

**RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE OF
THE NAVAJO NATION COUNCIL**

**Approving and Accepting the Navajo Nation Procurement Rules
and Regulations as Described Within the Procurement Code**

WHEREAS:

1. Pursuant to 2 N.N.C. § 374 (B)(16), as amended by Navajo Nation Council Resolution CO-81-90, the Budget and Finance Committee of the Navajo Nation Council has oversight authority over the Office of the Controller; and

2. Pursuant to 2 N.N.C. § 372, the Budget and Finance Committee is a standing committee of the Navajo Nation Council established for the purpose of recommending to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation; and

3. The Navajo Nation Office of the Attorney General, Office of Legislative Counsel, Business Regulatory Office and Division of Finance, Purchasing Services Department recommend the adoption of the Navajo Nation Procurement Rules and Regulations; and

4. The Navajo Nation Office of Legislative Counsel and the Office of the Attorney General, Business Regulatory and Division of Finance, Purchasing Services Department have developed a proposed comprehensive Navajo Nation Procurement Rules and Regulations, attached hereto as Exhibit "A"; and

5. Pursuant to 12 N.N.C. § 320 (as amended by CJY-68-01), the Navajo Nation Office of Legislative Counsel, Office of Attorney General, Business Regulatory and the Office of the Controller have been authorized to develop Navajo Nation Procurement Rules and Regulations; and

6. Pursuant to 12 N.N.C. §320 (as amended by CJY-68-01), the Budget and Finance Committee of the Navajo Nation Council has final authority to adopt the newly developed Navajo Nation Procurement Rules and Regulations; and

7. The Navajo Nation Procurement Rules and Regulations will establish rules, procedures, and guidelines relating to the procurement of all Goods, including supplies and services, including, but not limited to, the procurement of information technology, and construction. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout the Navajo

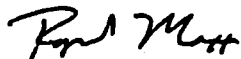
Nation government and to increase the effectiveness and efficiency of the Navajo Nation purchasing system and to minimize the administrative cost impact of the purchasing function on indirect costs while maintaining a controlled and efficient purchasing system providing full and open completion.

NOW THEREFORE BE IT RESOLVED THAT:

The Budget and Finance Committee of the Navajo Nation Council hereby approves and accepts the newly developed Navajo Nation Procurement Rules and Regulations (attached hereto as Exhibit "A").

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting in Window Rock (Navajo Nation), Arizona, at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, and 0 abstained, this 16th day of December, 2003.



**Raymond Maxx
Chairperson**

**Motion : Bennie Shelly
Second: Ernest Hubbell**

NAVAJO NATION PROCUREMENT RULES AND REGULATIONS

I. GENERAL; AUTHORITY; APPLICATION

- A. These Navajo Nation Procurement Rules and Regulations (hereinafter "Regulations") are promulgated under the statutory authority of the Navajo Nation Procurement Code, 12 N.N.C. §§301-371 (as amended by CAU-68-01).
- B. These Regulations, establish rules, procedures, and guidelines relating to the procurement of all Goods, including supplies, and Services, including the procurement of information technology and construction. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout the Navajo Nation government and to increase the effectiveness and efficiency of the Navajo Nation purchasing system and to minimize the administrative cost impact of the purchasing function on indirect costs while maintaining a controlled and efficient purchasing system providing appropriate competition.
- C. These Regulations shall apply to the procurement of Goods, including supplies, and Services, including the procurement of information technology and construction by any division, department, office, program or uncertified political subdivision of the Navajo Nation, as defined by Section II of these Regulations and 12 N.N.C. §308 (o).
- D. These Regulations shall be adhered to by the Navajo Nation Purchasing Services Department personnel and non-Purchasing Services Department personnel.
- E. The foundation of an efficient and cost-effective procurement process begins with proper planning by the procuring parties. Nothing in these Regulations is intended to or shall negate the procuring party's responsibility to allow sufficient time for the procurement process.
- F. Nothing contained in these Regulations shall be construed to waive any rights, remedies or defenses the Navajo Nation might have under any laws of the Navajo Nation.
- G. These Regulations are not intended to and shall not create any rights for, or in any third party, to any particular application or interpretation of these Regulations in any contract, bid, proposal, Invitation for Bids, Request for Proposals, or Request for Statement of Qualifications.

- H. While these Regulations are intended to apply to procurement using general, state, and/or federal funds, nothing in these Regulations shall, or is intended to, prevent any division, department, office or program or uncertified political subdivision of the Navajo Nation, from complying with the terms and conditions of any federal or state contract, grant, gift, bequest, or intergovernmental joint powers or cooperative agreement.
- I. While these Regulations are intended to apply to procurements using Navajo Nation general, state and/or federal funds, the procedures set forth in these Regulations supplement, but do not replace, federal regulations conditioning the receipt and use of federal funds, such as, but not limited to, Public Law 93-638 Funding Agreements, the Office of Management and Budget Circulars A-87, A-102, A-123 and the Federal Acquisition Regulations ("FAR") and when applicable, prior approval from a Federal Awarding Agency
- J. These Regulations are intended to comply with and supplement the Navajo Nation Procurement Code, 12 N.N.C. §§301-371 (as amended by CAU-68-01), the Navajo Business and Procurement Act, 12 N.N.C. §§1501-1516, and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§201-216 (as amended by CAP-37-02), and any underlying rules and regulations.
- K. Procurements under these Regulations shall comply with all applicable Conditions of Appropriations as enacted by the Navajo Nation Council. If not inconsistent or contrary with laws of the Navajo Nation and the federal government.

II. DEFINITIONS

- A. "CERTIFIED SMALL PURCHASING AUTHORITY" shall mean a division, department, program or office which has been formally certified and granted enumerated purchasing authority by the Director of the Purchasing Services Department.
- B. "CONTRACT LETTING ENTITY" shall mean the division, department, program, office, or uncertified political subdivision that is awarding a contract.
- C. "CONSTRUCTION" or "CONSTRUCTION RELATED" shall mean related to the process of building, altering, repairing, improving, renovating or demolishing any building, or real property. ALL Construction or Construction Related procurement, with the exception of materials, shall be classified as Services procurement.

Construction or Construction Related procurement falling within the Small Purchase limitations shall comply with the contract, bonding, insurance, retainage, etc., requirements falling within the Small Purchase limitation

- D. **"ESTABLISHED CATALOGUE PRICE"** shall mean the price included in a catalog, price list, schedule or other form that:
1. is regularly maintained by a manufacturer, distributor, or contractor; and
 2. is either published or otherwise available for inspection by customers; and
 3. states current prices or bids last made to a significant number of any category of buyers, or the general buying public for the Goods or Services involved.
- E. **"GOODS"** shall mean moveable tangible items, such as materials, supplies and commodities, and may include delivery, setup, installation, and/or warranty, etc., costing not more than the lesser of (a) ten percent (10%) of the total cost of the Goods; or (b) \$5,000.00.

For the purposes of these Regulations, the procurement of Goods with delivery, set-up, installation, and warranty, etc., costing more than the lesser of (a) ten percent (10%) of the total cost of the Goods; or (b) \$5,000.00 shall be processed as the procurement of Services.

- F. **"INVITATION FOR BIDS"** shall mean the written documents (s) issued by the Navajo Nation for the purposes of soliciting bids on specified Goods.
- G. **"LEASES"** shall include rentals and lease arrangements and shall mean any procurement of Goods or property (real and/or personal) that does not result in title passing to the Navajo Nation. All leases and lease-like arrangements shall be treated as the procurement of Services, including those leases and lease-like arrangements procuring Goods where title does not pass to the Navajo Nation.
- H. **"MAXIMUM FEASIBLE PRICE/COST"** shall mean the estimated cost of the Goods and/or Services being solicited and shall restrict the maximum price under which a procurement will be made, i.e., the maximum amount of money the Procuring Party is willing to spend on the procurement. The establishment of a Maximum Feasible Price/Cost may take into account, but is not limited to, current market price, the unit price from a previous purchase order or contract, a vendor's catalog or other published advertisement, budgetary constraints, or prototype costs.

The Procuring Party shall establish a Maximum Feasible Price/Cost for each procurement. However, the Maximum Feasible Price/Cost may not be revealed to the public, including bidders and offerors, until the final award is made.

For the purposes of these Regulations, a purchase meeting the federal General Services Administration (GSA) price shall satisfy the Maximum Feasible Price/Cost.

- I. **"PROCURING PARTY"** shall mean the Purchasing Agency as defined in the Navajo Nation Procurement Code and shall mean the Navajo Nation program, department, division or uncertified political subdivision seeking the procurement of Goods and/or Services.
- J. **"PURCHASE ORDER"** shall mean the contract executed for Goods with Services to be procured and shall be completed in its entirety before issuance. Only Purchase Order forms approved by the Navajo Department of Justice and contained in the Appendix of these Regulations shall be used in Navajo Nation procurements.
- K. **"PURCHASE REQUISITION"** shall mean the initiating document for the procurement of Goods or Services and shall be completed in its entirety by the Procuring Party. Only Purchase Requisition forms approved by the Purchasing Services Department and contained in the Appendix of these Regulations shall be used in Navajo Nation procurements.
- L. **"REQUEST FOR PROPOSAL"** shall mean the written document (s) issued by the Navajo Nation for the purpose of soliciting offers (proposals) on specified Services.
- M. **"REQUEST FOR STATEMENT OF QUALIFICATIONS"** shall mean the written document (s) issued by the Navajo Nation for the purpose of soliciting information from vendors as to their qualifications and capability to provide Goods or Services to the Navajo Nation in a specified area or for a specified purpose.
- N. **"RESPONSIVE"** shall mean a bid or offer (proposal) which conforms in all material requests to an Invitation for Bids, Request for Proposal or Request for Statement of Qualifications.
- O. **"SERVICES"** shall mean non-tangible items, such as, furnishing and/or performance of labor, time or the provision of expertise (consultants, etc.) that does not involve the delivery of a specific tangible product other than required reports, calculations, and or performance.

For the purposes of these Regulations, Services shall also include the procurement of Goods and accompanying Services separately costing more than the lesser of (a) ten percent (10%) of the total cost of the Goods; or (b) \$5,000.00

P. "SMALL PURCHASE" shall mean Goods or Services with a total estimated cost of \$50,000 or less.

Q. "UNCERTIFIED POLITICAL SUBDIVISION" shall include Navajo Nation Chapters not certified under the Navajo Nation Local Governance Act, 26 N.N.C. §§1-2008.

III. PROCUREMENT OF GOODS

This Section III shall apply to the procurement of Goods as defined in Section II. When a procurement involves both Goods and Services as defined in Section II, the Purchasing Services Director, in consultation with the Navajo Nation Department of Justice (or Office of Legislative Counsel for procurements involving the Legislative Branch), shall make the final determination of whether to classify the procurement as a procurement of Goods or a procurement of Services.

A. Purchase Requisition

1. Form

- a. The procurement process for each procurement of Goods shall begin with a Purchase Requisition form completed by the Procuring Party.
- b. A Purchase Requisition form shall not be considered complete unless it contains all requested information and such information is correct and complete, e.g. sub-account number. When ordering equipment, the generic name shall be listed first with specifications named thereafter.
- c. The Purchase Requisition shall not be considered complete unless it includes the following:
 - i. A complete specification, including the intended purpose or use of the required item, quantity desired of each item, expected unit price for each item, and a written description of the item desired including, as applicable, Tribal stock number, manufacturer's or vendor's name and stock number, technical or

physical requirements, and functional or performance requirements.

- ii. The name of at least one suggested Vendor however, Procuring Parties are encouraged to submit the names of three (3) suggested Vendors.
- iii. A Maximum Feasible Price/Cost as defined in Section II.
- iv. The time between the date on which the Purchase Requisition is submitted to the procurement process to the expected delivery date shall not be so short as to impede adherence to these Regulations.
- v. Signature of the Department Head or other authorized Division or Chapter representative.

2. Specifications

- a. The purpose of a Specification is to serve as a basis in obtaining goods that are adequate and suitable for the Navajo Nation's needs in a cost effective manner, taking into account and to the extent practicable, the cost of ownership and operation. It is the policy of the Navajo Nation that specifications permit maximum practicable competition consistent with this purpose.
- b. "Specification" means the description of the physical, technical, functional, and/or performance characteristics of Goods to be procured. A complete specification includes, when applicable, requirements for set-up, delivery, inspection, testing, etc. Specifications shall be drafted with the objective of clearly and fully describing the Procuring Party's requirements.
- c. The purchasing process is unduly delayed by incomplete, inaccurate or otherwise erroneous product specifications. Tribal resources, both time and money, are wasted when procurements are made with erroneous product specifications. While the Purchasing Services Department is available, upon request, to assist, it is the responsibility of the Procuring Party to obtain complete, comprehensive, and accurate specifications for the product they wish to procure and to include those specifications on the Purchase Requisition form.

- d. It is the general policy of the Navajo Nation to procure standard commercially available Goods whenever practicable. In developing specifications, commercially accepted standards shall be utilized. Non-commercial requirements shall be avoided to the extent practicable.
- e. "Brand Name Specification" means a specification limited to one or more items by manufacturers' name or catalogue number. Brand Name Specifications are to be avoided and shall be acceptable only with justification and approval of the Director of the Purchasing Services Department.
- f. "Brand Name or Equal Specification" means a specification which uses one or more manufacturers' names or catalogue numbers to describe the standard of quality and/or performance that characterizes the needed features of the procured good (s). Brand Name or equal Specification provides for the procurement of equivalent products and is an acceptable form of Specification.
- g. "Qualified Products List" means an approved list of Goods described by model or catalogue number, which, prior to competitive solicitation, the Purchasing Services Department has determined will meet procurement requirements. Qualified Product Lists shall be available from the Purchasing services Department. Reference to a Qualified Products List is an acceptable form of Specification.

The procedures for the inclusion of a good on the Qualified Products List shall be made available to prospective vendors on request.

- h. "Specification for a Common or General Use Item" means a specification, which has been developed and approved by the Purchasing Services Department for repeated use in procurement and is an acceptable form of Specification.

B. Property and Supply Clearance

- 1. It is the responsibility of the Procuring Party to check the availability of the needed Goods in the Procuring Party's area

warehouse or storage facility before initiating the procurement process.

2. If the desired Good (s) is a supply or an item of property, the Procuring Party shall submit the completed Purchase Requisition to the Property Management Department who will determine if the Navajo Nation has stock or surplus items which might satisfy the Procuring Party's needs. If the Procuring Party agrees that the surplus item satisfies its needs, the Property Management Department shall arrange for transfer of the surplus item to the Procuring Party.
3. The Property Management Department shall sign the Purchase Requisition to signify or clear that it has no stock or surplus items satisfying the required procurement.

C. Encumbrance

1. After clearance by the Property Management Department, the Procuring Party shall submit the Purchase Requisition to the appropriate encumbrance section of the Division of Finance for verification of allowable costs, funds availability, and funds encumbrance.
2. If the cost (s) is not allowable, funds are not available or there are other apparent deficiencies in the Purchase Requisition, the Division of Finance will return the Purchase Requisition to the Procuring Party with appropriate comments.
3. If costs are allowable, funds are available and there are no other apparent deficiencies, the Division of Finance will signify approval and funds encumbrance.
4. Goods shall not be procured prior to funds encumbrance.

D. Invitation to Bid

1. Unless otherwise excepted by these Regulations and/or other Navajo Nation law, Competitive Sealed Bidding, with public bid opening, shall be the preferred method of vendor selection.
2. The Invitation for Bid shall be used to initiate a Competitive Sealed Bid procurement of Goods and shall include the following, as applicable:

- a. **Instruction and information to bidders concerning the bid submission requirements, including:**
 - i. **procurement specifications;**
 - ii. **supplier qualifications;**
 - iii. **time and date deadline for submission of bids;**
 - iv. **individual to whom the bid is to be submitted and the address of the office to which bids are to be delivered;**
 - v. **form in which bids are to be submitted;**
 - vi. **date, time and location of the bid opening;**
 - vii. **the date and time of any pre-bid conference (s) and whether such conference (s) is mandatory or voluntary; and**
 - viii. **any other special information necessary for the particular procurement.**
- b. **The purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the specifications;**
- c. **Contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and**
- d. **Instructions to bidders to visibly mark their status as a vendor certified under the Navajo Nation Business Opportunity Act on the outside of the bid package, including their Priority ranking. It is the responsibility of the bidder to identify themselves as certified under the Navajo Nation Business Opportunity Act.**
- e. **Instructions to bidders to visibly mark as "Proprietary" each part of their bid which they consider to be proprietary information.**
- f. **Notification to bidders that:**

- i. the Navajo Nation is not bound to enter a contract under the Invitation for Bids and may issue a subsequent Invitation for Bids for the same Goods; and
 - ii. the Navajo Nation is a sovereign government and all contracts entered into as a result of the Invitation for Bids shall comply with Navajo Nation Law, rules and regulations, including but not limited to the Navajo Preference in Employment Act and applicable federal laws, rules, and regulations.
3. An Invitation to Bid will be issued in a fashion designed to provide bidders a reasonable time to prepare their bids. An average of five (5) days shall be provided unless a shorter or longer time is deemed necessary for a particular procurement as determined by the Director of the Purchasing Services Department.
4. Invitations to Bid shall be publicized in a newspaper of general circulation for a reasonable time prior to the deadline for bid submission. Publication of the Invitation to Bid in a newspaper of general circulation shall satisfy any requirements, unless otherwise excepted under these Regulations or other Navajo Nation law, to notify vendors certified under the Navajo Nation Business Opportunity Act.

The Business Regulatory Department shall maintain a listing of newspapers satisfying general circulation requirements.

5. Unless otherwise specifically excepted under these Regulations, only the Purchasing Services Department shall issue an Invitation to Bid.

E. Notice to Business Regulatory Department

Prior to bid opening, the Purchasing Services Department shall provide the Business Regulatory Department with:

1. a copy of the Invitation for Bids; and
2. a copy of the notice published in the newspaper; and
3. a list of all businesses directly notified, including the dates and manner of such notices.

F. Bid Opening

1. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids.
2. The Procurement Officer shall decide when the time set for bid opening has arrived and shall then personally and publicly open, in accordance with subsections (4) – (7) below, all bids received prior to the bid submission deadline and read aloud the name of the vendor and the dollar amount for each bid. The Procurement Officer shall not read aloud any information marked as proprietary.
3. The Procurement Officer shall call for the name of the vendor and the dollar amount for each bid to be recorded in the Register of Bids. The Register of Bids (Bid Summary) shall be open to public inspection, to the extent not prohibited by the Navajo Nation Privacy and Access to Information Act.

Only the information disclosed in the Register of Bids is considered to be public information under the Navajo Nation Privacy and Access to Information Act until the Notice of Intent to Award is issued.

4. The Procurement Officer shall first open all bids marked as submitted by Priority No. 1 vendors under the Navajo Nation Business Opportunity Act received prior to the proposal submission deadline. The Procurement officer shall then evaluate the bids of all Priority No. 1 vendors pursuant to subsection (G) (Bid Evaluation) below and award the solicitation to the lowest responsible and responsive Priority No. 1 vendor within the Maximum Feasible Cost/ Price pursuant to subsection (H) (Bid Award) below.
5. If there are no bids marked as submitted by Priority No. 1 vendors under the Navajo Nation Business Opportunity Act or if no Priority No. 1 vendors are deemed responsible and responsive after evaluation, the Procurement Officer shall then follow subsection (4) above in opening all bids marked as Priority No. 2 vendors under the Navajo Nation Business Opportunity Act.
6. If there are no bids marked as Priority No. 1 or Priority No. 2 vendors or if no Priority No. 1 or Priority No. 2 vendors are deemed responsible and responsive after evaluation, the

Procurement Officer shall then follow subsections (4) and (5) in opening all bids.

7. If it becomes necessary to postpone a Bid Opening, in whole or in part, the Purchasing Services Department shall issue the appropriate amendments to the Invitation to Bids postponing or rescheduling the bid opening. When the procuring agency is closed due to force majeure (Acts of God), bid opening will be postponed to the same time on the next official business day.

G. Bid Evaluation

1. The goal of Bid Evaluation is to select a responsible vendor that is the most responsive and best serves the needs of the Navajo Nation which include adherence to the Navajo Nation Business Opportunity Act and providing the Procuring Party with a reasonable price that is equal to or below the Maximum feasible Cost for the Goods requested with such Goods delivered to the specified location by the specified delivery date. The lowest cost alone may not always best serve the needs of the Navajo Nation.
2. Bids shall be evaluated by the Procuring Party, in conjunction with the Purchasing Services Department, on the requirements set forth in the Invitation for Bids, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.
3. Any bid which does not conform to the essential requirements of the Invitation for Bids shall be rejected and considered non-responsive.
4. Any bid which does not conform to the Specifications contained or referenced in the Invitation for Bids shall be rejected as non-responsive unless the Invitation for Bids authorized the submission of alternate bids and the Goods offered as alternates meet the requirements specified in the Invitation for Bids.
5. Any bid which does not conform to the delivery schedule or to other material requirements of the Invitation for Bids shall be rejected as non-responsive.
6. A bid in which the bidder attempts to impose conditions which would modify requirements of the Invitation for Bids or limit the

bidder's liability to the Navajo Nation shall be rejected as non-responsive.

For example, bids shall be rejected in which the bidder:

- a. Attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the Navajo Nation cannot be determined;
- b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"
- c. States a price but qualifies such price as being subject to "price in effect at time of delivery;"
- d. When not authorized by the Invitation for Bids, the bidder conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement:
- e. Requires the Navajo Nation to determine that the bidder's product meets specifications; or
- f. Limits the rights of the Navajo Nation under any contract clause.

At the discretion of the Director of the Purchasing Services Department, bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to substance, as distinguished from the form, of the bid or work an injustice on other bidders.

7. When a bid guarantee, such as a bond, is required and a bidder fails to furnish it in accordance with the requirements of the Invitation for Bids, the bid shall be rejected as non-responsive.
8. Unsigned bids shall be rejected as non-responsive unless a representative of the company who has the authority to sign is present at the bid opening and if discovery is made prior to the reading of any bids for that procurement, the representative shall be allowed to sign the bid.
9. A bid submitted before the publication of the Invitation for Bids shall be considered non-responsive and rejected.

10. Bids above the Maximum Feasible Price/Cost shall be rejected as non-responsive. Notwithstanding the above, if all responsive bids from Navajo Certified Priority No. 1 vendors are above the Maximum Feasible Price/Cost, such Priority No. 1 vendors, starting with the responsive vendor with the lowest bid, may be given one (1) opportunity to negotiate or submit a bid that is equal to or below the Maximum Feasible Price/Cost. If negotiations are unsuccessful with the lowest Priority No. 1 vendor, the next lowest responsive Priority No. 1 vendor shall be given one opportunity to negotiate or submit a bid below the Maximum Feasible Price/Cost. This process shall continue until a responsive Priority No. 1 vendor has negotiated or submitted a price below the Maximum Feasible Price/Cost.

Neither the Navajo Nation Procurement Code nor the Navajo Nation Business Opportunity Act require that Priority No. 1 vendors be given the opportunity to negotiate. The decision to negotiate with Priority No. 1 vendors on a specific procurement shall be at the discretion of the Director of the Purchasing Services Department.

11. Unless the Invitation for Bids so provides, a bid is not rendered non-responsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the Invitation for Bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after Bid Opening since such qualifications is substantive and affects the rights of other bidders.

H. Bid Award

1. Awards shall only be made to responsible bidders. The Procuring Party with delegation or concurrence by the Purchasing Services Department shall award the procurement contract, in adherence to the Navajo Nation Business Opportunity Act, to the responsible and responsive bidder (s) with the bid amount equal to or below the Maximum Feasible Cost/Price whose bid meets the requirements and criteria set fourth in the Invitation for Bids.
2. The Procurement Officer shall issue either a Notice of Intent to Award or a Notice of Award, which may be in the form of the Purchase Order. on the date announced at the bid opening, unless the Procurement Officer determines, and gives notice, that a longer review time is necessary. The Procurement Officer shall give notice of a time extension to each bidder by either

announcing it at the Bid Opening or posting the notice at the location announced at the Bid Opening.

3. Should administrative difficulties be encountered after Bid Opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement or re-bid.
4. Written Notice of Award or Purchase Order shall be delivered by hand or by first class mail to the successful bidder.
5. Notice of Intent to Award or Purchase Order shall be made available to the public on request and shall be posted at the location announced at the Bid Opening.
6. Copies of the Notice of Intent to Award or Purchase Order shall be forwarded to the selected Vendor, the Accounts Payable Section of the Division of Finance, the Procuring Party and its Division or Chapter, the Purchasing Services Department and the Property Department.

I. Receipt and Acceptance of Goods

1. The receipt and acceptance of Goods shall adhere to the Navajo Uniform Commercial Code.
2. In general, receipt is when the Goods are physically delivered to the address specified in the Purchase Order. The employee receiving the delivery is to verify that the Goods describe on the carrier's Bill of Lading and vendor's packing slip are in an acceptable condition and accounted for. Such employee is to complete a Receiving Report noting any defects or exceptions, such as, but not limited to, damage or defective items, wrong item received, or wrong quantities received.
3. A copy of the Receiving Report, with defects and exceptions noted, shall be forwarded to the Accounts Payable Section of the Division of Finance, Purchasing Services Department, and Procuring Party.
4. If exceptions are noted on the Receiving Report, the Procuring Party shall notify the vendor and allow them a reasonable opportunity to cure the defects and exceptions.

5. If the Goods are delivered to the Property Management Department, the Property Management Department will immediately arrange inspection by or delivery to the Procuring Party.
6. The Procuring Party shall immediately inspect the Goods to determine if the Goods meet specifications. If the Goods do not meet specifications, the Procuring Party is to notify the vendor and either reject the delivery for non-compliance or allow the vendor a reasonable opportunity to cure the defect. The Procuring Party shall immediately notify the Accounts Payable Section of the Division of Finance and Purchasing Services Department in writing that the Goods did not meet specifications and the actions taken.
7. The Procuring Party is to complete the Receiving Report by reporting what exactly was delivered. If the delivery was in total, then the original Receiving Report should be used to indicate that the delivery was complete. If the delivery was only partial, a copy of the Receiving Report should be used to indicate a partial order and forwarded to Accounts Payable for payment. Once the remaining items are delivered, constituting a complete delivery, the original Receiving Report can be filled out and forwarded to Accounts Payable for processing of final payment. It is the responsibility of the Procuring Party to make sure the vendor is paid in a reasonable time period.

J. Processing of Payments

The payment procedures established by the Division of Finance shall be adhered to and are to begin whenever Goods are delivered and accepted.

IV. PROCUREMENT OF SERVICES

This Section IV shall apply to the Procurement of Services as defined in Section II. When a procurement involves both Services and Goods as defined in Section II, the Purchasing Services Director, in consultation with the Navajo Nation Department of Justice (or Office of Legislative Counsel for procurements involving the Legislative Branch), shall make the final determination of whether to classify the procurement as a procurement of Services or a procurement of Goods.

A. Request for Proposals and Request for Statements of Qualifications

1. Pursuant to 12 N.N.C. §332 (a) and (b), Competitive Sealed Proposals and public proposal opening are not required for the

procurement of Services. However, Competitive Sealed Proposals shall be used when advantageous to the Navajo Nation. Notwithstanding the above, public advertisement and competition is required for all procurements of Services, unless otherwise excepted by these Regulations and/or other Navajo Nation law.

2. The procurement process for each procurement of Services shall begin with either a Request for Proposals ("RFP") prepared and issued by the Procuring Party or a Request for Statements of Qualifications ("RSQ") prepared and issued by the Procuring Party.

The purpose of the RFP is to solicit offers for the provision of defined Services from vendors wishing to contract for the provision of those Services. The purpose of the RSQ is to identify those vendors capable of providing Services for a specific purpose, or in a specific area, who may wish to contract for provision of defined Services for that purpose or in that area at a later date. All solicitations shall clearly indicate whether they are an RFP or RSQ.

3. The RFP and RSQ shall include the following, as applicable:
 - a. Instruction and information to offerors concerning the proposal submission requirements, including:
 - i. a complete description of the Services desired, including experience and/or education requirements of the vendor, performance standards, performance schedule, and evaluation factors and process;
 - ii. if Goods are included with the Services, specifications for the Goods meeting the criteria of Section III (A) (2) (Specifications);
 - iii. the deadline set for submission of proposals;
 - iv. the individual to whom the proposals are to be submitted and the address of the office to which proposals are to be delivered;
 - v. the form or format in which proposals are to be submitted;

- vi. the date and time of any pre-proposal conference(s) and whether such conference(s) are mandatory or voluntary;
 - vii. the date(s) and time frame for Proposal Opening and evaluation and whether Proposal Opening shall be public; and
 - viii. any other special information, such unique contract terms and conditions, including warranty, bonding or other security requirements.
- b. Instructions to offerors to visibly mark as "Proprietary" each part of their proposal which they consider to be proprietary information and to submit proposed Cost Schedules in a separate attached sealed envelope.
 - c. If the solicitation is an RSQ, instructions to offerors that only those vendors responding to the RSQ will be allowed the opportunity to offer on any RFP issued under the RSQ.
 - d. Instructions to offerors to visibly mark on the outside of the proposal package, if applicable, the offeror's priority status under the Navajo Nation Business Opportunity Act. It is the responsibility of the offeror to identify themselves as certified under the Navajo Nation Business Opportunity Act.
 - e. Notification to offerors that:
 - i. the Navajo Nation is not bound to enter a contract under the RFP or RSQ and may issue a subsequent RFP or RSQ for the same services; and
 - ii. the Navajo Nation is a sovereign government and all contracts entered into as a result for the RFP or RSQ shall comply with the Navajo Nation law, rules and regulations, including the Navajo Preference in Employment Act, and applicable federal law, rules, and regulations.
4. The purpose of the description of Services contained within the RFP or RSQ is to serve as a basis for the Navajo Nation obtaining Services that are adequate and suitable for its needs in a cost effective manner. It is the policy of the Navajo Nation that

description of Services permit maximum practicable competition consistent with this purpose.

At a minimum, the description of Services should contain the following:

- a. **The actual Services desired, e.g., consulting Services in a specific area, design Services for a specific project, collection Services for a specific group of accounts, etc.;**
 - b. **If Goods are included with the Services, the actual Goods desired, i.e., specifications for the Goods meeting the criteria of Section III (A) (2) (Specifications);**
 - c. **The minimum qualifications of the vendor, e.g., level of education, specific licensing, experience in a specific area, length of time in business, etc.;**
 - d. **Any bonding, security, and insurance requirements; and**
 - e. **Performance schedule and/or length of contract.**
5. **The procurement process is unduly delayed by incomplete, inaccurate or otherwise erroneous descriptions of Services. Tribal resources, both time and money, are wasted when procurement are made with erroneous descriptions of Services. While the Purchasing Services Department is available, upon request, to assist in the development of description of Services, it is the responsibility of the Procuring Party to obtain complete, comprehensive, and accurate descriptions for the Services they wish to procure and to include those descriptions in the RFP or RSQ.**
6. **An RFP or RSQ will be issued in a fashion designed to provide offerors a reasonable time to prepare their proposals and shall be publicized in a newspaper of general circulation for a reasonable time prior to the deadline for proposal acceptance. Publication of the RFP or RSQ in a newspaper of general circulation shall satisfy any requirements, unless otherwise excepted under these Regulations or other Navajo Nation law, to notify vendors certified under the Navajo Business Opportunity Act.**

The Business Regulatory Department shall maintain a listing of newspapers satisfying general circulation requirements.

7. The issuance of an RFP or RSQ is the responsibility of the Procuring Party, with assistance of the Purchasing Services Department, pursuant to the procedures and protocol duty established for their division, department or Chapter. Upon written request, the Director of the Purchasing Services Department shall review and comment on an RFP or RSQ before publication.
8. The Purchasing Services Department may issue an RFP or RSQ instead of an Invitation for Bids in the procurement of Goods when a Specification cannot be determined after diligent efforts, an ongoing need is identified for the desired Goods, or for any other reason in the best interests of the Navajo Nation. In such a situation, the Purchasing Services Department shall adhere to Section IV of these Regulations except that Proposal Opening in such situations shall be public.

B. Notice to Business Regulatory Department

Prior to Proposal Opening, the Procuring Party shall provide the Business Regulatory Department with:

1. a copy of the RFP or RSQ; and
2. a copy of the notice published in the newspaper; or
3. a list of all business directly notified, including the dates and manner of such notification.

C. Proposal Opening

1. Proposals shall be opened publicly only if so identified in the RFP or RSQ. If proposals are opened publicly, they shall be opened in the presence of one or more witnesses at the time and place designated in the RFP or RSQ.
2. The Procuring Party shall decide when the time set for Proposal Opening has arrived and shall then open all proposals marked as Priority No. 1 vendors under the Navajo Nation Business Opportunity Act received prior to the proposal submission deadline and have the proposals recorded in a Register of Proposals. The name of the offeror and such other relevant information, as determined by the Procuring Party, shall be recorded. The Procuring Party shall not disclose any information marked as proprietary.

The Register of Proposals shall be open to public inspection, to the extent not prohibited by the Navajo Nation Privacy and Access to Information Act.

Only the information disclosed by the Procuring Party is considered to be public information under the Navajo Nation Privacy and Access to Information Act until the Notice of Intent to Award is issued.

3. The Procuring Party shall then evaluate the proposals of all Priority No. 1 vendors pursuant to subsection (D) (Proposal Evaluation) below and award the solicitation to a responsible and responsive Priority No. 1 vendor pursuant to subsection (E) (Proposal Award) below.
4. If there are no proposals marked as submitted by Priority No. 1 vendors under the Navajo Nation Business Opportunity Act or if no Priority No. 1 vendors are deemed responsible and responsive after evaluation, the Procuring Party shall then follow subsections (2) and (3) above in opening all proposals marked as Priority No. 2 vendors under the Navajo Nation Business Opportunity Act.
5. If there are no proposals marked as Priority No. 1 or Priority No. 2 vendors or if no Priority No. 1 or Priority No. 2 vendors are deemed responsible and responsive after evaluation, the Procuring Party shall then follow subsections (2) and (3) in opening all proposals.
6. Due to the necessity to thoroughly evaluate the proposals of higher priority vendors before opening the proposals of lower and no priority vendors, the Procuring Party may schedule a subsequent public Proposal Opening, if necessary. The Procuring Party will announce the date, time and location of any subsequent public Proposal Openings during the initial Proposal Opening.
7. If it becomes necessary to postpone a Proposal Opening, the Procuring Party shall notify each offeror submitting a proposal. When the procuring agency is closed due to force majeure (Acts of God), Proposal Opening will be postponed to the same time on the next official business day.

D. Proposal Evaluation

1. The goal of proposal evaluation is to select a responsible vendor that is the most responsive and best serves the needs of the Navajo Nation which includes adherence to the Navajo Nation Business

Opportunity Act and provides the Procuring Party with the lowest responsive price for the best Services.

2. The RFP or RSQ shall state all of the evaluation factors, which may include price, and their relative importance. The evaluation and evaluation process shall be based only on the evaluation factors set forth in the RFP or RSQ and the best interest of the Navajo Nation. Numeric rating systems may be used.
3. Any proposal which fails to conform to the essential requirements of the RFP or RSQ shall be rejected as non-responsive.
4. Any proposal which does not conform to the description of Services (and specifications for Goods, as applicable) contained or referenced in the RFP or RSQ shall be rejected as non-responsive unless the RFP or RSQ authorized the submission of alternate proposals and the Services offered as alternates meet the requirements specified in the RFP or RSQ.
5. A proposal in which the offeror attempts to impose conditions which would modify requirements of the RFP or RSQ or limit the offeror's liability to the Navajo Nation shall be rejected as non-responsive.

At the discretion of the Procuring Party, upon consultation with the Department of Justice (or Office of Legislative Counsel for procurements of the Legislative Branch), offerors may be requested to delete objectionable conditions from their offer provided that these conditions do not go to substance, as distinguished from the form of the offer or work an injustice on other offerors.

6. Unsigned proposals shall be rejected as non-responsive unless a representative of the company who has the authority to sign is present at the Proposal Opening and if discovery is made prior to the reading of any proposals for that procurement, the representative shall be allowed to sign the offer.
7. Unless the RFP or RSQ so provides, an offer is not rendered non-responsive by the fact that the offeror specifies that award will be accepted only on all, or a specified group, of the Services included in the RFP or RSQ. However, offerors shall not be permitted to withdraw or modify an "all or none" qualification.
8. Discussions may be conducted with responsible offerors who the Procuring Party has determined, after initial evaluation, are

reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the RFP or RSQ and the needs of the Navajo Nation.

In conducting discussions, there shall be no disclosure of any information from proposals submitted by competing offerors.

9. After preliminary evaluation and discussion and at the invitation of the Procuring Party and for the purposes of obtaining best and final offers, offerors may be permitted to submit revised proposals prior to award. All offerors, even those not deemed reasonably susceptible of being selected for award, shall be permitted to submit such revised proposals.

The Procuring Party shall notify each offeror in writing of the opportunity to submit revised proposals, the due date, required format for such revised proposals, and the specific issues to be addressed in the revised proposals.

E. Proposal Award

1. Awards shall only be made to responsible offerors. The procurement shall be awarded to the responsible and responsive offeror (s) whose proposal is most advantageous to and best serves the needs of the Procuring Party and the Navajo Nation taking into consideration price and the evaluation factors set forth in the RFP.
2. All awards shall be contingent on the execution of a written contract that is acceptable to the Procuring Party and awardee. Such contract shall comply with Navajo Nation law.
3. The Procuring Party shall issue a Notice of Intent to Award on the date announced at the offer opening, unless the Procuring Party determines, and gives notice, that a longer review time is necessary. The Procuring Party shall give notice of a time extension to each offeror by posting it at the location announced at the offer opening.
4. Should administrative difficulties be encountered after offer opening which may delay award beyond offerors' acceptance periods, the several most responsive offerors should be requested, before expiration of their offers, to extend the offer acceptance period (with consent of sureties, if any,) in order to avoid the need for re-advertisement.

5. Written Notice of Intent to Award shall be hand-delivered or sent by first class mail to the selected offeror.
6. Notice of Intent to Award shall be made available to the public on request and shall be available from the Procuring Party.

F. Business Regulatory Department Clearance

Prior to contract formation under subsection (G) below, the Business Regulatory Department shall certify that the Navajo Nation Business Opportunity Act was adhered to in the solicitation and award.

G. Contract Document

1. The Procuring Party shall develop a written contract covering the procurement of Services identified in the RFP that is acceptable to the awardee and complying with Navajo Nation law, including but not limited to 2 N.N.C. §223 (as amended by CAU-48-03) and Section XIV (Types of Contracts) of these Regulations.
2. Purchase Orders shall not be used for the contracting of Services.

H. Encumbrance

1. The Procuring Party shall submit the proposed contract and review packet to the appropriate encumbrance section of the Division of Finance for verification of allowable costs, funds availability, and funds encumbrance.
2. If the costs are not allowable, funds are not available or there are other apparent deficiencies in the contract, the Division of Finance will return the contract to the Procuring Party with appropriate comments.
3. If costs are allowable, funds are available and there are not other apparent deficiencies, the Division of Finance will signify approval and funds encumbrance.

I. Contract Review/Execution

1. All contracts for Services, unless otherwise excepted by Navajo Nation law or these Regulations, shall be submitted through the 2 N.N.C. §164 (B) (as amended by CAU-48-03) review process for signature and comment.

2. All contracts for Services shall be executed pursuant to 2 N.N.C. §222 (as amended by CAU-48-03).
3. Copies of all executed contracts shall be forwarded to: the Division of Finance Financial Services, Procuring Party, Office of Contracts and Grants (Office of Contracts and Grants require four original copies).

J. Processing of Payments

The payment procedures established by the Division of Finance shall be adhered to and shall not begin until Services have been performed pursuant to the contract and completed to the satisfaction of the Procuring Party. The Procuring Party is responsible for filling out a Receiving Record form (forms may be obtained from the Office of Management and Budget) by stating exactly what Services were performed and completed and that the completed Services are satisfactory to the Procuring Party. The completed Receiving Record form and the Vendor's Invoices are to be submitted to Accounts Payable for processing of payment. It is the responsibility of the Procuring Party to insure that vendors are paid within a reasonable time period.

K. Construction and Construction Related Services

A. General; Application

1. Solicitations for Construction and Construction Related Services shall adhere to these Regulations for Services. Solicitations for Construction or Construction Related projects costing more than \$50,000.00 shall adhere to Section IV (Procurement of Services) of these Regulations. Solicitations for Construction or Construction Related projects costing \$50,000.00 or less adhere to Section V (Small Purchases) and subsection V (D) (Small Purchase of Services) of these Regulations.
All solicitations for Construction or Construction Related contracts shall identify the amount and form of bid security, payment and performance bonds, and insurance.
2. The method of construction management for a Construction or Construction Related procurement shall be determined under regulations established pursuant to 12 N.N. C. §340 (as amended by CAU-68-01). If no such regulations are in place, the Procuring Party shall use a general contractor as the method of construction management, except if another method serves the best interests of the Navajo Nation, such as, but not limited to, Design and Engineering Department or multiple contractors managed by a

designated general contractor, construction manager, or procurement agent. The Director of the Purchasing Services Department and the head of the Procuring Party's department or a designated chapter official shall concur on the method of construction management and such method shall be identified in the solicitation.

A written statement justifying the choice of construction management, signed by the Director of the Purchasing Services Department and the head of the Procuring Party's department or a designated Chapter official, shall be included in the contract file.

3. Contracts for Construction or Construction Related Services shall use standard forms approved by the Navajo Nation Department of Justice.

B. Bid Security

1. Bid security shall be required for all Construction or Construction Related contracts when the price is estimated to be greater than \$50,000.00. Nothing herein prevents the requirement of bid security on Construction or Construction Related contracts under \$50,000.00 when the circumstances warrant.
2. Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid.
3. Acceptable bid security shall be limited to:
 - a. an annual or one-time bond in a form satisfactory to the Controller of the Navajo Nation underwritten by a surety company authorized to do business within the Navajo Nation; or
 - b. the equivalent in cash, a bank certified check, or cashiers check payable to the Navajo Nation.
4. If an offer does not comply with the bid security requirements identified in the solicitation, the offer shall be rejected as non-responsive unless the failure to comply is determined by the Procuring Party to be non-substantial where:
 - a. only one offer is received and there is not sufficient time to re-solicit the contract; or

- b. the amount of the bid security submitted, though less than the amount required by the solicitation, is equal to or greater than the difference in the price stated in the next highest acceptable bid; or
- c. the bid security becomes inadequate as a result of the correction of a mistake in the offer or offer modification if the offeror increases the amount of guarantee to required limits within forty-eight (48) hours after the Proposal Opening.

C. Contract Performance and Payment Bonds

- 1. When a Construction or Construction Related contract is awarded in an amount of \$50,000.00 or greater, the following bonds shall be delivered to the Procuring Party and shall become binding on the parties upon the execution of the contract:
 - a. a performance bond in a form satisfactory to the Controller of the Navajo Nation underwritten by a surety company authorized to do business within the Navajo Nation in an amount equal to one hundred percent (100%) of the price specified in the contract; and
 - b. a payment bond in a form satisfactory to the Controller of the Navajo Nation underwritten by a surety company authorized to do business within the Navajo Nation for the protection of all persons supplying labor and material to the contractor or its subcontractor for the performance of the work provided in the contract in an amount equal to one hundred percent (100%) of the price specified in the current.
- 2. The head of the Procuring Party's department or designated Chapter official, with the concurrence of the Controller of the Navajo Nation or his designee, may reduce the amount of the performance and payment bonds to fifty percent (50%) of the contract price for each bond when:
 - a. retention on the contract is set at fifty percent (50%) or above; or
 - b. the contractor provides an irrevocable letter of credit equal to at least fifty percent (50%) of the contract price.

3. All solicitations for Construction or Construction Related services shall identify the amount of bid security required.
4. The head of the Procuring Party's department or a designated Chapter official, with the concurrence of the Controller of the Navajo Nation or his designee, may reduce the amount of the performance bond as work is completed if such reduction is in the best interests of the Navajo Nation.
5. Nothing in these regulations shall be construed to limit the authority of the Navajo Nation to require a performance bond of other security in addition to those bonds specifically provided for in this subsection or in circumstances other than those specified in this subsection.
6. The Controller of the Navajo Nation shall promulgate the form of the bonds required by this Section, which shall be reviewed and approved by the Navajo Nation Department of Justice.

D. INSURANCE

Construction and Construction Related contracts shall contain requirements for the protection of the Navajo Nation through sufficient insurance as specified by the Risk Management Department of the Insurance Services Department. The form and adequate proof of all such insurance shall be established by the Directors of the Risk Management Department or his designee prior to the execution of the contract.

E. INDEMNIFICATION

All Construction and Construction Related contractors shall indemnify and hold harmless the Navajo Nation, its agents and employees from any damages, losses and liabilities arising out of or resulting from any operations connected with the construction project, by the use of any improper materials, or by any act or omission of the contractor or its subcontractors, agents, servants, or employees.

F. MODIFICATION AND CHANGE ORDERS

1. All construction or construction Related contracts shall contain provisions giving the Procuring Party the right to require changes in quantities, additions or deletions of work or other changes within the original intent of the contract. Contractors, in accordance with contract provisions, for such things as

unforeseen field, regulatory, or market conditions and other emergencies, acts of God, and justifiable delays. may request change orders. All change orders shall adhere to section XV (Modifications and Change Orders).

2. All changes to Construction or Construction Related contracts that alter the terms and conditions of the contract or provide for a change in scope of the project beyond the original intent and costing more than twenty percent (20%) of the original cost of the contract must be contained in a formal amendment to the contract subject to the applicable Section 164 or Administrative review process.

V. SMALL PURCHASES

A. **General; Application**

1. In order to minimize the administrative cost impact of the purchasing function on indirect costs, a need was recognized to procure Goods or Services of low dollar value under simplified procedures. To address this need, the Navajo Nation Council at 12 N.N.C. 333 (as amended by CAU-68-01), enacted a Small Purchase exception to the general Navajo Nation purchasing rules for Goods and/or Services with a cost of \$50,000.00 or less.
2. The procedures set forth in this Small Purchases' section shall apply to the purchase of Goods or Services by any division, department, office or program or uncertified political subdivision of the Navajo Nation, as defined in 12 N.N.C. §308 (o) (as amended by CAU-68-01) and shall apply to all purchase of Goods and Services, including modification and change-orders, with a cost of \$50,000.00 or less.
3. The comprehensive Regulations (the Navajo Nation Procurement Rules and Regulations) shall apply to the procurement of Goods and Services, including modification and change-orders, with a cost of \$50,000.00 or less unless excepted or specifically contradicted by this Small Purchases' Section.
4. The procedures set forth for the procurement of Small Purchases shall not be used in the acquisition of Goods and Services initially estimated to exceed \$50,000.00 even though resulting awards do not exceed that limit. Requirements which may in total add up to more than \$50,000.00 shall not be split into several purchase actions that are less than those limits merely to permit the use of these Small Purchases' procedures.

5. Small Purchase can be separated into two main categories: (1) Goods and (2) Services. The purchase of Goods is further divided into two subcategories: (1) Goods costing \$5,000.00 or less and (2) Goods costing between \$5,000.01 and \$50,000.00. Each Small Purchase category and subcategory requires adherence to distinct procedures. These procedures are to be adhered to by Purchasing Service Department and non-Purchasing Service Department personnel at all times.
6. Pursuant to 2 N.N.C §223 (as amended by CAU-68-01), public advertisement and bidding is not required for the procurement of Goods and Services costing less than \$50,000.00 and pursuant to 12 N.N.C. S330 (as amended by CAU-68-01), Competitive Sealed Bidding or Proposals are not required for the procurement of Goods or Services costing less than \$50,000.00.

Notwithstanding the above, all vendors certified under the Navajo Nation Business Opportunity Act and listed as providing the Goods and Services required by the small purchases procurement shall be given the opportunity to submit bids or proposal for the procurement.

7. Notwithstanding subsection (6) above, there may be situations where the procurement of Goods or Services meeting the Small Purchasing limitation would be enhanced by public advertisement and/or competitive sealed bidding. In such a situation, the Purchasing Services Department and/or the Procuring Party shall adhere to the Regulations for procurement above \$50,000.00 as applicable.
8. The Purchasing Services Department shall maintain a record, conforming to the requirements of 12 N.N.C. S336, listing all purchases made under this Small Purchase section for a minimum of five years. All Procuring Parties shall provide the Purchasing Services Department with the following information for each procurement under this Small Purchase section:
 - a. the awardee's name
 - b. the amount and type of each contract, and
 - c. a listing of the Goods and Services procured under each contract.

9. Procurements made under this Small Purchase section shall only be awarded to responsible bidders and offerors.
10. Bids and offers received under this Small Purchases section shall be evaluated for responsiveness under the criteria listed in Section III (G) (Bid Evaluation) and Section IV (D) (Proposal Evaluation) of these Regulations, as applicable.

B. Small Purchase of Goods

The following procedures shall apply to the procurement of Goods under this Small Purchase Section.

1. Goods Costing \$5,000.00 or less

- a. The purchase of Goods with a total cost of \$5,000.00 or less may be procured by the Procuring Party's division or Chapter and shall not require Purchasing Services Department direct involvement except where specifically indicated or requested.
- b. Notwithstanding subsection (a) above, all Divisions and Chapters wishing to procure Goods with a total cost of \$5,000.00 or less without Purchasing Services Department involvement must attend annual training offered by the Purchasing Services Department. Failure to attend annual training will result in the revocation of the procurement privilege identified above.

When practicable, the business community will be allowed to attend such training for a reasonable cost.

- c. For the procurement of Goods costing less than \$5,000.00, the Procuring Party will complete the purchasing process by sequentially adhering to the following steps:
 - i. The Procuring Party will complete, in full, a Purchase Requisition form in adherence to Section III (A) (Purchase Requisition) of these Regulations.
 - ii. The Procuring Party will forward the completed Purchase Requisition form to his/her Division Director or other authorized Division representative or Chapter official for approval who will check for allowable costs and the availability of funds by referring to the latest budget reports and sign the form in the space provided to indicated approval.

- iii. The Procuring Party shall then comply with Section III (B) of these Regulations (Property and Supply Clearance).
- iv. After clearance by the Property Management Department, the Procuring Party shall then check to see if the Goods required are available under a current Purchase Agreement. If the Goods are available, the Procuring Party shall procure the Goods through Section VIII (Blanket Purchase Agreements) of these Regulations. The Purchasing Services Department shall publish a listing of all active Blanket Purchase Agreements and the Goods available under each.
- v. The Procuring Party shall forward the Purchases Requisition form to the appropriate encumbrance section of the Division of Finance for compliance with Section III(c) (Encumbrance) of these Regulations.
- vi. Once the Division of Finance has signified funds encumbrance, the Procuring Party shall prepare a bid solicitation conforming to the criteria enumerated in Section III (D) (2) (Invitation for Bids).
- vii. The Procuring Party shall then obtain (solicit) bids from vendors in the order specified in subsections (xii) through (xvii) below. Identical bid solicitations shall be submitted to all vendors.
- viii. Bids may be solicited through any reasonable means, including telephone, telefax, and catalog. The vendor must submit written confirmation of bids solicited through telephone.
- ix. A log shall be kept for bids solicited over the telephone identifying the time of the call and the name of the vendor's representative contacted. Such log must be attached to the Purchase Requisition form.
- x. All quotations from vendors must be confirmed in writing. An Established Catalog Price is an acceptable quotation and shall fulfill the writing requirement.

- xi. The Procuring Party must attach copies of all quotations to the Purchase Requisition form.
- xii. The Procuring Party shall solicit bids from all Priority No. 1 status Navajo Certified vendors claiming qualification to meet the Procuring Party's requirements as identified on the current Source List maintained by the Business Regulatory Department.
- xiii. The Procuring Party shall select for award the lowest responsive and responsible Priority No. 1 vendor within the Maximum Feasible Price/Cost.

If there are no responsive and responsible Priority No. 1 vendors within the Maximum Feasible Price/Cost, the Procuring party shall allow all responsive Priority No. 1 vendors one opportunity to resubmit prices/costs within the Maximum Feasible Cost/Price and shall then select for award the Priority No. 1 vendor submitting the lowest bid within the Maximum Feasible Cost/Price.

- xiv. If there are no Priority No.1 status vendors claiming qualification to meet the Procuring Party's requirement as identified on the current Source List maintained by the Business Regulatory Department or there are no responsive and responsible Priority No. 1 vendors within the Maximum Feasible Price/Cost, the Procuring Party shall solicit quotations from all Priority No. 2 status Navajo Certified Vendors claiming qualification to meet the Procuring Party's requirements as identified on the current Source List maintained by the Business Regulatory Department.
- xv. The Procuring Party shall then select for award the Priority No. 2 vendor submitting the lowest responsive bid within the Maximum Feasible Price/Cost.
- xvi. If no Priority No. 1 or No. 2 vendors submit quotations in a timely fashion or there are no Priority No. 1 or No. 2 vendor qualified and responsive to meet the Procuring Party's requirements, the Procuring Party shall obtain certification from the Business Regulatory Department that the Navajo

Nation Business Opportunity Act has been compiled with.

The Procuring Party shall provide the Business Regulatory Department with:

- a. a copy of the bid solicitation; and
 - b. a list of all Navajo Priority No. 1 and Priority No. 2 vendor notified, including the date and manner of such notification.
- xvii. After Business Regulatory Department certification, the Procuring party may obtain quotations from non-certified vendors claiming qualification to meet the Procuring Party's requirements.

The Procuring Party shall then award the procurement to the lowest responsive and reasonable vendor within the Maximum Feasible Price/Cost.

- xviii. Once a vendor has been selected, the Procuring Party will prepare a Purchase Order. The Purchase Order shall be approved by the Procuring Party's department head or other authorized Division representative or Chapter official.
- xix. The Procuring Party will award the bid to the selected vendor by telefaxing; if possible, a copy of the Purchase Order to the selected vendor and then mailing the original Purchase Order to the vendor.
- xx. The Procuring Party will forward a copy of the Purchase Order along with the Purchase Requisition and bid solicitation package to the Purchasing Services Department for inclusion in the Small Purchase record.

2. Goods Costing Between \$5,000.00 and \$50,000.00

- a. With the exception of procurements by Certified Small Purchase Authorities, all procurements of Goods having total cost between \$5,000.01 and \$50,000.00 shall be processed through the Purchasing Services Department.

- b. The procedures set forth in this subsection (2) shall not be used in the acquisition of Goods initially estimated to exceed \$50,000.00.
- c. The procurement of Goods under this subsection (2) shall comply with the Regulations applicable to Goods costing more than \$50,000.00 except for the followings:
 - i. For Goods procured under this subsection (2), the Procuring Party and the Purchasing Services Department shall satisfy notice and competition requirements through either:
 - a. adherence to Section III (D) (3) of these Regulations; or
 - b. Mailing or telefaxing of the Invitation to Bid to all Navajo Certified Vendors claiming qualification to fulfill the procurement as listed on the Navajo Nation Business Source List.
 - d. Pursuant to 12 N.N.C. §330, the procurement of Small Purchases under this subsection (2) does not require Public Bid Opening unless expressly stated in the Invitation for Bids. If the Invitation for Bids requires Public Bid Opening, bids shall be opened and evaluated in accordance with Section III (F) (Bid Opening) and Section III (G) (Bid Evaluation).

If the Invitation for Bids does not require public Bid opening, bids shall still be opened and evaluated in accordance with Section III (F) (Bid Opening) and Section (G) (Bid Evaluation) except that public presence and announcement requirements shall be excused.

- e. The Purchasing Services Department shall include a copy of the Purchase Order along with the Purchase Requisition and bid solicitation package in the Small Purchase record.

C. Certified Small Purchase Authority

- 1. The Director of the Purchasing Services Department may certify departments or program that repeatedly procure a high volume of Goods used or consumed by, or on behalf of other divisions and/or Chapters as a Certified Small Purchasing Authority able to make enumerated direct Goods procurements of less than \$50,000.00.

2. Upon certification by the Director of the Purchasing Services Department, the Certified Small Purchase Authority may make direct procurements of under \$50,000.00 for enumerated items or classes of items.
3. Certification as a Certified Small Purchase Authority shall be in writing, signed by the Director of the Purchasing Services Department and shall specify:
 - a. the name of the government body certified as a Certified Small Purchase Authority; and
 - b. the specific Goods or classes of Goods, including, but not limited to, cost/price limitations, of which the governmental body may make direct procurement; and
 - c. any other limits or restrictions on the exercise of the certification; and
 - d. the duration of the certification.
4. Certified Small Purchase Authorities shall be authorized to issue Invitation for Bids, RFPs and RSQs and shall assume the role and responsibilities of the Purchasing Services Department under this Small Purchases section.
5. The requirements for initial certification as a Certified Small Purchase Authority are as follows:
 - a. Written request for certification to the Director of the Purchasing Services Department demonstrating the need for certification and the volume of annual procurement used or consumed by or procured on behalf of other Divisions and/or Chapters; and
 - b. Successful completion of annual Small Purchase Authority training offered by the Purchasing Services Department.
6. The requirements for continuing certification as a Certified Small Purchase Authority are as follows:
 - i. Demonstrated adherence to the certification agreement, these Regulations, the Navajo Nation Procurement Code, the Navajo Nation Procurement Act, and the Navajo Nation Business Opportunity Act.

- ii. Complete file documentation of procurements, including, but not limited to:
 - a. Complete solicitation package for each procurement; and
 - b. Complete Purchase Order register; and
 - c. Adequate audit trails.
7. Certification as a Certified Small Purchase Authority may be revoked by the Director of the Purchasing Services Department at any time and for any reason that furthers the best interests of the Navajo Nation, including to, but not limited to, acting outside the scope of the certification agreement.

D. Small Purchase of Services

1. The following procedures apply only to the procurement of Services costing \$50,000.00 or less.
2. The procurement of Services costing \$50,000.00 or less shall be initiated by an RFP or RSQ meeting the requirements of Section IV (A) of these Regulations.
3. After approval by the department head or designated chapter official, the Procuring Party shall give notice of the RFP or RSQ to all Navajo Certified Vendors claiming qualification to meet the Procuring Party's requirement as identified on the current Source List maintained by the Business Regulatory Department.

The Procuring Party shall satisfy notice and competition requirements through either:

- a. adherence to Section IV (A) (6) of these Regulations; or
 - b. mailing or telefaxing of the RFP or RSQ to all Navajo Certified Vendors claiming qualification to fulfill the procurement as listed on the Navajo Nation Business Source List.
4. After the deadline date for the submission of proposals and before the deadline date for the selection of the vendor, the Procuring Party will evaluate the proposals by Navajo Certified Vendors, in order of Priority status under the Navajo Nation Business Opportunity Act, for conformance with the RFP and select the proposal of the highest

Priority Navajo Certified Vendor that is, after opportunity for negotiation, the most responsive.

5. If there are no proposals from Navajo Certified Vendors qualified to meet the Procuring Party's requirements, the Procuring Party will then evaluate the proposals from non-Certified Vendors for conformance with the RFP and select the quotation of the non-Certified Vendor that is the most responsive.
6. After a vendor has been selected, the Procuring Party shall obtain clearance from the Business Regulatory Department that vendor selection adhered to the Navajo Business Opportunity Act and that the vendor is eligible to contract under the Navajo Nation Procurement Code.
7. After Business Regulatory Department clearance, the Procuring Party shall send the selected vendor written notification of their selection. This written notification shall be signed by the Procuring Party and the program director or department head or chapter official.
8. The Procuring Party shall then adhere to Sections IV (G) (Contractor Document) and IV (H) (Encumbrances) of these Regulations.
9. After the Procuring Party has adhered to subsection (8) above, the Procuring Party shall submit the contract for administrative review and approval to the following entities:
 - a. The Program Director or Department Head; and
 - b. The Division Director or Chapter Official; and
 - c. The Division of Finance; and
 - d. The Navajo Nation Department of Justice (or Office of Legislative Counsel for contracts of the Legislative Branch)
10. After any concerns raised by the reviewers identified in subsection (9) above have been addressed, the Procuring Party shall submit the administrative review packet along with four (4) final copies of the contract, signed by the vendor, to the Office of the President/Vice-President or Office of the Speaker for contracts of the Legislative Branch or Chapter President for execution.

11. After execution, the Procuring Party shall return signed copies of the final contract to the vendor, to the Office of Contracts and Grants, and to the Division of Finance. The Procuring Party shall retain a signed copy of the final contract.

The Procuring Party will also forward a signed copy of the contract to the Purchasing Services Department for inclusion in the Small Purchases record.

VI. SOLE SOURCE PROCUREMENTS

A. General; Application

1. A need was recognized, under very limited circumstances, to allow the procurement of Goods and/or Services from a Sole Source under simplified procedures. This need arises when, after the application of proper competitive procedures, only one vendor qualified to fulfill a procurement request can be located within a geographically feasible area and no other Goods or Services will satisfy the procurement request and the expense attendant to locating vendors outside the geographically feasible area is an inefficient use of Navajo Nation resources. To address this need, the Navajo Nation Council, at 12 N.N.C. §335 (as amended by CJY-68-01), enacted a Sole Source Procurement exception to the comprehensive Navajo Nation Procurement Regulations.
2. The procedures set forth in these Sole Source Procurement Regulations shall apply to the purchase of Goods or Services, regardless of the cost of the Goods or Services, by any division, department, office or program or uncertified political subdivision of the Navajo Nation, as defined in 12 N.N.C. §308(o) (as amended by CAU-68-01).
3. The Regulations (the Navajo Nation Procurement Rules and Regulations) shall apply to the procurement of Goods and Services, including modifications and change-orders, unless excepted or specifically contradicted by this Sole Source Procurement section.
4. The procedures set forth in these Sole Source Procurement Regulations shall not be used in the acquisition of Goods or Services available from more than one geographically feasible vendor, regardless of whether those vendors are certified or non-certified. Procurement and/or contract requirements shall not be narrowed or manipulated merely to permit the use of these Regulations. The lack

of advanced planning on the part of the Procuring Party shall not justify the use of this Sole Source Procurement section.

5. Administrative Review, as identified in subsection (C) (4) below is required for all Sole Source Procurements.
6. The Purchasing Services Department shall maintain a record, conforming to the requirements of 12 N.N.C. §336 (as amended by CAU-68-01), listing all purchases made under these Sole Source Procurement Regulations for a minimum of five years.

B. Definitions

1. **"GEOGRAPHICALLY FEASIBLE"** shall mean a geographic area, surrounding the delivery local of the required Goods and/or Services, that is broad enough to allow sufficient vendor competition, but narrow enough to minimize publications cost during the procurement process.
2. **"SOLE SOURCE PROCUREMENT"** shall mean a procurement where the Procuring Party has determined, after adherence to applicable procedures, that only one vendor is available to fulfill the procurement request and no other Goods or Services will satisfy the procurement request and the expenses attendant to locating vendors outside a geographically feasible area is an inefficient use of Navajo Nation resources.

C. Procedures for Sole Source Procurements

1. The Director of the Procuring Division or President of the Procuring Chapter, the Purchasing Services Department Director, and a representative from the Office of the Attorney General (or the Office of Legislative Counsel for procurement by the Legislative Branch) must determine and concur in writing that there is only one geographically feasible qualified source for the desired Goods or Services. Such written determination shall be included in the subsequent contract file.
2. To qualify as a Sole Source Procurement and to gain the determination and concurrence required in subsection (1) above, the Procuring Party must, at a minimum, provide written documentation of the following:
 - a. Justification that there is only one geographically feasible qualified source for the desired Goods or Services. Such justification may be demonstrated by the following:

- i. Public notice of the Invitation for Bids or an RFP or RSQ published for a reasonable time prior to the date set for the submission of bids or proposal in a newspaper of general circulation; and
 - ii. A list of all entities submitting bids or proposals demonstrating that only one or none qualified or responsible vendors responded.
 - b. Justification as to why the expense attendant to locating vendors outside the geographically feasible area is an inefficient use of Navajo Nation Resources.
 - c. Justification as to why no other Goods or Services will satisfy the procurement request.
 - d. A cost price analysis justifying why the Sole Source Vendor's price for the Goods or Services is reasonable.
 - e. Clearance by the Business Regulatory Department that the Navajo Nation Business Opportunity Act has been adhered to in the solicitation.
3. After securing the determination and concurrence required by subsection (2) above, the Procuring Party shall proceed to enter a contract pursuant to these Regulations.
 4. Before issuance of a Purchase Order or execution of a contract, the Procuring Party shall submit all Sole Source Procurement contracts, including Purchase Orders, for Administrative Review and signature by:
 - a. The Program Director or Department Head; and
 - b. The Division Director or Chapter President; and
 - c. The Division of Finance; and
 - d. The Office of the Attorney General (or Office of Legislative Counsel for contracts of the Legislative Branch).

VII. EMERGENCY PROCUREMENT

A. General; Application

1. In order to protect the public health, welfare and/or safety of the residents of the Navajo Nation during emergency situations with exigent circumstances through the expedited procurement of necessary Goods or Services while still maintaining a centrally controlled and efficient purchasing system, a need was recognized to allow the procurement of Goods and/or services under simplified procedures during Emergency Conditions. This need arises only when Emergency Conditions exist. To address this need, the Navajo Nation Council, at 12 N.N.C. § 334 (as amended by CAU-68-01), enacted an Emergency Procurement exception to the comprehensive Navajo Nation Procurement Regulations.
2. The procedures set forth in this Emergency Procurement section shall apply to the purchase of Goods or Services, regardless of the cost of the Goods or Services, by any division, department, office or program or uncertified political subdivision of the Navajo Nation, as defined in 12 N.N. C. § 308(o).
3. The Regulations (the Navajo Nation Procurement Rules and Regulations) for non-Emergency procurements shall not apply to Emergency Procurements unless specifically made applicable under subsection (C) below.
4. The procedures set forth in this Emergency Procurement section shall not be used in the acquisition of Goods or Services in non-Emergency Condition situations. Conditions and/or situations shall not be inflated or manipulated merely to permit the use of this Emergency Procurement section. The lack of advance planning on the part of the Procurement Party shall not justify the use of this Emergency Procurement section.
5. To the extent practicable, vendors certified under the Navajo Nation Business Opportunity Act shall receive preference for Emergency Procurements.
6. The Purchasing Services Department shall maintain a record, conforming to the requirements of 12 N.N.C. §336, listing all purchases made under these Emergency Procurement Regulations for a minimum of five years.

B. Definitions

1. "EMERGENCY CONDITION" shall mean an immediate threat, arising suddenly out of the current events, of compelling and unusual urgency, to the public health, welfare, safety, and/or property of the Navajo Nation or residents of the Navajo Nation

sufficient to warrant the suspension of the comprehensive Navajo Nation Procurement Rules and Regulations.

C. Procedures and Emergency Procurement

1. The Procuring Party shall make written application to the Executive Director of the affected division or Chapter President for an expedited determination that an Emergency Condition exists sufficient to warrant a procurement under these Emergency Procurement regulations. Such application shall include detailed documentation of the Emergency Condition.
2. The Executive Director or Chapter President shall secure the written concurrence of the Director of the Purchasing Services Department or authorized designee and a representative of the Office of the Attorney General (or the Office of Legislative Counsel) that an Emergency Condition exists sufficient to warrant procurement under these Emergency Procurement regulations.
3. The Director of the Purchasing Services Department or authorized designee and a representative of the Office of the Attorney General (or the Office of Legislative Counsel for procurements by the Legislative Branch) shall, in an expedited manner, provide written concurrence as to what competition and selection procedures are acceptable and lawful under the circumstances.
4. As to the Emergency Procurement of goods, after subsections (1) – (3) above, have been complied with, the Director of the Purchasing Services Department or authorized designee shall determine whether the Procuring Party or the Purchasing Services Department will proceed to procure the needed Goods in the manner determined in subsection (3) above.
5. As to the emergency procurement of Services, after Sections (1) – (3) above have been complied with, the Procuring Party will proceed to procure the needed Services in the manner determined in subsection (3) above.
6. All Emergency Procurement contracts, including Purchase Orders, shall be submitted for expedited administrative review and signature by:
 - a. The program Director or Department Head; and
 - b. The Division Director or Chapter President; and

- c. Business Regulatory Dept
 - d. The Purchasing Services Department; and
 - e. The division of Finance; and
 - f. The office of Attorney General (or office of Legislative Counsel for contracts of the Legislative Branch).
7. The written determination that a Emergency Condition exists and the selection of the particular vendor shall be included in the procurement file.

VIII. BLANKET PURCHASE AGREEMENTS

- A. A Blanket Purchase Agreement is a simplified method of filling anticipated repetitive needs for small quantities of Goods or Services by establishing "charge accounts" with qualified sources. Blanket Purchase Agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.
- B. Blanket Purchase Agreements for goods shall be treated as a procurement for Goods and shall initially be produced and contracted in adherence to these Regulations through an Invitations for Bids. Notwithstanding the above, the Purchase Order shall be supplemented by a contractual agreement adhering to 2 N.N.C. § 222 (as amended by CAU-48-03).
- C. Blanket Purchase agreements for Services shall be treated as Procurement of Services and shall initially be procured and Contracted by the Purchasing Services Department as the Procuring Party in adherence to these Regulations through a RFP or RSQ.
- D. To the extent practicable, Blanket Purchase Agreements for Goods or Services of the same type should be placed concurrently with more than one qualified vendor. All competitive sources be given an equal opportunity to furnish Goods or Services under such agreements.
- E. At a minimum, Blanket Purchase Agreements shall contain the following provisions:
 - 1. A statement that the vendor shall furnish Goods or Services described therein in general terms, during a specified period and

within a stipulated aggregate amount, if any. Blanket Purchase Agreements may encompass all items that the vendor is in a position to furnish.

2. A statement that the Navajo Nation is obligated only to the extent of authorized orders actually placed against the Blanket Purchase Agreement.
 3. A detailed description of the required ordering, invoicing, and delivery procedures.
 4. A statement that notice of individuals authorized to place orders under the agreement identified by organizational component and the dollar limitation per order for each individual shall be furnished to the vendor by the Purchasing Services Department or Procuring Party.
- F. Orders against Blanket Purchase Agreements shall be placed only after prices are obtained. When concurrent Blanket Purchase Agreements for similar Goods or Services are in effect, orders shall be equitably distributed to the extent practicable. In those instances where there is an insufficient number of Blanket Purchase Agreements for any given class of Goods or Services to assure adequate competition, the Purchasing Services Department shall solicit quotations from other sources.
- G. Orders against Blanket Purchase Agreements shall only be made by individuals formally authorized to place orders and generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written orders may be executed on Purchase Orders or other forms approved by the Purchasing Services Department. Documentation of orders shall be limited to essential information.
- H. The Purchasing Services Department and Division of Finance shall review Blanket Purchase Agreement files at least semiannually to assure that authorized procedures are being followed.

IX. PREQUALIFICATION OF VENDORS

- A. Pursuant to the Regulation governing RSQ's, prospective vendors may be pre-qualified and distribution of solicitations identified in the RSQ may be limited to these pre-qualified vendors.
- B. Notwithstanding Section IV (A) (3), an RSQ may have an open-ended deadline for submission of proposals. When an RSQ had an open-minded

deadline for submission, vendors who submit responsive proposals and meet the pre-qualification standards at any time be added to the pre-qualified list for subsequent solicitations identified in the RSQ.

- C. The fact that a prospective vendor had been pre-qualified does not represent a finding of responsibility.

X. PRE-BID AND PRE-PROPOSAL CONFERENCES

Pre-Bid or pre-proposal conferences, either voluntary or mandatory, are allowed and may be conducted, if so identified in the Invitation for Bids, RFP or RSQ, including the date, time and location of the conference and whether the conference is voluntary or mandatory.

XI. RECEIPT AND SAFEGUARDS OF BIDS AND PROPOSALS

- A. The purchasing Service Department for Goods procurements and the Procuring Party for Service procurements shall accept all bid or proposal packages including those packages from vendors not certified under the Navajo Nation Business Opportunity Act. The bid or proposal packages shall be logged and stamped according to the time officially received as determined by the Purchasing Service Department or Procuring Party, as applicable.
- B. As a general rule, facsimile or telegraphic bids and proposals will not be accepted unless specifically authorized in the Invitation for Bids, RFP or RSQ or these Regulations. When, in the judgment of the Procurement Officer or Procuring Party, as applicable, the date set for the opening of bids or proposals will not allow bidders or offerors sufficient time to prepare and submit bids or proposals in the prescribed manner or when prices are subject to frequent changes, facsimile or telegraphic bids or proposals may be authorized and will be sealed (if required) when received by the Procurement Officer or Procuring Party, as applicable.
- C. Without exception, bid, or proposal packages submitted unsealed, without identification, and /or after the time set for submission of bids or proposals shall be marked and deemed non-responsive. Such bid or proposal packages shall not be opened.
- D. All bids or proposals (including bid or proposal modifications) received prior to the time of Bid or Proposal Opening shall be kept secure and, except as provided in subsection (E), unopened. Necessary precautions shall be taken to insure the security of all bids and proposals.

- E. Prior to Bid or Proposal Opening, information concerning the identify and number of bids or proposals received shall be made available only to the Navajo Nation employees, and then only on a "need to know" basis.

Prior to Notice of intent to Award, bid and proposal packages are not public information under the Navajo Nation Privacy and Access to information Act.

- F. When bid or proposal samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid or Proposal Opening.
- G. If a sealed bid or proposal is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the Director of the Purchasing Service Department or his designee or the Procuring Party who shall immediately write on the envelope an explanation of the opening, the date and time opened, his signature, and then shall immediately reseal the envelope.

XII. CORRECTION OR WITHDRAWAL OF BIDS AND PROPOSALS

- A. Bidders and offerors shall be allowed to correct bids and proposals before the bid or proposal submission deadline. Before the bid or proposal submission deadline, the bidder or offeror must submit, to the Procurement Officer or Procuring Party, as applicable, a written request to correct the bid or offer along with a corrected bid or proposal package.
- B. Bidders and offerors shall not be allowed to correct bids or proposals after the bid or proposal submission deadline has passed. Notwithstanding the above, if the Procurement Officer or the Procuring Party, as applicable, determines, after Bid or Proposal Opening, that a bid or proposal clearly contains an error in addition, an error in the extension of unit prices, or a similar type error, the Procurement Officer of the Procuring Party, as applicable, may permit the bid or Proposal to be corrected. The Procurement Officer or Procuring Party shall document in writing the basis for such correction.
- C. Bidders and offerors shall be allowed to withdraw bids or proposals prior to the Bid or Proposal Opening. Before the date and time set for Bid or Proposal Opening, the bidder or offeror must submit, to the Procurement Officer or the Procuring Party, as applicable, a written request to withdraw the bid or proposal.

XIII. CANCELLATION OR MODIFICATION OF INVITATION TO BID, REQUEST FOR PROPOSAL, OR REQUEST FOR STATEMENT OF QUALIFICATIONS

- A. Every effort shall be made to anticipate changes in a requirement prior to the deadline for bid or proposal submission and to notify prospective bidders and offerors of any resulting modification; thereby permitting bidders and offerors to change their bids or proposals and preventing the unnecessary exposure of bid or proposal prices. Such notification may extend the bid or proposal submission deadline and the new Bid or Proposal Opening date and time and shall be publicized in the same manner as the Invitation for Bids, RFP or RSQ was published.
- B. Prior to an award, an Invitation for Bids, RFP or RSQ may be cancelled when the Director of the Purchasing Services Department or Procuring Party determines in writing that:
1. Inadequate or ambiguous specifications were cited in the invitation or request; and
 2. Specifications or descriptions have been revised; and
 3. The Goods or Services being procured are no longer required; and
 4. The Invitation to Bid, RFP or RSQ did not provide for consideration of all factors of cost to the Navajo Nation; and
 5. Bids or proposals received indicate that the needs of the Navajo Nation can be satisfied by a less expensive Good or Service or Good Service differing from that on which the bids or proposals were invited or requested; and
 6. All otherwise responsive bids or proposals received exceed available fund or are at prices above the Maximum Feasible Price after opportunity for negotiation pursuant to 12 N.N. C. §331(f) and these Regulations; and
 7. The Director of the Purchasing Services Department or the Procuring Party, upon consultation with the Navajo Nation Department of Justice (or office of Legislative Branch for procurements of the Legislative Branch) determines that the bids or proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; and
 8. For other reasons, cancellation is clearly in the best interest of the Navajo Nation.
- C. As a general rule, an Invitation for Bids, RFP or RSQ should not be canceled after opening due solely to increased quantities of the Goods or

Services being procured. The award should be made on the initial Invitation for Bids or RFP and the additional quantity required should be treated as a modification or new procurement.

- D. A determination to cancel an invitation for Bids, RFP or RSQ prior to the bid or proposal submission deadline shall be published in the same manner as the Invitation for Bids, RFP or RSQ was published. A determination to cancel an Invitation for Bids or RFP after opening but prior to award shall be mailed or telefaxed to bidders and offerors submitting timely bids and proposals.
- E. If an Invitation for Bids, an RFP, or RSQ is cancelled, bids and proposals shall be returned to the bidders and offerors upon request.
- F. A written justification for the cancellation of an Invitation for Bids, approved by the Director of the Purchasing Services Department, or an RFP or RSQ, approved by the Procuring Party and Navajo Nation Department of Justice (or Office of Legislative Council for procurements of the Legislative Branch) shall be made part of the procurement file.

XIV. TYPES OF CONTRACTS

- A. Subject to these Regulations and the approval of the Navajo Nation Department of Justice (or Office of Legislative Counsel for contracts affecting the Legislative Branch), any type of commercially reasonable contract which promotes the best interest of the Navajo Nation may be used, including, but not limited to the following:

- 1. **Fixed-Price Contracts**

A fixed-priced contract places responsibility on the vendor for the delivery of the Goods or the complete performance of the Services, including Construction, in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. The fixed-priced contract is appropriate for use when the extent and type of work necessary to meet the Procuring Party's requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for standard commercial Goods and Construction. A Purchase Order is a form of a fixed-price contract.

- a. **Firm Fixed-Price Contract**

A Firm Fixed-Price Contract provides a price that is not subject to adjustments because of adjustment in the contractor's cost of performing the work specified in the contract.

b. Fixed Price Contract with Price Adjustment

A Fixed Price Contract with Price Adjustment provides for variation in the contract price under special conditions defined in the contract, other than provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract.

Price adjustment may be allowed upward or downward or both. Examples of conditions under which adjustments may be provided in Fixed-Price Contracts with Price Adjustments are:

- i. changes in the contractor's labor agreement rates as applied to the industry, local area or the Navajo Nation; and
- ii. changes due to rapid and substantial price fluctuations, which can relate to an accepted index (such as contracts for gasoline, heating oils, etc); and
- iii. if the contract provides unilateral action by the contractor to bring out the condition under which a price increase may occur, the contract shall reserve to the Navajo Nation the right to reject the price increase and terminate without cost the future performance of the contract. The contract shall also require that notice of any such price increase shall be given within such time prior to its effective date as is specified in the contract.

2. Time and Materials Contracts

Time and Materials Contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without Navajo Nation approval.

3. Labor Hour Contracts

A labor hour contracts provides only for the payment of labor performed at an established rate.

4. Definite Quantity and Indefinite Quantity Contracts

a. Definite Quantity Contract

A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of Goods or Services either at specified times or when ordered.

b. Indefinite Quantity Contract

An indefinite quantity contract is a contract for an indefinite amount of Goods or Services to be furnished at specified times, or as ordered, that establishes fixed unit prices. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity that the Procuring Party is obligated to order and may also provide for a maximum provision that limits the Procuring Party's obligation to order.

c. Requirement Contract

A requirement contract is an indefinite quantity contract for the Goods or Services that obligates the Procuring Party to order all the actual requirements of a designated user entities during a specified period of time. As a general rule, requirements contracts are to be avoided.

5. **Cost-plus-a-percentage-of-cost Contracts are prohibited. A cost-plus-a-percentage-of-cost contract is a contract that fixes the amount to be paid as the cost of the material and labor plus a percentage of the cost of the material and labor.**

B. Unless otherwise excepted by Navajo Nation law, contracts shall, when applicable, state in an appropriate form the following:

1. **Upon timely written notice, which shall be defined in the contract, the Navajo Nation shall have the unilateral right to order changes in the work within the scope of the contract; a method for calculating price adjustments for such changes shall be defined in the contract; and**
2. **Upon timely notice, which may be defined in the contract, the Navajo Nation shall have the unilateral right to temporarily stop work on the contract or to delay the contractor's performance under the contract; a method for calculating any price adjustments for such stoppage or delay shall be defined in the contract; and**
3. **The liability of the Navajo Nation under such contract is contingent upon the availability of appropriations by the Navajo Nation Council; and**

4. Nothing under the contract expressly or impliedly waives the Sovereign Immunity of the Navajo Nation; and
 5. The vendor shall comply with all applicable Navajo Nation laws and regulations; and
 6. Any disputes under the contract shall be resolved under Navajo Nation law.
- C. Unless otherwise prohibited by Navajo Nation law, multi-term contracts are acceptable provided that the term of the contract and conditions of renewal or extensions are included in the contract, as well as in the RFP, and funds are available for the first fiscal period at the time of contracting. Such contracts shall condition payment and performance obligations for succeeding fiscal periods on the availability and appropriation of funds.

XV. MODIFICATIONS AND CHANGE-ORDERS

Contract modifications or change-orders costing more than twenty percent (20%) of the total cost of the original contract and inconsistent with the original scope of work shall require new competition, subject to the following:

- A. Modifications or change-orders costing more than \$50,000.00 shall adhere to the competition procedures in these Regulations for Goods or Services costing more than \$50,000.00.
- B. Modifications or change-orders costing less than \$50,000.00 shall adhere to the competition procedures in Small Purchase section of these Regulations.
- C. Modifications of change-orders meeting the criteria of Sole Source or Emergency Procurements under these Regulations shall adhere to the Sole Source Procurement and Emergency Procurement sections of these Regulations.

XVI. LOW TIE BIDS

Low tie bids are low responsive bids from responsible bidders that are identical in price. If two (2) or more bidders are tied, the tie may be broken and the successful bidder selected in accordance with the best interest of the Navajo Nation, and the following may be given consideration:

- A. Quality of the Goods or Services bid or proposed, if such quality is ascertainable.

B. Delivery time.

XVII. RESPONSIBLE VENDORS

A. The Navajo Nation shall only award procurements to responsible contractors.

B. It is the responsibility of the Procuring Party to provide timely written notification to the Director of the Purchasing Services, the Director of the Business Regulatory Department, and the vendor of any complaints against vendors for contract noncompliance or noncompliance with these Regulations. The Director of Purchasing Services shall investigate the validity of such written complaints (notifications), including allowing the vendor the opportunity to respond. In determining responsibility for future procurements, only written complaints shall be considered.

C. The Purchasing Services Department or Procuring Party may make such investigations as it seems necessary to determine the ability of the vendor to provide or perform, solicited Good or Services. The vendor shall furnish to the Purchasing Services Department or Procuring Party all such information and data requested for this purpose. The Navajo Nation reserves the right to reject any bid or proposal, at any time, if the evidence submitted or investigation of such vendor fails to satisfy the Purchasing Services Department or Procuring Party that such vendor is properly qualified to provide the solicited Goods or Service and complete the work contemplated therein or has provided false or misleading information. The Purchasing Services Department or Procuring Party shall notify the Vendor in writing of the reasons they are not properly qualified.

D. The Navajo Nation reserves the right to reject the Bid or proposal of any bidder or offeror who:

1. has previously failed to properly perform or to complete on time contracts of a similar nature;
2. is not in a position to perform the contract;
3. has habitually and without just cause neglected the payment of bills or otherwise disregarded its obligations to subcontractors, employees, etc.

E. Factors to be considered in determining whether a vendor or prospective vendor is responsible are as follows:

1. whether the vendor has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the

- ability to obtain them, necessary to meet all procurements requirements; and
2. whether the vendor has a satisfactory record of performance with the Navajo Nation; and
 3. whether the vendor has a satisfactory record of integrity with the Navajo Nation; and
 4. whether the vendor is legally qualified to contract with the Navajo Nation; and
 5. whether the vendor has supplied all necessary information in connection with the inquiry concerning responsibility.
- F. The prospective vendor shall supply information requested by the Purchasing Services Department or Procuring Party concerning the responsibility of such vendor. If such vendor fails to supply the requested information, the determination of responsibility shall be based upon any available information and the prospective vendor may be deemed non-responsible if the failure to provide the requested information is unreasonable.
- G. The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
1. evidence that such vendor possesses such necessary items; and
 2. acceptable plans to subcontract for such necessary items; and
 3. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- H. Before awarding a contract, the Purchasing Services Department or Procuring Party must be satisfied that the prospective vendor is responsible.
- I. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the findings shall be prepared by the Purchasing Services Department or the Procuring Party. A copy of the determination shall be sent promptly to the bidder or offeror. The final determination shall be made by the part of the procurement file.

XVIII. RISK MANAGEMENT

- A. All contracts for Services, unless otherwise approved by the Department of Justice (or Office of Legislative Counsel for procurements by the Legislative Branch) shall require that the vendor defend, indemnify and hold the Navajo Nation, the Navajo Nation's representative or agent, and the officers, directors, agents, employees, and assigns of each harmless from and against any and all claims, demands, suits, judgments, damages to persons or property, injuries, losses or expenses of any nature whatsoever (including attorney's fees at trial at appellate level) arising directly or indirectly from or out of any negligent act or omission of the contractor, its subcontractors or sub-consultants and their officers, directors, agents or employees, and from any failure of the contractor to perform its services hereunder in accordance with generally accepted professional standards and from any material breach of the contractor's representations set forth in its proposal and from any other failure of the contractor to comply with the obligations on its part to be performed under the contract.
- B. The Navajo Nation Risk Management will review, when requested, special conditions and instructions to bidders and offerors for the solicitations of bids and proposals for Goods and Services, including Construction, for insurance requirements when the provision of insurance is specified in these Regulations or otherwise determined to be in the best interest of the Navajo Nation. Prior to the awarding of a bid or offer where insurance is required by these Regulations or the solicitation, the Risk Manager will review insurance certifications and shall provide written approval or rejection of the proof of insurance provided by the contractors.
- C. Vendor shall not continue performance under a Navajo Nation contract without proper insurance in effect after the Navajo Nation and vendor has been notified of the lapse of the requisite insurance.

XIX. AMENDMENT

These Regulations may be amended at any time upon recommendation of the Purchasing Services Department and approval of the Budget and Finance Committee of the Navajo Nation Council.

10/12/21

