Act.
  - e) Compliance with the Davis-Bacon Act. (Contracts exceeding \$2,000.)
  - f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standard Act. (Construction contracts in excess of \$2,000.)
  - g) IHS requirements for reporting, as called for in the MOA.
  - h) IHS Indian preference requirements.
  - I) Access by the Federal government and the Tribe to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making an audit, examination, excerpts, and transactions.
  - j) Retention of all required records for three years after the Tribe makes final payment and all other pending matters are closed.
  - k) Compliance with all applicable environmental laws and EPA regulations including Executive Order 11738. (Contracts exceeding \$100,000.)

H. GENERAL PROVISIONS:

In the absence of an equivalent set of General Provisions approved by the Area SFC Branch Chief for Construction contracts, Paragraph 1-43 of the General Provisions appearing as Schedule B in the Appendix shall be included in their entirety in the Tribe's solicitation and contract. For Procurement less than \$100,000, the Area SFC Division Director may approve a condensed set of these General Provisions that protects the IHS and Tribe's interests.

I. SPECIAL PROVISIONS:

Unless determined by the Area SFC Division Director to be inappropriate, the Tribe shall include in its solicitation and contract the Special Provisions shown as Schedule D in the Appendix.

J. SUBMITTAL REQUIREMENTS:

Unless determined by the Area SFC Division Director to be inappropriate, the Tribe shall include in its solicitation the submittal requirements shown as Schedule F in the Appendix.

K. FINAL INSPECTION:

The Tribe shall conduct with the contractor, IHS representatives, and other interested parties, a final inspection of the facilities provided under the contract. Final acceptance and payment for the work by the Tribe shall not occur until the contractor has corrected all deficiencies identified at the final inspection and until the work is in full compliance with the plans, specifications, and other contract requirements.

Work will be inspected by IHS to insure that the work performed complies with all the terms and conditions of the Tribal contract. Final IHS contribution for the work performed will not be released to the Tribe until such time as the IHS participates in a final inspection and determines that the work complies with all contract requirements.